NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Agenda for Board Meeting of the Authority April 12, 2023

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Incentives

Real Estate

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

March 8, 2023

MINUTES OF THE MEETING

The Meeting was held in-person and by teleconference call.

Members of the Authority present in person: Chairman Kevin Quinn, Noreen Giblin, Executive Representative; State Treasurer Elizabeth Muoio of the Department of Treasury; Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; and Public Members Charles Sarlo, Vice Chairman; Philip Alagia and Robert Shimko, First Alternate Public Member.

Members of the Authority present via conference call: Justin Zimmerman representing Commissioner Marlene Caride of the Department of Banking and Insurance; and Public Members Virginia Bauer, Fred Dumont, and Marcia Marley.

Also present: Timothy Sullivan, Chief Executive Officer of the Authority; Assistant Attorney General Gabriel Chacon; Jamera Sirmans, Governor's Authorities Unit; and staff.

Members of the Authority absent: Aisha Glover and 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 at the Department of State.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the February 8, 2023 meeting minutes. A motion was made to approve the minutes by Commissioner Angelo, and seconded by Ms. Giblin, and was approved by the twelve (12) voting members present.

FOR INFORMATION ONLY:

Chairman Quinn announced that today would be his last board meeting, and that he was resigning to join the U.S. Department of Commerce's CHIPs Program.

CEO Tim Sullivan and several Board Members thanked Chairman Quinn for his leadership during his tenure, and congratulated his on his upcoming role.

FOR INFORMATION ONLY: The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board. Mr. Sullivan announced that Mr. Terence O'Toole would be the next Board Chair, effective at the April 12, 2023 board meeting.

AUTHORITY MATTERS

Rules

ITEM: Final Adoption of the New Jersey Innovation Evergreen Program Rules, N.J.A.C. 19:31-25.1 et seq
REQUEST: To approve the submission of Notice of Final Adoption of the New Jersey Innovation Evergreen Program Rules, to the Office of Administrative Law for publication in the New Jersey Register as final adopted rules.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Giblin **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

MOUS and Grant Agreements

ITEM: Offshore Wind Submerged Arc Welding Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and Camden County Technical Schools (CCTS) and Camden County College (CCC)
REQUEST: To approve: (1) An MOU between NJEDA and Camden County Technical Schools and an MOU between NJEDA and Camden County College that will enable NJEDA to provide funding to each entity to support expansion of their submerged arc welding programs. (2) Utilization of funding for these two MOUs from the allocation memorialized via MOU between NJEDA and the NJ Board of Public Utilities for offshore wind initiatives; and (3) Delegated authority to the CEO to extend each MOU by up to 12 months if needed.
MOTION TO APPROVE: Treasurer Muoio **SECOND:** Mr. Alagia **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Memorandum of Understanding with the Capital City Redevelopment Corporation (CCRC)
REQUEST: To approve an MOU between the NJEDA and the CCRC as an inter-department governmental agreement confirming the mutual understanding and intention between the agencies with respect to the provision of the Authority's support services to the CCRC.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Angelo **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Dedication of Funds toward Commission on Science, Innovation and Technology for Food and Agriculture Research and Development Grant Program
REQUEST: To approve: (1) The transfer funds from NJEDA Fiscal Year 2022 Appropriations Act for "Food and Agriculture Innovation" toward grants made through the Commission on Science, Innovation, and Technology's ("CSIT") new Food and Agriculture Research & Development Grant Program; and (2) An MOU with CSIT to utilize funds to implement the new Food and Agriculture Research & Development Pilot Grant Program.
MOTION TO APPROVE: Mr. Shimko **SECOND:** Ms. Giblin **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ECONOMIC TRANSFORMATION

NJ Manufacturing Voucher Program

ITEM: Recommendation for Utilization of Additional Funding for the NJ Manufacturing Voucher Program (NJ MVP)
REQUEST: To approve: (1) The utilization of funds from the Fiscal Year 2023 Appropriations Act, known as Manufacturing Industry Initiative, to fund eligible applications under the NJ Manufacturing Voucher Program (NJ MVP); and (2) Delegated authority to the CEO to accept additional funds from any available governmental funding source (Federal, State or County/Municipal) to further fund this pilot program, and to impose additional requirements as may be required by law as a condition of accepting, provided that the requirements are consistent with the parameters of the program as approved on October 12, 2022.
MOTION TO APPROVE: Commissioner Angelo **SECOND:** Mr. Alagia **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

INCENTIVES

Emerge Tax Credit Program

ITEM: EpiBone, Inc. Emerge Tax Credit Program Application
REQUEST: To approve the Emerge New Jersey tax credit award, based on the company's growth plan with a maximum of 90 new full-time employees, for up to seven (7) years to induce the applicant to site the project in New Jersey. The applicant qualifies for the "Small Business" designation.
MOTION TO APPROVE: Mr. Alagia **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

Grow New Jersey Assistance Program

ITEM: World Business Lenders, LLC ("WBL")
Grow New Jersey Assistance Program ("Grow NJ") – COVID-Related Termination P #42005 (PROD-00183899)
REQUEST: Approve World Business Lenders, LLC's ("WBL") request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 ("ERA"), P.L.2020, c. 156, as amended by P.L. 2022, c. 134
MOTION TO APPROVE: Ms. Dragon **SECOND:** Treasurer Muoio **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

ITEM: Flight Centre Travel Group (USA) Inc. ("Flight Centre") Grow New Jersey \ Assistance Program ("Grow NJ") – COVID-Related Termination P #41420 (PROD-00183862)
REQUEST: To approve Flight Centre Travel Group (USA) Inc.'s ("Flight Centre") request to terminate its Grow NJ Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provisions the New Jersey Economic Recovery Act of 2020 ("ERA"), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Alagia **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

ITEM: Direct Energy GP, LLC - Grow New Jersey Assistance Program ("Grow NJ") – COVID-Related Termination - P#40027 (PROD-00184346)
REQUEST: To approve Direct Energy GP, LLC's ("Direct Energy") request to terminate its Grow NJ Incentive Agreement pursuant to the COVID-Related Relief provisions of the New Jersey Economic Recovery Act of 2020 (ERA), P.L.2020, c. 156, as amended by P.L. 2022, c. 134.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Angelo **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Maestri d'Italia Inc. - Hearing Officer's Recommendation on the Appeal of the Application for Grow New Jersey Assistance Program
THIS ITEM HAS BEEN WITHHELD FROM CONSIDERATION

REAL ESTATE

ITEM: PROD-00310359 and related PROD-00301488
Approval of Core Partner participation in the New Jersey Health + Life Science Exchange ("HELIX") - the next step in the investment in the New Jersey Innovation and Technology HUB
REQUEST: To approve the next step of the Strategic Innovation Center investment previously approved for this project, replacing the equity investment in Downtown Hub Associates, LLC ("Downtown Hub") with participation in the HELIX as a Core Partner subject to a Lease Agreement between HELIX NB LLC and the Authority.
MOTION TO APPROVE: Commissioner Angelo **SECOND:** Ms. Dragon **AYES: 11**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Mr. Zimmerman recused himself from the vote.

ITEM: Agreements for Payment in Lieu of Taxes (PILOT)
REQUEST: To approve entering into two Payment in Lieu of Taxes ("PILOT") agreements with the State of New Jersey, Department of Treasury and the City of Trenton for the Taxation Building and the Health Building in Trenton.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Alagia **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: Incubator Occupancy Extension for SPES Pharma
REQUEST: To approve a one-time five-month Incubator occupancy extension, with rent increase, for SPES Pharma.
MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Giblin **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

BOARD MEMORANDA

FYI ONLY

- Economic Transformation Products – Delegated Authority Reporting Q4 2022

PUBLIC COMMENT

Former EDA Board Member Rosemari Hicks, CEO, CoWork Street, located in Camden, New Jersey, thanked Chairman Quinn for his leadership on the Board and congratulated him on his new position.

Mr. Charles Kratovil, Editor, New Brunswick Today, and New Brunswick resident, addressed the Board regarding the "HELIX" project, and congratulated Chairman Quinn on his new position.

There being no further business, on a motion by Mr. Quinn, and seconded by Treasurer Muoio, the meeting was adjourned at 11:09 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: April 12, 2023

Re: April 2023 Board Meeting – CEO Report

I'm thrilled to welcome Terry O'Toole to his first New Jersey Economic Development Authority (NJEDA) board meeting as Chair. With Terry's experience, the NJEDA is well-positioned to advance Governor Murphy's bold economic agenda and ensure New Jersey remains the number one state to live, work, and raise a family. I'd also like to welcome Jewell Antoine-Johnson, our newest alternate board member. She has been a leader in the South Jersey construction industry for over 20 years and brings with her a commitment to building a sustainable and innovative New Jersey economy. I look forward to working with Terry and Jewell to build upon the progress the agency has made over the past few years by bolstering our state's diverse industries and communities.

The driving force at the NJEDA is to support our state's businesses by implementing programs that enhance economic vitality and strengthen our long-term economic competitiveness. When the success of our businesses and our economy are threatened, the NJEDA is committed to providing lifelines to ease economic distress.

And that's exactly what we did last month after Silicon Valley Bank and Signature Bank collapsed. That Friday evening, in the hours after SVB's failure, the NJEDA did extensive outreach to New Jersey-based companies banked by SVB to determine how best to support them. We worked around the clock to devise concrete solutions and by Sunday, when Signature Valley Bank also failed, the NJEDA announced we would launch our Angel Match Program and re-open the Entrepreneur Support Program – a combined $25 million package to ensure companies could keep their doors open, lights on, and employees on the payroll.

Last month we hosted our bi-annual Founders & Funders event at The College of New Jersey. The event connects emerging businesses and venture capital investors to discuss strategy, business models, and funding opportunities. 33 startups, nearly a third of which were women-founded, were represented at the event from across a variety of sectors including life sciences, technology, clean energy, and manufacturing. There were 20 investor groups in attendance, including six first-time attendees, and over 230 matches were made that day! We look forward to hosting another Founders & Funders event later this year.

The NJEDA made its first grant approvals under the Child Care Facilities Improvement Program, which is designed to strengthen the child care industry. The program launched late last year to support this sector that is a key pillar of the state's economic infrastructure. Since applications opened, hundreds of child care centers, which serve tens of thousands of children and employ thousands of staff, have submitted applications. This first-of-its kind program will allow child care centers to make facility upgrades and improvements.

We're also preparing to announce our first grant approvals for the New Jersey Manufacturing Voucher Program (MVP), following an overwhelming amount of interest in the MVP program since applications opened. The MVP program will help manufacturers purchase manufacturing equipment to become more efficient, productive, and profitable.

This Friday NJEDA staff will host a virtual public information session on the Garden State Commercial Property Assessed Clean Energy (C-PACE) Program. As part of Governor Murphy's ongoing commitment to address climate change, the C-PACE Program was established to provide financing to commercial property owners for renewable energy, water conservation, and energy efficiency projects. The information session will provide an overview of the program's draft guidelines including eligibility, application process, technical standards, and local program requirements.

Lastly, the NJEDA took its next step toward developing the Trenton-based Maternal and Infant Health Innovation Center by issuing a Request for Qualifications for three anchor tenants, including a health care services provider, an Institution of Higher Education, and a Multi-Service Organization. This Center is central to First Lady Tammy Murphy's Nurture NJ initiative and will provide the high-quality care and services new and expectant moms and babies need to thrive. Additionally, the Center will spur development, create good-paying jobs, support families, and generate economic activity.

The NJEDA has made great accomplishments and hit some major milestones since we last met and we have shown our ability to respond quickly to national crises. Over the next few weeks, we'll continue our hard work by launching our Cannabis Equity Grant Program and gearing up for a busy National Small Business Week in early May. Together, we'll continue supporting New Jersey's businesses, uplifting communities, fostering innovation, and strengthening our economy.

Tim Sullivan, CEO

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

RE: Consulting Services for CHIPS and IRA Analysis

Summary

The Members are asked to approve the award of a new contract for Consulting Services to McKinsey & Company, Inc. Washington, D.C. (McKinsey), for an Analysis of the Creating Helpful Incentives to Produce Semiconductors (CHIPS) and Science Act, and the Inflation Reduction Act (IRA) for one (1) one (1) year term.

Background

Over the past several years, the New Jersey Economic Development Authority ("Authority") has transformed itself from a "transaction-oriented bank" into a comprehensive economic development organization. As part of this transformation, the NJEDA has significantly expanded:

- The number of new programs it launches each year;
- The number and types of programs it runs;
- The types of industries it supports and entities with which it engages; and
- The number and types of services it procures.

In relation to this transformation and in furtherance of its mission, the Authority seeks to retain a management consulting company to prepare reports on how New Jersey can best leverage the funding sources available in the Creating Helpful Incentives to Produce Semiconductors ("CHIPS") and Science Act (Pub.L. 117–167) ("CHIPS Act") and the Inflation Reduction Act (Pub.L. 117–169) ("IRA"). Additionally, the management consultant will provide general support to municipalities that apply for federal funding from CHIPS and IRA. In response to this directive, the Authority has requested a proposal to undertake the review of these legislative packages and the preparation of reports for each Act to meet this requirement.

- **The CHIPS and Science Act (Pub.L. 117-167)**
  Signed into law by President Joe Biden on August 9, 2022, the CHIPS Act provides roughly $280 billion dollars in new funding to boost domestic research and manufacturing of semiconductors in the United States by investing in American manufacturing, supply chains, and national security, research and development, science and technology, nanotechnology, clean energy, quantum computing, and artificial intelligence.

- **The Inflation Reduction Act (Pub.L. 117-169)**
  Signed into law by President Joe Biden on August 16, 2022, the IRA aims to curb inflation by reducing the deficit, lowering prescription drug prices, and investing into domestic energy production while promoting clean energy. The legislation will raise $738 billion and authorize $391 billion in spending on energy and climate change, $238 billion in deficit reduction, tax reform, and healthcare reform, and includes significant requirements around community engagement and equity measurement.

NJEDA seeks approval to hire a strategic management consulting firm to help the Authority:

- Review the CHIPS and IRA to determine how New Jersey can best leverage the funding sources available in these Acts;
- Prepare a report with a strategic plan for each of these legislative packages, or Acts, that identifies funding opportunities best suited for New Jersey entities, including State Agencies and Authorities, municipal and county governments, public universities, and federal installations including research laboratories;
- The management consultant will provide general coordination/support for State Agencies in proposal development and implementation of the recommendations in the report and support to municipalities that apply for federal funding from CHIPS and IRA; and
- The strategic plan for each Act will address the Biden-Harris Administration created Justice40 Initiative to confront and address decades of underinvestment in disadvantaged communities. The initiative will bring resources to communities most impacted by climate change, pollution, and environmental hazards.

The Division of Purchase and Property (DPP) within the NJ Department of the Treasury procured and awarded State Contract - M4005 for Strategic Management Consulting Services to McKinsey & Company, Inc. In order to utilize same, the Authority is required to follow the requirements and process as set forth in the Method of Operation (MOO). In accordance with that MOO, the Authority was required to submit a request through DPP's Central Intake process. This request is then reviewed by the Director to ensure the Authority's use of the purchase order does not conflict with any pre-existing State contracting vehicle. The aforementioned request was sent to DPP on Thursday, February 2, 2023. On February 7, 2023, the DPP approved the request and stated the Authority could proceed pursuant to the terms of the MOO.

In furtherance of same, the Authority submitted the request and scope of work to McKinsey on February 7, 2023 and requested its proposal/submission.

The Authority received McKinsey's initial response on February 17, 2023. McKinsey proposed Support Model 1, priced at $2,927,400, and a supplemental scope (Support Model 2) which may be added to Support Model 1. The Supplemental Model (Support Model 2) was priced at $1,876,800. . The Authority concluded that what McKinsey proposed in Support Model 1 would be sufficient and adequate. Support Model 1 would provide a fact base summarizing the CHIPS and IRA Acts, a draft strategic report on how to approach funding provided by both programs, followed by a final strategic report of same. Moreover, the Authority concluded that the supplemental Support Model 2 was not necessary for what the Authority has envisioned.

Upon receiving this proposal, the Authority requested a further breakout of separate pricing for the IRA only, as it was considering purchasing Support Model 1 for just this Act due to price constraints. McKinsey provided the requested information on March 3, 2023.

Upon Authority request, McKinsey also provided separate Support Model 1 pricing for the CHIPS Act on March 13, 2023.

After further evaluation and discussion with the Authority's Chief of Staff, the decision was made to seek approval for McKinsey's original Support Model 1 offering for both the CHIPS Act and the IRA. As previously mentioned, McKinsey specified an initial cost of $2,927,400 for this offering.

Pursuant to the MOO, the Authority was empowered to negotiate pricing reductions. As such, Authority staff commenced further negotiations on March 17, 2023, and corresponded with McKinsey as to a price reduction according to the scope of work. On March 20, 2023, the Authority received McKinsey's final proposal and reduced cost to $2,468,400 amounting to a $459,000 reduction (reflecting a 16% reduction).

Staff concluded that the pricing was reasonable given the work to be performed and the proposed deliverables. It was further determined that McKinsey's submission, including its pricing, is the most advantageous to the NJEDA, price and other factors considered.

As staff reviewed and evaluated McKinsey's submission and determined that it was the most advantageous to the NJEDA, it is recommended that the Authority award the contract to McKinsey. As a result, it is recommended that the Authority retain McKinsey to provide Consulting Services for CHIPS and IRA Analysis for a not to exceed amount of $2,468,400 for one (1) one (1) year term.

<u>Recommendation</u>

The Members are asked to approve the award of the Consulting Services for CHIPS and IRA Analysis contract to McKinsey & Company, Inc. Washington, D.C. for a not to exceed amount of $2,468,400 for a one (1) one (1) year term.

Tim Sullivan, CEO

Prepared by: E. Corrado, T. Fanikos, and D. Albin

ADOPTED
APR 12 2023

Attachments

Resolution of the New Jersey Economic Development Authority Regarding the Approval of Consulting Services for CHIPS and IRA Analysis

WHEREAS, the Members of the New Jersey Economic Development Authority have been presented with and considered a Memorandum and attachment, in the forms attached hereto; and

WHEREAS, the Memorandum and attachment requested the Members to adopt a resolution authorizing certain actions by the New Jersey Economic Development Authority, as outlined and explained in said Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the Members of the New Jersey Economic Development Authority as follows:

1. The actions set forth in the Memorandum and attachment, attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.

2. The Memorandum and attachment, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.

3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: April 12, 2023

EXHIBIT

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Wind Power Ready Program Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and Rowan College of South Jersey (RCSJ)

Request

1. Approve the attached Memorandum of Understanding (MOU) between New Jersey Economic Development Authority (NJEDA) and Rowan College of South Jersey (RCSJ) that will enable NJEDA to provide up to $250,000 in reimbursement to RCSJ as RCSJ incurs costs to support the implementation of Wind Power Ready, a 2023 wind turbine technician training program.
2. Approve utilization of $250,000 in funding from the $5 million allocated via the February 24, 2023 grant agreement between NJEDA and the New Jersey Department of the Treasury for the Authority's Wind Institute for Innovation and Training activities.
3. Approve delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

The full text of the MOU is included as Exhibit A of this memorandum.

Background

Offshore wind is one of New Jersey's strategic growth sectors. Governor Murphy's economic development plan, "The State of Innovation: Building a Stronger and Fairer New Jersey Economy," identifies offshore wind as one of the State's strategic sectors for accelerating growth in New Jersey's economy. In addition, the plan asserts a commitment to investing in people in order to empower New Jersey students and workers to take advantage of high-growth, high-wage jobs. Governor Murphy's talent development plan, "JobsNJ: Developing Talent to Grow Business in the Garden State," emphasizes the need to bolster industry recognized credential programs that support career pathways. As part of NJEDA's mission to grow the State's economy and increase equitable access to opportunity by supporting high-quality job creation, catalyzing investment, and fostering vibrant, inclusive community development, NJEDA has been working to grow the offshore wind industry in the state. Following recommendations laid out in Governor Murphy's April 2020 WIND Council report, NJEDA is undertaking Wind Institute for Innovation and Training activities to coordinate and support offshore wind related workforce training. NJEDA's Wind Institute efforts to date include but are not limited to: grant challenges to support the development of new offshore wind focused workforce training programs, establishment of the Wind Institute Fellowship Program that supports student research in offshore wind, and trainings for New Jersey businesses to learn about offshore wind supply chain opportunities and how local companies can benefit from this emerging market.

Offshore wind technician training does not currently exist in New Jersey. The need for wind technician training was underscored by discussions with industry experts at a meetings organized by the WIND Council, as well as defined in the New Jersey Offshore Wind Strategic Plan released by the New Jersey Board of Public Utilities in September 2020.

Consequently, in June 2021, NJEDA issued the Wind Turbine Technician Grant Challenge to develop an industry recognized wind turbine technician training program. This grant challenge was awarded to RCSJ and, in September 2021, NJEDA entered into a grant agreement with RCSJ to develop a suite of programs including a certificate program and an associate degree program in Wind Power Technology. The associate degree program has been developed and submitted by RCSJ for approval by New Jersey Office of the Secretary of Higher Education (OSHE) and is not associated with the MOU described in this memo. The MOU and funding proposed in this memo relate solely to the certificate program, which does not require OSHE approval.

To run this certificate program in an effective manner, RCSJ determined to work closely with Ørsted, the developer of New Jersey's first offshore wind project (Ocean Wind 1), to create a certificate program to train New Jersey residents on the skills required for an entry-level wind turbine technician position. The resulting program, Wind Power Ready, is set to run between July and December 2023. As described by RCSJ, it is a free, full-time training program that combines classroom education and hands-on learning at Ørsted land-based wind farms in the Midwest and offshore wind turbines in Rhode Island. While the program will be open to all New Jersey residents, RCSJ's recruitment efforts will focus on Atlantic City, the location of Ørsted's Operations and Maintenance hub that will service Ocean Wind 1 and Ocean Wind 2. The program will offer a comprehensive set of wrap around services and participants will receive a paid stipend during their training. Upon completion, participants will receive 15 credits of Prior Learning Assessment through RCSJ as well as the following credentials:

- Global Wind Organization Basic Safety and Sea Survival
- Global Wind Organization Basic Technical Training
- First Aid, CPR, and AED Certification
- OSHA 10 Certification
- NEPA 70E, Standard for Electrical Safety in the Workplace Certification
- Transportation Worker Identification Credential
- RCSJ Wind Turbine Technician Training Program Certification.

RCSJ's goal is to run the program for 20-25 participants, with an emphasis on Atlantic City residents. RCSJ has obtained a commitment from Ørsted to a good faith hiring effort for 40% of participants from this training program; Ørsted's hiring for Ocean Wind 1 turbine techs will take place at the program's completion.

MOU Description

The proposed MOU will provide up to $250,000 to RCSJ to support the implementation of Wind Power Ready to prepare students for positions as entry-level wind turbine technicians. This funding may be used to cover the following:

- Marketing and recruitment activities and materials
- Tuition costs and participant stipends
- Transportation costs and other wrap around supports including childcare, counseling, etc.
- Participant Personal Protective Equipment
- Other costs related to the implementation of the program, subject to the NJEDA's prior written consent, so long as such costs are not already covered by the existing grant agreement between NJEDA and RCSJ.

RCSJ will track and report expenses to NJEDA, after which NJEDA will reimburse RCSJ for eligible expenses up to $250,000. The MOU has a term of twelve (12) months. This MOU may subsequently be extended for an additional twelve (12) months upon mutual written consent of the Parties. Staff requests delegated authority for the Chief Executive Officer to exercise these extensions if reasonably needed by RCSJ.

NJEDA's existing September 2021 grant agreement with RCSJ for program development requires RCSJ to report on participant demographics and employment outcomes for any implemented wind turbine technician training programs for three years. Consequently, this reporting is not required as part of this MOU for the program implementation.

Recommendation

It is the recommendation of Authority staff that the Members approve:

1. Memorandum of Understanding (MOU) between New Jersey Economic Development Authority (NJEDA) and Rowan College of South Jersey that will enable NJEDA to provide up to $250,000 in reimbursement to RCSJ as RCSJ incurs costs to support the implementation of Wind Power Ready, a 2023 wind turbine technician training program.
2. Utilization of $250,000 in funding from the $5 million allocated via the February 24, 2023 grant agreement between NJEDA and the New Jersey Department of the Treasury for the Authority's Wind Institute for Innovation and Training activities.
3. Approve delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

____

Tim Sullivan, CEO

Prepared by: Jen Becker

Exhibit A: MOU between NJEDA and Rowan College of South Jersey

Exhibit A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this day of_________,

2023 (the "Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA") and the Rowan College of South Jersey ("RCSJ"), (collectively the “Parties").

WHEREAS, the EDA, established pursuant to N.J.S.A. 34:lB-1 et seq., is an independent State authority, in but not of the New Jersey Department of the Treasury, that serves as the State's principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

WHEREAS, the EDA has launched the Office of Economic Transformation to focus on the growth- oriented sectors identified in the Governor's Strategic Plan for Economic Development; and

WHEREAS, offshore wind was identified as one of those growth- oriented sectors; and

WHEREAS, the Governor’s WIND Council recommended the creation of an independent authority to coordinate and advance offshore wind workforce, education, research, and innovation efforts, to be referred once established as the Wind Institute for Innovation and Training (“Wind Institute”); and

WHEREAS, the EDA has a role in supporting the development of the offshore wind industry in the State of New Jersey; and

WHEREAS, the EDA is undertaking actions in support of the offshore wind industry until the Wind Institute is established via an act of the Legislature; and

WHEREAS, the EDA has determined that wind turbine technician training is required to meet skillset needs for turbine operations and maintenance to support the growth of the offshore wind sector; and;

WHEREAS, the EDA awarded RCSJ the Wind Turbine Technician Grant Challenge in September 2021 and entered into a grant agreement to cover the costs associated with RCSJ developing wind turbine technician training programs; and

WHEREAS, RSCJ is a county college located in Gloucester and Cumberland Counties, that has developed a wind turbine technician training program to prepare New Jersey residents for positions as wind turbine technicians and such training has not been developed by any other entity in New Jersey; and

WHEREAS, RSCJ has decided to implement New Jersey’s first wind turbine technician training program, which will run in 2023, with Ørsted, the developer of New Jersey’s first offshore wind farm; and

WHEREAS, it is in the best interest of the Parties to enter into this MOU regarding the provision of EDA support of the implementation of the wind turbine technician training program; and

WHEREAS, N.J.S.A. 52:14-1 et seq. authorizes state agencies to enter agreements to provide assistance to each other.

NOW, THEREFORE, the Parties, in order to effectively and efficiently carry out their respective statutory mandates, agree to the following:

1. RCSJ will undertake the following activities:

a. Launch a wind turbine technician training program to run for five (5) months from approximately July 2023 to December 2023
b. Actively recruit New Jersey residents to apply for the program, with an emphasis on Atlantic City residents. RCSJ will work with local organizations in Atlantic City to raise awareness of the program and hold virtual and in-person information sessions in advance of the application due date.
c. Implement a wind turbine technician certificate curriculum that combines classroom learning and hands-on learning at operating wind turbines, whereby program graduates receive 15 credits of Prior Learning Assessment through RCSJ as well as the following credentials:
   - Global Wind Organization Basic Safety and Sea Survival
   - Global Wind Organization Basic Technical Training
   - First Aid, CPR, and AED Certification
   - OSHA 10 Certification
   - NEPA 70E, Standard for Electrical Safety in the Workplace Certification
   - Transportation Worker Identification Credential
   - RCSJ Wind Turbine Technician Training Program Certification.

d. Provide the training program free of charge to approximately 20-25 participants
e. Provide participants with stipends and wrap around support services including but not limited to transportation, child care, counseling for the duration of the program as needed
f. Connect graduates who have obtained their wind turbine technician certificate with wind farm developer hiring managers and/or other employers in the Atlantic City area
g. Track expenses for program implementation and no later than March 1, 2024 submit documentation to EDA for up to $250,000 in total eligible costs for reimbursement by EDA. RCSJ has the option to submit reimbursement requests in up to three installments, so long as the combined requests do not exceed $250,000.
h. Eligible costs include: marketing and recruitment activities and materials; tuition costs and participant stipends; transportation costs and other wrap around supports, including but not limited to childcare and counseling; Participant Personal Protective Equipment; and other costs related to the implementation of the program subject to the NJEDA's prior written consent, so long as such costs are not already covered by the existing 2021 grant agreement between NJEDA and RCSJ for the development of wind turbine technician training programs.
i. As part of the 2021 grant agreement, report on participant demographics and employment outcomes.

2. To implement an effective program, RCSJ has determined to undertake the above activities with Ørsted and has obtained a commitment from Ørsted to a good faith effort to hire 40% of program graduates.

3. The EDA will undertake the following activities:

   a. Within 30 days of receiving a reimbursement request with associated expense documentation, EDA will review submitted expense documentation and provide RCSJ with up to $250,000 in total funding for eligible expenses.

4. This MOU shall not take effect unless executed by the authorized representatives of EDA and RCSJ. This MOU becomes effective immediately upon full execution and shall remain in effect for twelve (12) months. This MOU may subsequently be extended for an additional twelve (12) months upon mutual written consent of the Parties.

