



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Agenda for Board Meeting of the Authority April 13, 2022

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Incentives

Bond Projects

Loans/Grants/Guarantees

Real Estate

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

March 9, 2022

MINUTES OF THE MEETING

The Meeting was held by teleconference call.

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

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

Members of the Authority absent: Public Members, Phil Alagia, Fred Dumont, 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. Mr. Sullivan stated that pursuant to the Internal Revenue Code of 1986, as amended, the meeting is a public hearing and comments are invited on any private activity bond projects presented.

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the February 9, 2022 meeting minutes. A motion was made to approve the minutes by Commissioner Caride and seconded by Ms. Bauer, and was approved by the 11 voting members present.

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

Ms. Glover joined the meeting at this time.

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

AUTHORITY MATTERS

ITEM: Adoption of Amended and Restated By-Laws and Board Policy on Delegation of Authority

REQUEST: To approve Amended and Restated By-Laws of NJEDA and a Policy on Delegation of Authority.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

ITEM: Memorandum of Understanding (MOU) with Kean University to support Trenton Community Engagement and Planning for Maternal and Infant Health Innovation Center

REQUEST: To approve a Memorandum of Understanding (MOU) between the Authority and Kean University's John S. Watson Institute for Urban Policy and Research using funding appropriated to the Authority for the first phase of planning activities related to establishing a new Trenton-based Maternal and Infant Health Innovation Center.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Glover **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Third Amendment to Real Estate Advisory Consulting Services Contract Between Jones Lang LaSalle Americas, Inc. and the Authority

REQUEST: To approve the execution of the Third Amendment to the Real Estate Advisory Consulting Services Contract, between the Authority and Jones Lang LaSalle Americas, Inc.

MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Keyes – Maloney **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: NJ Wind Institute Fellowship Program and University Initiatives to Advance Offshore Wind MOUs

REQUEST: To approve four Memorandums of Understanding (MOU) between NJEDA and 1) Rutgers University, 2) Rowan University, 3) Montclair State University, and 4) New Jersey Institute of Technology to support the implementation of the Wind Institute Fellowship Program and University Initiatives to Advance Offshore Wind utilizing funds from the Offshore Wind Sector Initiatives Memorandum of Understanding between NJEDA and NJBPU executed on July 14, 2021.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ITEM: Memorandum of Understanding Between the EDA and the Capital City Redevelopment Corporation

REQUEST: To approve a new Memorandum of Understanding between the New Jersey Economic Development Authority 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. Keyes – Maloney **SECOND:** Ms. Dragon **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: NJEDA Henri Ida Grant Program Additional Funding for Temporary Staff

REQUEST: To approve the increase of funding for the Purchase Order to 22nd Century Technologies Inc. for additional Economic Recovery Funds for temporary employees hired to administer the Henri/Ida grant program.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Dragon **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

COMMUNITY DEVELOPMENT

ITEM: Recommendation for Grant Award and Declinations – New Jersey Arts and Innovation Festival Challenge Grant

REQUEST: To approve the award of the New Jersey Arts and Innovation Festival Challenge Grant for the purpose of hosting a New Jersey Arts and Innovation Festival and declinations for applications due to program criteria.

MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Dragon **AYES: 10**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

Ms. Glover abstained because Audible, Inc. is on the board of NJPAC.

Ms. Keyes – Maloney abstained because State Treasurer Muoio is on the board of NJPAC.

ITEM: New Jersey Asset Activation Planning Grant Program

REQUEST: To approve 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 through funding of pre-development planning for projects that will activate distressed and under-utilized public assets benefiting their communities and the regional economy; approval of the Economic Recovery Fund authorization to capitalize the New Jersey Asset Activation Planning Grant Program, with funding for an initial pilot program round, delegated authority to extend additional funding to make additional awards should the application volume, received prior to the initial deadline, exceed the original funding amount; and delegated authority 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.

