MEMORANDUM

TO: Members of the Authority

FROM: Timothy J. Lizura, President and Chief Operating Officer

RE: New Health and Taxation Buildings in Trenton, Mercer County
Approval of Comprehensive Development Budget and Site License
(P44613, P44238)

DATE: December 12, 2017

SUMMARY
I request that the Members approve:

1. The comprehensive development budget for the construction of the Health and
   Taxation buildings and related site improvements, and the demolition of the existing
   Health and Agriculture buildings in the amount not to exceed $226,307,000
   (excluding the cost of issuance, capitalized interest, and the bond underwriter’s
discount)

2. A site license between New Jersey Department of the Treasury, Division of Property
   Management and Construction (“DPMC”) and EDA for Block 10701, Lots 1 through
   3, Trenton, Mercer County, which will permit the development of site improvements
   related to the new Taxation building, the use of the site for construction related
   activities, the demolition of the existing Health and Taxation buildings, and
   development of an interim parking lot on the existing Health and Agriculture
   buildings site upon completion of the demolition

In a separate memo, the Members will be requested to approve a bond resolution that authorizes
the ground leases between DPMC and EDA for the Health and Taxation building sites, the
subleases between EDA and DPMC which authorizes the construction of the Health and
Taxation buildings and the use of the completed buildings as offices for state employees, and the
issuance of bonds by EDA to fund the development of the new Health and Taxation buildings,
related improvements, the demolition of the existing Health and Agriculture buildings, and
construction of an interim parking lot on the existing Health and Agriculture buildings site upon
completion of the demolition.
BACKGROUND

1. Members’ Approval of Funding and Memorandum of Understanding (MOU) for Feasibility Study

In 2014, Treasury requested the Authority to prepare a Feasibility Study to build on the assumptions in the Lammey & Giorgio report and to recommend the most cost effective solution for the relocation of the departments that currently occupy the Health, Agriculture and Taxation buildings.

The Members have taken the following actions:

- In June 2014, the Members approved MOU and funding for the Feasibility Study
- In December 2014, the Members approved a $1 million bond reimbursement resolution to reimburse the cost of the Feasibility Study upon issuance of the bond to construct the Health, Taxation and Agriculture buildings and the hiring of KSS Architect as the consultant to assist Real Estate staff with the Feasibility Study.

The Authority expended $248,000 on the Feasibility Study. Under the Feasibility Study MOU, DPMC will reimburse EDA $124,000 of Feasibility Study costs. The balance will be reimbursed from bond proceeds for the Project.

The Feasibility Study was completed in May 2015, and recommended in part the following:

- Replace the existing Taxation, Health and Agriculture buildings with two new buildings
- Demolish the existing Health and Agriculture buildings
- To either demolish, rehabilitate, or sell, through a competitive bid process, the existing Taxation Building at Treasury’s sole discretion

EDA presented the Feasibility Study to DPMC and the City of Trenton Department of Economic Development (“City”) and DPMC and the City selected the following new construction alternative of new construction of a ±7 story (±175,000 sf) building on an existing State parking lot on the southwest corner of John Fitch Way and North Warren Street, and ±5 story (±135,000 sf) building on existing State parking lot at the southwest corner of North Willow and West Hanover Streets.

2. Members’ Approval of Funding, Predevelopment Services Budgets, MOUs, and A/E Contracts and Reimbursement Resolutions

a. Predevelopment Services Funding, Budgets, and MOUs

In September 2016, the Members approved the predevelopment funding, Predevelopment Services Budget in the amount of $3,602,940, and two MOUs between DPMC and EDA for predevelopment services for a ±135,000 sf Health and Agriculture building that would be located at North Willow and West Hanover Streets, and ±175,000 sf Taxation building that would be located at the corner of John Fitch Way and South Warren Street (the “Project”).
Under the MOUs, EDA provided the following predevelopment services:

- Site due diligence, which included an appraisal, title, and environmental review to determine the suitability of the parcels for the Proposed Project

- Design development services which included preliminary plans through the design development phase, a project schedule, and a construction cost estimate that included the cost to demolish the Health and Agriculture buildings, and the cost to demolish, rehabilitate or sell the existing Taxation building

