MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: Agenda for Board Meeting of the Authority July 13, 2022

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Economic Transformation

Community Development

Procurement

Incentives

Loans/Grants/Guarantees

Bond Projects

Real Estate

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

June 8, 2022

MINUTES OF THE MEETING

The Meeting was held in person and by teleconference call.

Members of the Authority present in person: Chairman Kevin Quinn; Noreen Giblin, Executive Representative; Public Members: Charles Sarlo, Vice Chairman; and Robert Shimko, First Alternate Public Member.

Members of the Authority present via conference call: Commissioner Marlene Caride of the Department of Banking and Insurance; State Treasurer Elizabeth Muoio of the Department of Treasury; Roberto Soberanis representing Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Virginia Bauer, Fred Dumont, Aisha Glover, Marcia Marley, and Rosemari Hicks, Second Alternate Public Member.

Also present: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; Jamera Sirmans, Governor's Authorities Unit; and staff.

Members of the Authority absent: Public Members Phil Alagia, and Massiel Medina Ferrara.

Mr. Quinn called the meeting to order at 10:00am.

In accordance with the Open Public Meetings Act, Mr. Sullivan announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the May 11, 2022 meeting minutes. A motion was made to approve the minutes by Commissioner Caride, and seconded by State Treasurer Muoio, and was approved by the 12 voting members present.

FOR INFORMATION ONLY: The next item was the presentation of the Chairman's remarks to the Board.

FOR INFORMATION ONLY: The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board.

Mr. Sullivan thanked Brian Sabina, Special Advisor to the CEO for his hard work and dedication during his tenure at the NJEDA. Mr. Sullivan also read a letter from Governor Phil Murphy thanking Mr. Sabina for his service to the NJEDA and to the State of New Jersey.

Ms. Hicks joined the meeting at this time.

INCENTIVES

FILM & DIGITAL MEDIA TAX CREDIT

ITEM: Proposed Rule Amendments: New Jersey Film & Digital Media Tax Credit (N.J.A.C.19:31-21.1)
REQUEST: To approve the proposed amendments to the rules implementing the New Jersey Film & Digital Media Tax Credit Program based on statutory adjustments and to authorize staff to (a) submit the proposed rule amendments for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Giblin **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

GROW NJ

ITEM: Pearl Capital Business Funding, LLC Grow New Jersey Assistance Program ("Grow NJ") – COVID-Related Termination P #44784 (PROD- 00128461)
REQUEST: To approve Pearl Capital Business Funding, LLC's request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020.
MOTION TO APPROVE: Mr. Shimko **SECOND:** Ms. Dragon **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

COMMUNITY DEVELOPMENT

ITEM: Application Fee Waiver for Asset Activation Planning Grant Program, Food Security Planning Grant Program, and Historic Property Survey Grant Program
REQUEST: To approve delegated authority to the Chief Executive Officer to waive application fees for the Food Security Planning Grant Program, Asset Activation Planning Grant Program and Historic Property Survey Grant Program, for a municipal government, municipal authority, commission or a redevelopment agency located in the most financially distressed NJ municipalities.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

AUTHORITY MATTERS

ITEM: **Delegations of Authority – Non-discretionary declinations for the Angel Tax Credit Program, NJ Innovation Evergreen Program, Legal Affairs, Administrative Overhead and Program Costs, and Sandy Programs**
REQUEST: To approve updates to delegations of authority for Non-discretionary declinations for the Angel Tax Credit Program, NJ Innovation Evergreen Program, Legal Affairs, Administrative Overhead and Program Costs, and Sandy Programs.
MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

Ms. Hicks abstained from voting.

BOND PROJECTS

Stand-Alone Bond

APPLICANT: The Atlantic City Sewerage Company PROD. #00302085
LOCATION: Atlantic City, Atlantic County
PROCEEDS FOR: Construction, rehabilitation, upgrade and expansion, cost of issuance
FINANCING: $7,000,000.00
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Shimko **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

LOANS, GRANTS, GUARANTEES

NJ ACCELERATE

APPLICANT: Princeton NuEnergy Inc. PROD. #00303053
LOCATION: Bordentown City, Burlington County **PROCEEDS FOR:** working capital
FINANCING: $52,500.00
MOTION TO APPROVE: Ms. Marley **SECOND:** Mr. Dumont **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

REAL ESTATE

ITEM: Supplemental Memorandum of Understanding between the Capital City Redevelopment Corporation and the NJ Economic Development Authority on Project Related Work and Fees regarding the Sale and Redevelopment of the Former Taxation Building
REQUEST: Approval is requested to enter into a supplemental MOU between the CCRC and the NJEDA to govern processes and substance of project related work and fees regarding the sale and redevelopment of the former Taxation Building.
MOTION TO APPROVE: Mr. Sarlo **SECOND:** Ms. Bauer **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

PUBLIC COMMENT

There was no public comment.

EXECUTIVE SESSION

INCENTIVES

GROW NJ

ITEM: D'Artagnan, Inc. - Declaration of Default Grow New Jersey Assistance Program ("Grow NJ") P#39728 (PROD-00184300)
THIS ITEM HAS BEEN WITHHELD FROM CONSIDERATION

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Shimko, the meeting was adjourned at 11:16am.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

Danielle Esser

Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: July 13, 2022

Re: July 2022 Board Meeting

The New Jersey Economic Development Authority (NJEDA) continues to play a major role in the state's recovery from the COVID-19 pandemic. Last week, we announced plans to award grants totaling $17.5 million to 30 nonprofit organizations through Phase 3 of our successful Sustain & Serve NJ program. Sustain & Serve NJ provides eligible entities with grants to support the purchase of meals from New Jersey restaurants that have been negatively impacted by COVID-19 and the distribution of those meals at no cost to recipients. The additional $17.5 million in awards brings total program funding to $52.5 million. With this additional funding, the program is now on track to provide a total of more than five million meals.

As restaurants and other small businesses continue to rebound from the pandemic, businesses in the state's emerging cannabis sector recently received a boost as Governor Phil Murphy signed S2945, which will enable these businesses to access NJEDA's existing small business resources. Cannabis-focused businesses were previously not eligible to apply for NJEDA programs. S2945 also opens the door for the creation of additional products and programs specific to this industry, such as grants, loans and/or technical assistance.

The Fiscal Year 2023 budget includes several appropriations that demonstrate the confidence of the Governor and the Legislature in the NJEDA's ability to develop and implement extraordinary resources to help further the goal of building a stronger and fairer New Jersey economy. The budget contains funding for several important initiatives that will build on the progress the NJEDA has made. This includes a $50 million expansion of the Main Street Recovery Program, which has already provided lease assistance and business improvement grants to hundreds of small businesses all over the state.

Some other highlights of the FY 2023 budget include encouraging a more diverse economy by funding the creation of the Black and Latino Seed Fund and the Diverse Developers Fund, and fostering entrepreneurship by allocating $70 million in funding for Strategic Innovation Centers.

The budget also includes appropriations for:

- NJ Commission on Science, Innovation, and Technology - $6.2m
- Manufacturing Initiative - $35m
- NJ Innovation Evergreen Fund - $5m
- NJ Big Data Alliance - $.2m
- Small Biz Bonding - $1m
- Planning Grants - $1.8m
- Child Care Employer - $15.5m
- Indoor Amusement Parks - $5m
- Brownfield Site Reimbursement $3.5m
- Real Estate Project Programs - $70m
- Ft Monmouth Infrastructure - $10m
- Expansion of University Hospital (Newark) - $50m

Notably, in response to the growing demand for NJEDA's involvement in major real estate projects, the NJEDA continues to evolve as an organization to ensure we are effectively building out the tools and capacity to help implement programs that advance the State's economic development objectives.

With these objectives in mind, I am thrilled to announce that Jorge Santos has been named Chief Real Estate Development officer, reporting directly to me. Jorge has served for the past three years as Chief of Staff, where he

worked closely with NJEDA leadership to drive the Authority's strategic direction and execute priority initiatives. Jorge will lead a new division specifically focused on Real Estate Development and major projects and will oversee our continued partnership with the Fort Monmouth Economic Revitalization Authority (FMERA).

Dan Jennings will be joining the NJEDA as Executive Vice President for Real Estate Development and Programs, reporting to Jorge. Prior to this role, Dan served as a Senior Advisor for Economic Development to Governor Murphy.

I am also delighted to congratulate Juan Burgos on his promotion to Vice President for Real Estate Development. Juan will continue to lead the team he has led on an interim basis since Dave Nuse's retirement earlier this year. Juan will report to Dan once he joins the NJEDA officially later this summer. Juan joined the Authority in 2007 and previously served as the Director of Real Estate Development and Finance. Alongside Juan's group, we will be building out a team focused real estate-related grant, loan and technical assistance programs.

And finally, as Jorge transitions out of his current role, I'm pleased to announce that Emma Corrado has been named Chief of Staff where she will work with the Executive Committee to drive NJEDA's strategic direction, execute priority initiatives, and liaise with the Governor's Office and key stakeholder groups. Emma previously served as a Senior Advisor – Community Development at NJEDA. Prior to joining the Authority, Emma was a Projects Specialist for United States Senator Cory A. Booker.

It is with a heavy heart that I acknowledge the passing of a beloved member of the NJEDA family, Maribel Fermin. Maribel was an essential part of the Small Business Services team, where she worked as a Senior Small Business Representative. After joining the NJEDA two and a half years ago, Maribel led outreach efforts to small businesses in North Jersey and worked tirelessly to ensure that businesses in need of financial assistance were provided the proper tools and resources available through NJEDA. Prior to her work at the Authority, Maribel worked for over 21 years as a Business Representative at the New Jersey Department of Labor and Workforce Development. Maribel was known by all those she worked with for her warmth, graciousness, and dedication to helping others. She will be greatly missed, and we extend our deepest condolences to her family, in particular, her mother, Nerys, and her sons, Carlos and Cesar.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 13, 2022

RE: NJ ZIP, the New Jersey Zero Emission Incentive Program: Second Phase Expansion of the Voucher Pilot

REQUEST

The Members of the Board are requested to approve a $46,575,000 expansion to the New Jersey Economic Development Authority's ("Authority") existing zero-emission commercial-use vehicle voucher pilot, the New Jersey Zero-emission Incentive Program (NJ ZIP). The first phase of the pilot is currently focused on the adoption and use of medium-duty zero-emission vehicles in four selected pilot communities: Greater Camden, Greater Newark, Greater New Brunswick, and Greater Shore Areas. This memorandum proposes the expansion of the current pilot into a second phase, to test new program functions, features, and eligibility, based on learnings from the first phase, with the anticipation of a longer-term program launched after the completion of this second phase, given its success and continued availability of funding. The pilot and related administration will be funded from the Authority's allocation of New Jersey's Regional Greenhouse Gas Initiative (RGGI) auction proceeds; as such, to remain good stewards of these funds, the Authority must continue prompt allocation of these monies to projects that support commercial, industrial, and institutional businesses' transitions to clean transportation.

In relation to this pilot program, and as continued from its initial approval, the Board is asked to approve delegated authority to:

- The Authority's Chief Executive Officer (CEO) or delegate(s) of the CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations and (ii) adjust voucher amounts;
- The CEO or delegate(s) of the CEO to approve Purchasers, Vendors, and vehicles as eligible and, subsequently, approve vouchers or extensions of vouchers reservation term;
- The CEO or delegate(s) of the CEO to, upon recommendation of the reviewing officer, decline eligibility based solely on non-discretionary reasons;
- The CEO or delegate(s) of the CEO to, upon recommendation of the reviewing officer, to waive half the application fee for Applicants upon demonstration by the Applicant that the imposition of the fee would propose undue financial hardship;

- In connection with any appeal from declination based solely on non-discretionary reasons, the CEO or delegate(s) of the CEO to designate a Hearing Officer who has not previously been directly involved in the eligibility determination, to prepare a recommendation to the final decision maker. The CEO or delegate(s) of the CEO shall make a final written decision on the matter, which shall constitute the Authority's Final Administrative Decision. .

OVERVIEW

The NJ ZIP pilot is structured as a first-come, first-serve voucher program. The pilot is focused on incentivizing the adoption of zero-emission vehicles (ZEV) by New Jersey businesses and institutions, especially those operating within overburdened community (as defined by NJ P.L.2020, c.92, and which, for the purposes of the pilot, is used interchangeably with the term "environmental justice communities" specified in the RGGI Strategic Funding Plan), that have been disproportionately impacted by emissions. The Authority's use of this funding is aligned with both its core mission, to foster sustainable and equitable economic growth – in this case, in the commercial-use ZEV ecosystem and value chain within the State – and with the State's broader clean transportation goals, to transition 75% of medium- and 50% of heavy-duty vehicles to zero emission by 2050 supported by incentive programs, which the Energy Master Plan (Goal 1.1.8) cites as NJEDA's responsibility.

Current Pilot Phase Performance To-date

The current phase of the NJ ZIP pilot focuses specifically on incentivizing the adoption of medium-duty ZEV within four pilot communities: the Greater Camden, Greater Newark, Greater New Brunswick, and Greater Shore Areas.

The primary goals of the pilot, as enumerated in the January 2021 Board memorandum in which the pilot was initially approved, are:

1) Accelerate the adoption and use of medium duty zero-emission vehicles within New Jersey;
2) Reduce emissions within the pilot overburdened communities, greater Newark and greater Camden
3) Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

In service to these goals, the pilot has received continuous application flow from applicants in the eligible communities, in addition to repeated interest for expansion to more parts of the state and for longer-term funding. As of the end of Q2 2022, two hundred twenty-eight (228) purchaser applications have been submitted to the Program, totaling $43.6M in active applications. Of these, one hundred forty-four (144) purchaser applications have been approved for a total of $32.2M in vouchers for zero-emission medium-duty vehicles; with $199,500 in voucher funding requested for disbursement. The remaining applications are in the queue for review (62 applications), or, at Applicant request, have been withdrawn (22 applications).

The vehicles supported by the approved vouchers would result in the reduction of 6,569.2 short tons of carbon emissions annually within the pilot communities they operate in, greater Camden (37 vehicles with vouchers totaling $3,638,000), greater Newark areas (92 vehicles with vouchers totaling $9,542,750),

greater New Brunswick (27 vehicles with vouchers totaling $2,786,000) and greater Shore area (140 vehicles with vouchers totaling $16,260,000).

More than 90% of the approved purchaser applicants are small businesses (receiving a 25% funding bonus), with the vast majority being microbusinesses earning less than $1,500,000 annually, and more than 57% of approvals to date are minority- and/or woman-owned businesses.

Pilot Expansion Design Overview and Reasoning

As intended, the first phase of the pilot has provided an opportunity not only to support the accelerated adoption of ZEV, but also to assess the effectiveness of the program design, through both quantitative analysis and external feedback. NJEDA has received both positive and constructive feedback to the program through ad hoc outreach and in more formalized stakeholdering. This analysis and feedback is what is driving the proposed incremental program improvements, ensuring the Authority is continuing to be a good steward of its RGGI allocation and address market needs.

The expansion to the pilot proposed herein is intended to build on the successes and be responsive to the learnings from the first phase. The overarching structure of the pilot will remain unchanged, allowing New Jersey businesses or institutions ("Purchaser Applicants") to reserve voucher funding for eligible ZEV for commercial, industrial, or institutional use, reducing the upfront cost of the ZEV alternatives. The pilot program has eligibility requirements for the Purchaser Applicant, the vehicle purchased, and the vehicle seller/manufacturer ("Vendor"). Pursuant to the standard operating procedures adopted to support the first phase of the pilot's launch after January 2021 Board approval, the voucher can then be redeemed by the Vendor after proof of registration of the eligible vehicle(s) by the Purchaser Applicant.

The second phase of this pilot contemplates two major eligibility changes from the first phase – to expand eligibility to include heavy-duty vehicle classes and to Purchaser Applicants statewide – and proposes updated support structures for pilot participants, including the development of a technical assistance mechanism. In addition, a number of small yet impactful changes will be made based on stakeholder feedback, including adjustment of voucher funding levels, extending voucher duration to account for the on-going supply chain crisis, and considering future opportunities for creative vehicle ownership solutions for the program participants.

While the core goals of the pilot remain the same, the goals of this second phase have been updated to reflect new features as well as learnings from the first phase, as outlined below:

1) Accelerate the adoption of zero-emission medium- and heavy-duty vehicles (ZE MHDV) for commercial and institutional use within New Jersey;
2) Expand equitable access to voucher funds to a wider range of fleets interested in electrification, ranging from large national fleet operators to small owner-operator businesses;
3) Reduce emissions within the state of New Jersey, with a focus on benefits to overburdened communities;
4) In response to market demand demonstrated during the first phase of the pilot, test additional or alternative methods to incentivize expanded range of vehicle classes, support new areas while maintaining support for overburdened communities, stimulate market-readiness, and improve business participant's experience with the Program and in the zero-emission transportation space; and

5) Reduce barriers of entry in the transition to commercial zero-emission vehicles through technical assistance, market-reactive program flexibility, and improved application clarity.

In order to appropriately understand new program functions and features, the second phase of the pilot is merited for several reasons. First, the expansion of eligibility to include heavy-duty vehicles opens the program up to entirely new potential Vendors and Purchaser Applicants. While the Authority has a benchmarked data and stakeholder input relative to what participants have found suitable in other states, the Authority does not yet have the experience with this market in New Jersey to justify a permanent program proposal without direct, local data. Second, expansion to statewide fleets is likely to provide a 'stress test' to the systems and procedures that supported the first phase, with an influx of applications within a year of the application opening. Having the flexibility to learn from this increased application flow and improve processes in a pilot stage is critical to inform a long-term, sustainable program model. Third, as the next RGGI Strategic Funding Plan is currently under development, the Authority has not confirmed certainty of continued availability of funding for a more permanent program. Finally, in approving this expansion, the Authority would be approving a commensurate level of funding to the first phase of the pilot, in a single approval rather than over the course of several expansions. Based on this level of funding, it is anticipated that another 200 - 400 ZEVs will be approved for vouchers, which represents approximately 0.1% of medium-duty commercial and institutional vehicles registered in New Jersey – truly a nascent industry, in need of a pilot that can be responsive to changing needs. The insight outlined above, at a pilot stage, will allow NJEDA to appropriately shape both eligibility and compliance requirements. Further, the funding level proposed would allow NJEDA to allocate the majority of its calendar year 2021 RGGI proceeds, acting as good stewards of the auction proceeds, improving access to them and the resultant emissions and economic benefits. After evaluation of the impact of this second phase, a longer-term program with expanded eligibility, improved by the learnings of this pilot, may be proposed.

NJEDA will continue to implement and administer this program and the associated technical assistance for the program, using administrative funds, as permitted by the RGGI statute, "for administrative costs incurred in the administration of programs to reduce the emissions of greenhouse gases", at a rate of 3.5% in addition to the program funds. NJEDA Staff will be responsible for reviewing applications, maintaining a program website, and providing educational resources, such as access to technical assistance, FAQs, and webinars, to Vendors and Purchaser Applicants when needed.

BACKGROUND

The Regional Greenhouse Gas Initiative (RGGI)

RGGI is a multi-state, market-based program that establishes a regional cap on carbon dioxide (CO2) emissions from the electric power generation sector allowing for auctioning of emissions rights, traditionally referred to as a "cap-and-trade" program. Through its participation in eight quarterly RGGI auctions starting in 2020, New Jersey has received funding that totaled approximately $290 million, with a projection that, by the end of the year, could total another $70 million in proceeds.

Under the Global Warming Solutions Fund at N.J.S.A. 26:2C-51, the Authority is allocated 2% of these funds for administration of programs and, after deduction of administrative funds for the other two participating agencies (the New Jersey Board of Public Utilities, NJBPU, and the New Jersey Department of Environmental Protection, NJDEP), is then allocated 60% of the remaining

funds for programs. As mandated in the current RGGI Strategic Funding Plan (2020 through 2022), the Authority must spend its allocation on clean, equitable transportation programs in the commercial, industrial, and institutional sectors, as well as on the creation of a green bank, demonstrating net emission reductions and economic co-benefits. To date, NJEDA has been allocated approximately $146 million in RGGI funds, and has utilized nearly $47 million, primarily through funding phase one of NJ ZIP.

In August 2020, to enable this work, the Board approved hiring a consultant, Guidehouse, to support the development of a data-driven ZE MHDV strategy for the State with the goals of increasing ZE MHDV adoption, decreasing emissions, improving environmental justice, and fostering the creation of new jobs and investments in New Jersey. The second phase of the voucher pilot program proposed herein expands on the first phase as part of a holistic cross-Agency approach, intended to lay the groundwork and stimulate the market to prepare for future programs necessary to meet the broader programmatic goals.

PROGRAM PURPOSE AND POLICY ALIGNMENT

Several State plans call for ZEV adoption. Governor Murphy's 2018 Economic Development Strategic Plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy" includes goals for innovation in clean energy and transportation, as a path to catalyze economic growth. The 2019 Energy Master Plan, which outlines the State's goal of 100% clean energy by 2050, includes as its first strategy the reduction of energy consumption and emissions from the transportation sector, establishing as targets that by 2050, 75% of medium-duty and 50% of heavy duty vehicles be ZEV. The 2020 RGGI Strategic Funding Plan, collectively developed by NJDEP, NJBPU, and NJEDA, outlines funding priorities and metrics for ZEV adoption to support clean, equitable transportation with anticipated economic co-benefits, such as increased jobs and investment. In addition, Governor Murphy signed the Multi-state Medium- and Heavy-Duty Zero Emission Vehicle Memorandum of Understanding in 2020, agreeing to target converting 30% of all MHDV sales to zero emission by 2030, and 100% of sales to zero emission by 2050. In each of these policies, equity in program planning, access, and impact is cited as a core pillar to meaningfully accomplish the stated goals.