MOTION TO APPROVE: Ms. Hicks **SECOND:** Mr. Shimko **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

INCENTIVES

GROW NEW JERSEY

ITEM: WallachBeth Capital, LLC Grow New Jersey Assistance Program – COVID-Related Termination P44030 (PROD-00184588)

REQUEST: To approve Wallach Beth Capital, Inc.’s 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.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Keyes – Maloney **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Interpool, Inc. Grow New Jersey Assistance Program – COVID-Related Termination P39455 (PROD-00184286)

REQUEST: To approve Interpool’s 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, contingent upon the receipt of its outstanding recapture obligation.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

ITEM: Laboratory Corporation of America Holdings –Grow New Jersey Assistance Program Modification – P44555 (PROD-00174510) \$39,984,780 Grow NJ

REQUEST: To approve: Decrease in estimated capital investment from \$150,372,005 to \$104,990,498; increase the square footage at 10 Johnson Drive from 57,502 square feet to 60,430 square feet, and at 69 1st Avenue from 284,118 square feet to 294,336 square feet. The overall 10-year tax credit will not be reduced from the originally approved amount as a result of this change.

MOTION TO APPROVE: Ms. Keyes – Maloney **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

ITEM: Ritz Hotel Services, Inc. Grow New Jersey Appeal

REQUEST: Consent of the members to the Hearing Officer’s recommendation upholding the NJEDA Board’s declination of Ritz Hotel Services, Inc. Grow New Jersey application and rejecting the Company’s appeal of the declination.

MOTION TO APPROVE: Ms. Hicks **SECOND:** Ms. Bauer **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

ITEM: Hearing Officer’s Recommendation, RespireRx Pharmaceuticals, Inc – 2021 Technology Business Tax Certificate Transfer Program Declination

REQUEST: Consent of the members to the Hearing Officer’s recommendation upholding the NJEDA Board’s decision denying RespireRx Pharmaceuticals, Inc’s 2021 Technology Business Tax Certificate Transfer Program application.

MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Keyes – Maloney **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

FILM & DIGITAL MEDIA TAX CREDIT

ITEM: Universal Television LLC “The Enemy Within Season 1” PROD-00185323

New Jersey Film Tax Credit Program - Modification

REQUEST: To approve an award increase of Universal Television LLC’s, New Jersey Film Tax Credit application from \$14,369,717 to \$17,083,038.

MOTION TO APPROVE: Ms. Keyes – Maloney **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

Apple Slice Productions

PROD-00288726

MAX AMOUNT OF TAX CREDITS: \$4,890,401.75

MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

Diga LLC

PROD-00300421

MAX AMOUNT OF TAX CREDITS: \$3,496,503.27

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Keyes – Maloney **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

Eye On The Ball Enterprises Inc.

PROD-00300467

MAX AMOUNT OF TAX CREDITS: \$1,686,165

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Bauer **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

Bound the Movie LLC

PROD-00300387

MAX AMOUNT OF TAX CREDITS: \$183,492.30

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Giblin **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

3 Days Rising LLC

PROD-00187927

MAX AMOUNT OF TAX CREDITS: \$154,748.80

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Keyes – Maloney **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

Smarty James, LLC

PROD-00300392

MAX AMOUNT OF TAX CREDITS: \$78,566.25

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Giblin **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 20

LOANS, GRANTS, GUARANTEES

ITEM: Main Street Recovery Finance Program - Micro Business Loan – Product Revision

REQUEST: To approve a revision to the Main Street Recovery Finance Program – Micro Business Loan to allow for eligibility for businesses that have been in operation for at least 6 months prior to date of the business’ loan application, rather than 6 months prior to the date the loan application was made available to the public.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Marley **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 21

NJ ACCELERATE

APPLICANT: ABF Creative Inc. **PROD. #00301572**

LOCATION: Newark City, Essex County

PROCEEDS FOR: working capital

FINANCING: \$262,500.00

MOTION TO APPROVE: Ms. Giblin **SECOND:** Ms. Bauer **AYES: 11**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 22

Ms. Glover abstained because Audible, Inc. has investments in ABF Creative Inc.

