MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Agenda for Board Meeting of the Authority November 10, 2021

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Economic Growth

Incentives

Loans/Grants/Guarantees

Bond Projects

Authority Matters

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

October 13, 2021

MINUTES OF THE MEETING

The Meeting was held by teleconference call.

Members of the Authority present via conference call: Chairman Kevin Quinn, Noreen Giblin representing the Governor's Office; Commissioner Marlene Caride of the Department of Banking and Insurance; State Treasurer Elizabeth Muoio of the Department of Treasury; Roberto Soberanis representing Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Charles Sarlo, Vice Chairman; Philip Alagia, Virginia Bauer, Fred Dumont, Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

Also present via conference call: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; and staff.

Members of the Authority absent: Public Member Massiel Medina Ferrara.

Mr. Quinn called the meeting to order at 10:00 am.

In accordance with the Open Public Meetings Act, Mr. Sullivan announced that notice of this meeting has been sent to the *Star Ledger* and the *Trenton Times* at least 48 hours prior to the meeting, and that a meeting notice has been duly posted on the Secretary of State's bulletin board.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the September 22, 2021 meeting minutes. A motion was made to approve the minutes by Commissioner Caride, seconded by Ms. Bauer, and was approved by the 14 voting members present.

The next item of business was the approval of the September 29, 2021 special meeting minutes. A motion was made to approve the minutes by Ms. Dragon, seconded by Commissioner Caride, and was approved by the 14 voting members present.

FOR INFORMATION ONLY: The next item was the presentation of the Chairman's remarks to the Board.

FOR INFORMATION ONLY: The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board.

INNOVATION

ITEM: Investment in HAX LLC
REQUEST: To approve an investment into a limited liability company, HAX LLC, newly formed by SOSV Investments, LLC, to stand up a hard-technology accelerator in Newark, New Jersey utilizing funds appropriated to the Economic Relief Fund (ERF) to undertake development of or invest in strategic innovation centers and granting delegated authority to the CEO to sign all documents associated with the investment into HAX LLC.
MOTION TO APPROVE: Mr. Sarlo **SECOND:** Ms. Marley **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

AUTHORITY MATTERS

ITEM: Matching Funds for Four Applicant Coalitions for Phase 1 of Build Back Better Regional Challenge
REQUEST: To approve the use of matching funds as part of the Authority's participation in four applicant coalitions to the US Economic Development Administration (US EDA) Build Back Better Regional Challenge (BBBRC).
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Revisions to Traditional Lending Programs
REQUEST: To approve eliminating Access as a standalone pilot program and consolidate its functionality into the Authority's Traditional Loan Programs, and approval to reduce the Authority's interest rate floor from the greater of the applicable US Treasury index or 2% to the greater of the applicable US treasury index or 1% for the Authority's Traditional Loan Programs.
MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Alagia **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Brownfields Impact Fund (US EPA Brownfields Revolving Loan Fund Grant)
REQUEST: To approve the creation of the Brownfields Impact Fund, a pilot program, that will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites; approval of utilization of funding from the Authority's General Operating Budget and/or in-kind contributions to meet the US EPA's cost share requirement for the program; delegation of authority to staff to approve individual applications in accordance with the program memo and specifications: delegated authority to decline application that do not meet eligibility requirements; delegated authority to appoint a hearing officer(s) to prepare final administrative decisions; delegation of authority to accept additional funding up to $5 million over a 15-year period for this program from the US EPA, and to impose additional requirements that may be required consistent with program parameters; and delegation of authority to waive the application fee for subgrant applicants upon demonstration by the applicant that the imposition of the fee would impose undue financial hardship.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Glover **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ECONOMIC GROWTH

NEW JERSEY WIND PORT

ITEM: NJ Wind Port – Request for Moffatt & Nichol Contract Increase for Confined Disposal Facility (CDF) Improvement Design
REQUEST: To approve an increase to the Authority's contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port. Funding will be used for the design of confined disposal facility (CDF) improvements in anticipation of the Port's future dredge placement needs.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Hicks **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

Ms. Dragon abstained due to pending permit reviews before the NJDEP.

ITEM: New Jersey Wind Port – Award of Port Operations Advisory Services Contract
REQUEST: To approve the Authority entering into a contract to provide port operations advisory services in relation to the New Jersey Wind Port project, to include both pre-procurement and procurement phase advisory support, with an initial 3-year contract term with two 1-year extension options. Members are also asked to approve a budget for operations advisory services.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Caride **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

Ms. Dragon abstained due to pending permit reviews before the NJDEP.
Ms. Hicks abstained due to not being prepared to vote in favor.

INCENTIVES

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

ITEM: Technology Business Tax Certificate Transfer Program: 2021 Program Approvals
REQUEST: Approval is recommended for the program applicants, as listed in Attachment A to the memo, that have been evaluated according to the criteria established by the program legislation, and disapproval is recommended for the applicant on Attachment C due to a lack of evidence to support the required eligibility criteria for approval.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Alagia **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

FILM & DIGITAL MEDIA TAX CREDIT

Universal Television, LLC PROD-00192239
MAX AMOUNT OF TAX CREDITS: $2,047,561.17

THIS ITEM WAS WITHHELD FROM CONSIDERATION.

BOND PROJECT

ITEM: NJEDA State Lease Revenue Bonds (State Government Buildings – Health Department, Taxation Division Office, and Juvenile Justice Commission Facilities Projects), 2018 Series and 2018 Series C, Amendment to Subleases - PROD-00152563
REQUEST: To approve amendments to the insurance clause sections of the subleases for the State Government Buildings and the Juvenile Justice Commission projects to align the sublease insurance requirements with the State's insurance program.
MOTION TO APPROVE: Ms. Hicks **SECOND:** Commissioner Caride **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

OFFICE OF RECOVERY
ENERGY RESILIENCE BANK

ITEM: Energy Resilience Bank – Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. – Jersey City Medical Center CHP Project Funding Modification Recommendation
REQUEST: To approve a modification to the June 13, 2017 NJEDA board action for the Barnabas Health, Inc. d/b/a/RWJBH Corporate Service, Inc. – Jersey City Medical Center CHP Project under the Energy Resilience Bank (ERB) program by changing the reservation of ERB funding for the project and extend the Mandatory Project Completion Date to the new funding deadline established by US HUD of March 31, 2023.
MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Alagia **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

LOANS, GRANTS, GUARANTEES

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Treasurer Muoio **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Residential:

PROJECT: Jorge Medina PROD. #00288605
LOCATION: Pennsauken Township, Camden County
PROCEEDS FOR: Remediation, Upgrade and Closure
FINANCING: $133,976.00

PROJECT: Jason Mohren and Justin Mohren PROD. #00258519
LOCATION: Montclair Township, Essex County
PROCEEDS FOR: Remediation
FINANCING: $193,784.06

PROJECT: Michael Schimmel PROD. #00288791
LOCATION: Vineland City, Cumberland County
PROCEEDS FOR: Remediation, Upgrade and Closure
FINANCING: $116,070.75

Commercial:

PROJECT: Steven Bognar PROD. #00258516
LOCATION: Kearny Town, Hudson County
PROCEEDS FOR: Remediation
FINANCING: $31,488.39

Hazardous Discharge Site Remediation Fund (HDSRF)

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

PROJECT: City of Perth Amboy (Second Street Park) PROD. #00288708
LOCATION: Perth Amboy City, Middlesex County
PROCEEDS FOR: Remedial Action
FINANCING: $88,288.60

BOARD MEMORANDA

FYI ONLY: Credit Underwriting Projects Approved Under Delegated Authority, September 2021
FYI ONLY: Real Estate Division Delegated Authority for lease and Right of Entry (ROE)/ Licenses, 3rd Quarter, 2021

PUBLIC COMMENT

Mr. Charles Kratovil, Editor, New Brunswick Today, and New Brunswick resident, addressed the Board regarding his concerns pertaining to the New Brunswick Development Corporation (DEVCO).

EXECUTIVE SESSION

The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss the construction budget on real property where disclosure could adversely impact the public interest.
MOTION TO APPROVE: Mr. Dumont **SECOND:** Commissioner Caride **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

Ms. Dragon left the meeting at this time to abstain from the discussion related to the NJ Wind Port item being discussed in Executive Session due to pending permit reviews before the NJDEP.

The Board returned to Public Session.

NEW JERSEY WIND PORT

ITEM: NEW JERSEY WIND PORT – Request to Issue Notice to Proceed for Construction Services and Request for Construction Funding
REQUEST: To approve the issuance of a Notice to Proceed for construction services for the New Jersey Wind Port and to approve funding for the first construction package.
MOTION TO APPROVE: Mr. Sarlo **SECOND:** Commissioner Caride **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

There being no further business, on a motion by Mr. Quinn, and seconded by Commissioner Caride, the meeting was adjourned at 11:44 am.

Certification: The foregoing and attachments represent a true and complete summary of the actions taken by the New Jersey Economic Development Authority at its meeting.

Danielle Esser

Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: November 10, 2021

Re: November 2021 Board Meeting

As we approach the holiday season, we continue to focus on supporting the recovery of small businesses from the effects of the pandemic and late summer storms. At last count, we had exceeded 92,300 approvals of grants, loans, guarantees of loans, and technical assistance totaling nearly $667 million through our COVID-19 relief programs. In addition, more than 1,000 businesses impacted by storms Henri and Ida have been approved for grants totaling $4.1 million, and additional applications are approved every day.

On Friday, Governor Phil Murphy announced an additional $10 million in funding to support the creation of a third phase of the Sustain and Serve NJ Program, bringing the total program funding to nearly $45 million. Sustain & Serve NJ has provided eligible entities with grants to support the purchase of meals from New Jersey-based restaurants that have been negatively impacted by COVID-19 and to distribute those meals to members of their communities facing food insecurity.

Through the first two phases of the program, the NJEDA awarded more than $34 million to 31 organizations across the state. Since February 2021, Sustain and Serve grantees have purchased two million meals from more than 400 participating restaurants across all 21 counties. Remaining Phase 2 funding and the recently announced Phase 3 funding is expected to bring the total number of meals purchased and distributed through the program to 4.5 million. I'd like to extend a special thank you to Tara Colton and her team for their work on this creative and extraordinarily impactful program, which has proven to be a "win" for restaurants, community-focused organizations, and New Jerseyans struggling to put food on the table during these very challenging times.

Restaurants are among the many types of small businesses that will receive support from programs being created under the Economic Recovery Act of 2020. On October 20th, we began accepting applications for the Small Business Lease Grant Program, which provides grants up to 20 percent of annual lease payments to small businesses and nonprofits entering new or amended market-rate leases for at least 250 square feet of street-level space. Applications are being accepted on a rolling basis until all funds are awarded. Complete eligibility criteria are available at https://www.njeda.com/small-business-lease-grant/.

To help connect business owners to the resources they need, the NJEDA yesterday hosted "Navigating State Departments," a virtual workshop designed to help New Jersey's small businesses, startups, and nonprofits learn how to properly navigate the numerous programs and services offered by State entities. Representatives from the New Jersey Division of Taxation, the New Jersey Department of Treasury, the New Jersey Business Action Center (BAC) and the New Jersey Small Business Development Centers (SBDC) Capital Team offered their expertise on topics such as how to properly register a business in New Jersey; how to obtain a tax clearance certificate; how to certify a business as women-, minority-, or veteran-owned; and ways to access free technical assistance, federal resources, and mentorship opportunities.

Significant progress has also been made toward advancing the State's innovation economy. On October 15th, Governor Murphy joined leaders from Rutgers, the State University of New Jersey, Princeton University, Hackensack Meridian Hospital, RWJ Barnabas, and Assembly Speaker Craig Coughlin – along with other academic, elected, and private sector leaders – to break ground on the historic New Jersey Innovation and Technology Hub, a $665 million, 550,000-square-foot development that will be a center of innovation,

research, and medical education in downtown New Brunswick. Announcements made during the festivities included the relocation of the Rutgers Robert Wood Johnson Medical School to the site and the inclusion of the Rutgers Translational Research facility in the Hub. Also, the County of Middlesex announced that it will become a new Core Partner at the Hub, joining the previously announced Core Partners including Rutgers University, RWJBarnabas Health, Hackensack Meridian Health, the NJEDA, and New Brunswick Development Corporation (Devco), as well as the first tenants, Princeton University and Choose New Jersey. The NJEDA intends to seek approval from its Board for The Hub to be supported as a Strategic Innovation Center.

Our efforts to grow New Jersey's offshore wind industry have also begun to bear fruit. The NJEDA recently received 16 non-binding offers from some of the largest turbine manufacturers and offshore wind developers in the world interested in becoming tenants at the New Jersey Wind Port. This interest from global leaders in offshore wind confirms the industry's strong and sustained interest in partnering with the State to turn the New Jersey Wind Port into an internationally-recognized offshore wind hub that will drive economic growth and job creation in South Jersey and throughout the Garden State. The Wind Port also won the "Strategic Infrastructure Project of the Year" award at CG/LA Infrastructure's 13th Annual North America Infrastructure Leadership Forum.

Thanksgiving is a time to step back and reflect on the blessings in our lives, both material and intangible, and to recognize those who may not be quite as fortunate. The COVID-19 pandemic brought on unprecedented challenges to New Jersey's business community. As members of the NJEDA team, we have been in a unique position to help to advance initiatives that both help address these obstacles and create opportunities for New Jerseyans, with a particular focus on combatting longstanding inequities in communities statewide. We do not take the responsibility of advancing our economic development efforts in an equitable and inclusive way lightly. I am grateful each and every day for our hardworking staff and the support of this Board, and the trust that Governor Murphy has placed in this team to execute on his vision. I wish you a Happy Thanksgiving filled with abundance and bright moments with family and friends.

ECONOMIC GROWTH

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

RE: **Shore Expansion of NJ ZIP, the New Jersey Zero-emission Incentive Program: Voucher Pilot for Medium-duty Zero-emission Vehicles**

REQUEST

The Members of the Board are requested to approve a $20,585,000 expansion to the New Jersey Economic Development Authority's (NJEDA) existing zero-emission medium-duty vehicle voucher pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program. The pilot is currently focused on the adoption and use of zero-emission vehicles in the greater Camden, Newark, and New Brunswick areas, selected based on a number of criteria, including population density. The goal of this expansion is to pilot the program in overburdened communities with lower population density, necessitating an update to the community selection methodology, as well as to deepen access to different vehicle use-cases. In addition, this funding would include the statutorily supported fees for NJEDA to administrate the expanded pilot program, both associated with the current expansion and to account for the administrative fees associated with the Greater New Brunswick Area in the previously approved pilot. The pilot and related administration will continue to be funded from NJEDA's allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. No other programmatic or process changes are proposed, nor changes in delegated authority, in order to maintain consistency across all data collected during the pilot.

OVERVIEW

NJ ZIP pilot is structured as a first-come, first-serve voucher program. It focuses on incentivizing the adoption of medium-duty zero-emission vehicles (ZEV) operating within NJ communities disproportionately impacted by emissions, with two overburdened communities (as defined by NJ P.L.2020, c.92, and which, for the purposes of this pilot, is used interchangeably with the term "environmental justice communities" specified in the RGGI Strategic Funding Plan) selected initially for this pilot: greater Newark and greater Camden areas and, later, utilizing the same selection methodology, the New Brunswick area, as approved through delegated authority on September 29, 2021. The pilot program has allowed New Jersey-registered for-profit businesses or New Jersey non-profit businesses or institutions ("Applicant") to reserve voucher funding for eligible medium-duty ZEV for commercial, industrial, or institutional use. Pursuant to the standard operating procedures adopted to support the pilot's launch after Board approval, the voucher can then be redeemed by their eligible vendor after proof of registration of the eligible vehicle. The pilot program has eligibility requirements for the Applicant, the vehicle purchased, and the vehicle seller/manufacturer ("Vendor").

The primary goals of this pilot program are to:

1) Accelerate the adoption and use of medium-duty zero-emission vehicles within New Jersey;
2) Reduce emissions within the pilot overburdened communities; and
3) Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

In service to these goals, the pilot has received continuous application flow from applicants in the eligible communities, in addition to repeated interest for expansion to more parts of the state and for longer-term funding. As of the end of Q3 2021, thirty-nine (39) purchaser applications have been submitted to the Program, totaling $15.1M in requested funding. Of these, by the end of Q3 2021, seventeen (17) purchaser applications had been approved for a total of $6.76M in vouchers for zero-emission medium-duty vehicles; the remaining applications are in queue for review (17 applications) or, at Applicant request, have been withdrawn (5 applications). The vehicles supported by the approved vouchers would result in the reduction of carbon and particulate emissions within the pilot communities they operate in, greater Camden (6 purchasers) or greater Newark areas (11 purchasers). More than 80% of the approved purchaser applicants are small businesses (receiving a 25% funding bonus), and approximately 60% are minority- and/or woman-owned businesses.

This participation has provided insight into adoption and use-cases relevant to the densest overburdened communities, in the greater Newark and Camden areas. Similarly, as intended, this pilot has also provided an opportunity to assess the effectiveness of the program design, through both quantitative analysis and external feedback.

NJEDA has received both positive and constructive feedback to the program. While larger, structural changes are not being contemplated within a pilot, the original methodology for community selection resulted in densely populated communities being prioritized for the pilot. Lower population density communities, especially those that experience seasonal shifts in population and therefore variable traffic density, have not been eligible. This criteria has had the unintended consequence of favoring vehicle use-cases that predominate densely populated communities, such as last mile truck delivery. As such, NJEDA has not had the opportunity to assess the functionality of the program for the wider range of use-cases, such as long distance shuttles and inter-community buses.

In order to appropriately understand the usage patterns that could impact program design for communities that are less densely populated and/or experience significant seasonal fluctuation in traffic flow, a further expansion and update of the pilot to include such areas is merited. This insight, at a pilot stage, will allow NJEDA to appropriately shape both eligibility and compliance requirements, for future expansions across all communities and vehicle use-cases. Further, the funding level proposed would allow NJEDA to fully allocate its 2020 RGGI proceeds, acting as good stewards of the auction proceeds, making them available to support the communities that have been disproportionately impacted by emissions, including those that cause negative health impacts and climate change. As such, NJEDA is proposing to expand the pilot funding and to include the Greater Shore Area as an eligible community, with a focus on passenger transportation. After evaluation of the impact of this expansion, a longer-term program with expanded eligibility, improved by the learnings of this pilot, may be proposed.

For the purposes of this pilot expansion, the Greater Shore Area is defined as the overburdened communities within or intersected by a line set at a 10-mile distance from New Jersey's eastern Atlantic shore, spanning approximately from Sandy Hook Bay to Delaware Bay. Specifically, the eligible

municipalities within each area are:

- **Greater Shore Area:** Absecon, Asbury Park, Atlantic City, Barnegat Township, Berkeley Township, Bradley Beach Borough, Brick Township, Brigantine, Cape May, Colts Neck Township, Eatontown Borough, Egg Harbor City, Egg Harbor Township, Farmingdale Borough, Galloway Township, Highlands Borough, Holmdel Township, Howell Township, Keansburg Borough, Keyport Borough, Lacey Township, Lakewood Township, Little Egg Harbor Township, Long Branch, Lower Township, Manchester Township, Middle Township, Middletown Township, Neptune City Borough, Neptune Township, North Wildwood, Northfield, Ocean City, Ocean Gate Borough, Ocean Township, Pleasantville, Point Pleasant Beach Borough, Red Bank Borough, Seaside Heights Borough, Shrewsbury Township, Somers Point, South Toms River Borough, Stafford Township, Tinton Falls Borough, Toms River Township, Tuckerton Borough, Union Beach Borough, Ventnor City, Wildwood, Woodbine Borough

The greater Shore Area was selected based on a quantitative analysis, considering the following criteria:

- percentage of a municipality's population meeting the NJ P.L.2020, c.92 overburdened community definition; and
- the municipal revitalization index (MRI) rank and impacted community population.

The overburdened community criteria had the majority of the weight in the selection, as New Jersey's definition adopted to identify environmental justice communities; followed by MRI data to ensure the pilot continued to provide focused support for communities in the most economic need. Population density as a traffic density proxy was removed as a factor, in order to remove the bias towards densely populated communities and their related use-cases. COVID-related economic impacts were also considered, but did not affect the selection of the Greater Shore Area communities. Based on this ranking analysis, communities along the shore were found to be the highest ranked candidates for the expansion of the pilot program, while recognizing opportunities to expand support state-wide for ZEV adoption if the pilot is successful.

Through the NJ ZIP pilot program, NJEDA has and will continue to:

- Subsidize the higher upfront cost of zero emission vehicles, as compared to the upfront costs of their conventional gasoline or diesel-powered alternatives;

- Accelerate the adoption of medium-duty zero emission vehicles for commercial, industrial, or institutional use. For the purposes of this program, medium-duty vehicles are defined as Class 2b through Class 6 Vehicles, with a Gross Vehicle Weight Rating (GVWR) of 8,501 – 26,000 lbs.;

- Issue an additional estimated 200 vouchers to Applicants operating or registering vehicles in the pilot communities, increasing total voucher count to approximately 350, which represents 0.1% of medium-duty commercial and institutional vehicles registered in New Jersey;

- Foster the growth of the commercial-use ZEV ecosystem and value chain within the State; and

- Support the State's goal of transitioning 75% of medium- and 50% of heavy- duty vehicles to zero emission by 2050 using an incentive program, which is specified within the Energy Master Plan (Goal 1.1.8) as NJEDA's responsibility.

- Report on DEP-defined RGGI metrics, including assessment of avoided emissions and co-benefits.

NJEDA will continue to implement and administer the pilot, at a 2% rate of the pilot program voucher pool budget, drawn from the RGGI allocation, as permitted by the RGGI statute, for administrative costs incurred "in administering programs to reduce the emissions of greenhouse gases". This memo requests approval for such administrative funds for not only this proposed expansion to the greater Shore Areas, but also to correct the administrative fee request for the initial pilot voucher pool, as related to the greater New Brunswick area funds. NJEDA Staff will be responsible for reviewing applications, maintaining a program website, and providing educational resources, such as FAQs and webinars, to Vendors and Applicants when needed.

BACKGROUND

The Regional Greenhouse Gas Initiative (RGGI) & zero emission transportation

On January 29, 2018, Governor Murphy signed Executive Order 7 (EO 7), instructing state government agencies to return New Jersey to full participation in the Regional Greenhouse Gas Initiative (RGGI) as quickly as possible.[1] RGGI is a multi-state, market-based program that establishes a regional cap on carbon dioxide (CO2) emissions from the electric power generation sector allowing for auctioning of emissions rights, traditionally referred to as a "cap-and-trade" program.

Through its participation in the quarterly RGGI auction in 2020 New Jersey received funding that totaled approximately $94 million, and over the next two years, New Jersey expects to receive at least an additional $160 million through the RGGI auctions. The State plans to deploy those funds within four initiative categories:

1. Catalyze Clean, Equitable Transportation;
2. Promote Blue Carbon in Coastal Habitats;
3. Enhance Forests and Urban Forests; and,
4. Create a New Jersey Green Bank.

Programs and projects within these initiatives must demonstrate net emission reductions and economic co-benefits, as mandated in the RGGI Strategic Funding Plan: Years 2020 through 2022, released in April 2020.

New Jersey's RGGI funds allocation is governed by the Global Warming Solutions Fund Act (P.L. 2008, c. 340). By law, three state agencies (NJEDA, the New Jersey Department of Environmental Protection (NJDEP), and the New Jersey Board of Public Utilities (NJBPU)) are allocated RGGI proceeds, with NJEDA receiving 60% (focus area: commercial, institutional, and industrial entities), and NJBPU and DEP each receiving 20% (focus areas, respectively: low income and moderate income residential; and local government, forests, and tidal marshes). These funds must be appropriated each year. For Fiscal Year 2021, the Appropriations Act appropriated the RGGI funds to their statutorily dedicated purposes. Thus, for FY 21, EDA expects to receive approximately $56 million in RGGI funds from the 2020 RGGI auctions.

[1] Executive Order 7 (EO 7) is available at: https://nj.gov/infobank/eo/056murphy/pdf/EO-7.pdf

Transportation accounts for 42% of greenhouse gas emissions in the State, more than twice that of the second largest source, electricity generation (18%). Fossil fuel-powered transportation is also the leading source of air pollutants. Further, although medium- and heavy-duty vehicles (MHDVs), Class 2b – Class 8 inclusive, represent fewer than 20% of the vehicles on the road, they contribute the majority of New Jersey's transport-sector emissions. Transitioning to zero-emission MHDVs is necessary to reduce these societal costs and to advance environmental justice (i.e., the health and quality of life outcomes for communities disproportionately impacted by pollutants). It aligns with the State's Global Warming Response Act goal of an 80% reduction in New Jersey's greenhouse gas emissions by 2050 in comparison to 2006 levels and, at the same time can increase the transportation sector's contribution to the goal of making New Jersey's economy both stronger and fairer.

As such, alongside NJBPU and NJDEP, a substantial majority of NJEDA's RGGI funding during the first three years of the State's renewed RGGI participation will be focused on programs and projects that support the deployment of zero emission MHDVs, with a focus in and around communities disproportionately impacted by emissions.

In August 2020, to enable this work, the Board approved hiring a consultant, Guidehouse, to support the development of a data-driven MHDV strategy for the State with the goals of increasing MHDV adoption, decreasing emissions, improving environmental justice, and foster the creation of new jobs and investments in New Jersey. The voucher pilot program proposed herein is the very first initiative of that holistic cross-Agency approach, intended to lay the groundwork and stimulate the market to prepare for future programs necessary to meet the broader programmatic goals.

Voucher incentive programs

Voucher programs are designed to reduce the higher upfront capital cost of a ZEV in comparison to an internal combustion engine alternative. By providing vouchers that bring ZEV closer to cost parity with traditional vehicles, ZEV become an affordable option for owners and operators, including the benefits of ZEV's lower cost over their lifetimes. In a typical program, once the new vehicle is delivered to the end user, and all program requirements, which vary from program to program, are met by the applicable parties, the voucher can be redeemed. While rebate programs are often utilized to provide post-purchase incentives for light-duty vehicles, such as the NJBPU's original Charge Up New Jersey program, voucher programs are generally found to be more effective for medium- and heavy-duty vehicles, as they allow purchasers to reserve funds and can defray the higher purchase price upfront. Voucher programs for low emission medium- and heavy-duty vehicles have been proposed or piloted in several US locations, including Massachusetts, Maryland, Oregon, and Chicago. Currently, however, only two other states, California and New York, have active voucher programs for medium- and heavy-duty vehicles. The California and New York programs provide funding to pre-approved vendors for both zero-emission vehicles and other alternative fueled vehicles that are not zero-emission, such as hybrid-electric and compressed natural gas. Learnings from these programs, including voucher values and eligibility requirements, were considered in the NJ pilot design.

PROGRAM PURPOSE AND POLICY ALIGNMENT

The primary goals of this pilot program are to accelerate the adoption and use of medium-duty zero-emission vehicles within New Jersey; reduce emissions within the pilot overburdened communities; and to allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and

program design, and test methodology for measuring economic impact of such adoption. Through eligibility requirements for the Applicant, vehicle, and the Vendor and in the context of a broader strategy, the pilot is being used as a vehicle to support the growth of the NJ ZEV ecosystem, with accelerated adoption of ZEVs being the first step to attracting more jobs and investment, as other zero-emission MHDV programs and regulations roll out across multiple State agencies.

Several State plans call for ZEV adoption. Governor Murphy's 2018 Economic Development Strategic Plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy" includes goals for innovation in clean energy and transportation, as a path to catalyze economic growth. The 2019 Energy Master Plan, which outlines the State's goal of 100% clean energy by 2050, includes as its first strategy the reduction of energy consumption and emissions from the transportation sector, establishing as targets that by 2050, 75% of medium-duty and 50% of heavy duty vehicles be ZEV. The 2020 RGGI Strategic Funding Plan, collectively developed by NJDEP, NJBPU, and NJEDA, outlines funding priorities and metrics for ZEV adoption to support clean, equitable transportation with anticipated economic co-benefits, such as increased jobs and investment.

In addition, Governor Murphy signed the Multi-state Medium- and Heavy-Duty Zero-Emission Vehicle Memorandum of Understanding in 2020, agreeing to target converting 30% of all MHDV sales to zero emission by 2030, and 100% of sales to zero-emission by 2050. In each of these policies, equity in program planning, access, and impact is cited as a core pillar to meaningfully accomplish the stated goals.

Transitioning from internal combustion engine MHDVs to zero-emission technologies will have a significant impact on state-wide transportation emissions and align with the above-noted policies; however, MHDV owners and operators face many barriers to EV adoption.

Beyond desktop research, NJEDA formally gathered stakeholder input on these barriers through a request for information (RFI) in July 2020 and hosted listening sessions and workshops with stakeholders throughout New Jersey to catalog challenges. Although there were and are many valuable and varied insights, three major themes arose:

1. Upfront cost of ZEV and related financing uncertainties are too high for near term adoption;
2. Charging infrastructure availability, costs, and related interconnection and permitting processes are too uncertain;
3. ZEV MHDV technology, knowledge, or access that meets their business or community needs is unavailable.

This pilot program primarily strives to address the first barrier for medium-duty zero-emission vehicles. Medium-duty vehicles are targeted for the pilot as they comprise the largest percentage of the MHDV population and are more immediately available, as compared with the heavy-duty categories.

During the initial run of the pilot, as intended, NJEDA has continued to gather feedback, receiving continuous and repeated interest in expansion to more parts of the state, as well as quantitatively assess program participation. While larger, structural changes are not being contemplated within a pilot, it has been identified that the original methodology for community selection was biased toward consistently densely populated communities, unintentionally excluding lower population density communities that experience seasonal shifts in population and therefore variable traffic density. This has limited vehicle use-cases, resulting in a limitation of NJEDA's ability to assess the functionality of the program in

different use-cases, especially those related to passenger transportation. In order to appropriately understand the usage patterns that could impact program design for communities that experience significant seasonal fluctuation in traffic flow and that are less densely populated, as well as to understand if the voucher funding levels for passenger transit are appropriately scaled, a further expansion and update of the pilot to include such areas and focus on such use-cases is merited.

Additionally, this pilot is designed to ensure small businesses have access to these funds and additional incentives to support their transition to ZEV. For the purposes of this Program, a small business is defined as having 25 or fewer full time employees in total OR less than $5M in annual revenue. More than 80% of the voucher applicants approved to-date are defined as small businesses and approximately 60% are minority- and/or woman-owned businesses.

This pilot does not include direct support for charging infrastructure but will serve as a way to gather data on charging plans and needs to inform potential future support. Similarly, this program does not itself support the creation of new technologies or workforce initiatives within the state, but it will incentivize local Vendors and manufacturers and gather insights on knowledge gaps, which are critical first steps to creating a ZE MHDV knowledge hub in the State that can stimulate further growth.

This pilot alone is not sufficient to match the ambition of the State's ZE MHDV goals, or to meaningfully address all the barriers laid out by stakeholders. With this expansion and the full allocation of NJEDA's portion of the 2020 RGGI auction proceeds, however, NJEDA continues as good stewards of the funds, making them available to communities that are disproportionately impacted by emissions, including those that cause negative health impacts and climate change. It remains one tool of many interlocking efforts that must be developed and deployed state-wide to serve as the foundation for New Jersey's zero-emission transportation economic evolution.

PROPOSED PROGRAM STRUCTURE & DESIGN

Pilot Program Eligibility

Except in expanding the list of eligible communities for participation to include the greater Shore Area, the pilot program eligibility will remain unchanged for Vendors, vehicles, and Applicants from the initial pilot program design.

Pilot Program Voucher Funding Levels

Voucher funding amounts will remain as originally approved, with no changes made from the initial pilot voucher funding levels, based on GVWR, and with previously approved bonus criteria for small businesses; woman-, minority-, and veteran-owned businesses; vehicle scrappage; in-state manufacturers; and Vendors who provide public driver readiness and education training.

Pilot Program Structure and Process

The pilot program structure and process will remain as originally approved, with no changes made.

Appeals
Appeals process for Applicants and Vendors will remain as originally approved, with no changes made.

Post-eligibility audits

Post-eligibility audit requirements, executed by Staff, will remain as originally approved, with no changes made

ESTIMATED BUDGET AND IMPACT

The RGGI-funded expansion to the NJ ZIP pilot budget will be $20,585,000, for a total pilot program budget of $45,585,000.