This pilot is being used as a vehicle to not only reduce harmful emissions in the state, but also to support the growth of the NJ ZEV ecosystem, with accelerated adoption of ZEVs being the first step to attracting more jobs and investment, as other ZE MHDV programs and regulations roll out across multiple State agencies.

While transitioning from internal combustion engine MHDVs to zero emission alternatives will align with the above-noted policies, MHDV owners and operators face many barriers to ZEV adoption.

Beyond desktop research, supported by Guidehouse's benchmarking, NJEDA formally gathered stakeholder input on these barriers through a request for information (RFI) in July 2020, and has continued to gather ad hoc feedback, host listening sessions, and schedule workshops with stakeholders throughout the first phase of the pilot to catalog challenges. Although there have been many valuable and varied insights, several major themes of barriers have arisen over the course of the last year and a half:

1. Desired vehicles are not available in the market or are not funded by the program; as such, upfront cost of such ZEV and related financing uncertainties are too high for near term adoption;

2. Charging infrastructure availability, costs, and related interconnection and permitting processes are too uncertain;
3. ZEV MHDV technology, knowledge, or access that meets their business or community needs is unavailable;
4. The program needs to reduce operational friction and increase clarity, especially for small businesses.

The most persistent ad hoc comment was a request for an expansion of eligible vehicle classes and eligible locations. Many would-be applicants noted their interest in the program, but vehicles were not available to suit their business needs or they did not operate in eligible areas. Additionally, based on the internal Authority staff observations, a significant degree of support was necessary to ensure small businesses understood the program and their various obligations and options.

While the first phase of the pilot program primarily addressed the first barrier for medium-duty zero emission vehicles, as they represent the largest percentage of the commercial vehicle population and were more readily available, the second phase strives to address additional barriers.

First, to address the calls for increased access, the second phase will expand to include the whole state and heavy duty vehicles. This expansion will not only increase access to these funds, but will start to target the heavy-duty vehicles that create the largest proportion of harmful emissions (SOx, NOx, and particular matter) as the ZE HDV sector ramps up production. This will more adequately address the breadth and depth of the market, providing the Authority with the opportunity to assess the functionality of the program for the wider range of use-cases, such as drayage, refuse vehicles, and school buses.

Second, to address the knowledge barrier, this second phase will incorporate technical assistance via an MOU with technical experts, detailed on under Technical Assistance section, providing a critical lifeline to small businesses who need specific and technical guidance to support their decision making on ZEV adoption. As outlined in the approval and application statistics previously cited, the first phase of the pilot was utilized primarily by small businesses. This positive outcome, while aligned with program intentions, was supported by significant outreach and education provided by the Authority team. As such, this update will also alleviate NJEDA administrative burden, allowing the team to continue to improve its services directly related to the product and prompt processing of applications.

Third, to address some challenges with user experience, NJEDA will assess and, where appropriate, implement, updates to the application portal and website. Additionally, improvements in efficiency of internal processes will reduce external friction and lower known barriers for small businesses.

This pilot does not include direct support for charging infrastructure but will serve as a way to gather data on charging plans that are included with the application and needs to inform potential future support. Further, the Authority intends to provide improved guidance, via technical assistance, to help NJ ZIP participants access other sources of funding for charging.

Similarly, this program does not itself support the creation of new technologies or workforce initiatives within the state, but it will continue to incentivize local Vendors and manufacturers and gather insights on knowledge gaps, which are critical first steps to creating a ZE MHDV knowledge hub in the State that can stimulate further growth. As token of the program's success to-date, a California-based electric vehicle manufacturer, working directly with NJ ZIP customers, has signed a letter of intent with a New Jersey

state university to provide education for in-state EV servicing technicians, and is opening a final assembly facility in New Jersey.

This pilot alone is not sufficient to match the ambition of the State's ZE MHDV goals, or to address all the barriers laid out by stakeholders. It is one tool of many interlocking efforts that must be developed and deployed state-wide to serve as the foundation for New Jersey's zero emission transportation economic evolution.

PROPOSED PROGRAM STRUCTURE & DESIGN

Pilot Program Eligibility

The NJ ZIP pilot program will provide funding to support Purchaser Applicants who meet a set of eligibility criteria, and whose selected vehicles, vehicle Vendors, and vehicle use case (i.e., use for commercial, industrial, or institutional purposes) qualify. The goal of these eligibility criteria is to simplify the program for rapid impact, appeal to a wide range of fleets interested in electrification, and collect information that will inform future programs. Any applicant approved under the first phase remains subject to the terms in the executed agreement under the first phase.

To be eligible for the second phase, an Applicant must:

- Be a commercial, industrial, or institutional organization in New Jersey. As defined in the Global Warming Solutions Fund regulation (N.J.A.C. 7:27D-1.2), "institutional" means serving a non-profit or public purpose, such as a library, hospital, public school, institution of higher education, municipal utility, public recreation or cultural facility, or government entity . The term "government entity" includes local and municipal government entities, but for the purposes of this pilot, State government entities are not eligible.

- Provide a valid New Jersey Tax Clearance Certificate and/or other documentation deemed acceptable by the Authority, as applicable, to demonstrate business registration or ability to conduct operations in NJ.

- Be in good standing with the New Jersey Department of Labor and Workforce Development and the New Jersey Department of Environmental Protection

- Satisfy the Authority's debarment/disqualification review and not be in default under any Authority program or have any outstanding obligations to the Authority

- Be the vehicle owner

To be eligible for the second phase, the Purchaser Applicant's proposed vehicle(s) must be:

- A new zero-emission Class 2b – Class 8 (GVWR 8,501 lbs. – 33,000+ lbs.) vehicle, used for commercial, industrial, or institutional purposes. Retrofits and repowers of pre-owned vehicles are not eligible.

  - All zero-emission vehicles, defined as "a vehicle that emits no tailpipe pollutants from the onboard source of power, such as particulates, hydrocarbons, carbon monoxide, ozone, lead, and various oxides of nitrogen", are eligible for vouchers. This includes, but is not limited to, battery-electric (BEV) and hydrogen fuel cell-electric (FCEV) vehicles.

- Purchased, delivered, and registered (in compliance with the New Jersey Motor Vehicles Commission (NJMVC)) within twelve months of receipt of voucher approval letter. Proof of such intent to purchase at time of application is required for eligibility. An extension for up to an additional 6 months may be permitted as described below.

- Not a subject of any other State or federal funding for the same vehicle(s)

- Procured from a Vendor that meets program eligibility requirements (detailed in the following section)

Note: Vehicle scrappage is not mandated by this program EXCEPT in the case that the new vehicle is replacing a vehicle model year 2009 or earlier. For consistency with prior State programs, scrappage is defined within the DEP's VW Settlement funded grant program as "rendering the vehicle inoperable and available for recycle; at a minimum, to cut a 3-inch hole in the engine block and disable the chassis by cutting the vehicle's frame rails complete in half". Vehicles that are not replacements (i.e., ZEV purchased are for new use cases or to expand a fleet) or are replacing a model year 2010 or later DO NOT have to comply with scrappage requirements. Information on any vehicle replacements will be requested within the application to determine scrappage requirements and support RGGI-metric reporting on avoided emissions.

To be eligible for the second phase, vehicle Vendor must:

- Provide proof of a minimum of 12 months of experience selling or manufacturing eligible zero-emission vehicles

- Be registered to conduct business in NJ, as demonstrated by a valid New Jersey Tax Clearance Certificate

- Be in good standing with the New Jersey Department of Labor and Workforce Development and the New Jersey Department of Environmental Protection

- Satisfy the Authority's debarment/disqualification review and not be in default under any Authority program or have any outstanding obligations to the Authority

- Offer at least one eligible vehicle and provide required vehicle-associated documentation, including but not limited to:

  - Listing information related to the vehicles, such as via Vendor website, inclusive of vehicle images, descriptions, and sale cost

  - A specification sheet outlining all major components, corroborating vehicle capabilities, charging/fueling needs, design appropriate to proposed use, and eligibility

  - Certification from the manufacturer that the vehicle complies with all applicable state and federal requirements for operation, including the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration (NHTSA), found in Title 49 of the Code of Federal Regulations (CFR).

  - Standard warranty for the eligible vehicle(s), indicating at least 3 years or 50,000 miles of coverage, whichever comes first, covering parts (at a minimum, motor, drive train, and batteries, hydrogen fuel cells, etc.) and labor. May be updated on a per-Purchaser basis.

  - Typical delivery plan and timeline, updated on a per-Purchaser basis.

  - In-state servicing plan for maintenance of vehicles aligned with industry norms and current best practices implemented before vehicle delivery. May be updated on a per-Purchaser basis.

  - Standard charging or fueling plan development methodology, updated on a per-Purchaser basis to address such Purchaser's needs, providing clarity on, but not limited to, the anticipated count, type, capacity, and location of chargers/fueling stations necessary for vehicle

- Agree to accept the Program's terms and conditions as laid out in the grant agreement, including but not limited to:

  - Accept the Program's voucher towards Purchaser Applicant vehicle payments, deducting the vehicle's voucher amount from the upfront cost.

  - Engage with the selected technical assistance provider that EDA signs an MOU with as necessary, potentially including in-person events when mutually agreed to

By accepting the voucher funding, as applicable Purchaser Applicants and Vendors will also agree to the following terms:

- Purchaser Applicant will register the vehicle in the State of New Jersey for a minimum of the three continuous years

- Purchaser Applicant will annually operate at least 75% of vehicle miles traveled (VMT) in the State of the New Jersey

- NJEDA's right to audit and verify compliance with eligibility requirements post-voucher redemption, and agree to provide responses and data upon request to support such audits and verifications. For example, to verify vehicle miles traveled within the eligible overburdened communities, NJEDA may require data such as but not limited to telematics, route maps, delivery histories, etc.

- Permit the use by NJEDA of Purchaser Applicant, Vendor, and vehicle data and information that is provided in the application and audit process, and that is not otherwise prohibited by law, for case studies and to support the development of future versions of this program, or future alternative programs

- Purchaser Applicant will commit to displaying a visual indication on the commercial vehicle that it is a ZEV and that its purchase was subsidized through this program, as materially provided by NJEDA (e.g., a bumper sticker, placard, etc.)

Pilot Program Voucher Funding Levels

Voucher funding amounts are based on GVWR laid out in the table below:

Table 1: Voucher Amounts

Vehicle GVWR	Vehicle Class	Voucher amount
8,501 - 10,000 lbs.	Class 2b	$20,000
10,0001 - 14,000 lbs.	Class 3	$50,000
14,001 - 16,000 lbs.	Class 4	$65,000
16,001 - 19,500 lbs.	Class 5	$75,000
19,501 - 26,000 lbs.	Class 6	$90,000
26,001 - 33,000 lbs.	Class 7	$135,000
33,001+ lbs.	Class 8	$175,000

These voucher amounts are based on industry research with subject matter experts through procured consultant, Guidehouse, benchmarked against other states' current, prior, and proposed programs, and verified with outreach from stakeholders. These values represent, based on current range of estimated ZEV costs, approximately 75 – 110% of the incremental cost of ZEV compared to similar internal combustion engine vehicles, bringing the zero emission vehicle closer to or at upfront cost parity for trucks. Through the same research, EV Buses have a much larger upfront cost compared to diesel bus alternatives. These base voucher amounts would not meet the incremental cost of a ZEV bus, thus the need for additional voucher funding.

In order to address stakeholder-identified barriers or to further incentivize activity aligned with the Authority's mission, Purchaser Applicants may be eligible and apply for increased per-vehicle voucher bonuses through documentation of any of the following:

- Certified woman-, minority-, or veteran-owned business bonus: 4% increase in the base voucher amount per vehicle per qualifying NJ State certification

- Small business bonus: A 25% increase of the base voucher amount per vehicle.

  - For the purposes of this Program, a small business is defined as having 25 or fewer full time employees in total OR less than $5M in annual revenue.

- New Jersey manufacturing bonus: A 25% increase of base voucher amount per vehicle will be available if the Vendor can formally document (for example, but not limited to, through price sheets and hourly rates) that 25% of the cost of the vehicle is spent in NJ on labor for vehicle design, assembly, and/or manufacturing or cost of components produced in New Jersey.

- EJ Bonus: 10% increase of base voucher amount per vehicle to small business applicants or municipalities who commit to driving in overburdened ("EJ") communities. To be eligible, Purchaser Applicants must demonstrate in a manner acceptable to the Authority, annual operation of 50% or more of VMT OR registration and domicile within overburdened community census tracts for a minimum of three continuous years from date of registration

- School Bus Bonus: 25% increase in base voucher amount per vehicle if applicant is purchasing a school bus.

These bonuses may be stacked, with Applicant eligible for multiple bonus criteria.

Applicants may apply for more than one vehicle voucher within the same application. The total funding per vehicle may equal but may not exceed the cost of the vehicle. The total funding reserved for an Applicant (as determined by EIN) through vouchers inclusive of any qualifying bonuses, cannot exceed $3,000,000, to ensure equitable distribution of resources.

Because this funding is provided through appropriations, all disbursements will be subject to appropriations and availability of funding.

Technical assistance

In addition to the voucher program itself, NJEDA is proposing to pilot a ZE MHDV technical assistance program in conjunction with the phase two pilot expansion. NJEDA will execute a Memorandum of Understanding (MOU) with a New Jersey State University to engage them to provide technical assistance. This memorandum serves to notify the Board of the plan to pursue such an engagement, which, pursuant to Authority policy regarding MOU scope and cost, may be executed by the CEO or may be brought back to Board in a substantially final form, inclusive of final funding amount and associated administration, paid for through RGGI funds.

The need for technical assistance, especially for small businesses navigating the ZEV space for the first time, is a critical learning from the first phase, and will be supportive of the expanded phase two pilot goals, including equitable access to the program.

The proposed technical assistance will serve three distinct programmatic areas. The first area of focus will facilitate general education on electric vehicles, understanding total cost of ownership, and behavior adaptation. The second will support the implementation of electric vehicles by conducting fleet assessments and developing and assisting with infrastructure plans unique to each applicant. Lastly, the engaged University will guide applicants through the administrative process. This may include activities such as navigating NJEDA application portal, as well as other state agency requirements (i.e. securing

businesses certifications and tax clearance certificate, understand requirements for registering vehicles, access to other state funding for infrastructure, guidance towards utility interconnection applications, etc).

In addition to the external support to applicants, the University will also be tasked with reporting on the impact of technical assistance, using key performance indicators to measure the impact of funding.

This assistance is being proposed as a pilot not only because it was an identified gap in the ZEV ecosystem in the state, but also because technical assistance may in future shift to electric distribution companies.

In August 2021, the NJ Board of Public Utilities issued a New Jersey Electric Vehicles Infrastructure 2021 – Medium and Heavy Duty Straw Proposal. In the NJBPU's straw proposal, utilities are proposed as responsible for providing technical assistance to public and private fleets to ensure that ZE MHDV charging is well planned and appropriate to the needs of the fleet. Such planning should address timing and size of charging, incorporation of storage to reduce grid impact and ensure resiliency and address any interconnection issues that may arise. In addition, the straw proposal suggests that utilities should provide technical assistance, including the development and hosting of customer accessed fleet planning and modeling tools, to private fleets interested in EV adoption to ensure adequate charging infrastructure is planned for and incorporated into the grid. As the straw proposal is not yet adopted as minimum filing requirements, the technical assistance outlined here and to be provided via MOU with a State University through the NJ ZIP pilot will provide a critical support – especially to small businesses – in the intervening time.

Pilot Program Structure and Process

The general methodology for voucher application and approval from the first phase of the pilot will be maintained in the second phase, with strategic implementation changes made to minimize administrative burden and increase efficiency.

Vouchers will be issued and redeemed through the following steps:

1. Vendors apply into the program and, as appropriate, are approved as eligible. Such eligibility must be maintained to continue to be approved within the program.
2. Purchaser Applicant selects an approved Vendor and their eligible vehicle(s)
3. Purchaser Applicant and Vendor prepare and submit their respective portion of the application, including proof of eligibility. If a Vendor has already been approved, the Vendor does not need to obtain a new approval unless there is a change from the prior Vendor application and approval.
4. NJEDA processes the applications and, if the Purchaser Applicant, Vendor, and vehicle are eligible and funds are available, approves voucher(s), inclusive of qualifying bonuses and sends the Applicant a voucher reservation approval letter.
5. The voucher funds are reserved for twelve months from the date of the approval letter. During this period, the Vendor and the Purchaser Applicant must execute the program agreement and submit documentation of same. Then, the vehicle must be delivered to and registered by the Purchaser Applicant during this period. A voucher reservation may be renewed for one six-month extension if requested prior to expiration and will be granted based on evidence by the Purchaser Applicant

and Vendor of good faith efforts to procure, deliver, and register vehicle.

6. Vehicle is delivered to and registered by the Purchaser Applicant. Documentation is submitted to NJEDA.

7. Once vehicle is confirmed as delivered and registered to the Purchaser Applicant, and all relevant program requirements are met, NJEDA will issue voucher monies to the Vendor.

NJEDA Staff will be responsible for reviewing applications, maintaining the program website, and providing program guidance resources, such as FAQs and webinars, to Vendors and Applicants where needed.

Appeals

Purchaser Applicants and Vendors will be able to appeal the Authority's determination of initial eligibilities, extension request eligibility, and/or funding amounts. Appeals will be reviewed by a hearing officer, who will be a staff member who has not up until that point been directly involved in the eligibility determination. Funds will be set aside for the maximum amount of voucher for any appeals that are lodged with the Authority until final resolution of the appeal.

Post-eligibility audits

Staff will conduct audits on a representative sample of disbursed vouchers to confirm that Purchaser Applicant and Vendor self-certifications are accurate and obligations in the agreement are upheld. In such cases where the audit reveals that the self-certification was not accurate or commitments were not upheld and this impacts eligibility, NJEDA may require, as remedy, that the relevant proportion of these funds be returned from either the Purchaser Applicant or the Vendor and/or may refer these organizations to the relevant State agency for further investigation. Any material misrepresentations by a Purchaser Applicant or Vendor in any submission required by the Authority for participation in the program or failure to uphold relevant commitments by Purchaser Applicant or Vendor may be considered by the Board in requiring repayment of a portion or all of the funds and in disqualifying the Purchaser Applicant or Vendor from future contracting with or financial assistance from the Authority.

ESTIMATED BUDGET AND IMPACT

The total RGGI-funded NJ ZIP pilot program budget will be $46,575,000.

Of the total program budget, $45,000,000 will be reserved to fund vouchers, utilizing the following allocations:

- $15,000,000 will be set-aside for small businesses
- $15,000,000 will be set-aside for overburdened community applications

Remainder of voucher fund will be un-allocated.

As previously noted, the total funding provided to a single applicant (as determined by EIN) through vouchers and any qualifying bonuses cannot exceed $3,000,000, to ensure equitable distribution of

resources. Applicants who applied in phase 1 of the pilot are eligible to apply in phase 2; phase 1 approvals do not impact the $3,000,000 cap.

In addition to the voucher budget, NJEDA will implement a technical assistance pilot, contracting with a New Jersey State University through an MOU. The Authority will fund the technical assistance pilot utilizing RGGI monies in addition to the budget noted within this memorandum.

NJEDA will charge Vendor Applicants a $1,000 fee to apply into the program. Purchaser Applicants will be charged a $1000 fee for applying for voucher funds; multiple vehicles can be applied for within a single application. For Applicants who demonstrate that the imposition of the fee would impose an undue financial hardship, this fee may be reduced.

In addition, NJEDA will charge 3.5% administration costs, for a total of $575,000, as permitted by statute.

Based on the pilot program voucher fund budget of $45 million, it is anticipated that 200 - 400 vouchers will be issued for the purchase of zero-emission vehicles. As required by the RGGI Strategic Funding Plan, NJEDA will report, based on NJDEP defined metrics, calculated avoided emissions and co-benefits.

REQUEST FOR DELEGATED AUTHORITY

Beginning in July 2003 the Members of the Authority have been asked to delegate signing authority to staff on certain financing and incentive transactions, to create efficiencies for our customers and provide fluidity to our business. Delegated authority for Phase II of this pilot program is consistent with delegated authority previously granted for the first phase of NJ ZIP, which saw average award amounts of $231,317.

Specifically, for the NJ ZIP pilot program, the Board is asked to approve granting delegated authority to:

- The Authority's Chief Executive Officer (CEO) or delegate(s) of the CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations and (ii) adjust voucher amounts;
- The CEO or delegate(s) of the CEO to approve Purchasers, Vendors, and vehicles as eligible and, subsequently, approve vouchers or extensions of vouchers reservation term;
- The CEO or delegate(s) of the CEO to, upon recommendation of the reviewing officer, decline eligibility based solely on non-discretionary reasons;
- The CEO or delegate(s) of the CEO to, upon recommendation of the reviewing officer, to waive half the application fee for Applicants upon demonstration by the Applicant that the imposition of the fee would propose undue financial hardship;
- In connection with any appeal from declination based solely on non-discretionary reasons, the CEO or delegate(s) of the CEO to designate a Hearing Officer who has not previously been directly involved in the eligibility determination, to prepare a recommendation to the final decision maker. The CEO or delegate(s) of the CEO shall make a final written decision on the matter, which shall constitute the Authority's Final Administrative Decision. .

If the program expands beyond the pilot stage, these delegation levels are to be revisited by the Board.