Hazardous Discharge Site Remediation Fund

ITEM: Summary of NJDEP Hazardous Discharge Site Remediation Fund Program projects approved by the Department of Environmental Protection.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Caride **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 23

PROJECT: National Park Borough

PROD. #00301705 Robert Hawthorne Sanitary Landfill

LOCATION: National Park Borough, Gloucester County

PROCEEDS FOR: Remedial Action

FINANCING: \$2,986,335.86

Petroleum Underground Storage Tank (PUST)

ITEM: Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Commissioner Caride **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 24

Residential:

PROJECT: Joseph Martin PROD. # 00301466
LOCATION: Nutley Township, Essex County
PROCEEDS FOR: upgrade, closure, and remediation
FINANCING: \$216,826.72

Commercial:

PROJECT: George's Friendly Service PROD. # 00301468
LOCATION: Dumont Borough, Bergen County
PROCEEDS FOR: Remediation **FINANCING:**
\$132,123.00

PROJECT: Warren Isaacs PROD. # 00288662
LOCATION: Linden City, Union County
PROCEEDS FOR: Remediation
FINANCING: \$83,901.79

BOND PROJECT

PROJECT: Linden Renewable Energy, LLC PROD-00228622
LOCATION: Linden City, Union County
PROCEEDS FOR: Construction, purchase equipment, fund debt service reserve fund, pay interest on the bonds during construction and cover the cost of issuance.
FINANCING: \$240,000,000 Tax-Exempt Bond
MOTION TO APPROVE: Mr. Shimko **SECOND:** Commissioner Caride **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 25
PUBLIC HEARING: Yes
PUBLIC COMMENT: None

PUBLIC COMMENT

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

Ms. Glover left the meeting at this time.

EXECUTIVE SESSION

The next item was to adjourn the public session of the meeting and enter into Executive Session to discuss a confidential matter involving anticipated contract negotiations, where disclosure could adversely impact the public interest.

MOTION TO APPROVE: Mr. Quinn **SECOND:** Ms. Keyes – Maloney **AYES: 11**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 26

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

The Board returned to Public Session.

INFRASTRUCURE

ITEM: New Jersey Wind Port – Request for approval of a grant agreement with Department of Treasury for project funding, additional project expenditure, and a project-specific delegated authority policy

REQUEST: To approve entering into a Grant Agreement with the New Jersey Department of the Treasury, additional project expenditure, and a NJWP-specific delegated authority policy.

MOTION TO APPROVE: Mr. Quinn **SECOND:** Ms. Bauer **AYES: 10**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 27

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Bauer, the meeting was adjourned at 12:33pm.

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, Director
Governance & Strategic Initiatives
Assistant Secretary



MEMORANDUM

To: Members of the Authority
From: Tim Sullivan
Date: April 13, 2022
Re: April 2022 Board Meeting

The New Jersey Economic Development Authority (NJEDA) continues to focus on the advancement of programs created by the Economic Recovery Act of 2020 (ERA), which are designed to foster a stronger and fairer New Jersey economy. With Earth Day coming up on April 22, we're also showcasing the breadth of resources offered by the NJEDA that contribute to Governor Phil Murphy's vision for a *greener* and fairer economy.

This suite of offerings includes financing to remediate and redevelop brownfield sites, clean energy solutions to protect the air we breathe, and solutions for advancing environmental justice so that the health and well-being of all New Jerseyans are protected. We are currently accepting applications for the Brownfields Impact Fund for projects in the 12 Community Collaborative Initiative municipalities. The program provides grant funding and low-interest loans to public sector and non-profit organizations, as well as low-interest loans to for-profit organizations to conduct cleanup activities at brownfield sites throughout the state. Applications for projects from non-CCI communities open on April 20.

