

SPECIAL ADOPTION

OTHER AGENCIES

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs Aspire Program

Proposed Readoption: N.J.A.C. 19:31V

Specially Adopted and Concurrently Proposed Amendments: N.J.A.C. 19:31V

Specially Adopted and Concurrently Proposed New Rule: N.J.A.C. 19:31V-1.14

Filed: July 30, 2025, as R.2025 d.102.

Authority: P.L. 2020, c. 156, P.L. 2021, c. 60, P.L. 2023, c. 98, and P.L. 2025, c. 2.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Concurrent Proposal Number: PRN 2025-116.

Effective Date: July 30, 2025.

Expiration Date: January 26, 2027.

Submit written comments by November 1, 2025, to:

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Take notice that in accordance with P.L. 2020, c. 156, P.L. 2021, c. 60, P.L. 2023, c. 98, and P.L. 2025, c. 2, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has specially adopted the following new rule and amendments to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Aspire Program (Program), sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, P.L. 2023, c. 98, and P.L. 2025, c. 2.

The specially adopted new rule and amendments became effective on July 30, 2025, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted new rule and amendments shall be effective for a period not to exceed 365 days from the date of filing, that is, until July 30, 2026. Concurrently, the provisions of the specially adopted new rule and amendments are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice before July 30, 2026, the expiration date of the specially adopted new rule and amendments is extended 180 days to January 26, 2027, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rule and amendments will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before January 26, 2027. Additionally, the Authority is proposing to readopt N.J.A.C. 19:31V in accordance with the normal rulemaking procedures of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as the chapter is scheduled to expire on November 29, 2025 (see the rulemaking history below).

The specially adopted and concurrently proposed new rule and amendments follows:

Summary

Summary of the Rulemaking and Legislative History:

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, created a package of tax incentive, financing, and grant programs to address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy, including the Aspire

Program. The Aspire Program is a gap financing tax incentive program to encourage the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credits in an amount based on a percentage of the project's costs.

On November 15, 2021, the NJEDA submitted specially adopted and concurrently proposed Aspire Program rules, pursuant to section 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160 (N.J.S.A. 34:1B-335 et seq.), to the OAL for publication in the New Jersey Register. The specially adopted rules became effective upon acceptance for filing by OAL and were published in the December 20, 2021 New Jersey Register. See 53 N.J.R. 2252(a). The initial expiration date for the specially adopted rules was 180 days from the date of filing, or May 14, 2022. The rules were concurrently proposed in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrent notice of proposal extended the expiration of the rules by an additional 180 days to November 10, 2022. See N.J.S.A. 52:14B-5.1.c.

Significant public comments were received. Pursuant to N.J.S.A. 52:14B-5.1.d(1), Governor Phillip D. Murphy, on October 31, 2022, directed that the expiration date of the Aspire Program rules be extended for a period of 12 months, from November 10, 2022 to November 10, 2023.

Additional subsequent legislative changes were enacted. On July 6, 2023, Governor Murphy signed S4023 into law as P.L. 2023, c. 98 (Chapter 98). Chapter 98 modified the Program in numerous ways, including, but not limited to, revising the maximum amount of tax credits that may be awarded to redevelopment and transformative projects pursuant to the Program, revising the square footage requirement for commercial projects, adopting rules concerning the establishment and administration of affordability controls for residential projects pursuant to the Program, and revising the circumstances in which a developer would be exempt from the Program's community benefits agreement (CBA) requirement. Thereafter, on December 5, 2023, the NJEDA submitted specially adopted amendments to the Aspire Program rules and concurrently proposed rule amendments to the OAL for publication in the New Jersey Register. These specially adopted rule amendments became effective upon acceptance for filing by OAL and were published in the January 2, 2024 New Jersey Register. See 56 N.J.R. 60(a). The initial expiration date for the specially adopted rule amendments was 365 days from the date of filing, or December 4, 2024. The rule amendments were concurrently proposed in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrent notice of proposal extended the expiration of the rule amendments by an additional 180 days through June 2, 2025. See N.J.S.A. 52:14B-5.1(c).

Significant public comments were received. Pursuant to N.J.S.A. 52:14B-5.1(d), Governor Phillip D. Murphy, on June 6, 2025, directed that the expiration date of the Aspire Program rules be extended for a period of 180 days, from June 2, 2025 to November 29, 2025. As the rules are currently scheduled to expire on November 29, 2025, they must be readopted pursuant to N.J.S.A. 52:14B-5.1 to maintain their effectiveness for seven years, so long as the notice of adoption for this rulemaking is filed with OAL on or before November 29, 2025.

In the interim, further legislative changes were enacted. On January 23, 2025, Governor Phillip D. Murphy signed S1323 into law as P.L. 2025, c. 2 (Chapter 2). Chapter 2 modified the Aspire Program in numerous ways, including, but not limited to:

Special Mission Non-Profit Projects

Chapter 2 adds the concept of "special mission non-profit projects," which is defined in the new law as a project that serves a special mission to accomplish the public purpose of a non-profit that is a developer of or affiliated with the project; and that includes no more than 100 units of 100 percent supportive housing units for tenants requiring special needs or social services. The new law permits these projects to have no more than 25,000 square feet of commercial space for on-site social service programs that require a license from the Department of Children and

Families as a child care center. The new law further stipulates that “special mission non-profit projects” are exempt from the net benefit test requirement, affordable housing requirements, and the market study requirement.

Sale of Buildings

Chapter 2 creates a new provision permitting a developer to sell one or more buildings that are part of the redevelopment project during the eligibility period, in accordance with this rulemaking adopted by the Authority.

Changes to Eligibility Requirements

Chapter 2 amends the requirement that developers and co-applicants of commercial projects must maintain an average occupancy rate of at least 60 percent during the fourth year of the eligibility period, rather than during the third year, as was previously required. The new law additionally clarifies that, if the average occupancy rate drops to less than 60 percent during any applicable tax period, the developer and co-applicant must forfeit any tax credits until the occupancy rate reaches or surpasses 60 percent.

Changes to Tax Incentive Award Requirements

Chapter 2 makes changes to the tax incentive award requirements, including reducing the eligibility period from 15 years to 10 years for commercial and mixed-use projects. The new law further provides that, for any year during the eligibility period in which the Director of the Division of Taxation in the Department of the Treasury (Director) purchases a tax credit certificate or a tax credit transfer certificate is issued for a redevelopment project, if the actual rate of return on investment exceeds the reasonable and appropriate rate of return on investment at the time of Board approval by more than 10 percent, the Authority shall require the developer to pay up to 20 percent of the amount in excess. The Authority shall not reduce or recapture any tax credits at project certification or at the end of the seventh year of the eligibility period solely due to an increase to the return on investment.

Changes to Annual Report

Chapter 2 also amends the annual report requirements. This amendment includes that the Authority shall preliminarily determine whether the annual report submitted by the developer is complete. After the Authority makes its determination, the Authority has 120 days to either approve the annual report and notify the Director, or request more information from the developer. If the Authority fails to act within 120 days from its preliminary determination, the annual report shall be deemed approved.

Upon receipt of the certificate of compliance, the Director shall allow the developer a tax credit. A developer shall apply the tax credit awarded against the developer’s liability identified in the tax credit certificate or in the tax period for which it was issued. A developer may carry forward an unused tax credit, if necessary, for use in the seven privilege periods next following the privilege period for which the tax credits are applied.

Changes to Projects Located in a Government-Restricted Municipality (GRM)

Chapter 2 increases the amount of total tax credits a developer can receive for a project located in a GRM. Previously, a developer was allowed a tax credit of up to 80 percent of the eligible project cost for a redevelopment project located in a GRM. The new law changes this amount to 85 percent for redevelopment projects and special mission non-profit projects.

Summary of the Public Comments and Agency Responses:

In response to the December 5, 2023 notice of special adoption and concurrent proposal, at 56 N.J.R. 60(a), the Authority received comments from the following:

1. U.S. Representative (then-State Senator) Nellie Pou
2. State Assemblywoman Eliana Pintor-Marin
3. Dan Kennedy, Chief Executive Officer, NAIOP New Jersey
4. Kevin Polston, Project Executive, Riverton, Sayreville Seaport Associates Urban Renewal, L.P.

1. COMMENT: The commenters requested removing from the definition of “commercial project,” the exclusion of warehouse, distribution, and fulfillment facilities.

RESPONSE: P.L. 2025, c. 2 amends the definition of “commercial project” to include industrial space that is predominantly used for warehouse distribution or fulfillment centers if the eligible project cost includes at least \$10 million in environmental remediation costs. This statutory update has been incorporated into this rulemaking.

2. COMMENT: The commenters suggest revisions to the definition of “project cost” and that the term “eligible project cost” should be used in lieu of “total project cost.” The commenters also suggest that the term “total project cost” should replace the terms “total development cost” or “total redevelopment cost.” Further, the commenters suggest revisions to the definition of “project financing gap,” that the term “total project cost” should be used in lieu of “total development cost,” and that the term “eligible project cost” should be used in lieu of “total development cost.”

RESPONSE: P.L. 2025, c. 2 amends the definition of “project cost” to use the term “eligible project cost” in lieu of “total development cost” and amends the definition of “total development cost” or “total redevelopment cost” to also include the term “total project cost” in lieu of “total development cost” or “total redevelopment cost.” This statutory update has been incorporated into this rulemaking. Moreover, the specially adopted and concurrently proposed new rule and amendments provide that the term “total project cost” shall have the same meaning as “total development cost” or “total redevelopment cost.” The portions of the statutory definition of “project financing gap” that commenters requested be included in the definition in the rules are already incorporated into other definitions in the rules, namely the definitions of “developer contributed capital” and “equity.”

3. COMMENT: The commenters requested increasing the eligibility period to up to 15 years for commercial and mixed-use projects and for the Authority to incorporate a mechanism to reduce the eligibility period if a shorter period would enhance the monetary value of the tax credit award.

RESPONSE: P.L. 2025, c. 2 amended N.J.S.A. 34:1B-323 and 328, which limit the maximum eligibility period to 10 years, to allow for applicants to elect a five-year eligibility period for projects located in a government-restricted municipality and for special mission non-profit projects. This statutory update has been incorporated into this rulemaking. Projects with a five-year eligibility period required to demonstrate a net positive economic benefit to the State may elect to have the net positive economic benefit evaluated for 10 years, subject to a five-year compliance period immediately following the eligibility period.

4. COMMENT: The commenters suggest that the prevailing wage requirements for building services work should include language specifically exempting workers employed to perform building services work by any residential tenant. Further, commenters request that the prevailing wage for construction work should be limited to two years after the first tax credit and language in the rules providing that prevailing wage shall apply to all construction work done by tenants at the redevelopment project should be removed.

RESPONSE: P.L. 2025, c. 2 includes language explicitly exempting workers employed to perform building services work by any residential tenant from prevailing wage requirements. This statutory update has been incorporated into this rulemaking. The Authority is bound by the statutory language at N.J.S.A. 34:1B-325, which requires prevailing wage requirements for construction work during the eligibility period.

5. COMMENT: The commenters suggest that language should be added to the rules clarifying that, upon completion of a building, the developer is free to sell the building.

RESPONSE: P.L. 2025, c. 2 amends N.J.S.A. 34:1B-328 to include language permitting developers to sell one or more buildings during the eligibility period, subject to rules adopted by the Authority. This statutory update has been incorporated into this rulemaking.

6. COMMENT: The commenters object to the CBA and the redevelopment agreement (RDA) requirements and process set forth in the rules.

RESPONSE: The Authority is bound by statutory language at N.J.S.A. 34:1B-328, which requires redevelopment agreements to include provisions that meet or exceed the standards required pursuant to a CBA.

7. COMMENT: The commenters contend that an ongoing 60 percent occupancy rate is untenable for a construction “gap financing” program. Further, before sanctions are imposed for failure to reach or maintain the

occupancy rate, a developer should be required to produce a corrective action plan and any sanctions should be proportional to the percentage of the occupancy, and residential projects should be exempt from any such occupancy requirements, in as much as the net benefit test applies only to commercial projects.

RESPONSE: P.L. 2025, c. 2 amends N.J.S.A. 34:1B-325 and requires a developer and co-applicant of a commercial project to forfeit all credits if the average occupancy rate of the commercial project is less than 60 percent during any applicable tax period from the fourth year of the eligibility period through the eligibility period's conclusion. Moreover, the statutory language exempts residential projects from the occupancy requirements.

8. COMMENT: The commenters suggest that the exclusion of a parking component for transformative projects is inconsistent with the statute and the parking component should be included as an eligible project cost. The commenters further suggest that the parking component of a project should be included in calculating square footage requirements to determine if a project is transformative, as long as the parking component is constructed to meet local zoning, planning, or similar requirements and is consistent with the Residential Site Improvement Standards. The commenters further suggest that any portion of a parking component in excess of local parking requirements and Residential Site Improvement Standards should not be included in the square footage calculation; however, any project located in a GRM may include the entire parking component square footage in the calculation.

RESPONSE: The parking component does not count towards square footage. However, the cost of parking that is eligible as a parking component is an eligible project cost. For a phased transformative project, the cost of the parking structure or lot proportionate to the number of parking spaces required by the municipality or other applicable government entity and the cost proportionate to any non-parking space in the parking structure are an eligible project cost. However, the cost of the parking structure or lot proportionate to the number of parking spaces in excess of what is required is not an eligible project cost.

9. COMMENT: The commenters welcome the proposed reduction in the requisite control standard to less than 50 percent of ownership to confirm affiliate status, but request that the Authority permit developers to provide an opinion of counsel showing that it has maintained the requisite control at less than 50 percent ownership.

RESPONSE: The Authority considers the type of documentation provided to demonstrate affiliate status to be beyond the scope of the Program rules.

10. COMMENT: The commenters suggest that the Program fees are too high.

RESPONSE: The Authority has determined that the fees outlined in the Program rules are appropriate to offset the cost to the Authority to administer the Program.

11. COMMENT: The commenters suggest that the rules should more clearly state that the scoring system only impacts project eligibility or award amount when there are limited tax credits.

RESPONSE: The Authority has determined that the rules at N.J.A.C. 19:31V-1.7 already clearly state whether the scoring system impacts project eligibility or award amount when there are limited tax credits.

12. COMMENT: The commenter seeks clarification as to whether N.J.A.C. 19:31V-1.11(a)6, regarding eligibility for transformative projects, only applies to residential transformative projects.

RESPONSE: The Authority agrees with the commenter that the rules, as previously written, were unclear as to whether N.J.A.C. 19:31V-1.11(a)6 only applies to residential projects. The Authority has clarified, through this rulemaking, that the requirement applies to all transformative projects.

13. COMMENT: The commenters suggest that when applying the 20 percent soft cap cost to multi-phased transformative projects or any phased project, it is not practical or necessary to enforce the cap on each phase because soft costs are not necessarily spread evenly and are often skewed towards the early phase(s) in connection with pre-construction costs. As such, the 20 percent cap should be applied only on an overall project cost basis.

RESPONSE: The previous rules and current rulemaking allow a developer to have soft costs in a phase that exceeds 20 percent of the

eligible project cost for that phase. At the end of the final phase, if the aggregate amount of soft costs exceeds 20 percent of the aggregate eligible project cost of all phases, the Authority shall reduce the amount of allowable soft costs, shall resize the amount of the incremental tax credit for the final phase, and may recapture any excess tax credits.

14. COMMENT: The commenters suggest that the 45-year affordability control for rental units at N.J.A.C. 19:31V-1.18 is overly burdensome and unfair.

RESPONSE: The 45-year affordability control is generally consistent with the New Jersey Housing and Mortgage Finance Agency (HMFA) requirements. This means that affordability restrictions will remain on the properties for the long term, benefiting future low- and moderate-income households.

15. COMMENT: The commenters note that the prior special adoption/concurrent rule proposal provides that "any modification" requires review and approval by the Authority and suggests that the Authority's Board should only review and approve modifications to the project costs or square footage of greater than 25 percent.

RESPONSE: The definition of "Authority," as defined at N.J.S.A. 34:1B-323 and N.J.A.C. 19:31V-1.2, does not refer specifically to the Authority's Board and, thus, the Board is not required to review and approve every modification.

16. COMMENT: The commenters suggest that the provisions at N.J.A.C. 19:31V-1.9, which require that a list of tenant information for all residential units be provided in the Program Annual Report, conflict with tenant privacy, and obligates developers to collect and provide the Authority with information they cannot obtain.

RESPONSE: The information is necessary to confirm and verify affordable housing requirements.

