

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** April 12, 2023

**SUBJECT:** Food Desert Relief Tax Credit Sale

### Request

The Members are asked to approve:

- 1) The sale of up to \$50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
- 3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
- 4) Delegated authority to the Chief Executive Officer to approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.

### New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (ERA), into law. The ERA presents a strong recovery and reform package that addresses the ongoing economic impacts of the COVID-19 pandemic and positions New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly, they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes more than 15 economic development programs, including:

- Tax credits to incentivize job creation and capital investment;
- Investment tools to support and strengthen New Jersey’s innovation economy;
- Support for new supermarkets and healthy food retailers in food desert communities;
- Tax credits to strengthen New Jersey’s communities including revitalization of brownfields and preservation of historic properties;
- Financial resources for small businesses, including those impacted by the COVID-19 pandemic;
- Additional tax credits for film and digital media.

Included in the ERA is the Food Desert Relief Act (FDRA), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq). The FDRA allows the New Jersey Economic Development Authority (NJEDA) to sell a portion of the \$240 million in tax credits allocated by the FDRA (\$40 million annually). These funds from the sale can be used in numerous ways to strengthen food security in New Jersey Food Desert Communities, including but not limited to:

- Offering technical assistance on best practices for increasing the accessibility of nutritious foods
- Providing grants and loans for food retailers of all sizes to fund equipment costs associated with providing nutritious food
- Supporting technology costs for the procurement or upgrade of technology systems to support online ordering and e-commerce, and
- Other initiatives to strengthen food security.

This memorandum requests approval of the Food Desert Relief Tax Credit Sale, including the structure, eligibility criteria, bidding process and the bid review process. Any request for a specific grant, loan, or technical assistance program will be brought at a later time to the Board. The Members are separately being asked to approve rules governing the Food Desert Relief Tax Credit Program.

**Sale Purpose and General Description**

The Food Desert Relief Act allocates \$40 million annually in Corporate Business and Insurance Premiums Tax credits over six years, beginning with fiscal year 2021. The FDRA authorizes NJEDA to either award these credits to eligible applicants through the Food Desert Relief Tax Credit Program or to sell all or a portion of the tax credits through a competitive auction process or publicly advertised solicitation for offers. Any unused allocation of tax credits carries forward to future years, meaning that a cumulative total of \$120 million of tax credits is available currently, and an additional \$40 million will become available as of July 1, 2023, bringing the cumulative total available to \$160 million later this year.

Eligible bidders may purchase the credits for a minimum of 85 percent of face value for New Jersey Corporate Business Tax or Insurance Premiums Tax. As described above, the proceeds of the sale will be utilized to fund grant, loan, and/or technical assistance programs administered by the Authority to strengthen food security in New Jersey, pursuant to the parameters set out in the FDRA.

Staff is seeking Board approval to sell up to \$50 million of the \$120 million in currently available tax credits in calendar year 2023. Staff may also seek Board approval to sell additional credits in the future, after considering demand for the Food Desert Relief Tax Credit Program from supermarket and grocery store developers and operators as well as market conditions. A range of approaches is necessary to have an impact on the structural conditions that have led to the persistence of food deserts, and auctioning tax credits to fund grants, loans, and/or technical assistance, alongside launching the Food Desert Relief Tax Credit Program allows NJEDA to take a multipronged approach to this issue.

### **Eligibility Criteria**

#### **Tax Credit Purchaser Requirements**

To be awarded a tax credit under the proposed sale, a potential purchaser must meet the following criteria:

- The bidder must be a New Jersey Corporate Business Tax or Insurance Premiums Tax filer;
- The amount of tax credits the bidder proposes to purchase shall not be less than \$500,000;
- The percentage amount of the face value of the tax credits the bidder proposes paying (purchase offer price) shall not be less than 85 percent of the face value of credits;
- The bidder must provide a refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000, at the time of bid (which will be applied to the final amount paid); and
- The bidder must be in good standing with New Jersey sister agencies, including the Division of Taxation, Department of Labor and Workforce Development, Department of Environmental Protection.

The auction will be run as a competitive process. Prior to opening the bid window, the Authority will establish and publicly disclose the timeline for the auction, provide detail on the information required in the bid and how award amounts will be calculated, and will accept questions from potential bidders and publicly post answers on the NJEDA website.

After the bid window closes, NJEDA staff will review the bids for completeness and will rank the completed bids based on purchase offer price, from highest to lowest. If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders. Authority staff will determine the clearing price, defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase price below the clearing price will be

declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price, as described in **Appendix A**. If more tax credits are available than the aggregate amount requested in bids, bidders, starting with those ranked highest, may elect to increase their purchase amount. Bidders that are declined may appeal within 5 business days after written notice of a decision. Detailed information on the estimated auction timeline and calculation of award amounts can be found in **Appendix A**.

### **Post-Approval Process**

Upon selection as a tax credit purchaser, corporations will execute a tax credit purchase agreement. Failure by the purchaser to pay the amount agreed on time shall make the purchaser ineligible for any NJEDA tax credit auction participation in the next twelve months. With regard to Evergreen, the Evergreen tax credit rules provides for such ineligibility for any entity that “was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits.” In such event, the Authority may offer the tax credits for purchase to other purchasers based on ranking, without re-auction, at the same or higher price as in the other purchaser’s tax credit purchase offer.

After initial purchase, pursuant to the FDRA, the tax credit purchaser has the option to resell the tax credit for no less than 85 percent of the transferred credit amount. There are no additional resales.

NJEDA shall publish on its website information on each tax credit purchaser as well as information on any tax credits that are transferred, pledged, or otherwise sold.

More information about this post-approval process can be found in **Appendix A**.

### **Request for Delegation**

Delegation to the Authority’s Chief Executive Officer is requested of the Board of the Authority for the following items:

- To establish the amount of tax credits to be auctioned in 2023, up to the amount approved by the Board, based on an assessment of economic and market conditions. This may include setting an amount lower than that approved by the Board. This may also include subsequently increasing the available amount after the auction opens, in response to demand, up to the amount approved by the Board.
- To establish a date for the 2023 tax credit auction. Please refer to **Appendix A** for a complete description of the auction process, including an estimated timeline of activities.
- To approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed in this memo (see Appendix B). Delegated authority is recommended because the selection and approval of tax credit purchasers is based on non-discretionary factors and a ranking based solely on purchase price. Any change to the tax credit auction award calculation method or other eligibility criteria will be brought to the Board.

- To decline tax credit purchasers that are deemed ineligible based on non-discretionary criteria or that submit final bids below the clearing price. As eligibility is based on non- discretionary criteria and the ranking of bidders is based solely on purchase price, staff does not anticipate bringing declinations to the Board.

### **Fees**

There are no external fees associated with the tax credit auction. At the time of auction, a 10% deposit up to \$500,000 must be paid by bidders at the time of bid. This deposit will serve as a qualifier to ensure corporate bidders maintain sufficient capital to participate in the auction and to affirm the seriousness of their bid. If awarded, the deposit will be attributed to the final award payment. If a bid is declined (either for missing documentation, ineligibility, or an offer price below the clearing price), this amount will be refunded to the auction participant.

### **Recommendation**

The Members are asked to approve:

- 1) The sale of up to \$50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
- 3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
- 4) Delegated authority to the Chief Executive Officer to approve tax credit purchases as long as the bids have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.



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Tim Sullivan, CEO