Another program that will lead to a greener, fairer New Jersey economy is the Historic Property Reinvestment Program. Created under the ERA, this program will also contribute to healthier communities, as the greenest buildings are those that are already built. Applications for transformative projects are currently being accepted, and the program will open to other types of projects in June.

Applications for 47 small businesses totaling over \$16.5 million have been approved under the New Jersey Zero Emission Incentive Program (NJ ZIP) to support the purchase of medium-duty zero emission vehicles. Notably, 44 percent of approvals have been for minority-business enterprises. NJZIP is currently available to businesses in the greater Camden, New Brunswick, Newark, and Shore areas.

Continuing its mission to foster innovation in the Garden State, the Commission on Science, Innovation and Technology approved the creation of Round 2 of the Clean Tech Research and Development (R&D) Voucher Program earlier this month. The program helps startups in the clean technology sector offset the cost of accessing amenities at New Jersey universities and federal laboratory facilities statewide.

Offshore wind, including the New Jersey Wind Port, represents a primary focus of our clean energy programs, but not solely for its environmental benefits. Today, the Board will be asked to consider a memorandum of understanding between the NJEDA and Salem County Vocational Technical School for the expansion of offshore wind-related painting and welding programs. These and other offshore wind educational programs will ensure the state's pipeline of skilled workers keeps pace with demand and is prepared for the family-sustaining career opportunities presented by this industry.

April's focus on the environment will culminate in two high-profile events where the NJEDA will showcase its offerings. On Saturday, April 23, we will exhibit at an Earth Day event at Liberty State Park, hosted by the New Jersey Department of Environmental Protection. The following week, the NJEDA and Choose New Jersey will sponsor the Business Network for Offshore Wind's International Partnering Forum (IPF), taking place in Atlantic City April 26-28. Throughout IPF, NJEDA staff will participate in panel sessions, and Governor Murphy will be a



keynote speaker. IPF will kick off with a Supplier Day on Tuesday, April 25, to introduce New York and New Jersey businesses to offshore wind developers, original equipment manufacturers, and suppliers of major equipment for offshore wind to learn about business opportunities related to offshore wind projects. Supplier Day will be followed by a New Jersey-themed reception hosted by the NJEDA and Choose New Jersey.

While offshore wind presents an opportunity for certain types of businesses, helping all small businesses build resiliency and adapt to a post-COVID reality continues to be a critical focus for the NJEDA. Staff is working tirelessly to process applications under the Main Street Small Business Lease Grant and Main Street Business Improvement Grant, both created by the ERA. The Main Street Micro Business Loan application will launch soon, adding to our capacity to support the state's smallest businesses.

The ERA also established the New Jersey Innovation Evergreen Fund (NJIEF), a ground-breaking new tool to increase access to venture capital in New Jersey. Today the Board will be asked to approve the creation of the NJIEF, which will create partnerships between the state and the private sector that will raise funds and invest into New Jersey-based high-growth companies to support entrepreneurs and grow the innovation economy.

In another move to improve the flow of capital to small businesses, yesterday, we kicked off a new series of roundtable discussions with small business owners as part of our ongoing partnership with the Federal Reserve Bank of Philadelphia. This session, held in North Brunswick, is the first of three meetings with small business owners to better understand their challenges with accessing capital. Roundtables will be held in Newark and Camden by the end of the month.

It's wonderful to see everyone back in person, and as always, we appreciate the steadfast support of our Board through incredibly challenging times.

A handwritten signature in black ink, appearing to be "T. A.", is written above a solid black horizontal line. The signature is fluid and cursive in style.