- Development of budgets, which included the DPMC approved Predevelopment Services budget and the preparation of the preliminary comprehensive development budget

b. A/E Contracts
On February 14, 2017, the Members approved the following A/E and CM contracts:

- HDR’s architectural and engineering contract and Turner Construction’s construction management contract and authorized design development services for the Health and Agriculture building

- Ballinger’s architectural and engineering contract and Torcon Inc.’s construction management contract and authorized design development services for the Taxation building

c. Reimbursement Resolution
In December 2016, the Members approved a $4 million bond reimbursement resolution to authorize the repayment of EDA for the interim financing provided to fund the Project’s predevelopment services.

3. First Amendment to the MOUs, Additional Funding, Amended Budgets, and Reimbursement Resolution.

a. Additional Funding and Predevelopment Services Budget Revisions
In January 2017, DPMC directed EDA to add approximately 75,000 sq ft to the proposed 135,000 sq ft Health and Agriculture building, and approximately 25,000 sq ft to proposed 175,000 sq ft Taxation building. The increase of the two buildings required Members to authorize $816,292 in additional funding to pay for additional design services and other project related costs for the Project.

b. Amendments to the A/E Contracts
Due to the increase in the building size, the A/E predevelopment budget allocations were increased as follows:

- HDR’s design development fee was increased from $1,168,689 to $1,617,975
- Ballinger’s design development fee was increased from $1,506,311 to $1,837,259
c. First Amendment to the MOUs
The MOUs were amended as follows:

- Increased the Taxation building size from ±175,000 sf to ±200,000 sf and increased the Health and Agriculture building size from ±135,000 sf to ±209,000 sf
- EDA provided $816,292 in additional predevelopment services funding
- Increased the predevelopment services budgets from $3,602,940 to $4,419,232 to include the additional predevelopment services funding
- Increased the parcel sizes from the building footprints to include the building footprint and related site improvements
- Moved the proposed Taxation building from the corner of John Fitch Way and South Warren Street west along John Fitch Way and immediately north of the Labor Building.

d. Reimbursement Resolution
In July 2017, the Members approved a bond reimbursement resolution in an amount not to exceed $5 million, which accounted for the additional EDA financing provided for the Project’s additional predevelopment services in the First Amendment to the MOUs.

4. Project Revisions
The design and space planning activities for the Project included the following revisions:

a. Revised Building Sizes
As a result of the design development programming activities, the new Health building will be 209,300 sf and the new Taxation building will be 209,400 sf.

b. Increased Building Occupancy
Increasing square feet of the Health building from 135,000 sf to 209,300 sf, and the Taxation building from 175,000 sf to 209,400 sf feet has increased the occupancy of each building as follows:

<table>
<thead>
<tr>
<th>Buildings</th>
<th>Initial Occupancy Projection</th>
<th>Revised Occupancy Projection</th>
<th>Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Health Building</td>
<td>398</td>
<td>879</td>
<td>481</td>
</tr>
<tr>
<td>Taxation Building</td>
<td>999</td>
<td>1,152</td>
<td>153</td>
</tr>
<tr>
<td>Totals</td>
<td>1,397</td>
<td>2,031</td>
<td>634</td>
</tr>
</tbody>
</table>
c. Relocation of Heath Staff to the New Health Building
The building was initially planned for the relocation of Health and Agriculture staff, but now the building will be the new home for Health staff only from the existing Health building and other lease spaced within Trenton. Agriculture staff will backfill space (excluding the existing Health building that will be demolished) that is currently vacant or that will be vacated by Health staff that will move to the new Health building.

d. Existing Taxation Building Demolition Funding
The comprehensive development budget will not include an allowance to demolish the existing Taxation building if the marketing of the building for alternative use through a request for proposal or other process is not successful. Treasury has decided to defer funding, if needed, to a later date.

e. Lease and Sublease Property Size for the New Taxation Building
The Lease and sublease for the proposed Taxation building only will include the proposed building’s footprint for the following reasons:

- The Proposed Taxation building will be included on a consolidated lot which includes the existing Labor, Health and Taxation Buildings

- The consolidated lot also serves as parking for state employees.