5. The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to the implementation of a 2023 turbine technician training program. It may be amended, modified, and supplemented at any time by mutual consent and in writing signed by the undersigned or their designees. This MOU may also be terminated by EDA or RCSJ upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.

6. This MOU shall not be assignable, except for EDA's ability to partner and/or assign their responsibilities to the Wind Institute upon its statutory establishment.
7. The Parties acknowledge that they are both public entities of the State of New Jersey. Therefore, the Parties agree that each entity shall be liable for its own conduct and any claims against it without indemnification from the other.
8. All notices or communications to any party to this MOU shall be sent to the addresses set forth below or as may be otherwise modified in writing:

EDA: Jen Becker, Vice President Offshore Wind
36 West State Street, PO Box 990
Trenton, NJ 08625
jbecker@njeda.com

RCSJ: ____________________________
____
____
____

IN WITNESS HEREOF, EDA and RCSJ have executed this MOU on the dates below. The Parties agree to accept electronic signatures.

For RCSJ:

Name: ______________________

Signature: ____________________

Title: _______________________

Date: _______________________

For EDA:

Name: _____Tim Sullivan_______

Signature: ____________________

Title: __Chief Executive Officer___

Date: _______________________

The following summary is provided for information only. Full eligibility and review criteria can be found in the program's Board memorandum and program specifications

MAIN STREET MICRO BUSINESS LOAN

Program Overview:

Main Street Micro Business Loan provides financing of up to $50,000 to eligible micro businesses in New Jersey with ten or fewer full-time employees and no greater than $1.5 million in annual revenues. The Micro Business loan is one of several products funded by the Main Street Recovery Program as established under the New Jersey Economic Recovery Act.

Eligibility:

Nonprofit, for profit, and home-based* micro businesses interested in applying for the Main Street Micro Business Loan must meet the following eligibility requirements:

- Must have less than $1.5 million in annual gross revenue for the most current fiscal year (to the extent the business has annual revenues)
- Must have a credit score of at least a 600 from at least one owner to be eligible.
- Must have no more than 10 full-time employees
- All employees must work in New Jersey as evidenced by WR-30 filings. There is no minimum employee number and sole proprietors are eligible.
- Must be legally registered to do business in New Jersey, with a business location in New Jersey
- Must be formed at least six months prior to the date of application, as evidenced by the date of formation/incorporation.
- Must be in 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
- Must provide a current tax clearance prior to approval to demonstrate the applicant is in good standing with the NJ Division of Taxation.

Rates and Terms:

Standard 10-year term, 2 percent interest rate, set at approval.

No payments or interest during the first year after closing. Payments of principal and interest will begin at the beginning of year 2.

Borrowers may be eligible for the balance of the loan to be forgiven at the end of the fifth year. To qualify for this forgiveness, the applicant must be

- Not in default
- Current on all loan payments with no delinquency of more than 90 days
- Able to certify that they are still open and operating as detailed in the loan agreement.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Recommendation to increase allocation for temporary employees to support the Main Street Micro Business Loan processing

Summary:

The Members are asked to approve:

1. The increase of the allocation for temporary employees from $250,000 to $1 million from the Main Street Recovery Fund. The increased allocation will cover the costs to maintain the existing temporary employees and hire additional temporary employees that will be provided by 22nd Century Technologies, Inc., to continue processing and closing loan applications for the Main Street Micro Business Loan.

Background:

The Main Street Recovery Finance Program was created under the Economic Recovery Act of 2020, and the Main Street Micro Business Loan is one of several products offered under the Main Street Recovery Finance Program. This product allows micro businesses, defined as businesses that have less than $1.5 million in gross revenue and 10 or less full-time employees, to get up to $50,000 in working capital. The loans have attractive rates and terms and a substantial forgiveness component after payments are made for 5 years.

On October 6, 2022, NJEDA launched the Main Street Micro Business Loan. It has been popular, taking in 1,998 applications that requested a cumulative total of $94 million in funding. The application window for this product has now closed due to this high level of demand.

The original allocation of funding for this product was $20 million from the Main Street Recovery Fund. At that time, an additional $250,000 was approved to hire temporary employees. The total funding allocated to this product was increased at our February 8, 2023, Board meeting from $20 million to $45 million to support additional processing and approvals. Funding for this additional $25 million was from the Lending Partnerships appropriation in the Fiscal Year 2022 Appropriations Act. No funding for additional temporary employees was allocated at that time.

The Authority has a contract with 22nd Century Technologies, Inc. to provide temporary employees. Staff anticipates that the initial $250,000 allocated in November of 2022 for temporary employees will be exhausted in May of 2023.

Staff is seeking an additional $750,000 in funding from the Main Street Recovery Fund to pay for temporary employees to not only support the processing of loan applications, but also to add support to the Closing Department with the closing of applications.

Exhibit A, attached, provides a summary of all Main Street Products, their funding levels and application activity as of March 23, 2023.

Recommendation:

The Members of the Board are asked to approve an increase of the allocation for temporary employees from $250,000 to $1 million by utilizing the Main Street Recovery Fund. The increased allocation will cover the costs to maintain the existing temporary employees and hire additional temporary employees to continue processing and closing loan applications for the Main Street Micro Business Loan.

Tim Sullivan, CEO

Prepared by: Christina Fuentes and Naimah Marshall

Exhibit A – Main Street Recovery Finance Program Summary

New Jersey Economic Development Authority
Main Street Recovery Finance Program Product Summary

Main Street Products	Board Approved	Approvals	Approved Amount	Balance of Funding	Applications Under Review	Under Review Amount	Board Approval	Product Launch
Small Business Lease Grant	$ 20,000,000.00	325	$ 8,035,953.62	$ 11,964,046.38	236	$ 7,106,552.05	August of 2021	10/20/2021
EDA Admin Fee	$ 600,000.00							
Temp Funding	$ 250,000.00							
Total	**$ 20,850,000.00**							
Small Business Improvement Grant	$ 60,000,000.00	1176	$ 28,814,910.22	$ 31,185,089.78	1405	$ 33,089,238.15	August of 2021	2/10/2022
EDA Admin Fee	$ 1,800,000.00							
Temp Funding	$ 750,000.00							
Total	**$ 62,550,000.00**							
Main Street Lenders Grant	$ 15,000,000.00	8	$ 11,700,000.00	$ 3,300,000.00	1	$ 1,500,000.00	February of 2022	5/26/2022
EDA Admin Fee	$ 450,000.00							
Temp Funding	$ -							
Total	**$ 15,450,000.00**							
Main Street Micro Business Loan	$ 20,000,000.00	411	$ 19,993,056.80	$ 6,943.20	1284	$ 60,401,852.73	September of 2022	10/6/2022
EDA Admin Fee	$ 600,000.00							
Temp Funding	$ 250,000.00							
Total	**$ 20,850,000.00**							
E-commerce Technical Assistance	**$ 4,000,000.00**						December of 2022	February of 2023
Total of funds allocated to products	**$ 123,700,000.00**	**1920**	**$ 68,543,920.64**	**$ 46,456,079.36**	**2926**	**$ 102,097,642.93**		

***As of 3/23/23**

Total Main Street Appropriation	$ 150,000,000.00
Allocated to Programs	$ 119,000,000.00
Allocated to EDA Admin Fees	$ 3,450,000.00
Allocated to Temps	$ 1,250,000.00
Balance	**$ 26,300,000.00**

The following summary is provided for information only. Full eligibility and review criteria can be found in the program's [Board memorandum and program specifications]

NEW JERSEY ASSET ACTIVATION PROGRAM

Program Overview:

The New Jersey Asset Activation Planning Grant provides grants of up to $50,000 to public, private, or non-profit entities, for early-stage planning and analysis that will demonstrate viability of projects that activate under-utilized public assets that benefit their communities and the regional economy.

Eligibility:

Applicant must be a New Jersey:

- Municipality,
- County,
- Municipal, county, regional or state redevelopment agency,
- Municipal, county, regional or state independent authority,
- Non-profit entity
- Private, for-profit entity that meet additional criteria detailed below and holds a valid New Jersey tax clearance certificate.

Staff Review and Scoring:

Complete applications are scored by a committee of EDA staff in the order in which submitted until funding is exhausted, or the application window closes. Applications that meet a minimum score of 65 are recommended to board for grant approval on a first in-first out basis.

Applications will be evaluated and scored based on:

1. Their "Asset Impact," which demonstrates the magnitude of improved utilization a project will have on a public asset, the local community, and regional economy. (40 points)
2. The project's purpose and merits, which address locality-specific needs and challenges that have precluded prior development of the asset, and plan for long term viability of a project. (20 points)
3. The demonstration of the applicant's previous experience with similar planning projects. (20 points)
4. Community Engagement aspects of the proposed planning work. (10 points)
5. Municipal Revitalization Index Score, which ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality (10 points)

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Supplemental funds for New Jersey Asset Activation Planning Grants and Awards

Summary

The Members are asked to approve:

1) Allocation of funds from Fiscal Year 2023 Appropriations Act, L. 2022, c. 49 (“Appropriations Act”) “Planning Grant” appropriation transferred by the New Jersey Department of Treasury to the New Jersey Economic Development Authority and designated to the Economic Recovery Fund, in the amount of $57,800.00 to supplement the New Jersey Asset Activation Planning Grant Program.

2) Grant award to LTD, Unlimited in the amount of $49,800 to conduct a remediation needs assessment, community visioning, and feasibility study for three historic downtown properties owned by the city of Salem, NJ.

3) Grant award to Financial Wellness Institute in the amount of $50,000 to undertake structural due diligence, community visioning, and a redevelopment feasibility study of a vacant historic theater in Woodbury, NJ, known as the "Old Sketch Club building."

Background

On March 9, 2022, the NJEDA Board approved the New Jersey Asset Activation Planning Grant (NJAAP). With an award pool of up to $400,000. This program offers grants to New Jersey public, private, and nonprofit entities of up to $50,000 for pre-development planning activities, such as conceptual design, feasibility studies, economic or market analyses, etc., for projects that activate distressed and under-utilized assets owned by a New Jersey municipality, county, independent authority, bureau, commission, or other public body.

Funded projects must be completed within six months following an executed grant agreement (with a possible two-month extension). Funds are disbursed in portions of 50% upon execution, 25% following a mid-point report, and 25% upon completion.

As part of the review process, an application must meet the minimum scoring threshold of 65 out of 100 possible points to demonstrate the ability to successfully complete the proposed planning activities and gage the improved utilization of a proposed or investigated public asset. The program scoring committee, composed of various subject matter experts among NJEDA staff, determined scores for each of the applications based on five components:

1) Asset Impact (40 points)
2) Project Purpose and Merits (20 points)
3) Previous Experience (20 points)
4) Community Engagement (10 points)
5) Municipal Revitalization Index Score (10 points)

Applications for the program are reviewed, scored, and recommended for awards in the order in which they were submitted. The program began accepting applications on July 26th, 2022, and the 90-day acceptance window ended October 24th, 2022. Eleven (11) applications were received for the program in total, which were reviewed on a first-come, first served basis. One (1) application was withdrawn in October, two (2) applications received approval at the November board meeting, and six (6) more applications were approved at the February 2023 board meeting.

As a result of those eight (8) awards there remains $42,000 in funds from the original $400,000 pilot program award pool. This amount is insufficient to fully fund the next eligible application as proposed and would leave one last eligible application unfunded.

As those two final applications are among the highest scored within the program and are located within municipalities ranked in the top 10% of the Municipal Revitalization Index, the Asset Activation team believe it would best serve the objectives of the program to allocate supplemental funds to award grants to these two projects.

The Board are therefore requested to approve allocation of funds from the Appropriations Act "Planning Grant" appropriation, in the amount of $57,800, as supplemental funding to the New Jersey Asset Activation Planning Grant Program.

Subsequent to those funds, the board are requested to consider the following applications.

The scoring committee determined that the next application (Application #10) from LTD, Unlimited received 85.7 out 100 points, (detailed in Appendix B), which was the highest among all applicants, and exceeds the requisite overall score. The Board are therefore requested to approve grant award of $49,800.

The scoring committee determined that Application #11 from Financial Wellness Institute, Inc. received 76.3 out 100 points, (detailed in Appendix B), which exceeds the requisite overall score. The Board are therefore requested to approve grant award of $50,000.

Project Descriptions

LTD Unlimited is a real estate development firm with extensive background and experience in downtown revitalization. The applicant requests grant funding of $49,800 to conduct a remediation needs assessment and feasibility study for 3 city-owned properties on Broadway and Market Streets in downtown Salem. One of the properties at 113 Market Street is a key historic landmark in the community which has operated as a tavern since the 1730's. A visioning and community planning campaign will engage the community and stakeholders with at least three focus group meetings. The feasibility study will summarize community visioning, renovation, investments, and operation costs, and include an implementation strategy.

Financial Wellness Institute is a 501(c)(3) community-based organization (CBO) operating in New Jersey and the Delaware Valley providing financial education, small business technical support, career services, and affordable housing, with the stated mission to "Strengthen families and move communities towards economic stability."

The applicant requests $50,000 to undertake structural due diligence, community visioning, and a redevelopment feasibility study of a vacant 3,832 square foot historic theater at 433 Glover Street in Woodbury, known as the "Old Sketch Club building." It is anticipated that a committee of municipal, private, and public interest groups will be formed to oversee community engagement and visioning through focus groups and local meetings. The feasibility study will compile the due diligence findings, community visioning, funding opportunities, economic impacts, implementation strategy, and redevelopment costs.

Recommendations

1) Allocation of funds from the Fiscal Year 2023 Appropriations Act, L. 2022, c. 49 ("Appropriations Act") "Planning Grant" appropriation transferred by the New Jersey Department of Treasury to the New Jersey Economic Development Authority and designated to the Economic Recovery Fund, in the amount of $57,800.00 to supplement the New Jersey Asset Activation Planning Grant Program.

2) Grant award to LTD, Unlimited in the amount of $49,800 to conduct a remediation needs assessment, community visioning, and feasibility study for three historic downtown properties owned by the city of Salem, NJ.

3) Grant award to Financial Wellness Institute in the amount of $50,000 to undertake structural due diligence, community visioning, and a redevelopment feasibility study of a vacant historic theater in Woodbury, NJ, known as the "Old Sketch Club building."

Tim Sullivan
Chief Executive Officer

Attachment:
Appendix A – Product Specifications
Appendix B – Scoring Summaries

Appendix A
New Jersey Asset Activation Planning Grant Specifications
Approved: March 2022

Funding Source	NJEDA Economic Recovery Fund. $200,000 for initial pilot program. Authority for additional $200,000 contingency.
Program Purpose	The New Jersey Asset Activation Planning Grant Program will award grants of up to $50,000 to public, private, or non-profit entities, for early-stage planning and analysis that will demonstrate viability of projects that activate distressed or under-utilized public assets that benefit their communities and the regional economy
Eligible Applicants	Qualified applicants are defined as a New Jersey: • Municipality, • County, • Municipal, county, regional or state redevelopment agency, • Municipal, county, regional or state independent authority, • Non-profit entity • Private, for-profit entity that meet additional criteria detailed below and holds a valid New Jersey tax clearance certificate. An Applicant in a lead role is the entity that is the sole recipient of grant funds and responsible for all terms of the grant agreement. The lead role applicant will serve as the primary point of contact with the Authority, submit any requests for fund disbursement, and provide reports to the Authority. An applicant may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. Any named strategic partner or partners included in the proposal cannot be changed without the prior written consent of the Authority. Applicants may add strategic partners whose experience, knowledge, skills, and ability may provide an advantage in the production of analyses and reports. The strategic partnership must be recognized by a signed memorandum of understanding or a written agreement between the partner and the applicant and included in the completed application. Private and nonprofit entities proposing projects in relation to public properties must provide a letter of approval from the chief executive of the public entities that hold ownership of the subject property. Assets owned by The State are not eligible for project applications, however assets owned by Independent State Authorities are eligible when accompanied by a letter of approval. A proposal on behalf of a county or independent authority does not preclude a municipality within that county; or municipality or county within boundary of independent authority; or independent authority whose boundaries overlap a municipality or county from submitting their own proposal.

Eligible Uses	The New Jersey Asset Activation Planning Grant Program will provide grants of up to $50,000 directly to grantees for pre-development planning that will demonstrate viability of projects. Proposed plans may include, but are not limited to: • Conceptual design • Feasibility studies • Economic analysis • Market analyses Proposal plans must demonstrate to what extent the utilization of a public asset will be improved by the proposed project and how development of an asset will benefit the regional economy and the community. Projects should target deficient, under-utilized, or vacant land, buildings, or infrastructure owned by a county, municipality, district, public authority, public agency, or other political subdivision or public body. Plans should demonstrate a strong connection to the State's development objectives through project elements, such as: • Creating or catalyzing a new business sector, or target industry ○ As defined by the NJEDA Emerge program, "Targeted industry" means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models • Driving economic growth and equity • Creating an innovative use for distressed public assets, unutilized or underutilized public property or unutilized public lands • Expanding access to public transportation or public services • Attracting employers and a diverse, talented workforce • Expanding entrepreneurial opportunities and support local businesses • Improving land use efficiency and sustainability
Application Process and Board Approval/ Delegated Authority	Applications for the New Jersey Asset Activation Planning Grant will be accepted on a rolling basis. EDA anticipates notifying each applicant within five business days of receipt if the application has been deemed complete. Applicants whose applications have been deemed incomplete will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing and a new application would need to be submitted for further consideration. Applications will be evaluated and scored on a first in, first out basis using the date and time that the Authority receives a completed application. Applications that meet the minimum score requirement of 65 will be recommended to the Board for award approval in that order. Applications will be accepted during a 90-day window publicized in the Notice of Funding Availably. Delegated authority is requested to allow the Chief Executive Officer to draw down additional funding of up to $200,000 from ERF for the purposes of making additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount.

	Applications must include plans for specific deliverables that can be fully completed (with copies provided to EDA appropriate for public consumption) six calendar months after the execution of funding agreement between EDA and the recipient. Upon written request by the grantee an extension of up to two months may be authorized for the plan's final delivery, at the sole discretion of the Authority.
Scoring	Applications will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions. Grants will be scored on a scale of 0-100 points, with 100 points being the highest score possible. Grants award recommendations will be limited to applications that meet or exceed the Minimum Score Requirement of 65 points. Applications will be evaluated and scored on each of the criteria below. <u>Criteria #1 - Asset Impact</u> (Up to 40 points) – Proposals must demonstrate how projects will improve the utilization of a public asset and contribute to the community and regional economy. Example of these may include, but are not limited to: • Projects that look to innovative uses of underutilized, distressed, or vacant public land, improvements or structures that will provide possibilities for local equitable economic growth • Projects that develop publicly owned parking lots into ratable businesses, or mixed-use neighborhoods infill. • Projects that activate use of public rights-of-way for multi-modal trail connections. • Designs for innovative and transformative new buildings on unused public lands. • Development of vacant, under-utilized, or distressed public land, improvements or structures for a targeted industry research, development, workforce training or manufacturing hub. Scoring measure: 0 - 10 points: Demonstrates minimal impact 11 - 20 points: Demonstrates marginal impacts 21 - 30 points: Demonstrates significant impacts 31 - 40 points: Demonstrates superior impacts <u>Criteria #2 – Identification of Project Purpose and Merits</u> (Up to 20 points) – Proposals should Identify community benefits of the project, and challenges that have precluded prior development of the asset. Considerations may include, but are not limited to: • Ability to address locality-specific needs and challenges. • Emphasis on long term viability and adaptability of a given concept. • Ability to consider and mitigate any past difficulties that created challenges for a given asset/grouping of assets. • Ability to identify and balance local needs with those of the region and state. Scoring measure:

	0 - 5 points: Little or no demonstration of features 5 - 10 points: Features are present but show deficiencies. 11 - 15 points: Features are well demonstrated. 16 - 20 points: Significantly exceeds requirements. Criteria #3 - Previous Experience (Up to 20 points) – Preference will go to entities who are able to display a strong record of early-stage project planning and analysis that lead to development. Applications should demonstrate a commitment to engage in development projects by a record of past project involvement. Applications may bolster these criteria through strategic partnerships and detailing those partners' records. Preference will go to applicants who can demonstrate a track record of: • Partnership and engagement with public entities for development and redevelopment. • Adherence to state and local development plans. • Dedication to principles of environmental sustainability. • Previous investments in business sector or innovation projects. Scoring measure: 0 - 5 points: Little or no demonstration of features 5 - 10 points: Features are present but show deficiencies. 11 - 15 points: Features are well demonstrated. 16 - 20 points: Significantly exceeds requirements. Criteria #4 - Community Engagement (0 to 10 points) - Preference will go to applicants that are able to display efforts to engage local residents and businesses in planning efforts. Local interest may be shown in the form of both past and present support, whether formal (municipal resolutions) or informal (community discussion and engagement). Scoring measure: 1-5 points: Feature is present but shows deficiencies 5-7 points: Meets requirements 7-10 points: Significantly exceeds requirements Criteria #5 - Municipal Revitalization Index Score (0 to 10 points) – The Municipal Revitalization Index (MRI) serves as the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. Most recent MRI scores will be applied based on time of application submission and physical location of proposed project's municipal host community. Scoring measure: 2 points: MRI Distress Score 30 – 34.9 4 points: MRI Distress Score 35 – 39.9 6 Points: MRI Distress Score 40 – 49.9 8 Points: MRI Distress Score 50 – 69.9 10 Points: MRI Distress Score 70 or higher
Grant Amounts	Grant awards will be up to $50,000

Funding Disbursement	Grant disbursements by the Authority will only be made to the lead role entity. The lead role entity shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners. All Applicants who are successfully awarded a grant will follow a uniform disbursement schedule. The lead entity will receive 50% of the grant amount upon execution of grant agreement, and 25% upon completion and submission of a mid-way progress report, and 25% upon completion and submission of a final plan and final progress report. At a minimum, the progress reports must include: • Summary of funds expended to date, and • Narrative detailing milestones achieved and overall progress toward completion of final plan.
Reporting requirements	A monthly call with the Designated Authority Project Manager and the Grantee's assigned Account Manager or Back-Up Account Manager will be held monthly for the first three months of the grant term, up until the halfway point of the grant term. During and following that time, additional calls may be held on an as needed basis until the grant term has ended. At the end of the grant term, the awarded grantee must provide a copy of the final report to the Authority for review and public dissemination.
Fees	A non-refundable fee of $ 1,000 shall accompany every application for Authority assistance.

Appendix B

New Jersey Asset Activation Planning Grant
Scoring Summary
Applicant #10: LTD, Unlimited (PROD-00308526)

Criteria	Committee Average Score	max score
#1 Asset Impact	**34.3**	/40
#2 Project Purpose and Merits	**16.7**	/20
#3 Previous Experience	**16.3**	/20
#4 Community Engagement	**8.3**	/10
#5 MRI Index	**10.0**	/10
Final Score	**85.7**	

New Jersey Asset Activation Planning Grant
Scoring Summary
Applicant #11: Financial Wellness Institute, Inc. (PROD-00308545)

Criteria	Committee Average Score	max score
#1 Asset Impact	**30.3**	/40
#2 Project Purpose and Merits	**13.7**	/20
#3 Previous Experience	**16.7**	/20
#4 Community Engagement	**7.7**	/10
#5 MRI Index	**8.0**	/10
Final Score	**76.3**	/100

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Recommendation for Additional Funding for the New Jersey Asset Activation Planning Grant Program

Summary

The Members are asked to approve:

1) Allocation of funds from the Fiscal Year 2023 Appropriations Act, L. 2022, c. 49 ("Appropriations Act") "Planning Grant" appropriation transferred by the New Jersey Department of Treasury to the New Jersey Economic Development Authority and designated to the Economic Recovery Fund in the amount of $500,000.00 to capitalize a new round of the New Jersey Asset Activation Planning Grant Program.

Background

On March 9, 2022, the NJEDA Board approved the New Jersey Asset Activation Planning Grant Program (NJAAP or "Program") to promote the priorities of Governor Murphy's Economic Plan of assisting communities in creating vibrant and inclusive cities and neighborhoods and building a stronger and fairer New Jersey that attracts top tier talent business to the state. The Program promotes these objectives through the funding of pre-development planning projects that will activate distressed and under-utilized public assets which will benefit their communities and the regional economy. With an award pool of up to $400,000 from the Economic Recovery Fund ("ERF") the Program offers grants of up to $50,000 to public, private, and nonprofit entities for planning activities such as conceptual design, feasibility studies, economic or market analyses, etc.

The program began accepting applications on July 26th, 2022, and the 90-day acceptance window ended October 24th, 2022. Applications were received from a variety of parties including non-profit organizations, private LLCs, state institutions, municipalities, and public authorities. The Program achieved an excellent geographic representation of the State, with eleven (11) total applications submitted for projects in ten (10) different counties evenly distributed north and south. Additionally, seven (7) proposed projects were in communities that ranked in the top 10% of the Municipal Revitalization Index (MRI), which are an emphasis for targeting development assistance. At the close of the application window the program received grant requests totaling $457,800, oversubscribing the original $400,000 award pool. We believe this high level of interest shows evidence that the Program provides support for planning efforts that are in high-demand and would otherwise remain un-met.

As a rolling-application, proposals are reviewed, scored, and recommended for awards in the order in which they are submitted. After the first eight (8) awards were approved by the board the remaining funds were insufficient to fully fund the next eligible application as proposed and would leave one last eligible application unfunded. The two final applications were among the highest scored within the program, and the projects were located within municipalities ranked in the top 10% of the Municipal Revitalization Index. As excellent projects that would promote the mission of the program, staff requested $57,800 in supplemental funding to award grants to the remaining two (2) proposals.

Initial feedback from early awardees has demonstrated the positive impact of this program in furthering the development process for proposed projects. Additionally, Program staff has received several inquiries regarding further availability of grants and application opportunities.

It is therefore recommended that the Board approve the use of $500,000 from the Fiscal Year 2023 Appropriations Act, L. 2022, c. 49 ("Appropriations Act") "Planning Grant" appropriation line item to capitalize the New Jersey Asset Activation Planning Grant Program for a new round of grants via the Economic Recovery Fund (ERF).

Funding for the original pilot round was allotted in two ERF tranches of $200,000 each. If approved, the new round of funds would be a single tranche of $500,000, but similarly awarded on a rolling basis to eligible applicants that meet minimum scoring requirements submitted during a 90-day acceptance window, or until funds are exhausted.

Any funds, either from the pilot round or the Appropriations Act allocation, that are un-used by grantees will be made available for awards in the new round of grants.

An applicant in the lead role of a project that received a grant funding through this program is ineligible to apply in subsequent rounds of this program.

All other specifications approved in March 2022 for the original pilot program (Appendix A) remain the same.

Recommendations

Approval is requested to utilize $500,000 from the Appropriations Act to capitalize the New Jersey Asset Activation Planning Grant Program for a new round of rolling grant awards of up to $50,000 to public, private, or non-profit entities, for early-stage planning activities for projects that activate distressed or under-utilized public assets.

Tim Sullivan, CEO

Prepared by: Jason Miller & Jenell Johnson
Attachment: Appendix A – New Jersey Asset Activation
Planning Grant Program Board Memo and Specification, approved March 2022

Appendix A
New Jersey Asset Activation Planning Grant Specifications
Approved: March 2022

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: March 9, 2022

RE: New Jersey Asset Activation Planning Grant Program

SUMMARY

The Members are asked to approve:

1. The creation of the New Jersey Asset Activation Planning Grant Program - a rolling grant program, to award grants of up to $50,000 to public, private, or non-profit entities, for early-stage planning and analysis that will demonstrate viability of projects that activate distressed or under-utilized public assets. Grant awards will be based on proposals that achieve a minimum score based on the evaluation criteria set forth in the product specifications.
2. NJEDA Economic Recovery Fund authorization of up to $400,000 to capitalize the New Jersey Asset Activation Planning Grant Program, with $200,000 for an initial pilot program round, and delegated authority to the EDA Chief Executive Officer for discretion to extend another $200,000 to make additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount.
3. Delegation to Authority staff (as listed below or to the Chief Executive Officer if the delegated authority policy has been approved) to decline applications that do not meet eligibility requirements and to issue final administrative decisions for appeals of declinations based solely on non-discretionary reasons.

BACKGROUND

New Jersey is the birthplace of many innovations of the American Industrial Revolution, which developed the State into one of the first modern industrial areas in the world. The accompanying transit networks, ports, and other urban amenities that early industry established became assets for growing the state and the economy.

Adoption of zoning regulations, as well as federal policies that promoted automobile utilization and expanded mortgage access for white Americans, drastically altered the way cities grew. In the late 20th Century, new development mostly came in the form of car-dependent, residential focused, suburbs. This shift in development priorities coincided with a waning manufacturing sector that left many urban and industrial areas vacant or underutilized, and often maintained by public entities.

At the turn of the millennium, a new direction for New Jersey's growth was laid out in The State Development and Redevelopment Plan ("the State Plan") of 2001. The State Plan recognized how the pattern of suburban sprawl had begun to constrain resources and infrastructure and sought to change those patterns by emphasizing redevelopment of urban and distressed areas, building more affordable housing, and preserving farmland and open space.