Of the pilot expansion budget, $20,000,000 will be reserved to fund vouchers, utilizing the following allocations:

- $5,000,000 will be set-aside for the greater Shore Area
- $10,000,000 will be set-aside for passenger transportation (i.e., buses, shuttle buses, and passenger vans)
- $5,000,000 will be set-aside for small businesses

Each of these allocations may be inclusive of all others. Thus, for example, a small business that operates passenger transportation will be counted toward both the small business and passenger transportation set-asides. The remainder of the voucher fund will be un-allocated, but within the pilot's overall locational requirements of greater Camden, greater Newark, or greater New Brunswick areas, in addition to the greater Shore Area.

In continuation of the requirements of the initial pilot funds, the total funding provided to a single applicant (as determined by EIN) through vouchers and any qualifying bonuses during the pilot cannot exceed $1,500,000, to ensure equitable distribution of resources.

To support this voucher budget, NJEDA will use a 2% administration fee on the pilot funds as authorized by the statute, for administrative costs incurred "in administering programs to reduce the emissions of greenhouse gases". For this expansion, that 2% fee is $400,000.

In addition, in the prior Board approval of the pilot, the administrative fee was not calculated on the total initial voucher pool ($24.25M), but rather on a subset related to the greater Camden and greater Newark areas, and to program market and education ($15.5M). As the pilot was expanded by delegated authority to the greater New Brunswick area and by $9.25M, an administrative fee on that portion of the voucher pool is requested. To correct the original budget approval, the fee is increased by $185,000.

In total, NJEDA requests approval of administrative fees of $585,000 to administer the $20,000,000 voucher fund expansion approved herein and the $9,250,000 expansion associated with the greater New Brunswick area previously approved and executed.

NJEDA will continue to charge Applicants a $1,000 fee for applying to this program; multiple vehicles can be applied for within a single application. For Applicants who demonstrate that the imposition of the fee would impose an undue financial hardship, as determined by an automated process or through manual

review, this fee may be reduced by half.

Based on the pilot program voucher fund budget totaling of $44.25 million, after this $20 million expansion, it is anticipated that 350 vouchers will be issued for the purchase of medium-duty zero-emission vehicles. This is truly a pilot, as it represents only 0.1% of all commercial and institution medium-duty vehicles registered in the state. As required by the RGGI Strategic Funding Plan, NJEDA will report, based on NJDEP defined metrics, calculated avoided emissions and co-benefits.

DELEGATED AUTHORITY

No change to the delegated authority granted in the original pilot program approval is requested, as no programmatic or process changes are proposed. For reference, with annotations to update terminology for new staff and department titles and to remove no longer relevant terms, that delegated authority included authority to:

- The CEO, based upon program demand reviewed at 3-month intervals, to:
  - (i) shift funding between the set asides for the eligible community areas and small businesses if funding reserved for a particular set-aside is unused and other set-asides are oversubscribed,
  - (ii) adjust voucher amounts, with ability to increase voucher amounts up to 50% if program is undersubscribed, up to total cost of vehicle, or decrease by up to 50% in the case the program is oversubscribed
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s), designated by the CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers,, who will be provided SOP and related training to approve voucher Applicants, Vendors, and their associated vehicles as eligible, as determined by an automated process or through a manual review.;
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s) designated by the Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, to – based on the NJEDA's general administrative regulation for application fees – waive half the application fee for Applicants upon demonstration by the Applicant that the imposition of the fee would propose undue financial hardship, as determined by an automated process or through manual review;
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s), designated by the CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, who will be provided program SOP and training to, upon

recommendation of the reviewing officer, decline voucher eligibility based solely on non-discretionary reasons, as determined by an automated process or through a manual review; and

- In connection with appeals from declinations based solely on non-discretionary reasons, the CEO or Chief Economic Growth Officer to designate one or more Hearing Officers who have not previously been directly involved in the eligibility determination to prepare a Final Administrative Decision based on their review and program SOP. The Final Administrative Decision must be approved by the Chief Economic Growth Officer, Executive Vice President, or Vice President, upon recommendation of the Hearing Officer

If the program expands beyond the pilot stage, these delegation levels are to be revisited by the Board.

CONCLUSION

The State has ambitious goals for the transition of New Jersey's MHDVs to zero-emission by 2050 with specific benefits to overburdened communities, and the NJ ZIP is a critical first step in this direction to support the ZEV marketplace and rapidly deploy electric MHDVs on the road. As such, the Members are requested to approve an expansion of $20,585,000 of RGGI funding to the NJ ZIP pilot program and program administration, detailed herein.

In relation to this pilot program, with annotations to update terminology for new staff and department titles and to remove no longer relevant terms, the Board is asked to maintain delegated authority approval to:

- The CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations, (ii) adjust voucher amounts;
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s) designated by the CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, to approve voucher Applicants, Vendors, and vehicles as eligible, as determined by an automated process or through a manual review;
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s) designated by the CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, to waive half the application fee for Applicants upon demonstration by the Applicant that the imposition of the fee would propose undue financial hardship, as determined by an automated process or through manual review;
- The CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, or Voucher Program Lead(s) designated by the CEO, Chief Economic Growth Officer, Executive Vice President for Technology, Life Science, and Entrepreneurship, Clean Energy Product Director, Program Managers, to, upon recommendation of the reviewing officer, decline

voucher eligibility based solely on non-discretionary reasons, as determined by an automated process or through a manual review;

- In connection with appeals from declinations based solely on non-discretionary reasons, the CEO or Chief Economic Growth Officer to designate one or more Hearing Officers who have not previously been directly involved in the eligibility determination, to prepare a Final Administrative Decision. The Final Administrative Decision must be approved by the Chief Economic Growth Officer, Executive Vice President, or Vice President, upon recommendation of the Hearing Officer

Tim Sullivan, CEO

Prepared by:

Victoria Carey

Sr. Project Officer

INCENTIVE PROGRAMS

NJ ASPIRE PROGRAM

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules for the Aspire Program (N.J.A.C. 19:31-23)

Request:

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Aspire Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and

2) The creation of the Aspire Program, a gap financing tax incentive program as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 54 through 67 of P.L. 2020, c. 156 and later amended by Sections 22 through 29 of P.L. 2021 c.160), 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.

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the

right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

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

On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA.

The program being presented for the Members' approval in this memorandum is the Aspire Program – one of the 15+ programs under the ERA. The Aspire Program is a gap financing incentive program designed to catalyze the development of commercial, mixed-use and residential real estate development projects in New Jersey.

This memorandum provides a summary about the Aspire Program including program limits, eligibility criteria, specific program requirements, application process and the underwriting process, and general details about the program. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

The Aspire Program encourages place-based economic development in the State by providing tax credits for ten years (the "eligibility period"). The amount of tax credits a real estate development project (referred to in the statute as a "redevelopment project") receives is generally a percentage of the project's costs and is subject to a statutory cap determined by the project location and other aspects of the project. The overview provided here highlights key aspects of the program. Additional program details are included in the sections below, and full program details are contained in the draft rules (attached) and the statute.

To be eligible for the Aspire Program, a project must meet various eligibility criteria at the time of application. For example, a project must:

- Demonstrate through NJEDA analysis that without the incentive award, the redevelopment project is not economically feasible;

- Demonstrate that a project financing gap (including review of a reasonable and appropriate rate of return) exists and the redevelopment project will generate a below market rate of return;

- Be located in a designated incentive area (except a film production project);

- Include a developer equity participation of at least 20 percent of the total development cost (or 10 percent in a Government Restricted Municipality (GRM));
- For commercial projects, result in a net positive economic benefit to the State;
- Meet specific size and/or cost thresholds, depending on where the project is located and;
- Meet a minimum eligible score as outlined in the Aspire Program scoring criteria.

Collectively, projects under the Aspire Program and the Emerge Program – a separate ERA tax incentive program focused on attracting high-quality jobs to New Jersey – are subject to a program cap of $1.1 billion per year for the first six years of the programs, with the cap split between northern and southern counties. For the first six years, unused amounts may be carried forward each year, subject to geographic limits, and any remaining unused tax credits are available in the seventh year without consideration of geographic limits.

Tax credit awards under Aspire are calculated based on a percentage of project costs (which are the eligible costs of the project), capped based on the type and location of the project. Transformative projects – which is a distinction given to projects of special economic importance – are outlined in further detail later in this memorandum.

Specifically, new construction projects utilizing federal Low Income Housing Tax Credits administered by the New Jersey Housing and Mortgage Finance Agency (HMFA) are limited to 60 percent of project costs, up to a maximum of $60 million. Commercial projects located in a GRM are limited to 50 percent of project costs, up to a maximum of $60 million. All other non-transformative projects are limited to 45 percent of project costs, not to exceed $42 million.

In addition to meeting the program eligibility, the developer and any co-applicant must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). If a compliance issue exists, the eligible developer or co-applicant may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The eligible developer and any co-applicant must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, the developer will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Aspire Program rules also require that the project demonstrate that it will comply with environmental laws (including flood hazard requirements). All projects that receive Aspire support must also meet minimum environmental and sustainability standards (green building requirements), pay prevailing wages to construction workers and building service workers, and for projects with a retail, warehouse, and/or hospitality establishments in which the State has a proprietary interest, the relevant establishment must enter into a labor harmony agreement with a labor organization or cooperating labor organizations which represent relevant employees in the State i.e. retail, warehouse, and/or hospitality workers, unless the

Authority determines the project would not be able to go forward if a labor harmony agreement was required.

Applicants with a project whose total project cost exceeds or equals $10 million must also enter into a Community Benefits Agreement with NJEDA and the county or municipality in which the project is located. The statute provides an exception if the municipality certifies the redevelopment agreement or the Aspire Program approval letter and the redevelopment agreement or approval letter satisfies the standards for a Community Benefits Agreement; however, staff does not propose for the approval letter to contain Community Benefits Agreement provisions.

In addition, a project must comply with certain standards during the term of an Aspire Program project agreement.

Some of the areas described above are outlined in greater detail further in this memorandum and in the attached rule proposal.

Eligibility Criteria

The following highlights key eligibility requirements for the Aspire Program. Full eligibility details are contained in the draft proposed rules in section N.J.A.C. 19:31-23.3, based on Section 57 of the ERA (P.L. 2020, c.156, amended by Section 23 of P.L. 2021 c.160). To be eligible, a project must meet various eligibility criteria at application, which the Board ascertains when the project is presented to the Board, and at project completion, when the developer must submit certifications evidencing satisfaction of Program requirements and conditions.

Eligible Incentive Area

As part of eligibility for the Aspire Program, a project must be located in an eligible incentive location, which may include: Planning Area 1, Aviation District, Port District, or Planning Area 2 or other Designated Center that is within a half mile of a rail, bus, or ferry transit station or a high frequency bus stop. Each of these geographic locations are statutorily defined, and the Authority maintains an interactive map to provide more clarity to potential applicants as to which of the aforementioned eligible incentive locations the proposed project falls within. The statute also provides clarification surrounding certain project types. Specifically, transformative projects may be considered eligible if they are located in a government-restricted municipality, an enhanced area, or distressed municipality. Film production projects have no geographic restrictions under Aspire and may be located anywhere in the state.

Project Size / Cost Thresholds

A project must meet minimum size and cost thresholds in order to be eligible under Aspire, with specific thresholds largely based on whether the project is considered commercial or residential.

Commercial projects must be a minimum of 100,000 square feet of retail or commercial space, exclusive of parking, with the majority of space being non-residential (that is, the project must be predominantly commercial).

Residential projects are subject to thresholds based on total project cost as opposed to size and must be predominantly residential. Specifically, residential projects located in a GRM or qualified incentive tract, must have a minimum of $5 million in project costs. Residential projects located in a municipality with a population less than 200,000 must have a minimum of $10 million in project costs, and a residential project located in a municipality with a population greater than 200,000 must have a minimum of $17.5 million in project costs.

For any project that includes newly constructed residential units (that is, not a project consisting solely of rehabilitated or renovated existing units, with no change to the composition of units or creation of new units), at least 20 percent of the residential units must be reserved for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.).

Project Financing Gap

Given that the Aspire Program is intended to catalyze redevelopment projects that would not be possible without the Aspire tax credits, the statute requires that a project must demonstrate the existence of a project financing gap in order to be eligible for tax credits under Aspire.
This means that the project must demonstrate that there is 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. Total development cost is used to evaluate the return and is based upon all costs incurred by the developer prior to completing the project, versus project (that is, eligible) costs as defined in the rules, which excludes certain costs such as soft costs in excess of 20 percent, land acquisition costs, and developer fees.

The reasonable and appropriate return on investment is based on the amount of capital contributed by the developer (equity), which must be 20 percent of the total development cost (or 10 percent in a GRM). The Authority will consider as equity other sources of capital such as deferred development fees, or proceeds from the sale of Federal tax credits the project may receive. To determine the reasonable and appropriate return on investment, the Authority will typically utilize a third-party analysis that considers factors including but not limited to: project type, scale, and geography. An overview of this analysis and the methodology proposed by Staff is included in Appendix B – Reasonable and Appropriate Return on Investment.

Further information regarding the gap analysis can be found in N.J.A.C. 19:31-23.6.

Net Positive Economic Benefit Test

Pursuant to the statute, and excepting situations described in this section, projects applying for assistance under the Aspire Program must demonstrate that the project will yield a net positive economic benefit to the State. Instead of prescribing specific net benefit thresholds, the statute instructs the Authority to establish thresholds that result in a positive economic benefit for the State over the eligibility period of a project. The statute further permits the Authority to establish a second threshold that is up to 35 percent lower for projects located in a government-restricted municipality. As outlined in the attached rule proposal, staff propose that projects located in a government restricted municipality must yield a net positive economic benefit to the State of 150%, whereas all other projects must yield a 185% net positive economic benefit.

The statute exempts residential projects, as well as projects that involve a food delivery source or health care or health services center that meet certain parameters as outlined in the attached rules, from the statutory requirement of meeting the net positive economic benefit threshold.

As with the Emerge Program, staff is proposing to use the IMPLAN model to assist with determining the economic benefits of the project. IMPLAN is a third-party economic development model that is widely known, understood and utilized at the state, federal, and international levels. Among widely-known, national-level third-party models, IMPLAN is the most easily understood by the broadest set of stakeholders.

The net positive economic benefit analysis will include direct and indirect tax revenues for ongoing benefits at the State level and also direct, indirect and induced tax revenues at the State level for construction benefits. The local tax benefits will only be included when they benefit the State. An inflation rate and discount rate will also be used based on market conditions, economic conditions, and uncertainty in the company's commitment.

Please refer to the Appendix C for the "Net Benefit Analysis – Overview" for a discussion of the test and model.

Project Scoring

The Authority is statutorily obligated to establish scoring criteria for the evaluation of proposed projects, which can be used to set a minimum acceptable score or to allocate tax credits in circumstances where there are more project requests than available credits.

Given the relatively large pool of available credits, staff does not anticipate that the Aspire Program will be oversubscribed. Accordingly, staff are recommending utilizing a minimum score approach to assess whether a proposed project is consistent with the objectives, policy goals, and principles of the Aspire Program, rather than using scoring as a means to competitively rank or compare projects against each other. If the volume of Aspire tax credit award requests is greater than currently anticipated, staff will present to the Board a revised scoring that can be used for comparative project ranking.

Please refer to Appendix D for the "Aspire Scoring Criteria" for the specific proposed criteria, and further clarification on each of the different aspects the Authority will consider in its scoring evaluation of proposed projects.

Green Building Standards

The ERA requires projects under Aspire to meet "minimum environmental and sustainability standards," which are statutorily defined as "standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.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 Green Building Manual is available online at http://greenmanual.rutgers.edu/.

The Authority had originally developed in 2013, and later updated in 2016, the "Green Building Standards" to evaluate Grow NJ and ERG projects. Staff has now updated the "Green Building Standards". The Green Building Standards lists options that apply the best practice principles of the Green Building Manual to the applicant's specific type of project. Please see Appendix E for a copy of the Authority's 2021 "Green Building Standards".

Fiscal and Resident Protections

Letter of Support and Community Benefits Agreement

As part of an application for Aspire tax credits, a developer must provide a letter of support from the governing body of the municipality or municipalities in which the project is located.

Furthermore, the ERA requires developers of projects with a total project cost equaling or exceeding $10 million to enter into a Community Benefits Agreement (CBA) with the Authority and the county or municipality in which the project is located. Staff propose to use the tax credit award process to provide economic resources that support CBA programs. Specifically, the rules allow for soft costs to include per-certification costs for benefits and services provided under the CBA that are not directly related to construction of the project. Additionally, CBA costs incurred after certification can be included as cash flow. However, the rules limit the sum of (1) CBA project development soft costs prior to project certification and (2) the discounted value of any CBA-supporting expenditures derived from annual payments made over the course of the project eligibility period to five percent of the project cost.

A developer shall not be required to enter into a community benefits agreement if 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 statutory standards required for a community benefits agreement in the ERA as amended by P.L. 2021, c.160 and as determined by the Chief Executive Officer. Staff does not know whether municipalities will include the Community Benefits Agreement requirements in a redevelopment agreement, because not all community benefit expenditures in a redevelopment agreement would otherwise be included in the Aspire project cost as provided in the Aspire rules. In any event, staff does not anticipate proposing that the approval letter contain any Community Benefits Agreement provision.

In other respects, the proposed rules implement the Community Benefits Agreement similarly to the Emerge Program. The rules require that the Community Benefits Agreement include a list of contributions by the developer and the monetary equivalent for any non-monetary contribution. The ERA also requires that the Community Benefits Agreement create a community advisory committee (CAC). The CAC is required to produce an annual report evaluating whether the developer is in compliance with the terms of the Community Benefits Agreement.

The Aspire Program rules, at N.J.A.C. 19:31-23.8 (e)(6)(ii), provide for a non-binding mediation process to be implemented if the CAC's annual report indicates that the developer is not in compliance with the Community Benefits Agreement. The Authority will serve as or identify a mediator. The CAC, municipality or county, as applicable, and the developer will have 60 days from the Authority's notice of

the mediator to resolve any differences. The results of the mediation will be reported to the Authority. If resolution is not achieved, then the Authority will assign a hearing officer to perform a review of the written record, with discretion to require an in-person hearing. The hearing officer shall issue an advisory written report to the Authority's Chief Executive Officer with finding(s) and recommendation(s). The developer, municipality or county, and the CAC will also have the opportunity to file written comments and exceptions regarding the report within five business days from receipt of the report. Based on the review of the written report and submitted comments and exceptions, the Chief Executive Officer will determine compliance or non-compliance.

If the non-compliance is not due to the developer and the developer has been using best efforts to cure the non-compliance, then the tax credit amount that the developer may apply in the relevant tax period will be reduced by 120% of the sum of the monetary values of the contributions for which the developer is not in compliance. For any other non-compliance, the developer shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period where documentation demonstrating compliance has been approved by the Authority, for which tax period and each subsequent tax period the full amount of the credit will be allowed.

Profit Sharing with the State in the Event of Excess Return on Investment

The ERA directs the Authority to determine at project certification if the actual financing employed by the applicant is consistent with that submitted at the time of the award approval. In the event that the actual financing utilized makes the financing gap smaller than what was calculated at the time of approval, the award shall be reduced so that project would result in rate of return on investment that is equal to the reasonable and appropriate rate on investment at the time of approval or accept payment from the developer on a pro rata basis. Furthermore, if the actual financing results in the absence of a financing gap, i.e., the project return prior to the incentive meets or exceeds the reasonable and appropriate return on investment determined at board approval, then the award would be forfeited. This analysis would take place prior to the issuance of any tax credits.

Following issuance of the initial tax credit, the Authority is directed by the statute to ensure that the returns realized by the project do not exceed those deemed appropriate at approval, i.e., that the actual return on investment is not greater than the reasonable and appropriate return on investment determined at board approval. This evaluation is to take place at the end of the 7th year of the eligibility period and following the final year of the eligibility period. For any project with returns that exceed the reasonable and appropriate return on investment determined at board approval by more than 15 percent, the project shall pay to the State 20 percent of the amount in excess of the reasonable and appropriate rate of return. This would be accomplished as follows. The evaluation at the end of the 7th year would evaluate actual data for the years to that point and projected data for the remaining years. At that time, the developer would pay into escrow the 20 percent of the amount that is calculated to be in excess of the reasonable and appropriate rate of return. Following the final year of the eligibility period, the Authority will determine if there are actual excess returns and those will be deposited in the State General Fund, with any escrowed funds not owed to the State returned to the developer. If more returns are due to the State than are in the escrow account, the developer shall pay those at that time.

Further discussion of this provision is included in Appendix B – Reasonable and Appropriate Return on Investment.

Transformative Projects

The Aspire statute allows for projects that meet certain parameters to qualify for credit above and beyond the caps that are established for standard projects under Aspire.

To be considered a transformative project, a project must include at least $100 million in total project cost, demonstrate a project financing gap (as with all Aspire projects), and be at least 500,000 square feet or up to 250,000 square feet for film studio projects (square feet are exclusive of parking). Furthermore, transformative projects must leverage 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.

All transformative projects must also demonstrate special economic importance to New Jersey, for which the Authority has established differing criteria to make that determination based on the type of project.

For commercial projects, the project must demonstrate the following to show that the project is of special economic importance and creates modern facilities, and that:

- With the exception of a film studio project, it is either creating at least 500 new full-time jobs based on the regional averages for employment density for the type of use or uses at the redevelopment project or involves the substantial renovation of a vacant commercial building;
- It is providing opportunities to leverage leadership in a high-priority targeted industry, which may be done through a market analysis evidencing the role the proposed facilities will play in catalyzing said industry or industries and is likely to be evidenced by the existence of one or more proposed anchor tenants.

For residential projects, the project must demonstrate that it is of special economic importance by demonstrating one of the following:

- A project location in a government-restricted municipality, enhanced area, or distressed municipality;
- A reservation of at least 20 percent of new residential units for either low- and moderate-income households or workforce housing that is in addition to the 20 percent reservation for low- and moderate-income households required of all Aspire projects; or
- The substantial renovation of a vacant commercial building.

Residential transformative projects must also meet the one of the following project thresholds:

- At least 1,000 newly constructed residential units;
- For a mixed-use residential project of at least 100,000 square feet (exclusive of parking) of retail or commercial space that is majority commercial space:

- If the project is located in a government-restricted municipality, 250 or more newly constructed residential units;
- If the project is located in an enhanced area, 350 or more newly constructed residential units; or
- Non-government-restricted municipality or enhanced area projects, 600 or more newly constructed residential units.

Transformative projects under Aspire must be located in an incentive area, distressed municipality, government-restricted municipality, or enhanced area. However, film studio projects are not subject to these geographic restrictions and may be located anywhere in the State. No transformative project may comprise of 50 percent or more final point-of-sale retail.

As mentioned above, the significance of being a transformative project for the purposes of tax credit award calculation, is that a transformative project is subject to higher project-specific caps than a standard Aspire project. For transformative projects, a project may receive no greater than 40 percent of eligible project costs, up to a maximum tax credit amount of $350 million. Additionally, the developer may take up to eight years to finish the transformative project and can complete the transformative project in phases. Each phase will constitute its own eligibility period, which allows the developer to earn the issuance of tax credits prior to the completion of the entire redevelopment project.

Post-Approval Process

Aspire is a performance-based program. After approval, the developer must sign an approval letter and subsequently an incentive award agreement with the terms and conditions to receive the tax credit. Upon completion of the project, the developer must submit certifications regarding the capital investment and other eligibility requirements and conditions. The project must demonstrate compliance with eligibility criteria and, among other things, affirmative action, prevailing wage, and, as applicable, labor harmony agreement requirements. The developer must also certify that the project is still operating in a manner that is consistent with the approval for which the tax credit award was based (i.e. commercial projects must still be predominantly commercial).

There are several scenarios where a tax credit award may be reduced or forfeited. These include, but are not limited to, the following, where applicable:

- A project changing so that it would not have been eligible or would have been reviewed under different eligibility criteria:
  - From predominantly residential to predominantly commercial (or the reverse);
  - From a film production project located outside the incentive area to a project that is not a film production project;
  - Absent prior approval by the Authority, to the uses in a commercial transformative project that were used to determine the anticipated employee occupancy or the uses in a non-transformative project that were utilized to determine the net positive economic benefit to the State; or
  - To characteristics used in initial project scoring so that the project no longer achieves the minimum requisite score under the Aspire Program Scoring Criteria;

- Non-compliance with affirmative action, prevailing wage, or any labor harmony agreement requirement;

- The occupancy of a project is reduced to less than 60 percent, where a residential unit shall be considered occupied if the unit is leased; and 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;

- Non-compliance with the Community Benefits Agreement as described in the Aspire rules; or

- A material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions. In this case, the rules also state that the Authority may recapture any and all tax credits.

Further information regarding reduction, forfeiture, and recapture of tax credits under Aspire can be found in N.J.A.C. 19:31-23.10.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Aspire Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 180 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedure Act's rulemaking procedures.

Compliance with Executive Order 63

In accordance with the Executive Order 63 directive to ensure outreach efforts are made to the public and affected stakeholders for agency rulemaking, the Authority issued a news release advising the public that the draft Aspire Program rules, were available for review and of the opportunity to provide informal input.

The Authority staff convened two virtual public "Listening Sessions", which provided an overview of the Aspire Program draft rules and the opportunity for the public feedback, on:

- Friday, September 17th, 2021 at 3:00 p.m.
- Monday, September 20^{h}, 2021 at 3:00 p.m.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (aspire@njeda.com) from September 10th through September 24th 2021.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101(a) of the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, "review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse".

Bruce Ciallella has been designated the CCO. In that capacity, Mr. Ciallella has reviewed the proposed rules and regulations for the Aspire Program and is prepared to sign the certification, subject to the Board taking action to approve the same for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Fees

The fee structure as outlined below is also included in the proposed new rules. Prior to establishing the proposed fee structure for this program as outlined in the proposed new rules, Authority staff conducted an internal review to estimate what the administrative costs to the authority are likely to be to administer the Aspire Program. This review considered areas cross-organizationally where the Aspire Program may require staff time, and the estimated percentage of staff time that would be required.

Fees are determined on a tiered basis based on the project type and project cost associated with the redevelopment project, with a separate tier for transformative projects. (Project cost and type is a reasonable proxy for the complexity of a project and how much staff time is required to evaluate an application.) The relevant tiers in addition to the separate tier for transformative projects include a project utilizing Low Income Housing Tax Credits, any other project with $50 million or less in project costs, any other project with more than $50 million in project costs, and any project applying under the regular Aspire program with approved phases.

An applicant for the Aspire Program will be responsible for a one-time, non-refundable application fee. This fee will be $10,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $50,000 for any other project with more than $50 million in project costs, $75,000 for any project applying under the regular Aspire program with approved phases, and $100,000 for each phase of a transformative project.

Additionally, prior to the approval of a tax credit award by the Board, the developer will be responsible for a one-time approval fee, which may be refunded if the project is not approved for a tax credit award. This fee will be $50,000 for a project utilizing Low Income Housing Tax Credits, $50,000 for any other project with $50 million or less in project costs, $60,000 for any other project with more than $50 million in project costs, $250,000 for any project applying under the regular Aspire program with approved phases, and $500,000 for each phase of a transformative project.

Prior to the receipt of a tax credit, the developer will be responsible for an issuance fee which will be $50,000 for a project utilizing Low Income Housing Tax Credits, $50,000 for any other project with $50 million or less in project costs, $60,000 for any other project with more than $50 million in

project costs, $250,000 for any project applying under the regular Aspire program with approved phases, and $500,000 for each phase of a transformative project.

Throughout the term of the award, the developer will be responsible for a servicing fee of $25,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $40,000 for any other project with more than $50 million in project costs, $100,000 for any project applying under the regular Aspire program with approved phases, and $200,000 for each phase of a transformative project.

Additionally, the developer may be responsible for a modification fee should the project require modifications to the tax credit. For a modification subject to board approval that fee shall be $30,000 for a project utilizing Low Income Housing Tax Credits, $30,000 for any other project with $50 million or less in project costs, $30,000 for any other project with more than $50 million in project costs, $150,000 for any project applying under the regular Aspire program with approved phases, and $300,000 for each phase of a transformative project

If the developer elects to sell the tax credit, a transfer fee will also apply. That fee for each transfer shall be $10,000 for a project utilizing Low Income Housing Tax Credits, $10,000 for any other project with $50 million or less in project costs, $10,000 for any other project with more than $50 million in project costs, $20,000 for any project applying under the regular Aspire program with approved phases, and $20,000 for each phase of a transformative project

If a developer requests an extension to the date by which the developer shall submit the certification with respect to the capital investment, employment, and other eligibility requirements of the program, a non-refundable extension fee will apply.

Finally, a developer seeking to terminate an existing incentive agreement will be responsible for a termination fee.

Program Evaluation Plan

Staff plans to establish a framework of key performance indicators (KPIs) to quantifiably measure over time how well the Aspire Program will meet the NJEDA's operational and strategic goals. Along with the goals and outcome of the program, the Authority will also request demographic information related to the developers applying for the Aspire Program, including demographic information with respect to the development company's leadership. This is part of the Authority's ongoing efforts to measure to what extent its programs and services are serving New Jersey's diverse residents, communities, and businesses. Other metrics are anticipated to focus on the Aspire Program's outreach efforts and volume of applicants, process and operational effectiveness, and economic development outcomes. The KPIs will provide valuable insight for staff and the Board to assess the effectiveness of the Aspire Program. These KPIs are still under development.

Recommendation

The Members are asked to approve:

1) The attached special adopted new rules and concurrent proposed new rules for the new Aspire Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and

2) The creation of the Aspire Program, a gap financing tax incentive program as initially authorized by the New Jersey Economic Recovery Act of 2020 (Sections 54 through 67 of P.L. 2020, c. 156 and later amended by Sections 22 through 29 of P.L. 2021 c.160), 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 total costs.

Tim Sullivan, CEO

Prepared by**:** Nat Bottigheimer and Paul Ceppi

Attachments:
Appendix A – Proposed New Rules – Aspire Program
Appendix B – Reasonable and Appropriate Return on Investment
Appendix C – Net Benefit Analysis
Appendix D– Aspire Program Scoring Criteria
Appendix E – Green Building Standards

D R A F T

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Aspire

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-23

Specially Adopted and Concurrently Proposed New Rules Authorized: November __, 2021, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: November __, 2021, as R.2021 d.___.

Authority: P.L. 2020, c. 156.

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

Concurrent Proposal Number: PRN 2021-___.

Effective Date: November __, 2021 [Date Filed].

Expiration Date: May __, 2022 [180 Days from Effective Date].

Submit written comments by January _, 2022, to:

Jacob Genovay, Senior Legislative and Regulatory Officer
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
jgenovay@njeda.com

In accordance with P.L. 2020, c. 156, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160.

The new rules became effective on November __, 2021, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 180 days from the date of filing, that is, until May __, 2022.

Concurrently, the provisions of the new rules 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. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 180-day expiration date from the date of filing.

The specially adopted and concurrently proposed new rules follow:

Summary

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, creates a package of tax incentive, financing, and grant programs that will address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy.

The Aspire program supports the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credit awards. To be eligible for such awards, a redevelopment project must:

- Demonstrate that without the incentive award, the redevelopment project is not economically feasible;
- Demonstrate that a project financing gap exists and/or the project will generate a below-market rate of return;
- Be located in a designated "incentive area;"
- Include a developer who has an equity participation of at least 10 percent of the total cost in limited instances, and at least 20 percent of the total cost for the majority of Aspire projects;
- Result in a net positive economic benefit to the State for commercial projects; and
- Meet specific minimum project cost thresholds for residential projects, depending on where the project is located.

For all projects, the Authority is setting the maximum amount of time allowable for the eligibility period to 10 years. The Aspire program awards are calculated based on a percentage of total project costs, with actual percentages dependent on the location of the project and whether the project is commercial or residential. The proposed rules also limit project costs that are allowable. For example, project "soft costs" are limited to 20 percent of the project costs, and costs eligible for spending on Community Benefits Agreements are limited to five percent of project costs. These caps are not limitations on what may be spent on a project and projects that exceed these limits will remain eligible for program support. Instead, costs that are above these ceilings will be excluded from the calculation of the Aspire tax credit awards.

Tax credit awards for every project under the Aspire program will be subject to caps – in terms of tax credit award amount and in terms of percent of total project costs. Tax credit awards for Aspire projects will be capped at $42 million for most projects and $60 million for certain projects in targeted areas or those utilizing tax credits under the federal Low-Income Housing Tax Credit Program. Project awards will also be capped at 45 percent of development costs for most projects, 50 percent of development costs for commercial projects in targeted areas, and 60 percent for new construction projects that also utilize tax credits under the federal Low-Income

Housing Tax Credit (LIHTC) Program administered by the New Jersey Housing and Mortgage Finance Agency (HMFA). Therefore, the Aspire program is an additional financial resource of tax credits that is available for developers in addition to HMFA's LIHTC Program, with a limit on the amount of the Aspire tax credit available that is based on the sum of the Low-Income Housing and Aspire program tax credits in relation to the project cost.