CONCLUSION

The State has ambitious goals for the transition of New Jersey's MHDVs to zero-emission by 2050 with specific benefits to overburdened communities, and the NJ ZIP is a critical step in this direction to support the ZEV marketplace and rapidly deploy electric MHDVs on the road. As such, the Members are requested to approve NJ ZIP pilot expansion Phase 2 with $46,575,000 of RGGI funding, and all the associated components, delegated authority, and processes detailed herein.

Tim Sullivan, CEO

Prepared by:
Olivia Barone, Project Officer
Victoria Carey, Clean Energy Manager

Exhibit A
NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

These specifications are provided as a summary of the NJ ZIP Phase 2 Pilot Expansion memorandum. In the case Exhibit A does not specify details or requirements or utilizes different language from the memorandum, the memorandum takes precedence.

Funding Source	Funding for NJ ZIP pilot ("Program") and associated administration will be from eligible Authority funds from the Regional Greenhouse Gas Initiative (RGGI) funds.
Program Budget	$46,575,000 total funding comprised of $45,000,000 voucher pool and $1,575,000 Admin fee.
Program Expiration	Program to operate on a pilot basis until such time that the funds are depleted. Funds are anticipated to be committed within an estimated 12 months from acceptance of the first application.
Program Purpose	To accelerate the adoption and use of zero-emission medium and heavy duty vehicles within New Jersey; to reduce emissions within the state; and to allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption. The pilot is being used as a vehicle to support the growth of the NJ zero emission vehicle ecosystem, with accelerated adoption of zero emission vehicles being a critical step to attracting more jobs and investment, as other zero emission vehicle programs and regulations roll out across multiple State agencies.
Technical Assistance	The Authority plans to pursue an engagement with a New Jersey State University to provide technical assistance support as part of the NJ ZIP phase two pilot expansion, which, pursuant to Authority policy regarding MOU scope and cost, may be executed by the CEO or may be brought back to Board in a substantially final form, inclusive of final funding amount and associated administration, paid for through RGGI funds. The proposed technical assistance will serve three distinct programmatic areas: • Facilitate general education on electric vehicles, understanding total cost of ownership, and behavior adaptation. • Support the implementation of electric vehicles by conducting fleet assessments and developing and assisting with infrastructure plans unique to each applicant. • Administrative guidance

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NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

	In addition to the external support to applicants, the University will also be tasked with reporting on the impact of technical assistance, using key performance indicators to measure both the economic and environmental impact of funding.
Applicant Eligibility Requirements	To be eligible, an Applicant must be: • A commercial, industrial, or institutional organization • Provide a valid New Jersey Tax Clearance Certificate and/or other documentation deemed acceptable by the Authority, as applicable, to demonstrate business registration or ability to conduct operations in NJ. • Be the vehicle owner • In tax compliance • Satisfy the Authority's debarment/disqualification review and not be in default under any Authority program or have any outstanding obligations to the Authority • In good standing with the New Jersey Department of Labor and Workforce Development and New Jersey Department of Environmental Protection
Project / vehicle eligibility requirements	To be eligible, Applicant's new vehicle(s) must be: • A new zero emission vehicle. Retrofits and repowers of vehicles already owned by the Applicant are not eligible. • Class 2b – Class 8 (GVWR 8,501 lbs – 33,000+ lbs) vehicle, used for commercial, industrial, or institutional purposes • Purchased, delivered, and registered (in compliance with the New Jersey Motor Vehicles Commission (NJMVC)) within twelve months of receipt of voucher approval letter. Proof of such intent to purchase at time of application is required for eligibility. An extension for up to an additional 6 months may be permitted as described below • Not a subject of any other state or federal funding for the same vehicle(s) • Procured from a Vendor that meets program eligibility requirements (detailed in the following section) Note: Scrappage is not required, except for vehicles that are directly replacing a vehicle which is model year 2009 or older.

Exhibit A
NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

Vendor Eligibility Requirements	To be accepted as an eligible Vendor, the Vendor must: • Provide proof of a minimum of 12 months of experience selling or manufacturing eligible zero-emission vehicles • Be registered to conduct business in NJ, as demonstrated by a valid New Jersey Tax Clearance Certificate • Be in good standing with the New Jersey Department of Labor and Workforce Development and the New Jersey Department of Environmental Protection • Satisfy the Authority's debarment/disqualification review and not be in default under any Authority program or have any outstanding obligations to the Authority • Offer at least one eligible vehicle and provide required vehicle-associated documentation, including but not limited to: o Listing information related to the vehicles, such as via Vendor website, inclusive of vehicle images, descriptions, and sale cost o A specification sheet outlining all major components, corroborating vehicle capabilities, charging/fueling needs, design appropriate to proposed use, and eligibility o Certification from the manufacturer that the vehicle complies with all applicable state and federal requirements for operation, including the Federal Motor Vehicle Safety Standards (FMVSS) issued by the National Highway Traffic Safety Administration (NHTSA), found in Title 49 of the Code of Federal Regulations (CFR). o Standard warranty for the eligible vehicle(s), indicating at least 3 years or 50,000 miles of coverage, whichever comes first, covering parts (at a minimum, motor, drive train, and batteries, hydrogen fuel cells, etc.) and labor. May be updated on a per-Purchaser

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<table>
<tr><td></td><td>basis.

o Typical delivery plan and timeline, updated on a per-Purchaser basis.

o In-state servicing plan for maintenance of vehicles aligned with industry norms and current best practices implemented before vehicle delivery. May be updated on a per-Purchaser basis.

o Standard charging or fueling plan development methodology, updated on a per-Purchaser basis to address such Purchaser's needs, providing clarity on, but not limited to, the anticipated count, type, capacity, and location of chargers/fueling stations necessary for vehicle

• Agree to accept the Program's terms and conditions as laid out in the grant agreement</td></tr>
<tr><td>Program funding level</td><td>The total RGGI-funded NJ ZIP pilot program budget will be $46,575,000.

Of the total program budget, $45,000,000 will be reserved to fund vouchers, utilizing the following allocations:

• $15,000,000 will be set-aside for small businesses
• $15,000,000 will be set-aside for Environmental Justice communities

Remainder of voucher fund will be un-allocated.</td></tr>
<tr><td>Project/vehicle funding levels</td><td>Qualifying vehicles will be funded at the following levels:

<table>
<tr><th>Vehicle GVWR</th><th>Vehicle Class</th><th>Voucher amount</th></tr>
<tr><td>8,501 - 10,000 lbs.</td><td>Class 2b</td><td>$25,000</td></tr>
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Exhibit A
NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

16,001 - 19,500 lbs.	Class 5	$85,000
19,501 - 26,000 lbs.	Class 6	$100,000
26,001 to 33,000 lbs.	Class 7	$135,000
33,000+	Class 8	$175,00

Bonuses:

Eligible applications may receive increased per-vehicle voucher bonuses through documentation of any of the following:

- Certified woman-, minority-, or veteran-owned business bonus: 4% increase in the base voucher amount per vehicle per qualifying NJ State certification
- Small business bonus: A 25% increase of the base voucher amount per vehicle.
- New Jersey manufacturing bonus: A 25% increase of base voucher amount per vehicle will be available if the Vendor can formally document (for example, but not limited to, through price sheets and hourly rates) that 25% of the cost of the vehicle is spent in NJ on labor for vehicle design, assembly, and/or manufacturing or cost of components produced in New Jersey.
- EJ Bonus: 10% increase of base voucher amount per vehicle to small business applicants or municipalities who commit to driving in overburdened ("EJ") communities. To be eligible, Purchaser Applicants must demonstrate in a manner acceptable to the Authority, annual operation of 50% or more of VMT OR registration and domicile within overburdened community census tracts for a minimum of three continuous years from date of registration
- School Bus Bonus: 25% increase in base voucher amount per vehicle if applicant is purchasing a school bus.

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NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

	Applicants may apply for more than one vehicle voucher within the same application. The total funding per vehicle may equal but may not exceed the cost of the vehicle. The total funding reserved for an Applicant (as determined by EIN) through vouchers inclusive any qualifying bonuses, cannot exceed $3M per EIN, to ensure equitable distribution of resources.
Funding Disbursement	• The voucher funds are reserved for twelve months from the date of the approval letter. During this period, the Vendor and the Purchaser Applicant must execute the program agreement and submit documentation of same. Then, the vehicle must be delivered to and registered by the Purchaser Applicant during this period. A voucher reservation may be renewed for one six-month extension if requested prior to expiration and will be granted based on evidence by the Purchaser Applicant and Vendor of good faith efforts to procure, deliver, and register vehicle. • Vehicle is delivered to and registered by the Purchaser Applicant. Documentation is submitted to NJEDA. • Once vehicle is confirmed as delivered and registered to the Purchaser Applicant, and all relevant program requirements are met, NJEDA will issue voucher monies to the Vendor.
Conditions of funding	By accepting the voucher funding, as applicable Purchaser Applicants and Vendors will also agree to the following terms: • Purchaser Applicant will register the vehicle in the State of New Jersey for a minimum of the three continuous years • Purchaser Applicant will annually operate at least 75% of vehicle miles traveled (VMT) in the State of the New Jersey • NJEDA's right to audit and verify compliance with eligibility requirements post-voucher redemption and agree to provide responses and data upon request to support such audits and verifications. For example, to verify vehicle miles traveled within the eligible overburdened communities, NJEDA may require data such as but not

Exhibit A
NJ ZIP – Zero emission Incentive Program: Second Phase Expansion of the Voucher Pilot Program Specifications

	limited to telematics, route maps, delivery histories, etc. • Permit the use by NJEDA of Purchaser Applicant, Vendor, and vehicle data and information that is provided in the application and audit process, and that is not otherwise prohibited by law, for case studies and to support the development of future versions of this program, or future alternative programs • Purchaser Applicant will commit to displaying a visual indication on the commercial vehicle that it is a ZEV and that its purchase was subsidized through this program, as materially provided by NJEDA (e.g., a bumper sticker, placard, etc.)
Fee Schedule	Vendor Applicant will be assessed an application fee of $1000 upon initial vendor application. Purchaser applicant will be assess an application fee of $1000 per application. Purchaser Applicant may apply for more than one vehicle voucher in a single application. Applicants that demonstrates that the imposition of the fee would impose an undue financial hardship may be eligible for a hardship waiver, reducing the fee to $500.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

RE: USEPA FY22 Brownfield Assessment Cooperative Agreement

Request

The Members are requested to authorize the Chief Executive Officer (CEO) to execute a cooperative agreement at the CEO's discretion to receive a $2,000,000 Brownfield Assessment grant offered by the US Environmental Protection Agency (USEPA), and to execute any other documents necessary to effectuate the grant, provided that the agreement is in substantially the same form as the attached FY21 USEPA Brownfield Assessment Cooperative Agreement.

Background

The New Jersey Economic Development Authority (NJEDA) submitted a brownfield assessment grant application to USEPA in December 2021. USEPA has provided notification that NJEDA has been selected to receive a $2,000,000 award, subject to entering into a cooperative agreement. There is no cost share requirement for this grant. The performance period for this grant is five years and is expected to begin October 1, 2022. USEPA is developing a program-specific cooperative agreement which is expected to require a short approval turnaround time (less than one month) which necessitates board approval at this time.

The goal of the EPA's Brownfield Assessment grant program is to provide funding to a grant recipient to perform environmental assessment and investigation activities and, to a more limited extent, for the grant recipient to prepare brownfield inventories, prioritize sites, support community involvement, conduct planning, and develop site reuse plans. This program catalyzes the transformation of underutilized properties into community assets.

Historically, a major barrier to successful brownfield redevelopment projects in New Jersey has been the lack of funding available to support site assessment and planning activities. The NJEDA Brownfields team is currently exploring options for deployment of the funds with USEPA. One option being considered is to deploy these funds by procuring a vendor or vendors to provide professional environmental services

using the Authority's fair and open public procurement process. Assessment and planning services could be provided at brownfield sites throughout the state, including sites in the 13 distressed communities within two state programs: the Community Collaborative Initiative (CCI) and the Government Restricted Municipality (GRM) designation. The 13 CCI and GRM communities are: Atlantic City, Bayonne, Bridgeton, Camden, Jersey City, Millville, Newark, Paterson, Paulsboro, Perth Amboy, Salem, Trenton, and Vineland. NJEDA will work in collaboration with the NJDEP's Office of Brownfield and Community Revitalization to deploy resources available through the Brownfield Assessment Grant to these targeted municipalities as well as other qualifying municipalities.

New Jersey has nearly 14,000 known contaminated sites of which an estimated 10% are brownfields. While some NJEDA resources are available to support brownfield redevelopment, the need is so great that priority brownfield redevelopment projects in CCI, GRM, and other communities remain underfunded. This grant award from USEPA provides needed assessment funds, which can be layered with NJEDA's other funding tools to advance brownfield redevelopment projects.

This grant will complement NJEDA's larger efforts, under the leadership of Governor Murphy, to promote equitable solutions for environmental and economic well-being. Specifically, this program complements the NJEDA's Brownfield Impact Fund, the forthcoming brownfield redevelopment tax incentive program, and the Hazardous Discharge Site Remediation Fund (HDSRF).

The USEPA is currently drafting the cooperative agreement, which is not yet available for review. It is anticipated that USEPA will not provide much time for response once the agreement is made available, so staff is requesting authorization for the NJEDA CEO to enter into a cooperative agreement to receive the $2,000,000 Brownfield Assessment Grant, provided that the agreement is in substantially the same form as the board-approved and NJEDA-executed FY21 agreement (attached).

The FY21 Brownfields Assessment grant (after which the FY22 Assessment grant is modeled) had a project start date of October 1, 2021, and a 3-year performance period to spend the grant amount of $300,000. To date, the NJEDA Brownfields team has procured a vendor, submitted federal forms, collaborated with the communities named in the grant application and designated priority projects for deployment of the grant funds, as follows:

FY21 Brownfields Assessment		
Timeframe	**Activities/Priority Projects**	**Proposed Budget**
October 1 to May 31, 2022	Program design, early implementation, and vendor costs	$16,000
Remainder of CY2022	Program management, assessments in Perth Amboy and Bayonne, and remediation strategy planning in Paterson	$142,000
CY2023	Program management, assessments in Paterson and Bayonne, and reuse planning in Bridgeton	$106,000
CY2024	Program management, final assessments and grant closeout	$36,000
Total Budget		$300,000

Additionally, NJEDA has received interest in this program with respect to a project in Camden.

With the scope of distressed properties in New Jersey previously mentioned, NJEDA applied for this FY22 Brownfields Assessment grant for $2,000,000 with a longer 5-year performance period to continue to designation additional priority projects.

The funds will be used to conduct environmental assessment and investigation activities (and, to a more limited extent, to prepare brownfield inventories, prioritize sites, support community involvement activities, conduct planning, and develop site reuse plans) at brownfield sites located in CCI, GRM, and other communities, pursuant to the terms of the USEPA Cooperative Agreement, and assist with catalyzing the redevelopment of underutilized properties into community assets. The NJEDA plans to utilize 5-10% of the funding for staff activities which will include programmatic management and reporting associated with the grant.

Recommendation

The Members' approval is requested to authorize the Chief Executive Officer, at the CEO's discretion, to execute a cooperative agreement with the USEPA for the Brownfields Assessment Grant, and to execute any other documents necessary to effectuate the grant, provided the agreement is in substantially the same form as the attached FY21 USEPA Brownfield Assessment Cooperative Agreement. The grant is in the amount of $2,000,000. Because there is no cost share requirement, NJEDA will not need to contribute any funding toward implementation of this grant program.

Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick & Melissa Dulinski
Attachment: Exhibit A: NJEDA and USEPA Brownfield Cooperative Agreement for the FY21 Assessment Grant

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 96242421 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** BF	**DATE OF AWARD** 09/22/2021
TYPE OF ACTION New	**MAILING DATE** 09/29/2021
PAYMENT METHOD: Advance	**ACH#** 20208

RECIPIENT TYPE:
State

Send Payment Request to:
RTP-Finance Center

RECIPIENT:
New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625
EIN: 22-2045817

PAYEE:
New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Elizabeth Limbrick 36 West State Street Trenton, NJ 08625 **E-Mail:** ELimbrick@njeda.com **Phone:** 862-872-3334	Alison Devine 290 Broadway, LCRD/LRPB New York, NY 10007 **E-Mail:** Devine.Alison@epa.gov **Phone:** 212-637-4158	Kelsey Steele Grants and Audit Management Branch 290 Broadway 290 Broadway New York, NY 10007 **E-Mail:** steele.kelsey@epa.gov **Phone:** 212-637-3457

PROJECT TITLE AND DESCRIPTION

FY2021 Brownfields Community-Wide Assessment Grant New Jersey Economic Development Authority

The purpose of this agreement is to provide funding for New Jersey Economic Development Authority to inventory, characterize, assess, and conduct cleanup planning and community involvement related activities for brownfield sites in the State of New Jersey. NJEDA's Assessment program will target the 12 Community Collaborative Initiative (CCI) communities. The CCI program was developed by the New Jersey Department of Environmental Protection (NJDEP) for advancing locally established environmental priorities within communities with high instances of brownfields, poverty, health disparities and need for revitalization. The activities to be performed include Phase I environmental assessments, Phase II environmental assessments, reuse planning, and community outreach. Anticipated outputs include Phase I environmental assessment reports, Phase II environmental assessment reports, Health and Safety Plans, Quality Assurance Project Plans, Remedial Action Workplans, and meeting minutes. The beneficiaries of the project are the residents of New Jersey. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2021 - 09/30/2024	10/01/2021 - 09/30/2024	$300,000.00	$300,000.00

NOTICE OF AWARD

Based on your Application dated 10/28/2020 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $300,000.00. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $300,000.00. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866	U.S. EPA, Region 2, Land, Chemicals and Redevelopment Division R2 - Region 2 290 Broadway New York, NY 10007-1866

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Donald Pace - Director	**DATE** 09/22/2021

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$0	$300,000	$300,000
EPA In-Kind Amount	$0	$0	$0
Unexpended Prior Year Balance	$0	$0	$0
Other Federal Funds	$0	$0	$0
Recipient Contribution	$0	$0	$0
State Contribution	$0	$0	$0
Local Contribution	$0	$0	$0
Other Contribution	$0	$0	$0
Allowable Project Cost	$0	$300,000	$300,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(2) & 104(k)(5)(E)	2 CFR 200, 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Oganization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2102HE0157	21	E4	02X0AG7	000D79	4114	-	-	$300,000
									$300,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$8,190
2. Fringe Benefits	$2,815
3. Travel	$2,495
4. Equipment	$0
5. Supplies	$2,500
6. Contractual	$284,000
7. Construction	$0
8. Other	$0
9. Total Direct Charges	$300,000
10. Indirect Costs: 0.00 % Base	$0
11. Total (Share: Recipient 0.00 % Federal 100.00 %)	$300,000
12. Total Approved Assistance Amount	$300,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$300,000
15. Total EPA Amount Awarded To Date	$300,000

Administrative Conditions

GENERAL TERMS AND CONDITIONS

The recipient agrees to comply with the current EPA general terms and conditions available at: https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-november-12-2020-or-later.

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: https://www.epa.gov/grants/grant-terms-and-conditions#general.

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

Federal Financial Reports (SF-425): rtpfc-grants@epa.gov; Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.

MBE/WBE reports (EPA Form 5700-52A): Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.

All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.

Payment requests (if applicable): Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.

Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer of record for this agreement.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC CONDITIONS

FY21 Assessment Cooperative Agreement

Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfield Assessment Cooperative Agreements awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k).

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions, the term "assessment" includes eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA-approved workplan.

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the application for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2021 competition for Brownfield Assessment cooperative agreements.

2. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of CERCLA § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations.

3. A term and condition or other legally binding provision shall be included in all subawards entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.

4. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. For additional information on cross-cutting requirements visit https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements.

5. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). Assessment activities generally do not involve construction, alteration, and repair within the meaning of the Davis-Bacon Act. However, the recipient must contact the

EPA Project Officer if there are unique circumstances (e.g., removal of an underground storage tank or another structure and restoration of the site) that indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. EPA will provide guidance on Davis-Bacon Act compliance if necessary.

II. SITE ELIGIBILITY REQUIREMENTS

A. Eligible Brownfield Site Determinations

1. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in CERCLA § 101(39), and whether the CAR is the potentially responsible party under CERCLA § 107, is exempt from CERCLA liability, and/or has defenses to CERCLA liability.

2. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

3. Brownfield Sites Contaminated with Petroleum

a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:

i. the State determines there is "no viable responsible party" for the site;

ii. the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and

iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

b. Documentation must include:

i. the identity of the State program official contacted;

ii. the State official's telephone number;

iii. the date of the contact; and

iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing or investigating the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the requisite determinations.

d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the necessary information for EPA to make the determinations described in Section II.A.3.b. above.

III. GENERAL COOPERATIVE AGREEMENT

ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Sufficient Progress Condition (No. 27) in the General Terms and Conditions. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.340 for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress is indicated when 35% of funds have been drawn down and disbursed for eligible activities. For Assessment Coalition cooperative agreements, sufficient progress is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated (if necessary), community involvement activities have been initiated and a Memorandum of Agreement is in place, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

B. Substantial Involvement

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing project phases, and approving substantive terms included in professional

services contracts. EPA will not direct or recommend that the CAR enter into a contract with a particular entity.

b. Substantial EPA involvement includes brownfield eligibility determinations, (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward for site assessment. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)

c. Substantial EPA involvement may include reviewing financial and program performance reports, monitoring all reporting, record-keeping, and other program requirements.

d. EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.

2. Effects of EPA's substantial involvement include:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.

b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable federal and state laws.

c. The CAR and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site assessment activities at a given site, if it does not have such a professional on staff.