Following the 2008 recession the real estate market shifted more dramatically in this direction with corporations seeking urban locations close to infrastructure, and many workers followed this trend toward greater amenities and employment options. As suburban retail and office spaces became outmoded, urban housing and commercial space costs greatly increased, further straining the residents of those areas that previously saw disinvestment and neglect.

In response to the Covid-19 pandemic many workers were required to change how and where they worked, while others lost their jobs entirely. As employment approaches pre-pandemic levels, remote- work appears to be a policy gaining favor with many employers that could remain in use even after the health crisis subsides and has the potential to alter New Jersey's economic geography once again.

This history of shifting economic and development paradigms have left an array of underutilized properties and infrastructure throughout state in urban, suburban, and rural communities alike. Former assets are now liabilities that no longer meet the needs of modern New Jerseyans and will require innovative development to activate their potential and contribute to the State's economy in an equitable way.

The priorities of Governor Murphy's Economic Plan have guided the New Jersey Economic Development Authority ("Authority", "EDA") efforts since 2018, and have led to a renewed focus on assisting communities to create vibrant and inclusive cities and neighborhoods that both build a stronger and fairer New Jersey and assists in attracting top tier talent and firms to locate business operations in New Jersey.

To meet the priorities of the Governor's Economic Plan, and develop of the State's vision, EDA will create and administer the New Jersey Asset Activation Planning Grant Program. This pilot grant program will fund pre-development planning for projects that will activate distressed and under-utilized public assets, benefiting their communities and the regional economy.

<u>OVERVIEW</u>

The New Jersey Asset Activation Planning Grant Program will provide grants of up to $50,000 directly to grantees for pre-development planning that will demonstrate viability of projects. Proposed plans may include, but are not limited to:

- Conceptual design
- Feasibility studies
- Economic analysis
- Market analyses

Proposal plans must demonstrate to what extent the utilization of a public asset will be improved by the proposed project and how development of an asset will benefit the regional economy and the community.

Projects should target deficient, under-utilized, or vacant land, buildings, or infrastructure owned by a county, municipality, district, public authority, public agency, or other political subdivision or public body.

Plans should demonstrate a strong connection to the State's development objectives through project elements, such as:

- Creating or catalyzing a new business sector, or target industry
    - As defined by the NJEDA Emerge program, "Targeted industry" means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models
- Driving economic growth and equity
- Creating an innovative use for distressed public assets, unutilized or underutilized public property or unutilized public lands
- Expanding access to public transportation or public services
- Attracting employers and a diverse, talented workforce
- Expanding entrepreneurial opportunities and support local businesses

- Improving land use efficiency and sustainability

Program Authorization and Funding

Through the Economic Recovery Fund ("ERF") statutes (N.J.S.A § 34:1B-7.13(a)(5) and (13)), NJEDA is respectively granted the authority to provide "financial assistance to assist municipalities, municipal entities, counties, county entities, regional entities, State instrumentalities, and not-for-profit local economic and community development entities to execute programs and initiatives to stimulate community and economic development," as well as to create "a fund to provide grants or competition prizes, either directly or through a not-for-profit entity, that is consistent with economic development priorities as defined by the authority's board."

This program will meet of, "Investing in Communities" and "Making Government work Better," by proving funding to activate underutilized or unutilized public properties for community focused investments and to activate assets that will catalyze new business sectors in NJ communities. This grant will improve investment in communities by working to activate underutilized, distressed, or vacant public lands and other assets to promote equitable economic growth and community wealth building. The grant will also provide funding to make government work better by helping to fund research and analysis on fallow public lands and assets.

The Board is requested to authorize the use of $200,000 from ERF for the purposes of funding NJ Asset Activation Planning Grant program.

Authority is also requested to allow the Chief Executive Officer to draw down additional funding of up to $200,000 from ERF for the purposes of making additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount.

Eligible Applicants

Qualified applicants are defined as a New Jersey:

- Municipality,
- County,
- Municipal, county, regional or state redevelopment agency,
- Municipal, county, regional or state independent authority,
- Non-profit entity
- Private, for-profit entity that meet additional criteria detailed below and holds a valid New Jersey tax clearance certificate.

An Applicant in a lead role is the entity that is the sole recipient of grant funds and responsible for all terms of the grant agreement. The lead role applicant will serve as the primary point of contact with the Authority, submit any requests for fund disbursement, and provide reports to the Authority.

An applicant may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. Any named strategic partner or partners included in the proposal cannot be changed without the prior written consent of the Authority.

Applicants may add strategic partners whose experience, knowledge, skills, and ability may provide an advantage in the production of analyses and reports.

The strategic partnership must be recognized by a signed memorandum of understanding or a written agreement between the partner and the applicant and included in the completed application.

Private and nonprofit entities proposing projects in relation to public properties must provide a letter of approval from the chief executive of the public entities that hold ownership of the subject property. Assets owned by The State are not eligible for project applications, however assets owned by Independent State Authorities are eligible when accompanied by a letter of approval.

A proposal on behalf of a county or independent authority does not preclude a municipality within that county; or municipality or county within boundary of independent authority; or independent authority whose boundaries overlap a municipality or county from submitting their own proposal.

An award of grant funding does not imply approval of planning, analysis, use, sale, or divestment of any assets or property.

Rolling Evaluations

Applications for the New Jersey Asset Activation Planning Grant will be accepted on a rolling basis.

EDA anticipates notifying each applicant within five business days of receipt if the application has been deemed complete. Applicants whose applications have been deemed incomplete will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing and a new application would need to be submitted for further consideration.

Applications will be evaluated and scored on a first in, first out basis using the date and time that the Authority receives a completed application. Applications that meet the minimum score requirement of 65 will be recommended to the Board for award approval in that order.

Applications will be accepted during a 90-day window publicized in the Notice of Funding Availably. Delegated authority is requested to allow the Chief Executive Officer to draw down additional funding of up to $200,000 from ERF for the purposes of making additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount.

Applications must include plans for specific deliverables that can be fully completed (with copies provided to EDA appropriate for public consumption) six calendar months after the execution of funding agreement between EDA and the recipient. Upon written request by the grantee an extension of up to two months may be authorized for the plan's final delivery, at the sole discretion of the Authority.

A non-refundable fee of $ 1,000 shall accompany every application for Authority assistance.

Scoring

Applications will be reviewed and scored by staff of the Authority formed as a scoring committee.

The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions.

Grants will be scored on a scale of 0-100 points, with 100 points being the highest score possible. Grants award recommendations will be limited to applications that meet or exceed the Minimum Score Requirement of 65 points.

Applications will be evaluated and scored on each of the criteria below.

<u>Criteria #1 - Asset Impact</u> (Up to 40 points) – Proposals must demonstrate how projects will improve the utilization of a public asset and contribute to the community and regional economy.
Example of these may include, but are not limited to:

- Projects that look to innovative uses of underutilized, distressed, or vacant public land, improvements or structures that will provide possibilities for local equitable economic growth
- Projects that develop publicly owned parking lots into ratable businesses, or mixed-use neighborhoods infill.
- Projects that activate use of public rights-of-way for multi-modal trail connections.
- Designs for innovative and transformative new buildings on unused public lands.
- Development of vacant, under-utilized, or distressed public land, improvements or structures for a targeted industry research, development, workforce training or manufacturing hub.

  Scoring measure:

0 - 10 points: Demonstrates minimal impact
11 - 20 points: Demonstrates marginal impacts
21 - 30 points: Demonstrates significant impacts
31 - 40 points: Demonstrates superior impacts

Criteria #2 – Identification of Project Purpose and Merits (Up to 20 points) – Proposals should Identify community benefits of the project, and challenges that have precluded prior development of the asset. Considerations may include, but are not limited to:

- Ability to address locality-specific needs and challenges.
- Emphasis on long term viability and adaptability of a given concept.
- Ability to consider and mitigate any past difficulties that created challenges for a given asset/grouping of assets.
- Ability to identify and balance local needs with those of the region and state as a whole.

Scoring measure:
0 - 5 points: Little or no demonstration of features
5 - 10 points: Features are present but show deficiencies.
11 - 15 points: Features are well demonstrated.
16 - 20 points: Significantly exceeds requirements.

Criteria #3 - Previous Experience (Up to 20 points) – Preference will go to entities who are able to display a strong record of early-stage project planning and analysis that lead to development. Applications should demonstrate a commitment to engage in development projects by a record of past project involvement. Applications may bolster these criteria through strategic partnerships and detailing those partners' records. Preference will go to applicants who can demonstrate a track record of:

- Partnership and engagement with public entities for development and redevelopment.
- Adherence to state and local development plans.
- Dedication to principles of environmental sustainability.
- Previous investments in business sector or innovation projects.

Scoring measure:
0 - 5 points: Little or no demonstration of features
5 - 10 points: Features are present but show deficiencies.
11 - 15 points: Features are well demonstrated.
16 - 20 points: Significantly exceeds requirements.

Criteria #4 - Community Engagement (0 to 10 points) - Preference will go to applicants that are able to display efforts to engage local residents and businesses in planning efforts. Local interest may be shown in the form of both past and present support, whether formal (municipal resolutions) or informal (community discussion and engagement).

Scoring measure:
1-5 points: Feature is present but shows deficiencies
5-7 points: Meets requirements
7-10 points: Significantly exceeds requirements

Criteria #5 - Municipal Revitalization Index Score (0 to 10 points) – The Municipal Revitalization Index (MRI) serves as the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. Most recent MRI scores will be applied based on time of application submission and physical location of proposed project's municipal host community.

Scoring measure:
2 points: MRI Distress Score 30 – 34.9
4 points: MRI Distress Score 35 – 39.9
6 Points: MRI Distress Score 40 – 49.9
8 Points: MRI Distress Score 50 – 69.9

10 Points: MRI Distress Score 70 or higher

Grant Disbursement

Grant disbursements by the Authority will only be made to the lead role entity. The lead role entity shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners.

All Applicants who are successfully awarded a grant will follow a uniform disbursement schedule. The lead entity will receive 50% of the grant amount upon execution of grant agreement, and 25% upon completion and submission of a mid-way progress report, and 25% upon completion and submission of a final plan and final progress report. At a minimum, the progress reports must include:

- Summary of funds expended to date, and
- Narrative detailing milestones achieved and overall progress toward completion of final plan.

A monthly call with the Designated Authority Project Manager and the Grantee's assigned Account Manager or Back-Up Account Manager will be held monthly for the first three months of the grant term, up until the halfway point of the grant term. During and following that time, additional calls may be held on an as needed basis until the grant term has ended.

Delegated Authority

Delegation to Authority staff (Chief Community Development Officer, Executive Vice President-Special Projects, Managing Director-Community Development, Chief Economist) to decline applications that do not meet eligibility requirements solely due to non-discretionary reasons. If the Board has approved the delegated authority policy, the delegation will be to the Chief Executive Officer.

Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of declinations based solely on non-discretionary reasons. If the Board has approved the delegated authority policy, the delegation will be to the Chief Executive Officer.

Delegated to Authority staff (Chief Executive Officer) to draw down additional funding of up to $200,000 from ERF for the purposes of making additional awards should the application volume, received prior to the initial program deadline, exceed the original funding amount.

Appeals

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 3 days but no longer than 10 days). Chief Legal & Strategic Affairs Officer or designee will designate Hearing Officers who will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a recommended decision, which must be approved, and a Final Administration Decision issued by the Board or, if under delegated authority, by Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations

RECOMENDATIONS

We recommend approval for the creation of the New Jersey Asset Activation Planning Grant Program - a pilot rolling grant program which will advance the priorities of the Governor's Economic Plan, and develop of the State's vision, through funding of pre-development planning for projects that will activate distressed and under-utilized public assets, benefiting their communities and the regional economy.

We also recommend approval Economic Recovery Fund authorization of up to $400,000 to capitalize the New Jersey Asset Activation Planning Grant Program, with $200,000 for an initial pilot program round, and delegated authority to the EDA Chief Executive Officer for discretion to extend another $200,000 to make additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount.

Finally, we recommend approval of delegation to Authority staff (as listed above or to the Chief Executive Officer if the delegated authority policy has been approved) to decline applications that do not meet eligibility requirements and to issue final administrative decisions for appeals of declinations based solely on non-discretionary reasons.

Tim Sullivan
Chief Executive Officer

Prepared by: Jason Miller & John Costello

Attachments
Exhibit A – New Jersey Asset Activation Planning Grant Program Specifications

Exhibit A
New Jersey Asset Activation Planning Grant
Proposed Specifications
March 2022

Funding Source	NJEDA Economic Recovery Fund. $200,000 for initial pilot program. Authority for additional $200,000 contingency.
Program Purpose	The New Jersey Asset Activation Planning Grant Program will award grants of up to $50,000 to public, private, or non-profit entities, for early-stage planning and analysis that will demonstrate viability of projects that activate distressed or under-utilized public assets that benefit their communities and the regional economy
Eligible Applicants	Qualified applicants are defined as a New Jersey: • Municipality, • County, • Municipal, county, regional or state redevelopment agency, • Municipal, county, regional or state independent authority, • Non-profit entity • Private, for-profit entity that meet additional criteria detailed below and holds a valid New Jersey tax clearance certificate. An Applicant in a lead role is the entity that is the sole recipient of grant funds and responsible for all terms of the grant agreement. The lead role applicant will serve as the primary point of contact with the Authority, submit any requests for fund disbursement, and provide reports to the Authority. An applicant may only submit one application each in a lead role but can be included as a partner in additional applications where they play a non-lead role. Any named strategic partner or partners included in the proposal cannot be changed without the prior written consent of the Authority. Applicants may add strategic partners whose experience, knowledge, skills, and ability may provide an advantage in the production of analyses and reports. The strategic partnership must be recognized by a signed memorandum of understanding or a written agreement between the partner and the applicant and included in the completed application. Private and nonprofit entities proposing projects in relation to public properties must provide a letter of approval from the chief executive of the public entities that hold ownership of the subject property. Assets owned by The State are not eligible for project applications, however assets owned by Independent State Authorities are eligible when accompanied by a letter of approval. A proposal on behalf of a county or independent authority does not preclude a municipality within that county; or municipality or county within boundary of independent authority; or independent authority whose boundaries overlap a municipality or county from submitting their own proposal.
Eligible Uses	The New Jersey Asset Activation Planning Grant Program will provide grants of up to $50,000 directly to grantees for pre-development planning that will demonstrate viability of projects. Proposed plans may include, but are not limited to: • Conceptual design • Feasibility studies • Economic analysis • Market analyses

	Proposal plans must demonstrate to what extent the utilization of a public asset will be improved by the proposed project and how development of an asset will benefit the regional economy and the community. Projects should target deficient, under-utilized, or vacant land, buildings, or infrastructure owned by a county, municipality, district, public authority, public agency, or other political subdivision or public body. Plans should demonstrate a strong connection to the State's development objectives through project elements, such as: • Creating or catalyzing a new business sector, or target industry ○ As defined by the NJEDA Emerge program, "Targeted industry" means any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models • Driving economic growth and equity • Creating an innovative use for distressed public assets, unutilized or underutilized public property or unutilized public lands • Expanding access to public transportation or public services • Attracting employers and a diverse, talented workforce • Expanding entrepreneurial opportunities and support local businesses • Improving land use efficiency and sustainability
Application Process and Board Approval/ Delegated Authority	Applications for the New Jersey Asset Activation Planning Grant will be accepted on a rolling basis. EDA anticipates notifying each applicant within five business days of receipt if the application has been deemed complete. Applicants whose applications have been deemed incomplete will be given five business days to cure any deficiencies. If at the end of the five-day period, the applications are still incomplete, they will be notified the application will not be advancing and a new application would need to be submitted for further consideration. Applications will be evaluated and scored on a first in, first out basis using the date and time that the Authority receives a completed application. Applications that meet the minimum score requirement of 65 will be recommended to the Board for award approval in that order. Applications will be accepted during a 90-day window publicized in the Notice of Funding Availably. Delegated authority is requested to allow the Chief Executive Officer to draw down additional funding of up to $200,000 from ERF for the purposes of making additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount. Applications must include plans for specific deliverables that can be fully completed (with copies provided to EDA appropriate for public consumption) six calendar months after the execution of funding agreement between EDA and the recipient. Upon written request by the grantee an extension of up to two months may be authorized for the plan's final delivery, at the sole discretion of the Authority.
Scoring	Applications will be reviewed and scored by staff of the Authority formed as a scoring committee. The scoring committee may utilize the advice of subject matter experts from both the Authority and other New Jersey state departments, agencies, councils, offices, and boards to advise scoring decisions.

Grants will be scored on a scale of 0-100 points, with 100 points being the highest score possible. Grants award recommendations will be limited to applications that meet or exceed the Minimum Score Requirement of 65 points.

Applications will be evaluated and scored on each of the criteria below.

<u>Criteria #1 - Asset Impact</u> (Up to 40 points) – Proposals must demonstrate how projects will improve the utilization of a public asset and contribute to the community and regional economy. Example of these may include, but are not limited to:

- Projects that look to innovative uses of underutilized, distressed, or vacant public land, improvements or structures that will provide possibilities for local equitable economic growth
- Projects that develop publicly owned parking lots into ratable businesses, or mixed-use neighborhoods infill.
- Projects that activate use of public rights-of-way for multi-modal trail connections.
- Designs for innovative and transformative new buildings on unused public lands.
- Development of vacant, under-utilized, or distressed public land, improvements or structures for a targeted industry research, development, workforce training or manufacturing hub.

  Scoring measure:
  0 - 10 points: Demonstrates minimal impact
  11 - 20 points: Demonstrates marginal impacts
  21 - 30 points: Demonstrates significant impacts
  31 - 40 points: Demonstrates superior impacts

<u>Criteria #2 – Identification of Project Purpose and Merits</u> (Up to 20 points) – Proposals should Identify community benefits of the project, and challenges that have precluded prior development of the asset. Considerations may include, but are not limited to:

- Ability to address locality-specific needs and challenges.
- Emphasis on long term viability and adaptability of a given concept.
- Ability to consider and mitigate any past difficulties that created challenges for a given asset/grouping of assets.
- Ability to identify and balance local needs with those of the region and state as a whole.

  Scoring measure:
  0 - 5 points: Little or no demonstration of features
  5 - 10 points: Features are present but show deficiencies.
  11 - 15 points: Features are well demonstrated.
  16 - 20 points: Significantly exceeds requirements.

<u>Criteria #3 - Previous Experience </u>(Up to 20 points) – Preference will go to entities who are able to display a strong record of early-stage project planning and analysis that lead to development. Applications should demonstrate a commitment to engage in development projects by a record of past project involvement. Applications may bolster these criteria through strategic partnerships and detailing those partners' records. Preference will go to applicants who can demonstrate a track record of:

- Partnership and engagement with public entities for development and redevelopment.
- Adherence to state and local development plans.
- Dedication to principles of environmental sustainability.
- Previous investments in business sector or innovation projects.

  Scoring measure:
  0 - 5 points: Little or no demonstration of features
  5 - 10 points: Features are present but show deficiencies.
  11 - 15 points: Features are well demonstrated.
  16 - 20 points: Significantly exceeds requirements.

	Criteria #4 - Community Engagement (0 to 10 points) - Preference will go to applicants that are able to display efforts to engage local residents and businesses in planning efforts. Local interest may be shown in the form of both past and present support, whether formal (municipal resolutions) or informal (community discussion and engagement). Scoring measure: 1-5 points: Feature is present but shows deficiencies 5-7 points: Meets requirements 7-10 points: Significantly exceeds requirements Criteria #5 - Municipal Revitalization Index Score (0 to 10 points) – The Municipal Revitalization Index (MRI) serves as the State's official measure and ranking of municipal distress. The MRI ranks New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality. Most recent MRI scores will be applied based on time of application submission and physical location of proposed project's municipal host community. Scoring measure: 2 points: MRI Distress Score 30 – 34.9 4 points: MRI Distress Score 35 – 39.9 6 Points: MRI Distress Score 40 – 49.9 8 Points: MRI Distress Score 50 – 69.9 10 Points: MRI Distress Score 70 or higher
Grant Amounts	Grant awards will be up to $50,000
Funding Disbursement	Grant disbursements by the Authority will only be made to the lead role entity. The lead role entity shall be responsible for assuring the compliance of any strategic partners and/or subcontractors with all terms and conditions of this application - and assumes the sole and absolute responsibility for any payments due to any municipal, county, or strategic partners. All Applicants who are successfully awarded a grant will follow a uniform disbursement schedule. The lead entity will receive 50% of the grant amount upon execution of grant agreement, and 25% upon completion and submission of a mid-way progress report, and 25% upon completion and submission of a final plan and final progress report. At a minimum, the progress reports must include: • Summary of funds expended to date, and • Narrative detailing milestones achieved and overall progress toward completion of final plan.
Reporting requirements	A monthly call with the Designated Authority Project Manager and the Grantee's assigned Account Manager or Back-Up Account Manager will be held monthly for the first three months of the grant term, up until the halfway point of the grant term. During and following that time, additional calls may be held on an as needed basis until the grant term has ended. At the end of the grant term, the awarded grantee must provide a copy of the final report to the Authority for review and public dissemination.
Fees	A non-refundable fee of $ 1,000 shall accompany every application for Authority assistance.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

RE: Updates to NJ Entrepreneur Support Program

Summary

The Members are asked to approve updates to the NJ Entrepreneur Support pilot program (NJESP). This program helps New Jersey entrepreneurs navigate cashflow constraints caused by adverse impacts to the financial system resulting from the ongoing effects of the COVID-19 pandemic to the US and global economy.

More recently, a historic rate of rising inflation requiring the Federal Reserve to increase the Federal Funds Rate has led to a liquidity crunch for financial institutions utilized by entrepreneurial startups in high tech industries. NJESP provides investor security to facilitate the extension of critical financing for working capital purposes to these NJ businesses.

Requested program updates include:

- An increase, from $200,000 to $400,000, in the total amount of guarantees available per startup company.
- The allowance of first-time investors to be eligible for the guarantee.
- An adjustment to the startup company's date for employment verification as well as to the eligibility date for guaranteed loans.
- An increase, from less than twenty-five to fewer than two hundred and twenty-five, in the maximum number of employees permitted to qualify as a startup.
- The removal of a maximum company revenue threshold. Instead, the company must operate in one of NJEDA's targeted industries to qualify for a guarantee.

All other requirements for this program not identified as updated will remain the same. This program will be funded up to $5,000,000 from the NJEDA Economic Recovery Fund.

Background

On March 9, 2020, Governor Phil Murphy issued Executive Order 103 ("EO103"), declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey's efforts to contain the spread of the COVID-19/novel coronavirus ("COVID-19"). Subsequent measures were announced and implemented, including prolonged quarantine restrictions and other actions, which has significant financial impact to New Jersey businesses.

The New Jersey Economic Development Authority (NJEDA) recognized these required measures would have a significant impact to the finances of entrepreneurial startups requiring additional capital so they would have the liquidity to endure throughout the likely economic slowdown. To accomplish this, the NJEDA created the NJ Entrepreneur Support Program (NJESP). In the early stages of development, startup businesses are not highly reliant on traditional banks for capital. Instead, they receive cash from investors in the private markets to fund their operations. In times of uncertainty, investors can become reluctant to extend funding to businesses due to a higher chance of failure and loss of investment. To provide confidence to investors and the underlying NJ startup ecosystem, NJESP provides a one-year guarantee for 80% of the loans provided by investors to NJ startup businesses. As a result, companies receive much needed cash to weather the economic uncertainty, and investors receive a guarantee on their loan in case the company defaults and/or ceases operations.

From March 2020 through February 2021, NJESP provided loan guarantees totaling approximately $2.04 million. The guarantees covered $2.54 million in private loans extended to thirteen NJ companies by their investors. Against these guarantees, only one company did not have the liquidity to repay at the end of the year, resulting in NJEDA making a single guarantee payment of $60,000. All other loans were either repaid, extended, or converted for an equivalent amount of equity. The NJEDA received warrants in three companies for guaranteed loans that converted to equity.

Entering into 2023, the effects stemming from the pandemic continue to impact the financial system. To combat increasing inflation rates, the Federal Reserve made a series of increases to their benchmark interest rate, the Federal Funds Rate, intended to reduce the inflation rate and slow the economic growth rate. These actions have had an outsized impact on entrepreneurial startups. More specifically, companies in high growth industries, like technology, have not only experienced a reduction in their sales but have also lacked the capital access needed to continue their current operations and future development. When the inflows of capital from these sources diminish, a startup company is forced to utilize their cash reserves at a higher rate, putting additional stress on the banking institutions that hold these cash reserves. Currently, this additional stress on deposits, along with the reduction in value of the banks' credit and cash equivalent reserves due to rising interest rates, caused lack of confidence in these financial institutions, requiring intervention from governmental entities and stronger, well-capitalized financial sources.

The current challenges with the startup-focused banking system are similar to the issues identified by NJEDA at the start of the Covid pandemic. The investor market is becoming increasingly reluctant to extend financial support to startup businesses. In particular, on March 8, 2023, this financial crisis made headlines after a run at Silicon Valley Bank. In response to these market conditions, the NJEDA decided to continue providing support to counter these continued aftereffects by reopening the NJESP in March of 2023.

As part of this prolonged effort, Staff now proposes to update the NJ Entrepreneur Support Program so that affected businesses have improved access to capital resources to prevent business failure and loss of employment. Additionally, program updates will allow the NJEDA to address a larger segment of affected businesses. At program inception, the NJEDA's greatest concern was high potential of immediate business failure and job loss for the smallest companies in the industry. Today, the NJEDA wants to increase the scope of support to assist a greater percentage of the industry. The updates set forth below and in Program specifications (Exhibit A) outline proposed updates to the NJESP. The actions, which are based on early market feedback, are designed to make the requirements for NJESP align with programs like the newly launched Angel Match Program, so there is a consistency across offerings to the market. Additionally, the updates will have an added benefit of supporting a larger section of businesses within NJEDA's targeted industries, which are critical to the strength and growth of New Jersey's economy.

<u>Program Updates</u>

The NJ Entrepreneur Support Program provides a guarantee to support the extension and repayment of investor loans to entrepreneurial startup businesses for working capital purposes.

Adjustments to the NJESP program specifications are as follows (updated language is in bold):

- UPDATE: Investors qualified for a guarantee can include, but are not limited to, **institutional investors,** individuals, trusts, and corporations
    - Explanation: The addition of "institutional investors" provides further clarification on investor structure in hopes of increasing the number of investor participants from the private market.

- UPDATE: NJESP guarantees **will no longer be available only** to current qualified investors, defined as having already provided funding to a New Jersey startup company business through a SAFE (simple agreement for equity), convertible note or equity investment as of **March 10, 2023**. **Current investors as well as new investors can apply.**
    - Explanation: Opening the guarantee for loans made by not just existing investors but also by new investors will benefit the company by increasing the available sources of funding as well as aligning NJESP with the similar NJEDA programs that utilize matching funding sources like the Angel Match Program and the Edison Innovation Fund. Also, the documentation date has changed to Friday, March 10, 2023, to correspond with the date that Silicon Valley Bank (SVB) was closed by the California Department of Financial Protection and Innovation (DFPI) and the Federal Deposit Insurance Company (FDIC) was named as receiver. This event could be considered as the catalyst for the current financial system issues effecting the sector.

- UPDATE: Investors qualified for a guarantee can receive an 80% NJEDA guarantee, not to exceed **$400,000 in total guarantees per** company **($500,000 in total loans guaranteed per company)**, for a new bridge loan/convertible note into a NJ business. Qualified investors are not required to be New Jersey residents.
    - Explanation: Increasing the amount for total guarantees per company from a total of $200,000 to $400,000 in guarantees (which correspond to an increase in the total loan amount which is guaranteed from $250,000 to $500,000) allows for additional company funding to increase financial security in addition to providing a similar amount of financial support as related programs such as the Angel Match Program.

- UPDATE: A New Jersey startup company is defined as having a minimum of 50% of employees in New Jersey, **confirmed by** their NJ WR-30 **as well as other acceptable payroll verifications including the Federal Form 941 or letter of verification from a Professional Employer Organization**, at **date of application** with **fewer than 225** total employees, and a corporate headquarters in New Jersey (including at least one C suite member with a principal office in New Jersey).
    - Explanation: This updated documentation is more inclusive for the employment methods of startup businesses. Updating the reference date for employee verification from year end to application submission date allows for confirmation of the company's most recent employment structure. Increasing the total amount of employees from less than 25 to fewer than 225 allows a greater number of affected companies to participate and is consistent with the standard used in other programs, namely the Angel Investor Tax Credit and Technology Business Tax Certificate Transfer (NOL) Program.