The Aspire program includes a number of fiscal and community protections, including a requirement for each applicant to demonstrate local support for their proposed project by providing a letter of support from the governing body of the municipality in which the project will be located; and by entering into a community benefits agreement or a redevelopment agreement with the municipality in which the project will be located, if the total project cost equals or exceeds $10 million.

As part of eligibility for the Aspire program, residential projects must meet minimum project cost thresholds, based on the population of the municipality where the project is located. The thresholds are:

Qualified Incentive Tract	$ 5 million
Government Restricted Municipality	$ 5 million
Municipal Population < 200,000	$10 million
Municipal Population > 200,000	$17.5 million

Additionally, the Aspire Act provides for another category of redevelopment projects that may be either residential or commercial projects, which are referred to as "transformative projects." Such projects must meet certain significant criteria and, if they do, may receive tax credit awards up to $350 million or 40 percent of project cost, with a total program cap of $2.5 billion in tax credit awards. No more than two transformative project awards can be made within a single municipality. Projects that are primarily final point of sale retail are not eligible for transformative project awards.

The following paragraphs summarize the contents of each section of the new rules implementing the Aspire program:

N.J.A.C. 19:31-23.1 Applicability and scope. This section addresses the statutory authority for the Aspire program and summarizes the scope and purpose of the program, which is to support redevelopment projects in target geographies that have certain project financing gaps by providing tax credit awards that developers can use to fill the identified financing gaps, pursuant to sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335), as amended by P.L. 2021, c. 160.

N.J.A.C. 19:31-23.2 Definitions. This section defines certain terms used in this subchapter and incorporates terms defined in P.L. 2020, c. 156 pertaining to the program. Specifically, this section clarifies statutory terms to support the implementation of the program, such as "cash flow," "commercial project," "developer" or "applicant," "director," "distressed municipality," "eligibility period," "labor harmony agreement," "minimum environmental and sustainability standards," "project cost" or "total project cost," "project financing gap," "project

labor agreement," "qualified incentive tract," "residential project," "transit hub," "transit hub municipality," and "vacant commercial building."

This section also creates additional terms to support the implementation of the program, including "act," "affiliate," "co-applicant," "community benefits agreement," "developer contributed capital," "employee," "enhanced area," "equity," "film production project," "fiscal impact analysis," "full-time employee at the redevelopment project," "hospitality establishment," "incentive phase agreement," "labor harmony agreement," "mixed use residential project," "soft costs," "reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment," "square feet," "total development cost," "total redevelopment cost," and "workforce housing."

The rules combine the definition of "project cost" and "total project cost." While the Act defined the two terms separately, the Act uses them interchangeably to mean the costs of the projects that are eligible as the basis to calculate the amount of tax credits. To refer to the total costs – ineligible and eligible – of the project, the rules introduce the new term "total development cost" (and "total redevelopment cost" as an alternative term with the same meaning).

N.J.A.C. 19:31-23.3 Eligibility criteria. This section outlines the criteria that a developer, and a co-applicant, if applicable, must meet at the time of application for an application to be eligible for an incentive award of tax credits as reimbursement for all or a portion of the project financing gap of a redevelopment project.

The developer is required to show at the time of application that the redevelopment project, among other factors, is not economically feasible without the incentive award and will be economically and commercially viable for the duration of the eligibility period; that a project financing gap exists (which includes a determination by the Authority that the project will generate a reasonable and appropriate return on investment); and that, with the exception of a redevelopment project that is predominantly infrastructure used for film production, the project is located in a targeted incentive area.

The program eligibility criteria also require an applicant to show that the overall public assistance needed to fill the project financing gap and enable the project to go forward will result in a net positive economic benefit to the State. However, the requirement to show a net positive economic benefit will not be applicable for: a residential project; a food delivery source; or a health care or health services center with at least 10,000 square feet of space that is devoted to health care or health services and that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of Health.

The developer applicant is also required to show that the amount of its contributed capital, or equity, totals at least 20 percent of the total development cost, or at least 10 percent of the total development cost for a redevelopment project that is located in a government-restricted municipality. As provided in the definition of "equity," satisfaction of developer contributed equity requirements for Low-Income Housing Tax Credit (LIHTC) financed projects differs

from projects financed by other means. For LIHTC-supported projects, the Authority will follow rules and procedures established by the Housing and Mortgage Finance Agency for deferred developer fees. Additionally, the proceeds from the monetization of LIHTC and other Federal or local tax credits will be counted as developer contributed equity. However, proceeds from redevelopment area bonds will not to be counted towards the developer contributed equity.

The developer also must show that it has complied with the requirements for tax filing and information returns, payment or remittance of State taxes and fees, which is evidenced by submitting a tax clearance certificate. The developer, all principals of the developer, and any entity with common principals as the developer, must also demonstrate not being in arrears of more than 24 months of any financing obligation for the project at the time of application.

With the exception of demolition and site remediation activities, the developer must demonstrate that no construction has commenced at the redevelopment project site prior to application submission, unless the Authority determines that the redevelopment project would not be completed otherwise. Further, where the redevelopment project will be undertaken in phases, the incentive award will be limited to only the phases where the construction has not yet begun. The inclusion of those costs incurred prior to application as project costs is limited to those undertaken within two years of application. However, exceptions are provided during the initial two years of the program, to account for work stoppages that likely resulted from the COVID-19 pandemic.

To qualify for an incentive award, a residential project must have a total project cost of at least $17,500,000, if the project is located in a municipality with a population greater than 200,000 or of at least $10,000,000 if the project is located in a municipality with a population less than 200,000 according to the latest federal decennial census. If the project is in a qualified incentive tract or government-restricted municipality, then the residential project must have a total project cost of at least $5,000,000.

A redevelopment project must be completed, and the developer must 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, or where the redevelopment project has a project cost in excess of $50,000,000, in accordance with the incentive phase agreement corresponding to the redevelopment project. For a redevelopment project with a project cost in excess of $50,000,000 and authorized to be completed in phases, the Authority has the discretion to allow up to six years from the date on which the incentive award agreement is executed to be issued a temporary certificate of occupancy by the applicable enforcement agency, provided that each phase, except for the last phase, shall be $50,000,000 or more.

The eligibility criteria also require that a redevelopment project meet minimum environmental and sustainability standards, comply with the Authority's affirmative action requirements, and pay prevailing wages to construction workers and building service workers. The developer is also required to certify that any contractors or subcontractors employed will be registered as required by "The Public Works Contractor Registration Act," will 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 will possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

Finally, for a residential project or redevelopment project consisting of newly constructed residential units, the developer is required to reserve at least 20 percent of the residential units for occupancy by low- and moderate-income households with affordability controls as required pursuant to the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.). If a project consists solely of rehabilitating or renovating existing units, with no change to the composition of units or creation of new units, the 20 percent reservation is not a requirement.

N.J.A.C. 19:31-23.4 Application submission requirements. This section establishes the information needed and procedures required for submitting an application to the Authority for tax credits under the program, including certain certifications pertaining to net positive economic benefit.

Materials required at application includes: basic details about the developer's and any co-applicant's business; a copy of a tax clearance certificate; information on the developer's and any co-applicant's relationships and good standing status (as defined by each department) with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury; information about pending legal matters and a completed legal questionnaire; and details on any other development-related subsidies received by the developer for the project.

The applicant will also be required to provide information about the proposed project, including: a description of the project, with a breakdown of uses and related square footage and costs; the developer's experience with similar project(s); the anticipated project construction schedule; employment projections at the redevelopment project; site control status for the entire redevelopment project site; list and status of all required State and Federal permits that have been or will be required to be issued, as well as all required local planning and zoning board approvals, for the redevelopment project; a copy of a market and/or feasibility study for the proposed use of the project site that is prepared by an independent third party, which must include the firm's judgement regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period. The developer must also submit project financial information including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed financing terms, projected internal rate of return on developer's contributed capital, net margin, and cash on cash yield; a certification from the chief executive officer or equivalent officer that additional capital cannot be raised from other sources after making all good faith efforts; and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23.3(a)2.

If the applicant is applying with a co-applicant, the application shall also include certain information pertaining to the co-applicant, including: 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, or has an interest in; a completed legal questionnaire disclosing all

relevant legal matters in accordance with the Authority debarment and disqualification rules; a list of all the development subsidies 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; organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality; and a description of the long-term participation agreement between the co-applicant and the developer regarding the redevelopment project.

For a redevelopment project with total project cost of $10 million or more and for which a community benefits agreement is required pursuant to N.J.A.C. 19:31-23.8(e), the developer shall provide a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreement for the redevelopment project and affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required by N.J.A.C. 19:31-23.8(e)(3).

For all projects, regardless of total project cost, the developer must submit with the application a letter of support for the project from the governing body of the municipality or municipalities in which the project is located.

For any aspect relating to applicant and project eligibility, the Authority may require an applicant to submit any other necessary and relevant information, including that which is needed to complete the financial review and developer capacity.

N.J.A.C. 19:31-23.5 Fees. This section establishes non-refundable application and other fees intended to assist the Authority in recouping the administrative costs of processing applications. Beyond application fees, the Authority sets rates for one-time approval fees; one-time issuance fees, which are paid at the point of initial certification; and annual servicing fees, which are paid for the years in which the Authority is monitoring the project; as well as fees for tax credit transfers, project modifications, and project terminations. All fees are based on the type of project and size of project cost, with larger fee levels for larger projects. In addition, costs associated with certain third-party analyses or reviews utilized to assess the application may be passed along directly to applicants.

N.J.A.C. 19:31-23.6 Financing gap and fiscal impact analysis. This section provides for the financial review of information provided by the developer, the evaluation of proposed project cost, the validation of project financing gap, and fiscal impact analysis to determine net positive economic benefit to the State.

The Authority shall review the financial information provided by the developer for the proposed redevelopment project and all phases, if applicable. The proposed total development cost will be evaluated against reasonable market costs and components of comparable projects.

The Authority shall conduct a fiscal impact analysis to determine and ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State. Exceptions to the requirement for a net positive economic benefit

are capital investment for a residential project, a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access.

The required net positive economic benefit to the State that must be demonstrated is set at 185 percent of the award of tax credits for redevelopment projects, unless the redevelopment project is located in a government-restricted municipality, in which case it is 150 percent. The time period for evaluating the net positive economic benefit is the duration of the eligibility period. Evaluation of the benefits will include consideration of direct and indirect benefits to the State, including local taxes. The Authority may also include induced benefits derived from project construction; however, such determination will be limited to the net positive economic benefit from the capital investment commenced after application submission. For calculating permanent 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.

In addition, certification is required by the chief executive officer or equivalent officer of the developer that the submitted documents and factual assertions are true and accurate at the time of submission.

If the Authority revises the methodology used for the net positive economic benefit calculation, the Authority will apply the revised methodology prospectively to pending applications, previously approved redevelopment projects when the developer requests a modification, and previously approved redevelopment projects for which these rules or the incentive award agreement requires or authorizes a reevaluation. Additionally, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

N.J.A.C. 19:31-23.7 Approval of completed application; tax credit amounts. This section delineates the Authority’s review process, which includes project eligibility review, and determination by the Board that the applicant complies with the eligibility criteria, satisfies the submission requirements and provides adequate information for the subject application.

To have an application reviewed, businesses must apply before March 1, 2027. The Authority will review complete applications in the order of their submission dates. In circumstances where interest in the program is expected to surpass available funds, the Authority may, at the Authority's discretion and upon notice, institute a competitive application process, whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date.

Before approval of an application, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the developer and any co-applicant are in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department (as determined by each department). Or, if the developer or any co-

applicant has a compliance issue, the developer or any co-applicant has entered into an agreement with the respective department that includes a practical corrective action plan.

Any contractors or subcontractors that will perform work at the redevelopment project shall be registered, 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.

The Authority shall allocate incentive awards 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 (scoring shall be based on factors outlined in the section). If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

If a developer intends to apply to both the Authority and the New Jersey Housing and Mortgage Finance Agency for subsidies, the developer shall notify the Agency simultaneously with any application made to the Authority. Approval of an application by the Agency shall be the final determination required for an incentive award for a residential project.

Upon completion of the capital investment and receipt of a temporary certificate of occupancy for the redevelopment project or any phase of an approved phased project, or upon any other event evidencing project completion, a developer shall be allowed a total tax credit equal to 45 percent of the total project cost unless one of two exceptions apply. For commercial projects, the total tax credit shall be equal to 50 percent of the total project cost if the project is located in a government-restricted municipality.

For residential projects, the total tax credit shall equal 60 percent of the total project cost if the project is new construction and receives a four-percent allocation from the federal Low-Income Housing Tax Credit Program. The award will also be limited based on the sum of the tax credits awarded under programs administered by the Authority and the federal Low-Income Housing Tax Credit Program. If the project has tax credits awarded under the federal Low-Income Housing Tax Credit Program, the limit is 90 percent, otherwise the limit is 80 percent.

The value of all tax credits approved by the Authority shall not exceed: $60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50; and $42,000,000 for any other redevelopment project or phase.

Finally, the amount of tax credits a developer may apply annually shall equal the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

N.J.A.C. 19:31-23.8 Approval letter; incentive award agreement. This section requires that all applicants execute an approval letter and incentive award agreement with the Authority to establish the terms and conditions and requirements for the award.

The Board shall make a determination, and upon approval, provide notification to the applicant and the Division of Taxation of the maximum amount of tax credits, and the maximum percentage of allowed tax credits for total project cost in a redevelopment project. An approval letter will set the conditions that must be met to retain the tax credits, including the Authority's requirements regarding prevailing wage requirements, affirmative action, and certifications that the proposed project does not violate any environmental law requirements, including the Flood Hazard Area Control Act Rules, and that the project incorporates the minimum environmental and sustainability standards. The approval letter, which provides the requirements necessary for the Authority to execute the incentive award agreement, will also require that a qualified residential project will be monitored to maintain the affordable units for the grant term.

The approval letter will provide the estimated completion date, and require periodic progress reports and the submission of executed financing commitments and documents that evidence site control by the developer or an affiliate.

The Authority may rescind the incentive award if the periodic progress reports are not submitted or if the progress reports demonstrate unsatisfactory progress. The Authority may allocate the unused tax credits to another applicant if the incentive award is rescinded in the same calendar year as when the award was approved. Upon receipt of the evidence of financial commitment required by the approval letter, the Authority may re-evaluate the project financing gap and reduce the size of the grant accordingly. Except for extenuating circumstances or in the Authority's sole discretion, the approval of the tax credits will expire if the developer does not submit required documentation within a year after application approval.

After the requirements for the execution of the incentive award agreement are satisfied, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Authority's Chief Executive Officer will negotiate the terms and conditions on behalf of the State. The awarding of tax credits will be conditioned on the developer's and any co-applicant's compliance with the agreement requirements, as outlined in subsections (c)1 through (c)25.

Subsection (d) also provides the circumstances requiring a labor harmony agreement for a redevelopment project, specifically between a developer or tenant that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment and a labor organization or cooperating labor organizations representing the employees. A labor harmony agreement is required only if the State has a proprietary interest in the redevelopment project. However, the labor harmony agreement may not be required if the Authority determines that the redevelopment project would not be able to go forward if the agreement is required.

Pursuant to subsection (e), for a redevelopment project whose total project cost equals or exceeds $10 million, a developer and any co-applicant shall be required to also execute a community benefits agreement with the Authority and the chief executive of the municipality or the county in which the redevelopment project is located. While the Authority will not participate in negotiations between the developer and the municipality or county, the Authority will review the agreement prior to its execution. The community benefits agreement is a

condition to entering into an incentive award agreement; however, a community benefits agreement will not be required if 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 and the approval letter or redevelopment agreement (1) has been certified by the municipality and (2) includes provisions that meet or exceed the standards required for a community benefits agreement. Nonetheless, the Authority does not intend to incorporate community benefit agreement standards in its approval letter, as those will need to be negotiated between the developer and municipality or the county.

The community benefits agreement may include requirements for training, employment, and youth development and free services to underserved communities in and around the community where the 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. The community benefits agreement will include the developer's contributions; the monetary equivalent for any non-monetary contribution; an event of default if the developer forfeits tax credits in two successive years; and the date by which the community advisory committee must submit its annual report.

At least one public hearing is required prior to entering a community benefits agreement to hear testimony from residents, community groups, and other stakeholders on the community needs that the agreement should address. The record and hearing minutes shall be an exhibit to the community benefits agreement.

The community benefits 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.

If the annual report required to be produced by the community advisory committee indicates that the developer is not in compliance with the agreement, then a mediation process will be utilized to seek resolution, which may include mutually agreeable amendments to the community benefits agreement. If resolution is not achieved through mediation, then a hearing officer will be assigned by the Authority to conduct a review and to issue a written report to the Chief Executive Officer with findings and recommendations. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The subsection provides for the reduction of tax credits or forfeiture if the developer is not in compliance.

Subsection (f) requires the developer to submit, prior to the issuance of tax credits but not later than six months following project completion, satisfactory evidence of actual project cost, as certified by a qualified independent certified public accountant, and evidence of a temporary certificate of occupancy, or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement. Also required is the developer's certification that the information provided is true under the penalty of perjury. If the project cost is reduced below the relevant minimum project cost for eligibility, then the redevelopment project will no longer be eligible. If the project cost in the certification is less than the project cost in the

application approval, then the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly.

For a redevelopment project approved as a commercial project or as a residential project, the developer shall submit evidence that the project is predominantly commercial or residential, respectively. The developer shall be required to file a certification indicating whether the developer is aware of any condition, event, or act that would cause the developer not to be in compliance. Subsection (f) outlines other specific requirements for documentary evidence relating to deed restrictions for residential units; qualification as a film production project; satisfaction of minimum environmental and sustainability standards; and modifications to the redevelopment project as approved by the Board.

Subsection (g) also provides for forfeiture of the credit amount for any tax period when the documentation remains uncertified, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

Pursuant to subsection (h), when the Authority accepts the certification and determines the conditions have been met, within 90 days the Authority will notify the developer and the Director, and the developer will receive its tax credit certificate, which will not exceed the maximum amount determined by the Board. The use of the tax credit certificate will be subject to the receipt of an annual certificate of compliance issued by the Authority.

N.J.A.C. 19:31-23.9 Reporting requirements and annual report. This section imposes annual reporting requirements on the developer during the term of the eligibility period and outlines the provisions for issuance of the annual certificate of compliance by the Authority. A developer that was approved for an incentive award and has entered into an incentive award agreement shall submit an annual report for each year of the eligibility period. The report shall include; occupancy vs gross-leasable area, tenant list, evidence of continued deed restriction, rent roll, executed financing commitments and site control documentation. It shall also include evidence that a labor harmony agreement is in place, if applicable.

The developer is required to submit separate certifications: indicating whether the developer is aware of any condition, event, or act which would cause the developer to not to be in compliance with the approval, the Act, the incentive award agreement, or community benefits agreement; stating that the project does not violate any environmental laws, including the Flood Hazard Area Control Act Rules; listing the use and occupancy of the project; and stating whether the developer is in compliance with a community benefits agreement, if applicable.

The report is required to be submitted 120 days after the end of the developer's tax privilege period. Absent extenuating circumstances and the Authority's written approval, failure to timely submit the annual report with the required information will result in forfeiture of tax credits for that privilege period. The Authority may audit any representations made or documents submitted in the annual report.

Upon the Authority's approval of each annual certified report, the Authority will provide to the developer and the Director of Taxation a certificate of compliance indicating the amount

of tax credits that the developer may apply against its tax liability for that privilege period. 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. Thereafter, the developer and any co-applicant shall apply the credit awarded and the Director of the Division of Taxation shall prescribe the order of priority of the application of the credit and any other credits allowed.

N.J.A.C. 19:31-23.10 Reduction, forfeiture, and recapture of tax credits. This section establishes provisions for the reduction, forfeiture, and recapture of tax credits.

The section sets forth various instances in which the developer and/or any co-applicant shall forfeit all credits; and, instances in which the Authority shall reduce and/or recapture the tax credits due to certain changes in a project, or non-compliance with program requirements, including those pertaining to: labor harmony agreement pursuant to N.J.A.C. 19:31-23.8(d); occupancy of a project to less than 60 percent; payment of prevailing wage pursuant to N.J.A.C. 19:31-23.3(a)8; community benefits agreement pursuant to N.J.A.C. 19:31-23.8(e); or any material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions.

In addition, if, based on new information, the Authority determines that 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 or tax periods.

If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment, the Authority shall recapture all of the tax credits awarded. Further, any recapture amount pursuant to the 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 section also outlines the requirements for the developer to update certain submissions upon termination of an incentive award agreement, and for the Authority to 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 pursuant to N.J.A.C. 19:31-23.8(c)17.

The section provides that if all or part of a tax credit sold or assigned is subject to recapture, then the Authority shall pursue recapture from the developer and any co-applicant, to the extent the co-applicant is involved with the basis for the recapture, and not from the purchaser or assignee of the tax credit transfer certificate.

Finally, any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

N.J.A.C. 19:31-23.11 Transformative projects. This section establishes the eligibility criteria for a transformative project.

To be a transformative project, the project must demonstrate a project financing gap and a total project cost of a minimum of $100,000,000. In addition, the project square footage, exclusive of any parking component, must be either 500,000 or more of new or substantially renovated industrial, commercial, or residential space, or 250,000 or more of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production. A redevelopment project where more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail is excluded from being a transformative project.

For commercial projects, developers must also demonstrate that the project has special economic importance to the State and that the project creates modern facilities that enhance the State's competitiveness in attracting targeted industries. To do so, the developer must satisfy this requirement by meeting two criteria. Except for projects with 250,000 square feet related to film production, the first criterion is either the creation of at least 500 new full-time jobs or the substantial renovation of a vacant commercial building. The second criterion is to demonstrate that the project provides opportunities to leverage leadership in a high-priority targeted industry, for example, where the developer 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.

For residential projects, the developer must satisfy one of three criteria to demonstrate special economic importance: location in a government-restricted municipality, enhanced area, or distressed municipality; if in any other location, inclusion of 20 percent of new residential units for low- and moderate-income household or workforce housing in addition to the 20 percent required reservation; or substantial renovation of a vacant commercial building. Additionally, the project must have a certain minimum number of new residential units depending on project location and whether the project contains 100,000 square feet or more of retail or commercial space, excluding any parking.

All transformative projects must leverage the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets. Thus, the developer must demonstrate the benefits to the project of such those assets. The developer must show that the project – which may provide a place of employment or housing – benefits from one or more such State assets so as to attract or retain both employers and skilled workers generally or in targeted industries. The developer can demonstrate this leveraging of assets if a third-party prepared market or feasibility study explains how the project benefits from any such State asset or if the developer has negotiated an agreement with the entity responsible for the asset that benefits the project, its tenants or occupants.

A transformative project may be completed in phases as determined by the Authority based upon written architectural plans and specifications that are completed before or during the physical work, certificates of occupancy, or financial and operational plans. For phased transformative projects, the developer must enter into a transformative phase agreement, which may be incorporated in the incentive award agreement, with the Authority.

The developer must be issued temporary certificates of occupancy for all phases of the transformative project facilities within eight years of executing either the incentive award agreement or the first transformative phase agreement corresponding to the transformative project. After completing each phase, the developer is required to submit a certification that the phase is completed and that includes the project cost for that phase. For any infrastructure work that is shared across multiple phases, the certification must also include the project cost of all completed infrastructure work through the date of the certification. The Authority will review the project financing gap based on the actual financing at the certification of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority will also re-evaluate the developer's reasonable and appropriate return on investment in the seventh year and at the end of the eligibility period for the last phase; however, the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.

For a transformative project completed in phases, each phase will have a separate eligibility period. All conditions and requirements applicable during an eligibility period will apply to the entire transformative project until the end of the eligibility period for the last phase. If the certification for any phase indicates that the project no longer qualifies as a transformative project, the developer will forfeit all tax credits for that tax period and for all subsequent tax periods.

All transformative projects with newly constructed residential units are required to reserve at least 20 percent of the new residential units for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et al.).

The Authority shall review the transformative project cost; evaluate and validate the project financing gap estimated by the developer; perform a single project financing gap analysis (across all phases); and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the transformative project results in a net positive economic benefit to the State. Further, for any business or person that is considering to locate in a transformative project and is applying to receive any other incentive subsequent to an award of transformative project tax credits, the Authority will not credit that business or person with any net positive economic benefit that was previously credited to the transformative project. Projects that are predominantly residential will be excluded from the net positive economic benefit calculation.

The Authority may allow a tax credit for a developer of a transformative project to reimburse certain project financing gap costs in an amount not to exceed: 1. 40 percent of the total project cost, 2. the total value of the project financing gap, 3. or $350,000,000, whichever is less. For a phased transformative project, the $350,000,000 limitation on incentive awards will apply to the total aggregate award for all phases of the transformative project.

Finally, the approval letter will include conditions that must be satisfied for each phase for a transformative project. The developer is required to submit progress reports for each phase that has not yet been certified until certification of the last phase.

N.J.A.C. 19:31-23.12 Application for tax credit transfer certificate. This section allows a developer or co-applicant that is a holder of a credit, upon application to, and approval by, the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority, to sell its credit, covering one or more years, under the tax credit transfer certificate program for consideration received by the business of not less than 85 percent of the transferred credit amount, provided that in instances where the project is constructing new residential units, this consideration may be no less than 75 percent; and for such projects utilizing Low-Income Housing Tax Credits, this consideration may be no less than 65 percent.

N.J.A.C. 19:31-23.13 Assignment of rights of incentive award agreement. This section outlines the process for a developer or co-applicant to 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, along with the rights and remedies. In determining whether to consent to the developer's assignment, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer or sale, the amount of the purchase price allocated to the tax credit rather than to the project, and how the transaction – and the transfer of the project to a new entity – impacts the reasonable and appropriate return on investment that must be calculated for the project based on a single developer. Any assignment will be absolute for all purposes, including the federal bankruptcy code. Finally, the section outlines the scope, validity and lien of the pledge, and requires as a condition of any incentive grant that the notice be filed with the clerk of the county in which the project is located. The Authority shall publish on its website information concerning each approved pledge, assignment, transfer, or sale approved.

N.J.A.C. 19:31-23.14 Affirmative action and prevailing wage. This section provides that the Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project. This includes, but is not limited to, construction work that the developer may include in project costs pursuant to these rules and that is performed prior to the application, such as demolition and site remediation, provided that such work occurs after the effective date of the subchapter. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued. In addition, the Authority's prevailing wage requirements at P.L. 2007, c. 24 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3, and 19:31-23.3(a)7 shall apply to the redevelopment project, including, but not limited to, construction work listed in subsection (b)1 through 3. Finally, during the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23.3(a)8.

N.J.A.C. 19:31-23.15 Appeals. This section outlines the requirements for an applicant to appeal an action of the NJEDA Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-23.16 Reports on implementation of program. This section details the provisions of P.L. 2020, c. 156 establishing requirements for an initial report in 2022, and subsequent biennial reports on the implementation of the program. The reports described in this section must be prepared by a State college or university in conjunction with the Authority. The

Authority must also provide a written response to the report, which, together with the report, will be submitted to the Governor and the Legislature.

N.J.A.C. 19:31-23.17 Severability. This section states that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

Social Impact

The proposed new rules, which establish the Aspire program to encourage real estate development and private investment into communities across New Jersey, with a focus on low-income and under resourced communities, 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 like food security.

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

Economic Impact

The proposed new rules 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, 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 proposed new rules require that only projects that will provide the State a long-term net positive economic benefit can participate in the Aspire Program. Additionally, 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 proposed new rules 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 will also result in job creation needed to support projects approved thereunder. 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. The Economic Recovery Act of 2020 creates a shared program cap between the Emerge Program and the Aspire Program of $1.1 billion per year; however, actual cap usage will primarily be driven by the volume of approved applicants. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Aspire program; however, the Act and the proposed new rules 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 proposed new rules 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 into consumer food products.

Regulatory Flexibility Analysis

The proposed new rules may 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.; however, any costs will be minimal and fully offset by the amount of financial assistance received. The proposed 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. the proposed new rules provide new features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This change is meant to improve regulatory compliance processes for all businesses and the Authority.

Housing Affordability Impact Analysis

The proposed new rules may have an 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. Under Aspire, a project may qualify for 60 percent of the total project cost for the new construction of a residential project that receives a four-percent 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 Aspire 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 proposed new rules, 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, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning juveniles and adults in the State.

Full text of the specially adopted and concurrently proposed new rules follows:

SUBCHAPTER 23. ASPIRE

19:31-23.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development 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 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. Under the Act, the Authority shall administer the program to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to sections 58 and 59 of P.L. 2020, c. 156. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth in section 98 of P.L. 2020, c. 156.

19:31-23.2 Definitions

"Act" means the "New Jersey Aspire Program Act," sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335), as amended by P.L. 2021, c. 160.

"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).

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to P.L. 1983, c. 530 (N.J.S.A. 55:14K-1 et seq.).

"Authority" means the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to section 24 of P.L. 1991, c. 252 (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.

"Board" means the Board of the New Jersey Economic Development Authority established by section 4 of P.L. 1974, c. 80 (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 in section 2 of P.L. 1963, c. 150 (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 under the community benefits agreement during the eligibility period, subject to the limitations of N.J.A.C. 19:31-23.8(e)9. 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 under 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, which is predominantly commercial and contains 100,000 or more square feet of office and retail space, industrial space, or film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, for purchase or lease. 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.

"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.A.C. 19:31-23.8(i).

"Developer" or "applicant" means a person who enters or proposes to enter into an incentive award agreement pursuant to the provisions of section 60 of P.L. 2020, c. 156 (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.

"Distressed municipality" means a municipality that is qualified to receive assistance under P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.), a municipality under the supervision of the Local Finance Board pursuant to the provisions of the "Local Government Supervision Act (1947)," P.L. 1947, c. 151 (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, a 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 during which a developer or a co-applicant, if applicable, may claim a tax credit under the program.

"Enhanced area" means a municipality that contains an urban transit hub, as defined in section 2 of P.L. 2007, c. 346 (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.

"Equity" means developer contributed capital that may consist of cash, deferred development fees, 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. Code § 47, Low-Income Housing Credit, 26 U.S. Code § 42, and New Market Tax Credit, 26 U.S. Code § 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 includes the portion of the developer's fee that is deferred for a minimum of five years.

"Film production project" means a commercial project that is predominantly a film studio, professional stage, television studio, recording studio, screening room, or other infrastructure used for film production.

"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 his or her 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" 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 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et seq.), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, P.L. 2016, c. 4 (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.

"Health care or health services center" means an establishment where patients are admitted for examination and treatment by one or more physicians, dentists, psychologists, or other medical practitioners.

"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, or area designated pursuant to the "State Planning Act," P.L. 1985, c. 398 (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.

"Incentive award" means an award of tax credits to a developer or a co-applicant, if applicable, reimburse a developer for all or a portion of the project financing gap of a redevelopment project pursuant to the provisions of sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Incentive award agreement" means the contract executed between a developer, any co-applicant if applicable, and the Authority pursuant to section 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), which sets forth the terms and conditions under which the developer and any co-applicant may receive the incentive awards authorized pursuant to the provisions of sections 54 through 67 of P.L. 2020, c. 156 (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.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail 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 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 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, 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 Labor and Workforce Development has determined represent substantial numbers of retail or distribution center employees in the State.

"Low-income housing" means housing affordable according to 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 equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located.

"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.

"Minimum environmental and sustainability standards" means standards established by the Authority in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (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 1,000 units that qualifies as a transformative project.

"Moderate-income housing" means housing affordable according to 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 equal to more than 50 percent, but less than 80 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

"Municipal Revitalization Index" means the index 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.

"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 in 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," P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.).

"Program" means the New Jersey Aspire Program established by section 56 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-324).

"Project cost" or "total 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. 19:23-8(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 project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award under sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-335) shall not constitute a project cost.

"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.

"Reasonable and appropriate return on investment" or "reasonable and appropriate rate of return on investment" means the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment. For a residential project utilizing federal tax credits under the Low-Income Housing Tax Credit Program awarded by the New Jersey Housing and Mortgage Finance Agency, the reasonable and appropriate return on investment shall be based on the approval of deferred developer fees pursuant to N.J.A.C. 5:80-33. For purposes of the analysis of the reasonable and appropriate return on investment, an investment shall not include any federal, State, or local tax credits.