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Special Adopted New Rules and Concurrent Proposed New Rules New Jersey Innovation Evergreen Fund Evergreen Program (N.J.A.C. 19:31-25)

Request:

The Members are asked to approve:

- 1) The attached special adopted new rules and concurrent proposed new rules for the New Jersey Innovation Evergreen Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed new rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and
- 2) The creation of the New Jersey Innovation Evergreen Program, a tax credit and investment program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 20 through 34 of P.L. 2020, c. 156 and amended by P.L. 2021, c. 160), to foster collaborative engagement among established corporations that will purchase tax credits and commit strategic value to the New Jersey innovation economy, venture capital firms that will invest the funds raised, and the innovative, early-stage businesses that will receive the funds in the form of investment; and
- 3) Delegation to the Authority's Chief Executive Officer to establish a date/s for the corporate business tax auction (no more than annually) and to approve follow-on investment (with certain exceptions) as explained in this memorandum.

New Jersey Economic Recovery Act:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA presents a strong recovery and reform package that 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 15+ economic development programs, including:

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

The program being presented for the Members’ approval in this memorandum is the New Jersey Innovation Evergreen Program (the Evergreen Program or Program) – one of the 15+ programs under the ERA. The Evergreen Program is an incentive and venture investment program designed to support job creation and the innovation ecosystem, with a focus on targeted industries.

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

Program Purpose and General Description

Innovation can occur anywhere, but it may have the greatest chance of success when born and fostered with the collaboration of interested partners. Entrepreneurship is a primary contributor to job creation and sustainable economic growth. New businesses can create disruptive products and services that launch new markets and spur employment in high-wage industries. While innovation is frequently associated with early-stage enterprises, few such businesses have the depth of resources of more established corporations necessary to turn their innovative ideas into realized solutions. Proximity and access to funding are key value drivers for the development of an entrepreneurial ecosystem. Venture capital can serve a critical function to help commercialize, test and scale research and ideas to truly transform the economy and, to attract and retain budding entrepreneurs. The Evergreen Program directly addresses our state’s competitive position in venture capital funding nationally and aims to create the conditions necessary for our entrepreneurs to succeed.

The Evergreen Program forms a platform that partners with the private sector to raise and invest capital in qualified New Jersey-based companies. The Evergreen Program will secure funding and strategic support from the sale of state corporate tax credits in a competitive auction, then partner with private venture capital firms to co-invest the funds in eligible early-stage businesses in New Jersey. This application of known economic development tools form a novel mechanism intended to create alignment among the resources of New Jersey’s established corporate citizens with professional venture capital investment firms and early-stage businesses in New Jersey. To accomplish the purposes of the Evergreen Program, the statute creates an Evergreen Fund to be held by the Authority. The Evergreen Fund shall receive the payment by tax credit purchasers; distributions from payments or repayments made to the Authority from Evergreen Program qualified investments; and money received pursuant to payments, repayments, or redemptions required due to a default or failure to comply by tax credit purchasers, qualified venture firms, or qualified businesses. In addition to funding qualified investments, the Evergreen Program statute authorizes payment of the Authority’s administrative costs for the Evergreen Program and requires that 75 basis points (0.75%) be used for EDA programmatic support that create an innovation ecosystem that supports and promotes high-growth businesses in the State. The overview provided here highlights the three primary components of the program: Tax Credit Sale Auction; Venture Firm Qualification; and, Investment Qualification. Additional program details are included in the sections below, and full program details are contained in the draft rules (**Appendix A**) and the statute.

I. Tax Credit Sale Auction

The State of New Jersey is authorized to sell corporate tax credits, annually, via competitive auction to eligible corporations through the first six years of the seven years of the Evergreen program with a maximum of \$300 million in aggregate. Corporations may purchase the credits for a minimum of 75 percent of face value, along with a strategic commitment to support the State’s innovation economy and requirement to be available to serve on the New Jersey Innovation Evergreen Advisory Board. The proceeds of the sale will form the capital of the Evergreen Fund. The Evergreen Fund provides the funding for the Evergreen Program investment, the administrative costs of the Evergreen Program, and funding for other programs administered by the Authority that create an innovation ecosystem promoting high-growth businesses in the State.