- UPDATE: A New Jersey startup company will **no longer be required to** have **less** than $5 million in trailing twelve-month revenue and will **no longer be required to** be aligned with the innovation economy goals in the Governor's October 2018 Economic Development Plan. **Instead, the company must be a part of at least one of the NJEDA established "targeted industries".**
    - Explanation: Removing the restrictions to a company's revenue allows for a greater number of affected companies to receive support. Mandating that the company operate in a targeted industry matches the standard used in other NJEDA programs, like the Angel Match Program and Emerge. The current list of targeted industries are Advanced transportation and logistics, Advanced transportation, Advanced logistics, Advanced manufacturing, Aviation, Autonomous vehicle research or development, Zero-emission vehicle research or development, Clean energy, Life sciences, Hemp processing, Information technology, High technology, Finance and insurance, Professional services, Film and digital media, Non-retail Food and Beverages, and other innovative industries that disrupt current technologies or business models.

- UPDATE: To be eligible for the 80% guarantee, the bridge loan/convertible note must have a minimum of a one-year maturity, be unsecured, and cannot have any current payment requirements (principal or interest) in year one. The note must be dated as of **March 10, 2023,** or later and supporting evidence of cash funding will be required.

- Explanation: The date of the note now matches the date Silicon Valley Bank entered into receivership; this can be considered as the start date for this current financial system issue effecting the industry.

- UPDATE: The total funding pool for the program will be **$5,000,000,** and completed applications from investors for guarantees will be considered on a first serve basis, including the ability to consider multiple guarantees per company towards the **$400,000** company exposure cap.
  - This includes a confirmation to make available a full $5,000,000 in guarantees for this updated round of the program. Originally, this program was funded for up to $5,000,000. Of that amount, a one payment of $60,000 was accounted for against the original cap amount. Also noted here is the increase (from $200,000 to $400,000) in the per company amount.

Recommendation

Approval is requested to update to the NJ Entrepreneur Support pilot program to help support New Jersey entrepreneurs. These updates will support companies in New Jersey's targeted industries and further the NJEDA's mission to grow our State's economy and encourage job growth. Information regarding the New Jersey Entrepreneur Support Programs will be related back the Members of the Board on a quarterly basis via the established Economic Transformation Delegated Authority Memorandum.

Tim Sullivan, CEO

Prepared by:
Clark Smith, Director Innovation Programs

NJ Entrepreneur Support Program – UPDATED Program Specifications - Updated April 12, 2023	
Funding Source:	Up to $5,000,000 – NJEDA Economic Recovery Fund. (This amount is consistent with the program's original approval but confirms $5,000,000 in guarantees will be available for the program going forward as the existing program did make one guarantee payment of $60,000)
Program Purpose:	To encourage investment from the investor community to provide new funding for NJ entrepreneurial businesses by providing a guarantee to support repayment of an investor loan advanced for working capital. (Removed references to existing company investors and Covid-19 pandemic)
Eligible Applicants:	Program requirements for the NJ Startup Business and the Investor are detailed below. Each must meet their listed specifications:
NJ Startup Company:	• Have a minimum of 50% of employees in New Jersey at date of application as confirmed by NJWR-30, Federal Form 941, PEO letter, or other similar documentation in regard to a company's employees (Updated date of verification from yearend and added clarification around payroll forms for verification) • Fewer than 225 total employees at the time of application (updated from less than 25) • (Removed requirement for under $5 million in trailing 12-month revenues) • A corporate headquarters in New Jersey (including at least one C suite member with a principal office in New Jersey) • Aligned with the NJEDA defined list of "targeted industries" (Updated from the innovation economy goals in the Governor's October 2018 Economic Development Plan) • A valid New Jersey tax clearance certificate from the Division of Taxation • Good standing with and NJ Workforce Development (DOL) at time of application and at time of any payment events with all decisions of good standing at the discretion of the Commissioner of the Department of Labor. • Prohibited businesses include, but are not limited to: gambling or gaming activities; the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services,

NJ Entrepreneur Support Program – UPDATED Program Specifications - Updated April 12, 2023	
	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 sales; sales by transient merchants, Christmas tree sales or other outdoor storage; ; any activity constituting a nuisance; or any illegal purposes.
Investor:	• Investors can include, but are not limited to, institutional investors, individuals, trusts, and corporations. (Included institutional investors for added clarity) • Qualified investors are not required to be New Jersey residents • (Removed requirement that guarantees are only available to existing company investors)
Eligible Uses:	• To be used as working capital to support a NJ Entrepreneurial business
Application Process and Board Approval/ Delegated Authority:	• Applications will be accepted until all funding is exhausted on a First-come basis. • Delegated Authority to the Chief Executive Officer to decision individual applications . Activity will be reported quarterly to the NJEDA Board. (Updated to new policy regarding Delegations for Authority to the CEO)
Guarantee Amount:	80% of investment amount, not to exceed $400,000 per NJ Company (Increase from $200,000 per company)

NJ Entrepreneur Support Program – UPDATED Program Specifications - Updated April 12, 2023	
Conditions on Qualifying Investor Notes:	• The original note must have a minimum of a one-year maturity • The note must be unsecured • The note cannot have any current payment requirements (principal or interest) in year one • The note must be dated as of March 10, 2023 or after. Investors that notify the Authority that the notes are being made in reliance on the program will be eligible for consideration of a guarantee, retroactive to the date of the note (Update in date) • The investor must supply evidence of funding (cash) to the NJ company • In the event the investor chooses to convert the note, it may be eligible for New Jersey's Angel Investor Tax Credit Program if all program eligibility is met (20% or 25% based on program guidelines). • In the event the investor converts the note to equity, the Authority will be provided with a warrant for 20% of the guarantee amount from the company, under the same pricing as the investor's conversion pricing on the Authority's standard warrant form.
Lien/Collateral/Security:	Not Applicable

Guarantee Payout Conditions:	• In the event the company ceases operations and has filed a certificate of dissolution, NJEDA will payout on the guarantee within 6 months from receipt of a written demand notice and upon satisfactory review by staff of supporting documentation.
	
	• At the one year anniversary of the note, if the New Jersey business does not have the liquidity to repay the note, and the note <u>*has not converted*</u>, NJEDA shall payout on the guarantee to the investor within six months from receipt of a written demand notice and upon satisfactory review by staff of supporting documentation.
	  o In this scenario, the NJEDA will work with the Department of Treasury to ensure the investor does not have any outstanding tax liabilities before making a payment
	  o Liquidity will be measured by the greater of: the average cash on the balance sheet of the

	company for the last three months prior to the note maturity, or the three-month average cash flow on the cash flow statement for the last three months prior to the note maturity. In the event the Authority pays out on a guarantee and a business has not been dissolved, the investor will assign their note to the Authority.
Fees:	• Due to financial hardship, there will be no fees associated with the NJ Entrepreneur Support Program

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Rules for Food Desert Relief Tax Credit Program (**N.J.A.C. 19:31-28**)

Request:

The Members are asked to approve:

1) The attached rules for the Food Desert Relief Tax Credit Program and to authorize staff to (a) submit the special adopted new rules and concurrently proposed new rules for publication in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for publication 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 tax credit component of the Food Desert Relief Program, established by the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq).
3) Delegation of authority to the CEO and/or his/her subdelegates in accordance with the Authority's Delegation Policy to:
   - Add the Food Desert Relief Tax Credit Program to existing delegated authority for certain minor administrative changes and for extensions to conditions of approval;
   - Approve up to four six-month extensions to the dates by when a supermarket or grocery store must be open for business to the public, and when the project must be completed and documents evidencing completion and satisfaction of eligibility requirements must be submitted; and
   - Decline Food Desert Relief Tax Credit Program applications for non-discretionary reasons (e.g., when the application does not meet objective program requirements or when applicants do not submit additional documents or information necessary to complete the review of the application).

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (ERA), into law. The ERA presents a strong recovery and reform package that addresses the ongoing economic impacts of the COVID-19 pandemic and positions New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes more than 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;
- Support for new supermarkets and healthy food retailers in food desert communities;
- 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;
- Additional tax credits for film and digital media.

The ERA program being presented for the Members' approval in this memorandum is the Food Desert Relief Tax Credit Program, sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq). The Food Desert Relief Tax Credit Program is an incentive program that provides financial assistance to supermarkets and grocery stores to establish and retain locations in Food Desert Communities (FDCs), as approved by the NJEDA board on February 9, 2022 in accordance with section 38 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-306), in order to provide a consistent and easily accessible source of fresh produce to residents in those communities.

This memorandum provides a summary of the Food Desert Relief Tax Credit Program, including program structure, eligibility criteria, specific program requirements, application process and the application review process. The specific details – and what will be published and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

The Food Desert Relief Act (FDRA) directs the New Jersey Economic Development Authority (NJEDA or Authority) to address the food security needs of communities across New Jersey by providing up to $40 million per year for six years to increase access to nutritious foods and develop new approaches to alleviate food deserts. Section 38 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-306). The FDRA established the Food Desert Relief Tax Credit Program to award tax credits to establish and retain new supermarkets and grocery stores in FDCs. The FDRA also provides the Authority authorization to sell tax credits to generate proceeds to fund future grant, loan, and technical assistance programs. Future programs to be established by the Authority will focus on a range of other approaches to alleviating food deserts, including, but not limited to offering technical assistance on best practices for increasing the accessibility of nutritious foods; providing grants and loans for food retailers of all sizes to fund equipment costs and technology costs associated with providing fresh food and/or technology costs associated with supporting Supplemental Nutrition Assistance

Program (SNAP) and Supplemental Nutrition Program for Women, Infants, and Children (WIC) payments; and supporting innovative initiatives to ensure food security.

As required by the FDRA, on February 9, 2022, the Board formally adopted the 50 Food Desert Communities (FDCs) designation for the State of New Jersey, taking a critical step towards addressing challenges around food access, food availability and nutritional value. The total population of New Jerseyans residing in Food Desert Communities exceeds 1.5 million individuals across a diverse range of communities in all 21 of New Jersey's counties.[1]

The Food Desert Tax Credit Program focuses only on the portion of the legislation regarding assistance to attract and retain supermarkets or grocery stores in New Jersey's 50 FDCs. Because supermarket developers and operators are both needed to attract and retain supermarkets and grocery stores in New Jersey's food deserts, the FDRA establishes two types of tax credits, for which staff are proposing rules:

- A **Financing Gap Tax Credit** for developers, which would provide up to 40% of project costs for the first new supermarket in an FDC, capped at the project financing gap, and up to 20% of project costs for the second new supermarket in an FDC, capped at the project financing gap.

- An **Initial Operating Cost Tax Credit** for supermarket operators, which would provide for the lower of either the initial operating shortfall or 100% of initial operating costs for the first new supermarket in an FDC, and the lower of either the initial operating shortfall or 50% of initial operating costs for the second new supermarket in an FDC.

In some cases, the developer and operator of a supermarket or grocery store may be the same applicant, while in others they will be separate entities. In the latter case, both parties will have to work collaboratively as several of the program requirements impact both the developer and the operator. Both applications will need to be submitted in tandem and have matching financial data, so that they can be reviewed and approved in tandem.

In addition to meeting the program eligibility, the statute requires the developer and operator must be in substantial good standing with the NJ Department of Labor and Workforce Development (DOL), the NJ Department of Environmental Protection (DEP), and the Department of Treasury (Treasury), as determined by each Department, or have entered into an agreement with the respective Department that includes a corrective action plan for the applicant. Section 38 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-306). Furthermore, the developer will be required to provide with the application a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury. All projects that receive Food Desert Relief Tax Credit support must also comply with EDA's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-4.

The Food Desert Relief Tax Credit Program rules also require applicants to demonstrate that a project will comply with environmental laws (including flood hazard requirements). In addition, a project must comply with certain milestones during the term of a Food Desert Relief Tax Credit Program project as established in the incentive award agreement and the rules.

[1] A map of NJ Food Desert Communities may be found at https://njdca.maps.arcgis.com/apps/webappviewer/index.html?id=cd59d206f39c40a691d6ba38598134fb

The requirements described above are outlined in greater detail below and in the attached rule proposal (Appendix A).

Key Definitions

Full definitions are included in the attached rule proposal (Appendix A).

- Commitment and eligibility period: A total of 7 years beginning when the supermarket or grocery store opens.
    - For the financing gap tax credit, eligibility period is 4 years, followed by commitment period of 3 years.
    - For the initial operating costs tax credit, eligibility period is 3 years, followed by commitment period of 4 years.
- First or second new supermarket: Up to two qualifying grocery stores per FDC may be eligible for the tax credits. These stores must have started construction or substantial rehabilitation after January 7, 2021, the effective date of the FDRA. The designations of first and second are based on the date of approval for tax credits, not on the date construction or rehabilitation began. Stores must continue to meet milestones set by the Authority in order to retain their designations. Stores must be at least 16,000 square feet, with at least 80% occupied by food and related products.
- Initial operating costs: Operating costs within the first three years after opening and one month prior to opening. Inventory, also known as cost of goods, will not be included. These costs must be aligned with industry standards as determined by NJEDA.
- Initial operating shortfall: initial operating costs, plus a net operating profit acceptable to the Authority, reduced by the income to the applicant associated with the operation of the new supermarket or grocery store after costs of goods sold. If this amount is negative, the shortfall is zero. Net income is income after deducting cost of goods. Staff is still evaluating what a reasonable net operating profit may be and intends to present a recommendation to the Board at a later date.
- Labor harmony agreement: an agreement between the supermarket or grocery store operator and one or more labor organizations, which requires neutrality toward unionization on the part of the operator and a commitment by the participating labor organization to refrain from disruptive actions such as picketing.

Eligibility Criteria

Key eligibility requirements for the Food Desert Relief Tax Credit Program include meeting various criteria at application and at project completion, when the developer or operator must submit certifications evidencing satisfaction of program requirements and conditions. Full eligibility details are contained in the proposed rules (Appendix A).

For both the financing gap and initial operating cost tax credits, an applicant or a co-applicant, if applicable, shall be eligible to receive an incentive award for a project only if the applicant demonstrates to the Authority at the time of application that:

1. The project is not economically feasible without the incentive award;
2. The new supermarket or grocery store will operate on a full-time basis during both the eligibility period and commitment period;
3. The new supermarket or grocery store will be economically and commercially viable by the last year of the commitment period; and

4. The project is located in an FDC.

The applicant must also submit a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39).

If the applicant is seeking a project financing gap tax credit, the applicant must also demonstrate that:

1. A project financing gap exists; and
2. No construction has commenced at the site other than for demolition and site remediation prior to submitting an application, unless the Authority determines the project would not be completed without the award.

If the applicant is seeking an initial operating costs tax credit, the applicant must also demonstrate that an initial operating shortfall will exist.

If awarded, for both the financing gap and initial operating cost tax credits, the applicant(s) must commit that the supermarket or grocery store will:

1. Accept benefits from federal nutrition assistance programs, including, but not limited to: Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
2. Devote at least 10 percent of retail space to fresh and/or frozen fruits and vegetables;
3. Meet the definition of new supermarket or grocery store;
4. Hold a public listening session in the FDC at least once a year; and
5. Open the supermarket or grocery store for business to the public within 6 months of the receipt of a temporary certificate of occupancy or three years of executing the incentive award agreement corresponding to the project (subject to possible extensions approved by the Authority).

Consistent with other ERA real estate tax credit incentive programs, including Aspire, if the application includes a co-applicant, the applicant and co-applicant must demonstrate the following:

1. 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;
2. The co-applicant's organizational purpose encompasses the co-applicant’s proposed participation;
3. The co-applicant has the financial and operational capability to provide co-applicant’s proposed contributions or services;
4. The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated customers or support the project or operations of the supermarket or grocery store; and
5. The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

The only costs incurred prior to application for a financing gap tax credit that may be included as project costs are demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs incurred within two years prior to the date of application.

If the applicant for an initial operating costs tax credit applies after the commencement of the expenditure of initial operating costs, only initial operating costs incurred after the date of application shall be eligible for the tax credit.

Financing Gap Tax Credit

As described above, one tax credit available in the Food Desert Relief Tax Credit Program is based on the developer demonstrating the existence of a project financing gap in order to be eligible for financing gap tax credits. Section 38 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-306).

Therefore, applicant(s) must demonstrate that part of the total development cost, including reasonable and appropriate return on investment, 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 of eligible project costs, 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. 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 for this program, the Authority will, as typically done in other programs, 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.

In addition to the statutorily required labor harmony agreement, which is only triggered where the State has a proprietary interest in a supermarket or grocery store, applicants for the financing gap tax credit may also be eligible for a higher cap on their tax credit amount if the supermarket or grocery store has a labor harmony agreement (or a collective bargaining agreement in lieu of a labor harmony agreement). NJEDA will request a certification annually from the developer about continued compliance with the labor harmony agreement, if applicable. The award caps are detailed in Table 1 below.

Table 1: Financing Gap Tax Credit Awards

	No labor harmony agreement	**Labor harmony agreement**
First supermarket in FDC	30% of project costs	40% of project costs
Second supermarket in FDC	15% of project costs	20% of project costs

As described in Appendix B, any future selection of a third-party provider of analysis and advisory services, and any modifications to the hurdle rate model or alternate approaches to the analyzing reasonable and appropriate rate of return, will be brought to the Board for approval before any approvals under the financing gap tax credit within the Food Desert Relief Tax Credit Program.

Initial Operating Cost Tax Credit

The long-term sustainability of supermarkets and grocery stores in FDCs is an essential goal of the Food Desert Relief Tax Credit Program. To help ensure their success, an Initial Operating Cost tax credit is proposed to ensure supermarket and grocery stores will be viable as they build their business to become a long-term presence in these underserved communities.

The Initial Operating Cost Tax Credit will consider initial operating expenses of the store during the first three years of operation. In line with the purpose of the Act to correct a market failure by mitigating costs for new supermarkets and groceries stores in FDCs during their early years of operation, the rules allow operators of new stores to use tax credits to offset those costs, cover a shortfall between income and costs, and achieve a net operating profit acceptable to the Authority. The first supermarket in each FDC will be eligible to receive a tax credit equivalent to its initial operational shortfall, **or** its initial operating cost, whichever is less. The second supermarket in each FDC will be eligible to receive a tax credit equivalent to its initial operational shortfall, **or** 50 percent of its initial operating cost, whichever is less.

This means that the operator must demonstrate that the store would otherwise not be viable (that is, would result in a loss or in less than an acceptable profit) without the tax credit and supply financial documentation verifying such. In its initial feasibility study, the operator will be required to portray how the store will progress from a non-viable situation from years one through three, to being sustainable from that point on through at least year seven of operation (the end of the commitment period). Supermarkets and grocery stores are typically profitable after approximately seven years, according to industry experts.

Fiscal Protections

Letter of Support

As part of an application for the Food Desert Relief Tax Credit Program, an applicant must provide a letter of support from the governing body of the municipality or municipalities in which the project is located.

Profit Sharing with the State in the Event of Excess Return on Investment (Financing Gap Tax Credit)

The Authority will 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 size of the incentive award shall be reduced accordingly. 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 financing gap tax credit, at the end of the 3rd year of the eligibility the Authority will re-evaluate the project's returns 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. The evaluation at the end of the 3rd year would evaluate actual data for the years to that point and projected data for the remaining years. For any project with returns that exceed the reasonable and appropriate return on investment determined at board approval by more than 15 percent, the amount to be issued in the 4th year of the eligibility period will be reduced by 20 percent of the amount in excess of the reasonable and appropriate rate of return.

In addition, if the applicant sells, leases, or subleases the store during the eligibility or commitment period, the Authority shall re-evaluate the project's returns. If the applicant's final return on investment (based on the sale) exceeds the reasonable and appropriate return on investment determined at Board approval by more than 15 percent, the applicant shall pay 20 percent of the amount in excess of the reasonable and appropriate to the Authority to be deposited in the State General Fund.

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

Fiscal Protections in Operating Cost Tax Credit

The Authority will 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 amount of initial operating shortfall smaller than what was calculated at the time of approval, the size of the incentive award shall be reduced accordingly. Furthermore, if the actual financing results in the absence of an initial operating shortfall, then the award would be forfeited. This analysis would take place prior to the issuance of any tax credits.

Fees

The proposed rules include the fee structure outlined below. Prior to establishing the proposed fee structure for this program, Authority staff conducted an internal review to estimate what the administrative costs to the authority are likely to be to administer the Food Desert Relief Tax Credit Program. This review considered areas cross-organizationally where the Food Desert Relief Tax Credit 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 project (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). Proposed program fees are outlined in Table 2 below. Additionally, any third-party fee, such as for due diligence, shall be paid by the applicant. Fees are non-refundable except that the approval fee shall be refunded if the Authority does not approve an application.

Table 2: Food Desert Tax Credit Program Fees

Type of Fee	**Financing Gap Tax Credit**		**Initial Operating Costs Tax Credit**	
	Project Costs <$10MM	Project Costs ≥$10MM	Total Sales <$20MM	Total Sales ≥$20MM
Application Fee	$2,500	$10,000	$2,500	$5,000

Approval Fee	$5,000	$15,000	$5,000	$10,000
Issuance Fee	$5,000	$15,000	$2,500	$5,000
Servicing Fee (x7)	$2,500	$10,000	$2,500	$5,000
Transfer Fee	$5,000	$15,000	$5,000	$10,000
Minor Modification	$2,000	$5,000	$2,500	$5,000
Major Modification	$5,000	$15,000	$5,000	$10,000
Extension	$2,000	$7,500	$2,000	$4,000
Total (w/o modifications or transfer)	**$30,000**	**$110,000**	**$27,500**	**$55,000**

Post-Approval Process

The Food Desert Relief Tax Credit Program is a performance-based program. After approval, the awardee 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 awardee must submit certifications regarding eligibility requirements and conditions. The applicant must demonstrate compliance with eligibility criteria and, among other things, affirmative action, prevailing wage, and, as applicable, labor harmony agreement requirements.

Under the Program, as outlined in the proposed rules, 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:

- Supermarket or grocery store is disqualified as a SNAP or WIC vendor
- Project ceases to be a supermarket or grocery store
- Project is not operating on a full-time basis
- Project ceases to dedicate 10% of retail space to fresh and/or frozen produce
- Failure to hold an annual community listening session
- Failure to timely submit annual report or progress report absent extenuating circumstances and the written approval of the Authority
- Failure to be substantial good standing with DOL, DEP, or Treasury or, if a compliance issue exists, failure to enter into an agreement with the Department
- Failure to satisfy any labor harmony agreement requirement, if applicable
- Failure to meet prevailing wage requirements
- A material misrepresentation of fact in the application, incentive award agreement, project completion certification, annual report, or any related submissions
- Failure to comply with requirements that each contractor or subcontractor performing work at the project is a Public Works Registered Contractor, has not been debarred by the DOL, and possesses a tax clearance issued by the Division of Taxation in the Department of Treasury

Delegations of Authority

Staff is requesting the following delegations of authority to the CEO and/or his/her subdelegates in accordance with the Authority's Delegation Policy:

- Delegation to add the Food Desert Relief Tax Credit Program to existing delegated authority for certain minor administrative changes and for extensions to conditions of approval;
- Delegation to approve up to four six-month extensions to the dates by a supermarket or grocery store must be open for business to the public, and when the project must be completed and documents evidencing completion and satisfaction of eligibility requirements must be submitted; and
- Delegation to decline Food Desert Relief Tax Credit Program applications for non-discretionary reasons (e.g., when the application does not meet objective program requirements or when applicants do not submit additional documents or information necessary to complete the review of the application).

These delegations of authority are requested based on staff's experience with existing ERA programs and for administrative consistency.

Rulemaking Process

The ERA authorizes the Authority to promulgate special adoption rules for the Food Desert Relief Tax Credit Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 360 days. Section 41 of P.L. 2020, c. 156, as amended by 2021, c. 160 and P.L 2022, c. 47 (N.J.S.A. 34:1B-309). In addition, Staff proposes publishing concurrently proposed rules. Pursuant to the Administrative Procedure Act, P.L.1968, c.410 (N.J.S.A. 52:14B-1 et seq), a 60-day public comment period will apply.

Compliance with Executive Order 63

In accordance with Executive Order 63, signed by Governor Murphy, which established new regulatory principles to foster economic growth and government efficiency, the Authority issued a news release advising the public that a PowerPoint presentation explaining the Food Desert Relief Tax Credit Program rules, were available for public review and of the opportunity to provide informal comment.

The Authority staff convened two virtual public "Listening Sessions", which provided an overview of
the Food Desert Tax Credit Program and the opportunity for the public feedback, on:

- Thursday, January 5th, 2023, at 11:00 a.m.
- Friday, January 6th, 2023, at 3:00 p.m.

The sessions attracted 116 registrants, over 20 of whom provided feedback or asked questions during and after the presentations.

Additionally, members of the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website: https://www.njeda.com/economicrecoveryact/program-specific-feedback/ from January 5th through January 9th, 2023. Written feedback was provided by more than 30 members of the public.

Chief Compliance Officer Certification of Draft Rule Proposal

Pursuant to Section 101 of P.L. 2020, c. 156, as amended by 2021, c. 160 and P.L 2022, c. 47 (N.J.S.A. 34:1B-365), 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."

Jignasa Desai-McCleary has been designated the CCO. In that capacity, Ms. Desai-McCleary has reviewed the proposed rules and regulations for the Food Desert Relief Tax Credit 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.

Recommendation

The Members are asked to approve:

1) The attached rules for the Food Desert Relief Tax Credit Program and to authorize staff to (a) submit the special adopted new rules and concurrently proposed new rules for publication in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for publication 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 tax credit component of the Food Desert Relief Program, established by the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq).

3) Delegation of authority to the CEO and/or his/her subdelegates in accordance with the Authority's Delegation Policy to:
   - Add the Food Desert Relief Tax Credit Program to existing delegated authority for certain minor administrative changes and for extensions to conditions of approval;
   - Approve up to four six-month extensions to the dates by a supermarket or grocery store must be open for business to the public, and when the project must be completed and documents evidencing completion and satisfaction of eligibility requirements must be submitted; and
   - Decline Food Desert Relief Tax Credit Program applications for non-discretionary reasons (e.g., when the application does not meet objective program requirements or when applicants do not submit additional documents or information necessary to complete the review of the application).

Tim Sullivan, CEO

Prepared by**:**

Riley Edwards, Team Lead Economic Security Projects
Brian Todd, Senior Advisor Food Desert Relief

Attachments:
Appendix A – Proposed New Rules – Food Desert Relief Tax Credit Program
Appendix B – Reasonable and Appropriate Return on Investment

Appendix A – Proposed New Rules – Food Desert Relief Tax Credit Program

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Food Desert Relief Tax Credit Program

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-28

Specially Adopted and Concurrently Proposed New Rules Authorized: , 2023, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: ____________________, 2023.

Authority: P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2022, c. 47.

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

Concurrent Proposal Number: PRN 2023-___.

Effective Date:

Expiration Date:

Submit written comments by ___________________________, 2023, to:

Alyson Jones, Director of Legislative and Regulatory Affairs
New Jersey Economic Development Authority
PO Box 990
Trenton, NJ 08625-0990
alyson.jones@njeda.gov

The rules in this subchapter are specially adopted by the New Jersey Economic Development Authority and immediately effective to implement the provisions of the New Jersey Economic Recovery Act of 2020 (ERA), establishing the New Jersey Food Desert Relief Act (FDRA or Act), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c 47 (N.J.S.A. 34:1B-303). Under the Act, the Authority is authorized to administer several programs to increase access to nutritious foods in food desert communities. These rules are promulgated specifically for the administration of the Food Desert Relief Tax Credit Program to encourage the development and operation of supermarkets and grocery stores through the provision of tax credit awards.

The new rules became effective on 2023, upon acceptance for filing by the Office of Administrative Law. The specially adopted new rules shall be effective for a period not to exceed 360 days from the date of filing, that is, until , 2023. N.J.S.A. 34:1B-309.

Concurrently, the provisions of the new rules are being proposed for adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1, et seq. As the NJEDA has filed this notice of readoption before 2023, the expiration date is extended 180 days to , pursuant to N.J.S.A. 52:14B-5.1c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(g)) if filed on or before .

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

The specially adopted and concurrently proposed new rules follow.

Summary

As set forth at proposed N.J.A.C. 19:31-28, et seq., the Food Desert Relief Tax Credit Program is a program to provide tax credits to developers and operators of supermarkets and grocery stores located in EDA-designated, in accordance N.J.S.A. 34:1B-306, food desert communities (FDCs) for a portion of project costs or initial operating costs.

The Program focuses on attracting and retaining supermarkets and grocery stores as a component of community development, strengthening food security, and increasing access to nutritious foods. Because supermarket developers and operators are both needed to attract and retain supermarkets and grocery stores in New Jersey's food deserts, the FDRA establishes two types of tax credits:

- A Financing Gap Tax Credit for developers provides up to 40 percent of project costs for the first new supermarket in a FDC, capped at the project financing gap, and up to 20 percent of project costs for the second new supermarket in an FDC, capped at the project financing gap. This includes a reasonable and appropriate return on investment based on at least 20 percent of capital contributed by the developer (equity). Applicants for the financing gap tax credit may be eligible for a higher cap on their tax credit amount if the supermarket or grocery store has an agreement. A developer approved for a Financing Gap Tax Credit can take the tax credit over a period of four years (the eligibility period) and must remain in compliance with the Program for an additional three years (the commitment period).