The following summarizes the contents of each section of the rules proposed for readoption and the specially adopted new rule and amendments, which are also concurrently proposed, implementing the Aspire Program. Throughout the chapter, as appropriate, changes are made to add "any compliance period" to the "eligibility period," as appropriate; cross-references are updated to represent the proper codification of the chapter; references to P.L. 2025, c. 2 are added; and technical and grammatical changes are made that do not affect the substance of the chapter, and are not discussed in any more detail below.

N.J.A.C. 19:31V-1.1 Applicability and Scope

This section provides that this subchapter is promulgated by the NJEDA to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, P.L. 2023, c. 98, and P.L. 2025, c. 2 (N.J.S.A. 34:1B-322 through 335).

N.J.A.C. 19:31V-1.2 Definitions

This section sets forth the definitions used throughout the Program rules, including new and updated definitions for "commercial project" (to include an eligible warehouse project); "compliance period" (added as a new definition); "contamination" (added as a new definition); "discharge" (added as a new definition); "eligible warehouse project" (added as a new definition); "individuals with special needs" (added as a new definition); "licensed site remediation professional" (added as a new definition); "maximum return" (added as a new definition); "project cost" or "eligible project cost"; "special mission non-profit" (added as a new definition); "special mission non-profit project" (added as a new definition); "supportive housing units" (added as a new definition); "total development cost" (to include "total project cost" as part of the term); and "transformative environmental remediation project" (added as a new definition).

The definition of "aviation district" is proposed for amendment to include the Trenton-Mercer Airport. The definition of "commercial project" is proposed for amendment to include an "eligible warehouse project." The term "eligibility period" is proposed for amendment to allow for a developer to elect for a five-year eligibility period for projects located in government-restricted municipalities or a special mission non-profit project. "Environmental remediation costs" is proposed for amendment for clarification that these costs must be for an area of concern

in a remedial action workplan and shall not include the payment of compensation for damage to or loss of natural resources. "Government-restricted municipality," "health care or health services center," and "incentive area" are proposed for amendment consistent with the statutory updates in Chapter 2. "Incentive award" is proposed for amendment to reference special mission non-profit applicants. "Major cultural institution" is proposed for amendment that the requirements set forth in this definition also apply during the compliance period. "Municipal Revitalization Index" is proposed for amendment to also include the term "MRI distress score." "Project cost" is proposed for amendment consistent with Chapter 2.

Moreover, consistent with the statutory changes at Chapter 2, this rulemaking proposes that the terms "project cost" and "eligible project cost" shall have the same meaning. This rulemaking further proposes that the terms "total project cost," "total development cost," and "total redevelopment cost" shall have the same meaning.

N.J.A.C. 19:31V-1.3 Eligibility Criteria

This section sets forth that a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project if the developer demonstrates that, without the incentive award, the redevelopment project is not economically feasible, with the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period and, if applicable, the compliance period; that a project financing gap exists; the redevelopment project, except for a commercial project that is predominately for film production uses or a special mission non-profit project, is located in the incentive area; except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application; during the eligibility period and, if applicable, the compliance period, each worker employed to work at the redevelopment project, shall be paid not less than the prevailing wage rate; and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities, except that the Authority may grant an extension for certain emergency situations. Only certain costs may be incurred prior to application. This section additionally sets forth the requirement to include the cost of acquiring a building or buildings or land in government-restricted municipalities, as a project cost.

Certain additional requirements apply based on project type. A redevelopment project with a project cost in excess of \$50 million may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive area agreement is executed, provided that certain requirements are met. Additionally, special mission non-profit projects are required to have a social services coordinator dedicated to the project for at least 20 hours per week and a social services plan that addresses the needs of the identified population of individuals with special needs is added.

In addition, the developer must comply with all requirements for filing and paying required State taxes and fees; the developer, all principals of the developer, and any affiliate of the developer, cannot be more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application. Except for certain exceptions, the overall public assistance will result in a net positive economic benefit to the State. If the application includes a co-applicant, the developer and co-applicant shall demonstrate the following: the co-applicant's organizational purpose encompasses the proposed participation; the co-applicant has the financial and operational capability to provide the proposed contribution or services; the co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and the co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

This rulemaking also proposes amendments to be consistent with the statutory changes at Chapter 2. These changes include, but are not limited to, clarification that the Program's building services requirements are inapplicable to work performed by residential tenants or subtenants, that land acquisition costs are an eligible project cost for certain projects, and that the requirements for residential also apply to commercial projects

comprised solely of a health care or health care service center. This rulemaking further proposes additional eligibility criteria for special mission non-profit projects, consistent with Chapter 2. These requirements include, but are not limited to, that the project meets the criteria for a special mission non-profit, that the project has a social services coordinator dedicated to the project for at least 20 hours per week, a social services plan addressing the needs of the individuals with special needs, as well as additional requirements if the special mission non-profit is not the developer.

N.J.A.C. 19:31V-1.4 Application Submission Requirements

This section sets forth the information that each applicant and, if applicable, the co-applicant must provide to the Authority, which includes, but is not limited to: financial statements for the last three years; a description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s); a copy of a market and/or feasibility study for the proposed use of the project site by an independent third party; financial information for the project, which shall include all phases; a certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development, and possess a tax clearance certificate issued by the Division of Taxation; except for certain residential projects, for a redevelopment project whose total project cost equals or exceeds \$10 million, a community benefits agreement, redevelopment agreement, or resolution pursuant to N.J.S.A. 34:1B-328f; and a letter of support from the chief executive of the municipality or county, if applicable. Furthermore, to be consistent with the statutory changes at Chapter 2, this rulemaking proposes that for applications approved on or after January 23, 2025, developers shall be required to additionally certify that no contractor or subcontractor performing work on the redevelopment project has been suspended or disqualified by a Federal agency from engaging in Federally funded construction projects or bidding on Federal contracting opportunities.

This rulemaking proposes additional application requirements for special mission non-profit projects, which requirements include, but are not limited to, providing a narrative description about the social services plan for the project; a description of the activities to be undertaken by the project's social services coordinator; and documentation demonstrating that the proposed special mission non-profit project has the required special mission. This rulemaking also proposes to require for eligible warehouse projects and transformative environmental remediation projects, a certification from a licensed site remediation professional.

N.J.A.C. 19:31V-1.5 Fees

This section establishes the fees required for the Program. The fee amounts depend on the type of project. If the Authority deems review by a third party necessary, the developer is responsible for payment.

This section is amended to include special mission non-profit projects.

N.J.A.C. 19:31V-1.6 Financing Gap and Fiscal Impact Analysis

This section provides that the Authority shall review the proposed total development cost, evaluate and validate the project financing gap estimate, and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive benefit to the State. The net positive economic benefit analysis shall not apply to a residential project, a component that is a food delivery source or health care or health services center, or a special mission non-profit project.

In determining whether the redevelopment project yields the net positive economic benefit, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefits derived from the capital investment commenced after the submission of an application to the Authority.

This rulemaking proposes permitting projects with a five-year eligibility period that are required to show a net positive economic benefit

to elect to have the net benefit evaluated for 10 years, subject to a five-year compliance period immediately following the eligibility period.

N.J.A.C. 19:31V-1.7 Approval of Completed Application; Tax Credit Amount

This section provides that the Authority shall make awards based on the order in which complete, qualifying applications are received. If interest in the Program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process.

Before the Board may consider an application, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Division of Taxation that the applicant, any co-applicant, special mission non-profit, and the lead development entity are in substantial good standing or entered into an agreement with the respective department.

If a developer intends to apply to both the Authority and the HMFA for subsidies, the developer shall notify HMFA simultaneously with any application made to the Authority.

The maximum amount of tax credits available to an applicant, annually, shall be equal to the total credit amount divided by the duration of eligibility period in years. This rulemaking proposes changes to the maximum amount of tax credit available to an applicant to be consistent with the statutory changes enacted at Chapter 2. Projects located in municipalities that qualified as government-restricted municipalities (GRM) prior to January 23, 2025, may receive a tax credit of no more than 85 percent of eligible project cost, an increase from the previous ceiling of 80 percent. Projects located in municipalities that newly qualified as GRMs on or after January 23, 2025, may receive a tax credit of no more than 80 percent of eligible project cost. Nonetheless, the amount of tax credit shall not exceed \$120 million per redevelopment project or phase of a redevelopment project.

N.J.A.C. 19:31V-1.8 Approval Letter; Incentive Award Agreement

This section provides that an approval letter setting forth the conditions will be sent to the approved applicant and any co-applicant and shall provide the requirements necessary for the Authority to execute the incentive award agreement.

Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the approved applicant and any co-applicant. The awarding of tax credits shall be conditioned on the applicant's and any co-applicant's compliance with the requirements of the agreement.

The approved applicant shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project, and satisfaction of the Program eligibility requirements.

Certain types of projects require additional documentation, to be submitted to the Authority. These projects include eligible warehouse projects, transformative environmental remediation projects, and special mission non-profit projects.

Approved applicants will submit additional documentation depending on their project. Projects that require additional documentation include, eligible warehouse projects, transformative environmental remediation projects, and special mission non-profit projects.

This rulemaking sets forth the timing of the evaluation of the approved applicant's actual return on investment for projects with a five-year eligibility period. While all projects will have the actual return on investment evaluated at project certification, projects with a five-year eligibility period without a compliance period will have an additional evaluation at the end of the third year, while projects with a compliance period will have an additional evaluation at the end of the third and fifth years. This rulemaking additionally sets forth the timing of payment for any payments required in excess of the maximum return on investment for projects with a five-year eligibility period.

N.J.A.C. 19:31V-1.9 Reporting Requirements and Annual Report

This section requires that an approved developer that enters into an incentive award agreement shall submit an annual report with supporting documentation on the status and continued eligibility compliance of the approved project.

The report is due 120 days after the end of the tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. During the eligibility period, within 120 days after the Authority preliminarily determines that an annual report is complete, the Authority shall either approve the annual report or request more information from the developer. If approved, the Authority shall provide a certificate of compliance to the developer. The certificate of compliance shall indicate the amount of tax credits that the developer may apply against the developer's tax liability.

An approved applicant or co-applicant may carry forward an unused tax credit for use in the seven privilege periods next following the privilege period for which the credits are applied. This rulemaking proposes amendments to this section to include language about the compliance period and for special mission non-profit projects, and to be consistent with the statutory updates set forth in Chapter 2.

N.J.A.C. 19:31V-1.10 Reduction, Forfeiture, and Recapture of Tax Credits

This section provides that the approved applicant and any co-applicant may have their tax credit reduced, forfeited in whole or part, or recaptured for certain violations including, but not limited to: project changes, absent prior written approval of a modification by the Authority; a labor harmony agreement requirement is not satisfied during a relevant tax period; a worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate pursuant to N.J.A.C. 19:31V-1.3(a)8 during the relevant tax period; a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth at N.J.S.A. 34:1B-325a(7)(b) and N.J.A.C. 19:31V-1.3(a)9; or the approved applicant or co-applicant, if a party to the community benefits agreement or redevelopment agreement, is not in compliance with the community benefits agreement or redevelopment agreement.

This rulemaking provides that approved special mission non-profit applicants may have their tax credit reduced, forfeited in whole or part, or recaptured if the project is changed such that it no longer qualifies. The Authority may recapture all, or part of, a tax credit awarded, if a project fails to comply with any Program requirements during any compliance period, based on the net positive economic benefits attributed to the compliance period. Furthermore, consistent with Chapter 2, an applicant may be subject to reduction, forfeiture, or recapture for failure to meet the 60 percent average occupancy rate for commercial projects during any applicable tax period beginning the fourth year, rather than the third year.

N.J.A.C. 19:31V-1.11 Transformative Projects

This section sets forth the transformative project eligibility requirements, which include, but are not limited to, the redevelopment project: has a project financing gap; for projects approved before January 23, 2025, has a total project cost of at least \$150,000,000 or projects approved on or after January 23, 2025, has a total development cost of at least \$150,000,000; leverages the competitive economic development advantages of the State's economic development assets; and meets certain square footage requirements.

In addition, the section includes specific criteria and requirements for commercial projects of special economic importance and certain residential projects for the construction of 700 or more newly constructed residential units; or a mixed-use residential project with construction of 30,000 square feet or more of commercial space (decreased from the previous 50,000 square feet, consistent with Chapter 2, which may include retail space). For transformative projects completed in phases, the approved applicant shall be issued temporary certificates of occupancy for all phases of the transformative project. Each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the approved applicant shall submit a certification that the phase is completed with the documents required. If the Authority approves the certification, the tax credit allowed to the approved applicant or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due

to the certification demonstrating a lesser total project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the approved applicant and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis.

A review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases.

Amendments are further proposed throughout this section to account for projects that elect to take the five-year eligibility period option, and to adjust the percentages for the maximum allowable tax credit amount, consistent with Chapter 2.

N.J.A.C. 19:31V-1.12 Application for Tax Credit Transfer Certificate

This section details the documentation that must be submitted evidencing the value of the tax credits and provides that an approved applicant or co-applicant may apply for a tax credit transfer certificate, covering one or more years, in lieu of being allowed any amount of the credit against the tax liability of the approved applicant. The tax credit transfer certificate may be sold or assigned, in full or in part, in an amount not less than \$25,000, in the privilege period during which the approved applicant or co-applicant receives the tax credit transfer certificate, to another person, who may apply the credit against a tax liability on or after the date of issuance of the tax credit transfer certificate.

The approved applicant or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration of less than 85 percent of the transferred credit amount before considering any further discounting to present value, which shall be permitted. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. The Authority shall publish, on its Internet website, information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section.

N.J.A.C. 19:31V-1.13 Assignment of Rights of Incentive Award Agreement

This section outlines the process for an approved applicant or co-applicant to pledge, assign, transfer, or sell any or all of its rights, title, and interest in, and to, the incentive award agreement and in the incentive awards payable, along with the rights and remedies. Any assignment will be absolute for all purposes, including the Federal Bankruptcy Code.

Any pledge of an incentive award made by the approved applicant shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the approved applicant shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind. The Authority shall publish certain information on its Internet website concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section.

N.J.A.C. 19:31V-1.14 Sale of Buildings

This section, which is proposed as new in this rulemaking, provides that a developer who has entered an incentive award agreement may sell one or more buildings or portions of a building during the eligibility period or any compliance period. The developer shall submit the application prior to the sale of any building or portion of building. To be eligible for such sale, the project cost must be included in documents evidencing completion of the project or of a phase, and the Authority must approve the proposed purchaser.

To apply for the sale of a building or a portion of it, the developer must include information in the sale of the building application including, but not limited to, the proposed purchase price and terms; the valuation of the property; whether there are proposed changes; a completed legal questionnaire disclosing all relevant legal matters; any other necessary and relevant information.

For every year in which a developer is approved to sell building(s) or portion(s) of building(s), the developer shall include in the annual report an updated project *pro forma* and other relevant information including,

but not limited to, an updated market and/or feasibility study for the redevelopment project by an independent third party. The developer shall remain responsible and liable for all terms and conditions of the Program and the incentive award agreement.

Recodified N.J.A.C. 19:31V-1.15 Affirmative Action and Prevailing Wage

This section provides that the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, as well as those within this subchapter, shall apply to the redevelopment project, including, but not limited to, construction contracts for certain work performed before the application. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued. During the eligibility period and any compliance period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:31V-1.3(a)9.

Recodified N.J.A.C. 19:31V-1.16 Affordability Controls: Documentation and Monitoring

This section provides that developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction and shall provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority. The Agency may serve as a monitoring entity acting to report to the Authority, compliance with the affordability controls.

Recodified N.J.A.C. 19:31V-1.17 Affordability Controls: Affordability Average; Bedroom Distribution

This section provides that, in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units. Further, this section proscribes the bedroom distribution for restricted units, the affordability average in determining initial rents; and that restricted units shall utilize the same type of heating source as market units within the affordable development.

Recodified N.J.A.C. 19:31V-1.18 Affordability Controls: Occupancy Standards

This section proscribes standards for how the initial rent for restricted units shall be determined.

Recodified N.J.A.C. 19:31V-1.19 Affordability Controls: Control Periods for Rental Units

This section provides that each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years. Deeds of all real property that include restricted rental units shall set forth deed restriction language as prescribed by the Authority. The deed restriction shall have priority over all mortgages on the property. A restricted unit shall remain subject to the affordability controls, despite the occurrence of any of the following events: a sale or other voluntary transfer of the ownership of the affordable development or the restricted unit or the entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

Recodified N.J.A.C. 19:31V-1.20 Affordability Controls: Restrictions on Rents

This section provides that rent shall be calculated, so as not to exceed 30 percent of the eligible monthly income of the appropriate household size; however, the rent shall be subject to the affordability average requirement at N.J.A.C. 19:31V-1.17. A written lease is required for all restricted rental units. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease.

