

**DRAFT TEMPLATE**

## **Community Benefits Agreement**

This Community Benefits Agreement (hereinafter this "**Agreement**"), made and entered into by and among the **NAME OF TOWNSHIP OR COUNTY**, having its principal offices at ADDRESS, CITY, New Jersey ZIP (hereafter "**Township**"), **APPLICANT COMPANY NAME**, having its principal offices at ADDRESS, CITY, STATE, ZIP (hereafter "**Company**"), and the **NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**, a body corporate and politic organized and existing under the authority of *N.J.S.A. 34:1B-1 et seq.*, having its offices at 36 West State Street, PO Box 990, Trenton, New Jersey 08625, hereinafter referred to as (the "**Authority**"), the above entities being hereinafter referred to as collectively (the "**Parties**").

### **WITNESSETH:**

**WHEREAS**, the Legislature enacted the *New Jersey Economic Recovery Act of 2020*, as amended, establishing the "Emerge Program Act," Sections 68 through 81 of P.L. 2020, c. 156 (the "**Act**") to encourage economic development, job creation and the retention of significant numbers of jobs in imminent danger of leaving the State of New Jersey; and

**WHEREAS**, the Act and regulations implementing the Act, *N.J.A.C. 19:31U-1.1 et seq.* ("**Regulations**"), set forth the criteria under which the Company is eligible for the grant of tax credits; and

**WHEREAS**, the Company is establishing a new location facility in New Jersey; and

**WHEREAS**, the award of an Emerge incentive pursuant to the Act was a material factor in the Company's site selection decision; and

**WHEREAS**, a new facility will provide the host municipality with higher ratables and will provide over 3,000 new and retained jobs to the State of New Jersey; and

**WHEREAS**, in addition to the retained and new jobs, the Company shall renovate XXX,0000 square feet of office space (the "**Project**") located at ADDRESS, CITY, New Jersey, ZIP (the "**Proposed NJ Site**"); and

**WHEREAS**, under the Act, proposed projects with a total project cost equal to or greater than \$10,000,000 must enter into a community benefits agreement with the Authority and the municipality in which the project is located pursuant to subsection b. of section 73 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and *N.J.A.C. 19:31U-1.9(c)* as a condition of the Emerge incentive; and

**WHEREAS**, the Project is estimated to have a total project cost of approximately \$XX,XXX,XXX, thereby requiring compliance with the community benefits agreement requirement; and

**WHEREAS**, the Act, further provides that prior to entering into this Agreement the governing body of the Township must hold at least one public hearing at which the chief executive or designee from the chief executive's department or office shall hear testimony from residents, community groups and other stakeholder regarding the community benefit(s) that the agreement shall address; and

**WHEREAS**, the Township held a public hearing on [DATE], in which members of the community and other stakeholders were able to provide input on the needs of the community that this Agreement should address, which minutes of said public hearing are attached hereto as **Exhibit A**; and

**WHEREAS**, the Parties now desire to enter into this Agreement to memorialize the terms and conditions of the community benefit(s) to be provided by the Company to the Township.

**NOW THEREFORE**, in consideration of the mutual promises and covenants made herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions.

All capitalized terms not otherwise defined herein shall have the meaning as set forth in the Act and Regulations, unless the context clearly indicates otherwise.

2. Community Benefit/Authority's Consent.

A. The community benefit(s) to be provided by the Company to the Township shall be as follows:

- (i) ; and
- (ii) a

B. The Authority hereby acknowledges and agrees this Community Benefits Agreement satisfies the requirements of subsection b. of section 73 of P.L. 2020, c. 156 as amended by Section 33 of P.L. 2021 c. 160 and *N.J.A.C. 19:31U-1.9(c)*

3. Community Advisor Committee.

A community advisory committee ("**Committee**") shall be created by the Township within ninety (90) days of the execution of this Agreement to oversee the implementation of this Agreement, monitor successes, and ensure compliance with the terms of this Agreement, as follows:

- A. The Committee shall be comprised of representatives from community groups and residents of the Township.
- B. The chief executive of the Township shall appoint the members of the Committee, which shall consist of not less than three (3) members.

(i) For new construction or substantial rehabilitation projects, the Committee shall have at least one representative from the business community in the zip code in which the Qualified Business Facility is located, at least one representative from a community group, and at least one resident from the zip code in which the Qualified Business Facility is located. There shall be no more than one municipal or county employee on the Committee.

(ii) For all other projects, the Committee shall be determined by the chief executive of the Township, without regard to the criteria listed at (B)(i) above.

- C. The Committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the Company. The certifications shall be submitted to the Authority by the Company or the Township.
- D. Any report or action shall be approved by a majority of the members of the Committee.
- E. The Committee shall produce an annual report, including an evaluation of whether the Company is in compliance with the terms of this Agreement, to be submitted to the Authority and the Company within fifteen (15) days of the end of the Company's fiscal year. Once the Committee submits a report stating that all obligations required under this Agreement have been met, it suffices for all future reports and no future reports will be required.
- F. If the annual report from the Committee and the certification from the Company pursuant to *N.J.A.C. 19:31U-1.10(a)4* both indicate that the Company is in compliance with this Agreement, then the Company shall be in compliance with this Agreement. Absent extenuating circumstances and the written approval of the Authority, if the Committee does not timely submit the annual report, then the determination of compliance of the Company shall be based on the certification from the Company pursuant to *N.J.A.C. 19:31U-1.10(a)4*.

If the annual report from the Committee indicates that the Company is not in compliance with the terms of this Agreement, the Authority shall serve as or identify a mediator. The Committee, the Township, and the Company shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to this Agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s).