5. Comprehensive Development Budget

The detailed comprehensive development budget for the Project is attached as Exhibit A to this memo. The following chart summarizes the budget for the new Health and Taxation buildings, the demolition of the existing Health and Agriculture buildings, and the development of an interim parking lot on the existing Health and Agriculture buildings site after completion of the Health and Agriculture buildings demolition:

<table>
<thead>
<tr>
<th>Uses</th>
<th>% Project</th>
<th>Health &amp; Taxation</th>
<th>Health</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary of Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.00 Acquisition</td>
<td>0.49%</td>
<td>$1,119,800</td>
<td>$352,500</td>
<td>$767,300</td>
</tr>
<tr>
<td>2.00 Improvements - Demolition</td>
<td>4.60%</td>
<td>$10,412,600</td>
<td>$10,412,600</td>
<td>$0</td>
</tr>
<tr>
<td>3.00 Improvements - Construction</td>
<td>74.93%</td>
<td>$169,569,000</td>
<td>$77,592,000</td>
<td>$91,977,000</td>
</tr>
<tr>
<td>4.00 Professional Services</td>
<td>5.65%</td>
<td>$12,789,000</td>
<td>$6,281,000</td>
<td>$6,508,000</td>
</tr>
<tr>
<td>5.00 Finance and Administration</td>
<td>3.00%</td>
<td>$6,795,000</td>
<td>$3,397,000</td>
<td>$3,398,000</td>
</tr>
<tr>
<td>6.00 Contingency</td>
<td>8.41%</td>
<td>$19,029,000</td>
<td>$8,763,000</td>
<td>$10,266,000</td>
</tr>
<tr>
<td>7.00 EDA Fee</td>
<td>2.91%</td>
<td>$6,592,000</td>
<td>$3,204,000</td>
<td>$3,388,000</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td>100.00%</td>
<td><strong>$226,306,400</strong></td>
<td><strong>$110,002,100</strong></td>
<td><strong>$116,304,300</strong></td>
</tr>
</tbody>
</table>

**ROUNDED**

**$226,307,000**

**$110,003,000**

**$116,305,000**
<table>
<thead>
<tr>
<th>Sources</th>
<th>Health &amp; Taxation</th>
<th>Health</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Summary of Sources</strong></td>
<td>418,700 SF</td>
<td>209,300 SF</td>
<td>209,400 SF</td>
</tr>
<tr>
<td>8.01 Bond - 2017 A Series</td>
<td>$209,616,800</td>
<td>$96,451,500</td>
<td>$113,165,300</td>
</tr>
<tr>
<td>8.02 Bond - 2017 B Series</td>
<td>$16,689,600</td>
<td>$13,550,600</td>
<td>$3,139,000</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td><strong>$226,306,400</strong></td>
<td><strong>$110,002,100</strong></td>
<td><strong>$116,304,300</strong></td>
</tr>
<tr>
<td><strong>ROUNDED</strong></td>
<td><strong>$226,307,000</strong></td>
<td><strong>$110,003,000</strong></td>
<td><strong>$116,305,000</strong></td>
</tr>
</tbody>
</table>

The Finance and Administration budget section includes a repair and replacement reserve of approximately $3.12 million for each building.

EDA’s total fee on the two buildings for development, design and construction management services is approximately three percent (3%) of budget sections 1 through 6.

The comprehensive development budget does not account for the following additional costs for the two buildings:

- The cost of issuance (which includes EDA’s bond and counsel fees), currently estimated at $391,000
- The bond underwriter’s discount, currently estimated at $1.12 million
- Capitalized interest, currently estimated at $5.47 million

6. *Site License for Block 10701, Lots 1 through 3, Trenton, Mercer County*

DPMC and EDA will enter into a site license agreement that will govern:

- The parking lot and site improvements for the new Taxation building
- Use of the site for construction related activities
- The demolition of the existing Health and Agriculture buildings
- The development of an interim parking lot on the existing Health and Agriculture buildings site after the two buildings are demolished

The license is attached to this memo as Exhibit B. The final license may be subject to revision, although the basic terms will remain consistent with the attachment. The final terms of the license will be subject to the approval of the Chief Executive Officer, President/Chief Operating Officer, the Attorney General’s Office, and DPMC.
Recommendation

In summary, I request the Members:

- Approve the comprehensive development budget in the amount not to exceed $226,307,000 (excluding the cost of issuance, capitalized interest, and the bond underwriter’s discount) for the construction of the Health and Taxation buildings and related improvements, the demolition of the existing Health and Agriculture buildings, and construction of an interim parking lot on the Health and Agriculture buildings site after the completion of the demolition.