Recodified N.J.A.C. 19:31V-1.21 Affordability Controls: Tenant Income Eligibility

This section provides that the initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined; however, this limit may be exceeded pursuant to certain circumstances that exist. Developers and subsequent owners of affordable development shall establish at least

one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

Recodified N.J.A.C. 19:31V-1.22 Affordability Controls: Affirmative Marketing

This section prescribes the affirmative marketing plan and strategy designed to attract renters, regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children the developer or subsequent owner of an affordable development shall utilize.

Recodified N.J.A.C. 19:31V-1.23 Affordability Controls: Household Selection; Related Project Information

This section provides that the developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate-income levels. When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect.

The developer or subsequent owner of the affordable development shall maintain certain information and provide it to the Agency or the Authority upon request. The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

Recodified N.J.A.C. 19:31V-1.24 Appeals

This section provides that an applicant may appeal the Board's action by submitting, in writing, to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the Program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. This rulemaking additionally proposes changes to allow for a designee of the Authority's Chief Executive Officer to appoint a hearing officer for appeals, to clarify that any comments received from the developer in response to the hearing officer's written report will be incorporated in the final report presented to the Board.

Recodified N.J.A.C. 19:31V-1.25 Reports by the Authority to the Governor and Legislature on Implementation of the Program

This section sets forth certain reporting requirements by the Authority to the Governor and the Legislature, which are statutorily required.

Recodified N.J.A.C. 19:31V-1.26 Severability

This section provides that if any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

The NJEDA has provided a 60-day comment period on this notice of concurrent proposal, therefore, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments for the Aspire Program encourage real estate development and private investment into communities across New Jersey, with a focus on low-income and under-resourced communities, and are intended to have a positive social impact.

The Aspire Program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating community development, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Aspire Program is primarily focused on community development. Other programs are primarily focused on areas such as job creation and

retention, small and micro business support, and other critical social issues, such as food security.

Catalyzing redevelopment projects and attracting long-term private investment into the State help bolster long-term tax revenues and revitalizes cities and downtowns into more vibrant magnets for people and are investment-rich with cultural amenities and safe, vibrant, walkable, mixed-use neighborhoods.

Economic Impact

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments are intended to bolster the State's economy by stimulating new high-quality economic development. The Aspire Program, the primary community development tool in the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, encourages smart, targeted investments in communities in the form of private capital investment that is, by definition, a durable and sustainable investment in the State's economic infrastructure. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of job creation opportunities, transit-oriented development, and affordable and workforce housing, even if a given project does not meet its full potential. The fact that capital investment must be completed before tax credits are provided to approved projects, along with robust recapture and repayment provisions if the projects fail to meet their long-term obligations, ensures substantial economic protections within the Program.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments are not subject to any Federal requirements or standards.

Jobs Impact

With the core focus of encouraging private investment in redevelopment projects, the Aspire Program also creates jobs needed to support approved projects. This includes the creation of union jobs needed to perform construction services on the redevelopment project, as well as permanent full-time jobs tied to the completed project, particularly for commercial and mixed-use projects. It is not possible to accurately forecast the number of jobs that will be supported by the Aspire Program; however, the Act and the rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments provide a series of transparency measures, including biannual Program evaluation reports, to ensure regular reporting of the number of jobs created.

Agriculture Industry Impact

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted industry inclusion of the non-retail food and beverages industry. Specifically, a transformative project may be within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods to consumer food products.

Regulatory Flexibility Analysis

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments are unlikely to impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any requirements are discussed in the Summary above; however, any costs will be minimal and fully offset by the amount of financial assistance received. The fees for the Program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the Program and are discussed in the Summary above.

Housing Affordability Impact Analysis

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments are likely to have a

positive impact on the affordability of housing in the State by helping to catalyze the development of market-rate housing in distressed communities and, where appropriate, mixed-income and affordable housing; however, the rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments should not impact the average costs of housing in the State. Pursuant to the Act, a project may qualify for a percent of the total project cost for the new construction of a residential project that receives an allocation from the Federal Low-Income Housing Tax Credit Program administered by the New Jersey Housing and Mortgage Finance Agency. These residential projects supported through the Aspire Program are expected to impact the amount or cost of housing units, primarily including multi-family rental housing in the State.

Smart Growth Development Impact Analysis

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments, which authorize tax credit awards for certain residential projects, may result in an indeterminate increase in the number of housing units or result in an increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, pursuant to the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State. Accordingly, no further analysis is required.

Full text of the December 2023 specially adopted new rules proposed for readoption and the specially adopted and concurrently proposed new rule and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

CHAPTER 31V ASPIRE

SUBCHAPTER 1. ASPIRE

19:31V-1.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority ("NJEDA" or "Authority") to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, [and] P.L. 2023, c. 98, **and P.L. 2025, c. 2** (N.J.S.A. 34:1B-322 through 34:1B-335) and shall apply to all Program applications completed after the effective date of P.L. 2023, c. 98 (July 6, 2023); except that in accordance with section 14(b) of P.L. 2023, c. 98, a developer that has submitted a completed application for a residential project and obtains all applicable approvals pursuant to the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for the project prior to November 4, 2023, and submits written notice to the Authority before the Authority's decision on the application, may proceed pursuant to the reasonable and appropriate return on investment definition as amended by section 1 at P.L. 2023, c. 98 (N.J.S.A. 34:1B-323), the tax credit award limits as amended by subsection b of section 7 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-329) and subsection g of Section 9 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-333), and the rules and statute in effect prior to July 6, 2023.

(b) Pursuant to the Act, the Authority shall administer the Program, including the establishment and administration of affordability controls that apply to the residential units constructed for occupancy by low- and moderate-income households pursuant to the Program, to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The requirement to reserve certain units for low- and moderate-income households and the affordability controls for all restricted units in redevelopment projects set forth in this subchapter apply solely as a requirement of this Program and do not replace or supersede any obligation pursuant to any other rule, regulation, law, or legal

requirement. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to N.J.S.A. 34:1B-326 and 327. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at N.J.S.A. 34:1B-362.

19:31V-1.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Act" means the New Jersey Aspire Program Act, sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, [and] P.L. 2023, c. 98, **and P.L. 2025, c. 2** (N.J.S.A. 34:1B-322 through 34:1B-335).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). For a phased transformative project, a developer may establish, by clear and convincing evidence, as determined by the Authority, that control exists in situations involving lesser percentages of ownership if the developer shall have control, at a minimum, of all aspects of compliance with the Program. An affiliate of a developer may contribute to the project cost and may satisfy the requirement for site control during construction [and], the eligibility period, **and any compliance period**, but in no event shall the tax credit certificate be issued to any affiliate.

"Affordability average" means the mean average of the percentage of median gross household income at which restricted units in an affordable development are affordable to households. For example, if the rents for the five restricted rental units in an affordable development are affordable at 46, 48, 50, 54, and 62 percent of median gross household income, respectively, the average affordability for those units would be 52 percent of median gross household income. The amount shall be rounded up to the nearest whole number (first decimal of five is rounded up).

"Affordability controls" means the controls established at N.J.A.C. 19:31V-[1.15]**1.16** through [22] **23** on restricted units.

"Affordable" means, in the case of a rental unit, that the rent for the unit conforms to the standards set forth at N.J.A.C. 19:31V-[1.19]**1.20** and [1.20] **1.21**.

"Affordable development" means a redevelopment project with restricted units.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to N.J.S.A. 55:14K-1 et seq.

"Age-restricted unit" means "housing for older persons" as defined at 42 U.S.C. § 3607.

"Authority" means the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to N.J.S.A. 27:25A-24, [and] the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center, **and the Trenton-Mercer Airport, established pursuant to N.J.S.A. 40:8-2, and the area within a one-mile radius of the outermost boundary of the Trenton-Mercer Airport.**

"Board" means the Board of the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at N.J.S.A. 34:11-56.26.

“Cash flow” means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. Cash flow shall include costs for benefits and services provided pursuant to the community benefits agreement during the eligibility period and any compliance period, subject to the limitations at N.J.A.C. 19:31V-1.8(e)8. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a violation or any payment that is not reasonable and customary, as determined by the Authority.

“Co-applicant” means an entity that:

1. Is non-profit for taxation purposes pursuant to the provisions of section 501(c)3 of the Internal Revenue Code;

2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and

3. Enters into a participation agreement with the developer that specifies the co-applicant’s participation in the redevelopment project.

“Commercial project” means a redevelopment project that is predominantly commercial and, if located in a government-restricted municipality, contains 25,000 or more square feet, or if located in any other municipality, contains 50,000 or more square feet of office and retail space, industrial space, or film production uses. Office space shall include laboratory and research and development space. The term “commercial project” includes a redevelopment project comprised solely of a health care or health services center. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use. The term “commercial project” **also includes an eligible warehouse project, but shall not otherwise include premises or space used predominately for warehousing, distribution, or fulfillment center.**

“Community benefits agreement” means the agreement between the developer; a co-applicant, if applicable; the municipality or county; and the Authority, pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31V-1.8(e).

“Compliance period” means the period of five years immediately following the eligibility period for projects with a five-year eligibility period for which the net positive economic benefit is evaluated for 10 years.

“Contamination” or “contaminant” means any discharged hazardous substances, as defined pursuant to N.J.S.A. 58:10-23.11b, hazardous waste as defined pursuant to N.J.S.A. 13:1E-38, or pollutant as defined pursuant to N.J.S.A. 58:10A-3.

“Developer” or “applicant” means a person who enters, or proposes to enter, into an incentive award agreement or pursuant to the provisions at N.J.S.A. 34:1B-328, including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

“Developer contributed capital” means equity contributed by the developer.

“Director” means the Director of the Division of Taxation in the Department of the Treasury.

“Discharge” means an action or omission defined as such pursuant to the Technical Requirements for Site Remediation rules at N.J.A.C. 7:26E-1.8.

“Distressed municipality” means a municipality that is qualified to receive assistance pursuant to N.J.S.A. 52:27D-178 et seq., a municipality pursuant to the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, N.J.S.A. 52:27BB-1 et seq., a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

“Economic development incentive” means a financial incentive, awarded by the Authority, or agreed to between the Authority and a business or person, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond,

grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

“Eligibility period” means the period of 10 years for an incentive award agreement or incentive phase agreement during which a developer, **any special mission non-profit**, or a co-applicant, if applicable, may claim a tax credit pursuant to the Program; **provided, that a developer may elect before approval a period of five years for a project located in a government-restricted municipality or for a special mission non-profit project.**

“Eligible warehouse project” means industrial space that is predominantly used for warehouse distribution or fulfillment centers **if the eligible project cost includes at least \$10,000,000 in environmental remediation costs. “Eligible warehouse project” shall not include a project by a developer that has discharged a contaminant at the site of the proposed redevelopment project or by a developer that is a corporate successor to the discharger.**

“Enhanced area” means a municipality that contains an urban transit hub, as defined at N.J.S.A. 34:1B-208; the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

“Environmental remediation costs” means any costs incurred by a developer **before the submission of the documents required pursuant to N.J.A.C. 19:31V-1.8(f)** in the completion of any actions necessary to investigate, clean up, or respond to a known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq. **“Environmental remediation costs” must be for an area of concern included in a remedial action workplan and shall not include the payment of compensation for damage to or loss of natural resources.**

“Equity” means developer-contributed capital that may consist of cash, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm’s length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Credit, 26 U.S.C. § 42, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity also includes the portion of the developer’s fee that is deferred for a minimum of five years.

“Film production uses” means a film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for film production, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back office use.

“Fiscal impact analysis” means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State.

“Food delivery source” means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

“Full-time employee at the redevelopment project” means a full-time employee whose primary office is at the redevelopment project and who spends at least 60 percent of their time at the redevelopment project, or who spends any other period of time generally accepted by custom or practice as full-time employment at the redevelopment project, as determined by the Authority.

“Government-restricted municipality” or “GRM” means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date at N.J.S.A. 34:1B-269 et seq. (January 7, 2021), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, N.J.S.A. 52:27BBBB-1 et seq., or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark. **The term “government-restricted municipality” also includes any municipality that has a population greater than 50,000 and less than 60,000 according to the latest Federal decennial census, is designated as the county seat of a county of the second class with a population greater than 800,000 according to the latest Federal decennial census, and has an 2023 MRI distress score of 62.1; has a population greater than 70,000 and less than 100,000 according to the latest Federal decennial census, is designated as the county seat of a county of the second class with a population greater than 515,000 and less than 525,000 according to the latest Federal decennial census, and has an 2023 MRI distress score of 100; or contains the intersection of Interstate 280 and the Garden State Parkway, and corresponding land areas occupied by such highways within the ownership or control of the Federal government of the United States or of this State within its municipal boundary, and has an 2023 MRI distress score of 55.5.**

“Health care or health services center” means an establishment that consists of not less than 10,000 square feet devoted to health care or health services where patients are admitted for or seek examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners, and which is located in a municipality with a 2023 Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract.

“Hospitality establishment” means a hotel, motel, or any business, however organized, that sells food, beverages, or both, with seating for consumption by patrons on the premises.

“Incentive area” means an aviation district; a port district; area designated pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq., as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center[, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop, as certified by the New Jersey Transit Corporation;] **pursuant to the State Development and Redevelopment Plan;** an area designated as a brownfield site pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., in an amount not less than \$10,000,000, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

“Incentive award” means an award of tax credits to a developer, **any special mission non-profit**, or a co-applicant, if applicable, to reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions at N.J.S.A. 34:1B-322 through 34:1B-335.

“Incentive award agreement” means the contract executed between a developer, **any special mission non-profit**, any co-applicant, if applicable, and the Authority pursuant to N.J.S.A. 34:1B-328, which sets forth the terms and conditions pursuant to which the developer, **any special mission non-profit**, and any co-applicant may receive the incentive awards authorized pursuant to the provisions at N.J.S.A. 34:1B-322 through 34:1B-335.

“Incentive phase agreement” means, for a phased project, the capital investment requirements, and the time periods in which each phase of the

project shall be commenced and completed. The incentive phase agreement may be incorporated in the incentive award agreement.

“Individuals with special needs” means individuals with mental illness, individuals with physical or developmental disabilities, and individuals in other emerging special needs groups identified by the Authority, based on guidelines established for the administration of the Special Needs Housing Trust Fund established pursuant to N.J.S.A. 34:1B-21.25a or developed in consultation with other State agencies.

“Labor harmony agreement” means an agreement between a business that serves as the owner or operator of a retail establishment, hospitality establishment, or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment, hospitality establishment, or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment, hospitality establishment, or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, [third-party] **third party** that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of the **Department of Labor and Workforce Development** has determined represent substantial numbers of retail establishment, hospitality establishment, or distribution center employees in the State.

“Lead [Development Entity] **development entity**” means the entity that is responsible for overseeing the redevelopment project and is relied upon by the Authority to demonstrate operational capability, expertise, and experience to complete the project. The Authority shall determine which entity is the lead development entity by considering the role an entity has in the coordination of activities related to the redevelopment project, including, but not limited to, project design, project financing, permitting and local approvals, construction oversight and contracting, and property management.

“Licensed site remediation professional” or “LSRP” shall have the same meaning as defined at N.J.S.A. 58:10-23.11b.

“Low-income household” means a household with a gross household income equal to 50 percent or less of the median gross household income.

“Low-income housing” or “low-income unit” means a housing unit affordable to and occupied or reserved for occupancy by low-income households.

“Major cultural institution” means a public or non-profit institution, not including an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the board as a major cultural institution. To be designated, a major cultural institution shall demonstrate at approval either an average of at least \$2,000,000 in gross revenue in the most recent three consecutive tax years or that it has raised at least \$5,000,000 in contributions and grants for a redevelopment project. Additionally, if the major cultural institution was established less than three years prior to the application, it shall provide an independent analysis that it has the ability and likelihood to remain operational for the duration of the eligibility period and **any compliance period.**

“Major rail station” means a railroad station that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

“Maximum return” means the reasonable and appropriate return on investment for a redevelopment project as established by the Board at the time of the approval of the redevelopment project.

“Median gross household income” means the median income for households of the same size within the county in which the housing unit is located according to the Federal Department of Housing and Urban Development standard as utilized by the Agency for Federal low-income housing tax credits.

“Minimum environmental and sustainability standards” means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to N.J.S.A. 52:27D-130.6, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

“Mixed-use residential project” means a residential project with less than 700 units that qualifies as a transformative project.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but equal to or less than 80 percent of the median gross household income.