- An Initial Operating Cost Tax Credit for supermarket operators provides for the lower of either the initial operating shortfall or 100 percent of initial operating costs for the first new supermarket in an FDC, and the lower of either the initial operating shortfall or 50 percent of initial operating costs for the second new supermarket in an FDC. An operator approved for an Initial Operating Cost Tax Credit can take the tax credit over a period of up to three years (the eligibility period) and must remain in compliance with the Program for an additional four years (the commitment period).

To be eligible for the Program, a project must meet various eligibility criteria at the time of application, including but not limited to:

- Demonstrating that the project is not economically feasible without the incentive award;
- Demonstrating that the new supermarket or grocery store will operate on a full-time basis during both the eligibility period and commitment period;
- Demonstrating that the new supermarket or grocery store will be economically and commercially viable by the last year of the commitment period;
- Project is located in an EDA-designated food desert community;
- Commitment to accept benefits from federal nutrition assistance programs, including, but not limited to: the Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC);
- Commitment to devote at least 10 percent of retail space to fresh and/or frozen fruits and vegetables; and
- Commitment to hold a community listening session at least once per year.

In addition to the eligibility requirements, the developer and the operator must also be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Division of Taxation within the Department of the Treasury, or have a corrective action plan. The Program rules also require that all projects that receive Food Desert Relief Tax Credits must comply with EDA's prevailing wage requirements at P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and N.J.A.C. 19:30-4. Applications for this Program will be accepted on a rolling basis.

The new rules implement the Food Desert Relief Tax Credit Program and do not establish the auctions, grants, and technical assistance programs created by N.J.S.A. 34:1B-306(d), -306(e), and -306(f).

The following paragraphs summarize the contents of each section of the new rules implementing the Food Desert Relief Tax Credit Program.

N.J.A.C. 19:31-28.1 sets forth the applicability and scope of the rules pursuant to the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Food Desert Relief Act of 2020 (FDRA or Act), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c 47, establishing the New Jersey Food Desert Relief Tax Credit Program (N.J.S.A. 34:1B-303).

N.J.A.C. 19:31-28.2 sets forth the definitions used in this subchapter.

N.J.A.C. 19:31-28.3 sets fort the eligibility criteria necessary for an applicant to be eligible to receive an incentive award.

N.J.A.C. 19:31-28.4 sets forth the application submission requirements for the financing gap tax credit and/or the operating tax credit. The requirements include, but are not limited to, a description of the project, the breakdown of retail space (e.g. a planogram), the applicant's experience with similar project(s), a copy of a market and/or feasibility study, the projected number of permanent part-time and full-time employees at the project, a list and status of all required permits and zoning board approvals, and a letter evidencing support for the project from the governing body of the municipality or municipalities in which the project is located.

N.J.A.C. 19:31-28.5 sets forth the program fees.

N.J.A.C. 19:31-28.6 sets forth the requirements of both the financing gap and the initial operating shortfall tax credits. For an application for a financing gap tax credit, the Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each applicant applying for an incentive award. For an application for an initial operating costs tax credit, the Authority shall review the proposed initial operating costs, and evaluate and validate the initial operating shortfall estimated by each applicant applying for an incentive award.

N.J.A.C. 19:31-28.7 sets forth the process of approving completed applications and tax credit amounts. The Authority's review will determine whether the applicant: complies with the eligibility criteria; satisfies the submission requirements; and provides adequate information for the subject application. Provided that the requirements are satisfied, the Authority shall allocate incentive awards to projects until the available tax credits are exhausted. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

N.J.A.C. 19:31-28.8 sets forth the requirements of the approval letter and the incentive award agreement. Upon receipt of a recommendation from the Authority staff on the 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. 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. Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the applicant and any co-applicant. The award of tax credits shall be conditioned on the applicant's and any co-applicant's compliance with the requirements of the agreement.

N.J.A.C. 19:31-28.9 sets forth the reporting requirements including the annual report. An applicant approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the privilege period for which the incentive award is issued and for the remainder of the commitment period, a report. 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.

N.J.A.C. 19:31-28.10 sets forth the basis for reduction, forfeiture, and recapture of tax credits such as, but not limited to, if, during the eligibility period, the applicant ceases to operate the project as a supermarket or grocery store, the supermarket or grocery store ceases to operate on a full-time basis, or the project ceases to meet the criteria the applicant and any co-applicant may forfeit or be subject to recapture for all or some of the incentive award.

N.J.A.C. 19:31-28.11 sets forth the application process for tax credit transfer certificate. An applicant 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 applicant or co-applicant being allowed any amount of the credit against the tax liability of the applicant. The Authority shall publish, on its Internet website, information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section.

N.J.A.C. 19:31-28.12 sets forth the process of assignment of rights of an incentive award agreement. An applicant who has entered into an incentive award agreement 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 award payable under the incentive award agreement, and the right to receive the incentive award, along with the rights and remedies provided to the applicant under the incentive award agreement.

N.J.A.C. 19:31-28.13 sets forth both the affirmative action and prevailing wage requirements of the Program. For a financing gap tax credit the Authority's affirmative action requirements will apply to the 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. For an initial operating costs tax credit, the Authority's affirmative action requirements and the prevailing wage requirements will apply to the project, including, but not limited to, construction contracts for work performed after the application is approved and construction contracts for work performed after the date of the application if included in the initial operating shortfall.

N.J.A.C. 19:31-28.14 sets forth the appeals process of the program. An applicant may appeal the Board's action by submitting in writing to the Authority 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., N.J.S.A. 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 et seq.

N.J.A.C. 19:31-28.15 sets forth the statutory requirement for the Authority to submit annual reports regarding the effectiveness of the program to the Governor, the State Treasurer, and, the Legislature.

N.J.S.A.19:31-28.16 sets forth the severability of this subchapter.

Social Impact

The specially adopted and concurrently proposed new rules, which establish the Food Desert

Relief Tax Credit Program to encourage investment into development and operation of supermarket and grocery stores in food desert communities, are intended to have a positive social impact on the State. The development of supermarkets and grocery stores in communities is a critical component of smart development that provides multiple social benefits, including increasing access to fresh and nutritious food. This leads to healthier communities and reduces the time that residents spend traveling outside their community for groceries. A September 2022 Feeding America study found that one in 13 New Jerseyans, including one in 11 children, struggle with hunger. Additionally, the rate of food insecurity among Black and Latino residents is even more pronounced than that of white residents – 17 percent versus three percent.

The Food Desert Relief Program is primarily focused on community development, and the development of supermarkets and grocery stores, thereby making a positive impact on neighborhoods and communities.

Economic Impact

The specially adopted and concurrently proposed new Food Desert Relief Tax Credit Program rules are intended to bolster the State's economy by stimulating new high-quality economic development. The Food Desert Relief Program, one of several community development tools 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. This program will provide investments focused into supporting the development and operation of supermarkets or grocery stores in food desert communities. A 2017 study from the Food Industry Association noted that the overall economic impact of New Jersey supermarkets was in excess of $30 billion. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of increased access to healthy, nutritious foods in food desert communities.

Federal Standards Statement

A Federal standards analysis is not required because the new rules are not subject to any Federal requirements or standards.

Jobs Impact

The NJEDA anticipates that the specially adopted and concurrently proposed Food Desert Relief Tax Credit Program rules will incentivize an indeterminate amount of increased job creation throughout New Jersey immediately and continuing throughout the operation of supported projects. With the core focus of encouraging investment in the development and operation of supermarkets or grocery stores in food desert communities, the Food Desert Relief Tax Credit Program will result in job creation needed to build and support projects approved thereunder. This includes the creation of jobs subject to prevailing wage rates needed to perform construction services on projects, as well as permanent full-time jobs tied to the completed project. In 2017, the supermarket industry in New Jersey employed over 85,000 workers, an average of about 34 per store, according to U.S. Census data. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the Food Desert Relief Program; however, the proposed new rules provide transparency measures, including annual reports, to ensure regular reporting of the number of jobs created.

Agriculture Industry Impact

The specially adopted and concurrently proposed new rules will have minimal impact on the agriculture industry in New Jersey. The impacts to the agricultural industry would be related to food items bought and subsequently offered for sale at a supermarket or grocery store participating in the Food Desert Relief Tax Credit Program.

Regulatory Flexibility Statement

The specially adopted and concurrently proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Generally, a small business would be required to comply with the NJEDA's standard online application process; however, any costs will be minimal and 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 specially adopted and concurrently proposed new rules provide features that allow approved applicants to use third-party, independent certified public accounting firms to support the tax credit certification process. This is meant to improve regulatory compliance processes for all businesses and the Authority.

Housing Affordability Impact Analysis

The specially adopted and concurrently proposed new rules may have indirect effects on the affordability of housing in New Jersey and may evoke a change in the average costs associated with housing units, including multi-family rental housing and for sale housing in the State.

Smart Growth Development Impact Analysis

The specially adopted and concurrently proposed new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that the proposed amendments and new rules would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, under the State Development and Redevelopment Plan because the specailly adopted and concurrently proposed new rules pertain to tax credit incentives of the Food Desert Relief Tax Credit Program.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The specially adopted and concurrently 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 proposed new rules follows:

SUBCHAPTER 28. FOOD DESERT RELIEF TAX CREDIT PROGRAM

19:31-28.1 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 Food Desert Relief Tax Credit Program (N.J.S.A. 34:1B-303 et seq.). Under the Act, the Authority is authorized to administer several programs to increase access to nutritious foods in food desert communities. These rules are promulgated for the administration of a tax credit program to encourage the development and operation of supermarkets and grocery stores through the provision of tax credit awards. The Authority Board may approve the award of a tax credit award to an applicant upon application to the Authority pursuant to N.J.S.A. 4:1B-306. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at N.J.S.A. 34:1B-362.

19:31-28.2 Definitions

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

"Act" means the New Jersey Food Desert Relief Act, N.J.S.A. 34:1B-303 through -310.

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the applicant. 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).

“Applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions of the Act under N.J.S.A. 34:1B-307, including, but not limited to, a lender that completes a project, operates a project, or completes and operates a project.

"Applicant contributed capital" or “equity” means capital contributed by the applicant 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 applicant owns the project site, the cost of infrastructure improvements in the public right of way, and any other investment by the applicant in the project deemed acceptable by the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, and New Market Tax Credit, 26 U.S.C. § 45D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. If the supermarket or grocery store is a component of a facility, the equity contributed by the applicant to the development of the facility may be considered as equity for the project only to the extent of the supermarket or grocery store’s pro-rata share, based on square footage, of the facility.

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

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

"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. 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.

“Commitment period” means a period that commences after the eligibility period and together with the eligibility period equals seven years.

"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 (26 U.S.C. § 501);

2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated customers or directly support the project or operations of the supermarket or grocery store; and

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

"Director" means the Director of the Division of Taxation in the Department of the Treasury.

"Eligibility period" means the period of 4 years for a financing gap tax credit award and up to 3 years for an initial operating costs tax credit award during which an applicant or a co-applicant, if applicable, may claim a tax credit under the program.

“Financing gap tax credit” means the tax credit awarded pursuant to N.J.A.C. 19:31-28.7 to mitigate a project financing gap.

"First or second new supermarket or grocery store" means the first and second new supermarket or grocery store within each food desert community to be approved for tax credits under the Program by the Authority, except that a supermarket or grocery store may lose the designation of first or second new supermarket or grocery store if the project does not meet milestones designated by the Authority in a timely manner, as determined by the Authority.

“Food desert community” means a physically contiguous area in the State in which residents have limited access to nutritious foods, such as fresh fruits and vegetables, and which has been designated as a food desert community pursuant to N.J.S.A. 34:1B-306, a list of which is located at NJEDA.com.

"Incentive award" means an award of tax credits to an applicant or a co-applicant, if applicable, to reimburse an applicant or a co-applicant, if applicable, for all or a portion of the project financing gap or initial operating shortfall pursuant to the provisions of the Act and this subchapter.

"Incentive award agreement" means the contract executed between an applicant, any co-applicant, if applicable, and the Authority pursuant to N.J.S.A. 34:1B-307, which sets forth the terms and conditions under which the applicant and co-applicant, if applicable, may receive the incentive award.

"Infrastructure improvements in the public right-of-way" means public structures or improvements, including public electric vehicle charging stations, located in the public right-of-way that are located within a project area and public utilities such as water, sewer, electric, and gas, either of which are dedicated to or owned by a governmental body or agency upon completion of the improvement, or any required payment in lieu of the structures, improvements or projects, or any costs of remediation associated with the structures, improvements or projects, and that are determined by the Authority, in consultation with applicable State agencies, to be consistent with and in furtherance of State public infrastructure objectives and initiatives.

“Initial operating costs” means expenditures by the applicant for the operation of a first or second new supermarket or grocery store within the first three years after the opening of the supermarket or grocery store for business to the public, but within a standard range based upon industry standards, as determined by the Authority. Initial operating costs shall not include inventory, incentive consultant fees, or Authority fees. Initial operating costs may include expenditures for the operation of a first or second new supermarket or grocery store incurred within one month prior to the opening of the supermarket or grocery store for business to the public. Initial operating costs may additionally include expenditures by an affiliate of the applicant for costs incurred at the site of the project.

“Initial operating shortfall” means on an annual basis, initial operating costs, including a net operating profit acceptable to the Authority, reduced by the income to the applicant associated with the operation of the new supermarket or grocery store after cost of goods sold, including, but not limited to, sales income and income from the supermarket or grocery store tenants, subtenant, and licensees. If the result is negative, the initial operating shortfall shall be $0.00.

“Initial operating costs tax credit” means the tax credit awarded pursuant to N.J.A.C. 19:31-28.8 to mitigate the initial operating costs of a new supermarket or grocery store.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a supermarket or grocery store 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 a supermarket or grocery store, 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 at a supermarket or grocery store 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 that have requested to be on the list and that the Commissioner of Labor and Workforce Development has determined represent substantial numbers of supermarket or grocery store employees in the State.

"Net operating profit" means pre-income tax operating profit.

"New supermarket or grocery store" means a supermarket or grocery store that commenced new construction of the building or commenced rehabilitation of at least 75 percent of its square footage, after January 7, 2021, the effective date of the Act. For purposes of this definition, rehabilitation of at least 75 percent of the square footage of a supermarket or grocery store means the repair or replacement of two or more major systems, including, but not limited to: (a) roof, (b) plumbing, (c) heating and cooling (including refrigeration), (d) electrical, (e) load bearing structural systems, or (f) weatherization (e.g. solar panels, siding, replacement windows, and doors), where the costs of such repair or replacement, exclusive of soft costs that exceed 20 percent of the total costs of repair and replacement, exceeds 60 percent of the fair market value of a rehabilitated supermarket or grocery store after such repair and replacement. and the rehabilitation affects at least 75 percent of square footage of the supermarket or grocery store.

"Opening of the supermarket or grocery store for business to the public" means the date a new supermarket or grocery store that has (a) received a temporary certificate of occupancy and all certifications from State and local health departments required to operate, met the requirements of the incentive award, and (c) starts operating the supermarket or grocery store on a full-time basis.

"Operating the supermarket or grocery store on a full-time basis" or "operating on a full-time basis" means operating the new supermarket or grocery store at least 60 hours per week every week of the year, absent unavoidable closures or other circumstances approved by the Authority.

"Program" means the New Jersey Food Desert Relief Tax Credit Program established by the Act and administered pursuant to this subchapter.

"Project" means, pursuant to the approval letter described in N.J.A.C. 19:31-28.8: (a) for a financing gap tax credit, the development and opening of the supermarket or grocery store for business to the public or (b) for an initial operating cost tax credit, owning, leasing, or subleasing the first or second new supermarket or grocery store and operating the supermarket or grocery store on a full-time basis.

"Project area" means land or lands on which the new supermarket or grocery store is located and land or lands adjacent and necessary to the operation of the new supermarket or grocery store, including but not limited to parking lots and loading docks.

"Project cost" means the costs incurred in connection with the establishment of a supermarket or grocery store within a food desert community by the applicant until the opening of the supermarket or grocery store for business to the public and the certification of costs pursuant to N.J.A.C. 19:28-8, 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, and any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. For the purposes of this subchapter, ancillary infrastructure projects may include off-site self-contained temperature-controlled lockers located in a food desert community that is exclusively serviced from the supermarket or grocery store. Project cost shall include otherwise qualifying costs incurred by an affiliate of the applicant. The fees paid by the applicant or a co-applicant, if applicable, to the Authority associated with the application or administration of an incentive award shall not constitute a project cost. Project costs shall not include the cost of acquisition of land. If the supermarket or grocery store is a component of a facility, the otherwise qualifying costs of any shared structures or improvements, including but not limited to, foundations or parking lots, may be included as project cost only to the extent of the supermarket or grocery store's pro-rata share, based on square footage, of the facility.

"Project financing gap" means the part of the total project costs, 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, applicant contributed capital, which shall not be less than 20 percent of the total project cost, which may include the property value of any existing land and improvements in the project area owned or controlled by the applicant, and the cost of infrastructure improvements in the public right-of-way, and investor or financial entity capital or loans for which the applicant, 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.

"Property value" means 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.

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment equal to the cost of the investment. 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 and grants.

“Retail space” means the areas of the supermarket or grocery store where customers are allowed to find and purchase items.

"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, pre-opening costs, 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, commissions and fees to the applicant, project management, or other similar costs.

"Square feet" or “square footage” means the sum of all areas on all floors of an enclosed retail outlet 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.

"Supermarket or grocery store" means a retail outlet with a lease or ownership of at least 16,000 square feet, of which at least 80 percent is occupied by food and related products, which products shall be based on industry standards, as determined by the Authority, except that the food and related products shall not include alcoholic beverages and products related to the consumption of such beverages. The square footage of a supermarket or grocery store shall include any space that the supermarket or grocery store subleases, licenses, or otherwise allows another entity to occupy.

"Tax credit" means credit against a tax liability pursuant to section 1 of P.L. 1950, c. 231 (N.J.S.A. 17:32-15), N.J.S.A. 17B:23-5, section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5, and sections 2 and 3 of P.L. 1945, c. 132 (N.J.S.A. 54:18A-2 and -3.

"Total development cost" means any and all costs incurred for and in connection with the project by the applicant and any affiliate of the applicant until the opening of the supermarket or grocery store for business to the public, 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. If the supermarket or grocery store is a component of a facility, the costs of any shared structures or improvements, including but not limited to, foundations or parking lots, may be included as total development cost only to the extent of the supermarket or grocery store’s pro-rata share, based on square footage, of the facility.

“Unavoidable closures” means any closure due to weather, strikes, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty, or other causes similarly beyond the control of the operator of the supermarket or grocery store as determined in the sole discretion of the Authority.

19:31-28.3 Eligibility criteria

(a) An applicant and co-applicant, if applicable, shall be eligible to receive an incentive award for a project only if the applicant demonstrates to the Authority at the time of application that:

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

2. With the incentive award, the new supermarket or grocery store will operate on a full-time basis during both the eligibility period and commitment period, and will be economically and commercially viable by the last year of the commitment period;

3. The application is for a project located in a food desert community;

4. If the applicant is seeking a financing gap tax credit:

i. A project financing gap exists; and

ii. Except for demolition and site remediation activities, the applicant has not commenced any construction at the site of the project prior to submitting an application, unless the Authority determines that the project would not be completed without the award.

5. If the applicant is seeking an initial operating costs tax credit, an initial operating shortfall will exist.

6. The applicant will comply with the prevailing wage and affirmative action requirements in N.J.A.C. 19:31-28.13.

7. The supermarket or grocery store shall:

i. Accept benefits from federal nutrition assistance programs, including, but not limited to: Supplemental Nutrition Assistance Program (SNAP) and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC).

ii. Maintain at least 10 percent of retail space dedicated to fresh and/or frozen fruits and vegetables.

iii. Meet the definition of new supermarket or grocery store.

iv. Hold at least one public listening session annually in the food dessert community in which the supermarket or grocery store is located about the supermarket or grocery store’s product offerings and operations. Notice of the listening session shall be prominently displayed at the entrance of the supermarket or grocery store and provided to the Authority at least seven days in advance of the meeting. The applicant shall keep reasonably comprehensible minutes of all its listening sessions showing the time and place, the subjects discussed, and any public comment, which minutes shall be promptly made available to the public.

8. The opening of the supermarket or grocery store for business to the public shall be within the earlier of six months of the receipt of a temporary certificate of occupancy for the supermarket or grocery store or three years of executing the incentive award agreement corresponding to the project. The Authority may approve six-month extensions if the applicant is using best efforts, with all due diligence, to proceed with the project.

9. The 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 N.J.S.A. 54:50-39.

10. If the application includes a co-applicant, the applicant and co-applicant must 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 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 customers or support the project or operation of the supermarket or grocery store; and

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

(b) The only costs incurred prior to application for a financing gap tax credit that may be included as project costs are demolition, site remediation, and acquisition of buildings or other site improvements not including any land acquisition costs incurred within two years prior to the date of application.

(c) The incentive award for an initial operating costs tax credit shall not include any initial operating shortfall incurred prior to the date of the application.

(d) To determine that the project has a project financing gap, the applicant shall demonstrate that the project has applicant contributed capital of at least 20 percent of the total development cost.

(e) To demonstrate that the project will have an initial operating shortfall, the applicant shall submit a feasibility study(s) acceptable to the Authority that demonstrates that (i) an initial operating shortfall is projected during the eligibility period, (ii) the initial operating costs tax credit will be sufficient to fill the initial operating shortfall, and (iii) the supermarket or grocery store is projected to operate on a full-time basis during both the eligibility period and commitment period and will be economically and commercially viable by the last year of the commitment period.

19:31-28.4 Application submission requirements

(a) Each application to the Authority made by an applicant 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. A description of the project, including a breakdown of uses and related square footage and costs, the breakdown of retail space (e.g. a planogram), and the applicant's experience with similar project(s);

9. For the financing gap tax credit:

i. The total projected number of construction employees and permanent full-time and part-time employees at the project;

ii. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the third party’s position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period and commitment period;

iii. An anticipated construction schedule;

iv. Financial information of the project 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 the applicant contributed capital, net margin, cash on cash yield, and a certification from the chief executive officer or equivalent officer of the applicant, 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. 19:31-28.3(a)2;

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

vii. 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 project, or will be required to be issued to construct the project and to open the supermarket or grocery store to the public, pending resolution of financing issues; and

viii. A binding agreement between the applicant and the operator of the new supermarket or grocery store regarding the operation of the new supermarket or grocery store;

10. For the initial operating costs tax credit:

i. The total projected number of permanent part-time and full-time employees at the project;

ii. A copy of a market and/or feasibility study for the proposed operation of the project by an independent third party, which must include the third party's position regarding the marketability, and underwriting of the project and satisfy the criteria set forth at N.J.A.C. 19:31-28.3(c);

iii. Financial information for the project, including, but not limited to, projected income statement, any federal, State or local financial assistance for the project, proposed terms of financing, projected net operating profit, and any other documentation demonstrating economic and commercial viability;

iv. A binding agreement between the prospective landlord and the applicant for the new supermarket or grocery store at the site of the project and an acknowledgment by the prospective landlord that the applicant is applying for an incentive award for the supermarket or grocery store, which may include, but is not limited to, a letter of intent and a verification by the prospective landlord of proposed rent; and

v. 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 project, or will be required to be issued to operate the supermarket or grocery store on a full-time basis;

11. A list of all of the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury permits and approvals or obligations and responsibilities with which the applicant is associated 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 applicant shall also submit a written certification by the chief executive officer or equivalent officer of the applicant, stating that the applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-28.7(b) to be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury;

12. A certification that any contractors or subcontractors that will perform work at the project are registered as required by the Public Works Contractor Registration Act, (N.J.S.A. 34:11-56.48 et seq.), have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the New Jersey Department of the Treasury;

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

14. 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;

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

16. A list of all the development subsidies, as defined at N.J.S.A. 52:39-3, that the applicant 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;

17. Information required by the Authority to evaluate and determine the eligibility of the application pursuant to N.J.A.C. 19:31-28.3(a)(7); and

18. 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 applicant capacity.

(b) If the applicant 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 New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury permits andapprovals or obligations and responsibilities with which the co-applicant is associated , or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or has 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. 19:31-28.7(b) to be in substantial good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department ofEnvironmental Protection, and the New Jersey 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 N.J.S.A. 54:50-39;

12. A list of all the development subsidies, as defined at N.J.S.A. 52:39-3, that the co-applicant is requesting or receiving for the 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 applicant, including a description of: how the co-applicant will take an active role in the project, the capital, and the real property or services related to the project that the co-applicant will provide that directly affect and serve the anticipated customers or directly support the project or operations of the supermarket or grocery store;

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

(c) Applications for a financing gap tax credit and an initial operating costs tax credit that relate to the same supermarket or grocery store must include the same financial information to the Authority. The Authority shall consider applications for a financing gap tax credit and an initial operating costs tax credit related to the same supermarket or grocery store at the same time. The Authority shall not approve one type of tax credit to a supermarket or grocery store for which the Authority previously approved the other type of tax credit.

(d) The Authority shall not consider an application for a project unless the applicant submits with the application a letter evidencing support for the project from the governing body of the municipality or municipalities in which the project is located.

(e) The Authority may, in its sole discretion, consider two or more applications for the same type of tax credits as one application for one project based on factors including, but not limited to, the location of the projects, the types of uses proposed, and the applicants' financing and operational plans.

(f) If circumstances require an applicant to amend its application to the Authority, the chief executive officer or equivalent officer of the applicant, shall certify to the Authority that the information provided in its amended application is true and correct under the penalty of perjury.

19:31-28.5 Fees

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

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $2,500. For other financing gap tax credit projects, the fee shall be $10,000.

2. For an initial operating costs tax credit with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $2,500. For other initial operating costs tax credit projects, the fee shall be $5,000.

(b) An applicant 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 applicant 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 a financing gap tax credit with a project cost of less than $10 million, the fee shall be $5,000. For other financing gap tax credit projects, the fee shall be $15,000.

2. For an initial operating costs tax credit with with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $5,000. For other initial operating costs tax credit projects, the fee shall be $10,000.

(d) The applicant shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. The fee shall be as follows:

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $5,000. For other financing gap tax credit projects, the fee shall be $15,000.

2. For an initial operating costs tax credit with with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $2,500. For other initial operating costs tax credit projects, the fee shall be $5,000.

(e) A applicant 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 applicant has met the eligibility requirements of the program for the respective project, and for the duration of the eligibility period and the commitment period. The annual servicing fee shall be paid to the Authority by the applicant at the time the applicant submits its annual report, as follows:

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $2,500. For other financing gap tax credit projects, the fee shall be $10,000.

2. For an initial operating costs tax credit with annual total sales in the tax accounting or privilege period of less than $20 million, the fee shall be $2,500. For other initial operating costs tax credit projects, the fee shall be $5,000.

(f) A applicant applying for a tax credit transfer certificate, permission to pledge a tax credit transfer certificate purchase contract as collateral, or to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder shall pay to the Authority a fee, as follows:

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $5,000. For other financing gap tax credit projects, the fee shall be $15,000.

2. For an initial operating costs tax credit with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $5,000. For other initial operating costs tax credit projects, the fee shall be $10,000.

(g) An applicant shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit as follows:

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $2,000 for each request for any minor administrative changes, additions, or modifications to the tax credit and $5,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other financing gap tax credit projects, the fee shall be $5,000 for each request for any minor administrative changes, additions, or modifications to the tax credit and $15,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

2. For an initial operating costs tax credit with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $2,500 for each request for any minor administrative changes, additions, or modifications to the tax credit and $5,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other initial operating costs tax credit projects, the fee shall be $5,000 for each request for any minor administrative changes, additions, or modifications to the tax credit and $10,000 for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for six-month extensions to the date by which the applicant shall complete the project pursuant to N.J.A.C. 19:31-28.3(a)8 and submit the satisfactory evidence with respect to the eligibility requirements of the program pursuant to N.J.A.C. 19:31-28.9(f), as follows:

1. For a financing gap tax credit with a project cost of less than $10 million, the fee shall be $2,000. For other financing gap tax credit projects, the fee shall be $7,500.

2. For an initial operating costs tax credit with average annual total sales over the eligibility period and the commitment period of less than $20 million, the fee shall be $2,000. For other initial operating costs tax credit projects, the fee shall be $4,000.

19:31-28.6 Financing gap and initial operating shortfall

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

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

2. The Authority shall determine if the applicant's submitted financial information for the project is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap analysis, 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 applicant. If the supermarket or grocery store is a component of a facility, the Authority shall additionally consider the reasonable and appropriate return on investment of the facility and may adjust the reasonable and appropriate return on investment of the supermarket or grocery store so that together the supermarket or grocery store and the facility yield a reasonable and appropriate return on investment.

(b) For an application for an initial operating costs tax credit, the Authority shall review the proposed initial operating costs, and evaluate and validate the initial operating shortfall estimated by each applicant applying for an incentive award, as follows:

1. The Authority shall evaluate the proposed initial operating costs against reasonable market costs to operate, and components of, the project against reasonable market costs and components of comparable projects. The applicant shall also provide written verification from the landlord, if applicable, about the proposed rent;

2. The Authority shall determine if the applicant's submitted financial information for the project is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the initial operating shortfall analysis, including the reasonable and appropriate net operating profit;

3. The initial tax credit shortfall analysis shall include, but not be limited to, an evaluation of the initial operating costs, proposed rental rates paid to the landlord, proposed rental rates or fees paid by subtenants or licensees, and the reasonable and appropriate net operating profit.