- Consent to enter into the site license with DPMC generally consistent with the form attached.

Timothy J. Lizura
President and Chief Operating Officer

Attachments: Exhibits A and B
Prepared by: Juan Burgos
### Exhibit A

**Comprehensive Development Budget: Trenton Health and Taxation State Office Buildings**

**Uses and Sources of Funds**

<table>
<thead>
<tr>
<th>Employees:</th>
<th>2,031</th>
<th>879</th>
<th>1,152</th>
</tr>
</thead>
<tbody>
<tr>
<td>Uses of Funds</td>
<td>Health &amp; Taxation</td>
<td>Health</td>
<td>Taxation</td>
</tr>
<tr>
<td>1.00</td>
<td>Acquisition</td>
<td>418,790 SF</td>
<td>209,300 SF</td>
</tr>
<tr>
<td>1.01</td>
<td>Property Acquisition (financing taxes, legal fees, title &amp; escrows)</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>1.02</td>
<td>Appraisal, Survey, Title and Procurement Fees</td>
<td>$113,440</td>
<td>$64,500</td>
</tr>
<tr>
<td>1.03</td>
<td>Temporary Replacement Parking (rent spaces)</td>
<td>$96,400</td>
<td>$288,000</td>
</tr>
<tr>
<td><strong>Subtotal Acquisition</strong></td>
<td><strong>$1,119,800</strong></td>
<td><strong>$355,500</strong></td>
<td><strong>$767,300</strong></td>
</tr>
<tr>
<td>2.00</td>
<td>Improvements - Demolition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2.01</td>
<td>Demolition of Existing Buildings (Health and Agriculture)</td>
<td>$8,897,000</td>
<td>$8,897,000</td>
</tr>
<tr>
<td>2.02</td>
<td>Construct Replacement Parking Where Building Demolished</td>
<td>$1,514,700</td>
<td>$1,514,700</td>
</tr>
<tr>
<td><strong>Subtotal Improvements Demolition</strong></td>
<td><strong>$10,412,600</strong></td>
<td><strong>$10,412,600</strong></td>
<td><strong>$0</strong></td>
</tr>
<tr>
<td>3.00</td>
<td>Improvements - Construction</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.01</td>
<td>Site and Building Construction</td>
<td>$144,753,000</td>
<td>$65,987,000</td>
</tr>
<tr>
<td>3.02</td>
<td>Fixtures, Furniture and Equipment</td>
<td>$18,897,000</td>
<td>$8,912,000</td>
</tr>
<tr>
<td>3.03</td>
<td>Site Environmental Remediation Allowance</td>
<td>$83,000</td>
<td>$33,000</td>
</tr>
<tr>
<td>3.04</td>
<td>Permits, Approvals and Fees</td>
<td>$2,632,000</td>
<td>$1,220,000</td>
</tr>
<tr>
<td>3.05</td>
<td>Site Work - Traffic Controls</td>
<td>$500,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>3.06</td>
<td>Public Art Inclusion Requirement</td>
<td>$2,713,000</td>
<td>$990,000</td>
</tr>
<tr>
<td><strong>Subtotal Improvements - Construction</strong></td>
<td><strong>$169,569,000</strong></td>
<td><strong>$77,592,000</strong></td>
<td><strong>$91,977,000</strong></td>
</tr>
<tr>
<td>4.00</td>
<td>Professional Services</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.01</td>
<td>Architect/Engineer - Design</td>
<td>$12,458,000</td>
<td>$6,099,000</td>
</tr>
<tr>
<td>4.02</td>
<td>Architect/Engineer - Feasibility</td>
<td>$1,240,000</td>
<td>$62,000</td>
</tr>
<tr>
<td>4.03</td>
<td>Construction Manager - Pre-Construction</td>
<td>$15,000</td>
<td>$15,000</td>
</tr>
<tr>
<td><strong>Subtotal Professional Services</strong></td>
<td><strong>$12,759,000</strong></td>
<td><strong>$6,285,000</strong></td>
<td><strong>$5,598,000</strong></td>
</tr>
<tr>
<td>5.00</td>
<td>Finance and Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.01</td>
<td>EDA Bond Commitment Fee</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>5.02</td>
<td>Bond, Legal and Other Fees</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>5.03</td>
<td>Insurances</td>
<td>$901,000</td>
<td>$250,000</td>
</tr>
<tr>
<td>5.04</td>
<td>Repair and Replacement Reserve</td>
<td>$2,777,000</td>
<td>$1,318,000</td>
</tr>
<tr>
<td>5.05</td>
<td>EDA Predevelopment Loan Interest</td>
<td>$18,000</td>
<td>$9,000</td>
</tr>
<tr>
<td><strong>Subtotal Finance and Administration</strong></td>
<td><strong>$6,950,000</strong></td>
<td><strong>$3,597,000</strong></td>
<td><strong>$3,388,000</strong></td>
</tr>
<tr>
<td>6.00</td>
<td>Contingency</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6.01</td>
<td>Project Contingency</td>
<td>$19,029,000</td>
<td>$8,763,000</td>
</tr>
<tr>
<td><strong>Subtotal Contingency</strong></td>
<td><strong>$19,029,000</strong></td>
<td><strong>$8,763,000</strong></td>
<td><strong>$10,266,000</strong></td>
</tr>
<tr>
<td>7.00</td>
<td>EDA Fee</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7.01</td>
<td>NJEDA Development and Project Management Fee</td>
<td>$6,592,000</td>
<td>$3,204,000</td>
</tr>
<tr>
<td><strong>Subtotal Administrative Fee</strong></td>
<td><strong>$6,592,000</strong></td>
<td><strong>$3,204,000</strong></td>
<td><strong>$3,388,000</strong></td>
</tr>
</tbody>
</table>