"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.

"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.

"SDA district" means an SDA district as defined in section 3 of P.L. 2000, c. 72 (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, project management, or other similar costs. Soft costs shall include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project, subject to the limitations of N.J.A.C. 19:31-23.8(e)9.

"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.

"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.

"Transit hub" means an urban transit hub, as defined in section 2 of P.L. 2007, c. 346 (N.J.S.A. 34:1B-208), that is located within an eligible municipality, as defined in section 2 of P.L. 2007, c. 346 (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.

"Workforce housing" means housing that is affordable according to 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.

19:31-23.3 Eligibility criteria

(a) Prior to March 1, 2027, a developer 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;

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 film production 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 section 4 of P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), as provided in N.J.A.C. 19:31-23.14(a);

8. During the eligibility period, each worker employed to perform construction work or building services 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 P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.). In the event a portion of a redevelopment project is undertaken by a tenant 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. For construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;

9. 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. 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;

10. 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 in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39);

11. 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;

12. Except for a residential project, food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of the Department of Health, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and

13. 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 of P.L. 2007, c. 101 (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, tenant, 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 1, 2024, demolition, site remediation, 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;

2. For applications submitted on or after January 1, 2023 and prior to January 1, 2024, demolition, site remediation, 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; and

3. For applications submitted prior to January 1, 2023, demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within four 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 residential project to qualify for an incentive award, the residential project shall:

1. Have a total project cost of at least $17,500,000 if the project is located in a municipality with a population greater than 200,000 according to the latest federal decennial census;

2. Have a total project cost of at least $10,000,000 if the project is located in a municipality with a population less than 200,000 according to the latest federal decennial census; or

3. Have a total project cost of at least $5,000,000 if the project is in a qualified incentive tract or government-restricted municipality.

(e) For a residential project or a redevelopment project consisting of 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 as required under the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.).

(f) For all redevelopment projects, in order to include the cost of acquiring a building or buildings in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings.

19:31-23.4 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 business;

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

3. The prospective future address of the business (if different);

4. The type of the business;

5. The principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;

7. The Federal tax identification number;

8. The total projected number of construction employees and permanent employees at the redevelopment project;

9. 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);

10. A copy of a market and/or feasibility study for proposed use of the project site by 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;

11. An anticipated construction schedule;

12. 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. 19:31-23.3(a)2;

13. As applicable, a certification that the project meets the requirements to reserve residential units as set forth in N.J.A.C. 19:31-23.3(d);

14. 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 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 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 satisfies the criteria at N.J.A.C. 19:31-23.7(b) 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;

15. 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," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by 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;

16. 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;

17. 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;

18. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

19. A list of all the development subsidies, as defined at P.L. 2007, c. 200, 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;

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

21. 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;

22. 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;

23. For a redevelopment project whose total project cost equals or exceeds $10 million and for which a community benefits agreement is required pursuant to N.J.A.C. 19:31-23.8(e), a letter of support from the chief executive of the municipality or county acknowledging the requirement for a community benefits agreements for the redevelopment project and affirming that the municipality or county shall proceed to negotiate a community benefits agreement in good faith with the developer and execute the community benefits agreement within the time required by N.J.A.C. 19:31-23.8(e)(3);

24. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23.7(c); and

25. 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) 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 prospective future address of the business (if different);

4. The type of the business;

5. The principal products and services and three-digit North American Industry Classification System number;

6. The New Jersey tax identification number;

7. The Federal tax identification number;

8. 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. 19:31-23.7(b) 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;

9. 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;

10. 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;

11. Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;

12. A list of all the development subsidies, as defined at P.L. 2007, c. 200, 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;

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

14. 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;

15. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project; and

16. 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) 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) 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) 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 under the penalty of perjury.

19:31-23.5 Fees

(a) A developer applying for benefits under this program shall submit a one-time non-refundable application fee. The application fee shall be as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $10,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $30,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, 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 under the federal Low-Income Housing Tax Credit Program, the fee shall be $50,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $50,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $60,000 without phases and $250,000 with phases; and

3. 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 phases. The fee shall be as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $50,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $50,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $60,000 without phases and $250,000 with phases; and

3. 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 pursuant to N.J.A.C. 19:31-23.2. 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 under the federal Low-Income Housing Tax Credit Program, the fee shall be $25,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $30,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $40,000 without phases and $100,000 with phases; and

3. 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. 19:31-23.12 or permission to pledge a tax credit transfer certificate purchase contract as collateral shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $10,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $10,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $10,000 without phases and $20,000 with phases; and

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

(g) Upon application 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, a developer shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $10,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $10,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $10,000 without phases and $20,000 with phases; and

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

(h) 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 under the federal Low-Income Housing Tax Credit Program, 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 utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total 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 utilizing tax credits under the federal Low-Income Housing Tax Credit Program, 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.

(i) 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. 19:31-23.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $7,500;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $7,500. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, 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

(j) 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. 19:31-23.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the federal Low-Income Housing Tax Credit Program, the fee shall be $7,500 for each extension;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $7,500 for each extension. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, 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.

(k) 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 under the federal Low-Income Housing Tax Credit Program, the fee shall be $25,000;

2. For projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program and with total project cost of $50 million or less, the fee shall be $25,000. For other projects not utilizing tax credits under the federal Low-Income Housing Tax Credit Program, 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

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

19:31-23.6 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, 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 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 capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access, as determined by the Commissioner of Health. 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 under the "Five-Year Exemption and Abatement Law," P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the "Long Term Tax Exemption Law," P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act," P.L. 1983, c. 303 (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 under 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 of (b) above to be eligible for any tax credits under 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 185 percent of the award, except that a redevelopment project located in a government-restricted municipality shall yield a net positive economic benefit to the State not less than 150 percent of the incentive award. The net positive economic benefit shall be evaluated for the duration of the eligibility period. 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.

(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 and indirect 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.

19:31-23.7 Approval of completed application; tax credit amounts

(a) Prior to March 1, 2027, for redevelopment projects eligible pursuant to section 57 of P.L. 2020, c. 156 (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 and any co-applicant is 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 or any co-applicant as applicable 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 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 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 may contract with an independent third party to perform a background check on the developer and any co-applicant.

3. Any contractors or subcontractors that will perform work at the redevelopment project shall be registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.), shall not have been debarred by 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.

(c) Provided that the requirements of (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 P.L. 2020, c. 92; 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 locating 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 under this section.

(e) Up to the limits established in (f) and (g) 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 transformative 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 under this program that shall not exceed the percentages 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 under this program.

1. 60 percent of the total project cost for the new construction of a residential project that receives a four-percent allocation under the federal Low-Income Housing Tax Credit Program;

2. 50 percent of the total project cost for a commercial project that is located in a government-restricted municipality; or

3. 45 percent of the total project cost for any other redevelopment project.

(f) Notwithstanding the provisions of subsection (e) above, for projects with tax credits under the federal Low-Income Housing Tax Credit Program, in no event shall the sum of all tax credits awarded under 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 under any program administered by the Authority exceed 80 percent of the project cost.

(g) The value of all tax credits approved by the Authority under the program shall not exceed $60,000,000 per redevelopment project or phase for a residential project that is allowed a tax credit under paragraph 1 of subsection (e) above, or a redevelopment project or phase that is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50; and $42,000,000 for any other redevelopment project or phase.

(h) 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.

19:31-23.8 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 and the Director of the Division of Taxation of the determination.

1. The Board's award of the 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 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, 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 will require that the qualified residential project will be monitored by an administrative agent as defined in N.J.A.C. 5:80-26.2 during the eligibility period for purposes of the affordable housing reservation in N.J.A.C. 19:31-23.3(e). 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 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.

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.

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 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 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 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;

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 the redevelopment project during the eligibility 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 and any co-applicants 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. 19:31-23.14(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-23.14(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 and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-23.9, as the Authority deems necessary;

12. Reporting requirements pursuant to N.J.A.C. 19:31-23.9;

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

14. A provision establishing the conditions under which the Authority, the developer 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 milestones in the incentive award agreement or fails to provide progress reports required under the approval letter;

16. A provision to verify the financing gap at the time the developer provides executed permanent financing commitments to the Authority and a verification of the developer's projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project 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, then the developer shall forfeit the incentive award;

17. A provision requiring that at the end of the seventh year of the eligibility period, the Authority shall evaluate the developer's reasonable and appropriate rate of return on investment and compare that reasonable and appropriate rate of return on investment to the reasonable and appropriate rate of return at the time of Board approval. 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 15 percent, the Authority shall require the developer to pay up to 20 percent of the amount in excess of the reasonable and appropriate rate of return on investment. The Authority shall require an escrow account to be held by the Authority until the end of the eligibility period. Following the final year of the eligibility period, the Authority shall determine if the developer's rate of return exceeded the reasonable and appropriate rate of return determined at Board approval. If the final rate of return does not exceed the reasonable and appropriate rate of return determined at Board approval, the Authority shall release to the developer the escrowed funds. If the project final rate of return exceeds the reasonable and appropriate rate of return determined at Board approval, the Authority shall require the developer to pay up to 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;

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 in N.J.A.C. 19:31-23.7(b)1, that the developer 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 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. 19:31-23.7(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 and any co-applicant shall forfeit the tax credits in any year in which the developer 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 confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by "The Public Works Contractor Registration Act," P.L. 1999, c. 238 (N.J.S.A. 34:11-56.48 et seq.); has not been debarred by 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. The incentive award agreement shall also include a provision that the Authority may suspend the tax credits if the developer is not in compliance with this requirement, and if the suspension continues for two years, then, at the Authority's sole option, the developer and any co-applicant may forfeit the tax credits for those years;

21. 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;

22. The incentive award agreement shall include a provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

23. Indemnification and insurance requirements from the developer and any co-applicant;

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

25. Default and remedies, including, but not limited, to a default if a developer or any co-applicant made a material misrepresentation on its application.

(d) The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center which will have more than 20 full-time employees, or at least one hospitality establishment which 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 which 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 and any co-applicants without the labor harmony agreement required under 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) For a redevelopment project whose total project cost equals or exceeds $10 million, in addition to the incentive award agreement, the developer shall execute a community benefits agreement or agreements pursuant to subsection e. of section 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), as prescribed below. Any co-applicant that is responsible or required to provide services under the community benefits agreement shall also execute the community benefits agreement.

1. 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)6ii 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.

2. The community benefits 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 (e)7ii below in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)6 below.

3. 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 community benefits agreement is a condition to entering into an incentive award agreement.

4. Prior to entering a community benefits 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 public hearing subject to the Senator Byron M. Baer Open Public Meetings Act 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 on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

5. The community benefits 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)5iii 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.

6. 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:

i. If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31-23.9(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. 19:31-23.9(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 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 shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this 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.

7. If the developer is not in compliance as determined pursuant to (e)6 above, the following apply:

i. The amount of tax credits that the developer 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:

(1) 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;

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

(3) The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

ii. For any other noncompliance, the developer 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 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.

8. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if 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 pursuant to (e)2 above required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer.

9. The sum of costs for benefits and services provided under the community benefits 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 under 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 below. 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.

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 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. For a redevelopment project approved as a commercial project, evidence that the redevelopment project is predominantly commercial; and for a redevelopment project approved as a residential project, evidence that the redevelopment project is predominantly residential;

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

5. Documentary evidence that a deed restriction reserving units pursuant to N.J.A.C. 19:31-23.3(e) or N.J.A.C. 19:31-23.11(e) has been recorded against each residential component of the redevelopment project. The deed restriction shall require that all residential units remain residential units until the eligibility period has expired;

6. If the redevelopment project was approved as a film production project, evidence that the redevelopment project qualifies as a film production project;

7. 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;

8. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true under 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. 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 by (f) above and the Authority determines that 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, and the developer shall receive its tax credit certificate which 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. 19:31-23.7(e) through (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.

19:31-23.9 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, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer 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 contained 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, which would cause the developer or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to subsection f. of section 60 of P.L. 2020, c. 156 and N.J.A.C. 19:31-23.8(e), or this subchapter;

2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, 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. 19:31-23.14(a);

4. Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-23.14(b) and (c);

5. A tax clearance certificate as described in section 1 of P.L. 2007, c. 101 (N.J.S.A. 54:50-39) for the developer and any co-applicant;

6. A certification from the developer that the project is still operating and that the redevelopment project is predominantly residential or commercial in accordance with the approval of the project. If the redevelopment project was approved as a film production project, the developer shall certify that the redevelopment project remains a film production project;

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, documentary evidence that the deed restriction required pursuant to N.J.A.C. 19:31-23.8(f)6 remains recorded, and documentation from the administrative agent that the redevelopment project remains in compliance with the affordability controls pursuant to the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.);

9. The rent roll 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;

11. A certification indicating compliance with the community benefits agreement required pursuant to N.J.A.C. 19:31-23.8(e);

12. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d);

13. For the first annual report, the permanent certificate of occupancy covering the entire redevelopment project;

14. 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 under the participation agreement; and

15. 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 by (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 the eligibility period, the Authority shall provide to the developer and the Director a certificate of compliance indicating 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 pro rate the tax credit for the first and last years of the eligibility period based on the number of full months the project was certified in the year the developer first certifies. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(e) Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer or co-applicant a credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). A developer or co-applicant shall apply the credit awarded against the developer's liability under section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and N.J.S.A. 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S.A 17:32-15), or N.J.S. 17B:23-5 for the tax I period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection. A developer or co-applicant shall not carry forward an unused credit unless the developer or co-applicant was unable to use the credit because the developer's redevelopment project was directly impacted by a natural disaster, state emergency, national emergency, or a situation that was out of the developer's

control that adversely affected the developer's or co-applicant's use of the credit that year. The developer or co-applicant may be permitted to carry forward an unused credit for up to two years, providing one or both has submitted evidence of the developer's redevelopment project being directly impacted by such a circumstance and receiving approval from the Authority and the Director. 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) The Director shall prescribe the order of priority of the application of the credit allowed under this section and any other credits allowed by law against the tax imposed under section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5). The amount of the credit applied under this section against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (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 in subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

19:31-23.10 Reduction, forfeiture, and recapture of tax credits

(a) The developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period if:

1. The developer changes a project that has been approved as a residential project to a commercial project or changes a project that has been approved as a commercial project to a residential project;

2. The developer changes a project that has been approved as a film production project outside the incentive area to a project that is not a film production project; or

3. Absent prior written approval of a modification by the Authority, the developer changes the uses of the redevelopment project that were utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31-23.6(b) and 19:31-23.11(l) or of a transformative project that were utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31-23.11(a)4i(1); or

4. The developer changes the project so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31-23.7(e).

(b) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23.8(d) is not satisfied during the relevant tax period, then the developer 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) If during the eligibility period, the occupancy of a project is reduced to less than 60 percent, 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 credit shall be allowed. For the purposes of this subsection, a residential unit shall be considered occupied if the unit is leased; and 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.

(d) As of the date of the annual report pursuant to N.J.A.C. 19:31-23.9, if any worker employed to perform construction work or building services 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. 19:31-23.3(a)8 during the relevant tax period, then the developer 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.

(e) If the developer or co-applicant, if a party to the community benefits agreement, is not in compliance with the community benefits agreement pursuant to N.J.A.C. 19:31-23.8(e), the Authority shall reduce the size of the award by the amount equal to 120 percent of the monetary value of the contribution or contributions for which the developer or co-applicant, if applicable, is not in compliance. This reduction shall not affect any recapture pursuant to any provisions in this section.

(f) If, based on new information, the Authority determines that 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 or tax periods.

(g) If at any time, the Authority determines that the developer or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded under 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, co-applicant, and the respective officer may be subject.

(h) The developer shall provide an updated project 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 pursuant to N.J.A.C. 19:31-23.7(c)17.

(i) If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (h) above or N.J.A.C. 19:31-23.8(c)17, the Authority shall recapture all of the tax credits awarded.

(j) 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.

(k) 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.

(l) If all or part of a tax credit sold or assigned pursuant to section 63 of P.L. 2020, c. 156, and N.J.A.C. 19:31-23.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

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

19:31-23.11 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 project cost of at least $100,000,000;

3. Includes:

i. 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, exclusive of any parking component; or

ii. 250,000 or more square feet of film, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, exclusive of any parking component; and

4. For commercial projects, 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, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production, either:

(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; or

(2) Involves the substantial renovation of a vacant commercial building; 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. For residential projects:

i. Is of special economic importance by meeting one of the following criteria:

(1) The project is located in a government-restricted municipality, enhanced area, or distressed municipality;

(2) The project is not located in a government-restricted municipality, enhanced area, or distressed municipality and includes at least 20 percent of new residential units for low- and moderate-income households or workforce housing, in addition to the 20 percent of the new residential units for occupancy by low- and moderate-income households required pursuant to (e) below; or

(3) Involves the substantial renovation of a vacant commercial building; and

ii. Either includes:

(1) The construction of 1,000 or more new residential units; or

(2) Is a mixed-use residential project with construction of 100,000 square feet or more of retail or commercial space, exclusive of any parking component and with the majority of such non-residential use being commercial, and includes one of the following:

(A) If the project is located in a government-restricted municipality, includes the construction of 250 or more new residential units;

(B) If the project is located in an enhanced area, includes the construction of 350 or more residential units; or

(C) If the project is not located in a government-restricted municipality or enhanced area, includes the construction of 600 or more 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 and hospitals.

(c) A transformative project, other than a project that includes 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production, 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 studios, professional stages, television studios, recording studios, screening rooms or other infrastructure for film production may be located anywhere in the State. No more than two transformative projects receiving an incentive award pursuant to this section shall be located in the same municipality. 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) All transformative projects that include newly constructed residential units shall reserve at least 20 percent of the new residential units for occupancy by low- and moderate-income households with affordability controls as required under the "Fair Housing Act," P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et al.).

(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 of section 57 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-325), any other section of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et al.), or other sections in this

subchapter to the contrary, 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 eight 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 of sections 55 and 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 and N.J.S.A. 34:1B-328), any other section of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et al.), or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility 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. 19:31-23.8(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. 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. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period pursuant to sections 55 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-323 through N.J.S.A. 34:1B-335) and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period for the last phase. If upon review of the certification and documentation for any phase, the project no longer qualifies as a transformative project, the developer and any co-applicant shall forfeit all tax credits for that tax period and all subsequent tax periods.

(j) Notwithstanding the provisions of section 60 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-328), any other section of P.L. 2020, c. 156 (N.J.S.A. 34:1B-269 et al.), 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 Authority shall re-evaluate the developer's reasonable and appropriate return on investment 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.

(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 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. 19:31-23.6(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. 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 under the "Five-Year Exemption and Abatement Law," P.L. 1991, c. 441 (N.J.S.A. 40A:21-1 et seq.), the "Long Term Tax Exemption Law," P.L. 1991, c. 431 (N.J.S.A. 40A:20-1 et al.), the "New Jersey Urban Enterprise Zones Act," P.L. 1983, c. 303 (N.J.S.A. 52:27H-N.J.S.A. 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 under 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 section 65 of P.L. 2020, c. 156 (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 section 65 of P.L. 2020, c. 156 (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 of sections 62 and 63 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-330 and N.J.S.A. 34:1B-331) and N.J.A.C. 19:31-23.9, 23.10, 23.12 and 23.13.

(o) Prior to allocating an incentive award to a developer, the Authority shall confirm that the transformative project satisfies the requirements of N.J.A.C. 19:31-23.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury and N.J.A.C. 19:31-23.7(b)3 regarding contractors and subcontractors.

(p) Notwithstanding the limitation on incentive awards set forth in subsection b. of section 61 and section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-329 and N.J.S.A. 34:1B-362) and any other sections in this subchapter to the contrary, the Authority may allow a developer of a transformative project a tax credit, as reimbursement for certain project financing gap costs, in an amount not to exceed 40 percent of the total project cost, the total value of the project financing gap, or $350,000,000, whichever is less, provided, however, that for a transformative project that is developed in phases, the $350,000,000 limitation on incentive awards set forth in this subsection shall apply to the total aggregate award for all phases of the transformative project. 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 under this program.

(q) For a transformative project, the approval letter shall contain 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.

19:31-23.12 Application for tax credit transfer certificate

(a) A developer 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 or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer 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 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 section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and 54:18A-3), section 1 of P.L. 1950, c. 231 (N.J.S. 17:32-15), or N.J.S. 17B:23-5. The certificate provided to the developer or co-applicant shall include a statement waiving the developer'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) The developer or co-applicant shall not sell or assign, including a collateral assignment, a tax credit transfer certificate allowed under this section for consideration received by the developer 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 or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits which 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 of (b)1 above, a developer or co-applicant of a residential project consisting of newly constructed residential units that has received tax credits under the federal Low-Income Housing Tax Credit Program, 26 U.S.C. s.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) The tax credit transfer certificate issued to a developer or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to sections 54 through 67 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-322 through 34:1B-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) 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) 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 transferrer;

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 transferrer.

19:31-23.13 Assignment of rights of incentive award agreement

(a) A developer who has entered into an incentive award agreement pursuant to section 60 of P.L. 2020, c. 156 (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 under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement. 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, 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, prior to requesting the consent of the Authority and State Treasurer, the developer shall obtain in writing the co-applicant’s consent, and the developer shall provide the co-applicant’s written consent to the Authority and State Treasurer with the developer's notice.

(b) A co-applicant who has entered into an incentive award agreement pursuant to section 60 of P.L. 2020, c. 156 (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 under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant under the incentive award agreement, provided that the purchaser shall be a non-profit under Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-

applicant, 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 and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation 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 shall obtain in writing the developer's consent, and the co-applicant shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant'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.

19:31-23.14 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at P.L. 1979, c. 203 (N.J.S.A. 34:1B-5.4) and N.J.A.C. 19:30-3 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after the effective date of this subchapter 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 P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), N.J.A.C. 19:30-3, and 19:31-23.3(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.

(c) During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23.3(a)8.

19:31-23.15 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 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., 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 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 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. 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 containing his or her 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 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.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. 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.

19:31-23.16 Reports on implementation of program

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 section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required under this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in sections 58 and 59 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-326 and 34:1B-327) and N.J.A.C. 19:31-23.6 and 23.7, 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 section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature.

19:31-23.17 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.

Appendix B – Reasonable and Appropriate Return on Investment

Introduction

As with its predecessor real estate development incentive, the Economic Redevelopment and Growth Program (ERG), a key statutory requirement within the Aspire Program is that without the incentive award, the redevelopment project is not economically feasible. As such the applicant must demonstrate that a project financing gap exists, which requires that redevelopment project will generate a below market rate of return.

This appendix outlines the Authority's history with such analyses and present policy recommendations for administering related provisions such as determining the reasonable and appropriate rate of return on investment for the project and how to administer profit sharing with the State in the event of excess returns on investment.

Authority History with Gap Financing Programs and Hurdle Rate Determinations

As noted previously the Authority has experience administering gap financing real estate development incentives through the ERG program dating back to its establishment in 2012. In November of 2012 the Authority Board approved the use of a financial model developed by real estate services firm Jones Lang Lasalle (JLL) for the purpose of determining market returns that would be required for prospective real estate projects in the State to be considered economically viable, i.e., a hurdle rate. This model was subsequently modified in December of 2012 to add functionality and allow for its use more efficiently across the state. The model arrives at a project specific hurdle rate based upon three factors including the projects proposed zip code, industry class, and if it would be located in area of the state exhibiting economic distress.

The zip code factor methodology determines expected returns in a market by analyzing historical real estate investments in the same zip code as the proposed project. It does this either by looking at historical transactions in the zip code and adjusting them for current economic conditions or, when there are not sufficient historical transactions, by interpolation, whereby a set of "anchor cities" are relied upon for comparable recent transactions. Anchor cities currently include Newark, Paterson, Camden, Asbury Park, Trenton, Millville, Paramus, Morristown, Summit, Princeton, Wall, Cherry Hill, Galloway, and Cape May. These cities were selected in consultation with JLL because of the presence of readily available comparable transactions and because of their geographic and economic diversity.

Within each zip code the model has a set of hurdle rates that are dependent upon the second factor: the industry class represented by the prospective project, e.g., office, retail, industrial, hospitality, and residential. The hurdle rate will reflect the market realities for the prospective project, i.e., a reasonable and appropriate return on investment is likely to vary within a specific market depending on the type of project that is being considered.

The third factor the model assesses is evidence of economic distress in the proposed project's location, which would be a further reason that a project would warrant a return above and beyond what would be anticipated in a market without such evidence of distress. These factors are median household income

below the state median, median personal income below the state median, and median housing prices below the state median. Within the model these three factors are evenly weighted to in total represent the difference between investment grade and non-investment grade debt, and the hurdle rate is increased accordingly for each factor that is exhibited i.e. if at approval the difference between market indicators for investment grade and non-investment grade debt is 250 basis points each factor of distress that is present would result in the hurdle rate being increased by 83.3 basis points.

The model is updated is typically updated quarterly to reflect current market realities and was most recently updated in September of 2021 for continued Authority use within the ERG program.

Historically there have been instances where the model has not been relied upon to determine the hurdle rate for a project by the Authority, and Staff proposes to continue this process. These are instances where either the developer is utilizing Low Income Housing Tax Credits (LIHTC) administered by the New Jersey Housing and Mortgage Finance Agency (HMFA) and where the project lacked sufficient forms of traditional equity such as cash and land to allow for the logical calculation of an IRR; or where the project is so exceptionally large, unique, and/or complex that the data in the model are not relevant or a good fit. In the event of the project utilizing LIHTC the Authority has relied upon the HMFA rules and policy detailing what is an acceptable deferred developer fee, which is widely understood within the affordable housing industry and effectively represents the extent returns are associated with an affordable housing project as they generally do not generate a profit for many years. In the event of a large, unique, and/or complex project, which could include complex projects utilizing LIHTC but having a significant commercial component, the Authority has commissioned a proposed project-specific third-party analysis performed by a real estate services firm to determine a project specific hurdle rate. As provided in the Aspire rules, the cost of these services is charged to the applicant.

Policy within Aspire for Determining Reasonable and Appropriate Return on Investment

Staff is proposing the continued use of the JLL hurdle rate model for purposes of determining the reasonable and appropriate return on investment that projects will be evaluated upon for program eligibility and award sizing. Staff is currently working with JLL to evaluate the continued appropriateness of the existing anchor cities given it is possible the development and economic landscape in the State has evolved since the creation of the model. In the event that the list of anchor cities is modified, staff will make the Board aware of any changes prior to considering any Aspire application for approval.

Staff will continue to rely upon the HMFA deferred developer fee model as the reasonable and appropriate return on investment when the project is utilizing LIHTC. For reference the HMFA deferred developer fee can be summarized as follows:

1. The amount of the developer fee is limited to 15 percent of project costs, except the developer fee shall only include 4 percent of building acquisition but excludes land acquisition
2. Of this 15 percent, at least 7 percent of the developer fee, i.e., deferred developer fee, cannot be realized in full prior to 5 years after stabilization of the project i.e. stabilization of rents. The developer must identify a reasonable point of stabilization the project's proforma based on the characteristics of the project. The Authority will review and determine whether the point of stabilization is reasonable and the project metrics (e.g., certain lease occupancy) that identifies

stabilization. For purposes of assessing excess returns, the point of stabilization will be the earlier of the time period identified in the developer's proforma (plus a short, reasonable amount of time) or when the project metrics are achieved.

Staff proposed continuing to use a third-party consultant to perform project-specific analysis for large and highly specific projects. The Aspire Program includes provisions that envision larger projects than those previously supported through ERG, both in the form of larger relative subsidy and in the creation of the Transformative Project designation. Additionally, the program allows for phased projects which would be evaluated based upon of project level return analysis potentially relying upon complex financing structurers. In these circumstances, the Authority staff will continue to rely upon real estate advisory services providers on an as needed basis to determine project specific reasonable and appropriate return on investment for large, unique, and/or highly complex projects.

Profit Sharing with the State in the Event of Excess Return on Investment

As indicated in the Rules, the Authority is directed to ensure that the returns realized by the Aspire supported project do not exceed those deemed acceptable at approval, i.e., that the actual return on investment is not greater than the reasonable and appropriate return on investment determined at board approval.

This analysis is to take place at the end of both the 7th and final year of the eligibility period. In instances where the actual project returns exceed the reasonable and appropriate return on investment determined at board approval by more than 15 percent, the developer is required to pay 20 percent of the excess returns to the State, ultimately to be deposited in the General Fund.
This analysis will be based upon a pro forma, the industry accepted financial analysis relied upon to calculate investment returns, provided by the developer detailing actual project financials to date and future projections (at the end of year 7). Critical to this analysis is the terminal value of the project assumed in the pro forma. A terminal value is typically used in calculating real estate development investment returns by using an assumed sale price of the asset in a specified year based upon underlying project income and the relative market conditions where the project is located, with the former typically reflected as a "cap rate". The cap rate used for this analysis will be based upon actual market conditions at the time of the return analysis, without regard for the cap rate assumed at approval.

The developer is required to provide to the Authority the updated financial information, including the updated pro forma, for the project at the time the return on investment must be calculated. Changes that can impact the return on investment include but are not limited to capital expenditure not envisioned at time of approval, the creation or funding of any reserve accounts, change in terms and/or amounts of debt and equity, changes in rents, and changes in expenses. Additionally, prior to consenting to a proposed sale of the property or an assignment of the incentive award agreement, the rules provide that the Authority will determine the impact of the sale or assignment to the return calculation, which will require determining the amount of return included in the purchase price and the reasonable and appropriate return on investment of the new owner.

Within the Aspire Rules, the concept of equity is used in two different ways. First, in the definition of "project cost," "equity" refers to the contribution by the developer to evidence a sufficient stake in the

project (20% or 10%). For this purpose, equity includes financial assistance the developer obtained from Federal and local tax credits and grants and for which the developer is responsible for meeting all requirements. Second, “equity” is also used to refer to the “investment” (as the statute and rules refer to equity for this specific purpose) that is the basis for calculating the project’s fiscal impact (net profit or loss) to the developer. Because this is a means of assessing how the developer leverages the project to increase the amount of developer’s value or wealth in the project, Federal or local tax credits and grants are excluded from the return on investment analysis. For example if a prospective project has costs totaling $40 million and is utilizing $6 million dollars in proceeds from the sale of Federal Historic Tax Credits and $2 million dollars in developer contributed cash to meet the 20 percent equity minimum (first meaning of “equity”), the project returns would be evaluated based upon developer contributed equity of $2 million (second meaning of “equity”).

For projects utilizing a deferred developer fee model i.e. those utilizing LIHTC, the reasonable and appropriate return on investment is effectively represented by the developer fee schedule. If any of these payments to the developer exceed the scheduled amount approved by the Board by more than 15 percent, the excess cash flow in that year shall be subject to this provision. This would also be the case in any year where excess project cash flow to the developer above and beyond the developer fee envisioned where to occur i.e. the project was to realize profitability sooner than anticipated.

Appendix C – Net Benefit Analysis

Introduction

As with prior incentive programs, such as Emerge and ERG - the predecessor to Aspire, a key statutory requirement is that the Authority must ensure fiscal prudency by determining that the award of **tax credits creates a net positive economic benefit to the State for most commercial projects**. While the Aspire program can support a variety of real estate projects, the ERA specifies that the requirement of a **net positive economic benefit to the State shall not apply** to the following:

1. **Residential projects**

2. Any portion of a commercial project that is **a health care or health services center with a minimum of 10,000 square feet located in a community with an MRI Distress score greater than 50 and that is lacking adequate access to such health care or services, as determined by the Commissioner of Health**

3. Any portion of a commercial project that is a "**food delivery source**," defined in the Aspire statute as **access to nutritious foods through a grocery operator of greater than 16,000 square feet**. Examples of nutritious foods are fresh fruits and vegetables, and grocery operators include, but is not limited to, supermarkets, grocery stores, or a prepared food establishment selling primarily nutritious ready-to-serve meals

For pre-ERA programs, the Authority relied upon a proprietary model that was developed by a third party but largely managed in-house. In the interest of greater transparency and consistency the Board approved, as part of the Emerge Program approval, that the best approach for new programs for such analysis is to rely upon an external third-party model that would not need to be updated or maintained by the NJEDA.

As described in the Emerge Program memorandum and appendices, to increase transparency and consistency, NJEDA staff determined that it would be important to utilize a third-party economic development model that is widely known, understood and utilized at the state, federal, and international levels. In addition, after evaluating several widely known, national level models, staff determined that utilizing a tool that was more easily understood by a broader set of stakeholders would be beneficial. Based on a thorough analysis of available alternatives that would meet the Authority's requirements, staff previously proposed the use of the IMPLAN model to calculate the expected net positive economic benefit from projects awarded within ERA programs, and the Board approved a specific approach within the Emerge program at the Authority's June 2021 Board Meeting. This memo provides background *(provided previously with approved Emerge Rules where noted)* on the fundamental theory underpinning IMPLAN's model, the history of EDA's work with the net benefit test, a brief overview of IMPLAN and its features, and an overview of the application of IMPLAN to calculate the net benefit for the Aspire program.