II. Venture Firm Qualification

Qualified Venture Firms may access the funds in the Evergreen Fund to make investments into qualifying New Jersey businesses. All investments must be matched by the Qualified Venture Firm, as discussed in section III below. In order to invest the Evergreen Fund monies, the Evergreen Program establishes an application process through which a venture firm will, first, apply for certification as a qualified venture firm. Approval will enable the firm to apply for funding from the Evergreen Fund to make qualified investments in qualifying early-stage New Jersey businesses.

III. Investment Qualification

Venture firms may submit applications for qualifying investments funded by the Evergreen Fund after receiving EDA Board approval as a qualified venture firm or in conjunction with an application for

certification as a qualified venture firm. Such qualified investments in New Jersey-based businesses must receive an investment from the qualified venture firm fund that matches or exceeds the qualified investment. Individual special purpose vehicles (generally anticipated to be limited liability companies, or LLC's) will be established to consummate the qualified investments for the Evergreen Fund. As the Evergreen Fund's investments mature and experience exit events (e.g. a sale or initial public offering), the proceeds flow back to the special purpose vehicle for payment to the qualified venture firm of its carried interest and a transfer of the remainder to the Evergreen Fund, providing a stream of capital to support the purposes of the Evergreen Fund.

It is anticipated additional follow-on capital investment will be needed to support growing early-stage businesses as noted in the delegation request. The Authority shall have the right, but not the obligation, to make a follow-on investment from the Evergreen Fund into the qualified business. The follow-on investment will be made on a pro rata basis with the qualifying venture firm's investment at the same ratio which the Evergreen Fund matched the initial qualifying investment.

A qualified venture firm shall report on its qualified investment activity and related special purpose vehicle(s) in its annual report. During the qualified business compliance period, all qualified businesses must maintain a place of business in New Jersey and must maintain one of the following: its principal business operations in New Jersey, at least 50 percent of its full-time employees filling a position in New Jersey, or at least 50 percent of wages paid to employees filling a full-time position in New Jersey.

The areas described above are outlined in greater detail in this memorandum and in detail within the full program regulations.

Key Definitions

Certain technical definitions from the Evergreen regulations are highlighted here:

Incentive area means an area in this State: designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan); or that has been designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

Opportunity zone means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1 as may be amended.

Principal business operations mean at least 50 percent of the business's full-time employees reside in the State, or at least 50 percent of the business's payroll for full-time employees is paid to individuals living in the State. For purposes of this definition, payroll shall mean wages. Note that "full-time employees" in the rules, including this definition, excludes any employee who is primarily engaged in final point-of-sale retail.

Qualified business compliance period means the period starting with the qualified investment in a qualified business and ending on the sale or other disposition of all shares of stock of the qualified business from the Evergreen special purpose vehicle, including any distribution of the shares to the Authority. If the distribution of the shares of stock from the Evergreen special purpose vehicle to the Authority occurs

in less than five years after the qualified investment, the qualified business compliance period shall be five years or such other shorter qualified business compliance period determined by the Authority, which may be based on factors including, but not limited to, the number of the qualified business full-time employees filling a position in New Jersey.

Qualified venture firm active fund means the entity managed by the qualified venture firm or an affiliate of the qualified venture firm from which the qualified venture firm invests in a qualified business alongside the qualified investment.

Reserves means capital in the fund which has been reserved for follow-on investments and qualified venture firm management fees and direct expenses; the 75 basis points for programs that support the State's innovation ecosystem; and administrative, legal, and auditing expenses of the Authority in administering the program. The Authority may also reserve such amounts as it considers necessary to achieve the opportunity zone eligible census tract goal and any goals that may be developed pursuant to the disparity study.

Targeted industries is defined the same as in Emerge: any industry identified from time to time by the Authority that 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-final point of sale retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A qualified business shall be considered to be in a targeted industry if the business is engaged primarily in a targeted industry. The Authority may consider whether a qualified business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new businesses to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based businesses to collect a share of revenues that were traditionally only available to companies in other geographies.