“Moderate-income housing” or “moderate-income unit” means a housing unit affordable to and occupied or reserved for occupancy by moderate-income households.

“Municipal Revitalization Index” or “MRI distress score” means the index created by the Department of Community Affairs ranking New Jersey’s municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

“Newly constructed residential unit” means a residential unit that was not previously occupied as a residential unit with the same room configuration, including, but not limited to, bedroom distribution, unit square footage, and floor plan. Any change that combines existing rooms that does not otherwise change the room configuration, such as combining separate kitchen and living rooms into a single kitchen and living room space, shall not be considered the construction of a newly constructed residential unit.

“Parking component” means any part of a redevelopment project used for parking and ancillary uses. For a redevelopment project that is not a phased transformative project, the parking and ancillary uses shall not be the sole use of any building or structure and any other use shall have at least 2,500 square feet. For a phased transformative project, the size of the parking component shall be based on the number of parking spaces required by the municipality or other applicable government entity that is applicable to the redevelopment project.

“Port district” means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined at Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, N.J.S.A. 12:11A-1 et seq.

“Program” means the New Jersey Aspire Program established [by] pursuant to sections 54 through 67 at P.L. 2020, c. 156, as amended at P.L. 2021, c. 160, and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

“Project cost” or “[total] eligible project cost” means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.A.C. 19:31V-1.8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the [total] eligible project cost[s], and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land, **except for a redevelopment project located in a government-restricted municipality, which shall include land costs in an amount**

not to exceed 20 percent of the eligible project cost. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer, **any special mission non-profit**, or any co-applicant to the Authority associated with the application or administration of an incentive award pursuant to N.J.S.A. 34:1B-322 through 335 shall not constitute a project cost. When 100 percent of the residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the term “project cost” shall also include the total amount of developer fees paid before acquiring permanent financing, as well as the deferred developer fees approved pursuant to the rules established by the Agency.

“Project financing gap” means the part of the total development cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total development cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total development cost.

“Qualified incentive tract” means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed 80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Random selection process” means a process by which currently income-eligible households are selected for placement in restricted units such that no preference is given to one household over another except for purposes of matching household income and size with an appropriately priced and sized restricted unit (for example, by lottery).

“Reasonable and appropriate return on investment” means the discount rate at which the present value of the future cash flows of an investment equals the cost of the investment. In determining the “reasonable and appropriate return on investment,” an investment shall not include any Federal, State, or local tax credits. For a residential project that utilizes Federal low-income housing tax credits awarded by the Agency, the “reasonable and appropriate return on investment” shall be based on the approval of deferred developer fees pursuant to the rules established by the Agency. In the event that a residential project, which utilizes Federal low-income housing tax credits awarded by the Agency, generates returns on equity other than Federal or local grants or proceeds from the sale of Federal or local tax credits, the “reasonable and appropriate return on investment” shall be based on both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment for the entire project, and when evaluating only the units financed with Federal low-income housing tax credits awarded by the Agency, the approval of deferred developer fees pursuant to the rules established by the Agency.

“Redevelopment agreement” means a properly executed agreement between a municipality and a developer that pertains to a property being redeveloped and includes the redevelopment project, pursuant to the Local Redevelopment and Housing law, N.J.S.A. 40A:12A-1 et seq.

“Redevelopment project” means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner, or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances utilized by the Agency for Federal low-income housing tax credits.

“Residential project” means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a

residential or commercial project, a parking component shall not constitute either a residential or commercial use.

“Restricted unit” means a dwelling unit that is subject to the affordability controls.

“SDA district” means an SDA district as defined at N.J.S.A. 18A:7G-3.

“SDA municipality” means a municipality in which an SDA district is situated.

“Soft costs” means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer not included in the definition of project cost, project management, or other similar costs. Soft costs shall include costs for benefits and services provided pursuant to the community benefits agreement that are not directly related to construction of the project, subject to the limitations at N.J.A.C. 19:31V-1.8(e)8.

“Special mission non-profit” means a non-profit that is a developer or is affiliated with a special mission non-profit project with a special mission to operate the special mission non-profit project and to service the identified individuals with special needs.

“Special mission non-profit project” means a redevelopment project located in a government-restricted municipality or in an enhanced area that serves a special mission to accomplish the public purpose of a special mission non-profit and consists of 100 percent supportive housing units, but not more than 100 such units. A “special mission non-profit project” may include no more than 25,000 square feet of commercial space for the provision of on-site social service programs that require a license from the Department of Children and Families as a licensed child care center. “Special mission non-profit projects” shall not include long-term care facilities, adult medical day care facilities, or dormitories. Redevelopment projects that are food delivery sources, health care or health services centers or other similar facilities anywhere in the State, or residential projects shall not be considered “special mission non-profit projects.”

“Square feet” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

“Supportive housing units” means the space that is rented to and/or occupied by an individual with special needs, or related individuals that includes an individual with special needs, who is a tenant or occupant requiring special needs or social services.

“Total project cost” or “total development cost” or “total redevelopment cost” means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate of the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

“Transformative environmental remediation project” means a transformative project located entirely on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area pursuant to N.J.S.A. 58:10B-25.1, and that will include at least \$15 million in environmental remediation costs as an eligible project cost.

“Transit hub” means an urban transit hub, as defined at N.J.S.A. 34:1B-208, that is located within an eligible municipality, as defined at N.J.S.A. 34:1B-208 and also located within a qualified incentive area.

“Vacant commercial building” means any commercial building or complex of commercial buildings having over 400,000 square feet of

office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied for a period of over one year at the time of application to the Authority, except that the amount of square feet in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties shall be 200,000.

“Very low-income household” means a household with a total gross annual household income equal to 35 percent or less of the median gross household income.

“Very low-income housing” or “very low-income unit” means a housing unit affordable and occupied or reserved for occupancy by very low-income households.

“Workforce housing” means housing that is affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

19:31V-1.3 Eligibility criteria

(a) Prior to March 1, 2029, a developer, **any special mission non-profit**, and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the Authority at the time of application that:

1. Without the incentive award, the redevelopment project is not economically feasible;

2. With the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period **and any compliance period**;

3. A project financing gap, which includes consideration of the project’s reasonable and appropriate return on investment, exists, or the Authority determines that the redevelopment project’s reasonable and appropriate return on investment is below the market rate of return and supports an incentive award of all or a portion of the project financing gap;

4. The redevelopment project, except a commercial project that is predominantly film production uses **or a special mission non-profit project**, is located in the incentive area;

5. Except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application. However, the Authority may determine that the redevelopment project would not be completed without the award or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;

6. The redevelopment project shall comply with minimum environmental and sustainability standards;

7. The redevelopment project shall comply with the Authority’s affirmative action requirements, adopted pursuant to N.J.S.A. 34:1B-5.4, as provided at N.J.A.C. 19:31V-[1.14(a)]**1.15(a)**;

8. During the eligibility period **and any compliance period**, each worker employed to perform construction work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq., and 34:11-56.58 et seq. For construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;

9. During the eligibility period **and any compliance period**, each worker employed to perform building services work at the redevelopment project, whether pursuant to contract by the developer or a commercial tenant, commercial subtenant, or other commercial occupant, shall be paid not less than the prevailing wage rate for the worker’s craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq., and 34:11-56.58 et seq., [except that this] **subject to the following**:

i. This requirement shall not apply to workers employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space

within the project. For purposes of this paragraph, square feet shall mean the rentable area of the building or structure in the lease but does not include the tenant's *pro rata* portion of common areas.

ii. This paragraph does not apply to residential tenants or residential subtenants at the redevelopment project.

iii. In the event a redevelopment project, or a portion of a redevelopment project, is undertaken by a tenant pursuant to a contract and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire redevelopment project and all tenants therein[. The requirement in this paragraph shall not apply to residential tenants or residential subtenants], **except as provided at (a)9i and ii above;**

10. The redevelopment project shall be completed, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project. However, if the Governor declares an emergency, the Chief Executive Officer of the Authority may grant an extension for the duration of the emergency and the Board of the Authority, upon recommendation of the Chief Executive Officer, may grant two additional six-month extensions; provided that on an ongoing basis:

i. The extensions are due to the economic disruption caused by the emergency;

ii. The project is delayed due to unforeseeable acts related to the project beyond the developer's control and not due to the developer's fault or negligence;

iii. The developer is using best efforts, with all due diligence, to proceed with the completion of the project and the issuance of the temporary certificate of occupancy; and

iv. The developer has made and continues to make all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;

11. A redevelopment project with a project cost in excess of \$50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that:

i. Each phase shall be \$50,000,000 or more, except for the last phase;

ii. The developer shall obtain a temporary certificate of occupancy for each phase; and

iii. The first temporary certificate of occupancy shall be obtained within four years of executing the incentive award agreement;

12. The developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39;

13. The developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application, in accordance with N.J.S.A. 34:1B-325.a;

14. Except for a residential project, **special mission non-profit project, or a component of a redevelopment project that is a food delivery source or a health care or health services center, the fiscal impact analysis set forth at N.J.A.C. 19:31V-1.6(b) of the overall public assistance provided to the project will result in a net positive economic benefit to the State; [and]**

15. For a special mission non-profit project:

i. The special mission non-profit meets the definition of special mission non-profit and the proposed project satisfies the definition of special mission non-profit project;

ii. The proposed project shall have a social services coordinator dedicated to the project for at least 20 hours per week and a social services plan that addresses the needs of the identified individuals with special needs, which scope of social services may include licensed social workers;

iii. The special mission non-profit has the financial and operational capability to provide the special services;

iv. If the special mission non-profit is not the developer:

(1) The special mission non-profit has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described at N.J.S.A. 54:50-39; and

(2) The developer will enter into an agreement with the special mission non-profit that provides for the special mission non-profit's required participation in the redevelopment project during the eligibility period; and

[15.] **16.** If the application includes a co-applicant, the developer and co-applicant demonstrate the following:

i. The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described [in Section 1 at P.L. 2007, c. 101 (] at N.J.S.A. 54:50-39[)];

ii. The co-applicant's organizational purpose encompasses the proposed participation;

iii. The co-applicant has the financial and operational capability to provide the proposed contribution or services;

iv. The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and

v. The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

(b) The following are the only costs incurred prior to application that may be included as project costs:

1. For applications submitted on or after January 23, 2025, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements, not including land acquisition costs, unless such land acquisition costs are otherwise eligible as project cost, are project costs if incurred within two years prior to the date of the application;

[1.] **2.** For applications submitted on or after January 1, 2024, and prior to January 23, 2025, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements, not including any land acquisition costs are project costs if incurred within two years prior to the date of the application; and

[2.] **3.** For applications submitted on or after January 1, 2023, and prior to January 1, 2024, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within three years prior to the date of the application.

(c) To determine that the project has a project financing gap, the developer shall demonstrate that the redevelopment project has developer-contributed capital of at least 20 percent of the total development cost, except that if a redevelopment project is located in a government-restricted municipality, the developer-contributed capital shall be at least 10 percent of the total development cost.

(d) [For a] **A residential project or a commercial project comprised solely of a health care or health care service center shall have the following to qualify for an incentive award[, the residential project shall]:**

1. [Have a total project cost of at least \$17,500,000, if the] **A project [is] located in a municipality with a population greater than 200,000 according to the latest Federal decennial census shall have an eligible project cost of at least \$17,500,000 for applications approved before January 23, 2025, or a total development cost of at least \$17,500,000 for applications approved on or after January 23, 2025;**

2. [Have a total project cost of at least \$10,000,000, if the] **A project [is] located in a municipality with a population less than 200,000 according to the latest Federal decennial census shall have an eligible project cost of at least \$10,000,000 for applications approved before January 23, 2025, or a total development cost of at least \$10,000,000 for applications approved on or after January 23, 2025; or**

3. [Have a total project cost of at least \$5,000,000, if the] **A project [is] in a qualified incentive tract or government-restricted municipality shall have an eligible project cost of at least \$5,000,000 for applications approved before January 23, 2025, or a total development cost of at least \$5,000,000 for applications approved before January 23, 2025.**

(e) For a residential project or a redevelopment project consisting of, or containing any, newly constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls set forth in this subchapter, except that a residential project receiving a Federal historic rehabilitation tax credit pursuant to Section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, **a special mission non-profit project**, or a tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 through 34:1B-276, shall be exempt from the affordability controls related to bedroom distribution.

(f) For all redevelopment projects, in order to include the cost of acquiring a building or buildings, **or land in government-restricted municipalities**, in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, **or land in government-restricted municipalities**, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings, **or land in government-restricted municipalities**, provided the cost of acquiring a building or buildings, **or land in government-restricted municipalities**, may be up to 60 percent of the [total] eligible project cost for a project utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consists solely of units reserved for occupancy by low- and moderate-income households.

19:31V-1.4 Application submission requirements

(a) Each application to the Authority made by a developer shall include the following information in an application format prescribed by the Authority:

1. The name of the developer and lead development entity;
2. The contact information of the person identified as the primary contact for the developer and lead development entity;
3. The type of the business of the developer and lead development entity;
4. The New Jersey tax identification number of the developer and lead development entity;
5. The Federal tax identification number of the developer and lead development entity;
6. Financial statements for the last three years of the lead development entity;
7. A description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s);
8. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the firm's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period **and any compliance period, unless the project is a special mission non-profit project**;

9. An anticipated construction schedule;

10. Financial information of the project, which shall include all phases, including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on developer's contributed capital, net margin, and cash on cash yield, and a certification from the chief executive officer, or equivalent officer of the developer, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31V-1.3(a)2;

11. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31V-1.3(e) and/or 1.11(e) and the affordability controls for such reserved units;

12. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the developer and the lead development entity is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by Program interest numbers or

licensing numbers. The developer and the lead development entity shall also submit a written certification by the chief executive officer, or equivalent officer of the developer, stating that the developer applying for the Program and the lead development entity satisfy the criteria at N.J.A.C. 19:31V-1.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury and the criteria at N.J.A.C. 19:31V-1.7(b)2 to be in substantial good standing with the Agency;

13. [A] **For redevelopment projects approved before January 23, 2025**, a certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury[;]. **For redevelopment projects approved on or after January 23, 2025**, the developer shall additionally certify that no such contractor or subcontractor has been suspended or disqualified by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State or been debarred, suspended, or disqualified by a Federal agency from engaging in Federally funded construction projects or bidding on Federal contracting opportunities;

14. A certification by the chief executive officer, or equivalent officer of the developer, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

15. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

16. Submission of a tax clearance certificate of the developer and the lead development entity;

17. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

18. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated on the local tax map;

19. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing issues;

20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;

21. [Except for a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, for a redevelopment project whose total project cost equals or exceeds \$10 million and for] **For redevelopment projects for which a community benefits agreement, a redevelopment agreement, or a resolution is required pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31V-1.8(e)**, a letter of support from the chief executive of the municipality or county, if applicable, acknowledging the requirement and that the requirement must be met within the time required at N.J.A.C. 19:31V-1.8(e)4;

22. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31V-1.7(c);

23. **For a redevelopment project located in a government-restricted municipality, or a special mission non-profit project, a preliminary election of a five-year or a 10-year eligibility period;**

24. **For a special mission non-profit project:**

i. **A narrative description identifying the individuals with special needs and the social services that will be included in the social services plan and will be provided to address the special needs of such individuals;**

ii. A narrative description of the activities that will be undertaken by the special mission non-profit project's social services coordinator;

iii. Evidence that the proposed special mission non-profit is non-profit for taxation purposes pursuant to the provisions of the Internal Revenue Code;

iv. The special mission non-profit's bylaws or other governing documents demonstrating the proposed special mission non-profit has the required special mission;

v. A floor plan, or site plan, identifying the proposed uses and square footage thereof;

vi. If the special mission non-profit intends on contracting with a third party to provide social services and/or the social services coordinator, a letter of intent evidencing a proposed contractual relationship between the special mission non-profit and the third-party services provider; and

vii. If the special mission non-profit is not the developer, a letter of intent evidencing a proposed agreement between the special mission non-profit and the developer.

[23.] 25. If a developer is applying as a major cultural institution, or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest:

i. Either:

(1) Form 990s or other forms filed with the Internal Revenue Service for the most recent three consecutive tax years showing the proposed major cultural institution's gross revenue; or

(2) Executed agreements or letters of intent demonstrating current contribution or grant commitments to the proposed major cultural institution;

ii. An independent analysis demonstrating that the proposed major cultural institution has the ability and likelihood to remain operational for the duration of the eligibility period **and any compliance period**; and

iii. If applicable, documentation evidencing the ownership interest by the proposed major cultural institution; [and]

26. For an eligible warehouse project or transformative environmental remediation project, a certification from a licensed site remediation professional of the estimated environmental remediation costs and budget, and that the licensed site remediation professional is not aware that the developer is a discharger of a contaminant at the site of the proposed redevelopment project or a corporate successor to a discharger; and

[24.] 27. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and developer capacity.