**Summary of Uses**

<table>
<thead>
<tr>
<th>Uses</th>
<th>Health &amp; Taxation</th>
<th>Health</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.00</td>
<td>Acquisition</td>
<td>418,790 SF</td>
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</tr>
<tr>
<td>2.00</td>
<td>Improvements - Demolition</td>
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<td>3.00</td>
<td>Improvements - Construction</td>
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<td>$77,592,000</td>
</tr>
<tr>
<td>4.00</td>
<td>Professional Services</td>
<td>$12,759,000</td>
<td>$6,285,000</td>
</tr>
<tr>
<td>5.00</td>
<td>Finance and Administration</td>
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<td>$3,597,000</td>
</tr>
<tr>
<td>6.00</td>
<td>Contingency</td>
<td>$19,029,000</td>
<td>$8,763,000</td>
</tr>
<tr>
<td>7.00</td>
<td>EDA Fee</td>
<td>$6,592,000</td>
<td>$3,204,000</td>
</tr>
<tr>
<td><strong>Total Uses</strong></td>
<td><strong>$228,306,400</strong></td>
<td><strong>$110,002,100</strong></td>
<td><strong>$115,304,300</strong></td>
</tr>
</tbody>
</table>

**Sources**

<table>
<thead>
<tr>
<th>Health &amp; Taxation</th>
<th>Health</th>
<th>Taxation</th>
</tr>
</thead>
<tbody>
<tr>
<td>8.00</td>
<td>Summary of Sources</td>
<td>418,790 SF</td>
</tr>
<tr>
<td>8.01</td>
<td>Bond - 2017 A Series</td>
<td>$296,016,800</td>
</tr>
<tr>
<td>8.02</td>
<td>Bond - 2017 B Series</td>
<td>$10,095,000</td>
</tr>
<tr>
<td><strong>Total Sources</strong></td>
<td><strong>$306,111,800</strong></td>
<td><strong>$99,990,300</strong></td>
</tr>
</tbody>
</table>