19:31-28.7 Approval of completed application; tax credit amounts

(a) 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 Authority’s 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 an application for tax credits:

1. The Authority shall confirm with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of Environmental Protection, and the New Jersey Department of the Treasury that the applicant and any co-applicant, if applicable, is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the applicant or any co-applicant, has entered into an agreement with the respective department, which may include a corrective action plan, as applicable.

i. Substantial good standing shall be determined by each department and mean, at a minimum, that the applicant 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 applicant 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 applicant and any co-applicant.

3. Any contractors or subcontractors that will perform work at the project shall be registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on public works contracts in the State and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to projects until the available tax credits are exhausted. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) For a financing gap tax credit, and in accordance with an incentive award agreement, beginning upon completion of the capital investment, the receipt of the temporary certificate of occupancy or upon any other event evidencing completion of construction as set forth in the incentive award agreement, and the opening of the supermarket or grocery store for business to the public, an applicant shall be allowed a total financing gap tax credit under this program to reimburse all or a portion of the project financing gap as follows:

1. For a project with supermarket or grocery store that has a labor harmony agreement, not to exceed 40 percent of project costs for the first new supermarket or grocery store and 20 percent of project costs for the second new supermarket or grocery store. In lieu of a labor harmony agreement the applicant may provide a collective bargaining agreement for the supermarket or grocery store.

2. For a project in which the supermarket or grocery store does not have a labor harmony agreement, not to exceed 30 percent of project costs for the first new supermarket or grocery store and 15 percent of project costs for the second new supermarket or grocery store.

(e) For an initial operating costs tax credit, and in accordance with an incentive award agreement, upon receipt of evidence that the applicant is operating the supermarket or grocery store on a full-time basis, an applicant shall be allowed a total initial operating costs tax credit under this program to reimburse all or a portion of the initial operating shortfall for the eligibity period that shall not exceed 100 percent of initial operating costs for the first new supermarket or grocery store and 50 percent of initial operating costs for the second new supermarket or grocery store.

(f) The maximum amount of financing gap tax credits available to an applicant 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.

(g) The maximum amount of initial operating cost tax credits available to an applicant to apply annually shall be the lesser of the actual annual initial operating shortfall and the amount of tax credit not applied previously during the eligibility period.

19:31-28.8 Approval letter; incentive award agreement

(a) Upon receipt of a recommendation from the Authority staff on the 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, and promptly notify the applicant, any co-applicant, and the Director of the Division of Taxation in the New Jersey Department of the Treasury 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, N.J.S.A. 34:1B-5.1 and affirmative action requirements, N.J.S.A. 34:1B-5.4 as set forth in N.J.A.C. 19:31-

28.13, and that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. For a financing gap tax credit the approval letter shall:

i. Require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the applicant or an affiliate of the applicant, a copy of the site plan approval, a copy of an executed agreement with the operator of the supermarket or grocery store at the site of the project, and a copy of all required permits and planning and zoning approvals and permits; and

ii. Provide estimated dates of completion and for the opening of the supermarket or grocery store for business to the public and include a requirement for periodic progress reports.

3. For an initial operating costs tax credit the approval letter shall:

i. Require documentation evidencing project and financing approvals, including the submittal of executed financing commitments, documents that evidence site control by the applicant or an affiliate of the applicant, a copy of all executed leases, licenses, or other occupancy agreements executed by the applicant for space at the supermarket or grocery store, and a copy of all required permits; and

ii. Provide the estimated date of the opening of the supermarket or grocery store for business to the public and include a requirement for periodic progress reports.

4. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority’s approval of the tax credits shall expire if the appliant or co-applicant, as applicable, does not submit the documentation required in subparagraphs (a)(2) and (a)(3) above within one year after approval of the application.

5. If the Authority does not receive a periodic progress report report when required, or if the progress report demonstrates unsatisfactory progress or inadequate information, then the Authority may rescind the commitment of the incentive award. If the Authority rescinds an incentive award or the approval of an award expires, the Authority may designate another new supermarket or grocery store as the first or second new supermarket or grocery store.

6. If the terms of the financing 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 or the amount of initial operating shortfall and reduce the size of the incentive award accordingly or may rescind the commitment of the incentive award.

(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 applicant and any co-applicant. The award of tax credits shall be conditioned on the applicant’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 project;

2. The duration of the eligibility period and the commitment period;

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

4. A requirement that the supermarket or grocery store shall not cease operating on a full-time basis during the eligibility period and the commitment period;

5. A method for the applicant to certify that it has met the project costs or initial operating costs and other eligibility requirements of the program;

6. A requirement for the applicant to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion reporting the project’s financial performance. For the initial operating costs tax credit, the financial statements during the eligibility period shall list initial operating costs on an income statement approved by the Authority;

8. Representations that the applicant and any co-applicants are in substantial good standing and that the project will comply with all applicable laws, including, but not limited to, prevailing wage requirements as set forth in N.J.A.C. 19:31-28.13(b) and (c), affirmative action requirements as set forth in N.J.A.C. 19:31-28.13(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;

9. A provision acknowledging the Authority’s right to confirm with the New Jersey Department of Environmental Protection, the New Jersey Department of Labor and Workforce Development, and the New Jersey Department of the Treasury, as set forth at N.J.A.C. 19:31-28.7(b)1, that the applicant and any co-applicant is in substantial good standing or has entered into an agreement with the respective department that includes a corrective action plan, as applicable;

10. A provision providing that if the applicant and any co-applicant is not in substantial good standing with the New Jersey Department of Environmental Protection, the New Jersey Department of Labor and Workforce Development, and the New Jersey Department of the Treasury, and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-28.7(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 applicant and any co-applicant may forfeit or the Authority may recapture tax credits in any year or in proportion to any year in which the applicant and any co-applicant is neither in substantial good standing with each

department nor has entered into a corrective action;

11. A requirement that the applicant shall confirm that each contractor or subcontractor performing work at the project: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., has not been debarred by the New Jersey 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 New Jersey Department of the Treasury. The incentive award agreement shall also include a provision that the Authority may suspend the tax credits if the applicant and any co-applicant is not in compliance with this requirement, and if the suspension continues for two years, then, at the Authority's sole option, the applicant and any co-applicant may forfeit or the Authority may recapture the tax credits for those years or in proportion to those years;

12. A provision permitting an audit of evidence and documentation of the applicant and any co-applicant supporting the certifications pursuant to (e) below, and the annual reports pursuant to N.J.A.C. 19:31-28.9, as the Authority deems necessary, including, but not limited to, site visits and verification with the United States Department of Agriculture Food and Nutrition Service;

13. Reporting requirements pursuant to N.J.A.C. 19:31-28.9;

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

15. A provision establishing the conditions under which the Authority, the applicant and any co-applicant, or all parties, may terminate the agreement;

16. A provision allowing the Authority to extend, in individual cases, the deadline for any annual report, project completion certification, or the opening the supermarket or grocery store for business to the public;

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

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

19. Default and remedies, including, but not limited to, a default if an applicant made a material misrepresentation on its application.

20. For a financing gap tax credit, the incentive award shall additionally specify and include:

i. 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;

ii. A description of the temporary certificate of occupancy permit, or other event evidencing completion of construction, and the opening of the supermarket or grocery store for business to the public, that begins the eligibility period;

iii. Milestones for the project, which shall include the estimated dates of commencement and completion of the project, and the opening of the supermarket or grocery store for business to the public, and a provision that the Authority may rescind the commitment of the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement and may designate another new supermarket or grocery store as the first or second new supermarket or grocery store;

iv. A provision to verify the project financing gap at the time the applicant provides executed permanent financing commitments to the Authority and a verification of the applicant's projected cash flow at the time the applicant 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 project financing gap that is smaller than the project financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the applicant 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 applicant shall forfeit the incentive award;

v. A provision requiring that at the conclusion of the third year of the eligibility period, the Authority shall evaluate the applicant's reasonable and appropriate return on investment and compare that reasonable and appropriate return on investment to the reasonable and appropriate return at the time of Board approval. If the actual return on investment exceeds the reasonable and appropriate return on investment at the time of Board approval by more than 15 percent, the Authority shall reduce the amount of tax credits allowed in the certificate of compliance for the fourth year by 20 percent of the amount in excess of the reasonable and appropriate return on investment to the Authority; and

vi. A provision stating that if the applicant sells, leases, or subleases the supermarket or grocery store during the eligibility period or the commitment period, the Authority shall determine if the applicant’s return on investment exceeded the reasonable and appropriate return on investment determined at Board approval. The applicant shall provide to the Authority any information that the Authority determines is necessary to re-evaluate the applicant’s return on investment, including, but not limited to, the purchase price. If the applicant’s final return on investment exceeds the reasonable and appropriate return on investment determined at Board approval by more than 15 percent, the applicant shall pay 20 percent of the amount of the excess to the Authority, and the Authority shall deposit such funds in the State General Fund; and

21. For an initial operating cost tax credit, the incentive award agreement shall additionally specify and include:

i. A detailed description of the operating years for which the tax credit is applicable;

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

iii. The opening of the supermarket or grocery store for business to the public that begins the eligibility period; and

iv. Milestones for the project, which shall include the estimated date of commencement of construction if applicable, the estimated date of commencement and completion of any tenant improvements undertaken by the applicant, the estimated date of the opening of the supermarket or grocery store to the public, and a provision that the Authority may rescind the commitment of the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement and may designate another new supermarket or grocery store as the first or second new supermarket or grocery store.

(d) A labor harmony agreement shall be required if the State has a proprietary interest in a supermarket or grocery store and the agreement shall remain in effect for as long as the State acts as a market participant in the project. The provisions of this paragraph shall apply to a supermarket or grocery store that will have more than 10 full-time employees. A labor harmony agreement shall not be required if the authority determines that the supermarket or grocery store would not be feasible 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) An applicant shall submit, prior to the issuance of tax credits under the incentive award agreement, satisfactory evidence of the opening of the supermarket or grocery store for business to the public and the program eligibility requirements, which shall include, but not be limited to, the documents in this subsection:

1. Evidence that the supermarket or grocery store meets the definition of new supermarket or grocery store and the supermarket or grocery store is operating on a full-time basis, which may include, but not be limited to, access to reports from an independent scanning data company and, if applicable, a certification from a licensed engineer that the major systems, as approved by the Authority, have been repaired or replaced for the supermarket to satisfy the definition of a new supermarket or grocery store;

2. A floor plan identifying the actual uses of the supermarket or grocery store, including square footage for any alcoholic beverages and products related to the consumption of such beverages, all retail space (e.g., planogram), and the retail space dedicated to fresh and/or frozen fruits and vegetables;

3. A copy of a permit from the Supplemental Nutrition Assistance Program (SNAP) and an executed vendor agreement from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) within 90 days of the opening the supermarket or grocery store for business

to the public or evidence of applications for SNAP and WIC retailer authorization made prior to the opening of the supermarket or grocery store for business to the public;

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

5. A certification by the chief executive officer or equivalent officer of the applicant that the information provided pursuant to this subsection is true and correct under the penalty of perjury;

6**.** If the Authority approval included a co-applicant, a certification that the participation agreement between the applicant and the co-applicant remains in effect and is not in default;

7. Copies of all government permits and approvals required to open the supermarket or grocery store for business to the public and for operating the supermarket or grocery store on a full-time basis;

8. If applicable, satisfactory evidence that the applicant complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-28.8(d) or as required for the tax credit under N.J.A.C. 19:31-28.7(d)1. For a financing gap tax credit award calculated as set forth in N.J.A.C. 19:31-28.7(d)1, if the applicant does not provide satisfactory evidence of the executed agreement, the incentive award shall be reduced to the amount set forth in N.J.A.C. 19:31-28.7(d)2; and

9. For a financing gap tax credit, the documents shall additionally include:

i. Evidence of a temporary certificate of occupancy or other event evidencing completion of construction, and the opening of the supermarket or grocery store for business to the public that begins the eligibility period indicated in the incentive award agreement;

ii. 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 applicable, the certification shall include the costs of the repair or replacement of the major systems, as approved by the Authority, for the supermarket or grocery store to satisfy the definition of a new supermarket or grocery store. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the applicant the list of qualified certified public accountants; provided, however, the applicant may select a certified public accountant that is independent to the applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the applicant demonstrates an extenuating circumstance prohibiting the applicant 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 applicant;

and

iii. Verification of the applicant's projected cash flow at the time of the submission of the documents.

10. For an initial operating costs tax credit, evidence of continued financing approvals, including the submittal of executed financing commitments.

(f) The documents required by subsection (e) above shall be submitted by the following dates:

1. For a financing gap tax credit, no later than six months following the opening of the supermarket or grocery store for business to the public.

2. For an initial operating costs tax credit, no later than six months after the later of the opening of the supermarket or govery store for business to the public or the date of approval of the application.

(g) Once the Authority accepts the documentation required in (e) 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 applicant, any co-applicant, and the Director of the Division of Taxation in the Department of the Treasury, and the applicant shall receive its tax credit certificate that will be based on the information submitted in the documents above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-23.7(d) and (e). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority. Notwithstanding this subsection, if the applicant submitted a copy of the application for Supplemental Nutrition Assistance Program (SNAP) or Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) retailer authorization, the Authority shall only review all other documents and shall not finalize its acceptance of the documentation until the applications for SNAP and WIC retailer authorization have been approved. If an application for SNAP or WIC retailer authorization is denied by the administrative agency, the Authority shall not accept the documentation, shall rescind the commitment of the incentive award and may designate another supermarket or grocery store as the first or second new supermarket or grocery store.

(h) For a financing gap tax credit, the eligibility period shall start with the privilege period in which the applicant establishes and opens the supermarket or grocery store for business to the public.

(i) For an initial operating tax credit award, the eligibility period shall start with the later of the privilege period in which the applicant opens the supermarket or grocery store for business to the public or in which the applicant submits a completed application to the Authority. Notwithstanding the date when the eligibility period starts, the eligibility period shall terminate at the end of the third year after the opening of the supermarket or grocery store for business to the public.

(j) Any modification to the project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, square feet, or initial operating costs, shall require review and approval by the Authority to determine that the project as modified does not undermine the basis for the tax credit award approved. The Authority may re-evaluate the project financing gap or the amount of initial operating shortfall and reduce the size of the incentive award accordingly.

19:31-28.9 Reporting requirements and annual report

(a) An applicant that is approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the privilege period for which the incentive award is issued and for the remainder of the commitment period, a report indicating whether the applicant is aware of any condition, event, or act that would cause the applicant or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter, the Act, and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The applicant, or an authorized agent of the applicant, shall certify that the information provided pursuant to this subsection is true and correct under the penalty of perjury.

(b) The annual report shall consist of:

1. A certification indicating whether the applicant is aware of any condition, event, or act that would cause the applicant or any co-applicant not to be in compliance with the approval, the Act, and the incentive award agreement, including, but not limited to, covenants that relate to the operation of the project and the use of space;

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

3. If applicable, for the two years after the first certificate of compliance is issued, evidence that the project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-28.13;

4. If applicable, for the two years after the first certificate of compliance is issued, evidence that the project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-28.13;

5. A tax clearance certificate as described in section 1 at N.J.S.A. 54:50-39 for the applicant and any co-applicant;

6. A certification from the applicant that the supermarket or grocery store is operating on a full-time basis, which may include but not be limited to access to reports from an independent scanning data company;

7. A list of all tenants, subtenants, or licensees of the supermarket or grocery store, the gross leasable area leased by each tenant or subtenants or occupied by a licensee, and whether the tenant or subtenant is operating its business at the premises;

8. Annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;

9. If applicable, satisfactory evidence that the applicant complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-28.8(d) or as required for the tax credit under N.J.A.C. 19:31-28.7(d)1. For a financing gap tax credit award calculated as set forth in N.J.A.C. 19:31-28.7(d)1, if the applicant does not provide satisfactory evidence of the executed agreement in effect for the relevant privilege period, the amount of the tax credit specified in the certificate of compliance shall be reduced to annual amount corresponding to an award pursuant to N.J.A.C. 19:31-28.7(d)2;

10. For a tax credit that has been awarded before the completion of construction of the supermarket or grocery store, the first annual report shall include the permanent certificate of occupancy covering the entire project;

11. A floor plan identifying the actual uses of the supermarket or grocery store for each quarter of the relevant privilege period, including square footage for any alcoholic beverages and products related to the consumption of such beverages, all retail space (e.g., planogram), and the retail space dedicated to fresh and/or frozen fruits and vegetables. The calculation of the square footage of uses shall be determined as the average of the quarterly floor plans for the period;

12. A copy of a permit from the Supplemental Nutrition Assistance Program (SNAP) and an executed vendor agreement from the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), unless an application for SNAP or WIC retailer authorization is pending pursuant to N.J.A.C. 19:31-28.8(g);

13. If the Authority approval included a co-applicant, a certification that the participation agreement between the applicant 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;

14. Evidence satisfactory to the Authority of the listening session required under N.J.A.C. 19:31-28.3(a)7iv, including, but not limited to, providing a copy of the notice of the listening session and the minutes of such listening session;

15. For a financing gap tax credit, the annual report shall additionally include, for the third year of the eligibility period, verification of the applicant's projected cash flow;

16. For an initial operating costs tax credit:

i. The annual financial statement shall include initial operating costs for the relevant privilege period and an income statement in a form satisfactory to the Authority that indicates the initial operating shortfall; and

ii. Evidence of continued financing approvals, including the submittal of executed financing commitments.

17. In conducting its annual review, the Authority may require an applicant to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The annual reports required at (a) above are due 120 days after the end of the applicant'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 annual report submitted during the eligibility period, the Authority shall provide to the applicant and the Director of the Division of Taxation in the Department of the Treasury a certificate of compliance indicating the amount of tax credits that the applicant or any co-applicant may apply against the applicant'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 applicant. 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 applicant or any co-applicant a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and -3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5. An applicant or any co-applicant shall apply the credit awarded against the applicant's liability for the tax period in which the supermarket or grocery store opens for business to the public.

(f) Credits granted to a partnership or a New Jersey S corporation 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 and accompanied by any additional information as the Director may prescribe, consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(g) The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at subsection (e) of N.J.S.A. 54:10A-5. Any credit shall be valid in the privilege period in which the certification is approved and any unused portion thereof may be carried forward into the next 10 privilege periods or until exhausted, whichever is earlier.

19:31-28.10 Reduction, forfeiture, and recapture of tax credits

(a) If, during the eligibility period, the applicant ceases to operate the project as a supermarket or grocery store, the supermarket or grocery store ceases to operate on a full-time basis, or the project ceases to meet the criteria in N.J.A.C. 19:31-28.3(a)(7), the applicant and any co-applicant may forfeit or be subject to recapture for all or some of the incentive award.

(b) During the commitment period, the Authority may recapture a proportionate amount of the tax credit if the project ceases to be a supermarket or grocery store, the supermarket or grocery store ceases to operate on a full-time basis, or the project ceases to meet the criteria in N.J.A.C. 19:31-28.3(a)(7).

(c) If the supermarket or grocery store is disqualified from the Supplemental Nutrition Assistance Program (SNAP) or is subject to federal sanction leading to discualification the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC), then the applicant and any co-applicant shall forfeit all credits for the relevant tax period and each subsequent tax period and the Authority shall recapture a proportionate amount of the tax credit.

(d) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-28.8(d) is not satisfied during the relevant tax period, then the applicant and any co-applicant shall forfeit or the Authority shall recapture some or all of the 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.

(e) As of the date of the annual report pursuant to N.J.A.C. 19:31-28.9, if any worker employed to perform construction work at the project is paid less than the prevailing wage rate for the worker's craft or trade during the relevant tax period as required pursuant N.J.A.C. 19:31-28.13(b), then the applicant and any co-applicant shall forfeit or the Authority shall recapture some or all of the 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.

(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 some or all of the tax credits for the relevant tax period(s).

(g) If, at any time, the Authority determines that the applicant or co-applicant made a material misrepresentation on the applicant's application, project completion certification, annual report, or any related submissions, the applicant 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 applicant, co-applicant, and the respective officers may be subject.

(h) 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.

(i) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-331 and N.J.A.C. 19:31-28.11(a) is subject to recapture, then the Authority shall pursue recapture from the applicant and to the extent the co-applicant is involved with basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

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

19:31-28.11 Application for tax credit transfer certificate

(a) An applicant or co-applicant may apply to the Director of the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the applicant or co-applicant being allowed any amount of the credit against the tax liability of the applicant. The tax credit transfer certificate, upon receipt thereof by the applicant 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 applicant or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5. The certificate provided to the applicant or co-applicant shall include a statement waiving the applicant's or co-applicant's right to claim the amount of the credit that the applicant or co-applicant has elected to sell or assign against the applicant's or co-applicant’s tax liability.

(b) The applicant 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 applicant 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 applicant or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement.

(c) The tax credit transfer certificate issued to an applicant or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of original State tax credits issued pursuant to the Act 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 transferor;

2. The name of the transferee;

3. The value of the tax credit transfer certificate;

4. The State tax against which the transferee may apply the tax credit; and

5. The consideration received by the transferor.

19:31-28.12 Assignment of rights of incentive award agreement

(a) An applicant who has entered into an incentive award agreement 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 award payable under the incentive award agreement, and the right to receive the incentive award, along with the rights and remedies provided to the applicant 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 applicant shall obtain, in writing, the co-applicant's consent, and the applicant shall provide the co-applicant's written consent to the Authority and State Treasurer with the applicant's notice.

(b) A co-applicant who has entered into an incentive award agreement 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 award payable under the incentive award agreement, and the right to receive the incentive award, 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 pursuant to 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 applicant. 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 applicant's consent, and the co-applicant shall provide the applicant'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 applicant shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the applicant shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the 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 award 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 award agreement;

3. The value of the right, title, or interest in the incentive award 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 award agreement.

19:31-28.13 Affirmative action and prevailing wage

(a) For a financing gap tax credit:

1. The Authority’s affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 shall apply to the 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.

2. The Authority’s prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to the project, but not limited to,construction contracts for work performed before the application and included in the project cost.

(b) For an initial operating costs tax credit, the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, and the prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to the project, including, but not limited to, construction contracts for work performed after the application is approved and construction contracts for work performed after the date of the application if included in the initial operating shortfall.

(c) The Authority's affirmative action and prevailing wage requirements shall continue to apply to the project for two years after the first certificate of compliance is issued.

19:31-28.14 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., the Office of Administrative Law, N.J.S.A. 52:14F-1, et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, et seq.

(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.

19:31-28.15 Reports on implementation of program

Within one year of January 7, 2021, the effective date of the Act, and annually there after, the Authority shall submit a report to the Governor, the State Treasurer, and, pursuant to N.J.SA. 52:14-19.1, the Legislature, on the effectiveness of the program in establishing supermarkets and grocery stores in food desert communities.

19:31-28.16 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 and Operating Costs Analysis

Introduction

As with several other NJEDA programs, a key statutory requirement of the financing gap tax credit within the Food Desert Relief Tax Credit Program is that without the incentive award, the project is not economically feasible. As such, for the financing gap tax credit, the applicant must demonstrate that a project financing gap exists, which requires that the project will generate a below-market rate of return.

Additionally, an applicant to the initial operating cost shortfall must demonstrate that the supermarket or grocery store is expected to face an operating shortfall. The financials provided to substantiate this shortfall will need to be verified and compared against industry standards.

This appendix outlines the Authority's history with analyses for gap financing programs and describes the planned approach to the necessary analyses for both the development and operating components of the Food Desert Relief Tax Credit Program.

Authority History with Gap Financing Programs and Hurdle Rate Determinations

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. This model was approved for use in the Aspire Program.

In some instances, the model has not been relied upon to determine the hurdle rate for a project, including 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 a large, unique, and/or complex project 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.

In October of 2022, the Authority Board approved a modification to the hurdle rate model to accommodate applications under the Historic Property Reinvestment and Brownfields Redevelopment Programs. In both cases, the types of projects supported by those programs were not adequately represented by the data used in the hurdle rate model. To accommodate this, the hurdle rate model was modified with specific multipliers based on the risk/return profile of historic preservation and brownfields redevelopment investments.

Approach within Food Desert Relief Tax Credit Program for Determining Reasonable and Appropriate Return on Investment

Staff expects that due to the inherent scarcity of supermarkets in food deserts, which reduces the number of relevant comparable projects, the existing hurdle rate model may not be appropriate for the purposes of the Food Desert Relief Tax Credit Program. Staff is evaluating whether the current model can be modified to fit the unique characteristics of these projects, as was done for the Historic Property Reinvestment and Brownfields Redevelopment programs.

Industry Standards Review

Concurrently, knowing that the Food Desert Relief Tax Credit Program differs from other programs in that analysis of supermarket operational costs plays a pivotal role in both the financing gap and initial operating cost tax credits, staff expect to procure advisory and analysis services from an entity with subject matter expertise in supermarket and grocery store development and operations to perform project-specific analysis, consolidating the analyses needed for both the initial operating cost tax credit and the financing gap tax credit.

Any future third-party selection and any modifications to the hurdle rate model or alternate approaches to the analyzing reasonable and appropriate rate of return to will be brought to the Board for approval before any approvals under the financing gap tax credit within the Food Desert Relief Tax Credit Program.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Food Desert Relief Tax Credit Sale

Request

The Members are asked to approve:

1) The sale of up to $50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
4) Delegated authority to the Chief Executive Officer to approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.

New Jersey Economic Recovery Act

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020, P.L. 2020, c.156 (ERA), into law. The ERA presents a strong recovery and reform package that addresses the ongoing economic impacts of the COVID-19 pandemic and positions New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly, they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes more than 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;
- Support for new supermarkets and healthy food retailers in food desert communities;
- 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;
- Additional tax credits for film and digital media.

Included in the ERA is the Food Desert Relief Act (FDRA), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq). The FDRA allows the New Jersey Economic Development Authority (NJEDA) to sell a portion of the $240 million in tax credits allocated by the FDRA ($40 million annually). These funds from the sale can be used in numerous ways to strengthen food security in New Jersey Food Desert Communities, including but not limited to:

- Offering technical assistance on best practices for increasing the accessibility of nutritious foods
- Providing grants and loans for food retailers of all sizes to fund equipment costs associated with providing nutritious food
- Supporting technology costs for the procurement or upgrade of technology systems to support online ordering and e-commerce, and
- Other initiatives to strengthen food security.

This memorandum requests approval of the Food Desert Relief Tax Credit Sale, including the structure, eligibility criteria, bidding process and the bid review process. Any request for a specific grant, loan, or technical assistance program will be brought at a later time to the Board. The Members are separately being asked to approve rules governing the Food Desert Relief Tax Credit Program.

<u>Sale Purpose and General Description</u>

The Food Desert Relief Act allocates $40 million annually in Corporate Business and Insurance Premiums Tax credits over six years, beginning with fiscal year 2021. The FDRA authorizes NJEDA to either award these credits to eligible applicants through the Food Desert Relief Tax Credit Program or to sell all or a portion of the tax credits through a competitive auction process or publicly advertised solicitation for offers. Any unused allocation of tax credits carries forward to future years, meaning that a cumulative total of $120 million of tax credits is available currently, and an additional $40 million will become available as of July 1, 2023, bringing the cumulative total available to $160 million later this year.

Eligible bidders may purchase the credits for a minimum of 85 percent of face value for New Jersey Corporate Business Tax or Insurance Premiums Tax. As described above, the proceeds of the sale will be utilized to fund grant, loan, and/or technical assistance programs administered by the Authority to strengthen food security in New Jersey, pursuant to the parameters set out in the FDRA.

Staff is seeking Board approval to sell up to $50 million of the $120 million in currently available tax credits in calendar year 2023. Staff may also seek Board approval to sell additional credits in the future, after considering demand for the Food Desert Relief Tax Credit Program from supermarket and grocery store developers and operators as well as market conditions. A range of approaches is necessary to have an impact on the structural conditions that have led to the persistence of food deserts, and auctioning tax credits to fund grants, loans, and/or technical assistance, alongside launching the Food Desert Relief Tax Credit Program allows NJEDA to take a multipronged approach to this issue.

Eligibility Criteria

Tax Credit Purchaser Requirements

To be awarded a tax credit under the proposed sale, a potential purchaser must meet the following criteria:

- The bidder must be a New Jersey Corporate Business Tax or Insurance Premiums Tax filer;

- The amount of tax credits the bidder proposes to purchase shall not be less than $500,000;

- The percentage amount of the face value of the tax credits the bidder proposes paying (purchase offer price) shall not be less than 85 percent of the face value of credits;

- The bidder must provide a refundable deposit for 10% of the tax credit purchase offer, not to exceed $500,000, at the time of bid (which will be applied to the final amount paid); and

- The bidder must be in good standing with New Jersey sister agencies, including the Division of Taxation, Department of Labor and Workforce Development, Department of Environmental Protection.