2. The CAR is responsible for ensuring that funding received under this cooperative agreement does not exceed the statutory $200,000 funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfield site must be submitted to the EPA Project Officer and approved prior to the expenditure of funding exceeding $200,000. In no case may funding for site-specific assessment activities exceed $350,000 on a site receiving a waiver.

CARs expending funding from a Community-wide Assessment cooperative agreement must include this amount in any total funding expended on the site.

3. Cybersecurity – The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State law cybersecurity requirements.

a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section,

a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.332(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

4. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 – December 31 (1st quarter); January 1 – March 31 (2nd quarter); April 1 – June 30 (3rd quarter); and July 1 – September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

2. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:

a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield Assessment cooperative agreement and related activities completed with other sources of leveraged funding.

b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.

c. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.

d. An update on the project schedule and milestones, including an explanation of any discrepancies from the EPA-approved workplan.

e. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.

f. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); program income generated and used (if applicable); and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, cost overruns or high unit costs, and other pertinent information.

Note: Each property where assessment activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see Section III.E. below).

3. The CAR must maintain records that will enable it to report to EPA on the amount of funds disbursed by the CAR to assess specific properties under this cooperative agreement.

4. In accordance with 2 CFR § 200.329(e)(1), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, clean up required, contaminants, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329, *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email; unless the EPA Project Officer agrees to accept a paper copy of the report.

The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:

a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;

b. reasons why anticipated outputs/outcomes were not met; and

c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the EPA-approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess sites; conduct site-specific planning, general brownfield-related planning activities around one or more brownfield sites, and outreach. Eligible programmatic expenses include activities described in Section V. of these Terms and Conditions. In addition, eligible programmatic expenses may include:

a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k).

b. Ensuring that an assessment complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).

c. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.12. The specific requirement for a QAPP is outlined in *Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance* available at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

d. Using a portion of the cooperative agreement funds to purchase environmental insurance for the characterization or assessment of the site. Funds shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV., *Ineligible Uses of the Funds for the Cooperative Agreement Recipient.*

e. Any other eligible programmatic costs, including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding, monitoring, and managing subawards to the extent required to comply with 2 CFR § 200.332 and the “Establishing and Managing Subawards” General Term and Condition; and carrying out community involvement pertaining to the assessment activities.

2. Under CERCLA § 104(k)(5)(E), CARs and subrecipients may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is $15,000. The total amount of indirect costs and any direct

costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement shall not exceed this amount. Subrecipients may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subrecipients must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. The term "administrative costs" does not include:

a. Investigation and identification of the extent of contamination of a brownfield site;

b. design and performance of a response action; or

c. monitoring of a natural resource.

Eligible cooperative agreement and subaward administrative costs subject to the 5% limitation include direct costs for:

a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.

i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;

ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;

iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;

iv. Preparing payment requests and handling payments under 2 CFR § 200.305;

v. Financial reporting under 2 CFR § 200.328;

vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and

vii. Closeout under 2 CFR § 200.344 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subawards are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:

a. Cleanup activities;

b. Site development activities that are not brownfield site assessment activities (e.g., marketing of property (activities or products created specifically to attract buyers or investors) or construction of a new facility);

c. General community visioning, area-wide zoning updates, design guideline development, master planning, green infrastructure, infrastructure service delivery, and city-wide or comprehensive planning/plan updates –

these activities are all ineligible uses of grant funds if unrelated to advancing cleanup and reuse of brownfield sites or sites to be assessed. Note: for these types of activities to be an eligible use of grant funds, there must be a specific nexus between the activity and how it will help further cleanup and reuse of the priority brownfield site(s). This nexus must be clearly described in the workplan for the project;

d. Job training activities unrelated to performing a specific assessment at a site covered by the cooperative agreement;

e. To pay for a penalty or fine;

f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;

g. To pay for a response cost at a brownfield site for which the CAR or subaward recipient is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and

i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR Part 200, Subpart E.

2. Cooperative agreement funds shall not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

C. Interest-Bearing Accounts and Program Income

1. In accordance with 2 CFR § 1500.8(b), during the performance period of the cooperative agreement, the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement.

2. Program income for the CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, cleanup planning, or other activities when the costs for the activities are charged to this agreement.

3. The CAR must deposit advances of cooperative agreement funds and program income (i.e., fees) in an interest-bearing account.

a. For interest earned on advances, CARs are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

b. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 2 CFR § 200.307 and 2 CFR § 1500.8, as applicable.

c. Interest earned on program income is considered additional program income.

d. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 2 CFR § 200.305(b)(5).

4. As required by 2 CFR § 200.302, the CAR must maintain accounting records documenting the receipt and disbursement of program income.

5. The recipient must provide as part of its quarterly performance report and final technical report a description of how program income is being used. Further, a report on the amount of program income earned during the award period must be submitted with the quarterly performance report, final technical report, and Federal Financial Report (Standard Form 425).

V. ASSESSMENT REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield assessment, the CAR shall comply with 2 CFR § 1500.12 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 45 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial.

2. Competency of Organizations Generating Environmental Measurement Data:

In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Community Outreach

1. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.

a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.

b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with a direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients.

2. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.

3. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's all

appropriate inquiries regulation (AAI). The CAR shall utilize the practices in ASTM standard E1527-13 *"Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process*," or EPA's All Appropriate Inquiries Final Rule (40 CFR Part 312). A suggested outline for an AAI final report is provided in *"All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content"* (Publication Number: EPA 560-F-14-003). This does not preclude the use of cooperative agreement funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable state standards.

2. AAI final reports produced with funding from this agreement must comply with 40 CFR Part 312 and must, at a minimum, include the information below. All AAI reports submitted to the EPA Project Officer as deliverables under this agreement must be accompanied by a completed *"All Appropriate Inquiries: Reporting Requirements Checklist for Assessment Grant Recipients"* (Publication Number: EPA 560-F-17-194) that the EPA Project Officer will provide to the recipient. The checklist is available to CARs on EPA's website at www.epa.gov/brownfields. The completed checklist must include:

a. An ***opinion*** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.

b. An identification of ***"significant" data gaps*** (as defined in 40 CFR § 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.

c. Qualifications **and** ***signature*** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

- ''[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in 40 CFR § 312.10 of this part.''

- ''[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312.''

Note: Please use either "I/my" or "We/our."

d. In compliance with 40 CFR § 312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation***, if the environmental professional has such an opinion.

3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR Part 312 (or comparable requirements for those using ASTM Standard 1527-13). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 2 CFR § 200.339. If a recipient willfully fails to correct the deficiencies EPA may consider

other available remedies under 2 CFR § 200.339 and 2 CFR 200.340.

E. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA- approved workplan. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows assessments are complete.

F. Inclusion of Additional Terms and Conditions

1. In accordance with 2 CFR § 200.334, the CAR shall maintain records pertaining to the cooperative for a minimum of three (3) years following submission of the final financial report unless one or more of the conditions described in the regulation applies. The CAR shall provide access to records relating to assessments supported with Assessment cooperative agreement funds to authorized representatives of the Federal government as required by 2 CFR § 200.337.

2. The CAR has an ongoing obligation to advise EPA if it assessed any penalties resulting from environmental non-compliance at sites subject to this agreement.

VI. PAYMENT AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; “closeout” refers to the process EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

1. The CAR may request advance payment from EPA pursuant to 2 CFR § 200.305(b)(1) and the prompt disbursement requirements of the General Terms and Conditions of this agreement.

This requirement does not apply to states which are subject to 2 CFR § 200.305(a).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 2 CFR § 200.344. EPA will close out the award when it determines that all applicable administrative actions and all required work under the cooperative agreement have been completed.

2. The CAR, within 120 days after the expiration or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement 2 CFR Part 200.

a. The CAR must submit the following documentation:

i. The Final Technical Cooperative Agreement Report as described in Section III.F. of these Terms and Conditions.

ii. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.

b. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

c. As required by 2 CFR § 200.344, the CAR must immediately refund to EPA any balance of unobligated (unencumbered) advanced cash or accrued program income that is not authorized to be retained for use on other cooperative agreements.

Davis-Bacon Terms and Conditions For Cooperative Agreements to Governmental Entities

DAVIS-BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis-Bacon Prevailing Wage Requirements

After consultation with DOL, EPA has determined that for Brownfields Grants for remediation of sites contaminated with hazardous substances and petroleum, DB prevailing wage requirement apply when the project includes the following activities.

Hazardous substances contamination:

(a) All construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings.

Petroleum contamination:

(a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,

(b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or

(c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be

covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements.

If the CAR encounters a unique situation at a site (e.g., unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

(a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain proposed wage determinations for specific localities at https://beta.sam.gov/.

(i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments), the CAR shall use the "Heavy Construction" classification for the following activities:

Hazardous substances contamination: excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings.

Petroleum contamination: installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement.

(ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments, the CAR shall use the "Building Construction" classification for the following activities:

Hazardous substances contamination: construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height).

Petroleum contamination: soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant.

(iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the "Heavy Construction" classification. (Only applies to petroleum contamination.)

(iv) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use "Residential Construction" classification. (Only applies to hazardous substances contamination.)

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications

described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation (e.g., unusually extensive excavation) the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the solicitation remains open, the CAR shall monitor https://beta.sam.gov/ on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.

(ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor https://beta.sam.gov/ on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from https://beta.sam.gov/ into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except

where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division,

Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section

1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at https://www.dol.gov/whd/forms/wh347.pdf or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by

paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(3) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in

a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(4) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(5) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(6) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(7) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(8) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(9) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts

by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of $100,000

(a) Contract Work Hours and Safety Standards Act. The CAR shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The ***CAR,*** upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of

the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at https://www.dol.gov/whd/america2.htm.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

RE: 2021-RFP-IPM-137 (Rebid) Offshore Wind Research & Development Facility Feasibility Study

REQUEST

The Members are asked to approve NJEDA entering into a contract with McKinsey & Company, Inc. Washington D.C (McKinsey) to conduct a feasibility study for a flagship offshore wind research and development (R&D) testing facility in NJ. Members are also asked to approve a budget of up to $880,000 utilizing funding available through the Offshore Wind Initiatives MOU between NJEDA and the NJ Board of Public Utilities dated July 14, 2021. The contract term is for twelve (12) months, with one (1), twelve month extension option. The scope of services are:

- Task 1: Market analysis and recommendations: Background review on existing offshore wind research and innovation facilities, market analysis to evaluate potential gaps and needs not currently being fulfilled, evaluation of New Jersey's competitive advantages to address one or more of these gaps, and development of ranked recommendations for NJ to pursue
- Task 2: Feasibility analysis: Evaluation of up to two (2) of the recommended strategies from Task 1 to determine feasibility against key criteria

Following Task 2, the Authority may seek to pursue an optional Task 3 that may include, but is not limited to, the creation of an implementation plan, conducting additional cost-benefit or site analyses or other research necessary to further the recommended strategies detailed in Task 2.

Vendor selection followed a publicly advertised procurement process, with McKinsey scoring the highest on price and other factors.

BACKGROUND

Governor Murphy's economic development plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy", identifies offshore wind as one of the NJ's strategic sectors for accelerating growth in the economy. Offshore wind is similarly stated as a key energy source in the State's Energy Master Plan for achieving 100% clean energy by 2050. In parallel, NJ has established an aggressive target of generating 7.5 gigawatts (GW) of offshore wind by 2035. To reach these goals, NJ has made significant investments including the development of the NJ Wind Port, construction of a state-of-the-art monopile manufacturing facility at the Port of Paulsboro, and the issuance of grant funding to support the development of targeted offshore wind workforce development and research programs. The State has received commitments from global industry players to locally produce critical offshore wind supply chain components including monopiles and nacelles. These anchor assets represent unique opportunities for wind turbine component, subcomponent, and material innovation to flourish in NJ and for local suppliers to enter the offshore wind supply chain as mid-and lower-tier suppliers.

The Governor's Wind Innovation and New Development Council report called for the creation of the New Jersey Wind Institute as an independent authority to coordinate and galvanize cross-organizational workforce, education, research and innovation efforts to support New Jersey as a leader in offshore wind. The Council's recommended objectives of the to be established Wind Institute will be to 1) act as a centralized hub for offshore wind workforce development and 2) champion research and innovation that unlocks the market potential of offshore wind in NJ. To date, NJEDA has been supporting the development of the Wind Institute.

NJEDA, in support of the development of the Wind Institute, is seeking to secure NJ as a leader in offshore wind technology research and innovation through the development of a world-class, flagship research and development (R&D) testing facility. The R&D facility will capitalize on NJ's offshore wind investments to spur a robust system of offshore wind-related innovation activities. In this context, NJEDA is seeking an expert consultant that can conduct a feasibility study to help NJEDA, the yet to be established Wind Institute, and the State of NJ meet the following goals through this investment:

- Propel NJ forward as the U.S. East Coast hub for world-renowned offshore wind technology research and innovation;
- Support and foster emerging innovations and solutions to offshore wind market challenges and opportunities;
- Incentivize clustering and anchoring of offshore wind research and innovation investments and activities around and near this proposed facility and/or in the state;
- Leverage existing facilities and assets in NJ in developing this facility and clustering opportunities;
- Capitalize on NJ's existing expertise and reputation for research and innovation across multiple sectors such as clean tech, information technology and life sciences; and
- Support opportunities for NJ-based businesses, including small and diverse businesses to expand and/or transition their product or service offerings for utilization in the offshore wind supply chain.

Specifically, McKinsey will conduct research and analysis to produce the following key deliverables:

- Task 1. Market Analysis and Recommendations: Background review on existing domestic and international offshore wind research and innovation facilities, market analysis to evaluate potential gaps and needs not currently being fulfilled, evaluation of New Jersey's competitive advantage to addressing one or more of these gaps, and the development of three (3) to five (5) ranked recommended strategies for the Wind Institute to pursue.
- Task 2. Feasibility Analysis: Following the review of Task 1 deliverables, NJEDA will determine up to two (2) of the recommended strategies for a feasibility analysis. McKinsey will then evaluate the feasibility of the selected recommendations based on key criteria.
- Optional Task 3: At NJEDA's sole discretion, NJEDA may authorize Task 3 through a separate Task Order Process for scopes that may include, but are not limited to, the creation of an implementation plan, conducting additional cost-benefit or site analyses, or other research necessary to further the recommendations covered in Tasks 1 and 2.

The scope of services for Tasks 1 and 2 will be rendered over five (5)months. The total not to exceed budget for Task 1 is $324,258 and the total not to exceed budget for Task 2 is $324,258 for a combined not to exceed budget for Tasks 1 and 2 of $648,516. If pursued, the timeline for services under Task 3 will be identified through a separate Task Order Request process. Any scope of services delivered under the Task Order Process shall not exceed $231,484 using hourly rates provided in the submitted proposal for this RFP, for a total contract not to exceed amount of $880,000.

Procurement Process

Staff are procuring the scope of services based on a publicly advertised procurement process. This process involved issuance of a Request for Proposal (RFP) on April 13, 2022, followed by the scoring of proposals based on price and non-price criteria.

Non-price criteria included:

- Relevant qualifications and experience of the proposer's management and supervisory staff, and key personnel assigned to the contract
- Documented experience of the proposer entity in successfully completing contracts of a similar size and scope to that required in the RFP Scope of Work
- Ability to complete the Scope of Work based on the proposer's Technical Proposal, including demonstrated understanding of the requirements of the Scope of Work and presented approach that permits successful performance of the technical requirements

Five proposals were received in response to the RFP. One firm was disqualified as the firm submitted contract exceptions with its bid proposal in violation of RFP, Provision 1.3.1.1. As such, this submission was found to be non-responsive, therefore and was not sent to the Evaluation Committee.

An evaluation committee of appropriately qualified NJEDA staff was convened and scored proposals on non-price criteria. The Evaluation Committee did not review or score the price component of proposals. The Fee Schedule component was evaluated independently in-line with Internal Process Management (IPM) Procurement guidelines. McKinney was the highest ranked of the four compliant proposals based on price and non-price criteria. Ranking of the submissions was as follows:

Firm	Score	Ranking
McKinsey & Company	4.0	1
BW Research	3.17	2
SRI International	2.46	3
XPEED	2.4	4

The RFP required a bidder to receive a total score of three (3) or higher to be considered for Award, which two (2) of the four (4) qualified bidders achieved.

Following the scoring of proposals, a Best and Final Offer (BAFO) request was issued to the highest technically evaluated proposer, however, McKinsey declined to submit a BAFO.

Staff is recommending that the Authority proceed with an award of the contract to the highest scoring proposer, McKinsey, per their originally submitted not to exceed budget of $648,516 for Tasks 1 and 2. If NJEDA decides to pursue the optional Task 3, it will utilize hourly rates submitted by McKinsey through a Task Order Process for a not to exceed budget for Task 3 of $231,484.

RECOMMENDATION

Members of the Board are asked to approve NJEDA entering a contract with McKinsey & Company, Inc. Washington D.C. to provide consulting services to conduct a feasibility study for an offshore wind research and development facility for a maximum not to exceed amount of $880,000, utilizing funding from the Offshore Wind Initiatives Memorandum between NJEDA and NJBPU that was executed on July 14, 2021.

Tim Sullivan, CEO

Prepared by: Jen Becker and Favio German

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

RE: Strategic Management Consulting Services

Summary

The Members are asked to approve the award of the Strategic Management Consulting Services contract to McKinsey & Company, Inc. Washington, D.C. (McKinsey).

Background

Over the past several years, the New Jersey Economic Development Authority (NJEDA) has transformed itself from a "transaction-oriented bank" into a comprehensive economic development organization. As part of this transformation, the NJEDA has significantly expanded:

- The number of new programs it launches each year;
- The number and types of programs it runs;
- The types of industries it supports and entities with which it engages; and
- The number and types of services it procures.

During that same time, the NJEDA has reorganized several of its internal functions and reallocated responsibilities for others. Given the significant expansion in activity, several of the Authority's centralized functions have faced dramatic increases in demand. These centralized functions have not yet been able to sufficiently ramp-up operations and therefore have built up significant backlogs. The Authority expects further demand for its services moving forward and therefore needs to build more scalable and sustainable structures and processes within its centralized functions. The Authority also wants to ensure clarity of goals and appropriate allocations of roles and responsibilities as a precursor to surging efforts in its centralized functions. These enhancements to process also need to be balanced with the responsibilities inherent to State entities and employers for various compliance with laws, regulations, executive orders, fair and equitable competition, government transparency, federal requirements, and other reporting standards.

NJEDA seeks approval to hire a strategic management consulting firm to help the Authority:

- Review the organization chart to determine whether roles and responsibilities could be better allocated and functions should be clarified;
- Review several centralized business functions to determine the optimal staff size, structure, and capabilities required to support the organization's current mandate and plans over the next 3-5 years;
- Within these business functions, review current business processes, help define improved scalable, technology-enabled processes, and fully implement these new processes (including documentation of policy & procedures and other written materials); and
- Provide sustained implementation/staff augmentation support to execute new processes in order to reduce current backlogs.

The Division of Purchase and Property (DPP) within the NJ Department of the Treasury procured and awarded State Contract - M4005 for Strategic Management Consulting Services to McKinsey & Company, Inc. In order to utilize same, the Authority is required to follow the requirements and process as set forth in the Method of Operation (MOO). In accordance with that MOO, the Authority was required to submit a request through DPP's Central Intake process. This request is then reviewed by the Director to ensure the Authority's use of the purchase order does not conflict with any pre-existing State contracting vehicle. The aforementioned request was sent to DPP on Wednesday, April 6, 2022. On Thursday, April 7, 2022, the DPP approved the request and the Authority could proceed pursuant to the terms of the MOO.

In furtherance of same, the Authority submitted the request and scope of work to McKinsey on Thursday, April 7, 2022 and requested its proposal/submission. That scope of work included various internal Authority business functions, including product development/technology, finance and accounting, procurement, and human resources. The Authority received McKinsey's initial response on April 25, 2022. Pursuant to the MOO, the Authority was empowered to negotiate pricing reductions. As such, Authority staff commenced negotiations and corresponded with McKinsey as to various price reductions according to the scope of work. The Authority received McKinsey's final proposal on June 9, 2022.

During the course of negotiations, the Authority revised the requested scope of work to focus on product development and accounting and finance, which will be the focus for the initial term (i.e., the first six months). McKinsey's reduced pricing proposal for the initial six (6) months was for a total $1,870,254, including $210,000 for its partner firm. The Authority also requested pricing for two three (3) month extension options. McKinsey's final proposal provided for $741,024 per 3-month extension for a combined $1,482,048 total for both extensions. This amounts to a total of $3,352,302 for the initial term and both extension options, ***if exercised***.

Staff concluded that the pricing was reasonable given the work to be performed and the proposed deliverables. It was further determined that McKinsey's submission, including its pricing, is the most advantageous to the NJEDA, price and other factors considered.

As staff reviewed and evaluated McKinsey's submission and determined that it was the most advantageous to the NJEDA, it is recommended that the Authority award the contract to

McKinsey. As a result, it is recommended that the Authority retain McKinsey to provide Strategic Management Consulting Services for one (1) six (6) month term, with two (2) three (3) month extension options to be exercised by Authority staff.

Recommendation

The Members are asked to approve the award of the Strategic Management Consulting Services contract to McKinsey & Company, Inc. Washington, D.C.

Tim Sullivan, CEO

Prepared by: C. Baker / T. Fanikos

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: **United States Fire Insurance Company (d/b/a Crum & Forster)**
Grow New Jersey Assistance Program ("Grow NJ") – COVID-Related Termination - P#42217 (PROD-00183915)

Request:
Approve United States Fire Insurance Company (d/b/a Crum & Forster) ("US Fire" or "Company") request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156.