Overview & History of Input-Output Analysis – *(provided previously with Approved Emerge Rules)*

IMPLAN's model is built on a macroeconomic analysis known as Input-Output analysis (I-O), which estimates the interdependence between economic sectors and industries. A product of I-O is an input-output table, which is a data matrix that shows the inputs from industries and sectors of the economy necessary to create the output of a given industry. As an example, Table 1 shows the intermediate input (inputs from other firms and industries) and within-firm factors of production (calculated as income going to labor, capital, and taxes) that go into producing an industry's output.

Table 1 – I-O for US Manufacturing in 2019, millions of dollars

	Commodities/Industries	Manufacturing
A	Agriculture, forestry, fishing, and hunting	$322,670
B	Mining	$371,488
C	Utilities	$55,663
D	Construction	$14,197
E	Manufacturing	$2,458,644
F	Wholesale trade	$25,085
G	Retail trade	...
H	Transportation and warehousing	$54,383
I	Information	$22,650
J	Finance, insurance, real estate, rental, and leasing	$108,329
K	Professional and business services	$373,668
L	Educational services, health care, and social assistance	$146
M	Arts, entertainment, recreation, accommodation, & food services	$12,127
N	Other services, except government	$21,587
O	Government	$4,698
Sum, A-O	**Total Intermediate**	$3,913,382
P	Compensation of employees	$1,131,337
Q	Other taxes on production	$60,414
R	Gross operating surplus	$1,125,415
Sum, P-R	**GDP**	$2,317,167
	Total industry output (Intermediate + GDP)	$6,230,548

This data provides two important sources of information. One is, when an industry's output is "shocked," or increased/decreased by a specified amount, an analyst can estimate the impact of that shock on all other associated industries and sectors of the economy. Another important source of information is the understanding and ability to estimate the ripple effects of any one shock through all the associated industries and sectors of the economy. These estimated impacts are known as multipliers, and they estimate the total change in output across all industries and sectors expected when a specified industry's final demand is shocked.

Moreover, these multipliers can be broken down into three categories, typically referred to as direct, indirect, and induced impacts, which are explained as follows:[1]

- Direct effects -- occur directly from the focus industry's shock.
- Indirect effects – occur from impacts on other industries. They are akin to second-round impacts. For example, if we shock a pharmaceutical manufacturer, a second-round impact would be from

[1] https://blog.implan.com/understanding-implan-effects; https://www.investopedia.com/terms/i/input-output-analysis.asp

an industry that produces an intermediate good for the pharmaceutical industry, such as a chemicals manufacturer. The economic impact of the shock on the chemicals manufacturer would be considered an indirect effect.

- Induced effects – occur through household spending from labor income generated by the shock. These effects are created by the spending of employees in the directly and indirectly impacted industries.

Expanding on the pharmaceutical industry shock explained above, using an economic impact model, we can estimate how this one focused shock impacts the economy through areas such as employment, consumer and industrial demand, and State tax revenues

IMPLAN - *(provided previously with Approved Emerge Rules)*

IMPLAN was created in the 1970s, when the National Forest Management Act required the United States Forest Service to prepare a plan for alternative land management strategies and potential resource outputs. IMPLAN, short for "impact analysis for planning," estimated the economic impacts of those resource outputs on local communities.[2] IMPLAN's data is based on federal data sources from the Bureau of Labor Statistics, Bureau of Economic Analysis, and the Census Bureau.[3]

A distinguishing feature of IMPLAN is that it estimates tax revenue impacts from events. Taxes by level of government are sourced from the Census Bureau's Annual Survey of State and Local Government Finances, state government tax collections, Census of Government Finance, and the Bureau of Economic Analysis's National Income and Product Accounts.[4] The taxes are not estimated based on an analysis of what the specific company may pay, but is an estimate based on the general data. Therefore, the model does not incorporate such details about the company as individual salary or whether a company is already in the State.

IMPLAN's methodology for tax estimates has been used by other states to evaluate their incentive programs as well as industries – examples include the following:

- Nevada Governor's Office of Economic Development, which used IMPLAN to determine tax revenue estimates for the Tesla Gigafactory project in 2014[5]
- Oklahoma Incentive Evaluation Commission, which issued a report in 2016 on the effectiveness of several incentive programs and used IMPLAN to estimate the economic impacts of projects receiving tax credits[6]
- The Louisiana Economic Development Office & Legislative Fiscal Office has used IMPLAN to estimate the economic and fiscal impacts of entertainment-related industries in Louisiana[7]

[2] https://www.implan.com/history/
[3] https://implanhelp.zendesk.com/hc/en-us/articles/115009674448-IMPLAN-Data-Sources
[4] https://implanhelp.zendesk.com/hc/en-us/articles/115009674528-Generation-and-Interpretation-of-IMPLAN-s-Tax-Impact-Report
[5] Economic Impact of Tesla on Washoe and Storey Counties, September 2014
[6] State of Oklahoma Incentive Evaluation Commission, Tax Incentive Evaluation Report, 2016
[7] BaxStarr Consulting Group LLC, Fiscal & Economic Impact Analysis of Louisiana's Entertainment Incentives. Prepared in conjunction with the Louisiana Economic Development Office of Entertainment Industry Development & the Legislative Fiscal office, April 2011

- Maryland's Department of Commerce has used IMPLAN to estimate the economic impacts of incentive programs in annual reporting[8]

IMPLAN is also currently used by the California Governor's Office of Planning and Research, the California Research Bureau, and the Washington State Department of Transportation.

IMPLAN also counts federal agencies as clients, including the Bureau of Ocean Energy Management, NASA, US Department of Agriculture, US Department of Interior, and the US Geological Survey. IMPLAN's model outputs have been published in peer-reviewed academic journals and professional publications and have been used by economists for decades.[9]

IMPLAN & Net Benefit Test Application for Aspire

IMPLAN provides flexibility to model impacts at different levels of geographic region, including at the state, county, Metropolitan Statistical Area (MSA), ZIP code, and congressional district. To align with the distinction in the allocation of the Emerge, Aspire, and Community-Anchored Development tax credits in the Economic Recovery Act of 2020 and account for distinctly different labor and housing markets within the State, **for the Aspire program there will be two regions in which projects will be modelled – Northern and Southern New Jersey**. Southern New Jersey comprises the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem, and Northern New Jersey is the counties of Bergen, Essex, Hudson, Hunterdon, Mercer, Middlesex, Monmouth, Morris, Passaic, Somerset, Sussex, Union, and Warren.

IMPLAN has several types of economic shocks that users can model, including industry output, industry employment, commodity output, and employee compensation. For the purposes of the NJEDA's net positive economic benefit test, the Authority will be shocking **industry employment** and **industry employee compensation** associated with the underlying real estate project within the Aspire Program**.**

For each applicant, two scenarios will be run: the **ongoing activities at the project** and any **up-front construction** associated with the real estate project. IMPLAN's model includes estimates of federal, state, county, and municipal taxes. **Except as explained below regarding local taxes, only the model's estimate of state taxes will be used to estimate the benefit to New Jersey**, as the ERA requires the determination of the net benefit to the State. Additionally, the vast majority of the tax benefit to New Jersey occurs at the state level. **For ongoing activities at the project, only direct and indirect state taxes will be used. For the construction work, direct, indirect, and induced state taxes will be used.** This follows the methodology previously approved with the Emerge rules.

When calculating the impacts from ongoing activities at the project, in the interest of fiscal prudency and acknowledging uncertainty in project outcomes with respect to occupancy and tenant types throughout the life of the award, **the Authority will model average employment scenarios**. The Authority will **use regional averages for wages and industry standards for employment density (i.e. workers per square foot) to determine expected economic activities at the real estate projec**t. This will be done based upon

[8] Fiscal Year 2017, Consolidated Incentives Performance Report, As required by the Maryland Jobs Development Act Economic Development Article 2.5-109, February 2018, Maryland Department of Commerce
[9] https://implanhelp.zendesk.com/hc/en-us/articles/360044985833-About-IMPLAN

the real estate use or uses represented at the project such as **office, research and development, warehouse, retail, hospitality, etc**. This is a departure from historic practices of relying on employment and salary information provided by the applicant which are more likely to reflect a best-case scenario. For example, if a project represents 40,000 square feet of office and 10,000 square feet of ground-floor retail; the Authority will rely upon industry standards to determine expected employment in both the office and retail spaces, and determine total compensation based upon the average wages in the region for office workers and retail workers respectively. As stated in the rules, the applicant will have an **ongoing obligation to demonstrate physical occupancy of the project during the eligibility period to provide assurances to the Authority** that this economic activity is ongoing.

Also as stated in the Aspire Rules, the net positive economic benefit will be **calculated for the eligibility period of the project which is set at 10 years**. For a phased **Transformative project**, this would include the period of time **from the certification of the first phase** of the project **until 10 years after the certification (that is, the end of the eligibility period) of the final phase of the project**.

The ERA statute requires the Authority to perform this analysis in terms of net present value, i.e., the benefit in the future should be expressed in dollars today. Additionally, the statue requires the discount to reflect the uncertainty of the underlying outcomes related to the real estate project. As such, the Authority will discount expected future revenues to the State accordingly. This, in practice, is a two-step process. First, given the IMPLAN model estimates a one-time (essentially, the 1st year) impact on government revenue, the Authority must estimate the growth of future annual revenues. The Authority does this by growing future revenues by an estimated rate of inflation**. The inflation rate will be set based on a five-year mean of the Personal Consumption Expenditures Price Index as provided by the Survey of Professional Forecasters adjusted annually; initially this is set at an annualized rate of two percent**. Second, the Authority must then discount these future revenues. **To calculate the discount rate, staff starts with an industry accepted net present value discount rate, which currently is six percent. To account for the significant risk and uncertainty associated with State revenues in the furthest years out, the discount rate is increased by two percent (so, currently eight percent).** Tax revenues resulting from construction expenditures and upfront costs do not need to be discounted as they would occur prior to the issuance of any tax credits awarded to a company. This follows the methodology previously approved with the Emerge rules.

In certain instances, taxes at the local level or with inherently local implications, impact the State and thus such taxes would be factored into the economic benefit analysis. The local taxes that could be considered are property taxes from new construction and local payroll taxes. As both of these local tax revenues offset State funds needed for municipal aid and/or appropriations to reduce property taxes, they may directly benefit the State thus making them appropriate to be considered in this analysis. To include such local property taxes, the business will need to provide a PILOT agreement, real estate appraisal, preliminary assessment from tax assessor, or any other relevant third-party document. Conversely, the State's Urban Enterprise Zone program affords projects located in certain geographies an exemption from a portion of the State sales tax associated with a construction project, as such where this is the case the analysis will be adjusted accordingly to best reflect actual sales tax revenues to the State from the related construction project. This follows the methodology previously approved with the Emerge rules.

The Aspire Statute directs the Authority to set a minimum threshold which a project must exceed to determine that the project sufficient provides a net positive economic benefit to the State. Furthermore, it

allows for projects within Government Restricted Municipalities to have a minimum threshold that is as much as 35% less than the standard applied to projects in other locations. Staff is recommending that commercial projects located in **Government Restricted Municipalities demonstrate a minimum net positive economic benefit to the State of 150% of the Aspire award** and that **all other commercial projects demonstrate a minimum net positive economic benefit to the State of 185%** of the Aspire award. In the event that the project either previously received an approval or is being considered in concert with the Aspire application for additional NJEDA administered subsidies, the net positive economic benefit to the State would be calculated after accounting for both the Aspire award and these additional subsidies.

This set of thresholds prioritizes investment into communities in the greatest need while also adequately accounting for the inherent uncertainty of modeling economic outcomes by providing sufficient cushion. While this standard is less than that which was included in the Emerge program by statute (200-400%), it is significantly larger than the comparable threshold that was contained in the predecessor program ERG (100-110%). Additionally, the State is afforded further risk mitigation resulting from staff relying on average outcomes occurring at these real estate project versus a best-case scenario presented by an applicant. In addition to an ongoing condition of physical occupancy consistent with the project as approved, **if prior to certification the capital investment or real estate uses in the project were to materially change the approval would be subject to a revised net positive benefits test and potential award resizing. As with the Emerge Program, staff proposes re-evaluating the net positive economic benefit if the capital investment is reduced by more than 10% or if the square foot per use in the net positive economic benefit changes by more than 10%.**

Appendix D
Aspire Project Scoring Questions

The Authority is statutorily obliged to establish a system for scoring proposed Aspire projects to be used either to set a minimum acceptable scoring level or to allocate tax credits to the highest scoring projects in circumstances where there are more project funding requests than tax credit awards available.

Given the currently large pool of available credits relative to anticipated demand, staff recommend using a minimum score approach to assess whether a given project is consistent with the objectives, policy goals, and principles of the Aspire Program, rather than using scoring to competitively rank or compare projects against one other. Should demand increase and a comparative ranking of projects become necessary, staff will present a revised scoring rubric to the Board.

The recommended system would score projects with respect to five project parameters:

- Equitable Development
- Workforce Housing Opportunity
- Smart Growth/TOD
- Environmental Justice
- Climate Resilience

Respectively, the scoring questions posed would be:

1. "Will the Project Invest in and Improve the Public Realm of the Community where it is Located?"
2. For projects with a housing component, "Will the Project Increase Workforce Housing Opportunities?"
3. "Does the Project use "Smart Growth" Investments and Project Design to Increase Travel Choice and Reduce Environmental Impacts?""
4. If located in an overburdened community, "Will the Project Create New, Unsupported Environmental Impacts?"; and
5. If located in a FEMA-designated 100-year flood zone, "Has the Applicant Assessed the Project's Climate Resilience?"

<u>Scoring</u>

To achieve the minimum Aspire score and gain entrance to the program, a project would need to receive an affirmative response – with a corresponding point – for each of the scoring questions. Thus, the minimum score would be 5 out of 5.

The remainder of Appendix D provides details on the score evaluation method recommended to establish a project score in each of the five subject areas.

Equitable Development – "Would the Project Invest in and Improve the Public Realm of the Community where it is Located?"

This scoring parameter would ask – as part of the project itself or the project-supported Community Benefits Agreement (CBA) – whether programmatic or physical improvements are being made to the host community to address challenges that tend to correlate with:

- Historic underinvestment in low-income and areas designated in the Aspire statute as GMR, QIT, and Distressed Municipalities;
- Communities that are overburdened from an environmental impact perspective; and
- The mobility needs of communities that have reduced access to automobile transportation relative to more advantaged neighbors or neighboring communities

This parameter evaluates the following questions. The questions below do not have a minimum threshold. Does the project:

- Increase the amount of publicly accessible open space?
- Activate vacant or underutilized lands or buildings? In this context, activation refers to the term used in public open-space management and can involve temporary use of unused space, reuse of unused space, programming of space (events, activities, uses) in absence of activity, counter-programming (programming in contrast to and to diminish negative existing uses and activities).
- Remediate environmental contamination?
- Add new Green Stormwater Management Infrastructure?
- Improve access to municipal amenities (e.g., groceries, health care, community center, library) for existing community residents?
- Increase sidewalk coverage?
- Add elements to the streetscape that would improve safety for non-auto users beyond minimums required by law?
- Add elements to the streetscape that would improve ADA accessibility beyond minimums required by law?
- Add project elements that would increase Walk Score? Walk Score is an established and accepted methodology; it is described at https://www.walkscore.com/professional/research.php.
- Add transit access amenities (shelters, seating, etc.)? or
- Add street shade and shelter (shade cover from trees, awnings)?

Scoring: Does the project do any four of the above and not reduce any of the above without restoration or mitigation?

Yes – 1 point awarded
No – 0

Housing Opportunity: "Would the Project Increase Workforce Housing Opportunities?"

This scoring parameter would be applied to projects with a housing component and would ask whether the proposed project increases housing opportunities for households with between 80% and 120% of area median income (AMI) ("workforce housing").

The parameter would be structured to:

- Not penalize projects that have no housing component; and
- Not impose the requirement on communities that the Aspire statute and the ERA targets for increased economic support

The parameter would award a point to projects that make a minimum of 10% of residential units affordable to households in the target household income range.

Is the project a commercial project with no housing component?
Yes – 1 point awarded
If no, then…

Is it in a GRM, Enhanced Area, Qualified Incentive Tract (QIT), or Distressed Municipality?
Yes – 1 point awarded
If no, then…

If not in GRM, Enhanced Area, QIT, or Distressed Municipality, in addition to the 20% reservation for low- and moderate-income households required by Statute, does the project provide at least 10 percent of newly-constructed units as workforce housing?
Yes – 1 point awarded
No – 0

Smart Growth/TOD – "Does the Project use "Smart Growth" Investments and Project Design to Increase Travel Choice and Reduce Environmental Impacts?"

This scoring parameter would ask whether the project increase travel choices and reduce environmental impacts by reducing reliance on automobile trip-making – and automobile travel – on a per household or per capita basis. This test would not ask whether automobile travel would be reduced in total. The reduction sought is on a per-capita or per-household basis and in comparison with the project NOT being done. Also, this test constitutes a simple add-on to the traffic analysis that any developer applicant will have to have engaged in order to satisfy required steps in the local development approvals process.

There are four rationales for this parameter, in that more walkable, transit-oriented communities:

1. Have been shown to reduce vehicle trip-making and vehicle travel per capita and per household;
2. Are needed to attract and accommodate the State's future workforce;
3. Are more affordable for more households, increasing equitable opportunity; and
4. Advance sustainability and climate impact mitigation goals.

A project could achieve the policy outcomes referenced above by:

- Including a mix of residential, retail, and commercial development;
- Adding retail/commercial development to a primarily residential community;
- Providing housing more densely than in the surrounding community;
- Being located near high-quality transit service;
- Providing less off-street parking compared to the surrounding community; and/or
- Improving local biking and walking networks.

Traffic planners have developed various proprietary "mixed use trip generation models" to measure the effects of the factors listed above on automobile travel and bike, walk, and transit trip-making. The United States Environmental Protection Agency has also developed a toolkit that is freely available to the public for the same purpose. Any capable traffic planning firm available to a developer applicant should be able to conduct the necessary measurement using such tools.

The scoring parameter would ask if the project, using a mixed-use trip generation tool (either proprietary or publicly available), would be forecast to have reduced vehicle trip-making per capita and reduced vehicle travel per capita – or no increase in either of these metrics – for the project environs, compared to NOT building the project as proposed. An affirmative answer would generate a point.

However, recognizing that the Legislature specifically exempted film production projects from place-based requirements, a film production project will receive a point for this scoring parameter.

To best reflect a project's Smart Growth characteristics, the project area for this scoring parameter is the most compact geography for which this analysis that is practicable (e.g., census block or traffic analysis zone).

Environmental Justice -- "Would the Project Create New, Unsupported Environmental Impacts?"

This scoring parameter would ask: (1) if the proposed project includes a "facility" defined in P.L. 2020, c. 92 (N.J.S.A. 13:1D-157 to -161), "the Environmental Justice Law," as potential sources of environmental and/or public health stressors, and whose construction or expansion would require an environment justice impact statement and public hearing prior to NJDEP evaluating an application for an environmental permit; (2) if the project is located in a community identified as an "overburdened community" according to the Environmental Justice Law; and (3) if the project has received a permit from the Department of Environmental Protection. If the project were to meet each of these conditions it would achieve a point for this parameter test, and if it did not it would not.

The rationale for this parameter is that it would avoid allocation of Aspire tax credit awards to applicants whose projects would be at risk of triggering the Environmental Justice Law process (without having completed such process). It would also avoid mis-allocating NJEDA staff time to projects that may be held up by Environmental Justice Law concerns arising from the NJDEP review and process.

The structure of the proposed scoring for this parameter is as follows:

Is the proposed project a facility as defined in P.L. 2020, c. 92? (yes/no)

If no, then the project receives 1 point

If yes, then: is the project located in an overburdened community as defined in P.L. 2020, c. 92? (yes/no)

If no, then the project receives 1 point

If yes, then has it received the required permits or any other type of approval from NJDEP (which, pursuant to the Environmental Justice Law, means that NJDEP has published the developer's environmental justice impact statement and received and considered public comment from the required public hearing)?

If yes, 1 point

If no, 0 points.

Climate Resilience – "Has the Applicant Assessed the Project's Climate Resilience?"

This scoring parameter would ask whether the applicant has prepared a self-assessment of project vulnerability to climate risk, specifically an assessment of the risk to its project of its long-term viability, feasibility, and accessibility given forecast climate-related changes.

The rationale for the scoring parameter would be to advance the State's progress towards declared climate resilience objectives. Achieving a point is within the control of any applicant.

The principal objective of this parameter would be to assure applicant self-assessment, with applicants using scientific analysis approaches and reputable and current data. The report must identify and explain the analysis and identify the source of data.

Regarding the parameter itself, the question would be, for projects located in a 100-year flood zone as defined by the Federal Emergency Management Administration, has the applicant prepared an assessment of climate impact risk for the construction, reconstruction, relocation, or modification of any building, parking area, or any other project feature relating to site access, site services, or project-serving utilities?

And if so, has the applicant's climate impact risk assessment evaluated the susceptibility of its project and all project elements, to each of the climate risk elements listed below, within a 10-year timeframe and for the year 2050?

- Sea level rise
- Increased temperatures and urban heat island effects
- Changes in groundwater tables
- Increased rainfall intensity (and ability of low-impact development (LID) stormwater management methods to mitigate these)
- Oher climate impacts that may affect the performance of the site in the future

And, finally, has/have the applicant(s) identified and described any specific project elements and/or risk mitigation mechanisms incorporated to address identified risks in the climate risk areas referenced above?

Is project located in an identified climate risk zone (yes/no)
If no, 1 points

If yes, has applicant prepared a climate risk self-assessment that uses analysis approaches and data as described above?

If yes, 1 points
If no, 0 points.

Appendix E:
Green Building Standards

GUIDANCE FOR POTENTIAL ASPIRE AND EMERGE INCENTIVE APPLICANTS NJEDA

UPDATED: 2021

Table of Contents

Green Building Standards Guidance for Potential Aspire & Emerge Incentive Applicants (Updated 2021)

The below information is intended to be plain language guidance as to the process NJEDA uses to evaluate compliance with green building standards. For specific questions regarding this process or for more information on specific green building requirements for your project, please contact Rob Wisniewski – Sr. Construction Officer-Green Building, rwisniewski@njeda.com *or (609) 858-6768.*

Background

The enabling acts establishing the Aspire and Emerge Programs require any applicant seeking incentive grants for redevelopment projects under these programs to certify that the project was designed and built to green building standards.

Given the fact that Aspire and Emerge were expanded under the Economic Recovery Act of 2020 to allow for a greater degree of variation in the projects that are eligible for these incentives, EDA has established a flexible menu of options that applies the best practice principles of the NJ Green Buildings Manual to the applicant's specific type of project.

Potential applicants should understand going into the application process that these standards exist and, depending on the scope of the project, compliance with green building standards can impact overall project cost. **Therefore, it may be in the applicant's best interest to review this information with a design professional as early in the process as possible for guidance as to how the requirements will impact overall project cost and implementation.**

Identifying a Project Type

Given that green building standards differ depending on the scope of the project, during the application stage, the applicant will be asked to identify the specific project type (1 or 2, see below) that best applies to the scope of construction and which will drive capital investment costs. Please note that EDA staff will not recommend any project for EDA Board approval until a project type has been clearly identified on the program application.

The **project classification types** are as follows:

Type 1:

Construction consisting of 50% or more of the building's value and/or square footage

- ***New Construction***

- ***Reconstruction –*** Commonly referred to as a "gut rehab" this includes extensive work involving the interior of a building, floor or tenant space to the degree that the work area cannot be occupied while the work is in progress, and where a new certificate of occupancy is required before the work area can be reoccupied. This does not include projects comprised only of floor finish replacement, painting, wall-papering, or the replacement of equipment or furnishings.

Type 2:

Construction consisting of 50% or less of the building's value and/or square footage

- ***Renovation*** – Work that is generally restorative in nature and involves the use of different materials. Examples include: replacement of interior finish, trim, doors, or equipment. Renovation does not involve the reconfiguration of space. Renovation also includes the replacement of equipment or fixtures.

- ***Alteration*** – Work that involves a change in layout of interior space while other portions of the space remain without rearrangement. For example, the rearrangement of any space by the construction of walls or partitions, the addition or elimination of any door or window, the extension or rearrangement of any system, the installation of any equipment or fixtures, or any work which affects a primary structural component.

For projects scopes considered "equipment only," project teams must submit a letter signed by CEO (or equivalent) along with a project narrative and schedule of values clarifying the scope of work for the project to be reviewed for exemption from the green building standards stipulated above.

Basic Application of Standards

For all Type 1 Projects: *Table 1: Applicable Standards for Type 1 New Construction/Major Reconstruction Project - page 7*

For all Type 2 Projects: *Table 2: Minimum Required Standards for Type 2 Renovation/Alteration Project – page 11*

NJEDA will review for green building compliance at two (2) stages for every project; Pre-Development and Post-Construction.

Submitting for a Pre-Development Review

Upon Incentive application approval, EDA will require that a project's specific green building plan be submitted the sooner of six (6) months following application approval (when the first project update is due,) or upon the applicant's request for a grant agreement. **However, the plan must be submitted no later than the end of "Schematic Design" so green building elements can be incorporated into the design appropriately.** The plan is to be submitted via email to Rob Wisniewski at rwisniewski@njeda.com with the name of the project in the subject line. The email should include the following information:

- NJEDA P #:
- Classification as described above (i.e.: New Construction, Reconstruction, Renovation or Alteration):
- Pre-Development or Post-Construction Review:
- Technical Contact Info (Owner, Architect/Engineer):
- Project Location(s):

All green building plans should include the following components:

1. A letter from the Applicant (on letterhead) outlining the project size and scope, plus a commitment to their specific standards based on project classification.
2. A signed and sealed letter (please rub lead on the seal so it's visible when scanning) from a licensed design professional outlining the scope of work for the project including the following:
    a. Type of project (New Construction, Reconstruction, Renovation or Alteration as described above) with square footage of the project (and how the project relates to the overall building size – if applicable).
    b. Identify which approved path of green building compliance the applicant is proposing (i.e., LEED Silver or % better than ASHRAE 90.1).
3. Comprehensive construction budget
4. The compliance documentation identified in the chart(s) below.

The submission of this green building plan along with the backup documentation identified in the chart below will start the Pre-Development Review process.

During this Pre-Development Review, EDA will evaluate the project specific green building plan for compliance with the referenced standards applicable to that specific project type. EDA will then either approve the plan or advise applicants as to the most applicable plan amendments to satisfactorily meet the standards. Should an applicant request a "preliminary" Pre-Development approval, a letter would be required from the applicant (on letterhead) clearly identifying a commitment to an approved metric in which the project's performance shall be measured against. Once the required documentation demonstrating compliance with the identified metric (i.e., an energy model or COMcheck calculations) is available and ready for review, the applicant can submit for "final" Pre- Development Review. Once all submissions have been reviewed and approved, a project will receive an approved review letter clearly stating that project has met the pre-development green building requirements of the program.

Project design documents should not be finalized by the applicant until EDA has reviewed and approved the green building pre-development plan.

EDA's Green Building staff are available at this stage to review the green building pre-development plan. However, applicants are advised to channel questions and information through their design professional charged with planning and executing the plan.

Submitting for a Post-Construction Review for Final Certification

Once EDA approves the green building pre-development plan**, the applicant will be expected to execute the plan as approved**. To ensure the plan was executed as approved, EDA will minimally require a signed and sealed letter from the licensed design professional certifying that the as-built project meets the specifications of the approved plan and all green building measures identified are actually installed and/or implemented. Additional required documentation will be outlined in the approval letter based on predevelopment submission. Refer to the chart below for requirements for each measure.

Table 1: Applicable Standards for Type 1 New Construction/Major Reconstruction Projects

Category	Project Type	Standard	Acceptable Measure	Pre-Development Review in addition to Green Building Plan	Proof of Compliance for Post-Construction Review
Commercial	New Construction or Reconstruction	U.S. Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED)	Minimum Silver for all USGBC-LEED rating systems	LEED Scorecard identifying at least 50 points and proof of project registration from GBCI. If project will not be registered and pursue actual certification, the applicant should clearly identify this approach in the green building plan.	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan and final LEED scorecard **OR** final LEED scorecard and award certificate indicating a minimum of Silver level. Should the project not actually receive certification but complied with all of the prerequisites and implemented green building strategies equivalent to at least 50 points, the applicant should submit compliance documentation with such prerequisites and credits just as the team would have been uploaded to LEED.
Commercial	New Construction or Reconstruction	American Society of Heating, Refrigerating and Air-Conditioning Engineers	Whole Building Energy Simulation verifying 5% (commercial) or 15% (multi-family) above ASHRAE 90.1-2016	Signed and sealed energy model summary results clearly identifying efficiency percentage over the referenced standard.	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan

Category	Project Type	Standard	Acceptable Measure	Pre-Development Review in addition to Green Building Plan	Proof of Compliance for Post-Construction Review
Commercial	New Construction or Reconstruction	New Jersey Board of Public Utilities Pay for Performance	New Jersey BPU Pay for Performance. Minimum 5% above ASHRAE 90.1-2016	New Jersey Board of Public Utilities Pay for Performance Application and/or Energy Reduction Plan (ERP) from an approved Pay for Performance Provider. If project will not actually participate in the P4P Program, the applicant should clearly identify this approach in the green building plan along with P4P formatted ERP.	New Jersey Board of Public Utilities Pay for Performance Application. Should the project not actually submit for P4P, the applicant shall submit a signed/sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Commercial	New Construction or Reconstruction	American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)	Standard 189.1-2014	Energy model and Identification of Mandatory Provisions	Proof of compliance with the mandatory provisions. Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Commercial	New Construction or Reconstruction	International Green Construction Code (IGCC) - 2015	Choose minimum of 15 electives from the Jurisdictional and/or Project Electives	Energy Model and Completed IGCC Table 302.1 and/or Table A103.2	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.

Category	Project Type	Standard	Acceptable Measure	Pre-Development Review in addition to Green Building Plan	Proof of Compliance for Post-Construction Review
Residential/ Mixed Use	New Construction/ Reconstruction	LEED, Home Energy Rating System (HERS), and/or EPA Energy Star	Development projects can pursue LEED ND (Silver) or choose an identified EPA Green Building Standards Guidance compliance path for individual buildings within a development project. Residential projects (single or multifamily) within a mixed- use project, HERS 75 or less. If more than 50 percent of the project is residential, than utilize Energy Star Homes or Energy Star Multifamily, otherwise utilize Energy Star Commercial score of 75 or better	LEED: Scorecard identifying at least 50 points and proof of project registration from GBCI. If project will not be registered and pursue actual certification, the applicant should clearly identify this approach in the green building plan. AND/OR HERS: Letter from RESNET provider confirming eligibility and engagement AND/OR EPA: Screen shot of Portfolio Manager with project's status	LEED: Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan and final LEED scorecard **OR** final LEED scorecard and award certificate indicating a minimum of Silver level. Should the project not actually submit for actual certification but complied with all prerequisites and implemented green building strategies equivalent to at least 50 points, the applicant should submit compliance documentation with such prerequisites and credits just as would have been uploaded to LEED Online. AND/OR HERS: Certificate AND/OR EPA: Energy Star Certificate

Category	Project Type	Standard	Acceptable Measure	Pre-Development Review in addition to Green Building Plan	Proof of Compliance for Post-Construction Review
Commercial/ Residential	New Construction or Reconstruction	International Living Future Institute	Net Zero Building Energy Certification	Proof of registration	Net Zero Building Energy Certification
Residential	New Construction or Reconstruction	NJ Housing and Mortgage Finance Authority (NJ-HMFA) and NJ Department of Community Affairs (NJ-DCA)	Residential projects that are utilizing affordable housing subsidies offered by NJ-HMFA and NJ-DCA are already required to conform to green building standards which meet the statutory requirement.	NJ Housing and Mortgage Finance Authority (NJ-HMFA) and NJ Department of Community Affairs (NJ-DCA) projects follow a separate and individual process outside of the green building standards review	HMFA final green building approval
Residential/Mixed Use	New Construction or Reconstruction	National Green Building Standard	National Green Building Standard	Proof of registration and NGBS Green Scoring Spreadsheet	NGBS Green certificate or the checklist
Residential/ Commercial	New Construction or Reconstruction	Passive House Institute US	Passive House Institute US Certification	Proof of registration	Passive House Institute US Certification

Guidance for Type 2 Projects

Table 2 below outlines the minimum green building requirements for all Type 2 projects considered an Alteration or Renovation, that are less than 50% of the building's value and/or square footage and fitting the project type criteria. These requirements are intended to give clear guidance to program participants, provide a consistent level of expectation throughout varying project types and reduce complications during the compliance review process. As noted in submission section, project teams must submit a construction budget & scope of work narrative outlining the minimum proposed standards and any additional green measures the project intends to pursue that address, but not limited to, the following areas of sustainability:

- Energy & Water Efficiency
- Indoor Air Quality Management
- Fundamental Commissioning
- Construction & Demolition Waste Management
- Occupancy Sensors
- Daylighting
- Innovative Measures

NOTES

1. Because of the variability in scope of work for each approved TYPE 2 project, not every category outlined below will/may be incorporated into every project. However, if the scope of work addresses one, any, or all categories listed in Table 2, project must adhere to the required measure.
2. LEED-CI Minimum Silver Certification will fulfill all prerequisites and requirements for TYPE 2 green building program approval

Table 2: Minimum Required Standards for Type 2 Renovation/Alteration Project

Category	Project Type	Standard	Acceptable Measure	Pre-Development Review in addition to Green Building Plan	Proof of Compliance for Post-Construction Review
Energy Efficiency	Newly installed lighting improvements including fixtures, ballasts and/or other electrical equipment	American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)	Minimum 5 percent energy improvement over ASHRAE 90.1-2016	COM Check or energy model signed & sealed by project design professional	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Energy Efficiency	Newly installed heating, ventilation, air conditioning & water heating equipment	American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE)	Minimum 5 percent energy improvement over ASHRAE 90.1-2016	COM Check or energy model signed & sealed by project design professional	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Energy Efficiency	Appliance	EPA Energy Star	Energy Star Labeled	Spec Sheet highlighting compliance	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.