The hearing officer's report shall be advisory in nature. The Company, the Township, and the Committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five (5) business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this paragraph is not a contested case subject to the requirements of the Administrative Procedure Act, *N.J.S.A. 52:14B-1 et seq.*, and the Uniform Administrative Procedure Rules, *N.J.A.C. 1:1*.

4. Audits and Inspections.

At any time during normal business hours upon written notice and as often as the Authority may reasonably deem necessary, the Township and the Company shall make available to the Authority, for examination, and to appropriate State agencies or officials, all of its records with respect to matters covered by this Agreement. The Township and the Company shall maintain records to adequately verify all information that it provides with respect to this Agreement. The provisions of this Paragraph shall survive termination of this Agreement. The Township and the Company shall reasonably cooperate with the Authority to provide the Authority any documents requested by the Authority that are in the Township's and the Company's possession relating to this Agreement and the award of tax credits under the Emerge program.

5. Default.

The following shall constitute an event of default ("**Event of Default**"):

- i. A party fails to perform or comply with the terms and conditions of this Agreement
- ii. The Company forfeits its Emerge tax credits pursuant to N.J.A.C. 19:31U-1.9 (c)(7)(ii) for two successive years
- iii. The Committee's annual report indicates that the Company is in non-compliance with this Agreement

6. Remedies Upon Default.

Upon the existence of any Event of Default, the Parties may take any action at law or in equity to enforce the provisions of this Agreement.

If the Event of Default is pursuant to paragraph 5(iii) above, the following apply:

- i. The amount of tax credits that the business may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the business is not in compliance if the Authority determines that:

(1) Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the Company's control and without its fault or negligence;

(2) The Company is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

(3) The eligible business has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance.

ii. For any other noncompliance, the business shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit shall be allowed.

7. Indemnification/Liability. The Parties agree that the Township shall be solely responsible for any and all construction, repairs, maintenance, planting, replacement, operation, security, safety precautions, liability, insurance, and any other obligation required with respect to the benefits bestowed by the Company to the Township under this Agreement. The Authority and the Company shall have no liability or responsibilities whatsoever with respect to the initial or ongoing maintenance, use, and operation of the benefits bestowed under this Agreement. The Township covenants and agrees to indemnify, defend, and hold harmless the Company, the Authority, the State of New Jersey and their respective members, agents, officers, employees and servants from all losses, claims, damages, liabilities and costs whatsoever (including all costs, expenses and reasonable counsel fees incurred in investigating and defending such losses and claims, etc.) brought by any person or entity, and caused by, related to, arising or purportedly arising out of, or from: (i) this Agreement, and (ii) any damage to property or injury to persons in any way relating to this Agreement, except for: losses, claims, damages, liabilities and costs as and to the extent directly arising from the gross negligence or willful misconduct of the Company or the gross negligence or willful misconduct of the Authority, the State of New Jersey or their respective members, agents, officers, employees and servants. The provisions of this Paragraph shall survive termination of this Agreement.

8. Miscellaneous.

A. Governing Law. This Agreement shall be governed by the laws of the State of New Jersey. All actions related to the matters which are the subject of this Agreement shall be forumed and venued in a court of competent jurisdiction in the County of Mercer and State of New Jersey.

B. Entire Agreement. This Agreement and its exhibits and any documents referred to herein constitute the complete understanding of the Parties and merge and supersede any and all other discussions, agreements and understandings, either oral or written, between the Parties with respect to the subject matter of this Agreement.

C. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid pursuant to applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement, unless the Parties deem the invalidated provision essential to the accomplishment of the public purposes served by this Agreement, in which case the Parties have the right to terminate this Agreement.

D. Notices. All notices, consents, demands, requests and other communications which may be or are required to be given pursuant to any term of this Agreement shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as each party to this Agreement may hereafter designate in a written notice to the other party transmitted in accordance with this provision.

The Authority:

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**  
Portfolio Services  
Attn: Director  
P.O. Box 990  
Trenton, New Jersey 08625

Township:

**NAME OF TOWNSHIP OR COUNTY**  
ADDRESESS  
CITY, NJ, ZIP  
Attn: \_\_\_\_\_

Company:

**APPLICANT COMPANY NAME**  
ADDRESS,  
CITY, STATE ZIP  
Attn: \_\_\_\_\_

With a copy to:

F. Amendments or Modifications. This Agreement may only be amended in a writing executed by all Parties. Such Amendments or Modifications shall become effective only upon execution of the same by all Parties.

G. Headings. Section headings contained in this Agreement are inserted for convenience only and shall not be deemed to be a part of this Agreement.

H. Contractual Liability Act. The New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., the provisions of which are hereby incorporated herein by reference, applies to any claims by the Company against the Authority and the Township.

I. Tort Claims Act. The New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., the provisions of which are hereby incorporated herein by reference, applies to any claims by the Company against the Authority and the Township.

J. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

K. Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the Parties hereto.

L. This Agreement may be executed and delivered by telecopier, email, PDF or other facsimile transmission of all with the same force and effect as if the same were a fully executed and delivered original manual counterpart.

[SIGNATURE PAGE TO FOLLOW]

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed and delivered by their respective officers duly authorized as of the date and year set forth below.

WITNESS:

NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY

\_\_\_\_\_

By: \_\_\_\_\_  
\_Director – Closing  
Services Date:

WITNESS:

TOWNSHIP OF

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Date:

WITNESS:

COMPANY NAME

\_\_\_\_\_

By: \_\_\_\_\_  
Name:  
Title:  
Date:



**EXHIBIT "A"**

**MINUTES OF PUBLIC HEARING**