Background:
United States Fire Insurance Company ("US Fire") has been a licensed insurance company since 1824 and has maintained its main administrative office in New Jersey since 1971. US Fire and its affiliated insurance companies within C&F Holdings are marketed under the Crum & Forster brand.

On March 11, 2016 the Members approved a maximum $8,000,000 10-year Grow NJ award to incent the creation of 100 new and 0 retained Grow-eligible employees with an estimated capital investment of $4,658,240 to relocate to an existing 35,040 square foot non-industrial premises that would be refurbished as its Qualified Business Facility ("QBF"), located at 101 Hudson Street, Jersey City, NJ.

In December 2019, US Fire certified project completion with 100 new Grow-eligible jobs. As a result, the Grow NJ award at project certification remained at the as approved maximum amount of $8,000,000.

US Fire maintained the minimum required jobs from 2019-2020 and was issued Annual Tax Credit Certificates of $775,000 for 2019 and $728,500 for 2020, totaling $1,503,500. US Fire elected to suspend its 2021 annual compliance requirements pursuant to Section 108(c)(1) of P.L. 2020, c. 156 of the ERA law.

On February 3, 2022, US Fire requested a termination of its Grow NJ Incentive Agreement citing COVID-Related impacts.

COVID Relief

On January 7, 2021, the ERA amended the Grow NJ statute to afford Grow NJ businesses several relief measures in recognition of the negative effects that the COVID-19 pandemic and Health Emergency restrictions may have on the businesses. To qualify for the relief, a Grow NJ business must demonstrate COVID-related impacts to the business that are the basis for the request for relief. Requests may be based on negative financial impacts to a business, as well as other changes including a decrease in workforce, a conversion of workforce to remote, real estate decisioning, and changes to business model that no longer enable the company to participate in the Grow NJ program. These measures are intended to provide flexibility to Grow NJ businesses and to ensure that they are not penalized due to the safety measures needed to respond to the COVID-19 Health Emergency.

Specifically, Section 108(g) of P.L. 2020, c. 156 amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements "provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due to the public health emergency and describing the impact of the public health emergency on the business." A termination under this provision results in the forfeiture of all tax credits for the tax period in which the termination occurs and all subsequent tax periods. Tax credits issued for previous years may be retained by the business without recapture while the business is relieved of all ongoing reporting obligations. To guard against misrepresentation by businesses, termination letters executed under the COVID-Related Relief provisions will include a provision allowing EDA to seek recapture of any tax credits issued should it be determined that the Grow NJ business decisioning was made without consideration of the impact of the COVID-19 Health Emergency on the business.

US Fire COVID-19 Impacts and Decisioning

Prior to the onset of the COVID-19 public health emergency, US Fire had approximately 100 full-time employees working at the QBF. During 2021, US Fire received requests from 30 of its employees to be transferred to remote work, three or more days per week. Additionally, another 16 employees requested approval to be permanently transferred to work at another facility for three or more days per week. These combined requests would have amounted to a reduction in qualified full-time employees at the QBF of 46 positions. As of December 31, 2021, the full-time headcount at the QBF had been reduced to 47. The Company was faced with the decision to either address its employees' requests and concerns and no longer qualify to participate in the Grow NJ Program or run the risk of its employees leaving US Fire and transferring to companies which had more flexible work arrangements in place as a result of COVID-19. The Company opted to address its employees' requests and step away from the Grow NJ Program.

US Fire indicated to Staff that it intends to remain at the QBF location, though it does not expect to meet the minimum job threshold for Grow-eligible employees for the foreseeable future due to the reduction brought about by the COVID-19 public health emergency.

Staff has determined that US Fire has met the requirements for a COVID-related termination. Pursuant to the Board Memo dated February 10, 2021, all COVID-related terminations must be presented to the Members for approval.

Recommendation:

Approve US Fire's request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156.

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Tim Sullivan, CEO

Prepared by: Mark Chierici

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: **iCIMS, Inc.**
Grow New Jersey Assistance Program ("Grow NJ") –
COVID-Related Termination
P #42594 (PROD- 00183962)

Request:
Approve iCIMS, Inc.'s ("iCIMS") request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156.

Background:
iCIMS is a software services company specializing in applicant-tracking software for human resources professionals. On June 14, 2016, the Members approved a $38,295,000 10-year Grow NJ award to incent the creation of 390 new and the relocation of 552 Grow-eligible employees with an estimated capital investment of $41,116,551 to relocate to an existing 339,327 square foot non-industrial facility as its Qualified Business Facility ("QBF"), located at 101 Crawfords Corner Road, Holmdel Township.

In August 2020, iCIMS certified project completion with 265 new and 552 retained Grow-eligible jobs. As a result, the Grow NJ award was decreased at project certification to $30,590,000 due to the reduction from estimated in new jobs and the Grow Incentive Agreement was amended.

iCIMS submitted its 2020 Annual Compliance report, which is under final review with the EDA. However, a preliminary review for timeliness and job numbers indicates that they may be eligible to receive a credit for that year.

iCIMS elected to suspend its 2021 annual compliance requirements pursuant to Section 108(c)(1) of P.L. 2020, c. 156 of the ERA law.

On April 20, 2022, iCIMS requested a termination of its Grow NJ Incentive Agreement citing COVID-Related impacts.

COVID Relief

On January 7, 2021, the ERA amended the Grow NJ statute to afford Grow NJ businesses several relief measures in recognition of the negative effects that the COVID-19 pandemic and Health Emergency restrictions may have on the businesses. To qualify for the relief, a Grow NJ business must demonstrate COVID-related impacts to the business that are the basis for the request for relief. Requests may be based on negative financial impacts to a business, as well as other changes including a decrease in workforce, a conversion of workforce to remote, real estate decisioning, and changes to business model that no longer enable the company to participate in the Grow NJ program. These measures are intended to provide flexibility to Grow NJ businesses and to ensure that they are not penalized due to the safety measures needed to respond to the COVID-19 Health Emergency.

Specifically, Section 108(g) of P.L. 2020, c. 156 amended the Grow NJ law to allow businesses to terminate Grow NJ Incentive Agreements "provided that the business shall submit a certification from the business's chief executive officer or equivalent officer stating that the termination is due to the public health emergency and describing the impact of the public health emergency on the business." A termination under this provision results in the forfeiture of all tax credits for the tax period in which the termination occurs and all subsequent tax periods. Tax credits issued for previous years may be retained by the business without recapture while the business is relieved of all ongoing reporting obligations. To guard against misrepresentation by businesses, termination letters executed under the COVID-Related Relief provisions will include a provision allowing EDA to seek recapture of any tax credits issued should it be determined that the Grow NJ business decisioning was made without consideration of the impact of the COVID-19 Health Emergency on the business.

iCIMS COVID-19 Impacts and Decisioning

Prior to the onset of the COVID-19 public health emergency, iCIMS had 808 full-time employees working at the QBF. On March 10, 2020 iCIMS implemented a remote working policy until June 14, 2021, where employees could return to the QBF by choice as there is no requirement in place to return to the QBF.

The effects of the COVID-19 pandemic caused iCIMS to reduce its workforce to 677 employees in April 2020. In 2021, iCIMS began efforts to return its workforce to pre-COVID-19 levels. iCIMS currently employs 522 employees that are related to the QBF and has continued its optional in-person policy.

In a competitive market, where other companies in the same field can offer more remote flexibility, iCIMS has determined it needs to offer greater flexibility to retain qualified and competent employees. As such, iCIMS foresees an inability to meet the requirement for each Grow-eligible employee to work 60% of the time at the QBF.

Staff has determined that iCIMS has met the requirements for a COVID-related termination. Pursuant to the Board Memo dated February 10, 2021, all COVID-related terminations must be presented to the Members for approval.

Recommendation:
Approve iCIMS' request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156.

Tim Sullivan, CEO

Prepared by: Marc Tomasini

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

RE: Small Business Emergency Assistance Loan Program Phase 2- Additional Funding

Summary

The Members are asked to approve additional funding of up to $2,000,000 from the Economic Recovery Fund for the Small Business Emergency Assistance Loan Program – Phase 2 ("Program"). The funding would allow for the approval of applications that are successful in the appeal process and meet program specifications, as well as administrative costs incurred from temporary staff retained from 22nd Century Technologies, Inc.

Background

On March 9, 2020, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of COVID-19. Subsequent containment measures were implemented, including restrictions on public gatherings and mandated closing for non-essential businesses, which are only recently starting to be relaxed. While these measures were consistent with similar measures being taken nationally to limit the public's exposure to COVID-19, our nation's economy has been adversely impacted. Within New Jersey, small businesses, and residents employed by these businesses, have faced significant economic challenges as businesses have had difficulties meeting payroll obligations and supporting basic operating during this prolonged period of business interruption.

On July 14, 2020 the members approved the creation of the Small Business Emergency Assistance Loan Program (Phase 2), an emergency loan program, funded by a $10 million grant from the US Economic Development Administration ("USEDA"). That version of the program was put on hold as there were several other resources available that were designed to assist companies to sustain themselves through the peak of the pandemic. On June 9, 2021, the Members approved the revision of the Program– to make direct low-cost financing available to help New Jersey small businesses and not-for-profit organizations with recovery and reopening efforts as a result of COVID-19. The program provided a priority to applicants that had recently signed new agreements to acquire at least 500 square feet.

The response to the program was overwhelming, with the Authority receiving 1,019 applications for Stage 1 of the program, representing an estimated $82.7 million in total funding requested. As of June 30, 2022, the expiration of the USEDA grant, there are 161 active loan approvals totaling approximately $9,752,683 million, of which 144 loans have closed for $8,688,753 million.

Unfortunately for as successful as the program has been for some, there were over 800 declines in the program for a variety reasons where applicants did not meet the program's specifications. As is customary with all programs, declined applicants can appeal the Authority's decision, and 160 applicants have exercised that right.

To date, staff has reviewed 115 appeals, overturning 47 declinations and upholding the original declination on 68 applications. Of those successful appeals, there have been 28 approvals for approximately $1,895,778 thus far, with 8 of those loans closing totaling $529,938.

Given the current trend of overturned declines and approvals, staff predicts up to an additional 20-25 approvals for an anticipated total of $2 million. The funds being requested today will allow the Authority to fund these small businesses, allowing them the opportunity to recover from the impacts of COVID-19.

Recommendation

Approval is requested for additional funding of up to $2,000,000 from the Economic Recovery Fund to support loan approvals in the Small Business Emergency Assistance Loan Program – Phase 2. The funding would be used for the approval of applications that are successful in the appeal process and meet program specifications, as well as administrative costs incurred from temporary staff retained from 22nd Century Technologies, Inc.

Tim Sullivan, CEO

Prepared by: Paul Ceppi

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: July 13, 2022

SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal project has been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summary:

HDSRF Municipal Grant:

Product 301874	Middlesex County (Perth Amboy Waterfront Park)	$1,222,511.75

Total HDSRF Funding – July 2022 **$1,222,511.75**

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation

APPLICANT: Middlesex County – Perth Amboy Waterfront Park PROD-00301874

PROJECT USER(S): Same as applicant

PROJECT LOCATION: High Street & Washington Street Perth Amboy City Middlesex County

APPLICANT BACKGROUND:

Between May 2017 and May 2021, Middlesex County received an initial grant in the amount of $4,126,929 under P43089 and a supplemental grant in the amount of $2,695,955 under Product 235507 for the project site identified as Block 238, Lots 1, 3, 4, 4,18; and 5.01 that were formerly industrial sites which have potential environmental areas of concern (AOC). Middlesex County currently owns the project site and has satisfied proof of site control. It is the County's intent to complete the cleanup activities and continue to use the recently redeveloped project site as a public park.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects within a BDA. The grant is awarded based on a calculation equal to 75% of the approved remedial action project costs ($1,630,015.67). Middlesex County is providing the remaining 25% of the eligible costs ($407,503.92).

OTHER NJEDA SERVICES:

$4,126,929, P43089; $2,695,955, Product 235507

APPROVAL REQUEST:

Middlesex County is requesting aggregate supplemental grant funding to perform RA in the amount of $1,222,511.75 at the Perth Amboy Waterfront Park project site. Total grant funding including this approval is $8,045,395.75.

FINANCING SUMMARY:

GRANTOR:	Hazardous Discharge Site Remediation Fund
AMOUNT OF GRANT:	$1,222,511.75
TERMS OF GRANT:	No Interest; No Repayment

PROJECT COSTS:

Remedial Action	$1,222,511.75	EDA Administrative Cost	$500.00

TOTAL COSTS: **$1,223,011.75**

DATE: 5/25/2022

NJ EDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: **Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority's State Lease Revenue Bonds (State House Project) 2017 Series B: PROD-00128451**

APPROVAL REQUEST

The Members of the Authority are asked to (i) adopt written post-issuance compliance procedures (the "Written Procedures") with respect to the Authority's State Lease Revenue Bonds (State House Project) 2017 Series B (the "2017 Bonds") and any Additional Bonds or Refunding Bonds (as such terms are defined in the hereinafter defined Resolution) issued pursuant to the Resolution (together with the 2017 Bonds, "Tax-Exempt Bonds"), (ii) appoint one or more Tax Compliance Officers to carry out the Written Procedures and (iii) approve the use of professionals and authorize Authority staff to take all necessary actions incidental to the foregoing.

BACKGROUND

The 2017 Bonds were issued pursuant to (i) the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and (ii) a resolution of the Authority entitled "State Lease Revenue Bond Resolution (State House Project)" adopted by the Authority on May 11, 2017 (the "Bond Resolution"), as amended and supplemented, including by a Series Certificate dated as of May 11, 2017 (the "Series Certificate" and, together with the Bond Resolution, the "Resolution"; unless otherwise noted, capitalized terms used but not defined herein shall have the meanings given them in the Resolution).

In accordance with the provisions of the Tax Certificate, and as is required pursuant to the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder, since the issuance of the 2017 Bonds, the Authority has been undertaking arbitrage compliance with respect to the 2017 Bonds, and the State Treasurer, or his/her designee, has been monitoring private use with respect to facilities financed with the proceeds of the 2017 Bonds. The Authority now desires to memorialize those on-going tax compliance procedures in writing pursuant to and as described in the Written Procedures.

Currently, the Members of the Authority are asked to adopt a Resolution authorizing the Written Procedures and the appointment of one of more Tax Compliance Officers (as such term is defined in the Written Procedures). The Members of the Authority also are asked to authorize an

Authorized Officer of the Authority to take any and all actions necessary in connection with the foregoing.

Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, and in compliance with Executive Order No. 26 (Whitman 1994), Chiesa Shahinian Giantomasi PC ("CSG") was selected as Bond Counsel ("Bond Counsel") in connection with the Written Procedures. The Members are asked to approve the use of CSG as Bond Counsel and authorize Authority staff to take all necessary actions incidental to the adoption of the Written Procedures, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S STATE LEASE REVENUE BONDS (STATE HOUSE PROJECT)" authorizing, among other things, the adoption of the Written Procedures and the appointment of Tax Compliance Officers. The Members are also asked to authorize the use of CSG as Bond Counsel and authorize the Authorized Officers of Authority to take any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

Tim Sullivan, CEO

Prepared By: Lori Zagarella

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

POST-ISSUANCE TAX COMPLIANCE PROCEDURES

FOR

USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS

Relating to

STATE LEASE REVENUE BONDS (STATE HOUSE PROJECT)

BACKGROUND – THE BONDS

On May 11, 2017, the New Jersey Economic Development Authority (the "Authority") issued, on a tax-exempt basis, its $300,000,000 State Lease Revenue Bonds (State House Project), 2017 Series B (the "2017 Bonds"). The 2017 Bonds were issued pursuant to the laws of the State of New Jersey (the "State"), including the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and a resolution of the Authority entitled "State Lease Revenue Bond Resolution (State House Project)" adopted by the Authority on May 11, 2017 (the "Bond Resolution"), as amended and supplemented, including by a Series Certificate dated as of May 11, 2017 (the "Series Certificate" and, together with the Bond Resolution, the "Resolution;" all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Resolution or in the Tax Certificate (as hereinafter defined)).

The 2017 Bonds were issued by the Authority for the purposes of: (i) paying costs of the New Money Project (as hereinafter defined), (ii) paying capitalized interest on the 2017 Bonds through December 17, 2018, and (iii) paying costs associated with the issuance of the 2017 Bonds, all as more fully described in the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 (the "Tax Certificate") dated May 11, 2017, and executed and delivered by the Authority in connection with the issuance of the 2017 Bonds.

The New Money Project consists of the rehabilitation, renovation and improvement of the State House, including, but not limited to, the design, planning, construction, reconstruction, relocation, installation, removal, establishment, repair or rehabilitation thereof, being financed in whole or in part with proceeds of the 2017 Bonds. The State House is situated on the Leased Premises, which, pursuant to the Lease Documents, were leased by the State Capitol Joint Management Commission (the "JMC") to the Authority and subleased by the Authority to the JMC.

Pursuant to the Lease Documents, the JMC and the Authority have agreed, to the extent permitted by law, not to take any action or fail to take any action the result of which action or inaction would cause the interest on the 2017 Bonds to lose the exclusion from gross income under Code Section 103 or cause interest on the 2017 Bonds to be treated as an item of tax preference under Code Section 57.

In the Tax Certificate, the Authority represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in the Tax Certificate and do and perform all acts and things necessary or desirable to ensure that interest paid on the 2017 Bonds will be excluded from gross income for federal tax purposes under Section 103 of the Code.

The Resolution provides for the issuance of Additional Bonds and Refunding Bonds (as such terms are defined in the Resolution). For purposes of these procedures, the term "Bonds" refers to the 2017 Bonds and any Additional Bonds and/or Refunding Bonds issued as Bonds (as such term in defined under the Resolution) under the Resolution. These procedures may be amended as necessary or appropriate in connection with the issuance of any such future Bonds to conform to the requirements of the Code as may be in effect at the time of such issuance, unless separate post-issuance tax compliance procedures are then adopted in connection with any such future Bonds.

PURPOSE OF POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Section 141 of the Code contains limitations on the extent to which proceeds of the Bonds can benefit persons other than a state or local governmental unit. In addition, Section 148 of the Code imposes limitations on the investment of proceeds of the Bonds and requires rebate of excess earnings to the federal government. The procedures set forth herein are intended enable the Authority to comply with the applicable requirements of the Code and thereby to preserve the tax-exempt status of the Bonds. These procedures, together with the Tax Certificate, establish procedures for: (1) identifying uses that may constitute private uses; (2) managing and tracking changes in use; (3) accomplishing remedial actions when necessary; (4) ensuring compliance with the arbitrage requirements of the Code; and (5) ensuring compliance with the record retention requirements of the Code.

RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of the Bonds (the "Tax Requirements"), the Authority has, by Resolution adopted on July 13, 2022 (the "Post-Issuance Compliance Resolution"), appointed one or more tax compliance officers (each a "Tax Compliance Officer" and, together, the "Tax Compliance Officers"), as set forth below, with respect to the Bonds. The Tax Compliance Officers will have the primary responsibility to monitor the Authority's compliance with the Tax Requirements for the Bonds. The general responsibilities of the Tax Compliance Officer with respect to tax compliance shall include, but not be limited to, confirming consistent application of these procedures, monitoring the completeness of documentation required by these procedures, and requesting that the Attorney General's Office engage nationally recognized bond counsel ("Bond Counsel") as necessary in the event that a potential issue arises with respect to the tax-exempt status of the Bonds. The Tax Requirements include both limitations on the private use of the New Money Project and arbitrage limitations on the investment of the proceeds of the Bonds under the Code. The procedures to be undertaken are set forth below and are intended to supplement the Tax Certificate. The Authority, in consultation with Bond Counsel, will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements. The Tax Compliance Officer shall be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

PRIVATE ACTIVITY LIMITATIONS

Private Activity Review

Federal tax law limits the permitted amount of private business use of tax-exempt bond-financed facilities ("Bond-Financed Property"), such as the New Money Project, by reference to a percentage of the total amount of proceeds of the tax-exempt bonds issued to finance such Bond-Financed Property (the "Private Activity Limitations"). In the case of private uses that are related to the governmental use of the facility, the limit is 10% of proceeds. In the case of private uses that are unrelated to the governmental use, or that are related but disproportionate to the governmental use, the limit is 5% of proceeds. Federal tax law also limits the amount of private loans financed with tax-exempt proceeds to the lesser of 5% of proceeds or $5,000,000.

The Treasurer of the State of New Jersey (the "State Treasurer") has designated the Real Estate Specialist (the "DPMC Real Estate Specialist") of the New Jersey Division of Property Management & Construction (the "DPMC") to serve as the Tax Compliance Officer with regard to the matters discussed under this Section. Any references to "Tax Compliance Officer" in this Section shall mean the DPMC Real Estate Specialist.

In order to demonstrate compliance with the Private Activity Limitations, the Tax Compliance Officer will implement or oversee the procedures described below under "Monitoring Procedures." These procedures are designed to assist the Tax Compliance Officer in identifying the potential occurrence of any of the events set forth below (each, a "Tax Event") with respect to any portion of the New Money Project:

Change in use of Bond-Financed Property -- a change in the use of the Bond-Financed Property as a result of any one or more of the other Tax Events set forth below.

Change of ownership of Bond-Financed Property -- the ownership of any portion of the Bond-Financed Property is transferred to anyone other than a State or local governmental unit, prior to the earlier of the end of the expected economic life of the Bond-Financed Property or the latest maturity date of any bond of the issue financing (or refinancing) the Bond-Financed Property.