Category	Project Type	Standard	Acceptable Measure	Pre-Development Submission	Proof of Compliance for Post Construction Review
Water Efficiency	Toilets	1.6 Gallons per flush	In aggregate, 20% better than baseline standard	LEED v4 Indoor Water Use Reduction Calculator	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
	Urinals	1.0 gpf			
	Public Lavatory Faucet	2.2. gpm@60psi			
	Kitchen Faucet	2.2 gpm@60psi			
Low Emitting Materials	Interior Wet Applied Paints	VOC Content Requirements for Wet Applied Products	Must meet the applicable VOC limits of the California Air Resources Board (CARB) 2007	Spec Sheets highlighting compliance	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Low Emitting Materials	Interior Adhesives/ Sealants	VOC Content Requirements for Wet Applied Products	Must meet the applicable chemical content requirements of SCAQMD Rule 1168, July 1, 2005, Adhesive and Sealant Applications	Spec Sheet highlighting compliance	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.
Low Emitting Materials	Carpet Flooring	VOC Content requirements	CRI Green Label Plus	Spec Sheets highlighting compliance	Signed and sealed letter from the licensed design professional indicating construction is complete and in accordance with the approved green building plan.

FILM TAX CREDIT PROGRAM

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Universal Television, LLC PROD-00192239

APPLICANT BACKGROUND:
Universal Television LLC is the production company responsible for "Echo (Pilot)". Echo is a high concept, genre procedural revolving around a team of investigators who solve the highest profile crimes by sending heroes into the past in the body of the victim. They assume the victim's identity and must race against time to prevent the crime before it happens.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:
As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film's total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	$7,900,344.91
B. Total Post-Production Expenses	$90,349.26
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	$6,825,203.90
Percentage Calculation = C/(A-B)	87%

Criterion Met	**Yes**

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than $1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	$6,825,203.90
Criterion Met	**Yes**

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	$6,825,203.90 x 30% =	$2,047,561.17
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$0 x 2% =	$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	$0 x 5% =	$0
Total Award		**$2,047,561.17**

APPLICATION RECEIVED DATE: 05/06/2020
DATE APPLICATION DEEMED COMPLETE: 05/11/2020
PRINCIPAL PHOTOGRAPHY COMMENCEMENT: 03/11/2020
PRINCIPAL NJ PHOTOGRAPHY LOCATION: East Rutherford, NJ
ESTIMATED DATE OF PROJECT COMPLETION: 12/31/2020

APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	1/31/2023

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of $75 million in tax credits for State Fiscal Year 2019 and increased to $100 million as amended by law on 1/21/2020. As a result, $100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, $48.13 remains in the program for State Fiscal Year 2022. However, there are 29 additional applications in the pipeline totaling $111.58 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:
The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on July 2, 2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Due Season Movie LLC PROD-00258366

APPLICANT BACKGROUND:
Due Season Movie LLC is the production company responsible for "Due Season". The story follows a young and incoming college freshman in need of raising money to attend her dream college (Prestige International School of Music). The only way to receive a full scholarship is to compete in the school's biggest music competition. Along the way she befriends students who want to help her to rebel against the school's policies and a Chancellor who is set in his ways.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:
As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film's total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	$1,956,719
B. Total Post-Production Expenses	$150,000

C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	$1,806,719
Percentage Calculation = C/(A-B)	100%
Criterion Met	**Yes**

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than $1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	$1,377,679
Criterion Met	**Yes**

AWARD CALCULATION

Base Award Criteria	Calculation	Result
35% of Qualified Film Production Expenses	$1,377,679 x 35% =	$482,187.65
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$1,377,679 x 2% =	$27,553.58
Total Award		**$509,741.23**

APPLICATION RECEIVED DATE: 4/21/2021
DATE APPLICATION DEEMED COMPLETE: 6/9/2021
PRINCIPAL PHOTOGRAPHY COMMENCEMENT: 5/18/2021
PRINCIPAL NJ PHOTOGRAPHY LOCATION: Montclair, NJ
ESTIMATED DATE OF PROJECT COMPLETION: 6/15/2021
APPLICANT'S FISCAL YEAR END: 12/31/2021
TAX CREDIT VINTAGE YEAR(S): 2021

TAX FILING TYPE: Corporate Business Tax
ANTICIPATED CERTIFICATION DATE: 8/9/2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of $75 million in tax credits for State Fiscal Year 2019 and increased to $100 million as amended by law on 1/21/2020. As a result, $100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, $48.13 remains in the program for State Fiscal Year 2022. However, there are 29 additional applications in the pipeline totaling $111.58 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:
The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – DIGITAL MEDIA TAX CREDIT PROGRAM

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Digital Media Tax Credit Program, applicants are eligible for a tax credit equal to 20% of qualified digital media content expenses, or 25% of qualified digital media content expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

APPLICANT: Audible, Inc. PROD-00188254

APPLICANT BACKGROUND:
Audible, Inc. is a producer and provider of spoken-word entertainment and audiobooks. The Company creates content and listening experiences for customers in over 150 countries. The Company employs a team of production staff in Newark, NJ utilizing technologies to record, produce, and edit Audible entertainment. The Company employs a team of production staff in Newark, NJ utilizing technologies to record, produce, and edit Audible entertainment.

In May 2015, Audible, Inc. was approved for Grow New Jersey tax credit award of $3,937,500 per year over 10 years, in total of $39,375,000 for the creation of 350 new full-time jobs and the retention of 50 full-time jobs.

ELIGIBILITY AND TAX CREDIT CALCULATION:
As part of eligibility for tax credits under the New Jersey Digital Media Tax Credit Program, an applicant must meet the statutory and regulatory definition of Digital media content. Digital media content is any data or information that is produced in digital form, including data or information created in analog form but reformatted in digital form, text, graphics, photographs, animation, sound and video content.

1. All Audible Studios, Audible Originals, and ACX audiobook and other spoken-word productions meet the definition of digital media content. For each digital audio production, data/information is transitioned, transformed and converted from an analog form (scripts, books, music, lyrics, articles, reports, etc.) to a digital form (a sound file) for mass audience release and consumption. In the production of audiobooks (Studios, Originals, ACX), spoken word or pre-published written content is narrated by a selected voice actor and recorded onto a digital format. The Audible Team will take the raw sound data and produce the file to be uploaded for a listener experience on the Audible website along with the digital text, graphics, and images related to the content title. Production activities include, but are not limited to, record, review and select the narration takes, piece audio takes together to create one final high quality audiobook or other audio content, add music and/or sound effects to narration, and conduct final quality checks.

As part of eligibility for tax credits under the New Jersey Digital Media Tax Credit Program, an applicant must meet two expense eligibility thresholds:

1. Percentage of the qualified digital media content production expenses for wages: A minimum of 50% of the qualified digital media content production expenses of the taxpayer are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

A. Total Qualified Digital Media Content Production Expenses after July 1, 2018	$32,032,910
B. Wages Paid to Employees in New Jersey	$25,694,521
C. Percentage of the qualified digital media content production expenses incurred for wages in New Jersey	80.21%
Criterion Met	**Yes**

2. Total Digital Media Content Production Expenses: A minimum of $2,000,000 of qualified digital media content production expenses. "Qualified digital media content production expenses" are expenses incurred in New Jersey after July 1, 2018 but before July 1, 2034 for services performed and goods purchased through vendors authorized to do business in New Jersey. "Qualified digital media content production expenses" shall include but shall not be limited to: wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the "New Jersey Gross Income Tax Act," N.J.S.54A:1-1 et seq. has been paid or is due; and the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payment made to a loan out company or to an independent contractor shall not be a "qualified digital media content production expense" unless the payment is made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required. "Qualified digital media content production expenses" shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the taxpayer for distribution or incorporation into the taxpayer's digital media content shall not be "qualified digital media content production expenses." The following digital media content expenses are projected by the applicant.

Qualified Digital Media Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	$32,032,910
Criterion Met	**Yes**

AWARD CALCULATION

Base Award Criteria	Calculation	Result
20% of Qualified Digital Media Content Production Expenses	$32,032,910 x 20% =	$6,406,582
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Digital Media Content Production Expenses.	$32,032,910 x 2% =	$640,658.20
5% of Qualified Digital Media Content Production Expenses incurred for services performed and tangible personal property purchased through	$0 x 5% =	$0

vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.		
Total Award		**$7,047,240.20**

APPLICATION RECEIVED DATE: 2/7/2020 (Application #3)
DATE APPLICATION DEEMED COMPLETE: 6/22/2021
ESTIMATED DATE OF PROJECT COMMENCEMENT: 1/1/2020
ESTIMATED DATE OF PROJECT COMPLETION: 12/31/2020
APPLICANT'S FISCAL YEAR END: 12/31/2021
TAX CREDIT VINTAGE YEAR(S): 2021
TAX FILING TYPE: Corporate Business Tax
ANTICIPATED CERTIFICATION DATE: December 14, 2021

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act provides a total of $10 million in Digital Media tax credits originally available for State Fiscal Year 2022. After today's approval, $2.95 million remains in the program for State Fiscal Year 2022.

APPROVAL REQUEST:
The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

LOANS/GRANTS/GUARANTEES

MAIN STREET RECOVERY FINANCE PROGRAM

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Main Street Recovery Finance Program - Micro Business Loan

Summary

The Members are asked to approve:

1. Creation of the Main Street Micro Business Loan – a pilot product under the Main Street Recovery Finance Program that makes financing of up to $50,000 available to micro businesses in New Jersey. This new pilot would replace the Micro Business Loan Program established in 2019.

2. Main Street Recovery Fund utilization of up to $20 million to fund the Main Street Micro Business Loan pilot program, of which 3% would be used for administrative costs to reduce the fees charged to applicants and an additional $250,000 would be used for temporary employees if necessary.

3. In accordance with the fee waiver regulations, a partial waiver of EDA's standard application and closing fees due to the drastic negative impact of the COVID-19 pandemic on micro businesses.

4. Delegation to Authority staff (Chief Community Development Officer, Managing Director – Underwriting and Community Development, Director of Small Business Services, Senior Vice President of Finance and Development, or Vice President of Business Operations) to approve individual applications to the Main Street Micro Business Loan in accordance with the terms set forth in the attached program specifications. The delegated authority requested for approval also includes the delegated authority to decline for any decisions based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Chief Legal & Strategic Affairs Officer, any Vice President, or the Director Legal Affairs.

Background

On November 14, 2019, the Members approved the creation of the Micro Business Loan Program, as a demonstration (or pilot) program, utilizing $1 million from the NJEDA Economic Recovery Fund to make available loans of up to $50,000 to businesses that are: legally registered to do business in New Jersey and have a commercial location in New Jersey (no home-based businesses), with annual gross revenues of no more than $1.5 million (as demonstrated in the most recently filed federal tax return) and no more than 10 full-time employees at time of application (and three months prior). Under the existing program, startup businesses are eligible but must demonstrate completion of an entrepreneurship training program or Small Business Development Center counseling sessions. Due to the COVID-19 pandemic and financial hardships affecting the NJ micro business owners, staff recommended enhancements to the program which the Members approved on June 9, 2020, which included the elimination of fees and the inclusion of a loan forgiveness component to the program for forgiveness of 10 percent of the loan.

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone. On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 further improving the programs established under the New Jersey Economic Recovery Act of 2020.

One of the 15+ programs under the ERA is the Main Street Recovery Finance Program, a small business support program under which individual financial assistance products will be created, all of which will share a common purpose of supporting the growth and success of small businesses in New Jersey. As of today, $100 million has been appropriated for the Main Street Recovery Fund, which funds products in the Main Street Recovery Finance Program. On August 11, 2021, the Members approved the creation of special adopted rules creating the Main Street Recovery Finance Program. These rules created two initial products under the Main Street Program – the Small Business Lease Assistance Grant and the Small Business Improvement Grant. At the time these products were approved, staff had advised the Members that requests would be made at a later date to establish pilot products under the Main Street Recovery Finance Program.

Given the feedback from the business community and stakeholders as well as the effects of COVID-19 on micro businesses across New Jersey, staff requests closing the original Micro Business Loan pilot program and introduce the Main Street Micro Business Loan, an enhanced pilot product within the Main Street Recovery Finance Program, to support even more micro businesses. This new program will remain a pilot program for staff to assess the performance of the significant enhancements to the original program. Staff also recommends authorizing a larger budget ($20 million as opposed to $10 million for the original program) because we anticipate higher demand for the new pilot. Under the product enhancement for the Members consideration today, the eligibility will be broadened to enable support for more micro businesses, a portion of all funding will be reserved for businesses located in eligible New Jersey Opportunity

Zone census tracts, and more flexibility will be provided on terms/collateral, including a substantially enhanced forgiveness component for a portion of the loan.

Program Details

The Main Street Micro Business Loan will offer financing of up to $50,000 to for-profit and non-profit businesses, including home-based businesses, registered to do business in New Jersey (except for non-profit businesses that are not required to register), with a business location (including a home office) in New Jersey. All entities must be in existence, as evidenced by date of formation/incorporation, and in operation for at least six months prior to the date of application being made publicly available. No real estate or holding companies are eligible.

The ERA statutes establishing the Main Street Recovery Finance Program, as amended, provide specific terms by which the Authority can lend to micro businesses. Pursuant to the statute, an eligible micro business must have less than $1.5 million in annual gross revenue in the most recently filed federal tax return (to the extent the business has annual revenues). Furthermore, the statute defines a micro business as having no greater than 10 full-time employees. For this pilot program, staff does not propose a minimum number of employees. To ensure that the business has not temporarily reduced employment, the maximum number of employees must be satisfied both at the time of application and three months before the date of application.

Given the level of need in the small business community for this funding and the expected interest, the Authority has narrowed down the eligible uses of the financing to make sure the limited funding is being utilized as widely and as impactfully as possible. Therefore, eligible uses of the financing under the program will be limited to future operating expenses such as inventory, equipment (that does not require installation or construction work totaling more than $1,999.99). As the operating expenses can be made in the future, the loan funds may be held by the business as working capital to fund such future business operating expenses. Home-based businesses cannot use loan proceeds for any residential costs (i.e. home mortgage or lease payments). The term of the loan will remain a standard 10-year term as is currently under the product. Additionally, the interest rate will remain at 2 percent for this program, set at approval, with no interest and no payment due for the first year.

This new loan product will offer a generous forgiveness portion. At the end of year 5 the applicant may be eligible for the balance of the loan to be forgiven if the applicant 1) is current on all of their loan payments (as agreed upon in their loan agreement) with no delinquency of more than 90 days, 2) has no current default, and 3) certified that they are still open and operating by submitting to the Authority a completed Open and Operating Certification Form. This form will be included in the loan agreement and must be returned by the applicant 60 days prior to the end of the 5th year. If the applicant delays providing this certification form, they must continue making all loan payments until the form is submitted to the Authority. If, after submission of the form, staff can independently verify that the business is still in operation, then the Authority will forgive the balance remaining either at the end of year 5 if submitted 60 days prior to the end of the 5th year or at the time the form is verified if submitted later. Any business that does not meet the forgiveness criteria will be responsible for continuing to make their payments as defined in their loan agreement.

Staff recognizes that traditional underwriting has posed a challenge to the micro businesses in need of this financing, staff is proposing that the underwriting for for-profit businesses be based on the guarantees of all owners and on at least one owner having a credit score of 600 or more. Although an individual's credit score does not determine a business's ability to repay debt, the ability an individual owner's ability to successfully maintain their personal credit during the pandemic is a good indicator that the applicant may support the debt service requirement for the loan amount under this product. While owner guarantees would not apply to non-profits, they would only need to meet a 1.0 debt service coverage ratio. Accordingly, there will no longer be a collateral requirement for any applicants.

It should be noted that the risk rating on loans under the Main Street Micro Business Loan Program are expected to be substandard. If the risk rating assessment supports an override to a lower risk rating, then staff will do so to reflect the appropriate rating.

As required by the Main Street Recovery Finance Program statute, in addition to the eligibility parameters already stated above, the applicant must also be in substantial good standing with the New Jersey Department of Labor and Workforce Development (LWD) and NJ Department of Environmental Protection at the time of application to be eligible for a micro business loan. A current tax clearance will need to be provided prior to approval to demonstrate the applicant is in substantial good standing with the NJ Division of Taxation. This statutory requirement is consistent with how the current Micro Business Loan product works.

The Members are also requested to approve the use of $20 million from the Main Street Recovery Fund to capitalize the Main Street Micro Business Loan. The Main Street Recovery Finance Program statute requires a disparity study relevant to the purposes of the program. At this time, until such study is completed and the results are evaluated, staff proposes setting aside $8 million to support entities that meet all other applicable eligibility criteria and have a commercial business address (or home address for home-based businesses) located (fully or partially) in a census tract that was eligible to selected as New Jersey Opportunity Zone (i.e. a New Market Tax Credit census tract). There are 715 census tracks that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding under the Main Street Micro Business Loan Program to support entities located in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive.

Staff is also requesting to use 3% of the $20 million funding request for administrative costs to allow for reduced application fees to the public. In accordance with the Authority's regulations on fee waivers, Staff recommends a partial waiver of standard EDA application and closing fees because of the drastic negative impact of the pandemic on most micro businesses. Micros businesses need operating support to help them survive in this time of recovery, but they have experienced challenges accessing capital at attractive terms. A burdensome fee structure would deter these businesses, which are most in need of financial support to recover from the pandemic. Therefore, staff proposes that to allow for reduced application fees to the public. A reduced application fee of $100 would be collected at time of application instead of $300, with a flat closing fee of $400 to be paid at the time of closing to receive loan proceeds rather than taking the normal fee of .875% at both commitment and closing. Thus, the applicant's total flat fee under this pilot would be $500 to have access up to $50,000.

Staff is further requesting an additional amount of up to $250,000 of the $20 million funding to cover the costs of temporary employees who may be needed to assist with administering this product, which may be made through one or more purchase orders to 22nd Century Technologies Inc., the current State vendor.

This pilot product will available for three years from the date applications are made available to the public, or until the total funding pool is exhausted (whichever is sooner). Applications will be reviewed on a first-come, first-served basis, based on the date/time in which the Authority receives the completed application. The initial application that must be completed will gather the required information. Staff will be able to follow up with applicants if clarity or additional support documentation is needed. Given the expected demand and urgent need by businesses for funding, applicants will have a limited window of time in which to respond to requests by staff for financial documentation and clarifying questions, or risk declination as a result of unresponsiveness. The original Micro Business Loan pilot program approved by the Members in June 2020 will cease accepting new applications and will end. Any pending applicant can still proceed towards closing on their loan and still be eligible for this product as well. Any previous recipient of the original Micro Business Loan would be eligible for this product too .

Finally, the Members are requested to approve Delegation to Authority staff (Chief of Community Development, Managing Director – Underwriting and Community Development, Director of Small Business Services, Senior Vice President of Finance and Development, or Vice President of Business Operations) to approve individual applications to the Main Street Micro Business Loan in accordance with the terms set forth in the attached product specifications. The delegated authority requested for approval also includes the delegated authority to decline for any decisions based solely on non-discretionary reasons.

Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 10 business days). The Director of Legal Affairs will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will recommend an administrative decision. For final appeal decisions on non-discretionary reasons delegated authority is issued to the following staff Chief Legal & Strategic Affairs Officer, any Vice President, and Director of Legal Affairs.

Recommendation

Approval is requested for: (1) Creation of the Main Street Micro Business Loan to replace the Micro Business Loan Program established in 2019; (2) Main Street Recovery Fund utilization of up to $20 million to fund the Main Street Micro Business Loan pilot program, of which 3% would be used for administrative costs to reduce the fees charged to applicants and an additional $250,000 would be used for temporary employees if necessary; (3) A partial waiver of EDA's standard application and closing fees due to the drastic negative impact of the COVID-19 pandemic on micro businesses; (4) Delegation to Authority staff (Chief Community Development Officer, Managing Director – Underwriting and Community Development, Director of Small Business Services, Senior Vice President of Finance and Development, or Vice

President of Business Operations) to approve individual applications to the Main Street Micro Business Loan in accordance with the terms set forth in the attached program specifications. The delegated authority requested for approval also includes the delegated authority to decline for any decisions based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Chief Legal & Strategic Affairs Officer, any Vice President, or the Director Legal Affairs.

Tim Sullivan, CEO

Attachments

Exhibit A – Main Street Micro Business Loan – Product Specifications

Main Street Micro Business Loan – Proposed Product Specifications	
Funding Source	Up to $20,000,000 – Main Street Recovery Fund under Economic Recovery Act 40% or $8 million of total funding amount will be reserved for businesses located in an eligible NJ Opportunity Zone census tract.
Program Purpose	To provide low-cost financing to micro businesses in New Jersey.
Eligible Applicants	The following entities are eligible for financing under the Main Street Micro Business Loan: • For-profit business, non-profit, and home-based businesses with a business location in New Jersey and that have been in operation for at least six months prior to the date that the application is made available to the public • No real estate or holding companies are eligible for this product. All entities must meet the following requirements to be eligible under the Micro Business Loan: • Must have annual gross revenues of $1,500,000 or less according to the most recent federal tax return that the applicant was required to file. • At time of application and three months prior to application entity cannot have more than 10 full-time employees in total. All employees must work in New Jersey as evidenced by WR-30 filings. There is no minimum employee number and sole proprietors are eligible. • One loan per business entity (verified by the business's employer identification number, or EIN) • Applicants and recipients of the original Micro Business Loan are eligible for this loan if they meet all eligibility requirements.

Main Street Micro Business Loan – Proposed Product Specifications	
Eligible Applicants (continued)	• A business entity with multiple locations (that is, all locations operate under only one EIN) will be limited to one application under this new product (under the sole business entity). • Entity must provide a current Tax Clearance Certification prior to receiving EDA approval. • Applicant must be in substantial good standing with the Department of Labor and Department of Environmental Protection, with all decisions of substantial good standing at the discretion of the Commissioner of the Department of Labor. • Applicant must submit a completed legal debarment questionnaire and not be subject to disqualification based on that questionnaire. Businesses that are engaged in the following are not eligible for funding: the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi-nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of-business" or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity constituting a nuisance.
Eligible Uses	• Future operating expenses, which may be held as working capital to fund such future operating expenses • Future inventory expenses • Future purchases of equipment as long as installation and construction costs do not exceed $1,999.99 • Home-based businesses cannot use loan, proceeds for any residential costs (i.e. home mortgage/lease payments) The following uses are **not** eligible uses: • Refinancing of existing debt

Main Street Micro Business Loan – Proposed Product Specifications	
Eligible Uses (continued)	• Personal, non-business obligations or costs incurred by related entities • Construction • Equipment requiring installation or construction costs in excess of $1,999 • Rolling stock – no cars, trucks, or vans can be purchased
Application Process and Board Approval/ Delegated Authority	• Applications will be reviewed on a rolling basis (first-come, first- served as applications are completed) until all funds are committed or program expires (3 years). • Delegation to Authority staff (Chief Community Development Officer, Managing Director - Underwriting and Community Development, Director of Small Business Services, Senior Vice President of Finance and Development, or Vice President of Business Operations) to approve individual applications to the Main Street Micro Business Loan in accordance with the terms set forth in the attached program specifications. • The delegated authority requested for approval also includes the delegated authority to decline for any decisions based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Chief Legal & Strategic Affairs Officer, any Vice President, or the Director Legal Affairs. • Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 10 business days). The Director of Legal Affairs will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will recommend a final administrative decision. For final appeal decisions on non-discretionary reasons, delegated authority is issued to the following staff: Chief Legal & Strategic Affairs Officer, any Vice President, and Director of Legal Affairs.

Main Street Micro Business Loan – Proposed Product Specifications	
Underwriting/ Approval Criteria	• For for-profit businesses, the financial information that is provided will only be utilized to verify annual revenue to determine an applicant's eligibility criteria and ownership – it will not be used to determine the applicant's ability to repay this loan. However, all owners will need to provide a guarantee. • If otherwise eligible, staff will have a specialty hard credit report pulled specific for small businesses from CoreLogic Credco. At least one of the guarantors (owners) must have a credit score of 600 and above in at least one of the three data sources provided in the credit report: Equifax (Beacon 5.0), Experian (FICO II), and TransUnion (FICO Classic 04). • Non-profits will be required to meet a minimum Debt Service Coverage Ratio (DSCR) of 1.00x based on most recent tax return or financial statements.
Loan Amounts	Up to $50,000
Rates & Terms	• Standard 10-year term • The interest rate will be 2 percent for this program, set at approval. • No payments or interest will accrue during the first year after closing. Payments of principal and interest will begin at the beginning of year 2. • No payment term amendments are allowed prior to end of 5th year – all other modifications unrelated to the payment terms may be permitted throughout the term of the loan. If after the 5th year any payment terms are modified, the business will no longer be eligible for forgiveness. • At the end of year 5 the applicant may be eligible for the balance to be forgiven if the applicant (1) has made their loan payments as identified in their loan agreement with no

Main Street Micro Business Loan – Proposed Product Specifications	
Rates & Terms (continued)	delinquency of more than 90 days, (2) has no current default, and (3) is still be open and operating. The applicant will be required to submit a certification form to EDA certifying that they are open and operating, that they have used the loan for approved purposes only, and that they are not in default. This form will be included in the loan agreement and must be returned by the applicant 60 days prior to the end of the 5th year so a decision can be made by EDA. If the applicant does not submit the form by that date, they may still qualify for loan forgiveness, however loan payments will continue to be required until their certification form is supplied to and verified by EDA, which will reduce the balance EDA will forgive. Staff will verify the business is open and operating, which may be through an Internet search. If verified, EDA will forgive the remaining balance at the end of year 5 or later if the certification form is not received by the due date as described above. If an applicant is not eligible for forgiveness or does not request forgiveness and submit the required documentation, they are required to continue making their payments as defined in their loan agreement.
Lien/Collateral/Security	• No collateral is required • Guarantee is required of all owners except for non-profits • Risk Rating: expected to be substandard. If the risk rating is found to support an override to a lower risk rating, then staff will do so to reflect the appropriate rating.
Fees	Staff is requesting a partial waiver of EDA's standard application and closing fees because of the drastic negative impact of the pandemic on most micro businesses: • Application fee of $100 (non-refundable) at time of application

Main Street Micro Business Loan – Proposed Product Specifications	
Fees (continued)	• Closing fee: $400 EDA will use up to 3% of the $20 million funding for administration to process applications and to cover other operating fees since fees to applicants are reduced. EDA will use an additional amount up to $250,000 to hire temporary employees for processing if deemed necessary.
Disbursement	Approved loan amount to be fully disbursed upon closing.

HAZARDOUS DISCHARGE SITE REMEDIATION FUND

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal projects have been approved by the Department of Environmental Protection to perform preliminary assessment, site investigation, remedial investigation and remedial action activities. The scope of work is described on the attached product summaries:

HDSRF Municipal Grants:

Product 200790	City of Paterson (Salvation Army)	$18,687.00
Product 258233	City of Paterson ATP Processors LTD (Quarry Lawn/Waverly & Colt Mills)	$243,431.00
Product 297238	City of Paterson ATP Processors LTD (Quarry Lawn/Waverly & Colt Mills)	$1,605,084.16
Total HDSRF Funding –November 2021		**$1,867,202.16**

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation - Government Facility

APPLICANT: City of Paterson – BDA Salvation Army PROD-00200790

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 38 Van Houten Street Paterson City Passaic County

APPLICANT BACKGROUND:

In March 2009, City of Paterson received a grant in the amount of $575,723 under P23230 to perform preliminary assessment (PA) and site investigation (SI). The project site identified as block 4601, lot 15 is a former industrial site which has potential environmental areas of concern (AOCs). This project is within the Great Falls Historic District Brownfield Development Area ("BDA"). The City of Paterson owns the project site and has satisfied proof of site control. It is the City's intent upon completion of the environmental investigation activities to redevelop the project site for recreational use.

NJDEP has approved this supplemental request for Preliminary Assessment (PA) and Site Investigation (SI) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

The City has received a Brownfield Development Area (BDA) designation from the NJDEP for this project site.

OTHER NJEDA SERVICES:

$575,410, P23230

APPROVAL REQUEST:

City of Paterson is requesting supplemental grant funding to perform PA and SI in the amount of $18,687 at the Salvation Army project site. Because the supplemental funding request exceeds the maximum staff delegation approval of $500,000 it requires EDA's board approval. Total grant funding including this approval is $594,410.

FINANCING SUMMARY:

GRANTOR: Hazardous Discharge Site Remediation Fund

AMOUNT OF GRANT: $18,687.00

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

Site Investigation	$14,227.00
Preliminary Assessment	$4,460.00
EDA Administrative Cost	$500.00
TOTAL COSTS:	**$19,187.00**

DATE: 10/27/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation – Municipal Grant

APPLICANT: City of Paterson – ATP Processors PROD-00258233

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 1-31 VanHouten Street Paterson City Passaic County

APPLICANT BACKGROUND:

Between December 1995 and February 2017, the City of Paterson received an initial grant in the amount of $85,692 under P08484 and supplemental grants in the amount of $165,500 under P09145, $13,500 under P17593, $641,996 under P19833 and $124,938 under P42347 for site investigation (SI) and remedial investigation (RI) activities at the Former ATP Processors project site. The project site identified as Block 4601, Lot 4 is a former mill which has potential environmental areas of concern (AOC's). The City currently owns the project site and has satisfied proof of site control. It is the City's intent upon completion of the environmental remediation activities to redevelop the project site for recreational use.

NJDEP has approved this supplemental request for Preliminary Assessment (PA) and Remedial Investigation (RI) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

OTHER NJEDA SERVICES:

$85,692, P08484; $165,500, P09145; $13,500, P17593; $641,996, P19833, $124,938, P42347

This Applicant is concurrently seeking assistance under Product-297238 in the amount of $1,605,084.16 in which the proceeds will be used for Remedial Action at the same project site.

APPROVAL REQUEST:

City of Paterson is now requesting supplemental funding to perform PA and RI the amount of $243,431.00 at the ATP Processors LTD (Quarry Lawn/Waverly & Colt Mills).

Total grant funding including this approval of $243,431.00 along with the requested grant under Product-297238 is $2,794,449.16.