(b) For a special mission non-profit project, if the special mission non-profit is not the developer, the application shall also include the following information of the special mission non-profit:

1. The name of the business;

2. The contact information of the person identified as the primary contact for the business;

3. The type of the business;

4. The New Jersey tax identification number;

5. The Federal tax identification number;

6. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the special mission non-profit is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The special mission non-profit shall also submit a written certification by the chief executive officer, or equivalent officer of the special mission non-profit, stating that the special mission non-profit applying for the Program satisfies the criteria at N.J.A.C. 19:31V-1.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

7. A certification by the chief executive officer, or equivalent officer of the special mission non-profit, that the officer has reviewed

the application information submitted and that the representations therein are accurate;

8. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

9. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;

10. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the special mission non-profit is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

11. A description of the agreement between the special mission non-profit and the developer; and

12. Any other necessary and relevant information as determined by the Authority for a specific application.

[(b)] (c) If the developer is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;

2. The contact information of the person identified as the primary contact for the business;

3. The type of the business;

4. The New Jersey tax identification number;

5. The Federal tax identification number;

6. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by Program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the Program satisfies the criteria at N.J.A.C. 19:31V-1.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

7. A certification by the chief executive officer, or equivalent officer of the co-applicant, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;

8. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;

9. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;

10. A list of all the development subsidies, as defined at N.J.S.A. 52:39-1 et seq., that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;

11. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;

12. A description of the long-term participation agreement between the co-applicant and the developer, including a description of how the co-applicant will take an active role in the redevelopment project, including a description of the capital, real property, or services related to the project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the project;

13. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project and how the co-applicant satisfies the eligibility criteria set forth at N.J.A.C. 19:31V-1.3(a)15; and

14. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of project financial review and developer capacity.

[(c)] (d) The Authority shall not consider an application for a redevelopment project, unless the developer submits with the application

a letter evidencing support for the redevelopment project from the governing body of the municipality or municipalities in which the redevelopment project is located.

[(d)] (e) The Authority may, in its sole discretion, consider two or more applications as one application for one redevelopment project based on factors including, but not limited to, the location of the redevelopment projects, the types of uses proposed, and the developer's financing and operational plans.

[(e)] (f) If circumstances require a developer to amend its application to the Authority, then the developer, or chief executive officer or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true pursuant to the penalty of perjury.

19:31V-1.5 Fees

(a) A developer applying for benefits pursuant to the Program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$10,000;

2. For projects not subject to (a)1 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$30,000. For other projects not subject to (a)1 above, the fee shall be \$50,000 without phases and \$75,000 with phases; and

3. For transformative projects, the fee shall be \$100,000 for each phase included in the proposed project.

(b) A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The developer shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$75,000;

2. For projects that do not have any residential units with [total] **eligible** project cost of \$50 million or less, the fee shall be \$50,000. For other projects that do not have residential units, the fee shall be \$60,000 without phases and \$250,000 with phases;

3. For projects not subject to (c)1 or 2 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$75,000. For other projects not subject to (c)1 or 2 above, the fee shall be \$85,000 without phases and \$275,000 with phases; and

4. For transformative projects, the fee shall be \$500,000 for each phase included in the proposed project.

(d) For all redevelopment projects, including transformative projects, a developer shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. For a phased transformative redevelopment project, the developer shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phase. The fee shall be as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$75,000;

2. For projects that do not have any residential units with [total] **eligible** project cost of \$50 million or less, the fee shall be \$50,000. For other projects that do not have residential units, the fee shall be \$60,000 without phases and \$250,000 with phases;

3. For projects not subject to (d)1 or 2 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$75,000. For other projects not subject to (d)1 or 2 above, the fee shall be \$85,000 without phases and \$275,000 with phases; and

4. For transformative projects, the fee shall be \$500,000 for each phase included in the approved project.

(e) A developer shall pay, to the Authority, an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the developer has met the eligibility requirements of the Program for the respective redevelopment project, or the first phase for a phased transformative project, and for the duration of the eligibility period **and any compliance period** pursuant to N.J.A.C. 19:31V-1.2. The annual servicing fee shall be paid to the Authority by the developer at the time the developer submits its annual report, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$37,500;

2. For projects that do not have any residential units with [total] **eligible** project cost of \$50 million or less, the fee shall be \$30,000. For other projects that do not have residential units, the fee shall be \$40,000 without phases and \$100,000 with phases;

3. For projects not subject to (e)1 or 2 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$42,500. For other projects not subject to (e)1 or 2 above, the fee shall be \$52,500 without phases and \$112,500 with phases; and

4. For transformative projects, the fee shall be \$200,000 for each phase included in the approved project.

(f) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31V-1.12, including use of the tax credit transfer certificate as collateral, or to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$10,000, and \$5,000 for each additional request made annually;

2. For projects not subject to (f)1 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$10,000, and \$5,000 for each additional request made annually. For other projects not subject to (f)1 above, the fee shall be \$10,000 without phases and \$5,000 for each additional request made annually, and \$20,000 with phases, and \$10,000 for each additional request made annually; and

3. For transformative projects, the fee shall be \$20,000 and \$10,000 for each additional request made annually, for each phase included in the approved project.

(g) A developer shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, a non-refundable fee of \$10,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$30,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;

2. For projects not subject to (g)1 above, with [total] **eligible** project cost of \$50 million or less, a non-refundable fee of \$10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other projects not subject to (g)1 above, a non-refundable fee of \$20,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval without phases and \$150,000 with phases; and

3. For transformative projects, a non-refundable fee of \$30,000 shall be paid for each request for any administrative changes, additions, or

modifications to the tax credit; and a non-refundable fee of \$300,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31V-1.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$7,500;

2. For projects not subject to (h)1 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$7,500. For other projects not subject to (h)1 above, the fee shall be \$10,000 without phases and \$15,000 with phases; and

3. For transformative projects, the fee shall be \$20,000 for each phase included in the approved project.

(i) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall submit the satisfactory evidence with respect to the eligibility requirements of the Program pursuant to N.J.A.C. 19:31V-1.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31V-1.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$7,500 for each extension;

2. For projects not subject to (i)1 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$7,500 for each extension. For other projects not subject to (i)1 above, the fee shall be \$10,000 without phases and for each subsequent extension shall be \$15,000 and \$15,000 with phases and for each subsequent extension shall be \$30,000; and

3. For transformative projects, the fee shall be \$20,000 for each phase included in the approved project and for each subsequent extension shall be \$40,000 for each phase included in the approved project.

(j) A developer seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Aspire Program shall pay to the Authority a non-refundable fee, as follows:

1. For projects utilizing tax credits pursuant to the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, **or for special mission non-profit projects**, the fee shall be \$25,000;

2. For projects not subject to (j)1 above, with [total] **eligible** project cost of \$50 million or less, the fee shall be \$25,000. For other projects not subject to (j)1 above, the fee shall be \$50,000; and

3. For transformative projects, the fee shall be \$100,000 for each phase included in the approved project.

(k) The fees paid to the Authority pursuant to this section shall not affect or reduce any fees due to the Agency.

19:31V-1.6 Financing gap and fiscal impact analysis

(a) The Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed total redevelopment costs to develop, and the components of, the redevelopment project against reasonable market costs and components of comparable projects;

2. The Authority shall determine if the developer's submitted financial information for the project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment **over a hold period generally accepted in the market or industry as determined by the**

Authority, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) [The] **Except for redevelopment projects, or components of redevelopment projects, for which no fiscal analysis is required pursuant to N.J.A.C. 19:31V-1.3(a)14**, the Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State[, provided that the net positive economic benefit analysis shall not apply to a residential project, to a component that is a food delivery source, or to a component that is a health care or health services center]. In determining whether a project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis pursuant to which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.

(c) For a redevelopment project subject to the requirement at (b) above, to be eligible for any tax credits pursuant to the Program, a developer shall demonstrate to the Authority that the award of tax credits will yield a net positive economic benefit to the State not less than 160 percent of the award. The net positive economic benefit shall be evaluated for the duration of the eligibility period **and, if elected by a developer of a redevelopment project with a five-year eligibility, a compliance period. If a developer elects to include a compliance period, the redevelopment project will continue to be subject during the compliance period to the terms and conditions of the Program, including those set forth in this subchapter and in the agreement.** The chief executive officer or equivalent officer of the developer shall certify, under the penalty of perjury, that all documents submitted and factual assertions made to the Authority to demonstrate that the award of tax credits will yield a net positive economic benefit to the State in accordance with this subsection are true and accurate at the time of submission. Notwithstanding this provision, the following redevelopment projects shall demonstrate to the Authority that the award of tax credit shall yield a net positive economic benefit to the State not less than 125 percent:

1. A redevelopment project located in a government-restricted municipality;

2. A commercial project that contains 50,000 or more square feet of space devoted to an incubator and conferencing facilities that are predominantly focused on research or technology that are used or managed by one or more institutions of higher education or non-profit organizations, and which has [a total] **an eligible project cost of not less than \$50 million for projects approved before January 23, 2025, or has a total development cost of not less than \$50 million for projects approved on or after January 23, 2025;**

3. A commercial project that receives a Federal historic rehabilitation tax credit pursuant to section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 through 34:1B-276;

4. A commercial project that is located on land owned by the Federal government on or before December 31, 2005; and

5. A redevelopment project that is undertaken by a major cultural institution, or undertaken by a developer in which the major cultural institution has an ownership interest, to renovate existing space or expand services into additional space, including, but not limited, new construction.

(d) In determining whether the redevelopment project yields the net positive economic benefit pursuant to (b) above and as certified by the chief executive officer or equivalent officer of the developer pursuant to (c) above, the Authority's consideration shall include, but not be limited

to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. For the purposes of calculating employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

(e) If, during the administration of the Program, the methodology used by the Authority in evaluating the net positive economic benefit of redevelopment projects is modified, the Authority shall apply such modification to the methodology prospectively. Prospective application means using the modified methodology to pending applications and to redevelopment projects that have been previously approved if the developer requests a modification, or this subchapter or the incentive award agreement requires, or authorizes, the Authority to conduct a reevaluation of the net positive economic benefit.

(f) In determining net positive economic benefits for any business or person considering locating in a redevelopment project and applying to receive from the Authority any other economic development incentive subsequent to the award of tax credits pursuant to the Act and this subchapter, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

19:31V-1.7 Approval of completed application; tax credit amounts

(a) Prior to March 1, 2029, for redevelopment projects eligible pursuant to N.J.S.A. 34:1B-325 and this subchapter, the Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the Program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;
2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(b) Before the Board may consider a developer's application for tax credits:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer, **any special mission non-profit**, any co-applicant, and the lead development entity are in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the developer, **any special mission non-profit**, any co-applicant, as applicable, or the lead development entity has entered into an agreement with the respective department [and any co-applicant], which may include a practical corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the developer, the lead development entity, **any special mission non-profit**, and any co-applicant:

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the developer, **the lead development entity, any special mission non-profit**, and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department

shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority shall confirm with the Agency that the applicant and the lead development entity are in compliance by being in substantial good standing with regard to the Agency's low-income housing tax credit.

3. The Authority may contract with an independent third party to perform a background check on the developer, the lead development entity, **any special mission non-profit**, and any co-applicant.

4. Any contractors or subcontractors [that will perform work at the redevelopment project shall be registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury] **shall satisfy the requirements set forth at N.J.A.C. 19:31V-1.4(a)13.**

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. The scoring shall be based on factors including, but not limited to, consistency of proposed use with applicable land use requirements or redevelopment plans; whether the redevelopment project adheres to smart growth, equitable development, and transit-oriented development principles; whether the redevelopment project has environmental or public health stressors and is located in an overburdened community pursuant to N.J.S.A. 13:1D-157 et seq.; whether the redevelopment project design anticipates long-term risks of climate change to the redevelopment project; and inclusion of workforce housing in a residential project not located in a distressed municipality. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) If a developer intends to apply to both the Authority and the Agency for tax credits, subsidies, or other financing, the developer shall notify the Agency simultaneously with any application made to the Authority. The Authority shall transmit its grant determination for such residential projects to the Agency, along with any information developed by the Authority and confirmation of the Authority's intent to provide an incentive award or award to the project. Approval of an application by the Agency, subject to the Agency's rules and guidelines for the applicable Agency Program, shall be the final determination required for an incentive award for a residential project pursuant to this section.

(e) Up to the limits established at (f) below, and in accordance with an incentive award agreement, beginning upon completion of the capital investment and the receipt of the temporary certificate of occupancy for the redevelopment project or the first phase of an approved phased project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit pursuant to the Program that shall not exceed the percentages in this subsection. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded pursuant to the Program.

1. Eighty five percent of the [total] **eligible** project cost for a redevelopment project that is located in a government-restricted municipality, **which municipality qualified as a government-restricted municipality prior to January 23, 2025, or is a special mission non-profit project**, not to exceed \$120 million per redevelopment project or phase for a redevelopment project;

2. **Eighty percent of the eligible project cost for a redevelopment project that is located in a government-restricted municipality, which municipality did not qualify as a government-restricted municipality prior to January 23, 2025, not to exceed \$120 million per redevelopment project or phase for a redevelopment project;**

[2.] 3. Sixty percent of the [total] **eligible** project cost for a residential project that receives a four-percent allocation pursuant to the Federal Low-Income Housing Tax Credit Program or a redevelopment project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, not to exceed

\$90 million per redevelopment project or phase [of] for a redevelopment project; or

[3.] 4. Fifty percent of the [total] **eligible** project cost for any other redevelopment project, not to exceed \$60 million per redevelopment project or phase for a redevelopment project.

(f) Notwithstanding the provisions at (e) above, for projects with tax credits pursuant to the Federal Low-Income Housing Tax Credit Program in which not all the residential units are reserved for occupancy by low- and moderate-income households, in no event shall the sum of all tax credits awarded pursuant to any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed 90 percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded pursuant to any Program administered by the Authority exceed 90 percent of the project cost.

(g) The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

19:31V-1.8 Approval letter; incentive award agreement

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a redevelopment project, and promptly notify the applicant, **any special mission non-profit**, any co-applicant, and the Director of the Division of Taxation of the determination.

1. The Board's award of the tax credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant, **any special mission non-profit**, and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, [P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1)] and affirmative action requirements, [P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4)], that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the developer or an affiliate of the developer, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. [If a developer is applying as a major cultural institution or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest, and the developer applied on the basis of contributions and grants, the approval letter shall also require submittal of executed grant and contribution agreements. If the Authority approval included a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period.] Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.

i. For an **eligible warehouse or transformative environmental remediation project**, the approval letter shall also require a copy of the remedial action workplan(s) submitted to the Department of Environmental Protection that includes the environmental remediation costs.

ii. For a **special mission non-profit project**, the approval letter shall also require a copy of the social services plan for the project; a job description for the social services coordinator; and if the **special mission non-profit** is contracting with a third party to provide social services and/or the social services coordinator, a copy of the executed contract between the **special mission non-profit** and the third-party services provider. If the developer is not the **special mission non-**

profit, the required documents shall also include the executed agreement between the **special mission non-profit** and the developer with a term that extends for the duration of the eligibility period.

iii. If a developer is applying as a major cultural institution or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest, and the developer applied on the basis of contributions and grants, the approval letter shall also require submittal of executed grant and contribution agreements.

iv. If the Authority approval includes a co-applicant, the required documents shall also include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period and any compliance period.

[3. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the incentive award, accordingly.]

3. The Authority shall not resize or reduce the tax credit based on the executed financing commitments or the updated projected cash flow, but the Authority shall use the commitments and cash flow to calculate the return on investment required pursuant to (c) below.

4. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. If the Authority does not receive a progress report when required, or if the progress report demonstrates unsatisfactory progress, then the Authority, upon consultation with the Agency, and if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the incentive award. If the Authority rescinds an incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant.

(b) Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer, **any special mission non-profit**, and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's, **any special mission non-profit's**, and any co-applicant's compliance with the requirements of the agreement.