Private business use of Bond-Financed Property -- any portion of the Bond-Financed Property is or will be used by anyone other than (i) a State or local governmental unit or (ii) members of the general public who are not using the property in the conduct of a trade or business. Examples of uses that can give rise to private business use include use by a person as an owner, lessee, purchaser of the output of the Bond-Financed Property under a "take" or "take or pay" contract, purchaser or licensee of research conducted at the Bond-Financed Property, a manager or independent contractor under certain management or professional service contracts with respect to the Bond-Financed Property, or any other arrangement with respect to the Bond-Financed Property that conveys special legal entitlements for beneficial use of the property (e.g., an arrangement that conveys priority rights to the use or capacity of the financed property) or special economic benefit with respect to the use of the Bond-Financed Property.

Leases of Bond-Financed Property -- any portion of the Bond-Financed Property is to be leased or otherwise subject to an agreement which gives possession of any portion of the Bond-Financed Property to anyone other than a State or local governmental unit.

Management agreement or service agreement with respect to Bond-Financed Property -- any portion of the Bond-Financed Property is to be used under a management contract or professional service contract (e.g., medical group), other than a contract for services that are solely incidental to the primary function of the Bond-Financed Property, such as janitorial services or office equipment repair.

Sale of output from Bond-Financed Property -- any output of the Bond-Financed Property is to be sold under a long-term contract to any person other than a State or local governmental unit.

Naming rights agreements with respect to Bond-Financed Property -- any portion of the Bond-Financed Property will become subject to a naming rights or a sponsorship agreement, other than a "brass plaque" dedication.

Research using Bond-Financed Property -- any portion of the Bond-Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than a State or local governmental unit.

Private Loan of proceeds of the Bonds -- any portion of the proceeds of the Bonds (including any investment earnings thereon) is to be loaned by the Authority to any person other than a State or local governmental unit.

On or prior to the occurrence of any Tax Event or prior to an imminent, suspected, potential, or anticipated Tax Event, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel to ascertain what effect, if any, a contemplated Tax Event may have on the tax-exempt status of interest on the Bonds. In certain circumstances it may be necessary for the Authority to take a remedial action under Treasury Regulation Section 1.141-12 to preserve the tax-exempt status of interest on the Bonds. Timely identification of a Tax Event is necessary to take a remedial action. In certain cases, remedial action may not be available, and the Authority may need to consider entering into a voluntary closing agreement with the IRS.

Monitoring Procedures

Responsible Persons

The Tax Compliance Officer will be responsible for determining the occurrence or possibility of the occurrence of any Tax Event as soon as practicable upon learning of any such occurrence or possibility of such occurrence. The Tax Compliance Officer will seek the assistance of pertinent staff of the DPMC in its review.

Ongoing Contract Review

The Tax Compliance Officer will oversee the establishment of a procedure for the review on an on-going basis of all existing and prospective contracts between DPMC and a non-governmental person, including the federal government or a non-profit organization, that involve the use of, management of, or provision of services with respect to, the New Money Project. Excluded from such review process and reporting requirement will be construction contracts, engineering or similar contracts, purchase contracts, and incidental contracts such as contracts for janitorial services or office equipment repair. Based upon such review of contracts, the Tax Compliance Officer will oversee the maintenance of written records that identify, for each such contract, the type of use by the contracting party, the term of the contract and the compensation arrangement.

For all such contracts requiring review, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel with respect to whether the contract meets, or will meet, the requirements for a safe harbor management contract under the Code and Regulations and applicable Revenue Procedures and Revenue Rulings or another exception to private use or can be revised to meet a safe harbor or exception. For those contracts that cannot meet a safe harbor or exception from private use, including all leases and sale contracts with a non-governmental person, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel as to any further steps to be taken, including remedial action if necessary.

Change in Use and Remediation

No less frequently than annually, the Tax Compliance Officer will undertake or coordinate a review to identify any changes in use of the New Money Project that might result in private use and/or private payments, including any privatization initiatives. Should the information collected by the Tax Compliance Officer indicate that there may be a change in private use and/or private payments from what was contemplated at the time of the issuance of the Bonds, the Tax Compliance Officer will request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary. To the extent that any such potential change comes to the attention of the Tax Compliance Officer prior to the next scheduled periodic review, the Tax Compliance Officer shall not wait until the next scheduled periodic review but shall, within a reasonable time after such change comes to the attention of the Tax Compliance Officer, request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary.

Recordkeeping

The Internal Revenue Service (the "IRS") has advised issuers of tax-exempt obligations that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the IRS in the event of an audit. Accordingly, all files must be maintained for the life of the Bonds plus three years. See IRS FAQs on Record Retention, current as of January 14, 2021, attached as Appendix A. The FAQs, as from time to time updated by the IRS, can be found at the following link:
https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements#1

The records to be maintained by the DPMC are to include:

1. Information and records regarding any use of proceeds of the Bonds to make or finance a loan to any person other than a state or local governmental unit;

2. Records reflecting actual expenditures of the proceeds of the Bonds;

3. Information and records regarding the continued use and ownership of the New Money Project;

4. Any use arrangements affecting the New Money Project, which result in private business use of any portion of the New Money Project; and

5. Copies of any leases, management contracts, service contracts or other written arrangements with persons other than a state or local governmental unit relating to the New Money Project.

ARBITRAGE COMPLIANCE

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of the Bonds and the rebate of excess investment earnings to the federal government.

The Authority hereby designates the Chief Executive Officer of the Authority ("NJEDA CEO") to serve as the Tax Compliance Officer with regard to the matters discussed under this Section. Any references to "Tax Compliance Officer" in this Section shall mean the NJEDA CEO.

Arbitrage Review

The Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below and to maintain the records and documents described below under "Recordkeeping." The Tax Compliance Officer is responsible for maintaining or causing to be maintained records documenting the investment and allocation of proceeds of the Bonds, determining if any spending exception allowed by the Code and set forth in the Tax Certificate is applicable or permitted, causing a rebate analysis to be prepared on each date that a rebate analysis is required or permitted by the Tax Certificate and/or the Code, determining the amount of any required rebate due to the federal government and the applicable due date thereof, depositing or causing the Trustee to deposit in the Rebate Fund the amounts available to be deposited therein pursuant to the Bond Resolution, including Rebate Payments received from the JMC as Additional Rent pursuant to the Sublease, and causing the Trustee to apply amounts on deposit in the Rebate Fund to make any required payments to the United States when due, in accordance with the Code and as further described in the Tax Certificate.

Temporary Periods for Unrestricted Yield

The available temporary periods with respect to the Bonds are as set forth in the Tax Certificate. If any proceeds of the Bonds remain unexpended beyond the applicable temporary period, the Tax Compliance Officer must assure that such proceeds are yield restricted. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely yield reduction payments.

Rebate

The Tax Compliance Officer will be responsible for ensuring that a rebate analysis with respect to the Bonds is performed at the times provided in the Tax Certificate. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely filings and payments with respect to any rebate amount due.

Arbitrage Consultant

The Tax Compliance Officer will maintain a contract with a third-party nationally recognized arbitrage consultant (the "Arbitrage Consultant") for the purpose of providing arbitrage consulting services, including but not limited to:

1. Annual analysis of the Bonds;

2. Yield restriction calculations;

4. Arbitrage rebate calculations; and

5. Technical support on an ad-hoc basis.

The Arbitrage Consultant will provide, on an annual basis, an analysis of the Bonds to review and identify potential arbitrage or rebate liability, issues regarding yield restriction compliance, and/or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the Arbitrage Consultant to prepare any necessary filings and payments on a timely basis. The Tax Compliance Officer will timely file or cause to be filed with the IRS the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due with respect to the Bonds.

Recordkeeping

In order to satisfy the arbitrage recordkeeping requirements, the Tax Compliance Officer will create and maintain, or cause to be created and maintained, records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of:

1. Purchases or sales of investments made with the proceeds of the Bonds (including amounts treated as "gross proceeds" as a result of being part of a sinking fund or pledged fund or otherwise under section 148 of the Code, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;

2. The allocations, by date and amount, of the proceeds of the Bonds to expenditures;

3. Information and records showing that investments made with unspent proceeds of the Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;

4. Information and records, including bank and earnings statements, that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the Authority has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;

5. In the event that an exception to the arbitrage rebate requirement was not applicable, information and calculations that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of the Bonds was calculated and timely paid with Form 8038-T being timely filed with the IRS;

6. Information and records demonstrating that all rebate calculations and reports prepared in connection with the Bonds were prepared in accordance with the requirements of the Tax Certificate and the Code;

7. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows funded with the proceeds of the Bonds were not invested in higher-yielding investments; and

8. The Tax Certificate.

MISCELLANEOUS

Training Requirements

The Tax Compliance Officer will arrange for training regarding the requirements of these procedures for him or herself, any other Authority personnel involved in implementing these procedures, and any successor(s) thereto, and will periodically provide or arrange for training for each of such individuals concerning their respective duties under these procedures.

Appendix A

Tax Exempt Bond FAQs Regarding Record Retention Requirements

- During the course of an examination, IRS Tax Exempt Bonds (TEB) agents will request all material records and information necessary to support a municipal bond issue's compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.

- These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

- The freely available Adobe Acrobat Reader software is required to view, print, and search the questions and answers listed below.

Why keep records with respect to tax-exempt bond transactions?

- Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

- The IRS regularly advises *taxpayers* to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and

records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

- Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.

- Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.

- In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

Who may maintain records?

- Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:

1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;

2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and

3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.

- Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

What are the basic records that should be retained?

- Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:

  - Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);

  - Documentation evidencing expenditure of bond proceeds;

  - Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);

  - Documentation evidencing all sources of payment or security for the bonds; and

  - Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

Are these the only records that need to be maintained?

- No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related

to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

•

Single Family Housing Bonds	• Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences. • Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.
Multi-Family Housing Bonds	• Documentation evidencing that the facility is not used on a transient basis. • Documentation evidencing compliance with the income set-aside requirements. • Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.
Small Issue Industrial Development Bonds	• Documentation evidencing compliance with the $10,000,000 limitation on the aggregate face amount of the issue. • Documentation evidencing that no test-period beneficiary has been allocated more than $40,000,000 in bond proceeds.

In what format must the records be kept?

- All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.

- Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:

1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.

2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).

4. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.

5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.

6. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.

7. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

How long should records be kept?

- Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years. Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.

- To support these tax positions, material records should *generally* be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.

- Certain federal, state, or local record retention requirements may also apply.

How does this general rule apply to refundings?

- For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.

What happens if records aren't maintained?

- During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.

- Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax

attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.

Can a failure to properly maintain records be corrected?

- Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, TEB Compliance and Program Management has resolved arbitrage rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. More information on VCAP is available.

Are there exceptions to the general rule regarding record retention for certain types of records?

- No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB and sent by e-mail to TEGE TEB Questions.

ADOPTED
JUL 13 2022

RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES, DESIGNATION OF A TAX COMPLIANCE OFFICER AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S STATE LEASE REVENUE BONDS (STATE HOUSE PROJECT)

WHEREAS, on May 11, 2017, the New Jersey Economic Development Authority (the "Authority") issued its $300,000,000 State Lease Revenue Bonds (State House Project), 2017 Series B (the "2017 Series B Bonds") pursuant to its "State Lease Revenue Bond Resolution (State House Project)" adopted by the Authority on May 11, 2017, and a Series Certificate dated as of May 11, 2017 (collectively, the "Resolution;" all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Resolution or in the Tax Certificate (as hereinafter defined)); and

WHEREAS, on October 24, 2018, the 2017 Series B Bonds were converted from a variable interest rate to Bonds bearing fixed rates of interest to maturity; and

WHEREAS, the 2017 Series B Bonds were issued for the purposes of: (i) paying costs of the New Money Project, (ii) paying capitalized interest on the 2017 Series B Bonds through December 17, 2018, and (iii) paying costs associated with the issuance of the 2017 Series B Bonds, all as more fully described in the Certificate as to Arbitrage and Compliance with the Internal Revenue Code of 1986 dated May 11, 2017 and executed in connection with the issuance of the 2017 Series B Bonds (the "Tax Certificate"); and

WHEREAS, pursuant to the Resolution, one or more Series of Additional Bonds and/or Refunding Bonds may be issued as provided in the Resolution (such Additional Bonds and/or Refunding Bonds issued as Tax-Exempt Bonds are, collectively with the 2017 Series B Bonds, hereinafter referred to as the "Tax-Exempt Bonds"); and

WHEREAS, the New Money Project consists of the rehabilitation, renovation and improvement of the State House, including, but not limited to, the design, planning, construction, reconstruction, relocation, installation, removal, establishment, repair or rehabilitation thereof, which shall be financed in whole or in part with proceeds of the Tax-Exempt Bonds; and

WHEREAS, the State House is situated on the Leased Premises, which, pursuant to the Lease Documents, have been leased by the State Capitol Joint Management Commission (the "JMC") to the Authority and subleased by the Authority to the JMC; and

WHEREAS, the Authority has developed written procedures for post-issuance tax compliance ("Written Procedures") in connection with the Tax-Exempt Bonds to preserve the tax-exempt status of the Tax-Exempt Bonds by establishing procedures for: (1) identifying uses that may constitute private use of the Tax-Exempt Bonds or the New Money Project; (2) managing and tracking changes in use of the Tax-Exempt Bonds or the New Money Project; (3) accomplishing remedial action with respect to the Tax-Exempt Bonds or the New Money Project if and when necessary to maintain compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the Treasury Regulations promulgated thereunder (the "Regulations") relating to Tax-Exempt Bonds; and (4) assuring compliance with the arbitrage requirements of the Code and Regulations; and

WHEREAS, pursuant to the Lease Documents, the JMC and the Authority have agreed, to the extent permitted by law, not to take any action or fail to take any action the result of which action or inaction would cause the interest on the Tax-Exempt Bonds to lose its exclusion from gross income under Code Section 103 or cause interest on the Tax-Exempt Bonds to be treated as an item of tax preference under Code Section 57; and

WHEREAS, the Authority's Written Procedures will also set forth the respective responsibilities of the Authority as issuer of the Tax-Exempt Bonds and the Tax Compliance Officer(s) named therein; and

WHEREAS, the Tax Compliance Officer(s) is expected to acknowledge and adopt the Written Procedures, setting forth the respective responsibilities of the Authority and such Tax Compliance Officer(s) as described therein.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Written Post-Issuance Tax Compliance Procedures.

The Written Procedures, in substantially the form presented to this meeting, are hereby approved, provided that an Authorized Officer of the Authority is hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate. The Chief Executive Officer of the Authority or his designee, is hereby authorized and directed, with the advice of Bond Counsel and the State Attorney General, to amend from time to time such Written Procedures as may be necessary or desirable or as may be required by the Code and Regulations.

Section 2. Designation of Tax Compliance Officer.

The Chief Executive Officer of the Authority is hereby authorized and directed to appoint one or more Tax Compliance Officers, in addition to or in lieu of the Tax Compliance Officer(s) named in the form of Written Procedures submitted to this meeting.

Section 3. Additional Proceedings.

Any of the Chairman, Vice Chairman, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Director, or any other authorized Authority representative who shall have power to execute contracts pursuant to the bylaws or a resolution adopted by the Authority is hereby authorized to take any additional actions which are necessary or desirable to achieve the purposes of this resolution upon advice of Bond Counsel and the State Attorney General.

Section 4. Effective Date.

This resolution shall take effect in accordance with the provisions of the New Jersey Economic Development Authority Act, L. 1974, c. 80, as from time to time amended and supplemented.

NJ EDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: **Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority's State Lease Revenue Bonds (State Government Buildings) 2018 Series A and 2018 Series C: PROD-00152563**

APPROVAL REQUEST

The Members of the Authority are asked to (i) adopt written post-issuance compliance procedures (the "Written Procedures") with respect to the Authority's State Lease Revenue Bonds (State Government Buildings – Health Department and Taxation Division Office Project), 2018 Series A and State Lease Revenue Bonds (State Government Buildings – Juvenile Justice Commission Facilities Project), 2018 Series C (collectively, the "2018 Bonds") and any Additional Bonds or Refunding Bonds (as such terms are defined in the hereinafter defined Resolution) issued pursuant to the Resolution (together with the 2018 Bonds, "Tax-Exempt Bonds"), (ii) appoint one or more Tax Compliance Officers to carry out the Written Procedures and (iii) approve the use of professionals and authorize Authority staff to take all necessary actions incidental to the foregoing.

BACKGROUND

The 2018 Bonds were issued pursuant to (i) the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and (ii) a resolution of the Authority entitled "State Lease Revenue Bond Resolution (State Government Buildings)" adopted by the Authority on December 12, 2018, as amended and supplemented, including by a First Supplemental State Lease Revenue Bond Resolution (State Government Buildings) adopted by the Authority on December 12, 2018 and a Series Certificate of the Authority dated as of January 5, 2018 (collectively, the "Resolution"; unless otherwise noted, capitalized terms used but not defined herein shall have the meanings given them in the Resolution).

In accordance with the provisions of the Tax Certificate, and as is required pursuant to the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder, since the issuance of the 2018 Bonds, the Authority has been undertaking arbitrage compliance with respect to the 2018 Bonds, and the State Treasurer, or his/her designee, has been monitoring private use with respect to facilities financed with the proceeds of the 2018 Bonds. The Authority now desires to memorialize those on-going tax compliance procedures in writing pursuant to and as described in the Written Procedures.

Currently, the Members of the Authority are asked to adopt a Resolution authorizing the Written Procedures and the appointment of one of more Tax Compliance Officers (as such term is defined in the Written Procedures). The Members of the Authority also are asked to authorize an Authorized Officer of the Authority to take any and all actions necessary in connection with the foregoing.

Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, and in compliance with Executive Order No. 26 (Whitman 1994), Chiesa Shahinian Giantomasi PC ("CSG") was selected as Bond Counsel ("Bond Counsel") in connection with the Written Procedures. The Members are asked to approve the use of CSG as Bond Counsel and authorize Authority staff to take all necessary actions incidental to the adoption of the Written Procedures, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S STATE LEASE REVENUE BONDS (STATE GOVERNMENT BUILDINGS)" authorizing, among other things, the adoption of the Written Procedures and the appointment of Tax Compliance Officers. The Members are also asked to authorize the use of CSG as Bond Counsel and authorize the Authorized Officers of Authority to take any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

Tim Sullivan, CEO

Prepared By: Lori Zagarella

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

POST-ISSUANCE TAX COMPLIANCE PROCEDURES

FOR

USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS

Relating to

STATE LEASE REVENUE BONDS (STATE GOVERNMENT BUILDINGS)

BACKGROUND – THE BONDS

On January 8, 2018, the New Jersey Economic Development Authority (the "Authority") issued, on a tax-exempt basis, its $196,280,000 State Lease Revenue Bonds (State Government Buildings – Health Department and Taxation Division Office Project), 2018 Series A (the "2018 Series A Bonds") and $160,325,000 State Lease Revenue Bonds (State Government Buildings – Juvenile Justice Commission Facilities Project), 2018 Series C (the "2018 Series C Bonds" and, together with the 2018 Series A Bonds, the "2018 Bonds"). The 2018 Bonds were issued pursuant to the laws of the State of New Jersey (the "State"), including the New Jersey Economic Development Authority Act, L. 1974, c. 80, as amended and supplemented, N.J.S.A. 34:1B-1 et seq. (the "Act") and a resolution of the Authority entitled "State Lease Revenue Bond Resolution (State Government Buildings)" adopted by the Authority on December 12, 2017 (the "General Resolution"), as amended and supplemented, including by a First Supplemental State Lease Revenue Bond Resolution (State Government Buildings) adopted by the Authority on December 12, 2017 and a Series Certificate of the Authority dated as of January 5, 2018 (collectively, the "Bond Resolution"; all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Bond Resolution or in the Tax Certificate (as hereinafter defined)).

The 2018 Bonds were issued by the Authority for the purposes of: (i) paying costs of the Projects (as hereinafter defined), (ii) paying capitalized interest on the 2018 Bonds through June 15, 2018, and (iii) paying costs associated with the issuance of the 2018 Bonds, all as more fully described in the Tax Regulatory Agreement (the "Tax Certificate") dated January 8, 2018, and executed and delivered by the Authority in connection with the issuance of the 2018 Bonds.

The portion of the Health Department Office Project financed with the proceeds of the 2018 Series A Bonds (the "Tax-Exempt Health Department Office Project") entailed the development, design, planning, construction, acquisition, improvement, installation and/or equipping of an office facility, including without limitation an office building of approximately 209,300 square feet, and related improvements to and on the Leased Premises described in Exhibit A to the Health Department Office Sublease. The portion of the Taxation Division Office Project financed with the proceeds of the 2018 Series A Bonds (the "Tax-Exempt Taxation Division Office Project") entailed the development, design, planning, construction, acquisition, improvement, installation and/or equipping of an office facility, including without limitation an office building of approximately 209,400 square feet and related improvements to an on the Leased Premises described in Exhibit A to the Taxation Division Office Sublease. The portion of the Juvenile Justice Commission Facilities-Central Project financed with the proceeds of the 2018 Series C Bonds (the "Tax-Exempt Juvenile Justice Commission Facilities-Central Project") entails the development, design, planning, construction, acquisition, improvement, installation and/or equipping of a Juvenile Justice Commission regional secure care facility consisting of approximately 40 to 72 residential beds, located on the Leased Premises described in Exhibit A to the Sublease with respect to the Juvenile Justice Commission Facilities-Central Project. The portion of the Juvenile Justice Commission Facilities-South Project financed with the proceeds of the 2018 Series C Bonds (the "Tax-Exempt Juvenile Justice Commission Facilities-South Project") entailed the development, design, planning, construction, acquisition, improvement, installation and/or equipping of a Juvenile Justice Commission regional secure care facility consisting of approximately 40 to 72 residential beds, located on the Leased Premises described in Exhibit A to the Sublease with respect to the Juvenile Justice Commission Facilities-South Project.