**Surplus (GAP)** | $0 | $0 | $0
Exhibit B

SITE LICENSE AGREEMENT
STATE OFFICE BUILDINGS PROJECT
BLOCK 10701, LOTS 1, 2 and 3, TRENTON, NEW JERSEY

THIS AGREEMENT is made this ____ day of ______________, 2017, by and between the DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION, DEPARTMENT OF TREASURY, STATE OF NEW JERSEY (“DPMC”) and the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“NJEDA”), collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, on July 22, 2014, the Parties entered into a Memorandum of Understanding (“MOU”) authorizing NJEDA to prepare a Feasibility/Basis of Design Study for the Taxation and Health and Agriculture Buildings in the City of Trenton, which considered the alternatives of new construction replacement buildings, rehabilitation of the existing buildings, and/or leasing new space in the open market;

WHEREAS, on October 7, 2016, the Parties entered into a subsequent Memorandum of Understanding (“Health/Ag MOU”) authorizing NJEDA to perform predevelopment services for the Health and Agriculture Building that would be located on the southwest corner of North Willow and West Hanover Streets;

WHEREAS, it was subsequently determined that the predevelopment services (“Health Project”) would be performed solely for the Department of Health at the above building at the corner of North Willow and West Hanover Streets (“Health Building”);

WHEREAS, on October 7, 2016, the Parties entered into a subsequent Memorandum of Understanding (“Taxation MOU”) authorizing NJEDA to perform predevelopment services for the Taxation Building that would be located on the southwest corner of John Fitch Plaza and North Warren Streets (“Taxation Project”);

WHEREAS, the Health Project and the Taxation Project are collectively referred to as the “Projects”;

WHEREAS, in 2017, NJEDA completed the predevelopment services and the State Treasurer and DPMC have approved the plans and budgets for both of the Projects;

WHEREAS, the Health Project and Taxation Project have received the required State Approvals outlined in the Health/Ag MOU and the Taxation MOU;
WHEREAS, the Projects are now entering Phase Three - Financing/Construction phase;

WHEREAS, NJEDA has engaged contractors and consultants to construct the improvements at the Projects; and

WHEREAS, NJEDA requires a license from DPMC for entry and use of its site known as Tax Block 10701, Lots 1, 2 and 3 (the “Premises”) as identified on the attached tax map, Exhibit “A”, for (i) construction staging for the Taxation Project, (ii) construction thereafter of an interim parking lot for State employees, and (iii) demolition of the existing Health/Ag Buildings and associated appurtenances, which is a component of the Health Project.

NOW, THEREFORE, the Parties hereto, for and in consideration of the foregoing premises and of the mutual promises set forth below, with the intention of being legally bound, agree as follows:

1. **Right of Entry and Use:** DPMC does hereby grant to NJEDA, its employees, officers, agents, consultants, contractors and invitees, a right of ingress and egress to the Premises and a license to use the Premises for the purpose of construction staging, construction of an interim parking lot, and demolition of the existing Health/AG Buildings and associated appurtenances (the “Work”).

2. **Term:** The Premises will be available to NJEDA for the purpose set forth herein commencing immediately upon the date first above written This Agreement shall remain in effect until NJEDA receives final approval from the New Jersey Department of Community Affairs for all of the Work at the Projects at which point this Agreement shall automatically terminate. NJEDA will notify DPMC upon completion of each stage of the Work. Notwithstanding the foregoing, this Agreement may be extended upon mutual agreement of both Parties, in writing.

3. **Operation of the Premises:** The NJEDA will be solely responsible for any and all Work activities at the Premises during the term.

4. **Legal Compliance:** NJEDA will comply with all applicable laws, regulations, and ordinances associated with the Work.

5. **Liability:** NJEDA assumes all risks and liability associated with the Work and DPMC shall have no responsibility in this regard.

6. **Environmental Liability:** DPMC will be the responsible party for the Premises’ environmental condition. It is expressly understood that this Agreement and any and all subsequent, associated agreements will not obligate NJEDA to incur any liability for any
known or unknown pre-existing environmental conditions of the Premises.

7. **Consultants and Contractors:** Any and all consultants and contractors hired by NJEDA who enter upon the Premises shall:

   i. Indemnify, defend and hold DPMC and EDA and their respective employees, agents and representatives harmless from any and all damages, losses or claims related to or arising from said consultant or contractor, or any agent, employee, subcontractor, supplier or subconsultant of such consultant or contractor entering the Premises.

   ii. Maintain adequate insurance coverage as set forth on Exhibit “B” attached hereto.

   iii. Be aware of and comply with all federal, state and local laws, ordinances, rules and regulations that affect those engaged or employed on the Project, or that affect the conduct of the Work.