(c) The incentive award agreement shall specify and include:

1. A detailed description of the proposed redevelopment project. For a phased project, the incentive award agreement may include an incentive phase agreement for each phase, which shall contain a description of the phase, the expected project cost and total development cost, and the commencement and completion for the respective phase;

2. The maximum amount of project cost and the maximum percentage of the project cost that will be used to calculate the amount of tax credits. If the actual project costs are less than the project cost set forth in the application, the tax credit shall be calculated based on the actual project cost;

3. The duration of the eligibility period and any compliance period;

4. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;

5. An ongoing requirement to provide the Authority with current personnel information that will enable the Authority to administer the Program;

6. A requirement that the developer shall not cease to operate or cease to cause to operate the redevelopment project, or any portion or building of the redevelopment project, during the eligibility period and any compliance period;

7. A method for the developer to certify that it has met the project cost and other eligibility requirements of the Program;

8. A requirement for the developer to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;

9. Representations that the developer will comply with the minimum environmental and sustainability standards;

10. Representations that the developer, **any special mission non-profit**, and any co-applicant[s] are in substantial good standing and that the redevelopment project will comply with all applicable laws, including,

but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31V-[1.14(b)]**1.15(b)** and (c), affirmative action requirements pursuant to N.J.A.C. 19:31V-[1.14(a)]**1.15(a)**, and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

11. A provision permitting an audit of evidence and documentation[,] of the developer, **any special mission non-profit**, and any co-applicant[,] supporting the certifications pursuant to (f) below[,] and the annual reports pursuant to N.J.A.C. 19:31V-1.9, as the Authority deems necessary;

12. Reporting requirements pursuant to N.J.A.C. 19:31V-1.9;

13. A provision permitting the Authority to amend the agreement;

14. A provision establishing the conditions pursuant to which the Authority, the developer, **any special mission non-profit**, and any co-applicant, or all parties, may terminate the agreement;

15. Milestones for the redevelopment project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority, upon consultation with the Agency, if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the award of tax credits if a project fails to advance in accordance with the milestones in the incentive award agreement or fails to provide progress reports required pursuant to the approval letter;

16. A provision to verify [the financing gap and] the developer's updated projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below[, which shall include, but is not limited to, any executed permanent financing commitments. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project or the updated projected cash flow has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by the project or the updated projected cash flow, then the developer shall forfeit the incentive award];

17. [A] **To ensure the protection of taxpayer money**, a provision requiring [that at] **the re-evaluation of the developer's actual return on investment**, as follows:

i. **At project certification and at the end of the seventh year [of the] for a redevelopment project with a 10-year eligibility period, the end of the third year for a redevelopment project with a five-year eligibility period without a compliance period, or the end of the third and fifth year for a redevelopment project with a compliance period**, the Authority shall evaluate the developer's actual reasonable and appropriate rate of return on investment and compare that actual reasonable and appropriate rate of return on investment to the [reasonable and appropriate rate of] **maximum** return [at the time of Board approval]. If the actual rate of return on investment exceeds the [reasonable and appropriate rate of] **maximum** return [on investment at the time of Board approval] by more than 15 percent, the Authority shall require the developer to pay 20 percent of the amount in excess of the [reasonable and appropriate rate of] **maximum** return [on investment at time of Board approval].

ii. The Authority shall require an escrow account to be held by the Authority **for any payment received pursuant to this subsection until the end of the eligibility period and any compliance period. For any payment amount calculated at project certification, the developer shall make equal annual payments, which in aggregate, shall equal the calculated payment amount, with each annual report for the first seven years for a redevelopment project with a 10-year eligibility period or for the first three years for a redevelopment project with a five-year eligibility period. At the end of the seventh year for a redevelopment project with a 10-year eligibility period or the end of the third year for a redevelopment project with a five-year eligibility period, the developer shall pay the Authority any additional amount required. The Authority shall not reduce or recapture any tax credits at project certification or at the end of the seventh year for a redevelopment project with a 10-year eligibility period, or the end of the third year for a redevelopment project with a five-year eligibility period, solely due to an increase to the return on investment.**

iii. Following the final year of the eligibility period **and any compliance period**, the Authority shall determine if the developer's actual rate of return exceeded the **maximum** [reasonable and appropriate rate of] return [determined at Board approval] **by more than 15 percent**. If the final actual rate of return does not exceed the [reasonable and appropriate rate of] **maximum** return [determined at Board approval] **by more than 15 percent**, the Authority shall release to the developer the escrowed funds. If the actual project final rate of return exceeds the [reasonable and appropriate rate of] **maximum** return [determined at Board approval] **by more than 15 percent**, the Authority shall require the developer to pay 20 percent of the amount of the excess, which shall include the funds held in escrow, and such funds shall be deposited in the State General Fund[.];

iv. **For any year during the eligibility period in which the director purchases a tax credit certificate or tax credit transfer certificate issued for a redevelopment project pursuant to N.J.S.A. 52:18A-263, if the actual rate of return on investment exceeds the maximum return by more than 10 percent, the Authority shall require the developer to pay 20 percent of the amount in excess of more than 10 percent over the maximum return, except as otherwise provided at N.J.S.A. 52:18A-263;**

18. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31V-1.7(b)1, that the developer, **any special mission non-profit**, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

19. A provision providing that if the developer, **any special mission non-profit**, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31V-1.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer, **any special mission non-profit**, and any co-applicant shall forfeit the tax credits in any year in which the developer, **any special mission non-profit**, and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

20. A requirement that the developer shall include in all commercial leases or other commercial occupancy agreements and shall require that all subleases or other commercial occupancy agreements applicable to the redevelopment project include, a provision setting forth the requirements at N.J.A.C. 19:31V-1.3(a)9, which provision shall be in a form acceptable to the Authority. A provision that if a commercial tenant, commercial subtenant, or other commercial occupant fails to pay the required prevailing wage rate as set forth at N.J.A.C. 19:31V-1.3(a)9, then the issuance of tax credits to the developer, **any special mission non-profit**, and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of the **Department of Labor and Workforce Development**, subsequently reviewed and approved by the Commissioner of the **Department of Labor and Workforce Development**, and verified by the Authority;

21. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project[: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.; has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State; and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury] **satisfies the requirements set forth at N.J.A.C. 19:31V-1.4(a)13;**

22. A requirement for the developer to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

23. A requirement for the developer of a redevelopment project with newly constructed residential units to comply with the affordability controls;

24. A provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

25. Indemnification and insurance requirements from the developer, **any special mission non-profit**, and any co-applicant;

26. Events that would trigger forfeiture, reduction, or recapture of the tax credits, including, but not limited to, provisions in this subchapter; and

27. Default and remedies, including, but not limited to, a default if a developer, **any special mission non-profit**, or any co-applicant made a material misrepresentation on its application, provided that the incentive award agreement shall not allow the Authority to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, is in default with any other assistance program administered by the Authority.

(d) The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment that will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment that will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into an incentive award agreement with a developer, **any special mission non-profit**, and any co-applicant[s] without the labor harmony agreement required pursuant to this subsection, if the Authority determines that the redevelopment project would not be able to go forward if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) Except as set forth at (e)1 below, for a redevelopment project **approved before January 23, 2025** whose [total] **eligible** project cost equals or exceeds \$10 million, **or a redevelopment project approved on or after January 23, 2025** whose **total development cost equals or exceeds \$10 million**, in addition to the incentive award agreement, the developer, and any co-applicant that is responsible or required to provide services pursuant to the community benefits agreement, shall execute a community benefits agreement in accordance with N.J.S.A. 34:1B-328.f, as prescribed below.

1. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if:

i. The developer submits to the Authority a copy of either the developer's approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer **pursuant to this subchapter**;

ii. The developer submits to the Authority:

(1) A resolution adopted by the governing body of the municipality in which the redevelopment project is located, which states and explains the governing body's reasons and determined that the redevelopment project will provide economic and social benefits to the community that fulfill the purposes [at] of N.J.S.A. 34:1B-328.f and this subsection and, thus, rendering a separate community benefit agreement unnecessary; and

(2) Documentation that the resolution was adopted after at least one **previously advertised** public hearing at which the governing body provided an opportunity for residents, community groups, and other stakeholders to testify, **including, but not limited to, the meeting minutes from such public hearing(s); or**

iii. The project is a **special mission non-profit project in any eligible location, or a residential project** that is located in a government-restricted municipality[,] and in which 100 percent of the residential units

constructed in the residential project are reserved for occupancy by low- and moderate-income households.

2. The developer shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the redevelopment project is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the Authority that the municipality has made the request. The Authority shall not participate in negotiations between the developer and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (e)7ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located, as well as any other Program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit.

3. The community benefits agreement or redevelopment agreement shall include a list of contributions by the developer; the monetary equivalent for any non-monetary contribution; an event of default, if the developer forfeits tax credits pursuant to N.J.A.C. 19:31V-1.10(e)2 in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)7 below.

[4. The developer and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the developer's application, to enter into a community benefits agreement, the redevelopment agreement, or approve the resolution and submit such agreement or resolution to the Authority. Submission of such community benefits agreement, redevelopment agreement, or resolution is a condition to entering into an incentive award agreement.]

4. The developer and the municipality or county shall submit the executed community benefits agreement, redevelopment agreement, or approved resolution to the Authority within the same time as all other conditions subsequent required in the approval letter.

5. Prior to entering a community benefits agreement or a redevelopment agreement, the [governing body of the] municipality or, if the county is executing the agreement, the [governing body of the] county, in which the redevelopment project is located shall hold at least one **previously advertised** public hearing [subject to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.,] at which the chief executive, or designee from the chief executive's department or office shall hear testimony from residents, community groups, and other stakeholders **who shall have an opportunity to be heard** on the needs of the community that the agreement should address. The chief executive shall provide a record, including **public hearing minutes**, satisfactory to the Authority, which **public hearing meeting minutes** shall be an exhibit to the **resolution of the governing body of the municipality or county adopting** the community benefits agreement.

6. The community benefits agreement or redevelopment agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from diverse community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the redevelopment project is located.

ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the redevelopment project is located, at least one representative from a community group,

and at least one resident from the zip code in which the redevelopment project is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (e)6iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the developer and any co-applicant. The certifications shall be submitted to the Authority by the developer or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

7. The community advisory committee shall produce an annual report, including an evaluation of whether the developer is in compliance with the terms of the community benefits agreement or the redevelopment agreement:

i. If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31V-1.9(b)1 both indicate that the developer is in compliance with the community benefits agreement, then the developer shall be in compliance with the community benefits agreement. Absent extenuating circumstances, and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the developer shall be based on the certification from the developer pursuant to N.J.A.C. 19:31V-1.9(b)1.

ii. If the report from the community advisory committee indicates that the developer is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality or county, as applicable, and the developer shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits 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.

iii. 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 of the Authority containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The developer, municipality or county, and the community advisory 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 business days from receipt of such report. The Chief Executive Officer of the Authority shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer of the Authority shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8. The sum of costs for benefits and services provided pursuant to the community benefits agreement or the redevelopment agreement included as soft costs or to determine cash flow shall not exceed five percent of project cost. [For purposes of this paragraph, costs for benefits and services incurred during the eligibility period shall be discounted to present value.]

(f) A developer shall submit, prior to the issuance of tax credits pursuant to the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the Program eligibility requirements, which shall include, but not be limited to, the documents in this subsection. The Authority may provide any information in the annual report to the Agency for any redevelopment project if the Agency has

provided financial assistance or awarded tax credits to the redevelopment project.

1. Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;

2. A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the relevant minimum project cost for eligibility, the redevelopment project shall no longer be eligible. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits, accordingly. The Authority shall qualify certified public accountants and provide to the developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer, **any special mission non-profit**, and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer from retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the developer;

3. A floor plan identifying the actual and proposed uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31V-1.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;

4. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer, **any special mission non-profit**, or any co-applicant not to be in compliance with the approval, the Act, or this subchapter;

5. A letter from the Agency to the developer with a copy to the Authority confirming compliance with the affordability controls;

6. A certification from a licensed engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer would satisfy the minimum environmental and sustainability standards;

7. Any permanent financing commitments executed as of the date of the submission of the documents in this subsection and an updated project *pro forma*;

8. For an eligible warehouse project or transformative environmental remediation project, a response action outcome for the site of the redevelopment project by a licensed site remediation professional and a certification from a licensed site remediation professional of a schedule of the actual environmental remediation costs;

9. For a special mission non-profit project:

i. A certification from the special mission non-profit that the social services plan remains in effect and is being implemented;

ii. If the special mission non-profit has contracted with a third party to provide social services and/or the social services coordinator, a certification from the special mission non-profit that the contract remains in effect and is not in default; and

iii. If the developer is not the special mission non-profit, a certification that the agreement between the developer and the special mission non-profit remains in effect and is not in default;

[8.] **10. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true pursuant to the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive**

tax credits shall not be considered claims, records, or statements made in connection with State tax laws; and

[9.] **11.** If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default.

(g) A developer shall forfeit the credit amount for any tax period for which the developer's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

(h) Once the Authority accepts the documentation required at (f) above and the Authority determines that all eligibility requirements and other required conditions have been met, within 90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the developer and notify the Director. The developer shall receive its tax credit certificate that will be based on the information submitted in the certification pursuant to (f) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31V-1.7(e), (f), and (g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

(i) At, or before, the date of certification, any modification to the redevelopment project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the redevelopment project, as modified, does not undermine the basis for the tax credit award approved.

19:31V-1.9 Reporting requirements and annual report

(a) A developer approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period **and any compliance period**, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer, **any special mission non-profit**, or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter and the Act and any additional reporting requirements in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(b) The annual report shall consist of:

1. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer, **any special mission non-profit**, or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31V-1.8(e), or this subchapter;

2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

3. For the two years after the first certificate of compliance is issued, evidence that the redevelopment project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31V-[1.14(a)]**1.15(a)**;

4. Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31V-[1.14(b)]**1.15(b)** and (c);

5. A tax clearance certificate as described at N.J.S.A. 54:50-39 for the developer, **any special mission non-profit**, and any co-applicant;

6. A certification from the developer that the project is still operating and that the redevelopment project continues to meet the eligibility requirements on site control, size, and uses, including, but not limited to, predominance of commercial, residential, or film production uses, and a floor plan identifying the actual uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance

of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth at N.J.A.C. 19:31V-1.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;

7. For a commercial project, a list of all tenants, the gross leasable area leased by each tenant, and whether the tenant is operating its business at the premises leased by the tenant;

8. For a project with residential units, a letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls;

9. A list of tenant information for all residential units;

10. Annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance, and, for the annual report for the [seventh and last] year in which the Authority will reevaluate the developer's actual return on investment pursuant to N.J.A.C. 19:31V-1.8(c)17 or **1.14(d)**, the updated project [pro forma] *pro forma* and all other information required by the Authority to evaluate the actual reasonable and appropriate rate of return on investment;

11. If applicable, a certification indicating compliance with the community benefits agreement or redevelopment agreement provisions required pursuant to N.J.S.A. 34:1B-328.f and N.J.A.C. 19:31V-1.8(e);

12. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31V-1.8(d);

13. Confirmation that the developer and the lead development entity satisfy the criteria as set forth at N.J.A.C. 19:31V-1.4(a)12;

14. The developer shall confirm that each contractor or subcontractor performing work at the qualified business facility satisfies the requirements as set forth at N.J.A.C. 19:31V-1.4(a)13;

[13.] **15.** For the first annual report subsequent to its receipt, the permanent certificate of occupancy covering the entire redevelopment project;

[14.] **16.** If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required pursuant to the participation agreement; [and]

17. For a special mission non-profit project:

i. A certification from the special mission non-profit that the social services plan remains in effect and is being implemented;

ii. Proof of hire or continued employment of the social services coordinator;

iii. A site plan identifying the uses and square footage of the components of the special mission non-profit project;

iv. If the special mission non-profit has contracted with a third party to provide social services and/or the social services coordinator, a certification from the special mission non-profit that the contractual relationship remains in effect and is not in default; and

v. If the developer is not the special mission non-profit, a certification that the agreement between the developer and the special mission non-profit remains in effect and is not in default; and

[15.] **18.** In conducting its annual review, the Authority may require a developer to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The report required at (a) above is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(d) [Upon receipt, review, and acceptance of each report submitted during] **During** the eligibility period, [the Authority shall provide to the developer and the Director a] **subject to forfeiture, reduction, or other action for failure to comply with a Program requirement, within 120 days after the Authority preliminarily determines that an annual report is complete, the Authority shall either: approve the annual**

report or determine the appropriate action with regard to the tax credit for that year, notify the developer and the Director of the Authority's decision, and, if approved, provide the certificate of compliance to the developer with notice to any co-applicant, any special mission non-profit, and notify the Director to issue the tax credit certificate; or request more information from the developer to finalize the decision whether to approve. The certificate of compliance [indicating] shall indicate the amount of tax credits that the developer may apply against the developer's tax liability. [If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer.] The Authority shall not prorate the tax credit for the first year. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(e) If the Authority fails to take one of the actions at (d) above within 120 days from its preliminary determination that the annual report is complete, the annual report shall be deemed approved by the Authority, and the developer shall be entitled to receive its tax credit certificate. Such deemed approval shall not waive the Authority's right to audit and determine compliance.