The Tax-Exempt Health Department Office Project, the Tax-Exempt Taxation Division Office Project, the Tax-Exempt Juvenile Justice Commission Facilities-Central Project, and the Tax-Exempt Juvenile Justice Commission Facilities-South Project are each sometimes referred to herein individually as a "Project" or collectively as the "Projects."

Each Project was leased by the State to the Authority pursuant to a separate lease (each, a "Lease" and collectively, the "Leases"), each dated as of January 8, 2018. Simultaneously with the execution and delivery of the Leases, each Project was subleased by the Authority to the State pursuant to a separate Agreement and Sublease (each, a "Sublease" and collectively, the "Subleases"), each dated as of January 8, 2018.

Pursuant to each Sublease, the State and the Authority have agreed, to the extent permitted by law, not to take any action or fail to take any action the result of which action or inaction would cause the interest on any Bonds issued as Tax-Exempt Bonds to lose the exclusion from gross income under Code Section 103 or cause interest on any Bonds issued as Tax-Exempt Bonds to be treated as an item of tax preference under Code Section 57.

In the Tax Certificate, the Authority represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in the Tax Certificate and will do and perform all acts and things necessary or desirable in order to assure that, under the Code as presently in effect, interest on the 2018 Bonds will, for purposes of Federal income taxation, be excludable from the gross income of the recipients thereof.

The Resolution provides for the issuance of Additional Bonds and Refunding Bonds (as such terms are defined in the Resolution). For purposes of these procedures, the term "Bonds" refers to the 2018 Bonds and any Additional Bonds and/or Refunding Bonds issued as Tax-Exempt Bonds (as such term is defined under the Resolution) under the Resolution. These procedures may be amended as necessary or appropriate in connection with the issuance of any such future Bonds to conform to the requirements of the Code as may be in effect at the time of such issuance, unless separate post-issuance tax compliance procedures are then adopted in connection with any such future Bonds.

PURPOSE OF POST-ISSUANCE TAX COMPLIANCE PROCEDURES

Section 141 of the Code contains limitations on the extent to which proceeds of the Bonds can benefit persons other than a state or local governmental unit. In addition, Section 148 of the Code imposes limitations on the investment of proceeds of the Bonds and requires rebate of excess earnings to the federal government. The procedures set forth herein are intended enable the Authority to comply with the applicable requirements of the Code and thereby to preserve the tax-exempt status of the Bonds. These procedures, together with the Tax Certificate, establish procedures for: (1) identifying uses that may constitute private uses; (2) managing and tracking changes in use; (3) accomplishing remedial actions when necessary; (4) ensuring compliance with the arbitrage requirements of the Code; and (5) ensuring compliance with the record retention requirements of the Code.

RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of the Bonds (the "Tax Requirements"), the Authority has, by Resolution adopted on July 13, 2022 (the "Post-Issuance Compliance Resolution"), appointed one or more tax compliance officers (each a "Tax Compliance Officer" and, together, the "Tax Compliance Officers"), as set forth below, with respect to the Bonds. The Tax Compliance Officers will have the primary responsibility to monitor the Authority's compliance with the Tax Requirements for the Bonds. The general responsibilities of the Tax Compliance Officer with respect to tax compliance shall include, but not be limited to, confirming consistent application of these procedures, monitoring the completeness of documentation required by these procedures, and requesting that the Attorney General's Office engage nationally recognized bond counsel ("Bond Counsel") as necessary in the event that a potential issue

arises with respect to the tax-exempt status of the Bonds. The Tax Requirements include both limitations on the private use of the New Money Project and arbitrage limitations on the investment of the proceeds of the Bonds under the Code. The procedures to be undertaken are set forth below and are intended to supplement the Tax Certificate. The Authority, in consultation with Bond Counsel, will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements. The Tax Compliance Officer shall be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in staff occur.

PRIVATE ACTIVITY LIMITATIONS

Private Activity Review

Federal tax law limits the permitted amount of private business use of tax-exempt bond-financed facilities ("Bond-Financed Property"), such as the Projects, by reference to a percentage of the total amount of proceeds of the tax-exempt bonds issued to finance such Bond-Financed Property (the "Private Activity Limitations"). In the case of private uses that are related to the governmental use of the facility, the limit is 10% of proceeds. In the case of private uses that are unrelated to the governmental use, or that are related but disproportionate to the governmental use, the limit is 5% of proceeds. Federal tax law also limits the amount of private loans financed with tax-exempt proceeds to the lesser of 5% of proceeds or $5,000,000.

The Authority hereby designates the Chief Executive Officer of the Authority ("NJEDA CEO") to serve as the Tax Compliance Officer with regard to the matters discussed under this Section as they relate to the Tax-Exempt Health Department Office Project and the Tax-Exempt Taxation Division Office Project (together, the "Tax-Exempt NJEDA Projects"). Any references to "Tax Compliance Officer" in this Section shall mean the NJEDA CEO with regard to the Tax-Exempt NJEDA Projects.

The Treasurer of the State of New Jersey (the "State Treasurer") has designated the Real Estate Specialist (the "DPMC Real Estate Specialist") of the New Jersey Division of Property Management & Construction (the "DPMC") to serve as the Tax Compliance Officer with regard to the matters discussed under this Section as they relate to the Tax-Exempt Juvenile Justice Commission Facilities-Central Project and the Tax-Exempt Juvenile Justice Commission Facilities-South Project (together, the "Tax-Exempt DPMC Projects"). Any references to "Tax Compliance Officer" in this Section shall mean the DPMC Real Estate Specialist with regard to the Tax-Exempt DPMC Projects.

In order to demonstrate compliance with the Private Activity Limitations, the Tax Compliance Officer will implement or oversee the procedures described below under "Monitoring Procedures." These procedures are designed to assist the Tax Compliance Officer in identifying the potential occurrence of any of the events set forth below (each, a "Tax Event") with respect to any portion of any of the Projects:

Change in use of Bond-Financed Property -- a change in the use of the Bond-Financed Property as a result of any one or more of the other Tax Events set forth below.

Change of ownership of Bond-Financed Property -- the ownership of any portion of the Bond-Financed Property is transferred to anyone other than a State or local governmental unit, prior to the earlier of the end of the expected economic life of the Bond-Financed Property or the latest maturity date of any bond of the issue financing (or refinancing) the Bond-Financed Property.

Private business use of Bond-Financed Property -- any portion of the Bond-Financed Property is or will be used by anyone other than (i) a State or local governmental unit or (ii)

members of the general public who are not using the property in the conduct of a trade or business. Examples of uses that can give rise to private business use include use by a person as an owner, lessee, purchaser of the output of the Bond-Financed Property under a "take" or "take or pay" contract, purchaser or licensee of research conducted at the Bond-Financed Property, a manager or independent contractor under certain management or professional service contracts with respect to the Bond-Financed Property, or any other arrangement with respect to the Bond-Financed Property that conveys special legal entitlements for beneficial use of the property (e.g., an arrangement that conveys priority rights to the use or capacity of the financed property) or special economic benefit with respect to the use of the Bond-Financed Property.

Leases of Bond-Financed Property -- any portion of the Bond-Financed Property is to be leased or otherwise subject to an agreement which gives possession of any portion of the Bond-Financed Property to anyone other than a State or local governmental unit.

Management agreement or service agreement with respect to Bond-Financed Property -- any portion of the Bond-Financed Property is to be used under a management contract or professional service contract (e.g., medical group), other than a contract for services that are solely incidental to the primary function of the Bond-Financed Property, such as janitorial services or office equipment repair.

Sale of output from Bond-Financed Property -- any output of the Bond-Financed Property is to be sold under a long-term contract to any person other than a State or local governmental unit.

Naming rights agreements with respect to Bond-Financed Property -- any portion of the Bond-Financed Property will become subject to a naming rights or a sponsorship agreement, other than a "brass plaque" dedication.

Research using Bond-Financed Property -- any portion of the Bond-Financed Property will be used for the conduct of research under the sponsorship, or for the benefit of, any organization other than a State or local governmental unit.

Private Loan of proceeds of the Bonds -- any portion of the proceeds of the Bonds (including any investment earnings thereon) is to be loaned by the Authority to any person other than a State or local governmental unit.

On or prior to the occurrence of any Tax Event or prior to an imminent, suspected, potential, or anticipated Tax Event, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel to ascertain what effect, if any, a contemplated Tax Event may have on the tax-exempt status of interest on the Bonds. In certain circumstances it may be necessary for the Authority to take a remedial action under Treasury Regulation Section 1.141-12 to preserve the tax-exempt status of interest on the Bonds. Timely identification of a Tax Event is necessary to take a remedial action. In certain cases, remedial action may not be available and the Authority may need to consider entering into a voluntary closing agreement with the IRS.

Monitoring Procedures

Responsible Persons

The Tax Compliance Officer will be responsible for determining the occurrence or possibility of the occurrence of any Tax Event as soon as practicable upon learning of any such occurrence or

possibility of such occurrence. The Tax Compliance Officer will seek the assistance of the pertinent staff of the Authority, the DPMC Real Estate Specialist and/or other pertinent staff of the Authority and/or DPMC, as applicable, in its review.

Ongoing Contract Review

The Tax Compliance Officer will oversee the establishment of a procedure for the review on an on-going basis of all existing and prospective contracts between the Authority or the DPMC, as applicable, and a non-governmental person, including the federal government or a non-profit organization, that involve the use of, management of, or provision of services with respect to, any of the Projects. Excluded from such review process and reporting requirement will be construction contracts, engineering or similar contracts, purchase contracts, and incidental contracts such as contracts for janitorial services or office equipment repair. Based upon such review of contracts, the Tax Compliance Officer will oversee the maintenance of written records that identify, for each such contract, the type of use by the contracting party, the term of the contract and the compensation arrangement.

For all such contracts requiring review, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel with respect to whether the contract meets, or will meet, the requirements for a safe harbor management contract under the Code and Regulations and applicable Revenue Procedures and Revenue Rulings or another exception to private use or can be revised to meet a safe harbor or exception. For those contracts that cannot meet a safe harbor or exception from private use, including all leases and sale contracts with a non-governmental person, the Tax Compliance Officer will request that the Attorney General's Office obtain the advice of Bond Counsel as to any further steps to be taken, including remedial action if necessary.

Change in Use and Remediation

No less frequently than annually, the Tax Compliance Officer will undertake or coordinate a review to identify any changes in use of any of the Projects that might result in private use and/or private payments, including any privatization initiatives. Should the information collected by the Tax Compliance Officer indicate that there may be a change in private use and/or private payments from what was contemplated at the time of the issuance of the Bonds, the Tax Compliance Officer will request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary. To the extent that any such potential change comes to the attention of the Tax Compliance Officer prior to the next scheduled periodic review, the Tax Compliance Officer shall not wait until the next scheduled periodic review but shall, within a reasonable time after such change comes to the attention of the Tax Compliance Officer, request that the Attorney General's Office engage Bond Counsel to provide advice as to any steps to be taken, including remedial action if necessary.

Recordkeeping

The Internal Revenue Service (the "IRS") has advised issuers of tax-exempt obligations that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the IRS in the event of an audit. Accordingly, all files must be maintained for the life of the Bonds plus three years. See IRS FAQs on Record Retention, current as of January 14, 2021, attached as Appendix A. The FAQs, as from time to time updated by the IRS can be found at the following link: https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements#1

The records to be maintained by the Tax Compliance Officer are to include:

1. Information and records regarding any use of proceeds of the Bonds to make or finance a loan to any person other than a state or local governmental unit;

2. Records reflecting actual expenditures of the proceeds of the Bonds;

3. Information and records regarding the continued use and ownership of each Project;

4. Any use arrangements affecting any of the Projects, which result in private business use of any portion of any of the Projects; and

5. Copies of any leases, management contracts, service contracts or other written arrangements with persons other than a state or local governmental unit relating to any of the Projects.

ARBITRAGE COMPLIANCE

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of the Bonds and the rebate of excess investment earnings to the federal government.

The Authority hereby designates the NJEDA CEO to serve as the Tax Compliance Officer with regard to the matters discussed under this Section. Any references to "Tax Compliance Officer" in this Section shall mean the NJEDA CEO.

Arbitrage Review

The Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below and to maintain the records and documents described below under "Recordkeeping." The Tax Compliance Officer is responsible for maintaining or causing to be maintained records documenting the investment and allocation of proceeds of the Bonds, determining if any spending exception allowed by the Code and set forth in the Tax Certificate is applicable or permitted, causing a rebate analysis to be prepared on each date that a rebate analysis is required or permitted by the Tax Certificate and/or the Code, determining the amount of any required rebate due to the federal government and the applicable due date thereof, depositing or causing the Trustee to deposit in the Rebate Fund the amounts available to be deposited therein pursuant to the Bond Resolution, including Rebate Payments received from the JMC as Additional Rent pursuant to the Sublease, and causing the Trustee to apply amounts on deposit in the Rebate Fund to make any required payments to the United States when due, in accordance with the Code and as further described in the Tax Certificate.

Temporary Periods for Unrestricted Yield

The available temporary periods with respect to the Bonds are as set forth in the Tax Certificate. If any proceeds of the Bonds remain unexpended beyond the applicable temporary period, the Tax Compliance Officer must assure that such proceeds are yield restricted. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely yield reduction payments.

Rebate

The Tax Compliance Officer will be responsible for ensuring that a rebate analysis with respect to the Bonds is performed at the times provided in the Tax Certificate. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely filings and payments with respect to any rebate amount due.

Arbitrage Consultant

The Tax Compliance Officer will maintain a contract with a third-party nationally recognized arbitrage consultant (the "Arbitrage Consultant") for the purpose of providing arbitrage consulting services, including but not limited to:

1. Annual analysis of the Bonds;

2. Yield restriction calculations;

4. Arbitrage rebate calculations; and

5. Technical support on an ad-hoc basis.

The Arbitrage Consultant will provide, on an annual basis, an analysis of the Bonds to review and identify potential arbitrage or rebate liability, issues regarding yield restriction compliance, and/or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the Arbitrage Consultant to prepare any necessary filings and payments on a timely basis. The Tax Compliance Officer will timely file or cause to be filed with the IRS the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due with respect to the Bonds.

Recordkeeping

In order to satisfy the arbitrage recordkeeping requirements, the Tax Compliance Officer will create and maintain, or cause to be created and maintained, records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of:

1. Purchases or sales of investments made with the proceeds of the Bonds (including amounts treated as "gross proceeds" as a result of being part of a sinking fund or pledged fund or otherwise under section 148 of the Code, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;

2. The allocations, by date and amount, of the proceeds of the Bonds to expenditures;

3. Information and records showing that investments made with unspent proceeds of the Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;

4. Information and records, including bank and earnings statements, that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the Authority has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;

5. In the event that an exception to the arbitrage rebate requirement was not applicable, information and calculations that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the rebate amount, if any, that was payable to the United States of America with respect to investments made with gross proceeds of the Bonds was calculated and timely paid with Form 8038-T being timely filed with the IRS;

6. Information and records demonstrating that all rebate calculations and reports prepared in connection with the Bonds were prepared in accordance with the requirements of the Tax Certificate and the Code;

7. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows funded with the proceeds of the Bonds were not invested in higher-yielding investments; and

8. The Tax Certificate.

MISCELLANEOUS

Training Requirements

The Tax Compliance Officer will arrange for training regarding the requirements of these procedures for him or herself, any other Authority or DPMC personnel, as applicable, involved in implementing these procedures, and any successor(s) thereto, and will periodically provide or arrange for training for each of such individuals concerning their respective duties under these procedures.

Appendix A

Tax Exempt Bond FAQs Regarding Record Retention Requirements

- During the course of an examination, IRS Tax Exempt Bonds (TEB) agents will request all material records and information necessary to support a municipal bond issue's compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.

- These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

- The freely available Adobe Acrobat Reader software is required to view, print, and search the questions and answers listed below.

Why keep records with respect to tax-exempt bond transactions?

- Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.

- The IRS regularly advises *taxpayers* to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the

issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

- Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.

- Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.

- In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

Who may maintain records?

- Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:

1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;

2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and

3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.

- Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for

the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

What are the basic records that should be retained?

- Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:

  - Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);

  - Documentation evidencing expenditure of bond proceeds;

  - Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);

  - Documentation evidencing all sources of payment or security for the bonds; and

  - Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

Are these the only records that need to be maintained?

- No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

-

Single Family Housing Bonds	• Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences. • Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.
Multi-Family Housing Bonds	• Documentation evidencing that the facility is not used on a transient basis. • Documentation evidencing compliance with the income set-aside requirements. • Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.
Small Issue Industrial Development Bonds	• Documentation evidencing compliance with the $10,000,000 limitation on the aggregate face amount of the issue. • Documentation evidencing that no test-period beneficiary has been allocated more than $40,000,000 in bond proceeds.

In what format must the records be kept?

- All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.

- Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:

1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.

2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).

4. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.

5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.

6. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.

7. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

How long should records be kept?

- Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years. Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.

- To support these tax positions, material records should *generally* be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.

- Certain federal, state, or local record retention requirements may also apply.

How does this general rule apply to refundings?

- For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.

What happens if records aren't maintained?

- During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.

- Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax

attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.

Can a failure to properly maintain records be corrected?

- Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, TEB Compliance and Program Management has resolved arbitrage rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. More information on VCAP is available.

Are there exceptions to the general rule regarding record retention for certain types of records?

- No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB and sent by e-mail to TEGE TEB Questions.

ADOPTED
JUL 13 2022

RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES, DESIGNATION OF A TAX COMPLIANCE OFFICER AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S STATE LEASE REVENUE BONDS (STATE GOVERNMENT BUILDINGS)

WHEREAS, on January 8, 2018, the New Jersey Economic Development Authority (the "Authority") issued its $196,280,000 State Lease Revenue Bonds (State Government Buildings – Health Department and Taxation Division Office Project), 2018 Series A (the "2018 Series A Bonds") and $160,325,000 State Lease Revenue Bonds (State Government Buildings – Juvenile Justice Commission Facilities Project), 2018 Series C (the "2018 Series C Bonds" and, together with the 2018 Series A Bonds, the "2018 Bonds") pursuant to its "State Lease Revenue Bond Resolution (State Government Buildings)" adopted by the Authority on December 12, 2017, as amended and supplemented, including by a First Supplemental State Lease Revenue Bond Resolution (State Government Buildings) adopted by the Authority on December 12, 2017 and a Series Certificate of the Authority dated as of January 5, 2018 (collectively, the "Resolution;" all capitalized terms not otherwise defined shall have the meanings ascribed to them in the Resolution or in the Tax Certificate (as hereinafter defined)); and

WHEREAS, the 2018 Bonds were issued for the purposes of: (i) paying costs of the Projects, (ii) paying capitalized interest on the 2018 Bonds through June 15, 2018, and (iii) paying costs associated with the issuance of the 2018 Bonds, all as more fully described in the Tax Regulatory Agreement (the "Tax Certificate") dated January 8, 2018, and executed and delivered by the Authority in connection with the issuance of the 2018 Bonds.

WHEREAS, pursuant to the Resolution, one or more Series of Additional Bonds and/or Refunding Bonds may be issued as provided in the Resolution (such Additional Bonds and/or Refunding Bonds issued as Tax-Exempt Bonds are, collectively with the 2018 Bonds, hereinafter referred to as the "Tax-Exempt Bonds"); and

WHEREAS, the Projects include the portions of the Health Department Office Project, the Taxation Division Office Project, the Juvenile Justice Commission Facilities-Central Project and the Juvenile Justice Commission Facilities-South Project which shall be financed in whole or in part with proceeds of the Tax-Exempt Bonds; and

WHEREAS, each Project was leased by the State to the Authority pursuant to a separate lease (each, a "Lease" and collectively, the "Leases"), each dated as of January 8, 2018; and

WHEREAS, simultaneously with the execution and delivery of the Leases, each Project was subleased by the Authority to the State pursuant to a separate Agreement and Sublease (each, a "Sublease" and collectively, the "Subleases"), each dated as of January 8, 2018; and

WHEREAS, the Authority has developed written procedures for post-issuance tax compliance ("Written Procedures") in connection with the Tax-Exempt Bonds to preserve the tax-exempt status of the Tax-Exempt Bonds by establishing procedures for: (1) identifying uses that may constitute private use of the Tax-Exempt Bonds or the Projects; (2) managing and tracking changes in use of the Tax-Exempt Bonds or the Projects; (3) accomplishing remedial action with respect to the Tax-Exempt Bonds or the Projects if and when necessary to maintain compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code") and the

Treasury Regulations promulgated thereunder (the "Regulations") relating to Tax-Exempt Bonds; and (4) assuring compliance with the arbitrage requirements of the Code and Regulations; and

WHEREAS, pursuant to each Sublease, the State and the Authority have agreed, to the extent permitted by law, not to take any action or fail to take any action the result of which action or inaction would cause the interest on any Bonds issued as Tax-Exempt Bonds to lose the exclusion from gross income under Code Section 103 or cause interest on any Bonds issued as Tax-Exempt Bonds to be treated as an item of tax preference under Code Section 57; and

WHEREAS, the Authority's Written Procedures will also set forth the respective responsibilities of the Authority as issuer of the Tax-Exempt Bonds and the Tax Compliance Officer(s) named therein; and

WHEREAS, the Tax Compliance Officer(s) is expected to acknowledge and adopt the Written Procedures, setting forth the respective responsibilities of the Authority and such Tax Compliance Officer(s) as described therein.

NOW THEREFORE BE IT RESOLVED THAT:

Section 1. Written Post-Issuance Tax Compliance Procedures.