FINANCING SUMMARY:

GRANTOR:	Hazardous Discharge Site Remediation Fund	
AMOUNT OF GRANT:	$243,431.00	
TERMS OF GRANT:	No Interest; No Repayment	
PROJECT COSTS:	Preliminary Assessment	$7,800.00
	Remedial Investigation	$235,631.00
	EDA Administrative Cost	$500.00
	TOTAL COSTS:	**$243,931.00**

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation – Municipal Grant

APPLICANT: City of Paterson – ATP Processors PROD-00297238

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 1-31 VanHouten Street Paterson City Passaic County

APPLICANT BACKGROUND:

Between December 1995 and February 2017, the City of Paterson received an initial grant in the amount of $85,692 under P08484 and supplemental grants in the amount of $165,500 under P09145, $13,500 under P17593, $641,996 under P19833 and $124,938 under P42347 for site investigation (SI) and remedial investigation (RI) activities at the Former ATP Processors project site. The project site identified as Block 4601, Lot 4 is a former mill which has potential environmental areas of concern (AOC's). The City currently owns the project site and has satisfied proof of site control. It is the City's intent upon completion of the environmental remediation activities to redevelop the project site for recreational use.

NJDEP has approved this supplemental request for Remedial Action (RA) grant funding on the above-referenced project siteand finds the project technically eligible under the HDSRF program, Category 2, Series A.

OTHER NJEDA SERVICES:

$85,692, P08484; $165,500, P09145; $13,500, P17593; $641,996, P19833, $124,938, P42347

This Applicant is concurrently seeking assistance under Product-258233 in the amount of $243,431.00 in which the proceeds will be used for Preliminary Assessment and Remedial Investigation at the same project site.

APPROVAL REQUEST:

City of Paterson is now requesting supplemental funding to perform Remedial Action (RA) in the amount of $1,605,084.16 at the ATP Processors LTD (Quarry Lawn/Waverly & Colt Mills).

Total grant funding including this approval of $1,605,084.16 along with the requested under Product-258233 is $2,794,449.16.

FINANCING SUMMARY:

GRANTOR:	Hazardous Discharge Site Remediation Fund	
AMOUNT OF GRANT:	$1,605,084.16	
TERMS OF GRANT:	No Interest; No Repayment	
PROJECT COSTS:	Remedial Action	$1,605,084.16
	EDA Administrative Cost	$500.00
	TOTAL COSTS:	**$1,605,584.16**

PETROLEUM UNDERGROUND STORAGE TANK (PUST)

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following projects have been approved by the Department of Environmental Protection to perform tank removal and site remediation activities. The scope of work is described on the attached project summaries:

PUST Grants:

Residential

Product 297214	Vitor Santos	$114,916.69

Not-For-Profit

Product 258032	St. Luke's Episcopal Church	$123,230.37

Total UST Funding – November 2021	**$238,147.06**

Tim Sullivan, CEO

Prepared by: Kathy Junghans

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NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Underground Storage Tank - Residential

APPLICANT: Vitor Santos PROD-00297214

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 347-349 New York Avenue - Apt 1 Elizabeth City Union County

APPLICANT BACKGROUND:

Vitor Santos is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible. Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

The applicant is requesting grant funding in the amount of $114,916.69 to perform the approved scope of work at the project site.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT: $114,916.69

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

UST Project:Upgrade,Closure,Remediation	$114,916.69
EDA Administrative Cost	$250.00
TOTAL COSTS:	**$115,166.69**

DATE: 10/15/2021

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Underground Storage Tank -

APPLICANT: St. Luke's Episcopal Church PROD-00258032

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 75 S Fullerton Avenue Montclair Township Essex County

APPLICANT BACKGROUND:

St. Luke's Episcopal Church is a 501(c)(3) not-for-profit entity seeking to remove a leaking underground storage tank (UST) and perform the required remediation. The tank was located and remediated outside the applicant's building and will be decommissioned in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible.

Certifications provided by the 501(c)(3) not-for-profit applicant meet the requirements for a conditional hardship grant.

OTHER NJEDA SERVICES:

None

APPROVAL REQUEST:

The applicant is requesting grant funding in the amount of $123,230.37 to perform the approved scope of work at the project site.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT: $123,230.37

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

UST Project:Upgrade,Closure,Remediation	$123,230.37
EDA Administrative Cost	$500.00
TOTAL COSTS:	**$123,730.37**

DATE: 11/9/2021

BOND PROJECT

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Defeasance and Redemption of Certain Outstanding NJEDA/School Facilities Construction Bonds
PROD-00147142, PROD-00147165, PROD-147170, PROD-00179776, PROD-00179889, PROD-00172889, PROD-00174158, PROD-00174506, PROD-00185027, PROD-00188055

APPROVAL REQUEST

The Members of the Authority are asked to approve a resolution authorizing an Authorized Officer of the Authority to enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of certain of the Authority's Outstanding School Facilities Construction Bonds and to approve the use of professionals and authorize Authority staff to take all necessary actions incidental thereto.

BACKGROUND

Pursuant to the New Jersey Economic Development Authority Act, the Educational Facilities Construction and Financing Act and a resolution of the Authority adopted February 13, 2001 entitled "School Facilities Construction Bond Resolution," as amended and supplemented from time to time (the "Bond Resolution"), the Authority has issued, and there are presently Outstanding, the School Facilities Construction Bonds listed below (the "School Facilities Construction Bonds"). Pursuant to Section 1201 of the Bond Resolution, if the Authority shall pay or cause to be paid to the Holders of School Facilities Construction Bonds the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Resolution, such School Facilities Construction Bonds shall cease to be entitled to any lien, benefit or security under the Resolution, and all covenants, agreements and obligations of the Authority to the Holders of such School Facilities Construction Bonds shall thereupon cease, terminate and become void and be discharged and satisfied.

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School Facilities Construction Bonds

School Facilities Construction Series	Issue Date	Original Par Amount	Outstanding Par Amount
Refunding Bonds, 2012 Series II	5/2/2012	$407,135,000	$180,875,000
2012 Series KK	10/3/2012	$136,880,000	$49,770,000
Refunding Notes, 2013 Series I (SIFMA Index Notes)	1/31/2013	$380,515,000	$380,515,000
Refunding Bonds, 2013 Series NN	1/31/2013	$1,629,710,000	$1,328,810,000
Refunding Bonds, 2014 Series PP	5/6/2014	$553,845,000	$335,240,000
2014 Series RR	5/6/2014	$60,000,000	$60,000,000
2014 Series UU	10/17/2014	$525,000,000	$415,845,000
2015 Series WW	8/31/2015	$500,000,000	$492,040,000
2016 Series AAA	12/8/2016	$342,850,000	$318,775,000
Refunding Bonds, 2016 Series BBB	12/8/2016	$553,970,000	$532,500,000
2017 Series DDD	10/5/2017	$350,000,000	$325,050,000
2018 Series EEE	11/28/2018	$350,000,000	$350,000,000
2019 Series LLL	11/19/2019	$350,000,000	$350,000,000

On June 29, 2021, the State adopted P.L. 2021, c. 125 (the "2021 Act"), which established the New Jersey Debt Defeasance and Prevention Fund (the "Debt Defeasance Fund") within the State's General Fund as a restricted reserve fund. Pursuant to the 2021 Act, $3,700,000,000 was credited to the Defeasance Fund, of which amount $2,500,000,000 is appropriated for debt defeasance for the purpose of retiring and defeasing debts of the State, and paying the costs thereof, in such manner and at such times as the Treasurer of the State (the "State Treasurer") may direct.

The Members of the Authority are asked to approve a resolution authorizing an Authorized Officer of the Authority (as such term is defined in the Bond Resolution) to enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of the School Facilities Construction Bonds (the "Bonds to be Defeased") from a portion of the funds appropriated for debt defeasance in the Debt Defeasance Fund (such portion being referred to herein as the "State Deposit") as may be directed by the State Treasurer.

The Members of the Authority also are asked to authorize an Authorized Officer of the Authority to take any and all actions necessary to accomplish the defeasance and redemption of the Bonds to be Defeased.

Professionals for this transaction were selected in compliance with Executive Order No. 26 (Whitman 1994). Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, Chiesa Shahinian & Giantomasi PC was selected as Bond Counsel ("Bond Counsel"). Acacia Financial Group, Inc. was selected as Financial Advisor and Bidding Agent and Precision Analytics Inc./Samuel Klein and Company, Certified Public Accountants, was selected as Verification Agent ("Verification Agent"), each by Treasury through a competitive RFP process. The Members are asked to approve the use of the aforementioned professionals and authorize Authority staff to take all necessary actions incidental to the defeasance and redemption of the Bonds to be Defeased, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING THE DEFEASANCE AND REDEMPTION OF CERTAIN OUTSTANDING SCHOOL FACILITIES CONSTRUCTION BONDS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY FROM FUNDS PROVIDED BY THE STATE OF NEW JERSEY PURSUANT TO P.L. 2021, c. 125" (the "Cash Defeasance Resolution") authorizing, among other things, the Authority to defease and redeem all or a portion of the Bonds to be Defeased. The Members are also asked to authorize the use of the above-named professionals and authorize the Authorized Officers of Authority to enter into the Escrow Deposit Agreement and to take any and all necessary actions incidental to the defeasance and redemption of the Bonds to be Defeased, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

Tim Sullivan, CEO

Prepared By: Lori Zagarella

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Defeasance and Redemption of Certain Outstanding NJEDA/Cigarette Tax Revenue Refunding Bonds, Series 2012
PROD-00182708

APPROVAL REQUEST

The Members of the Authority are asked to approve a resolution authorizing an Authorized Officer of the Authority to enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of the Authority's Outstanding Cigarette Tax Revenue Refunding Bonds, Series 2012 and to approve the use of professionals and authorize Authority staff to take all necessary actions incidental thereto.

BACKGROUND

Pursuant to the New Jersey Economic Development Authority Act, as amended and supplemented by the Cigarette Tax Securitization Act of 2004, P.L. 2004, c. 68 (the "2004 Act"), as amended and supplemented by P.L. 2006, c. 98 and P.L. 2009, c. 70 and as hereafter from time to time amended and supplemented (collectively, the "Securitization Act"), and pursuant to a resolution of the Authority adopted on March 15, 2012 (the "Authorizing Resolution") and the Indenture of Trust dated as of September 1, 2004 (the "2004 Indenture") between the Authority and U.S. Bank National Association (as successor to Wachovia Bank, National Association), as trustee (the "Trustee"), as amended and supplemented pursuant to a First Supplemental Indenture dated as of April 18, 2012 (the "First Supplemental Indenture" and, together with the 2004 Indenture, the "Indenture"), the Authority issued and there are currently outstanding the Cigarette Tax Revenue Refunding Bonds, Series 2012 described below (the "Cigarette Tax Bonds, Series 2012"). Pursuant to Section 1401 of the Indenture, if the Authority shall pay or cause to be paid to the Owners of the Cigarette Tax Bonds, Series 2012, the principal or Redemption Price, if applicable, and interest due or to become due thereon, at the times and in the manner stipulated therein and in the Indenture, then the pledge of the Trust Estate and other moneys and securities pledged under the Indenture and all covenants, agreements and other obligations of the Authority to the Owners of such Cigarette Tax Bonds, Series 2012 shall thereupon cease, terminate and become void and be discharged and satisfied.

Cigarette Tax Revenue Refunding Bonds, Series 2012
New Jersey Economic Development Authority
Cigarette Tax Revenue Refunding Bonds, Series 2012
Issue Date: April 18, 2012
Original Par Amount: $1,041,745,000
Outstanding Par Amount: $436,940,000

On June 29, 2021, the State adopted P.L. 2021, c. 125 (the "2021 Act"), which established the New Jersey Debt Defeasance and Prevention Fund (the "Debt Defeasance Fund") within the State's General Fund as a restricted reserve fund. Pursuant to the 2021 Act, $3,700,000,000 was credited to the Defeasance Fund, of which amount $2,500,000,000 is appropriated for debt defeasance for the purpose of retiring and defeasing debts of the State, and paying the costs thereof, in such manner and at such times as the Treasurer of the State (the "State Treasurer") may direct.

The Members of the Authority are asked to approve a resolution authorizing an Authorized Officer of the Authority (as such term is defined in the Cash Defeasance Resolution (as hereinafter defined)) enter into an Escrow Deposit Agreement, directing the Trustee to defease and redeem all or a portion of the Cigarette Tax Bonds, Series 2012 (the "Bonds to be Defeased") from a portion of the funds appropriated for debt defeasance in the Debt Defeasance Fund (such portion being referred to herein as the "State Deposit") as may be directed by the State Treasurer.

The Members of the Authority also are asked to authorize an Authorized Officer of the Authority to take any and all actions necessary to accomplish the defeasance and redemption of the Bonds to be Defeased.

Professionals for this transaction were selected in compliance with Executive Order No. 26 (Whitman 1994). Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, Chiesa Shahinian & Giantomasi PC was selected as Bond Counsel ("Bond Counsel"). Acacia Financial Group, Inc. was selected as Financial Advisor and Bidding Agent and Samuel Klein and Company, Certified Public Accountants, was selected as Verification Agent ("Verification Agent"), each by Treasury through a competitive RFP process. The Members are asked to approve the use of the above-named professionals and authorize Authority staff to enter into the Escrow Deposit Agreement and to take any and all necessary actions incidental to the defeasance and redemption of the Bonds to be Defeased, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING THE DEFEASANCE AND REDEMPTION OF CERTAIN OUTSTANDING CIGARETTE TAX REVENUE REFUNDING BONDS OF THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY FROM FUNDS PROVIDED BY THE STATE OF NEW JERSEY PURSUANT TO P.L. 2021, c. 125" (the "Cash Defeasance Resolution") authorizing, among other things, the Authority to

defease and redeem all or a portion of the Bonds to be Defeased. The Members are also asked to authorize the use of above-mentioned professionals and authorize the Authorized Officers of Authority to take enter into the Escrow Deposit Agreement and to take any and all necessary actions incidental to the defeasance and redemption of the Bonds to be Defeased, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.

Tim Sullivan, CEO

Prepared By: Lori Zagarella

AUTHORITY MATTERS

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan

DATE: November 10, 2021

Subject: MOU with the NJIT for Airport City Newark

Request

The members are requested to approve a Memorandum of Understanding (MOU) with the New Jersey Institute of Technology to provide $50,000 in matching funding for the purpose of economic analysis around Newark Liberty International Airport Station.

Background

Airport City Newark is a coalition of universities, government bodies, and research entities coordinating to maximize the benefit to Newark and Elizabeth from the airport and associated infrastructure. The coalition is led by the New Jersey Institute of Technology and includes the City of Newark, Port Authority of New York and New Jersey, Regional Plan Association, North Jersey Transportation Authority, University of Pennsylvania, Rutgers University and Weequahic Park Sport Authority. The coalition is working to ensure the economic, social, and environmental sustainability surrounding a newly catalyzed Newark Liberty International Airport Station.

The train station currently does not provide direct access for travelers to or from the neighborhood around it, and serves only those traveling to or from the airport. The coalition has been working to explore potential avenues to improve transit access for the surrounding community through a combination of extending the PATH train to reach the Newark AirTrain and providing street-level access to the Airport train station. Providing direct connections between the Airport and these communities – and between these communities and Downtown Newark and Manhattan – is expected to unlock locational opportunity and generate economic activity in a neighborhood that is mostly comprised of underused industrial space and the economically distressed Dayton neighborhood.

The purpose of this funding is to provide matching funding for NJIT's USEDA Planning and Local Technical Assistance grant application for $125,000. The purpose is the first phase of a comprehensive economic analysis to assess the marketability of the Airport City concept around the reopening of the station. NJIT is expected to formally apply shortly after the MOU is signed and expects a decision on the rolling application before the end of the year. The Airport City concept is development that leverages proximity to an airport and its associated uses including aviation dependent businesses. As it pertains to Newark Liberty International Airport, the opening of a train station and increased connectivity between Downtown Newark, the Dayton neighborhood near the airport and the airport itself can provide significant growth as an employment center. As described in the MOU, NJIT will provide the Authority a copy of the final analysis and publish the analysis on a website dedicated to supporting the Airport City concept.

The coalition's work has been funded to date through the Prudential Foundation and NJIT. Both are continuing their involvement in the project. For this grant, only NJEDA is providing a match.

Recommendation

Members of the Board are asked to approve the Authority entering an MOU with the New Jersey Institute of Technology, attached in substantially final form pending NJIT's review, to provide $50,000 in matching funding for the purpose of performing an economic analysis of the opening of the train station to the neighborhood at Newark Liberty International Airport.

Tim Sullivan, CEO

Prepared by: Jorge Santos

TO: Members of the Authority

FROM: Bruce Ciallela
Chief Operations and Compliance Officer

DATE: November 10, 2021

SUBJECT: **Recommendation for Award - #2021-RFP 057**
Microsoft Cloud Development and Support Services

Summary

The Members' approval is being requested to enter into one contract for a two (2) year term, with three (3), one (1) year extension options to be exercised by Authority staff with a maximum-not-to-exceed contract price of $10,000,000.00, to provide information technology consulting services for Microsoft Cloud Development and Support Services to the Authority. Based upon the results of a publicly advertised procurement and evaluation of price and other factors, the highest scoring firm was Spruce Technology.

These services will enable the Authority to engage with the Contractor through Task Order Requests (TOR) pertaining to information technology services for Microsoft Cloud Development and Support Services.

Background

On Friday, June 4, 2021 the Authority, at the request of the Information Technology Services Division, through its Internal Process Management ("IPM") Division, issued a solicitation for Request for Proposals (RFP), #2021-RFP-057, to provide information technology consulting services for Microsoft Cloud Development and Support Services.

These services will assist the Authority's Information Technology Services department. Services under this contract includes, but not be limited to, building out its Microsoft Cloud presence in order to have in place a multi-year partner with expert knowledge of Microsoft products and that can provide ongoing and continuous support with programming, and counsel. The Authority in an attempt to build out its Microsoft Cloud presence by:

- expanding the customization to the Dynamics CRM 365 Platform;
- linking data to documents, adding security and apply document retention policies by further integrating the out of the box functionality between SharePoint 365 and Dynamics CRM;
- migrating legacy files to SharePoint through automation;
- grow Portals to host all program applications delivered by the EDA and create additional customer interfaces;
- data deduplication of account and contact records;
- enhance integration of Dynamics 365 to existing or new financial system;
- better integrate the Office 365 platform into workflows;
- recode existing workflow programs to use the Power Platform;

• develop a long term migration strategy for legacy Great Plains Accounting to Dynamics 365;
• examine the Microsoft Cloud security mechanism in place;
• review and recommend cloud transformation through Custom off the Shelf ("COTS") software to handle financial transaction data that supports CRM project data and programs; and,
• assess systems in order to propose other process improvement recommendations.

The awarded Contractor will be engaged through Task Order Requests (TOR).

The RFP language provided for the award of one contract, for a two (2) year term with three (3), one (1) year extension options to be exercised at the sole discretion of the Authority and by its staff, at the same terms and conditions. The estimated total amount of the contract, which if fully extended is estimated to be a total of $10,000,000.00, based on the Authority's projected needs for these services.

Per the instructions set forth in the RFP, firms submitting proposals were required to provide a narrative description thoroughly detailing their experience as an information technology consulting services firm, supported by evidence or information that can be independently verified by the Authority. It was also mandatory that firms provide information/examples of services provided, similar in size and scope, or demonstrated experience working in New Jersey or other states. Additionally, firms had to provide information from projects they have previously worked on, in what role/capacity and to provide a listing of three references of contacts for whom proposer has previously provided services.

In terms of evaluative criteria, a weighted average of (4) four primary categories were completed:

1. Personnel;
2. Experience of Firm;
3. Ability of firm to complete the Scope of Work based on firm's technical proposal; and
4. Competitiveness of fee schedule and pricing.

Fee schedules were not provided to the Evaluation Committee, but were ranked by IPM's Senior Procurement Officer and included in the overall evaluative criteria.

Firms were asked to complete the following technical proposal:

a. description & documentation of proposer's prior experience and qualifications;
b. management overview and technical approach to achieve the scope of work;
c. organization chart, if applicable and not a sole proprietor;
d. key team member list, if applicable and not a sole proprietor;
e. resumes of key team members;
f. references (minimum of three references are required); and
g. financial capability of the proposer.

Seven (7) proposals were received prior to bid opening date and time. IPM's Senior Procurement Officer reviewed the proposals for procurement responsiveness. One (1) proposal was deemed non-responsive, specifically the submission by Crowe for failing to have an authorized representative sign

the mandatory signatory page. The remaining six (6) submissions, were reviewed and verified that all required items were submitted from the respective bidders, prior to the bid opening date and time. IPM tabulated the results of the evaluations and the firm's total score and ranking was as follows:

Firm	**Score**	**Rank**
Spruce Technology	3.85	1
HSO Enterprise Solutions	3.58	2
AgreeYa Solutions	3.33	3
Demand Dynamics	2.39	4
Beringer Technology Group	2.11	5
IT Partner	2.07	6

All proposals and supporting documentation, including IPM's Recommendation Memo, are on file with the IPM Division.

The Information Technology Services department will issue a Task Order Request ("TOR"), each time services are required by the Authority, detailing the specific project requirements. The Authority does not guarantee a minimum number of TORs, during the term of the contract or any extensions, thereafter. Rather, the Authority will utilize the Information Technology Services of the successful vendor on an "as needed" basis, to assist and support its staff. A TOR will be issued for each project detailing that project's requirements. The successful vendor will then provide the department with a cost based on the line item fees submitted on the Proposer's Fee Schedule. Prior to any work being performed, the Authority will provide written authorization to proceed via email to the vendor in response to the fees and costs outlined in its TOR.

The RFP required a bidder to receive a total score of three (3) or higher to be considered for Award, which three (3) of the six (6) responsive bidders achieved. As a result, based upon the scores and ranking, Staff is recommending that the Authority proceed with an award of the contract to the highest ranked firm Spruce Technology

<u>Recommendation</u>

Based on the results of the 2021-RFP-057, it is recommended that the Members approve entry into the Microsoft Cloud Development and Support Services contract to Spruce Technology for a maximum of $10,000,000.00 for two (2) years, with three (3), one (1) year extension options to be exercised by Authority staff.

Prepared by: Ted Fanikos, Procurement Officer & Thomas Murphy, CIO

BOARD MEMORANDA – FYI ONLY

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Credit Underwriting Projects Approved Under Delegated Authority – **For Informational Purposes Only**

The following projects were approved under Delegated Authority in October 2021:

Small Business Fund Program:

1) Jersey Shore Community Center Project Inc. (PROD-00297109), also known as QSpot LGBT Community Center, located in Asbury Park City, Monmouth County, was founded in 2005 as an LGBT community outreach center, providing resources, referrals, education, and counseling toward the health and well-being of NJ's LGBT and allied community. The NJEDA approved a $112,800 loan for the purpose of purchasing a commercial property. 1st Constitution Bank has also approved a $141,000 loan for the same purpose. The Company currently has one employee.

Hazardous Discharge site Remediation Fund Program:

1) AAR Fuel, LLC (PROD-00258267) is located in Irvington Township, Essex County. Established in 2007 as a fuel pumping station, the Company also leases space for a restaurant, and a three-car garage workshop to unrelated businesses. The fuel pumping station is currently unoccupied due to required remediation. The NJEDA approved a $180,086.97 loan to be used for property remediation including the removal of three underground storage tanks, removal of contaminated soil, well installation, and ground water delineation.

Tim Sullivan, CEO

Prepared by: G. Robins

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Economic Growth Products – Delegated Authority Approvals for Q3 2021
For Informational Purposes Only

Angel Investor Tax Credit Program (ATC)

On January 31, 2013, the New Jersey Angel Investor Tax Credit Act was signed into law with initial Regulations approved by the Members of the Board in June 2013. The New Jersey Angel Investor Tax Credit Program (ATC) establishes credits against corporate business tax or New Jersey gross income tax. When the program was originally approved, the amount of the tax credit was 10%. In 2019, Governor Murphy approved an increase to the amount of the tax credit from a 10% to 20% with a 5% bonus for either investing in NJ certified women or minority owned businesses or if the business is located in an Opportunity Zone or New Markets Tax Credit census tract. This increase is effective for all investments made on or after January 1, 2020. Initially, $25M in tax credits could be approved annually under the ATC program. With the approval of the Economic Recovery Act on Jan 7, 2021, this cap increased to $35M annually. Updated Regulations were approved by the Members of the Board in July 2021.

Angel Investor Tax Credit Program – Q3 2021 Review

In the third quarter of 2021, Staff approved forty-three Angel Tax Credit applications for a total of $2,062,860.00 in tax credits. This represented $18,647,302.00 in private investments into 15 unique technology and life science companies.

For the third quarter 2021 approvals, the Technology sector represented 53% of applications while Life Science companies were 47% of the overall total. There were approvals for 2 new companies participating in the program this quarter: Macrotope, Inc and Valet Manager, Inc. Of note, investors in two companies received an additional 5% bonus to their tax credit due to the company being headquartered in a qualifying location or being certified as a women or minority owned business entity: POM Partners Inc.(OZ), Vaneltix Pharma Inc.(OZ).

Angel Investor Tax Credit Program Q3 2021 Approval Results

Sector	Investment Amount	Applications	# of Companies in Each Sector	% of Total Investments	% of Total Applications
Technology	$ 14,627,502.00	14	8	78%	53%
Life Sciences	$ 4,019,800.00	29	7	22%	47%
Total	**$ 18,647,302.00**	**43**	**15**		

The following fifteen companies were participants for the third quarter of 2021:

- Acuitive Technologies, Inc.: Based in Allendale, NJ. Acuitive Technologies is pursuing the development of novel biomaterial technologies to improve the repair and regeneration of musculoskeletal tissue.

- Aspargo Laboratories, Inc.: Based in Englewood Cliffs, NJ. Aspargo Labs Inc. is a life science corporation that commercializes a therapeutic approach to addressing a clinical need for drugs that treat erectile dysfunction (ED).

- Chromis Fiberoptics, Inc.: Based in Warren, NJ. Chromis Fiberoptics is the leading provider of Graded-Index Polymer Optical Fiber (GI-POF) Active Optical Cables (AOCs) for high-speed data transmission in digital signage, commercial and residential audio/video, mobile computing, consumer electronics and data center applications.

- Crescenta Biosciences Inc.: Based in Union, NJ. Crescenta Biosciences Inc. is a small molecule drug discovery company focused on developing novel therapeutic approaches for the treatment of metabolic diseases.

- Deliveright Logistics: Based in Bayonne, NJ. Deliveright Logistics, Inc. provides patented technology called Grasshopper, which bridges the gap between the E-Commerce segment of Heavy Goods retailers and companies that deliver these products. Grasshopper, a cloud-based proprietary platform, provides transparency and increased efficiency in pricing, delivery route optimization, tracking and logistics chain visibility.

- Elucida Oncology, Inc.: Based in Bound Brook, NJ. Elucida Oncology is a biotechnology company focused on clinical research, development and subsequent commercialization of life-changing products based on the Target or ClearTM technology of the novel, ultra-small nanoparticle delivery platform.

- Macrotope, Inc.: (New Company to ATC) Based in Princeton, NJ. Macrotope, Inc is a start-up company conducting research in “unique antigens” for new, more efficacious vaccines and human protein antigens for the discovery and development of novel biotherapeutic antibodies.

- MEMX LLC: Based in Jersey City, NJ. MEMX’s innovative platform promises to disrupt the conventional stock exchange business model by improving the quality of electronic financial markets through modern technology and by offering features that will benefit both retail and institutional investors.

- Paragon Flavors, Inc.: Based in Princeton, NJ. Paragon Pure is inventing replacements for synthetic materials in the food, supplement, and cosmetic industries by developing natural alternatives that are healthier for the population and the environment.

- POM Partners, Inc.: Based in Newark, NJ. POM Partners, Inc. provides an emergency communications portal solution for the higher education, healthcare and enterprise industries. (Opportunity zone bonus)

- Ricovr Healthcare, Inc.: Based in Princeton, NJ. Ricovr Healthcare is working on a biosensor technology to manufacture and commercialize oral point-of-care medical devices for use in diverse markets.

- Sonnet BioTherapeutics, Inc.: Based in Princeton, NJ. Sonnet BioTherapeutic is a pre-clinical biotech company developing a pipeline of therapies relating to oncology (cancer).

- Thinkster Learning, Inc.: Based in Kendall Park, NJ. Thinkster Learning, Inc is an AI and tech-enabled, SaaS platform for K-12 called Life Learning which offers a variety of subjects to students, such as, math, reading, physics, chemistry and test prep.

- Valet Manager, Inc.: (New Company to ATC) Based in Englewood Cliffs, NJ. Valet Manager, Inc is a cloud-based parking management platform whose unique hardware and software offers efficient parking systems.

- Vaneltix Pharma Inc. fka Urigen: Based in Bound Brook, NJ. Vaneltix Pharma Inc. fka Urigen Pharmaceuticals is a New Jersey based biopharmaceutical company that is developing treatments for Urological disorders. (Opportunity zone bonus)

Since program inception in 2013 through third quarter 2021, the Authority has approved 1,899 applications for investments totaling more than $677 million invested in 108 New Jersey based technology businesses.

Please find a detailed list of all ATC applications that were approved under delegated authority during the third quarter of 2021 on Exhibit A.

NJ Ignite Program

NJ Ignite offers grants to support the rent of early stage technology and life science companies located in an NJ Ignite approved collaborative workspace. Grants vary in amount. The start-up must commit to work for a specified time at the collaborative space under established agreements in which the workspace will partner to forego an element of the rent to support the business. As of September 30th, 2021, there were 22 approved collaborative spaces in New Jersey, some of which have multiple locations.

As of January 7, 2021, the Governor signed into law the Economic Recovery Act of 2020 (ERA) which results in the creation of the NJ Ignite Statutory Program. To ensure continuous NJ Ignite program operations, specific changes were approved by the Board on May 12, 2021 so that the NJ Ignite Pilot Program conforms to the NJ Ignite Legislative Program as outlined in the ERA. These updates included moving the annual reporting deadline to the calendar year end from one year

anniversary date, increasing the maximum benefit from $15,000 to $25,000, expanding the eligible industries to align with current NJEDA targeted industries, extending the earliest formation date from application date to 7 years, and adding 2 more stackable bonuses for M/WBEs and foreign companies. Updated Regulations for the NJ Ignite Legislative Program created by the ERA are anticipated to be presented to the Board in 2022.

NJ Ignite Program – Q3 2021 Review

Staff conducted 7 more update calls and are actively engaged with 18 approved collaborative workspaces currently. There are 4 approved workspaces that remain unresponsive to outreach attempts. All of the 18 approved collaborative workspaces shared that activity has been picking up between late 2nd quarter and throughout the 3rd quarter. However, there is still a lag in tenants and occupancy available at the facilities. Regarding updates from the ERA, 16 out of the 18 workspace managers stated they are optimistic the recent board approvals will help them grow, particularly noting the expansion of eligible industries, the increase in grant size, and the raising of maximum age of business. Financial issues exist with 2 workspaces and withdrawing from the Program is a possibility.

There were no new Workspace Approvals and no new Tenant application approvals in the third quarter. However, there was 1 NJ Ignite benefit disbursement.

NJ Ignite Program Disbursements

Tenant Name	Workspace Name	EDA Grant	Number of Employees	Disbursement Date
Farm To Flame Inc.	Kearney Point	$11,400.00	2	9/31/2021

NJ Entrepreneur Support Program (NJESP)
Covid Relief Program

On March 26, 2020, the NJEDA Board approved the NJ Startup Entrepreneur Support Program (NJESP) to support New Jersey entrepreneurial businesses with limited funding navigate COVID-19 related cashflow constraints by providing financial support to their existing investors. Through NJESP, investors in NJ entrepreneurial businesses (operating in Innovation Economy sectors) could receive a guarantee (up to 80%, not to exceed $200,000 per company) for new, qualified bridge loans/convertible notes into NJ entrepreneurial business. The guarantee matures in 1 year having an expiration date 1 year from the underlying note's issue date. If certain financial conditions are met by the company within this 1-year term, the note investor could submit a claim to the NJED a for payment of the guarantee. The total program budget was $5 million.

Applications for the program opened on April 22, 2020. No applications were accepted after February 12, 2021. A total 97 applications were submitted, from which, 47 applications were approved by the Authority staff under delegated authority. The guarantee amount in total was of $2.036 million for $2.545 million of promissory note investment. This represents investments in 13 unique businesses with a total 85 full-time NJ employees. Additionally, 28 applications were withdrawn, and 22 applications were declined.

To date, investors in 2 companies (POM Partners, Inc. and Ricovr Healthcare, Inc.) converted their promissory notes into equity. The Authority has received warrants in each company for the equity conversion as specified by the NJESP. Additionally, investors in 1 company (Sunray Scientific LLC) have informed Staff that their promissory notes converted into equity and a warrant closing is in process. Furthermore, there was 1 company with an expired 1-year term as well as 90-day window to claim.