The auction will be run as a competitive process. Prior to opening the bid window, the Authority will establish and publicly disclose the timeline for the auction, provide detail on the information required in the bid and how award amounts will be calculated, and will accept questions from potential bidders and publicly post answers on the NJEDA website.

After the bid window closes, NJEDA staff will review the bids for completeness and will rank the completed bids based on purchase offer price, from highest to lowest. If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders. Authority staff will determine the clearing price, defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price, as described in **Appendix A**. If more tax credits are available than the aggregate amount requested in bids, bidders, starting with those ranked highest, may elect to increase their purchase amount. Bidders that are declined may appeal within 5 business days after written notice of a decision. Detailed information on the estimated auction timeline and calculation of award amounts can be found in **Appendix A.**

Post-Approval Process

Upon selection as a tax credit purchaser, corporations will execute a tax credit purchase agreement. Failure by the purchaser to pay the amount agreed on time shall make the purchaser ineligible for any NJEDA tax credit auction participation in the next twelve months. With regard to Evergreen, the Evergreen tax credit rules provides for such ineligibility for any entity that "was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits." In such event, the Authority may offer the tax credits for purchase to other purchasers based on ranking, without re-auction, at the same or higher price as in the other purchaser's tax credit purchase offer.

After initial purchase, pursuant to the FDRA, the tax credit purchaser has the option to resell the tax credit for no less than 85 percent of the transferred credit amount. There are no additional resales.

NJEDA shall publish on its website information on each tax credit purchaser as well as information on any tax credits that are transferred, pledged, or otherwise sold.

More information about this post-approval process can be found in **Appendix A**.

Request for Delegation

Delegation to the Authority's Chief Executive Officer is requested of the Board of the Authority for the following items:

- To establish the amount of tax credits to be auctioned in 2023, up to the amount approved by the Board, based on an assessment of economic and market conditions. This may include setting an amount lower than that approved by the Board. This may also include subsequently increasing the available amount after the auction opens, in response to demand, up to the amount approved by the Board.

- To establish a date for the 2023 tax credit auction. Please refer to **Appendix A** for a complete description of the auction process, including an estimated timeline of activities.

- To approve tax credit purchasers as long as the bidders have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed in this memo (see Appendix B). Delegated authority is recommended because the selection and approval of tax credit purchasers is based on non-discretionary factors and a ranking based solely on purchase price. Any change to the tax credit auction award calculation method or other eligibility criteria will be brought to the Board.

- To decline tax credit purchasers that are deemed ineligible based on non-discretionary criteria or that submit final bids below the clearing price. As eligibility is based on non-discretionary criteria and the ranking of bidders is based solely on purchase price, staff does not anticipate bringing declinations to the Board.

Fees

There are no external fees associated with the tax credit auction. At the time of auction, a 10% deposit up to $500,000 must be paid by bidders at the time of bid. This deposit will serve as a qualifier to ensure corporate bidders maintain sufficient capital to participate in the auction and to affirm the seriousness of their bid. If awarded, the deposit will be attributed to the final award payment. If a bid is declined (either for missing documentation, ineligibility, or an offer price below the clearing price), this amount will be refunded to the auction participant.

Recommendation

The Members are asked to approve:

1) The sale of up to $50 million in available tax credits in calendar year 2023 in a manner consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
2) Delegated authority to the Chief Executive Officer to establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.
3) Delegated authority to the Chief Executive Officer to establish start and end dates for the tax credit auction.
4) Delegated authority to the Chief Executive Officer to approve tax credit purchases as long as the bids have met all the criteria described in this memo and the award amount calculation is done pursuant to the formula proposed herein.

Tim Sullivan, CEO

Prepared by:

Brian Todd, Senior Advisor, Food Desert Relief
Riley Edwards, Team Lead, Economic Security Projects

Attachments
Appendix A—Auction and Bid Review Process

Appendix A – Auction and Bid Review Process

Overview

As authorized by the Food Desert Relief Act, N.J.S.A. 34:1B-303, et seq., the NJEDA will raise capital for programs to increase food security in New Jersey by auctioning up to $50 million of tax credits in calendar year 2023 to New Jersey Corporate Business Tax and Insurance Premium Tax taxpayers. Auction bids will be evaluated and scored according to the price ("Purchase Offer").

The following provides an overview of the auction . The process includes an approach to marketing the auction, how to execute the auction bid period, bid review process, award amount calculation, and closing process.

Auction Process

The auction will be run as a competitive process. Bid submissions will be reviewed by EDA staff for eligibility and price. All eligibility criteria (listed in the memorandum) will be communicated to the market in advance of the auction. Thirty days in advance of the auction opening, the following will be made available on the NJEDA website:

- A sample bid form
- Detailed information on the auction process
- A sample template tax credit purchase agreement
- Information on how to submit questions and comments to NJEDA

Questions may be submitted until 14 days before the auction opens. Answers to submitted questions will be posted on the NJEDA website on a rolling basis, with all answers posted by 7 days before the auction opens. Any changes to the above-mentioned documents based on the questions and comments submitted will be publicly posted prior to the auction opening. No changes will be made after the auction opens.

Once the auction launches (Day 1 noted below), potential purchasers will have 30 days to submit their bid. All bids are due 30 days after the auction opens, along with a refundable deposit equal to 10% of the purchase price. Payment of the deposit must be initiated by the auction close, and evidence of such payment must be provided with the bid. Once the auction closes, NJEDA staff will review the bids for completeness and request any missing documents, if needed. Bidders will have ten business days to provide missing documentation, but not to pay or initiate payment, starting when they are notified by NJEDA staff. Once this completeness review is finished, staff will rank the bids by purchase offer price, from highest to lowest.

If the amount of tax credits requested exceeds the total amount available for purchase, the Authority may seek best and final offers from all bidders. If a best and final offer is requested, Staff will communicate the bid spread to the purchasers. At that time, bidders will be permitted to increase and resubmit their purchase price to remain competitive. Purchase prices may not be lowered, and bids may not be rescinded. The final purchase price will determine the rank order of bids for the purpose of determining award amounts. This process is described in more detail later in this appendix.

A written notice will be sent to all approved bidders indicating approval, with purchase agreements that the purchaser must execute and return to NJEDA along with remaining amount due (the approved award less the deposit paid at bid submission). If a bidder does not wish to (or is unable to) follow through on their submitted bid, the credits can be offered by the Authority to other bidders, in order from highest bidder to lowest, without need of re-auction, for the same purchase price per tax credit dollar offered by these other bidders. As a remedy for the default of not closing on the commitment, the withdrawing bidder is not eligible to participate in any NJEDA tax credit auction for the following year, including both a potential future FDRA tax credit auction as well as future New Jersey Innovation Evergreen Fund tax credit auctions (per the Evergreen tax credit auction rules) within one year.

Estimated Summary Timeline

Auction Timeline	
• Example bid form and agreement template posted to website • Q&A period opens, with questions answered on a rolling basis and posted to website	Day -30
• Q&A period closes	Day -14
• Answers posted	Day -7
• Online auction launches	Day 1
• All bids due, including initiation of refundable 10% deposit	Day 30
• NJEDA staff review bids for completeness and notify bidders of any missing documents	Day 45
• NJEDA staff ranks bids • Best and final offer notification sent to bidders if auction is over-subscribed	Day 55
•	
• Final bids due	Day 70
• Bid ranking and award amount calculation completed	Day 75
• Bidders notified of approval and provided with purchase agreement or notified of	Day 80

declinations (with a right to appeal within 5 business days after written notice of a decision)	
• Bid contracts executed and Purchaser wires remaining amount due (final purchase offer less the deposit made at auction close).	Day 110
• NJEDA staff notifies Taxation of receipt of funds and requests issuance of tax credit	Day 115

Purchase Amount Calculation

Upon submission of an auction bid, NJEDA staff will review the bid materials for completeness. Required information will include, without limitation: company identification information, primary contact information, purchase offer (including requested amount of tax credits, bid price, total value), New Jersey tax clearance certificate, and legal questionnaire. All bidders must be in good standing with the New Jersey Department of Labor and Workforce Development and with the New Jersey Department of Environmental Protection.

Staff will ensure bidders comply with auction requirements. Eligible purchase offers must consist of:

- Tax credit request of at least $500,000 (face value)
- Purchase offer price to be paid of at least 85 percent of face value
- Refundable deposit for 10% of the tax credit purchase offer, not to exceed $500,000. Deposit must be initiated by the bidder before the deadline.

Following submission, EDA staff will inform the potential purchaser's primary contact if there is a discrepancy in the bid information or if any required information is missing. Only complete bids will be eligible for consideration. Missing documents must be submitted during the 10 business-day period following notification by staff. If required documents are not received during this period, bids will be considered incomplete.

Purchase Offer

The purchase offer is comprised of two components: the amount offered per dollar of tax credit (with a minimum of 85 percent of face value), and the volume of request (with a minimum of $500,000). This price floor is mandated in statute and helps to ensure strong purchase offers. The FDRA sale price floor is higher than the minimum price floor that applies for purchases in the New Jersey Innovation Evergreen Tax Credit Sale and is closely aligned with the minimum transfer prices utilized in other ERA tax credit incentive programs.

The bidder must submit a refundable deposit of 10% of the purchase offer at the time of bid. The amount will be applied to the final amount paid. The deposit becomes non-refundable on the effective date of the tax credit purchaser contract. If the approved bidder does not execute the contract the 10% deposit will be returned. An approved bidder that fails to execute the contract, or a bidder that executes the contract but fails to pay the remainder of the purchase offer within 30 days of approval, shall not be eligible to participate in an NJEDA tax credit auction for one year. An example of a purchase offer is below:

Purchase Offer Elements	**Example**
Amount of Tax Credits Requested (face value)	$10,000,000
Purchase Offer Price (per dollar of tax credits)	$0.85
Total Purchase Offer	$8,500,000
Refundable Deposit Due at Bid Submission (10% of total purchase offer, but no more than $500,000)	$500,000

Oversubscription

In the event the final requested amount of tax credits exceeds the amount of credits available in the auction, best and final offers will be requested, and not all bidders will receive the full amount of tax credits that they requested. After best and final offers are received all qualified bids will be ranked in sequential order from the highest purchase offer price (that is, the amount per dollar of tax credit) to the lowest purchase offer price. Then the clearing price will be determined. The clearing price is defined as the highest price at which the amount of tax credits requested at or above that price equals or exceeds the total amount available for purchase. Bidders offering a purchase offer price below the clearing price will be declined. If the amount requested at the clearing price exceeds the amount remaining after bids above the clearing price are accounted for, bidders offering a purchase offer price equal to the clearing price will receive a prorated amount based on the amount requested at the clearing price. There is no minimum tax credit award, and such proration could result in tax credit awards below the minimum tax credit request of $500,000.

This example shows the methodology for how this process will work in a hypothetical auction with $10 million of tax credits available and eight bidders, requesting an aggregate total of $20 million. The bidders are ranked from highest to lowest based on purchase offer price.

Bidder	**Purchase Offer Price**	**Face Value**	**Total Purchase Offer**
A	$0.95	$3,000,000	$2,850,000
B	$0.95	$1,000,000	$950,000
C	$0.93	$2,000,000	$1,860,000
D	$0.93	$1,000,000	$930,000
E	$0.90	$2,800,000	$2,520,000
F	$0.90	$2,200,000	$1,980,000
G	$0.90	$1,000,000	$900,000
H	$0.85	$7,000,000	$5,950,000
TOTAL		**$20,000,000**	**$17,940,000**

The clearing price is $0.90, because $13 million is requested at or above that price. Bidder H, who offered a price below the clearing price, is declined and receives no tax credits. Bidders A through D receive the full amount of tax credits that they requested, at the purchase prices they offered. Bidders E through G, who offered the clearing price, receive a tax credit award amount that is prorated based on the amount they requested and the amount of tax credits remaining after accounting for the bids above the clearing price. In this example, $6 million was requested at the clearing price of $0.90. Only $3 million is available after the bids above the clearing price are accounted for, which is equal to half of what was requested. Therefore, each of the bidders who bid at the clearing price receives an award that is equal to 50% of the tax credit amount that they requested.

Clearing Price	$0.90
Amount Requested Above Clearing Price	$7,000,000
Amount Requested at Clearing Price	$6,000,000
Amount Requested Below Clearing Price	$7,000,000
Total Amount Available	$10,000,000
Amount Awarded Above Clearing Price	$7,000,000
Amount Available to Award at Clearing Price	$3,000,000

The bids and awards in this example auction are shown below.

Bidder	**Purchase Offer Price**	**Face Value**	**Tax Credits Awarded**	**Total Amount Due**
A	$0.95	$3,000,000	$3,000,000	$2,850,000
B	$0.95	$1,000,000	$1,000,000	$950,000
C	$0.93	$2,000,000	$2,000,000	$1,860,000
D	$0.93	$1,000,000	$1,000,000	$930,000
E	$0.90	$2,800,000	$1,400,000	$1,260,000
F	$0.90	$2,200,000	$1,100,000	$990,000
G	$0.90	$1,000,000	$500,000	$450,000
H	$0.85	$7,000,000	$0	$0
TOTAL		**$20,000,000**	**$10,000,000**	**$9,290,000**

Undersubscription

In case of undersubscription to the auction, remaining tax credits will be made available to bidders who indicated interest in additional allocation at time of bid. Priority is assigned by purchase offer price with the credits offered at the lowest price bid. This mechanism offers an incentive to the highest bidder(s) and secures a strong bid from all parties.

If some of the tax credits allocated for the 2023 auction are not awarded, the remainder may be issued through the Food Desert Relief Tax Credit Program or carried over to future FDRA tax credit auctions.

ADOPTED
APR 12 2023

Attachments

Resolution of the New Jersey Economic Development Authority Regarding the Approval of the Food Desert Relief Tax Credit Sale

WHEREAS, the Members of the New Jersey Economic Development Authority have been presented with and considered a Memorandum and attachment, in the forms attached hereto; and

WHEREAS, the Memorandum and attachment requested the Members to adopt a resolution authorizing certain actions by the New Jersey Economic Development Authority, as outlined and explained in said Memorandum.

NOW, THEREFORE, BE IT RESOLVED by the Members of the New Jersey Economic Development Authority as follows:

1. The actions set forth in the Memorandum and attachment, attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.

2. The Memorandum and attachment, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.

3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: April 12, 2023

EXHIBIT

The following summary is provided for information only. Full eligibility and review criteria can be found in the program's rules.

GROW NJ ASSISTANCE PROGRAM

Program Overview:

Created under the Economic Opportunity Act of 2013, Grow New Jersey (Grow NJ) served as a job creation and retention incentive program to help strengthen New Jersey's competitive edge against tax incentive programs in surrounding states.

Until the program's sunset in June 2019, businesses creating or retaining jobs in New Jersey could apply for tax credits ranging from $500 to $5,000 per job, per year; with bonus credits ranging from $250 to $3,000 per job, per year based on applicable criteria. Tax credits are paid annually over the term of the grant agreement, generally 10 years, at the rate of one-tenth of the total award per year.

Companies do not receive Grow NJ tax credits until the NJEDA has certified that the project has been completed and it has met the commitments upon which its approval was based, including capital investment and job creation and retention. Each company must then certify annually that it has maintained its numbers for job creation and retention in order to receive that year's credits.

Many companies approved for tax credits under Grow NJ currently have active agreements and are receiving tax credits annually based on each year's certification.

Eligibility:

In order to qualify for consideration for Grow NJ, a company must have:

1. Located the project in a Qualified Incentive Area, including:

Urban Transit Hub Municipality

Distressed municipality

Garden State Growth Zones (GSGZ) – Camden / Trenton / Paterson / Passaic

Garden State Create Zone – at or within a three-mile radius of the outermost boundary of the campus (or satellite campus) of a New Jersey doctoral university

Projects in a priority area (see Program Rules for more information)

Other eligible areas not located within a distressed municipality or priority area, including an Aviation District; Planning Areas 1, 2 or 3 pursuant to State Planning Act; certain portions of Meadowlands, Pinelands and Highlands; certain portions of Planning Areas 4A, 4B & 5; and the "sports complex" under the jurisdiction of the New Jersey Sports and Exposition Authority

2. Met or exceeded the minimum employment and capital investment requirements, as outlined here.

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Aptapharma, Inc., ("Aptapharma") –
Grow New Jersey Assistance Program ("Grow NJ") Modification- P44129

Request:
Because of the reduction of the eligible jobs from 75 to 56 which is a 25.33% decrease, approval is requested from the Members to affirm that the project has not materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction in eligible jobs from the current number of 56.

As a result of this requested change, the approved award will decrease by 35% from $4,522,100 to $2,959,920 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.

The Members are asked to approve this action because it exceeds the criteria for staff delegations to approve these matters. As decided by resolution on February 10, 2021, the Members' approval is required when a reduction in eligible jobs equals or exceeds 25% of the approved amount.

Background:
Aptapharma is a technology-based pharmaceutical company that offers a broad range of oral drug delivery technologies and provides product development services for the pharmaceutical industry.

On August 8, 2017, Aptapharma was approved for a ten (10) year, $4,522,100 Grow NJ award to incent the creation of 35 new full-time jobs and retention of 40 full time jobs. Capital investment in the Qualified Business Facility ("QBF"), in Pennsauken Township, Camden County, was estimated to be $4,900,000.

Aptapharma was approved for a six-month extension to certify project completion and in February 2021, Aptapharma submitted certification of its project completion. The independent CPA certified capital investment of $5,211,326, which exceeded the minimum requirement of $568,120. The company certified it retained all 40 of the anticipated retained full-time jobs and 16 of the 35 anticipated new full-time jobs for a total of 56 jobs, which exceeds the program minimums of 19 retained jobs and 8 new jobs respectively. The company informed us that they were unable to meet their anticipated new jobs due to the struggle of hiring manufacturing jobs during the pandemic. Nevertheless, they currently have 63 full time jobs at the QBF and are in the process of hiring new employees to get closer to the 75 total jobs that were anticipated at approval.

During certification review, staff performed a routine site visit to verify completion and the industrial premises bonus. It was discovered that Aptapharma was making use of 12,000 sf basement space for additional warehousing and storage, which aligns with the permitted use of the premises as outlined in the lease. As this space was not previously included as part of the approved QBF, staff reviewed the implications of adding the new space. The minimum capital investment requirement would have increased to $733,333, well below the company's actual capital expenditures of $5,211,326. The company did not request to modify the agreement as it does not intend to house employees in this part of the approved QBF, the lease aligns with the approved QBF, the outcome of the project completion certification would not be affected, and there would be no impact to the award. Therefore, staff determined that while Aptapharma made use of the basement space for storing goods after post-production, there was no reason to modify the agreement in order to decision the project completion certification.
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Based on the $5,211,326 of certified capital investment and the 56 retained and new full-time jobs, the amount of Grow NJ award will be reduced to $2,959,920. Since the jobs were reduced by more than 10% from what was approved, staff recalculated the Net Positive Economic Benefit ("NBT") to the State over 20 years using the current net benefit model which resulted in a $2,285,911 NBT to the State, allowing the company to continue to meet the required 110% NBT to the State. The company expended $5,211,326 in capital investment (more than anticipated at approval), retained 40 and created 16 new jobs at the approved QBF and continues the operations as described to the Board at approval. Based on the above, staff has determined that, aside from the reduction in new full-time jobs, the overall Grow NJ project has not materially changed since Board approval.

Summary of Project Changes

	At Approval	**At Certification**
Proposed/Actual Jobs:	35 (New) 40 (Retained)	16 (New) 40 (Retained)
Base Amount:	$ 4,000	$ 4,000
Bonus Increases:		
Capital Investment in Excess of Minimum (non-Mega)	$ 3,000	$ 3,000
Targeted Industry	$ 500	$ 500
2007 Revit. Index>465 in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, Salem	$ 1,000	$ 1,000
Total Amount per Incented Employee	$ 8,222	$ 8,222
Annual Award:		
New:	35 x $8,222 = $287,770	16 x $8,222 = $131,552
Retained:	40 x $4,111 = $164,440	40 x $4,111 = $164,440

Total:	$452,210 (cap)	$ 295,992
Total Award	$4,522,100	$2,959,920
Net Benefit to the State: Over 20 Years, Net of award	$3,796,860	$2,285,911
Square Footage	42,609	42,609
Eligibility Min. Cap-Ex	$ 568,120	$568,120
Proposed/Actual Cap-Ex	$4,900,000	$5,141,393

Recommendation:

Because of the reduction of eligible jobs from 75 to 56, which is a 25.33% decrease, approval is being requested from the Members to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of eligible jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction from the current number of 56.

As a result of this requested change, the approved award will decrease by 35% from $4,522,100 to $2,959,920 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.

Tim Sullivan, CEO

Prepared by: Parviz Ibragimov

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Grow NJ COVID-Related Termination Delegation

Request:
Delegate to the Chief Executive Officer the authority to approve the termination of approved Grow NJ awards in accordance with the COVID relief provisions recently enacted by amendment to the Grow New Jersey Assistance Act, N.J.S.A. 34:1B-242 to 250.

All approvals under delegated authority will be reported to the Members quarterly.

Background:
In recognition of the potential negative effects that the COVID-19 Health Emergency had on businesses, a series of agency and legislative actions were taken since the beginning of the Emergency to temporarily lift some of the Grow NJ program requirements on businesses due to the safety measures needed to respond to the pandemic and those businesses were afforded flexibility through reduction or deferment of the business's program obligations.

Those efforts included the ability for Grow NJ businesses to elect to suspend reporting obligations for 2020 and 2021, to reduce the number of full-time jobs specified in the incentive agreement commencing with the 2020 tax period and at the discretion of the applicant, each subsequent tax period remaining in the eligibility period where continued program eligibility, and to request termination of the incentive agreement through December 31, 2022, provided certain conditions were met.

In February 2021, the Board approved a delegation to staff to approve suspension and job reset requests. Since that time, staff has processed approximately 30 elections through this delegation. Staff recommendations to decline these requests would be presented to the Members for consideration.

In recognition that businesses continue to make decisions regarding real estate holdings and in-person employment, the Grow law was further amended to extend the COVID-relief offerings to allow suspensions of 2022 and 2023 obligations and the ability to extend requests for termination through December 31, 2023. Since COVID relief enactment, staff has presented 12 of these termination requests to the Board, and estimates the receipt of 12-20 through the remainder of the year.

Presently, we are seeking the Members' approval to delegate to the CEO, who pursuant to existing delegated authority policy may further sub-delegate authority to staff, authority to approve COVID relief termination requests, which allow businesses to end their Grow NJ awards without repayment as would otherwise be required under their Incentive Agreements. Requests to date have related primarily to a change in business model to provide employees remote work flexibility. We have also seen several requests by businesses that had or planned to decrease or eliminate the real estate, or Qualified Business Facility, that was the situs of the incentive activity. Any outstanding recapture payment owed as a result from a failure to have the number of jobs specified in the incentive agreement, that is, if the failure to have the requisite number of jobs occurred prior to the request for termination, have been required of businesses before the termination becomes effective.

In light of our experience coupled with the clear legislative intent to broaden application of the relief, staff believes these requests can be vetted and approved under delegated authority. Staff will continue to bring termination requests to the Board where staff has determined that credible COVID-related impacts have not been articulated by the applying business .

Termination is available for all projects for which the business demonstrates changes to their business model, real estate decisioning, or job declines related to COVID-19 impacts.

Businesses that had certified but not yet received any tax credits could terminate the Grow Incentive Agreement with no ongoing compliance requirements. Businesses that have received tax credits may terminate with no recapture or ongoing compliance requirements.

Applicants must explain the impacts of the COVID-19 Health Emergency that resulted in changes to the business, the business model, or their continued desire to participate in the Grow Incentive Agreement. Any outstanding recapture payments owed as a result of job-related deficiencies (as explained above) will be required of businesses before termination.

All credits for the tax period for which the termination is requested and all subsequent tax periods shall be forfeited. Eligible credits for which staff has not yet issued a letter of compliance will be approved before termination letters are effective and previously issued credits of the business will remain unaffected.

A $5,000 termination fee will be required pursuant to existing Grow NJ program regulations.

Once approved, termination agreements will be executed by EDA and the Grow NJ businesses and will include a provision allowing EDA the ability to seek recapture of all tax credits previously approved with letters of compliance should it be determined that the business decisioning was made without consideration of COVID.

However, Board approval will be sought for requests that do not provide a clear or credible connection to the COVID-19 Health Emergency, if required, and any declinations.

All approvals under delegated authority will be reported to the Members quarterly.

Recommendation:
Delegate to the Chief Executive Officer the authority to approve the termination of approved Grow NJ awards in accordance with the COVID relief provisions recently enacted by amendment to the Grow New Jersey Assistance Act, N.J.S.A. 34:1B-242 to 250.

____
Tim Sullivan, CEO

Prepared by: Susan Greitz

NJEDA

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan, CEO

Date: April 12, 2023

Subject: P44124 – Hearing Officer's Recommendation on the Appeal of the Maestri d'Italia Inc. Application for Grow New Jersey Assistance Program

Pursuant to the Program's enabling legislation, Grow New Jersey incentive grant recipients are required to certify that they have met or exceeded the Program's minimum capital investment requirements to qualify for a Grow New Jersey tax credit certificate. Applicants who are deemed ineligible for a Grow New Jersey tax credit certificate have twenty (20) days from the date of notification of ineligibility to submit appeals, which are reviewed by an independent Hearing Officer.

I reviewed the attached Hearing Officer's report along with Maestri d'Italia Inc.'s appeal and written comments and I concur with the recommendation that Maestri d'Italia Inc. is ineligible for a Grow New Jersey tax credit certificate because Maestri d'Italia Inc. has failed to demonstrate that it has met or exceeded the Program's minimum capital investment requirements.

Tim Sullivan, CEO

MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 12, 2023

Subject: P44124 – Hearing Officer's Recommendation on the Appeal of the Maestri d'Italia Inc. Application for Grow New Jersey Assistance Program

Request:

It is recommended that the Board members deny the applicant's appeal and affirm the Hearing Officer's recommendation to uphold staff's determination to withhold the Grow New Jersey Assistance Program ("Grow NJ") incentive award for Maestri d'Italia, Inc. ("Maestri").

Purpose:

The New Jersey Economic Development Authority ("Authority", "EDA") staff found Maestri to be ineligible to receive a Grow NJ Tax Credit Certificate because the applicant failed to satisfy the capital investment requirement of the Grow NJ program.

Specifically, staff found that all project expenditures were incurred by Tipico Products Co. Inc. ("Tipico"), an entity that is not eligible to fulfill the capital investment requirement. Grow NJ requires that the capital investment be made by an award recipient, an award recipient's approved affiliate, or the landlord (or seller) of the qualified business facility; Tipico does not qualify as any of the above entities.

Background:

The Grow New Jersey Assistance Act, N.J.S.A 34:1B-249, *et seq.*, ("Act") provides incentives for business growth involving the acquisition and/or leasing of a capital investment at a Qualified Business Facility ("QBF"). The program requires that a certain number of Retained Full-Time Jobs or New Full-Time jobs be provided by the applicant. The Legislature created Grow NJ to encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but are in danger of being relocated outside of the State.

Pursuant to the Act and the implementing regulations (NJAC 19:31-18.1 *et seq.*), businesses that are creating or retaining jobs in New Jersey may be eligible for tax credits ranging from $500 to $5,000 per job, per year, with individual bonus credit categories ranging from $250 to $3,000 per job, per year. Approved businesses receive tax credits per job, per year for a period of up to ten years for each new or retained full-time job to be located at the qualified business facility.

Within three (3) years following the date of approval of the application, the applicant is required to submit certification from an independent certified public accountant ("CPA") confirming the required capital investment and submit a certification attesting to the required jobs retained and/or created. Applicant must also provide the Authority with annual reporting requirements in compliance with their executed incentive agreement to become eligible for issuance of the letter of compliance that allows the applicant to use a portion of the Grow NJ tax credit.

Once the EDA has accepted the certification of the business and is satisfied that the capital investment, employment requirements and other necessary conditions have been met, the business will receive the tax credit certificate within 90 days of EDA's acceptance of the submission of the certifications and evidence satisfactory to the Authority. Failure to provide any of the above indicated materials or failure to comply with the regulations, deems the applicant ineligible to receive a Grow NJ Tax Credit Certificate.

Applicants deemed ineligible to receive the Tax Credit Certificate are provided the opportunity to appeal the decision within 20 calendar days of the declination letter by providing an explanation as to how the company has met the Grow NJ program eligibility requirements.

Previous Actions and Appeal

On May 11, 2017, the Board approved Maestri for a ten (10) year Grow NJ award not to exceed $681,520 for the creation of 14 full time eligible jobs at an existing 21,000 square foot industrial premises located at 480 Oberlin Avenue South, Lakewood, Ocean County, New Jersey. The estimated eligible capital investment to complete the project was $2,560,000, which exceeded the minimum required eligible capital investment amount of $272,667.

In accordance with the regulations, the Grow NJ Approval Letter executed by Maestri on June 13, 2017, and the Incentive Agreement executed by Maestri on October 23, 2018, a condition to the receipt of the Tax Credit Certificate is the EDA deeming the project completion documents acceptable after review.