The Written Procedures, in substantially the form presented to this meeting, are hereby approved, provided that an Authorized Officer of the Authority is hereby authorized, with the advice of Bond Counsel and the State Attorney General, to make such changes, insertions and deletions to and omissions from such form as may be necessary or appropriate. The Chief Executive Officer of the Authority or his designee, is hereby authorized and directed, with the advice of Bond Counsel and the State Attorney General, to amend from time to time such Written Procedures as may be necessary or desirable or as may be required by the Code and Regulations.

Section 2. Designation of Tax Compliance Officer.

The Chief Executive Officer of the Authority is hereby authorized and directed to appoint one or more Tax Compliance Officers, in addition to or in lieu of the Tax Compliance Officer(s) named in the form of Written Procedures submitted to this meeting.

Section 3. Additional Proceedings.

Any of the Chairman, Vice Chairman, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Director, or any other authorized Authority representative who shall have power to execute contracts pursuant to the bylaws or a resolution adopted by the Authority is hereby authorized to take any additional actions which are necessary or desirable to achieve the purposes of this resolution upon advice of Bond Counsel and the State Attorney General.

Section 4. Effective Date.

This resolution shall take effect in accordance with the provisions of the New Jersey Economic Development Authority Act, L. 1974, c. 80, as from time to time amended and supplemented.

TO: Members of the Authority

FROM: Tim Sullivan

DATE: July 13, 2022

SUBJECT: New Jersey Wind Port – Purchase of 109-acre property from NDEV LLC

I. REQUEST

Members of the Board are asked to approve:

- The purchase of a 109.486 property (known as "Parcel B") from NDEV LLC, a wholly-owned subsidiary of PSEG Power ("PSEG"). The purchase, for a negotiated price of $24.25 million, is subject to the substantially final terms within the Purchase Agreement enclosed in Exhibit A. The Agreement is subject to approval by the Office of the State Comptroller. NJEDA will draw on the $265 million in state project funds provided from the Debt Defeasance and Prevention Fund.
- An amendment to NJEDA's existing road access easement agreement with PSEG Nuclear to provide NJEDA and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees a right of ingress to and egress from Parcel B (amendment enclosed in Exhibit C). This provides a right of access in perpetuity to Parcel B through PSEG's property independent of NJEDA's Ground Lease with PSEG Nuclear.

II. PARCEL B OVERVIEW

Parcel B is an approximately 109-acre land parcel set directly north of and contiguous to property that NJEDA is currently leasing from PSEG Nuclear in order to develop Phase 1 of the New Jersey Wind Port (NJWP). The Parcel is currently permitted as a confined disposal facility (CDF). It was acquired by NDEV on May 3, 2022, from the US Army Corp of Engineers (USACE) which had owned and operated the property as a CDF since its creation as part of Artificial Island in the early 1900s.

The purchase of Parcel B will enable Phase 2 of the Port's expansion. Specifically, the property will be used to construct additional marshalling and manufacturing parcels, increasing the Port's footprint to over 200 acres and enabling it to support the marshalling of two offshore wind projects concurrently.

Purchasing Parcel B provides NJEDA with stronger property rights and greater control relative to leasing. Purchase was not an option for the adjacent property that NJEDA is leasing from PSEG Nuclear due to that property being within PSEG Nuclear's designated nuclear control area requiring that it retain ownership.

III. AUTHORITY TO PURCHASE

N.J.S.A. 34:1B-5(m) provides that NJEDA has the power "[t]o acquire, purchase, manage and operate, hold and dispose of real and personal property or interests therein…necessary or incidental to the performance of its duties." NJEDA has a history of past property acquisitions pursuant to this statutory authority, including purchase of property without the threat of condemnation.

Consistent with this authority and constrained by limited alternative expansion options for the Wind Port, NJEDA identified Parcel B as an acquisition target and entered into negotiations with its owner, NDEV. Staff believe the purchase price provides strong value for money when both near (dredge placement and borrow) and long-term (port expansion) uses are considered. With respect to near term use, staff estimate that not purchasing Parcel B would cost the state in the region of $56-61 million in additional dredging and surcharging costs. With respect to longer-term use, not purchasing Parcel B would mean the state is unable to expand the Port beyond Phase 1b with no alternate land available at the site. This would see fewer jobs created at the Port as well as foregone revenue opportunities from expanded marshalling and manufacturing.

IV. DETAIL

Project & Parcel B overview

Figure 1 demarcates the three project development phases and approximate nuclear control area boundary.

Core construction on Phase 1a, comprising a 30-acre marshalling parcel and adjacent wharf infrastructure and dredge channel, commenced in January of this year and is targeted to complete in Q2 2024. NJEDA has executed a non-binding Letter of Intent (LOI) with Orsted North America to sublease this parcel for its Ocean Wind project, with parties currently finalizing binding development and sublease agreements.

Phase 1b, which comprises several inland manufacturing parcels, a CDF, and enabling utility and road infrastructure, is in the early design phase with construction due to commence from mid-2023. Phase 1b will comprise approximately 60 acres of manufacturing property (Parcel G and Parcel C), an approximately 30-35 acre CDF (Parcel E), and 5 acre area (Parcel D) for general port services, as well as key enabling road and utility infrastructure. The combined cost of phases 1a and 1b is estimated at $500-$550 million. Phases 1a and 1b are being developed on property that NJEDA is leasing from PSEG Nuclear through a 78-year Ground Lease. NJEDA did not have the option to purchase this property as it falls within a designated nuclear control area meaning that PSEG Nuclear must retain land ownership.

Phase 2 of the Port, which will be developed on Parcel B, will comprise the construction of additional marshalling and manufacturing properties, increasing the Port's footprint to over 200 acres and enabling it to support the marshalling of two offshore wind projects concurrently. Phase 2 is currently at the feasibility design stage with construction expected to commence in 2024 subject to federal and state permitting approvals. Parcel B is located to the immediate north of Parcel A. It is permitted as a CDF with a capacity to hold up to an additional one million cubic yards (CY) of dredge spoils. From its creation in the early 1900s until May 3, 2022, when the title was transferred to NDEV, the property was owned and operated as a CDF by the USACE. The transfer of title followed a process commenced by PSEG and the USACE in 2010 involving the purchase of an alternative Delaware River based CDF by PSEG and exchange of that CDF for Parcel B. At the time of the exchange's inception PSEG was considering expanding its nuclear generating assets however this was not pursued. In contrast to Phase 1a and 1b parcels, Parcel B is located outside of PSEG's control area meaning it is not subject to the same nuclear safety-related licensing requirements as NJEDA's leased premises.

Purchase agreement – Key terms

Price

The purchase price agreed with NDEV has been extensively negotiated over a period of approximately two years. Staff believe the agreed purchase price represents value for money considering NJEDA's intended near and longer-term use of the property. In particular, the sales price was arrived at with consideration to:

- The costs that PSEG incurred in purchasing Parcel B. These costs included land purchased by PSEG for $17 million (in 2012 dollars)[1] and exchanged with the USACE for Parcel B including PSEG's estimated transaction costs. This cost calculation is included in Figure 2. NJEDA's financial and commercial advisor EYIA advised that transaction costs average 3-5 percent, in-line with NDEV's estimated transaction costs for the exchange.
- The significant savings for the state in having a proximate CDF in which to place dredge material from Phase 1 of the Port's development as well as borrow material for use in surcharging. Staff estimate the additional cost to the state should it not be able to place dredge spoils on Parcel B – or to extract existing material from Parcel B for use in surcharging on Parcel A – at between $56 million and $61 million (2022 dollars). A more detailed cost breakdown is included in Exhibit B.[2]
- Schedule benefits in having proximate borrow material. The proximity of Parcel B to Parcel A enables the movement of up to 20,000 CY of surcharge material a day. It would not be possible to move this same quantity over road if borrow material was sourced from offsite, requiring longer to surcharge and impacting the Port's development schedule. This ability to accelerate surcharge supports the State's goal of completing Parcel A in time to support the Ocean Wind project.
- The State's stated goal to expand the Port to include additional marshalling and manufacturing capacity, which will more than double job creation and economic impact. Expansion is only possible with the purchase of Parcel B due to extensive wetlands and existing nuclear facilities.

Appraisals undertaken by NJEDA and PSEG (on behalf of NDEV) as part of negotiations over the Ground Lease served as additional inputs. NJEDA's appraisal, undertaken by Sterling, DiSanto & Associates, assessed the "as is market value" assuming CDF usage as the highest and best use, arriving at a value of $5,500,000 (2020 dollars). PSEG's appraisal, undertaken by Marshall Stevens, assessed value on the basis of an industrial port development as the highest and best use, arriving at $25,110,000 (2020 dollars).

Figure 2 – Breakdown of purchase price

Cost component	**Value ($M)**
Land NDEV purchased to exchange for Parcel B (2012 dollars)	17.00
Escalation to 2022 dollars (from the period 2012 – 2022)	6.05
NDEV's estimated transaction costs incurred since approximately 2010	1.20
Total purchase price	**$24.25**

NJEDA will draw on the $265 million in project funds provided from the Debt Defeasance and Prevention Fund, which allows for property purchases. Of the $265 million in funds provided by the Agreement approximately $35.7 million has yet to be allocated.[3]

Environmental obligations

NJEDA has taken numerous steps to limit its potential liability for the environmental condition of Parcel B. The purchase agreement and quitclaim deed (by which NEDA will acquire title) states that: (1) under CERCLA, the USACE is responsible for any release or threatened release of hazardous substances discovered on the property after the date it conveyed the property to NDEV – as long as it can be linked to the USACE's use and ownership of the property; and (2) NDEV will indemnify NJEDA for any claims,

[1] PSEG purchased a 407 acre property for $17 million on 8/12/2012 for the purpose of exchanging that property (with the USACE) for Parcel B. This exchange completed on May 3, 2022. Staff applied a straight line escalation factor (3.3749 percent per annum) from 2012 – 2022 which was based on Sterling, DiSanto & Associates' estimate of market value escalation from 2012 - 2020.
[2] Based on analysis by NJEDA's technical staff with support from WSP USA.
[3] With the exception of Parcel A construction for which allocations are fixed, budget allocations for specific categories of cost (e.g. design and preconstruction versus professional services) are subject to change with staff reallocating funds in-line with project needs – provided that total spending remains within the (current) overall board-approved project budget.

liabilities, etc. in connection with any hazardous substances resulting from any act or omission of NDEV during the window in which it owned the property. NJEDA will be responsible for the release or any threatened release of hazardous substances it causes on the property.

As a condition precedent to closing, NJEDA has also received an updated Phase I Environmental Site Assessment report on which it may rely, and the opportunity to review both an Environmental Condition of Property (ECP) report and the Finding of Suitability to Transfer (FOST) which were generated in connection with the transfer of title from the USACE to NDEV. Further, NJEDA has sampled and characterized approximately 900,000 CY of material on Parcel B since November 2021.[4] None of the samples exceeded Resource Conservation and Recovery Act (RCRA) hazardous waste thresholds or NJDEP non-residential remediation limits allowing the characterized material to be utilized for surcharge.

NDEV's rights to purchase

The Agreement reflects NDEV's unsolicited interest in re-purchasing Parcel B if the site is no longer being used as a Wind Port, and the conditions and process under which NDEV can submit an offer for negotiations. This provision is consistent with NJEDA's property disposition procedures which authorize the Authority to accept an unsolicited offer. If a third party expresses an unsolicited interest in an NJEDA property and NJEDA decides that it will consider selling that property, staff will inform the third party that it must make a full offer for NJEDA to consider. If NJEDA receives multiple such offers, the procedures state that NJEDA will select the best unsolicited offer based on consideration of highest net cash return to NJEDA; conditions of sale; resulting job creation, attraction and/or retention, if any; and tax generation. Additionally, Section 4 of the procedures allow for the Board to authorize a departure in connection with an NJEDA project on the basis of job creation, attraction or tax generation considerations. Due to the location of the property, staff considers development of the property by NDEV, and its affiliates and subsidiaries, which includes PSEG Nuclear, rather than other purchasers, as more likely to result in jobs and economic development if the site is no longer used as a Wind Port.

The Agreement grants NDEV a Right of First Refusal ("ROFR") for Parcel B in the event that NJEDA should receive: 1) an unsolicited bona fide offer for Parcel B, 2) from a party other than NDEV, and 3) for use of the property other than as a wind port. Per the Agreement, NJEDA is required to notify NDEV should it receive an unsolicited offer and intend to execute a sale. NDEV shall in-turn notify NJEDA within 60 days of its intent to purchase the property. If NDEV and NJEDA subsequently fail to agree to terms within 90 days of receipt of NDEV's notification – such period to be extended by mutual agreement by NDEV and NJEDA– then NJEDA is free to sell the property to a third party within 90 days – or such period to be extended by mutual agreement by NJEDA and the third party – provided the terms are no less favorable than those offered to NDEV. The ROFR does not apply to the sale or transfer to another state entity.

NDEV also has a right to purchase the property at Fair Market Value (FMV) prior to NJEDA issuing a public solicitation for the sale of the property (such as a Request for Proposals) for use other than as a wind port. Within 60 days of NJEDA notifying NDEV of its intent to list NDEV shall provide notice of its intent to purchase. If parties subsequently fail to agree to terms within 90 days of receipt of NDEV's notification – such period to be extended by mutual agreement by NDEV and NJEDA– then NJEDA is free to proceed with listing the property and selling to a third party provided the terms are no more favorable to the buyer than those offered to NDEV and the third party and NJEDA reach an agreement 90 days after the Board selects the purchaser. FMV shall be determined by applying an average of two independent appraisals. A floor price of $24.25 million will apply.

Any sale to NDEV will be subject to Board approval and NDEV shall be required to comply with all applicable State requirements.

[4] Sampling consisted of the collection of five grab (discrete) soil samples at a frequency of one grab sample per 2,000 CY of material. Each set of five discrete grab samples were laboratory-composited into one composite sample (P1-G1-G5 through P94-G1-G5). Each 5-point composite sample characterizes approximately 10,000 CY of material.

Permitting

The Agreement makes provision for the reimbursement of NDEV's costs in securing regulatory permits on NJEDA's behalf for the development of Parcel B. PSEG's ongoing involvement in securing permits reflects Parcel B's inter-connectedness with concurrent ongoing permitting of leased premises with NJEDA anticipating the lodgment of a permit application encompassing (Phase 1b) leased parcels and Parcel B. Staff will review and approve all costs upfront with NDEV required to tender invoices for all costs. NJEDA's permitting costs incurred under the Purchase Agreement will be covered within the Board's March 9, 2022 approval of $15 million for Phase 1b and 2 design and preconstruction costs.

Amendment to the road access easement agreement

NJEDA entered into a road access easement agreement with PSEG Nuclear on January 11, 2022, further to the execution of a Ground Lease between parties. The amendment, enclosed in Exhibit C, provides NJEDA and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees shall have the right to ingress to and egress from Parcel B through the Material Center Road (as defined in such agreement). This ensures that NJEDA has standalone rights of access to Parcel B through PSEG property that are not dependent on the continuation of the Ground Lease.

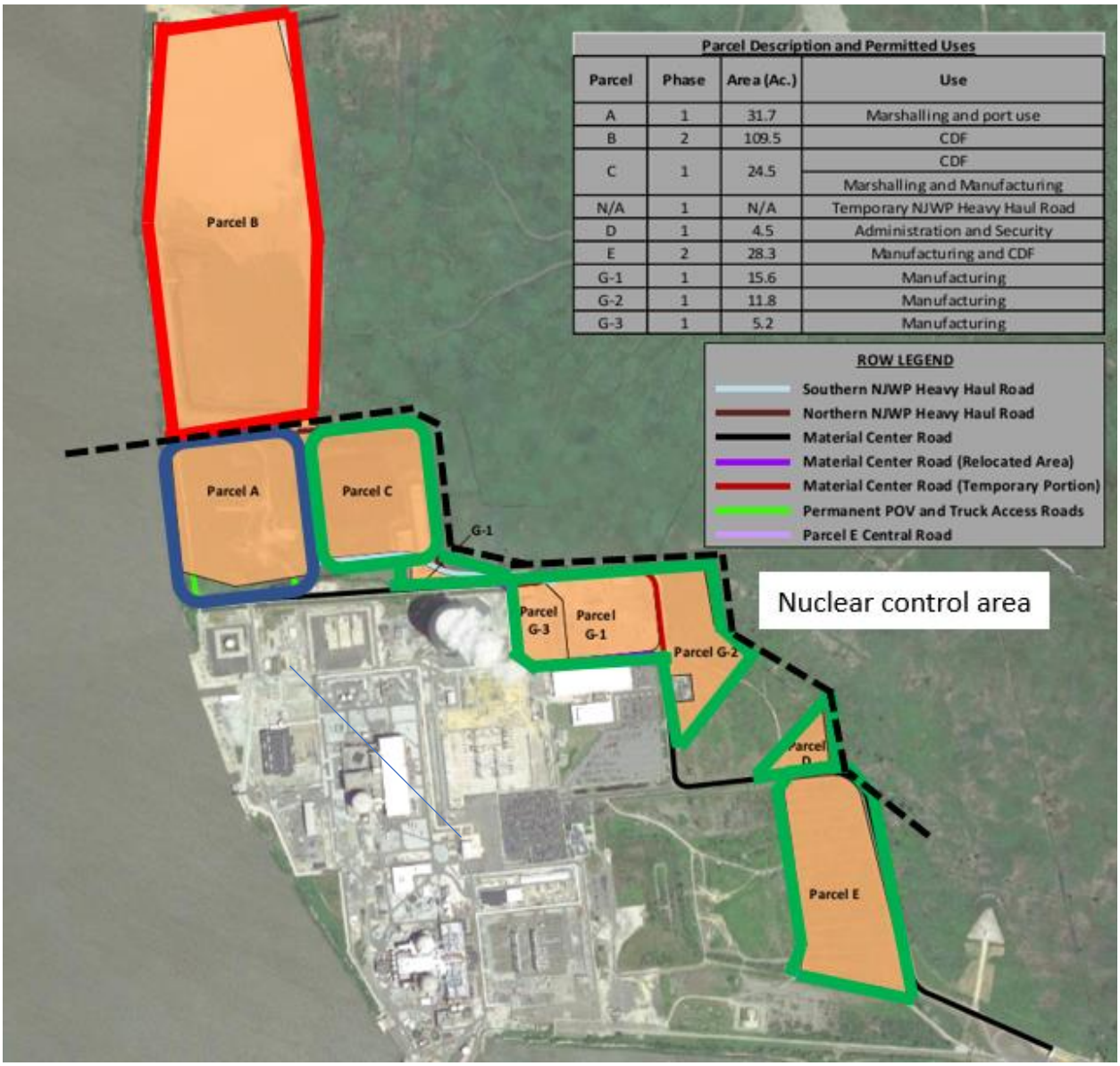
RECOMMENDATION

Members of the Board are asked to approve:

- The purchase of a 109.486 property (known as "Parcel B") from NDEV LLC, a wholly-owned subsidiary of PSEG Power ("PSEG"). The purchase, for a negotiated price of $24.25 million, is subject to the substantially final terms within the Purchase Agreement enclosed in Exhibit A. The Agreement is subject to approval by the Office of the State Comptroller. NJEDA will draw on the $265 million in state project funds provided from the Debt Defeasance and Prevention Fund.
- An amendment to NJEDA's existing road access easement agreement with PSEG Nuclear to provide NJEDA and its principals, officers, employees, lessees, sublessees, contractors, subcontractors, agents, representatives, guests or invitees a right of ingress to and egress from Parcel B (amendment enclosed in Exhibit C). This provides a right of access in perpetuity to Parcel B through PSEG's property independent of NJEDA's Ground Lease with PSEG Nuclear.

Tim Sullivan, CEO

Figure 1 – Port site map



(Legend: Blue (Phase 1a); Green (Phase 1b); Red (Phase 2)

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: July 13, 2022

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses for Second Quarter 2022 - ***For Informational Purposes Only***

The following approvals were made pursuant to Delegated Authority for Leases and ROE/ Licenses in April 2022, May 2022 and June 2022 :

LEASES

TENANT	LOCATION	TYPE	TERM	S.F.
Angex Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	125sf
SPES Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month ot Month	1,800sf
EUPROTEIN	Bioscience Center Incubator	Month to Month	Month to Month	2,400sf
Bright Cloud International	Bioscience Center Incubator	Month to Month	Month to Month	900sf
OLI Technologies	Bioscience Center Incubator	New Lease	One Year	900sf
Fidelis Pharmaceuticals	Bioscience Center Incubator	Lease Renewal	One Year	125sf
Neoventech	Bioscience Center Incubator	New Lease	One Year	900sf
Acasti Pharma US fka Grace Therapeutics	Bioscience Center Step Out Labs	Lease Renewal	Three Years	2,170sf
Chobani	Bioscience Center Step Out Labs	Lesae Amendment	21 months	4,596sf

TENANT	LOCATION	TYPE	TERM	S.F.
TheWell Bioscience	Bioscience Center Incubator	Lease Amendment	9.5 months	2,200sf
Sonder Research	Bioscience Center Incubator	Lease Amendment and Extension o	13 months	5,320sf
Histobridge	Bioscience Center Incubator	Lease Extension	One year	900sf
JMS Pharma	Bioscience Center Incubator	Lease Extension	One year	1,800sf
Chobani	Bioscience Center Step Out Labs	Lease Amendment	20 months	4,254sf

RIGHT OF ENTRY/LICENSES/EXTENSIONS

ENTITY	LOCATION	TYPE	CONSIDERATION
None			

MISCELLANEOUS

ENTITY	LOCATION	TYPE	CONSIDERATION
None			

Tim Sullivan, CEO

Prepared by: Cyndi Costello