8. **Application of Laws and Regulations:** This Agreement shall be interpreted under the laws of the State of New Jersey.

9. **Other Approvals.** Each Party will obtain all applicable governmental approvals, permits, and authorizations necessary to effectuate their respective responsibilities under this Agreement.

10. **PSE&G Project:** The Parties acknowledge that PSE&G will be performing environmental testing and remediation on a portion of the Premises NJEDA will make a good faith effort to coordinate the Work with PSE&G so that the respective projects do not interfere or impede with each other.

11. **Notices:** All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been given when mailed by certified mail, return receipt requested, addressed to the intended recipient as follows:

    If to DPMC:
    Department of Treasury
    Division of Property Management & Construction
    33 West State Street
    P.O. Box 229
    Trenton, NJ 08625-0229
    Attention: Director, Division of Property Management & Construction

    If to NJEDA:
New Jersey Economic Development Authority
36 West State Street
P.O. Box 990
Trenton, NJ 08625-0990
Attn: VP, Real Estate Division

With a copy to:
Gary A. Kotler, DAG
Department of Law & Public Safety
Division of Law – Pension & Financial Transactions
Hughes Justice Complex
P.O. Box 106
Trenton, NJ 08625-0106

12. Amendment: This Agreement may be amended upon written consent of all Parties hereto.

13. Assignment: This Agreement shall not be assigned, nor any interest herein, in whole or in part, without prior written approval from all Parties to this Agreement, which approval shall not be unreasonably withheld.

14. Termination: This Agreement shall not be terminated by either Party except arising from a (i) default hereunder that is not cured or (ii) right of termination set forth in the lease/sublease for the Projects.

15. Incident Reporting: All accidents or injuries to persons, or any damages, occurring as a result of the Work shall be reported promptly to DPMC’s Director.

16. Claims: Notwithstanding any provision in this Agreement to the contrary, the Parties hereto agree that any and all claims based in tort made against NJEDA or DPMC for damages, including, but not limited to costs and expenses, shall be governed by and subject to the limitations of the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et seq.) and that any and all claims based in contract made by anyone against NJEDA or DPMC for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et seq).

17. Waiver: A waiver by any party of a breach or default by the other party of any provision of this Agreement shall not be deemed a waiver of future compliance therewith, and such provisions shall remain in full force and effect.

18. Captions: All headings preceding the text of the several sections and paragraphs hereof are inserted solely for the convenience and reference of the Parties and shall not constitute a
part of this Agreement, nor shall they affect the meaning or interpretation thereof.

18. **Severability:** In any provision of this Agreement shall be invalid or unenforceable, in whole or in part, such provision and this Agreement shall be deemed and construed to be modified or restricted to the extent that and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement as the case may require.

IN WITNESS WHEREOF, and intending to be bound hereby, the Parties hereto have caused this Agreement to be duly executed, effective as of the day and year first above written.

ATTEST: 

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By: ___________________________

Donna T. Sullivan
Vice President, Real Estate Division

By: Maureen Hassett, SVP Governance, Communications And Strategic Initiatives

ATTEST

STATE OF NEW JERSEY, DEPARTMENT OF TREASURY, DIVISION OF PROPERTY MANAGEMENT AND CONSTRUCTION

By: ___________________________

Christopher Chianese
Director

The foregoing document has been reviewed and approved as to form.
Christopher S. Porrino, Attorney General

By: ___________________________

Gary A. Kotler
Deputy Attorney General
EXHIBIT “A”
EXHIBIT "B"

INSURANCE CERTIFICATE REQUIREMENTS FOR CONTRACTORS

The Contractor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the State of New Jersey. The Contractor shall obtain this coverage from A VII or better rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis. The types and minimum amounts of insurance required are as follows:

WORKERS’ COMPENSATION
New Jersey Statutory Coverage and Employers’ Liability Insurance. Employer’s Liability shall carry limits of $1,000,000 each accident, $1,000,000 Disease - Each Employee and $1,000,000 Disease – Policy Limit.