On May 8, 2020, Maestri submitted its certification of project completion claiming the creation of 22 new full-time jobs and an amount of eligible capital investment of $3,653,341. In addition, it certified that the approved bonus criteria as per the regulations were satisfied, provided documentation to support satisfaction of labor compliance and green building requirements, and submitted a valid tax clearance certificate.

Upon reviewing of the certifications, the EDA staff determined that Maestri had not satisfied that capital investment requirement of Grow NJ and therefore was not eligible to receive a Grow NJ Tax Credit Certificate. EDA issued a Declination Letter to Maestri on February 10, 2021. Specifically, the staff found that the capital investments were incurred by an entity other than the award recipient, an approved affiliate of the award recipient, or the landlord of the qualified business facility as required by the Act and regulations under N.J.A.C.19:31-18.2 and 18.3.

On February 25, 2021, Maestri responded to the Declination Letter by appealing the EDA staff's declination. In its appeal, Maestri makes three arguments. First, it argues that the investments made by Tipico satisfied the capital investment requirements because Tipico was reimbursed by the applicant's landlord, 480 – 490 Oberlin Ave ("Oberlin" or "Landlord"). Second, Maestri argues that it made additional investments, not previously submitted in its certification, for purchases of equipment and leasehold improvements which on their own satisfy the capital investment requirements. Last, Maestri argued that, due to the Covid-19 pandemic, it was allotted a limited amount of time to provide additional documentation in support of its position.

On December 21, 2021, John Rosenfeld, NJEDA Director of Quality Control, responded to the appeal by reiterating the Authority's reasons for declination and stating that the certification documents provided by Maestri did not demonstrate that it had made the minimum required Capital Investment in its QBF.

On May 31, 2022, applicant submitted a supplemental response clarifying the relationship between Maestri, the applicant; Oberlin, the landlord; and Tipico. In this supplemental response, applicant argues that Oberlin made the capital investments and that Tipico was the landlord's construction manager and successor general contractor.

Record Assembled

For purposes of this appeal, a record was assembled over the preceding months consisting of the following documents:

Maestri's reply to NJEDA Hearing Officer's Recommendation dated February 7, 2023

Maestri's supplemental response to NJEDA staff dated May 31, 2022

NJEDA staff response to Letter of Appeal dated December 21, 2021

Letter of Appeal from Athos Maestri, Director, Stefano Tedesco, General Manager and Thomas Rahoche, Account Manager, dated February 25, 2021, including the following attachments:

- 11/24/2020 – Email from EDA staff member Thomas McCusker, where Tipico was mentioned as an "affiliate of the Landlord."
- 12/31/2020 – Maestri d'Italia Fixed Asset Schedule
- 02/16/2021 – Letter provided by Thomas Gellert, Member, regarding leasehold improvements performed

Maestri d'Italia declination letter dated February 10, 2021

Maestri's fully executed Incentive Agreement dated October 23, 2018

Lease agreement between 480 Oberlin Avenue LLC and Maestri D'Italia dated June 26, 2017 and Lease amendment dated December 1, 2018

<u>Hearing Officer's Discussion and Analysis</u>

Applicant, Maestri, appeals the denial of its Grow NJ incentive award, which was based on the applicant's failure to satisfy the minimum required eligible capital investment. Specifically, the applicant was denied because its certification stated that all the $3,653,341 capital investment was incurred by Tipico, a third party entity who is neither the award recipient, nor the award recipient's approved affiliate, nor the landlord or seller of the qualified business facility, as required by the Act and applicable regulations.

A. Capital Investment Requirement

Section 5(a) of the Incentive Agreement, which is titled "Certain Covenants of the Company," states: "[i]n consideration for the Grant of Tax Credits, the Company, **expressly including its landlord or seller**, covenants to make, acquire or lease a minimum Capital Investment at the Qualified Business Facility…" (emphasis added). (See also N.J.A.C. 19:31-18.3(a))

Section 1 of the Incentive Agreement defines "Capital Investment" in a qualified business facility as "expenses by **the Company or any Affiliate** incurred after application for (a) site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property..." (Emphasis added). Section 1 also defines an "Affiliate" as an entity that directly controls, is under common control with, or is controlled by the Applicant. (See also N.J.A.C.19:31-18.2)

Additionally, Section 9(a) of the Incentive Agreement labeled "Affiliates" states, in pertinent part, "[i]n order to be considered an Affiliate for purposes of this agreement, an entity must meet the definition of Affiliates…" Section 9(b) then lists an applicant's approved affiliates that have met the requirements of subsection 9(a).

B. Factual Application

Section 9 of Maestri's Incentive Agreement states that 100% of the capital investments would solely be met by Maestri d'Italia. Maestri did not list any entities as affiliates, nor did it execute or provide evidence of an affiliate agreement, nor did they request additional affiliates in the Incentive Agreement at any time, as would be required.

On May 8, 2020, Maestri submitted its certification of project completion as required. Their CPA's certification claimed the creation of 22 new full-time jobs and an amount of eligible capital investments of $3,653,341. Nevertheless, this certification also stated that the capital investment was entirely incurred by an unrelated entity, Tipico. Tipico is neither the award recipient, nor the award recipient's approved affiliate, nor the landlord (or seller) of the qualified business facility.

As such, the Authority determined that the minimum capital investment had not been met, as the eligible capital investment for this project was $0.00. The Authority thus denied the incentive award and issued its denial letter to Maestri on February 10, 2021.

C. Discussion

Maestri appealed the denial in a letter dated February 25, 2021, arguing that they satisfied the capital investment requirements based on the following: (1) the expenditures were paid by Oberlin, the landlord, (2) expenditures significantly exceeded the minimum required eligible capital investments; and (3) Covid-19 had an impact on the review process. The Authority's response to each of these arguments is addressed here one at a time:

i. Maestri failed to satisfy the capital investment requirement of the Grow NJ program because the expenditures were not made by the award recipient, nor the award recipient's approved affiliate, nor the landlord of the qualified business facility.

Maestri does not dispute that the project expenditures were made by Tipico, however, Maestri's appeal letter states that Tipico is an affiliate of Maestri's landlord because Tipico, the landlord (480-490 Oberlin Ave LLC), and a third entity, the Gellert Global Group, are separate legal entities with common ownership. However, even if that is the case, it is irrelevant to the EDA's determination, as the Act and regulations only allow the landlord entity to make eligible capital investment. The Act and regulations permit affiliates only of the applicant that are approved by the Authority to contribute eligible capital investment.

Maestri also argues that Tipico made the payments as a construction manager or successor general contractor for the QBF renovations on behalf of the landlord. This fact is also not relevant to EDA's determination, as a capital investment cannot be made "on behalf of" the landlord. Moreover, Maestri's appeal letter did not indicate that any written agreement exists memorializing what would have been a multimillion dollar contracting arrangement between Tipico and the landlord. Maestri contends that the landlord and Tipico contractor relationship are evidenced by written confirmation via email, bank statements and other documentary evidence demonstrating that Tipco paid in its capacity as construction manager/successor general contractor, and in the written lease agreement between the Landlord and Maestri signed on June 26, 2017. However, upon review of the additional document and exhibits submitted, specifically the letter dated May 31, 2022, it was found that a consultant to the chairman of Gellert Group stated that "a written agreement showing that Tipico acted as the landlord's construction manager and successor general contractor does not exist." Additionally, the Consultant stated that the bank statements indicate that the wire transfers encompass work done for "both Maestri's project as well as a project for Tipico," raising more questions and confusion regarding the relationship between Oberlin, Tipico and Maestri.

Lastly, Maestri argues it is making the capital investment by reimbursing the landlord $3,700,000 incrementally, in payments over the full term of the lease. An incremental reimbursement such as this would also not qualify as a capital investment.

As previously stated, capital investments in a qualified business facility must be made by **the company or any affiliate**. The mere fact that a third party, Tipico, which paid upfront for the construction, is then reimbursed by the landlord, which is then ultimately reimbursed by Maestri over the full term of a lease does not fit the definition of a capital investment that must be made directly by the business, an affiliate of the business, or a landlord prior to the issuance of the tax credit certificate. As such, the reasoning supporting the decline is adequately supported and is neither arbitrary nor capricious.

ii. Maestri failed to satisfy the capital investment requirement of the Grow NJ program because the additional investments made by Maestri were excluded from the submitted CPA certification to NJEDA.

Maestri states that it made over $2.5M in Capital Investments at the QBF between 2018 and 2020. However, none of these expenditures were included in the certification documents submitted at the completion of the project. Maestri argues that it believed the project expenditures made by Tipico fit the requirements of Grow NJ and exceeded the necessary investment. Maestri states that it therefore made the decision not to include its own expenditures in the certification. A schedule of these capital investments by Maestri was submitted after the deadline for certification and with Maestri's appeal.

Pursuant to N.J.S.A. 34:1B-247b(2)(a) and quoting from the Grow NJ regulations (N.J.A.C. 19:31-18.7(f)3), "the certification with respect to capital investment and employment shall be submitted within three years following the date of approval of the application." While the regulations state that this timeframe can be extended by a year, it must be approved and granted by the Authority, and no such extension was requested by or granted to Maestri. The approval date of Maestri's application was May 11, 2017. Maestri's certification, which did not include Maestri's additional capital investments, was submitted on May 8, 2020, shortly before the three-year window expired.

The $2.5M in capital investments at the QBF that Maestri claims to have made was not submitted to the Authority until after the certification and well after the required three-year window. Nor was it submitted as part of the CPA certification required by the Act and regulations. The Authority is therefore unable to consider this request to make an untimely and late submission and, thus, to ignore the mandatory deadline in the statute and regulations, which the Legislature determined necessary. As such, the reason for the decline is supported by adequate evidence and should be adopted by the Board.

iii. Maestri's concedes that it decided to exclude its own capital investments from the certification and CPA reports.

Maestri argues that the preparation and submission of the certification documents happened during the height of the COVID-19 outbreak, which restricted the ability of both the company and the EDA staff to investigate and provide additional support of the affiliation of the companies and the project expenditures. Maestri submitted certification documents on May 8, 2020 but did not receive notice of a problem with Tipico having made the project expenditures until December 14, 2020, and, as per Maestri, limiting the time for it to provide additional documents.

However, the purpose of the certification is to evidence that the business has satisfied the requirements relating to capital investments and any employment requirements with supporting evidence satisfactory to the Authority. Maestri's concedes that it made the decision to submit costs by an entity that could not make eligible capital expenses and to exclude its own capital contributions from the certification. Maestri was aware of the requirements in the Act, the regulations, and the Incentive Agreement. Further, there is no statutory amendment that affords additional extensions of time to the deadline for certification of the project due to a submission being provided during the COVID-19 public health emergency. As such, this argument is not persuasive.

Maestri also argues that in email correspondence dated November 24, 2020, Authority staff referred to Tipico as an affiliate of the landlord "without showing any concern or identifying it as a potential issue." The email referenced Tipico when staff informed the applicant that the submitted cost certification incorrectly attributed the costs to the applicant and asked the applicant to correct the record by submitting a cost certification correctly attributing the costs to Tipico. The email did not say that the corrected certification would be acceptable. Rather, staff explained in the email that the list of documents were required "to continue [the officer's] review of the overall project certification submission" and that "the project certification submission must be approved" prior to the issuance of the tax credit. While a staff member did state, prior to the certification, that Tipico is an affiliate of the Landlord, it does not and cannot change the requirements of the Act, regulation and agreement which specifies that only the award recipient, the award recipient's approved affiliate, or the landlord of the qualified business facility can make the capital investments, and it doesn't alter the relationship between the parties.

Conclusion

In considering the assembled record, applicable statutes and regulations, and based upon the above analysis, I have concluded that staff has demonstrated a sufficient basis for their decision to deny the application of Maestri d'Italia Inc. to receive a Grow NJ Tax Credit Certificate.

Maestri's reply to Hearing Officer's Recommendation

In accordance with N.J.A.C. 19:31-18.18(c)(2), the applicant was provided a copy of the Hearing Officer's recommendation discussed above and was given the opportunity to file written comments and exceptions to the Hearing Officer's report. On February 7, 2023, Maestri submitted written comments via email correspondence that reiterated the three main arguments posed in the initial appeal. As Hearing Officer, I have reviewed the written comments and do not find them persuasive. These written comments have also been provided to the Board for review. Appellant's written comments do not alter my recommendation to the Board that staff's determination should be upheld.

Recommendation

As a result of careful consideration of the above appeal, I am recommending the Board deny applicant's appeal and uphold staff's determination to withhold the Grow New Jersey Assistance Program ("Grow NJ") incentive award for Maestri d'Italia, Inc.

Gisselle Vega

Gisselle Vega
Hearing Officer

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February 7, 2023

Via Email and FedEx
(gvega@njeda.com)

Ms. Gisselle Vega
Legal Affairs Officer
New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625-0990

Re: Maestri D'Italia's Reply to NJEDA Hearing Officer's Recommendation

Dear Ms. Vega:

This office represents appellant Maestri D'Italia Inc. ("Maestri") and submits this letter in response to the New Jersey Economic Development Authority's (the "NJ EDA") Memorandum, dated December 21, 2021 (the "Hearing Officer Recommendation"), which recommends that the Board of the NJ EDA deny Maestri's appeal and uphold staff's determination to withhold the Grow New Jersey Assistance Program ("Grow NJ") incentive award for Maestri, notwithstanding the undisputed fact that the owner of the premises, 480-490 Oberlin Ave LLC ("Landlord"), beneficially paid more than $3,653,341 for covered "capital investment" within the meaning of Grow NJ. For the reasons set forth herein, and in Maestri's prior position statements,[1] the Board should reject the Hearing Officer Recommendation, Maestri's appeal should be granted, and the NJ EDA's decision to reject the application should be reversed on the grounds that, consistent with the regulations and purpose of the Grow NJ program, Landlord and/or Maestri made the requisite capital investments.

As background, Maestri's Landlord engaged Tipico Products, Inc. ("Tipico"), as its construction manager and successor general contractor and that Landlord paid Tipico more than $3.65 million for capital investments to the leased premises. It is uncontested that Tipico is an affiliate of the Landlord and that both are commonly owned and controlled. (May 31, 2022 Letter, **Exhibit F**). It is also uncontested that the construction project generated sufficient employment in New Jersey and that, other than the issues raised below, Maestri is entitled to receive the benefits of the Grow NJ program.

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[1] Citations preceded by "Exhibit" refer to the exhibits attached to Maestri's Letter of Appeal, dated February 25, 2021 (the "February 25, 2021 Letter"), and Maestri's Reply to NJEDA Staff Response on Appeal, dated May 31, 2022 (the "May 31, 2022 Letter").

First, the Hearing Officer Recommendation is incorrect in asserting that Tipico made the project expenditures. The Landlord itself made the project expenditures. The project expenditures were made by the Landlord to Tipico, the Landlord's construction manager and successor general contractor. If Tipico and the Landlord were unrelated and the Landlord made the payments to a construction manager or contractor with whom it had no relationship, there would no question that Landlord made the capital investments and Maestri would be entitled to the incentive award. The mere fact that Tipico and the Landlord happen to be related companies is of no consequence and cannot serve as a basis to deny Maestri benefits under Grow NJ. Similarly unavailing is the statement in the Hearing Officer Recommendation that the lack of a written agreement between the Landlord and Tipico "rais[es] more questions and confusion regarding the relationship between [the Landlord], Tipico and Maestri." As set forth in Maestri's May 31, 2022 Letter, there is no requirement under the law that the relationship between a construction manager/general contract and property owner be set forth in a written agreement. *Leodori v. Cigna Corp.*, 175 N.J. 293, 304-05 (2003) ("[u]nless required by the Statute of Frauds ... contracts do not need to be in writing to be enforceable"); *Williams v. Vito*, 365 N.J. Super. 225, 232 (Law Div. 2003) ("absent a statute to the contrary," the enforceability of an oral contract is "central to American contract law").

Second, even assuming that Tipico made the capital investments rather than the Landlord, which it did not, the Hearing Officer Recommendation's contention that the Act and regulations only allow the Landlord entity to make eligible capital investments is belied by the text of the Act and its regulations. As discussed in the May 31, 2022 Letter, this interpretation of the Act and the regulations produces an absurd result where, as here, Landlord and Tipico are under common ownership and control. Related provisions of the regulations suggest that Landlord and Tipico should both be treated as the Landlord and/or owner for the purpose of the capital investment requirement. *See, e.g., NJ Admin Code* 19:31-18.2 ("Business" means an applicant proposing to own or lease premises... members, shareholders, partners, or other ownership or leasing participants and others that are tenants in the facility shall be treated as affiliates for the purpose of counting the full-time employees and capital investments in the facility"). Other provisions echo that single nouns referring to business entities should be interpreted to include commonly owned and affiliated entities. *See, e.g., NJ Admin Code* 19:31-18.2 ("Capital investment" in a qualified business facility means expenses by a business or any affiliate of the business..."). Consistent with this language, the term "landlord" should be interpreted to include Tipico as an affiliate under common ownership with Landlord.

The assertion in the Hearing Officer Recommendation that Landlord cannot satisfy the capital investment requirement by directing Tipico to make the payments as a construction manager or successor general contractor, on behalf of and as agent of Landlord, is equally without merit. Under the regulations, "Capital Investment is defined in relevant part as:

> expenses by a business or any affiliate of the business incurred after application for: site preparation and construction, repair, renovation, improvement, equipping, or furnishing on real property or of a building, structure, facility, or improvement to real property; obtaining and installing furnishings and machinery, apparatus, or equipment, including, but not limited to, material goods..."

The phrase "expenses... incurred" necessarily includes the payments that Landlord made to Tipico, which were expenses incurred after application for construction, repair, renovation, etc. Neither the regulations, nor the Hearing Officer Recommendation, provides any mechanism to differentiate between Tipico and Landlord (which share common ownership) for the purpose of the capital investment requirement.[2] Moreover, at all stages of the application and certification process, Maestri remained ready willing and able to provide additional information in support of its application. Maestri should not be held responsible for the NJ EDA's failure to timely request additional documentation. *See NJ Admin Code* 19:31-18.7(f)(5) ("The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification"). In any event, the Landlord supplied sufficient additional information to prove Tipico and Landlord's common ownership and the relationship between the parties with respect to the underlying construction project.[3]

Third, the Hearing Officer Recommendation states that Maestri's appeal should be denied because Maestri is barred from submitting evidence of $2.5 million in additional capital investment because Maestri did not include those documents in their original certification application. Contrary to the conclusion in the recommendation, there is no regulatory prohibition on the submission of additional materials in support of the application for certification. *See NJ Admin Code* 19:31-18.7 (Absent extenuating circumstances..., the certification with respect to capital investment and employment shall be submitted within three years).

Here, it is uncontested that the original application was submitted within the time limits of the regulations. There is no provision that expressly precludes Maestri from submitting additional documents and, in fact, the NJ EDA should have requested additional materials sooner if it believed the original application was somehow deficient. *See NJ Admin Code* 19:31-18.7(f)(5) ("The Authority may seek additional information from the business and/or information from the Department of Labor and Workforce Development to support the certification."). Moreover, Maestri submitted its original certification of project completion on May 8, 2020. Maestri did not receive any response or request for additional documentation until ten months later, on or about February 10, 2021. Maestri responded promptly on February 25, 2021, and provided additional materials to support its application. Again, Maestri did not receive any response until around ten months later, on December 21, 2021. Accordingly, any delay regarding the submission of supplemental materials was caused entirely by the NJ EDA and, thus, denial of the appeal on this ground would be unwarranted and an arbitrary and capricious deprivation of Maestri's rights under Grow NJ.

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[2] Similarly, the Hearing Officer Recommendation provides no basis for the conclusion therein that Maestri's incremental payments to Landlord, pursuant to the Lease, as reimbursement for Landlord's capital investments do not qualify as "Capital Investment" within the meaning of NJ Grow.

[3] Significantly, NJ EDA was aware of Tipico's involvement and had previously referred to Tipico as an affiliate of Landlord "without showing any concern or identifying it as a potential issue." Had Maestri been told that payments by a landlord's affiliate did not quality as capital investments under Grow NJ, Maestri could have taken appropriate remedial action to supplement its certification of completion.

At the very least, in accord with the purpose of the Grow NJ program, which is to "encourage economic development and job creation and to preserve jobs that currently exist in New Jersey but which are in danger of being relocated outside of the State" (*NJ Admin Code* 19:31-18.1), Maestri should be given an extension of time to submit additional documentation, if necessary, to support its application. It is uncontested that Maestri and Landlord beneficially paid more than $3,653,341 to create jobs and infrastructure in New Jersey in reliance on the benefits it was supposed to receive pursuant to the Grow NJ program. Thus, it would be against equity and good conscience for Maestri to be denied the benefits of the Grow NJ program.

In closing, we thank you for your attention to this matter.

Respectfully submitted,

TARTER KRINSKY & DROGIN LLP

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NJEDA

NJEDA REAL ESTATE DEPARTMENT

Department Overview:

The Department of Real Estate Development & Programs (Department) mission is to fill gaps in the commercial real estate marketplace by facilitating projects that, absent our assistance, would not move forward. Since 1979, REDD has developed ±13.7 million SF, and currently holds an interest in ±4.5 million SF, and actively manages ±.3 million SF of real estate. The Department has grown from a land developer in urban centers to a full service, state-wide development entity and administers real estate programs and tax incentives.

The Department's assistance can take several forms:

- Development, Construction and Strategic Projects:
  This team provides technical assistance, planning, financial, and/or development/construction services for Authority or State strategic initiatives, and also manages property within Authority's portfolio.

- Programs:
  This team develops real estate related products, which include, but are not limited to the Construction Inflation, Stranded Assets, and the Film Infrastructure programs.

- Incentives:
  This team administers the Aspire and other real estate tax incentives.

The Department engages consultants to assist with the acquisition of property, the planning, development and construction of projects, and the administration of real estate programs.

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan

DATE: April 12, 2023

SUBJECT: Recommendation for Award - #2022-RFP-070

Summary

The Members' approval is being requested to enter into a contract with Jones Lang LaSalle Americas, Inc. ("JLL") for a total contract award in an amount not to exceed $1,700,000 for one (1), three-year (3) term, with two (2) one-year (1) extension options to provide advisory services to the Authority. These services will assist the Authority to evaluate EDA programs and investments in real estate projects.

Background

On November 30, 2022, the New Jersey Economic Development Authority (NJEDA) issued a Request for Proposals (RFP), #2022-RFP-070 Advisory Services for NJEDA Programs and Projects to solicit proposals from experienced consulting firms to support its programs and projects. Services include, but are not limited to conducting market studies, preparing financial feasibility analyses, evaluating sites and analyzing economic impacts.

The RFP language provided for the award of one (1), three (3) year term, with two (2), one (1) year extension options to be exercised through Task Order Requests (TORs) at the sole discretion of the Authority, at the same terms and conditions. Neither the RFP nor Exhibit A – Contract for Professional Services indicated a budgetary amount.

The RFP was duly advertised in two (2) newspapers - the Courier Post and Star Ledger for one (1) day on November 30, 2022, posted on the Authority's website, and on the NJ State Business Portal. One Thousand-Nine Hundred-fifty-Five (1,955) total firms were identified by the Procurement Department, through a NJSTART search, and a NJ Selective Assistance Vendor Information (NJSAVI) search for bid notification of the posting and identified firms were sent an e-mail. NJSAVI is a database designed to assist small, minority and/or women-owned businesses that wish to do business with the State of New Jersey and the private sector.

Two (2) proposals, shown below in alphabetical order, were received prior to the bid opening date and time, and were deemed responsive:

1- Ernst and Young U.S., LLP, New York, NY 10001
2- Jones Lang LaSalle Americas, Inc., Washington DC 20006

Prior to the receipt of the proposals, an Evaluation Committee of appropriately qualified EDA staff was established. The Evaluation Committee was convened and scored proposals on non-price criteria. The Evaluation Committee did not review or score the price component of proposals. The Fee Schedule component was evaluated independently in-line with Procurement guidelines and was added to the Evaluation Committee's non-priced scoring to result in the below overall scores. Jones Lang LaSalle Americas, Inc. was the highest ranked of the two responsive proposals based on price and non-price criteria. Ranking of the submissions was as follows:

Rank	**Proposer**	**Score**
1	Jones Lang LaSalle Americas, Inc.	4.5
2	Ernst and Young U.S., LLP	3.5

The RFP required a bidder to receive a score of three (3) or higher to be considered for Award, which means that Jones Lang LaSalle Americas, Inc. successfully received a passing total score of 4.5. Jones Lang LaSalle Americas, Inc. is, therefore, being recommended for award. This contract is Task Order Request (TOR)-based, and the budget for the three-year (3) contract with two (2), one-year (1) extension options is an amount not to exceed $1,700,000.00.

Recommendation

The Members are requested to approve an Advisory Consulting Services contract award to JLL for a total contract award in an amount not to exceed $1,700,000 for one (1), three-year (3) term, with two (2) one-year (1) extension options to be exercised by Authority staff, at the same prices, terms and conditions to provide advisory services to the Authority.

Tim Sullivan, CEO

Prepared by: Dan Jennings, Executive VP Real Estate Development & Programs

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

RE: Contract for Real Estate Selling Broker for Select Authority Owned Property with Jones Lang LaSalle Americas, Inc.

Summary

The Members are asked to approve the selection of and execution of a contract with Jones Lang LaSalle Americas, Inc. (JLL), of Parsippany, New Jersey for real estate brokerage services to sell select Authority owned property.

Background

On January 9, 2023, the Procurement Department publicly advertised a Request for Proposals (RFP) for real estate selling brokerage services for various Authority owned parcels.

In response to the RFP, the Procurement Department received one (1) proposal from JLL, which was reviewed for compliance and evaluated to ensure all of the qualifications, experience, and other requirementsas outlined in the RFP were met. JLL meets all the criteria outlined in the RFP and was evaluated and scored above the minimum score provided in the RFP. The Evaluation Committee recommends that the Authority retain JLL to provide real estate selling brokerage services for a three-year (3) term, and if exercised by the Authority, two (2), one (1) year renewal options.

The commission will be fixed for the term of contract and both extensions at 4.875%. The Authority will not be responsible to pay any commission to a cooperating broker. If a cooperating broker is representing a purchaser, JLL enters into an agreement with the cooperating broker and pays the commission to the cooperating broker.

JLL will not earn commissions on transactions between the Authority and any instrumentality or agency of the State of New Jersey or any corporate entity comprised of an instrumentality or agency of the State of New Jersey ("State Related Sales"), including but not limited to State universities and/or colleges, and local government (county or municipal) or any instrumentality of any local government, including but not limited to any county college, agency, or corporate entity of any local government.

Additionally, JLL will not be entitled to receive a commission in instances where Authority staff is required to market a property pursuant to the Authority's internal policy or for a sale that is a result of an unsolicited offer to purchase a property that was not marketed for sale either through Authority staff marketing efforts or under this Contract.

Recommendation

Subject to approval of the Chief Executive Officer, I request the Members approve awarding the real estate selling brokerage services contract for selected Authority owned parcels to Jones Lang LaSalle.

____

Tim Sullivan, CEO

Prepared by: Cathleen A. Hamilton and Juan Burgos

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Credit Underwriting Projects Approved Under Delegated Authority – **For Informational Purposes Only**

The following project was approved under Delegated Authority in March 2023:

Small Business Fund Program:

1) Demitria Bulsara Enterprises LLC ("Demitria") (PROD-302291) is located in Mount Laurel Township, Burlington County. Demitria, formed in 2022, is a real estate holding company purchasing the project property. The operating company, Kash Bulsara Insurance and Financial Services, Inc. was formed in 2021 as a State Farm Insurance Agency Owner licensed to sell auto, homeowners, condo, renters, personal articles, business, life, health, and pet insurance products. The NJEDA approved a $382,500 loan to purchase the project property. The Company currently has four employees.

Tim Sullivan, CEO

Prepared by: G. Robins

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 12, 2023

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses for the first Quarter 2023 - ***For Informational Purposes Only***

The following approvals were made pursuant to Delegated Authority for Leases and ROE/ Licenses in January, February and March 2023 :

LEASES

TENANT	LOCATION	TYPE	TERM	S.F.
SPES Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	1,800sf
Bright Cloud International	Bioscience Center Incubator	Month to Month	Month ot Month	900sf
TheWell Bioscience	Bioscience Center Incubator	Month to Month	Month to Month	2,200sf
Delve Therapeautics	Bioscience Center Incubator	Lease Renewal	One Year	900sf
Innovative Molecules	Bioscience Center Incubator	Lease Renewal	One Year	1000sf
Osseoprint 3D	Bioscience Center Incubator	Lease Renewal	One Year	900sf

RIGHT OF ENTRY/LICENSES/EXTENSIONS

ENTITY	**LOCATION**	**TYPE**	**CONSIDERATION**
Trenton Board of Education	Ringold Street, Trenton, NJ	License Agreement for EDA to access property for feasibility activities	$0

Tim Sullivan, CEO

Prepared by: Cyndi Costello