[(e)] (f) Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer, any special mission non-profit, or co-applicant, a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5. A developer, any special mission non-profit, or co-applicant, shall apply the credit awarded against the developer's liability pursuant to N.J.S.A. 17:32-15, 17B:23-5, 54:10A-5, or 54:18A-2 and 3 [for the tax period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection] in the tax period in which it was issued, or in any tax period during the eligibility period, without the need to amend the tax return for the tax period for which the credit was issued, subject to the carry-forward provision at (g) below. Notwithstanding the foregoing, no more than the amount of tax credits equal to the total credit amount divided by the duration of the tax credit term, in years, may be taken in any tax period.

(g) A developer, any special mission non-profit, or co-applicant may carry forward an unused credit for use in the seven privilege periods next following the privilege period for which the credits are [awarded] applied. Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

[(f)] (h) The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5 for a tax privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at N.J.S.A. 54:10A-5.

19:31V-1.10 Reduction, forfeiture, and recapture of tax credits

(a) The developer, any special mission non-profit, and any co-applicant shall forfeit all credit[s] for the tax period in which the change occurs and each subsequent tax period and may be subject to recapture, if:

1. The developer changes a project that has been approved based on certain eligibility requirements on size and uses, including, but not limited to, the predominance of commercial, residential, or film productions uses, and the redevelopment project changes such that the eligibility requirements are no longer met;

2. Absent prior written approval of a modification by the Authority, the developer changes any characteristic of the redevelopment project, including, but not limited to, uses, that were utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31V-1.6(b) and 1.11(l) or of a transformative project that was utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31V-1.11(a)4(i);

3. The developer changes the project, so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31V-1.7(c); [or]

4. If, upon review of the certification and documentation for any phase of a transformative project, the project has been modified such that it no longer qualifies as a transformative project[.]; or

5. The developer changes a special mission non-profit project, such that it no longer qualifies as a special mission non-profit project.

(b) If a project fails to comply with any requirements of the Program during any compliance period, including, but not limited to, the occupancy requirement at (d) below or the affordability controls at (o) below, the Authority may recapture all, or part of, a tax credit awarded, based on the net positive economic benefits attributed to the compliance period.

[(b)] (c) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31V-1.8(d) is not satisfied during the relevant tax period, then the developer, any special mission non-profit, and any co-applicant shall forfeit all credit for the tax period in which the labor harmony agreement requirements are not satisfied 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 period the full amount of the credit shall be allowed.

[(c)] (d) If, on or after the [third] fourth year of the eligibility period [, the occupancy of commercial space of a redevelopment project, or component of a redevelopment project, for which a net positive economic benefit analysis is required pursuant to N.J.A.C. 19:31V-1.6(b) is reduced to] for a commercial project, and through the conclusion of the eligibility period, if the average occupancy rate is less than 60 percent during any applicable tax period, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of occupancy to the threshold level required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the [tax] credit shall be allowed. For the purposes of this subsection, commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period. If the Authority determines there are extenuating circumstances beyond the developer and any co-applicant's control based on the Governor declaring an emergency, the Authority may waive the 60 percent occupancy requirement for the tax year. The occupancy requirement in this subsection shall not apply to residential projects or special mission non-profit projects.

[(d)] (e) As of the date of the annual report pursuant to N.J.A.C. 19:31V-1.9:

1. If any worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31V-1.3(a)8 during the relevant tax period, then the developer, any special mission non-profit, and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid 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 period the full amount of the credit shall be allowed.

2. Notwithstanding any provisions of law to the contrary, if a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth at N.J.S.A. 34:1B-325a(7)(b) and N.J.A.C. 19:31V-1.3(a)9, then the issuance of all certificates of compliance for the tax credits to the developer, any special mission non-profit, and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of the Department of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of the Department of Labor and Workforce Development, and verified by the Authority. If a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, then the developer, any special mission non-profit, and any co-applicant shall forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. If the violation is not cured on or before the conclusion of that tax period in which the one year to cure has expired, the developer, any special mission non-profit, and any co-applicant shall forfeit up to 100

percent of the tax credits otherwise authorized, as determined by the Authority, in each subsequent tax period until the first tax period for which documentation demonstrating compliance has been provided to the Commissioner of the Department of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of the Department of Labor and Workforce Development, and verified by the Authority. In this event, the developer, **any special mission non-profit**, and any co-applicant shall be allowed the full tax credit amount beginning in the tax period in which documentation of compliance was reviewed and approved by Commissioner of the Department of Labor and Workforce Development and verified by the Authority, including each subsequent tax period in which the tax credits are otherwise authorized. **The requirement of this paragraph shall not apply to the residential tenants or residential subtenants of a redevelopment project.**

3. If the developer is not in compliance with the requirements set forth at N.J.A.C. 19:31V-1.4(a)13, the Authority may suspend the tax credits for the relevant tax period if the developer, and if the suspension continues for two years, then, at the Authority's sole option, the developer, **any special mission non-profit**, and any co-applicant may forfeit the tax credits for those years.

[(e)] (f) Unless an exception applies, if the developer or co-applicant, if a party to the community benefits agreement or redevelopment agreement, is not in compliance with the community benefits agreement or redevelopment agreement pursuant to N.J.A.C. 19:31V-1.8(e), the following shall apply:

1. The amount of tax credits that the developer or any co-applicant 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 developer is not in compliance, if the Authority determines that:

- i. Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible developer's control and without its fault or negligence;
- ii. The developer is using best efforts, with all due diligence, to proceed with the completion of the contribution; and
- iii. The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

2. For any other noncompliance, the developer and any co-applicant 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. The full amount of the [tax] credit shall be allowed for the first tax period in which the Authority has approved compliance and each subsequent tax credit for which the Authority approves compliance.

[(f)] (g) If the redevelopment project was eligible by demonstrating a lower net positive economic benefit pursuant to N.J.A.C. 19:31V-1.6(c), and the redevelopment project ceases to meet the respective eligibility, then the Authority shall re-evaluate the net positive economic benefit and either reduce the size of the tax credits accordingly or recapture any excess tax credits.

[(g)] (h) If, based on new information, the Authority determines that a reduction, forfeiture, or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

[(h)] (i) If, at any time, the Authority determines that the developer, **any special mission non-profit**, or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer, **any special mission non-profit**, and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded pursuant to the Program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the developer, **any special mission non-profit**, co-applicant, and the respective officer may be subject.

[(i)] (j) The developer shall provide an updated project [pro forma] *pro forma* and other relevant financial documentation to the Authority when the incentive award agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period and **any compliance period** pursuant to N.J.A.C. 19:31V-1.8(c)17.

[(j)] (k) If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to [(i)] (j) above or N.J.A.C. 19:31V-1.8(c)17, the Authority shall recapture all of the tax credits awarded.

[(k)] (l) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

[(l)] (m) The Authority shall notify the Agency of any reduction, forfeiture, or recapture of tax credit if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

[(m)] (n) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-331 and N.J.A.C. 19:31V-1.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant or **any special mission non-profit** is involved with the basis for the recapture, any co-applicant or **special mission non-profit**, and not from the purchaser or assignee of the tax credit transfer certificate.

[(n)] (o) If, during the eligibility period the letter from the Agency pursuant to N.J.A.C. 19:31V-1.8(f)5 or 1.9(b)8 indicates that the developer is not in compliance with the affordability controls, the Authority shall not issue the certificate of compliance for any tax credits until the developer obtains a letter from the Agency demonstrating compliance.

[(o)] (p) If, after the eligibility period or **any compliance period**, the Agency determines that the developer is not in compliance with the deed restriction pursuant to N.J.A.C. 19:31V-[1.18(c)]1.19(c), the developer, the lead development entity, and the owner shall be ineligible for any Authority financial assistance for the construction or development of a real estate project. The Authority shall have the right to enforce specific performance of the affordability controls. The developer and lead development entity shall no longer be subject to this provision if the Authority provides written approval of the sale or transfer of the project.

[(p)] (q) Any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31V-1.11 Transformative projects

(a) To be eligible as a transformative project, the redevelopment project must satisfy the following criteria:

1. Has a project financing gap;
2. [Has a total] **For projects approved before January 23, 2025, has an eligible project cost of at least \$150,000,000, or for projects approved on or after January 23, 2025, has a total development cost of at least \$150,000,000;**

3. **Leverages the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing; and**

[3.] 4. Includes:

- i. Two hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality, exclusive of any parking component;
- ii. Two hundred fifty thousand or more square feet of film production uses, exclusive of any parking component;
- iii. Three hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area, exclusive of any parking component; or
- iv. Five hundred thousand or more square feet of new or substantially renovated industrial, commercial, or residential space for any other project, exclusive of any parking component;

[4.] 5. A commercial project is of special economic importance and creates modern facilities that enhance the State's competitiveness in attracting targeted industries by meeting the following criteria:

i. Except for a redevelopment project with 250,000 or more square feet of film production uses:

(1) Creates 500 new full-time jobs, which shall be demonstrated by determining the anticipated employee occupancy based on the regional averages for employment density for the type of use or uses at the redevelopment project;

(2) Involves the substantial renovation of a vacant commercial building; or

(3) The project is [located entirely on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area pursuant to N.J.S.A. 58:10B-25.1, and the project costs of the redevelopment project includes or will include at least \$ 15 million in environmental remediation costs] **a transformative environmental remediation project**; and

ii. Provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to, being undertaken by a developer that is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State; **and**

[5.] **6.** For residential projects includes one of the following:

i. The construction of 700 or more newly constructed residential units;

ii. Is a mixed-use residential project with construction of [50,000] **30,000** square feet or more of commercial space, **which may include retail space**, exclusive of any parking component, and includes one of the following:

(1) If the project is located in a government-restricted municipality, and includes the construction of 200 or more newly constructed residential units;

(2) If the project is located in an enhanced area, and includes the construction of 300 or more newly constructed residential units; or

(3) If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 400 or more newly constructed residential units; and].

[6. Leverages the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.]

(b) A transformative project shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail, including, but not limited to, hotels.

(c) A transformative project, other than a project that includes 250,000 or more square feet of film production uses, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film production uses may be located anywhere in the State. The Authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

(d) A transformative project may be completed in phases, which phases may be determined by the Authority based on factors, such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans.

(e) In accordance with N.J.A.C. 19:31V-1.3(e), all transformative projects that include any newly constructed residential units shall reserve at least 20 percent of the newly constructed residential units and all other residential units for occupancy by low- and moderate-income households with affordability controls.

(f) The Authority shall review and determine whether to approve an incentive award to a transformative project in accordance with the provisions applicable to any redevelopment project, unless otherwise provided in this section.

(g) For transformative projects completed in phases, the developer and any co-applicant shall enter into a transformative phase agreement with the Authority. As used in this subsection, "transformative phase agreement" shall mean a sub-agreement of the incentive award agreement

that governs the timing, capital investment, and other applicable details of the respective phase of a phased project. The transformative phase agreement may be incorporated in the incentive award agreement.

(h) Notwithstanding the provisions at N.J.S.A. 34:1B-325 and 34:1B-269 et seq., or other sections in this subchapter to the contrary, a transformative project shall be completed, and the developer shall be issued a certificate of occupancy for the transformative project facilities by the applicable enforcing agency, within five years of executing the incentive award agreement, except that the Authority may, in its discretion, extend this deadline by up to one additional year. For transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued temporary certificates of occupancy for all phases of the transformative project by the applicable enforcing agency within 10 years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. For a project component to be allowed as a phase, a developer shall obtain a temporary certificate of occupancy for the entirety of the component and the component shall be \$50,000,000 or more except for the last component.

(i) Notwithstanding the provisions at N.J.S.A. 34:1B-323, 328, and 269 et seq., or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility period **or any compliance period**. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required pursuant to N.J.A.C. 19:31V-1.8(f). In the certification for the project cost for that phase, any infrastructure work completed at the same time shall be included in the certification for that phase. The amount of soft costs for a phase may exceed 20 percent of the [total] **eligible** project cost in the certification for the respective phase. If the aggregate amount of soft costs at the completion of the final phase exceeds 20 percent of the aggregate [total] **eligible** project cost in all phase certifications, the Authority shall reduce the amount of allowable soft costs and shall resize the incremental tax credit for the final phase and recapture other excess tax credits. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due to the certification demonstrating a lesser [total] **eligible** project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the developer and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis. Notwithstanding the different eligibility periods **or any compliance periods** for each phase, all conditions and requirements applicable during an eligibility period **or any compliance period**, pursuant to N.J.S.A. 34:1B-322 through 335 and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period **or any compliance period** for the last phase.

(j) Notwithstanding the provisions at N.J.S.A. 34:1B-328 and 269 et seq., or other sections in this subchapter to the contrary, for a transformative project completed in phases, [a review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The] **the** Authority shall re-evaluate the developer's reasonable and appropriate return on investment as set forth at N.J.A.C. 19:31V-1.8(c)17 [in the seventh year and at the end of the eligibility period] for the last phase, provided that the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase **for redevelopment projects with a 10-year eligibility period or projects with a compliance period, or during the third year of any earlier phase for redevelopment projects with a five-year eligibility period without a compliance period.**

(k) The Authority shall review the transformative project cost and evaluate and validate the project financing gap estimated by the developer. The Authority shall perform a single project financing gap analysis for a transformative project.

(l) [The] **Except for redevelopment projects, or components of redevelopment projects, for which no fiscal analysis is required pursuant to N.J.A.C. 19:31V-1.3(a)14, the Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive economic benefit to the State in accordance with the percentages pursuant to N.J.A.C. 19:31V-1.6(c). The Authority shall determine a single net positive economic benefit for a transformative project, including a phased transformative project, and the net positive economic benefit evaluation shall be conducted for the period beginning with the first eligibility period and ending with the last eligibility period and, if elected by a developer of a redevelopment project with a five-year eligibility, any last compliance period. If a developer elects to include a compliance period, the redevelopment project will continue to be subject during the compliance period to the terms and conditions of the Program, including those set forth in this subchapter and in the agreement.** In determining whether a transformative project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based upon the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis pursuant to which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. [Projects that are predominantly residential shall be excluded from the calculation of the net positive economic benefit test required pursuant to this subsection.]

(m) In determining net positive economic benefits for any business or person considering locating in a transformative project and applying to receive from the Authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to N.J.S.A. 34:1B-333 and this section, the Authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to N.J.S.A. 34:1B-333 and this section.

(n) The Authority shall administer the credits awarded pursuant to this section, in accordance with the provisions at N.J.S.A. 34:1B-330 and 331; and N.J.A.C. 19:31V-1.9, 1.10, 1.12, and 1.13.

(o) Prior to allocating an incentive award to a developer, the Authority shall confirm that the developer, lead development entity, and any co-applicant for the transformative project satisfies the requirements at N.J.A.C. 19:31V-1.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, the Department of the Treasury, N.J.A.C. 19:31V-1.7(b)2 for substantial good standing with the Agency, and N.J.A.C. 19:31V-1.7(b)4 regarding contractors and subcontractors.

(p) Notwithstanding the limitation on incentive awards set forth at N.J.S.A. 34:1B-329 and 362 and any other sections in this subchapter to the contrary, the Authority may allow a developer of a transformative project a tax credit in an amount not to exceed the lesser of the amounts below. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded pursuant to the Program.

1. Eighty five percent of the [total] **eligible project cost** for a transformative project that is located in a government-restricted municipality, **which municipality qualified as a government-restricted municipality prior to January 23, 2025**, which percentage shall apply to the [total] **eligible project cost** of each phase of a phased transformative project;

2. Eighty percent of the **eligible project cost** for a transformative project that is located in a government-restricted municipality, **which municipality did not qualify as a government-restricted municipality prior to January 23, 2025**, which percentage shall apply to the **eligible project cost** of each phase of a phased transformative project;

[2.] 3. Sixty percent of the [total] **eligible project cost** for a residential transformative project that receives a four-percent allocation from the Federal Low-Income Housing Tax Credit Program administered by the Agency or a transformative project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, which percentage shall apply to the [total] **eligible project cost** of each phase of a phased transformative project;

[3.] 4. [Fifty] **50 percent** of the [total] **eligible project cost** for any other transformative project, which percentage shall apply to the [total] **eligible project cost** of each phase of a phased transformative project;

[4.] 5. The total value of the project financing gap; or

[5.] 6. \$400,000,000, except that for a transformative project that is developed in phases, the \$400,000,000 limitation on incentive awards shall apply to the total aggregate award for all phases of the transformative project.