COMMERCIAL GENERAL LIABILITY INSURANCE
Contractor shall maintain Commercial General Liability Insurance (CGL), of $1,000,000 each occurrence and $2,000,000 in the aggregate, for products/completed operations. If such CGL insurance contains a general aggregate limit, it shall apply separately to the Project site. Limits may be provided through a combination of General Liability and Umbrella coverages. Umbrella coverage is indicated below.

CGL insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall cover liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract. This insurance must include Contractor's Independent (Contingent) Liability Coverage, Broad Form Property Damage, and Personal Injury Coverage, without an employee exclusion.

The New Jersey Economic Development Authority (“NJEDA”), and the State of New Jersey shall be included as an additional insured under the CGL insurance, using ISO additional insured endorsement CG 20 10 11/85 (or a substitute form providing equivalent coverage). This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the NJEDA.

COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE
Covering all owned, hired and non-owned automobiles with a minimum policy limit of $1,000,000 Combined Single Limit per occurrence. NJEDA and the State of New Jersey shall be included as an additional insured. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to NJEDA.

UMBRELLA/EXCESS LIABILITY
Commercial Umbrella/Excess Liability Insurance with a limit of not less than $15,000,000 each occurrence and in the aggregate. Such coverage shall follow the underlying General Liability, Automobile, and Employers Liability policies, including but not limited to the additional insureds and primary status requirements.
POLLUTION LIABILITY
Pollution Liability as a result of all construction operations at the job site, while in transit or at non-owned disposal sites, including coverage for mold/fungus, asbestos and lead with minimum policy limits of $2,000,000 each occurrence and $4,000,000 aggregate. NJEDA and the State of New Jersey shall be included as Additional Insureds. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Additional Insureds. Coverage may be provided on a claims-made basis as long as the retroactive date is prior to commencement of work at the site (must be indicated on certificate of insurance) and continuous coverage is maintained or an extended discovery period exercised for a period of five (5) years beginning from the time the policy is terminated.

WAIVER OF RIGHTS
Contractor waives all rights against the New Jersey Economic Development Authority and its agents for recovery of damages to the extent these damages are covered by the Commercial General Liability, Business Automobile Liability or Commercial Umbrella Liability Insurance maintained by Contractor.

If the insurance policies purchased by Contractor as required above do not expressly allow the insured to waive rights of subrogation prior to loss, Contractor shall cause them to be endorsed with a waiver of subrogation as required above.

CONTRACTORS EQUIPMENT INSURANCE
Any insurance policy covering the machinery and equipment of the contractor, subcontractors and subordinate subcontractors against loss by any cause shall include an endorsement providing that the underwriters waive their right of subrogation against the owner, the architect and/or engineer, the contractor and all subcontractors and subordinate subcontractors.

CERTIFICATE
Prior to the commencement of work hereunder, the Contractor shall furnish to NJEDA, a Certificate of Insurance, executed by a duly authorized representative of each insurer, evidencing compliance with the insurance requirements set forth herein. All policies and corresponding certificates must show thirty (30) days prior written notice of cancellation to NJEDA. Failure of NJEDA to demand such certificate or other evidence of full compliance with these insurance requirements or failure to identify a deficiency from evidence that is provided shall not be construed as a waiver of Contractor’s obligation to maintain such insurance. Failure to maintain the required insurance may result in termination of this contract at NJEDA’s option. Contractor shall provide certified copies of all insurance policies required within ten (10) days of NJEDA’s written request for such policies. If Contractor fails to maintain the insurance as set forth herein, NJEDA shall have the right, but not the obligation, to purchase said insurance at Contractor’s expense, and in connection therewith, including without limitation, NJEDA’s reasonable attorneys fees, on demand. By requiring insurance herein, NJEDA does not represent that coverage and limits will necessarily be adequate to protect Contractor, and such coverage and limits shall not be deemed as a limitation on Contractor’s liability under the indemnities granted to NJEDA in the Contractor Agreement.

SUBCONTRACTORS
Contractor will include all subcontractors as insureds under its policies or will furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors will be subject to the requirements stated herein.