



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Food Desert Relief Tax Credit Sale

Request

The Members are asked to approve:

- 1) The sale of up to \$35 million in available tax credits in calendar year 2024 in a manner consistent with the Board-approved specifications from April 2023 and 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 hear and decide appeals from non-discretionary declinations and issue final administrative decisions.

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.

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).

In April 2023, the Board approved 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. In accordance with the delegated authority in the Board approval, the Chief Executive Officer determined to offer \$15 million for auction. The 2023 Food Desert Relief Tax Credit Auction was open from September 18, 2023 to October 18, 2023. Seven bids were received. Of those seven bids, three ineligible bids were declined. The remaining four bids totaled \$20 million in tax credit requests, more than the \$15 million that EDA had made available through the auction. Because the auction was oversubscribed, the remaining bidders proceeded to a best and final offer process. Four eligible bids were approved in December 2023 for a total of \$15 million in tax credits approved and \$13.075 million in proceeds.

Discussions around the use of the auction proceeds have highlighted the ongoing need to support food security and led to the request in this memo. Staff intends to recommend programs to be funded with the \$13.075 million raised by the 2023 auction at later Board meetings in 2024. As described in the ERA, proceeds from a FDRA tax credit 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 sale of up to \$35 million in tax credits through a 2024 Food Desert Relief Tax Credit Sale, which will be subject to the specifications approved by the Board in April 2023, attached. Requests to fund specific grant, loan, or technical assistance programs with proceeds from the tax credit sale will be brought to the Board.

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 \$160 million of tax credits have become available to date, and an additional \$40 million will become available as of July 1, 2024, bringing the cumulative total available to \$200 million later this year. Because \$15 million in tax credit awards were approved through the 2023 Food Desert Relief Tax Credit Sale, the total amount of credits currently available is \$145 million.

Eligible bidders may purchase available 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 \$35 million of the \$145 million in currently available tax credits in calendar year 2024. Staff may 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. As stated in the April 12, 2023 board memorandum, the Chief Executive Officer will 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.

Request for Delegation

The Board of the Authority is asked to approve delegation of authority to the Authority’s Chief Executive Officer to hear and decide appeals from non-discretionary declinations and issue final administrative decisions. In April 2023, the Board approved delegation of authority to the CEO to approve and decline tax credit purchasers based on the non-discretionary described in the board memorandum. As eligibility is based on non-discretionary criteria and the ranking of bidders is based solely on purchase price, staff does not anticipate bringing appeals to the Board.

Recommendation

The Members are asked to approve:

- 1) The sale of up to \$35 million in available tax credits in calendar year 2024 in a manner consistent with the Board-approved specifications from April 2023 and 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 hear and decide appeals from non-discretionary declinations and issue final administrative decisions.

Tim Sullivan
Chief Executive Officer

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