(q) For a transformative project, the approval letter shall include conditions that must be satisfied and documents and certifications that must be submitted for each phase. Until the developer submits the certification for the last phase, the developer shall submit progress reports for each phase that has not yet been certified.

19:31V-1.12 Application for tax credit transfer certificate

(a) A developer, **any special mission non-profit**, or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer, **any special mission non-profit**, or co-applicant being allowed any amount of the credit against the tax liability of the developer.

(b) **Subject to forfeiture, reduction, or other action for failure to comply with a Program requirement, within 120 days after the Authority preliminarily determines that an application pursuant to this section is complete, the Authority shall either: approve the application and notify the developer and the Director of the Authority's decision and, if approved, that the Director is to issue the tax credit transfer certificate; or request more information from the developer to finalize the approval. If the Authority fails to take one of the actions within 120 days from its preliminary determination that the application is complete, the application shall be deemed approved by the Authority, and the developer shall be entitled to receive its tax credit transfer certificate. Such deemed approval shall not waive the Authority's right to audit and determine compliance.**

(c) The tax credit transfer certificate, upon receipt thereof by the developer, **any special mission non-profit**, or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$25,000, in the privilege period during which the developer, **any special mission non-profit**, or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to N.J.S.A. 54:10A-5, 54:18A-2 and 3, 17:32-15, or 17B:23-5; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, [and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods,] **in the tax period in which it was issued, or in any of the next three successive tax periods. The tax certificate holder or transferee may first use the credit against tax liabilities in the tax period in which it was issued or in a succeeding tax period, as authorized in this subsection, without the need to amend the tax return for the tax period for which the credit was issued, subject to the provisions of this section. A transferee may carry forward an unused credit for use in any of the next five successive tax periods, and the unused credit shall expire thereafter.** Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years. The certificate provided to the developer, **any special mission non-profit**, or co-applicant shall include a statement waiving the developer's, **special mission non-profit's**, or co-applicant's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

[(b)] (d) The developer, **any special mission non-profit**, or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer, **any special mission non-profit**, or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The developer, **any special mission non-profit**, or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement, except:

1. A developer or co-applicant of a residential project consisting of newly constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the Authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, which plan must demonstrate that the developer or co-applicant is receiving no less than 75 percent of the transfer credit amount before considering any discounting to present value; and

2. Notwithstanding the provisions at [(b)](d)1 above, a developer or co-applicant of a residential project consisting of newly constructed residential units that has received tax credits pursuant to the Federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42(b)(1)(B)(i), may assign a tax credit transfer certificate for consideration of no less than 65 percent of the transfer credit amount before discounting to present value subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

[(c)] (e) The tax credit transfer certificate issued to a developer, **any special mission non-profit**, or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to N.J.S.A. 34:1B-322 through 335 and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

[(d)] (f) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

[(e)] (g) The Authority shall publish, on its internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferor;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and
5. The consideration received by the transferor.

19:31V-1.13 Assignment of rights of incentive award agreement

(a) A developer who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable pursuant to the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer pursuant to the incentive award agreement, provided that any sale, assignment, or transfer of the incentive award agreement shall be to the purchaser, assignee, or transferee of the redevelopment project. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer, or sale, the allocation of the purchase price to the tax credit in relation to the minimum required pursuant to N.J.A.C. 19:31V-1.12(b)]1.12(d), and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant **or special mission non-profit**, prior to requesting the consent of the Authority and State Treasurer, the developer

shall obtain, in writing, the co-applicant's **or special mission non-profit's** consent, and the developer shall provide the co-applicant's **or special mission non-profit's** written consent to the Authority and State Treasurer with the developer's notice.

(b) A co-applicant **or special mission non-profit** who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable pursuant to the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant **or special mission non-profit** pursuant to the incentive award agreement, provided that the purchaser shall [be a non-profit pursuant to section 501(c)3 of the Internal Revenue Code] **satisfy the definition of co-applicant or special mission non-profit, as applicable**. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant **or special mission non-profit**, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer, or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant **or special mission non-profit, as applicable**, and shall be required to receive an assignment of the co-applicant's participation agreement **or special mission non-profit's agreement with the developer**, or to execute a new participation agreement **or special mission non-profit agreement** with the developer. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant **or special mission non-profit** shall obtain, in writing, the developer's consent, and the co-applicant **or special mission non-profit** shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant's **or special mission non-profit's** notice.

(c) Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

(d) The Authority shall publish, on its internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;
3. The value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

19:31V-1.14 Sale of buildings

(a) Notwithstanding any requirement of this subchapter to the contrary, a developer who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 and N.J.A.C. 19:31V-1.8 may apply to the Authority to sell one or more buildings or portion or portions of a building during the eligibility period or any compliance period. The developer shall submit the application prior to the sale of any building or portion of a building.

(b) To be eligible for such sale:

1. The project cost of the building, or portion of the building, to be sold was included in the documents evidencing completion of the project or, for phased transformative projects, of a phase; and

2. The Authority shall approve the proposed purchaser, which may include a review of the proposed purchaser pursuant to the Authority debarment and disqualification rules at N.J.A.C. 19:30-2.

(c) To apply for the sale of a building or a portion of a building, the developer shall include the following information in an application format prescribed by the Authority:

1. The proposed purchase price and terms of the contract for sale between the developer and the purchaser of the building(s);

2. The valuation of the building(s) or portions of a building(s) to be sold, which may include an appraisal;

3. Whether there are any proposed changes to the use of the building(s) or portions of building(s) being sold;

4. A legal questionnaire completed by the proposed purchaser disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2; and

5. Any other necessary and relevant information as determined by the Authority for a specific application.

(d) Except as provided for at (d)1 below, for every year in which a developer is approved for and sells a building or portion of a building, the developer shall include in the annual report an updated project *pro forma* and other relevant financial information, including, but not limited to, an updated market and/or feasibility study for the redevelopment project by an independent third party, and the Authority shall review the project's actual return on investment based on the updated project *pro forma*. If the actual project return on investment exceeds the maximum return by any amount, the developer shall pay to the State, 20 percent of the excess return, provided that the payment shall not exceed the net proceeds of the sale of the building or portion of a building. Such payment shall be final and not subject to escrow.

1. For a phased transformative project, if the developer uses all the net proceeds from the sale of building(s) or portions of building(s) as equity for the redevelopment project, no payment shall be required.

(e) Notwithstanding the sale of the building(s) or portions of building(s), the developer shall remain responsible and liable for all terms and conditions of the Program and the incentive award agreement for the entire redevelopment project, including, but not limited to, any building or portion of building sold, for the duration of the eligibility period and any compliance period. These terms and conditions include, but are not limited to, reporting, indemnification, affordability control, prevailing wage, and affirmative action requirements.

19:31V-[1.14]1.15 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and 19:31V-1.3(a)7 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after November 15, 2021, and included in the project cost. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 and 19:31V-1.3(a)8 shall apply to the redevelopment project, including, but not limited to, the following:

1. Construction contracts for work performed before the application and included in the project cost;

2. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and

3. Construction contracts for work performed during the eligibility period and any compliance period.

(c) During the eligibility period and any compliance period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:31V-1.3(a)9.

19:31V-[1.15]1.16 Affordability controls: documentation and monitoring

(a) Developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction set forth at N.J.A.C. 19:31V-[1.18]1.19 and shall

provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority.

(b) As set forth in this subchapter, the Agency may serve as a monitoring entity acting to report to the Authority compliance with the affordability controls. Notwithstanding such monitoring by the Agency, enforcement of any and all requirements pursuant to this subchapter shall be the responsibility of the Authority.

19:31V-[1.16]1.17 Affordability controls: affordability average; bedroom distribution

(a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units.

(b) The bedroom distribution for restricted units that are not age-restricted shall be as follows:

1. The combined number of studios and one-bedroom units is no greater than 20 percent of all restricted units;

2. At least 30 percent of all restricted units are two-bedroom units;

3. At least 20 percent of all restricted units are three-bedroom units; and

4. The remainder, if any, may be allocated at the discretion of the developer or subsequent owner of the affordable development.

(c) In determining the initial rents, the affordability average shall be no more than 52 percent.

(d) Restricted units that are age-restricted units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of restricted units that are age-restricted units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each studio.

(e) Restricted units shall utilize the same type of heating source as market units within the affordable development.

19:31V-[1.17]1.18 Affordability controls: occupancy standards

(a) In determining the initial rents for compliance with the affordability average requirements for restricted units, the following standards shall be used:

1. A studio shall be affordable to a one-person household;

2. A one-bedroom unit shall be affordable to a one and one-half person household;

3. A two-bedroom unit shall be affordable to a three-person household;

4. A three-bedroom unit shall be affordable to a four and one-half person household; and

5. A four-bedroom unit shall be affordable to a six-person household.

(b) In offering specific restricted units to low- and moderate-income households, to the extent feasible, and without causing an undue delay in occupying the unit, the developer or subsequent owner of the affordable development shall strive to:

1. Provide an occupant for each bedroom;

2. Provide children of different sex with separate bedrooms; and

3. Prevent more than two persons from occupying a single bedroom.

19:31V-[1.18]1.19 Affordability controls: control periods for rental units

(a) Each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years.

(b) The affordability control period for the restricted units shall commence on the first date that a low- or moderate-income household occupies a unit and shall terminate at the end of the period set forth at (a) above, except that the eviction or termination of tenancy (other than for good cause) of an existing tenant of any restricted unit or the increase in the gross rent with respect to any restricted unit not otherwise authorized pursuant to this subchapter shall be prohibited for an additional three years.

(c) Deeds of all real property that include restricted rental units shall contain deed restriction language as prescribed by the Authority. The deed restriction shall for the period set forth at (a) above, require compliance with the affordability controls, prohibit the sale or transfer of individual restricted units unless without the prior written consent of the Authority, and shall grant the Authority the rights set forth at N.J.A.C. 19:31V-1.10. The deed restriction shall have priority over all mortgages on the property.

(d) A restricted unit shall remain subject to the affordability controls despite the occurrence of any of the following events:

1. A sale or other voluntary transfer of the ownership of the affordable development or the restricted unit; or

2. The entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

19:31V-[1.19]1.20 Affordability controls: restrictions on rents

(a) Rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined pursuant to N.J.A.C. 19:31V-[1.17]1.18; provided, however, that the rent shall be subject to the affordability average requirement at N.J.A.C. 19:31V-[1.16]1.17.

(b) Mandatory fees or charges shall be included in the calculation of rent.

(c) Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit.

(d) A written lease is required for all restricted rental units. Final lease agreements are the responsibility of the developer (or subsequent owner of the affordable development) and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance as utilized by the Agency for Federal low-income housing tax credits.

19:31V-[1.20]1.21 Affordability controls: tenant income eligibility

(a) The initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 19:31V-[1.22]1.23; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its eligible monthly income for rent and the proposed rent will reduce its housing costs;

2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;

3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets, with which the household proposes to supplement the rent payments; or

5. The household documents proposed third-party assistance from an outside source, such as a family member.

(b) Developers and subsequent owners of affordable development shall establish at least one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

19:31V-[1.21]1.22 Affordability controls: affirmative marketing

(a) The developer or subsequent owner of an affordable development shall have an affirmative marketing plan that is a regional marketing strategy designed to attract renters regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan shall also target those potentially eligible persons who are least likely to apply for restricted units in that region. The affirmative marketing plan shall be continuing and cover the period of deed restriction.

(b) The developer or subsequent owner of an affordable development shall comply with the affirmative marketing plan for restricted units.

(c) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;
2. The number of units, including the number of rental units;
3. The rent for rental units;
4. The name of the rental manager;

5. A description of the random selection process that will be used to select occupants of restricted units; and

6. Disclosure of required application fees.

(d) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of units, including restricted units. In developing the plan, the developer or subsequent owner of the affordable development shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers of general circulation within the region;

2. The names of specific radio and television stations broadcasting throughout the region;

3. The names of other publications circulated within the region, such as neighborhood oriented weekly newspapers, religious publications, and organizational newsletters;

4. The names of employers throughout the region that will be contacted to post advertisements and distribute flyers regarding the available restricted units;

5. The names of specific community and regional organizations that will aid in soliciting low- and moderate-income household applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and

6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

(e) The affirmative marketing process for available restricted units shall begin at least four months prior to expected occupancy. In implementing the affirmative marketing program, the developer or subsequent owner of the affordable development shall undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed pursuant to (d)1 above;

2. Broadcast of one advertisement by a radio or television station listed above pursuant to (d)2 above;

3. At least one additional regional marketing strategy using one of the sources listed [pursuant to] at (d)3, 4, 5, and 6 above; and

4. Addition of the affordable development to the Agency's New Jersey Housing Resource Center website.

(f) Such advertising and outreach shall take place during the first week of the affirmative marketing program and each month thereafter until all the restricted units have been leased. The advertisement shall include at least the following:

1. The location of the restricted units;

2. Directions to the restricted units;

3. The range of rents for the restricted units;

4. The size, as measured in bedrooms, of the restricted units;

5. The maximum income permitted to qualify for the restricted units;

6. The location of applications for the restricted units;

7. The business hours when interested households may obtain an application for a restricted unit; and

8. Application fees, if any.

(g) Applications for restricted units shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s), and the municipal library in the municipality in which the restricted units are located; and the rental office of the developer or the subsequent owner of the affordable development. Applications shall be mailed to prospective applicants upon request.

19:31V-[1.22]1.23 Affordability controls: household selection; related project information

(a) The developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate-income levels.

(b) When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect. For the purposes of this subchapter, income and assets, and verification of same, shall be defined

and calculated as set forth by the Agency for Federal low-income housing tax credits.

(c) Households shall also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

(d) The following information shall be maintained by the developer or subsequent owner of the affordable development and shall be provided to the Agency or the Authority upon request:

1. The total number of units in the redevelopment project, and number of restricted units, broken down by bedroom size, identifying which are moderate-, low-, and very low-income units, and including street addresses of restricted units;

2. Floor plans of all restricted units, including complete and accurate identification of uses and dimensions of all rooms;

3. A project map identifying the locations of restricted units and market units;

4. Proposed rent for all units;

5. Any maintenance or other fees;

6. Sewer, trash disposal, and any other utility assessments;

7. A description of all HVAC systems;

8. Location of any common areas and elevators;

9. Proposed form of lease; and

10. The name of the person who is responsible for compliance with the affordability controls.

(e) The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

19:31V-[1.23]1.24 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

(b) [An applicant] **A developer** may appeal the [Board's] **Authority's** action by submitting in writing to the Authority, within 20 calendar days from the effective date of [the Board's] **such** action, an explanation [as to how the applicant has met the Program criteria] **of the grounds for such appeal**. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(c) Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer **of the Authority, or designee**, shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record, **which includes, but is not limited to, the written appeal, any documentation provided in support of the appeal, and any written staff response to the appeal**. The hearing officer may require an in-person hearing. The hearing officer **and** has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information [that would demonstrate that the applicant meets all of the application criteria].

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board

[his or her] **setting forth the hearing officer's** finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The [applicant] **developer** shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. **Any such comments will be incorporated into the final report presented to the Board.**

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer **of the Authority**, if any, and any written comments and exceptions timely submitted by the [applicant] **developer**. Based on that review, the Board shall issue a final decision on the appeal.

4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

19:31V-[1.24]1.25 Reports by the Authority to the Governor and Legislature on implementation of the Program

(a) Beginning in 2022, and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the Program, and submit the report to the Authority, the Governor, and, pursuant to N.J.S.A. 52:14-19.1, to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit pursuant to the Program, a detailed analysis of the consideration given in each project to the factors set forth at N.J.S.A. 34:1B-326 and 327 and N.J.A.C. 19:31V-1.6 and 1.7, in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant to N.J.S.A. 52:14-19.1, to the Legislature.

(b) On or before December 31, 2023, the Authority shall submit a report to the Governor and, pursuant to N.J.S.A. 52:14-19.1, the Legislature on the effectiveness of the Program in encouraging development in government-restricted municipalities, which report shall include, at a minimum, recommendations to incentivize additional development in government-restricted municipalities through financial assistance or other incentives that the authority determines are appropriate.

19:31V-[1.25]1.26 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.