NJ Entrepreneur Support Program – Q3 2021 Review

For the third quarter of 2021, investor note guarantees for 6 companies with pervious 1-year maturities also reached the expiration of the 90-day window to claim payment. An additional 2 companies saw investor note guarantees reach their maturity of 1 year in Q3. The investors of these guaranteed notes have 90 days from the maturity date to claim payment for their guarantee if certain financial conditions were met by the company within this 1-year term. There is 1 company remaining with a set of active investor guarantees due to expire in the fourth quarter of 2021. As of the end of the third quarter, Staff has not received any notice of guarantee redemption from the investors or companies.

NJ Accelerate Program

On February 11th, 2020, the NJEDA Board approved the pilot program NJ Accelerate. The total program budget is $2.5 million. Through NJ Accelerate, the NJEDA seeks to provide early-stage businesses access to best-in-class Accelerator programs, enabling the tools and support to grow their businesses in the Garden State. The program provides up to $250,000 of direct loan funding and up to 6 months of free rent to Approved Accelerator Graduates located in New Jersey. Graduates certified as woman or minority owned can receive an additional 5% bonus to the direct loan amount as well as 1 addition month of rent. Approved Accelerators may also receive sponsorship of up to $100,000 to produce events in NJ to encourage their on-the-ground engagement in the State. Also, a sponsorship bonus of 5% is available for Approved Accelerators demonstrating meaningful written policies and practices for attracting and promoting companies owned by women and minority persons.

NJ Accelerate Program – Q3 2021 Review

The Authority began accepting applications to become an approved accelerator during Q4, 2020. On November 12th, 2020, Morgan Stanley Multicultural Innovation Lab became the first approved accelerator. The Authority approved Cleantech Open Northeast on April 13th, 2021 becoming the second approved accelerator, followed by VentureWell's Aspire program which was approved on May 14th, 2021. In the third quarter 2021, University City Science Center's Launch Lane Accelerator was approved to participate in the Program on September 1st, 2021.

NJ Accelerate Program Approved Accelerators

Accelerator Name	Accelerator Location
Morgan Stanley Multicultural Innovation Lab	New York City, NY
Cleantech Open Northeast	Boston, MA
VentureWell - Aspire Program	Hadley, MA
University City Science Center - Launch Lane Accelerator	Philadelphia, PA

Morgan Stanley Multicultural Innovation Lab was created in 2017 to drive positive economic outcomes for multicultural and women-led companies in the post-seed to Series B funding rounds by providing content, visibility, technical support, and connectivity with important stakeholders who can accelerate the growth of participants' businesses. The accelerator is built around tailored support and expertise entrepreneurs receive from a dedicated Morgan Stanley team. To date, 32 tech or tech-enabled companies have participated in the Lab, with many going on to successful acquisitions and additional funding rounds.

Cleantech Open Northeast is part of Cleantech Open, a cleantech accelerator managed by the Boston-based Northeast Clean Energy Council (NECEC) as the on-the-ground affiliate. Cleantech Open finds, funds, and fosters entrepreneurs with big ideas that address urgent energy, environmental, and economic challenges. Cleantech Open provides the infrastructure, expertise and strategic relationships that turn ideas into successful global cleantech companies. In 15 years, Cleantech Open Northeast has supported 414 startups and the 68% active alumni companies employ approximately 3,300 people, have generated over $279 million in revenue and raised over $653 million in funds.

VentureWell is a Massachusetts-based nonprofit that supports early-stage science- and technology-based inventors. Its E-Team Grant Program supports early-stage innovators (science- and engineering-based student teams) from across the nation with early funding and targeted training to commercialize their high-impact innovations. During ASPIRE, VentureWell's third and final phase of the E-Team Grant Program, startup companies participate in an intensive program that prepares them for the investments and partnerships necessary to launch their ventures. Since its inception in 2015, 117 startups have participated in ASPIRE and have raised over $190 million in follow-on funding since participating in the program. The E-Team Grant program overall, with its three stages, has supported 652 teams that have raised a total of $645 million.

Launch Lane is an accelerator program powered by the University City Science Center, a Philadelphia-based nonprofit innovation hub. Launch Lane helps tech and tech-enabled startups transition from prototype to sales and customer acquisition. The accelerator utilizes an anonymous application to de-bias the selection process. In the history of the program, including the former Digital Health Accelerator, Launch Lane has supported 35 companies and invested $1.4 million. Those companies' combined have gone on to raise more than $100 million in funding, generate $50 million in revenue and create 300 jobs.

New Jersey Zero-emission Incentive Program (NJ ZIP)

In January 2021, the Members of the Board approved a $15,750,000 pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program, funded from New Jersey Economic Development Authority's (NJEDA) allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. Launched in April 2021, the NJ ZIP pilot established a first-come, first-served voucher-style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the greater Newark and greater Camden areas.

The primary goals of this pilot program are to:

- Accelerate the adoption and use of medium duty zero-emission vehicles within New Jersey;
- Reduce emissions within the pilot communities, greater Newark and greater Camden; and
- Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

Based on the results of the pilot program (e.g., program uptake, efficacy, and continued market need), and assuming continued availability of RGGI funds allocated to this program, a longer-term program with expanded eligibility may be proposed after the pilot funds are fully reserved.

In addition to delegated authority to approve and decline applicants to the program, the Members of the Board also approved in January 2021 delegated authority to "the CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations, (ii) adjust voucher amounts, (iii) select additional eligible communities, and (iv) expand the pilot program to a maximum of $25 million." After a program review, the NJEDA CEO approved on September 28, 2021 the expansion of the pilot program to a total of $25,000,000 and add the greater New Brunswick area as an additional eligible community. The approved Operating Memorandum can be found on Exhibit B.

New Jersey Zero-emission Incentive Program – Q3 2021 Review

NJ ZIP is administered in sequential steps. First, a zero-emission vehicle vendor must submit an application to become an approved vendor. Once approved, a vehicle purchaser may submit an application to receive an NJ ZIP voucher to purchase a qualified vehicle from their selected approved vendor. This voucher that may be redeemed for a specific dollar amount after completion of the total vehicle purchase. The value of the voucher ranges from $25,000 to $100,000 per vehicle depending on the vehicle's weight class. Additional bonus amounts can be added to the voucher if certain conditions are met by the purchaser, such as by being a small or micro-business, or by the vendor, such as by manufacturing 25% or more of the vehicle in NJ. For the purposes of this Program, a small business is defined as having 25 or fewer full-time employees in total or less than $5M in annual revenue.

In the third quarter of 2021, one (1) zero-emission vehicle vendor was approved to participate in NJ ZIP, bringing the total approved vendors to fourteen (14). In Q3 2021, twenty (20) new purchaser applications were submitted to the Program, bringing the total submitted purchaser applications to thirty-nine (39). Of these, eleven (11) purchaser applications were approved in Q3 2021 for a total of $4,249,000 across 43 vouchers. These 11 purchasers' 43 vouchers support the addition of 43 zero-emission medium-duty vehicles on New Jersey roads once the vouchers are redeemed, supplied by 4 different vendors. In Q3, more than 90% of the approved purchaser applicants are small businesses (receiving a 25% funding bonus) and are minority- and/or woman-owned (receiving an additional $4,000 bonus per vehicle per qualifying certification); all applicants will operate and/or register their vehicles within the greater Camden (4 purchasers) or greater Newark areas (7 purchasers). Five applicants withdrew from the program in Q3, either at their own request or due to non-responsiveness. The remaining applications received through the end of the third quarter are currently under review by Staff. No approved vouchers have been redeemed as of the end of the third quarter.

The program has received continuous application flow from the eligible communities, and repeated interest for expansion to more parts of the state and for longer-term funding. In support of this, since the program opened for applications, the total value of the applications submitted by the end of the third quarter totaled more than $15.1M in value. Based on the results of and feedback on the pilot

program to-date, NJEDA exercised its delegated authority to expand the pilot program by $9,250,000, to a program total of $25,000,000, and add one additional eligible community area (greater New Brunswick). For the purposes of this pilot expansion, the greater New Brunswick area is defined as the overburdened communities within or intersected by a circle with a 10-mile radius centered in New Brunswick. This community area was selected based on the same quantitative analysis used to select Camden and Newark areas. Based on this analysis, communities surrounding New Brunswick were found to be the highest ranked candidates for the pilot program after Camden and Newark. All other eligibility requirements, voucher values, and funding caps remain unchanged.

New Jersey Zero-emission Incentive Program Q3 2021 Results

Purchaser Applicant	Vendor	Purchaser Location	SBE	MBE	WBE	# of Vehicles	Total Voucher $
JUAN KELMY PRODUCTION	GreenPower Motor Company, Inc.	Greater Camden	Yes	Yes		2	$195,500
ENAT DELIVERIES LLC	GreenPower Motor Company, Inc.	Greater Newark	Yes	Yes	Yes	3	$305,250
COLEY CONSULTING & TAX SERVICES, LLC	Adomani Inc	Greater Newark	Yes	Yes	Yes	1	$99,500
Avalon Distribution Services LLC	Sea Electric	Greater Newark	Yes	Yes		9	$1,142,250
JP2018 LLC	Adomani Inc	Greater Newark	Yes	Yes		8	$784,000
County of Bergen	United Ford	Greater Newark	No			10	$850,000
JKMAK Investment Group	Adomani Inc	Greater Camden	Yes	Yes		1	$97,750
Supreme Green Team L.L.C.	GreenPower Motor Company, Inc.	Greater Newark	Yes	Yes		3	$293,250
2407 Emergency Services & Restoration, LLC	Sea Electric	Greater Camden	Yes	Yes	Yes	3	$230,250
2407 Medical Billing, LLC	Sea Electric	Greater Camden	Yes	Yes	Yes	2	$153,500
MLM Unlimited Enterprises LLC	Adomani Inc	Greater Newark	Yes	Yes		1	$97,750
Quarterly TOTAL	11					**43**	**$4,249,000**

Small Business Emergency Assistance Loan Program (Phase 2)

On June 9, 2021, the NJEDA Board approved the Small Business Emergency Assistance Loan Program (Phase2) to provide low-cost capital to New Jersey businesses and not-for-profits to assist them with recovery and resiliency as a result of COVID-19. This program is funded by an $11 million USEDA award ($10 million for the revolving loan fund and $1 million for administrative support), to do the following: focus funding on entities that have started a new business and taken on new space, transitioned from a home-based business or smaller space into a larger space or acquired an owner-occupied commercial space. Applications opened on August 3, 2021 and closed on August 13, 2021. A total 1,019 applications were submitted, of which, 22 applications were approved by the Authority staff under delegated authority for $1,578,912.88 in the third quarter of 2021.

Small Business Emergency Assistance Loan Program (Phase 2) Q3 2021 Results

Total Approved Application Amount	Total Loan Amount
22	$1,578,912.88

Please find a detailed list of all applications that were approved under delegated authority during the third quarter of 2021 on Exhibit C.

Tim Sullivan, CEO

Angel Investor Tax Credit Prepared by:
Clark Smith

NJ Ignite Prepared by:
Jerrel Burney

NJ Entrepreneur Support Program Prepared by:
Clark Smith

NJ Accelerate Prepared by:
Monica Valenzuela

New Jersey Zero-emission Incentive Program Prepared by:
Victoria Carey

Small Business Emergency Assistance Loan Program (Phase 2) Prepared by:
Derrick Benns

Memo Prepared by:
Clark Smith

EXHIBIT A

Q3 2021 Delegated Approvals - Angel Investor Tax Credit

Investors	Employees in NJ	Company	Investment	Proposed Tax Credit
Medical Device Investment Consulting, LLC		Acuitive Technologies, Inc.	$50,000	$10,000
1	**NJ: 22 Total: 21**	**Acuitive Technologies, Inc.**	**$50,000**	**$10,000**
AutoBar Systems of N.J., Inc.		Aspargo Laboratories, Inc.	$10,000	$2,000
John Strauss Jr.		Aspargo Laboratories, Inc.	$10,000	$2,000
Thomas Kenny		Aspargo Laboratories, Inc.	$125,000	$25,000
Angelo J Pino		Aspargo Laboratories, Inc.	$250,000	$50,000
Gabriella Liotta		Aspargo Laboratories, Inc.	$10,000	$2,000
HENNING LORENZ		Aspargo Laboratories, Inc.	$10,000	$2,000
Linda Ann Schunck-Boyce		Aspargo Laboratories, Inc.	$5,000	$1,000
Charles G Schade		Aspargo Laboratories, Inc.	$25,000	$5,000
HENNING LORENZ		Aspargo Laboratories, Inc.	$50,000	$10,000
Paul F. Meinville		Aspargo Laboratories, Inc.	$50,000	$10,000
Alton R. Tyndall Jr.		Aspargo Laboratories, Inc.	$10,000	$2,000
Vincent Margiotta		Aspargo Laboratories, Inc.	$50,000	$10,000
12	**NJ: 2 Total: 2**	**Aspargo Laboratories, Inc.**	**$605,000**	**$121,000**
Miri Park		Chromis Fiberoptics, Inc.	$25,000	$5,000
1	**NJ: 6 Total: 6**	**Chromis Fiberoptics, Inc.**	**$25,000**	**$5,000**
SYSTEM MORGAN LLC		Crescenta Biosciences Inc.	$1,000,000	$200,000
SYSTEM MORGAN LLC		Crescenta Biosciences Inc.	$1,000,000	$200,000
2	**NJ: 2 Total: 2**	**Crescenta Biosciences Inc.**	**$2,000,000**	**$400,000**
Michael J Cerminaro Family Trust		Deliveright Logistics, Inc.	$122,004	$12,200
1	**NJ: 37 Total: 48**	**Deliveright Logistics, Inc.**	**$122,004**	**$12,200**
MARCIN PIROG		Elucida Oncology, Inc.	$250,000	$50,000
Trust u/w/o Lenore Stern f/b/o James Stern		Elucida Oncology, Inc.	$150,000	$30,000
Alok Agrawal Aruna Agrawal JT TEN		Elucida Oncology, Inc.	$25,000	$5,000
Gregory Hartnell Blaine		Elucida Oncology, Inc.	$76,000	$15,200
John A. Avenia		Elucida Oncology, Inc.	$60,800	$12,160
Kim Kiat Ong		Elucida Oncology, Inc.	$38,000	$7,600
Wychmere Partners, LLC		Elucida Oncology, Inc.	$100,000	$20,000
Kenmont Capital Private Equity Partners III, LP		Elucida Oncology, Inc.	$75,000	$15,000
8	**NJ: 10 Total: 13**	**Elucida Oncology, Inc.**	**$774,800**	**$154,960**
Clara K. Anderson		Macrotope, Inc.	$50,000	$5,000
Yellow Mintu, LLC		Macrotope, Inc.	$50,000	$10,000
2	**NJ: 1 Total: 1**	**Macrotope, Inc.**	**$100,000**	**$15,000**
Jane Street Group, LLC		MEMX Holdings, LLC	$3,300,000	$500,000
Jane Street Group, LLC		MEMX Holdings, LLC	$10,000,000	$500,000
2	**NJ: 43 Total: 44**	**MEMX Holdings, LLC**	**$13,300,000**	**$1,000,000**

Matthew Patrick Sillick		Paragon Flavors, Inc.	$30,000	$6,000
Paul Vincent Sillick		Paragon Flavors, Inc.	$50,000	$10,000
2	**NJ: 2 Total: 2**	**Paragon Flavors, Inc.**	**$80,000**	**$16,000**
The Mitchell Benson Support Trust		POM Partners, Inc.	$124,998	$31,250
Christopher H Kelly		POM Partners, Inc.	$245,000	$61,250
2	**NJ: 6 Total: 6**	**POM Partners, Inc.**	**$369,998**	**$92,500**
John McCarthy		Ricovr Healthcare Inc.	$40,000	$8,000
Province Milford Capital L.L.C.		Ricovr Healthcare Inc.	$25,000	$5,000
Sheri Matarese		Ricovr Healthcare Inc.	$25,000	$2,500
Satinder S Sadhar		Ricovr Healthcare Inc.	$25,000	$5,000
4	**NJ: 2 Total: 2**	**Ricovr Healthcare Inc.**	**$115,000**	**$20,500**
Pankaj Mohan		Sonnet BioTherapeutics, Inc.	$198,000	$39,600
Shrikant Nistane		Sonnet BioTherapeutics, Inc.	$200,000	$40,000
2	**NJ: 6 Total: 6**	**Sonnet BioTherapeutics, Inc.**	**$398,000**	**$79,600**
Syven Capital LP		Thinkster Learning, Inc	$515,500	$103,100
1	**NJ: 10 Total: 11**	**Thinkster Learning, Inc**	**$515,500**	**$103,100**
Millennium Trust Co LLC FBO Custodian Andrew Bess IRA		Valet Manager	$100,000	$10,000
1	**NJ: 7 Total: 7**	**Valet Manager**	**$100,000**	**$10,000**
Dorothy S Lowry Trust		Vaneltix Pharma Inc	$42,000	$10,500
Cheryl Vitow and Laurie MacPherson		Vaneltix Pharma Inc	$50,000	$12,500
2	**NJ: 4 Total: 2**	**Vaneltix Pharma Inc**	**$92,000**	**$23,000**
43		**15**	**$18,647,302.00**	**$2,062,860.00**

EXHIBIT B

Approved Operating Memorandum - NJ ZIP

To: Tim Sullivan, CEO NJEDA

From: Victoria Carey, Senior Project Officer and NJ ZIP Program Lead

Date: 28 September 2021

Regarding: Record of Approval for NJ ZIP Delegated Authority Pilot Expansion – *for inclusion in Economic Growth Products Delegated Authority Memo for Q3 2021*

In January 2021, the Members of the Board approved a $15,750,000 pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program, funded from New Jersey Economic Development Authority's (NJEDA) allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. Launched in April 2021, the NJ ZIP pilot established a first-come, first-served voucher-style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the greater Newark and greater Camden areas.

Within the same memorandum, the Members of the Board also approved delegated authority to expand the pilot to a total amount of $25,000,000, granting "[i]n relation to this pilot program… delegated authority to: The CEO to, based upon program demand reviewed at 3-month intervals, (i) shift funding allocations, (ii) adjust voucher amounts, (iii) select additional eligible communities, and (iv) expand the pilot program to a maximum of $25 million using RGGI funds".

The primary goals of this pilot program are to:

- Accelerate the adoption and use of medium duty zero-emission vehicles within New Jersey;
- Reduce emissions within the pilot communities; and
- Allow NJEDA to determine and stimulate market-readiness, assess effectiveness of funding levels and program design, and test methodologies for measuring economic impact of such adoption.

The pilot has received continuous application flow from the eligible communities, in addition to repeated interest for expansion to more parts of the state and for longer-term funding. Since launch, fourteen (14) zero-emission vehicle vendors were approved to participate in NJ ZIP. As of September 28, 2021, thirty-eight (38) purchaser applications have been submitted to the Program, totaling $15.1M in requested funding. Of these, sixteen (16) purchaser applications have so far been approved for a total of $6.7M across 69 vouchers for 69 zero-emission medium-duty vehicles. Three quarters of the approved purchaser applicants are small businesses (receiving a 25% funding bonus), and half are minority- and/or woman-owned businesses; all applicants will operate and/or register their vehicles within the greater Camden (6 purchasers) or greater Newark areas (10 purchasers). No approved vouchers have been redeemed to date; it is anticipated the first vouchers will be redeemed in Q4 2021, and redemptions will continue through Q2 2022. The remaining applications received to date are currently under review by Staff.

Based on the results of and feedback on the pilot program to-date, NJEDA is exercising its delegated authority to expand the pilot program by $9,250,000, to a program total of $25,000,000, and add one additional eligible community area: the greater New Brunswick area.

For the purposes of this pilot expansion, the greater New Brunswick area is defined as the overburdened communities within or intersected by a circle with a 10-mile radius centered in New Brunswick. Specifically, the eligible municipalities in this area are:

- **Greater New Brunswick area:** Bound Brook, Bridgewater, Clark, Dunellen, East Brunswick, Edison, Franklin Township, Green Brook, Highland Park, Hillsborough, Jamesburg, Manville, Metuchen, Middlesex, Monroe, Montgomery, New Brunswick, North Brunswick, North Plainfield, Old Bridge, Perth Amboy, Piscataway, Plainfield, Raritan, Sayreville, Scotch Plains, Somerville, South Amboy, South Bound Brook, South Brunswick, South Plainfield, South River, Spotswood, Woodbridge

This community area was selected based on the same quantitative analysis used to select Camden and Newark areas, considering the following criteria:

- percentage of a municipality's population meeting the NJ P.L.2020, c.92 overburdened community definition;
- municipal population density, used as a proxy for traffic density (which is reported at the county level); and
- the municipal revitalization index (MRI) rank and impacted community population.

COVID-related economic impacts were also considered, but did not affect the selection of the additional pilot communities. Based on this ranking analysis, communities surrounding New Brunswick were found to be the highest ranked candidates for the pilot program after Camden and Newark.

All other eligibility requirements, voucher values, and funding caps remain unchanged.

Tim Sullivan

Chief Executive Officer

EXHIBIT C

Q3 2021 Delegated Approvals - Small Business Emergency Assistance Loan Program (Phase 2)

Applicant	Amount	Approval Date
Good Morning Dental LLC	$ 50,000.00	9/10/2021
NSN Moorestown, LLC	$ 100,000.00	9/10/2021
TMT MARKETING LLC	$ 75,000.00	9/10/2021
MHD LLC	$ 100,000.00	9/10/2021
Titan Technologies, LLC	$ 100,000.00	9/10/2021
TJ Rocco Enterprises LLC	$ 35,000.00	9/10/2021
JVA Accountants & Advisors LLC	$ 50,000.00	9/10/2021
B&H AUTO REPAIRS II LLC	$ 100,000.00	9/19/2021
Northeast Communications, Inc	$ 100,000.00	9/19/2021
Mtom Global Inc.	$ 50,000.00	9/19/2021
Yuenme Corporation	$ 97,819.88	9/19/2021
MRFG CHILL LLC	$ 100,000.00	9/24/2021
Cruisin' Garage, LLC	$ 89,000.00	9/24/2021
The Academy NJ, LLC.	$ 75,000.00	9/24/2021
COMMUNITY ACTION SERVICE CENTER INC	$ 55,000.00	9/27/2021
Valeza LLC	$ 50,000.00	9/28/2021
Yayasphere Studios LLC	$ 75,000.00	9/28/2021
Garrison Family Industries Ltd Liability Company	$ 20,000.00	9/28/2021
R&S DollarBees LLC	$ 95,393.00	9/28/2021
PURE NAIL 13 INC	$ 50,000.00	9/28/2021
Rocco Films LLC	$ 11,700.00	9/28/2021
Flower Sum Pita LLC	$ 100,000.00	9/29/2021
Quarterly Total	**$ 1,578,912.88**	

NJEDA
ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Film and Digital Media Tax Credit Program – Notice of Award Increase for Redo Askew LLC – PROD-00258300
For Informational Purposes Only

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York,
New, York.

On March 31, 2021, Redo Askew, LLC submitted an application for the Film and Digital Media tax credit program for the production of Clerks III. On June 9, 2021, Redo Askew, LLC was approved for an award not to exceed $2,532,789.12 under the Film and Digital Media Tax Credit Program. This award was based on a 30% tax credit and 2% diversity bonus on an estimated $7,914,966 worth of qualified film production expenses.

Based on the effective date of the updated statute and the application submission date, Redo Askew, LLC is eligible for an increased tax credit of 35% plus a 2% diversity bonus for a total award not to exceed $2,928,537.42. This award brings the total awards for State Fiscal Year 2021 to $30,896,078.87 with $119,103,921.13 in allocation remaining.

Tim Sullivan, CEO

Prepared by**:** Matt Sestrich

Attachment:
Exhibit 1: Redo Askew LLC, June 9, 2021 Board Memo

Exhibit 1

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – FILM TAX CREDIT PROGRAM

As created under the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the Film Tax Credit Program, applicants are eligible for a tax credit equal to 30% of qualified film production expenses, or 35% of qualified film production expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.

As amended by law on 7/2/2021, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Universal Television, LLC PROD-00192239

APPLICANT BACKGROUND:
Universal Television LLC is the production company responsible for "Echo (Pilot)". Echo is a high concept, genre procedural revolving around a team of investigators who solve the highest profile crimes by sending heroes into the past in the body of the victim. They assume the victim's identity and must race against time to prevent the crime before it happens.

The film content has been reviewed and recommended for approval under the Act by the New Jersey Motion Picture and Television Commission. The Commission has determined that the film shall include, at no cost to the State, marketing materials promoting the State, including the placement of a logo in the end credits of the film.

ELIGIBILITY AND TAX CREDIT CALCULATION:
As part of eligibility for tax credits under the New Jersey Film Tax Credit Program, a film must meet at least one of two expense eligibility thresholds:

1. Total Film Production Expenses: A minimum of 60% of the film's total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2023 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	$7,900,344.91
B. Total Post-Production Expenses	$90,349.26
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	$6,825,203.90
Percentage Calculation = C/(A-B)	87%

Criterion Met	**Yes**

2. Qualified Film Production Expenses: During a single privilege period, the film must have more than $1 million in qualified film production expenses. "Qualified film production expenses" are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. "Qualified film production expenses" shall include, but shall not limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a "qualified film production expenses" unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). "Qualified film production expenses" shall not include: expenses incurred in marketing or advertising a film; and payment in excess of $500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	$6,825,203.90
Criterion Met	**Yes**

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Qualified Film Production Expenses	$6,825,203.90 x 30% =	$2,047,561.17
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	$0 x 2% =	$0
5% of Qualified Film Production Expenses incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer or Salem County.	$0 x 5% =	$0
Total Award		**$2,047,561.17**

APPLICATION RECEIVED DATE: 05/06/2020
DATE APPLICATION DEEMED COMPLETE: 05/11/2020
PRINCIPAL PHOTOGRAPHY COMMENCEMENT: 03/11/2020
PRINCIPAL NJ PHOTOGRAPHY LOCATION: East Rutherford, NJ
ESTIMATED DATE OF PROJECT COMPLETION: 12/31/2020

APPLICANT'S FISCAL YEAR END:	12/31/2021
TAX CREDIT VINTAGE YEAR(S):	2021
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	1/31/2023

In general, the final documentation shall be submitted to the Authority no later than four years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

The Garden State Film and Digital Media Jobs Act originally provided a total of $75 million in tax credits for State Fiscal Year 2019 and increased to $100 million as amended by law on 1/21/2020. As a result, $100 million of film tax credits are available for State Fiscal Year 2022. After today's approvals, $48.13 remains in the program for State Fiscal Year 2022. However, there are 29 additional applications in the pipeline totaling $111.58 million and therefore being over-subscribed for State Fiscal Year 2022.

APPROVAL REQUEST:
The Members of the Authority are asked to initially approve the proposed award to the applicant under the New Jersey Film and Digital Media Tax Credit Program. The recommended tax credit is contingent upon receipt by the Authority of evidence that the applicant has met certain criteria to substantiate the recommended award and is subject to final approval by the Authority and the Division of Taxation. Staff may issue the Authority's final approval if the criteria met by the company is consistent with that shown herein. If the criteria met by the company differs from that shown herein, Staff may lower the tax credit amount to reflect what corresponds to the actual criteria that have been met.

APPROVAL OFFICER: M. Bhatia

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan**,** Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Bond Modifications – 3rd Quarter 2021

(For Informational Purposes Only)

The following Post-Closing Bond action was approved under delegated authority in the 3rd quarter ending September 30, 2021:

Stand Alone and Refunding Bonds - (EDA has no Credit Exposure)

Applicant	Product Number	Modification Action	Bond Amount
The Montclair Art Museum	PROD-00171837	Consent to (i) reduce the interest rate from 3.42% to an indicative rate of 2.3% and (ii) modify the amortization schedule to reflect the new interest rate.	$4,549,200
Middlesex Water Company	PROD-00147147	Execute the pledge and escrow deposit agreement in connection with the Defeasance of the 2012 Series C bonds.	$23,000,000

Tim Sullivan, CEO

Prepared by: K. Hall

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Post Closing Credit Delegated Authority Approvals for 3Q Quarter 2021
For Informational Purposes Only

The following post-closing actions were approved under delegated authority during the third quarter of 2021:

Name	**EDA Credit Exposure**	**Action**
Northshore Sportech, Inc.	$ 317,483 SBL	Approve a six (6) month principal moratorium to provide cashflow relief.

Camden Economic Recovery Board Grants (EDA has no credit exposure)	
Camden Community Partnership, Inc (Formerly Cooper's Ferry Partnership, Inc.)	One-year extension of the required construction completion date of the infrastructure grant.

Loans Written off with Recourse	

As required by generally accepted accounting principles, loans that are nonperforming, offer limited likelihood of future recovery and have been fully reserved are to be written off. Special Loan Management conducts a quarterly portfolio review, and with concurrence from management, recommend loans to be written off with recourse pursuant to delegated authority. EDA retains legal rights against the borrower and/or guarantors and pursue collections of these loans through litigation.

Name	Credit Exposure	Description
Orange Trucking, Inc.	$578,400.76 SBL	EDA has not received any payments on this loan since March 2020.
Thomas Tweer & Robert Tweer, a general partnership (Hobby Lobby Marine)	$1,173,856.16 SBL	EDA has not received any payments on this loan since July 2020.
Optijob, Inc.	$395,400.02 SBL	EDA has not received any payments on this loan since February 2020.

Tim Sullivan, CEO

Prepared by: Fabiola Saturne and Mansi Naik

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 10, 2021

SUBJECT: Incentives Modifications – 3rd Quarter 2021

(For Informational Purposes Only)

Since 2001, and most recently in June 2014, the Members have approved delegations to staff for post-closing incentive modifications that are administrative and do not materially change the original approvals of these grants.

Attached is a list of the Incentive Modifications that were approved in the 3rd quarter ending September 30, 2021.

Timothy Sullivan
Chief Executive Officer

Prepared by: F. Saturne

ACTIONS APPROVED UNDER DELEGATED AUTHORITY

THIRD QUARTER ENDING September 30, 2021

Business Employment Incentive Grant Program

Applicant	Modification Action	Approved Award
Tyco International, Ltd.	Consent to remove Tyco Valves & Controls Inc. effective September 2012 and Tyco International Ltd., Inc. effective November 2014, change the name of Simplex Grinnell LP to Johnson Controls Fire Protection LP effective May 2017.	$13,230,000

GROW NEW JERSEY ASSISTANCE PROGRAM

Applicant	Modification Action	Approved Award
Corcentric, LLC	Consent to Approve a first six-month extension of the certification deadline from September 13, 2021 to March 13, 2022.	$1,387,440
Factor Systems	Consent to grant two six-month COVID-related extensions of the Project Certification Deadline, extending the certification deadline from August 8, 2021, to June 4, 2022, or one year after the end of the Public Health Emergency.	$12,894,240
Geri-care Pharmaceuticals, Corp.	Consent to grant two six-month COVID-related extensions of the Project Certification Deadline, extending the certification deadline from August 8, 2021, to June 4, 2022, or one year after the end of the Public Health Emergency.	$11,700,000
J&K Ingredients Corp.	Consent to update the award recipient name from "J&K Corp." into "J&K LLC" in acknowledgement of an internal merger.	$11,685,000
Laboratory Corporation of America Holding dba LabCorp	Consent to grant two six-month COVID-related extensions of the Project Certification Deadline, extending the certification deadline from November 14, 2021, to June 4, 2022, or one year after the end of the Public Health Emergency.	$39,984,780
Maestro Technologies, Inc.	Consent to grant two six-month COVID-related extensions of the Project Certification Deadline, extending the certification deadline from March 24, 2021 to June 4, 2022, or one year after the end of the Public Health Emergency.	$17,355,000
Modern Meadow, Inc.	Consent to grant two six-month COVID-related extensions of the Project Certification Deadline, extending the certification deadline from July 13, 2021, to June 4, 2022, or one year after the end of the Public Health Emergency.	$32,200,000
Sanofi US Services, Inc.	Consent to add Sanofi-Aventis US LLC, Genzyme Corporation, and Chattem Inc as affiliates to the Incentive Agreement.	$39,943,970

SALEM/UEZ ENERGY SALES TAX EXEMPTION RENEWALS

Applicant	Extend to date	Location	#/% of employees	Benefit
F&S Produce Co., Inc.	June 9, 2022	Vineland, NJ	586/73%	$156,163
Mexichem Specialty Resin	August 7, 2022	Pedricktown, NJ	85/66%	$459,304
Union Beverage Packers, LLC	August 26, 2022	Hillside, NJ	342/96%	$63,137