Eligibility Criteria Highlights

Each of the three primary components of the Evergreen Program – tax credit auction, venture firm qualification, and investment qualification – requires a unique set of eligibility criteria due the disparate nature of each component. The following highlights key eligibility requirements for the three components of the Evergreen Program in accordance with the statute, with additional clarification as provided in the program rules. Full eligibility details are contained in the draft proposed rules, N.J.A.C. 19:31-25, based on the Economic Recovery Act statute in Sections 20 to 34 of P.L. 2020, c.156, amended by P.L. 2021 c.160.

Tax Credit Purchaser Requirements

To be awarded a tax credit under the program, a potential purchaser must meet various criteria contained in the rules, **Appendix A**, and explained in the auction overview, **Appendix B**, including but not limited to:

- The amount of tax credits to purchase shall not be less than \$500,000;
- The percentage amount of the face value of the tax credits the bidder proposes paying shall not be less than 75 percent of the face value of credits;
- Each component of the strategic commitment, including the cost to the proposed purchaser of each such component, must be described in detail. The strategic commitment may include, but is not limited to mentorship hours, internship offerings, sales and distribution pipeline access;
- Commit to serve on the New Jersey Innovation Evergreen Advisory Board for one-year from the time of approval;
- Provide a refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000, at the time of application (which will be applied to the final purchase amount paid);
- Purchasers must agree to publicize their involvement with the Evergreen Fund.

The Authority shall evaluate and score each completed bid application once the application period has closed and all applications have been received. If the amount of tax credits requested for purchase exceeds the total amount available for purchase, the Authority may pro rate the amount of tax credits allocated to each tax credit purchaser based on the formula as noted (**Appendix B**). Successful tax credit purchasers will not receive less than \$500,000 of Program tax credits. If the proration were to result in any potential tax credit purchaser receiving less than \$500,000, the Authority shall award tax credits only to the highest scored potential tax credit purchasers that would result in a proration with at least \$500,000 of tax credits to each potential tax credit purchaser.

The auction will be run as a competitive process. Prior to opening the bid application window, the Authority will establish and publicly disclose the timeline, will publish the weighted criteria, and will disclose whether the Authority may seek best and final offers. After the application window closes, NJEDA staff will review the applications for completeness and will score and rank the completed bids. If best and final offers are permitted, the Authority may seek to do so, for example, if the aggregate amount of tax credits requested exceed the amount of tax credits available. If more tax credits are available than the aggregate amount requested in bid applications, applicants, starting with those ranked highest, may elect to increase their purchase amount. Detailed information about the Auction Timeline can be found in **Appendix B**.

Tax credit purchasers shall be required to complete their strategic commitment with expenditures of at least 80% of the value of each commitment component in order to remain in compliance. In the tax credit purchaser contract, the tax credit purchaser will be provided an opportunity to cure by completing the commitment component over the next year. Failure to do so, absent extenuating circumstances or the Authority's written consent, will require the tax credit purchaser to pay the difference between the cost of the strategic commitment component as set forth in the bid application and the actual cost of the amount of the strategic commitment delivered by the tax credit purchaser. Until such amount is paid to the Authority, the tax credit purchaser will not be able to participate in future competitive auctions. The amount paid by the tax credit purchaser will be deposited into the Evergreen Fund. Additionally, any tax

credit purchaser selected to be a member of the New Jersey Evergreen Innovation Advisory Board that does not participate in a majority of that Board's meeting and activities will not be eligible to purchase tax credits in the next twelve months.

No Undue Financial Advantage

As required by the statute, the Evergreen Program requires that no undue financial advantage inures to a tax credit purchaser as a result of a qualified or follow-on investments from the Evergreen Fund. To ensure this, during the twelve-month period after the approval of the award of tax credits to a tax credit purchaser, the Authority shall not approve a qualified or follow-on investment to a qualified venture firm that is (1) managed by; (2) beneficially owned, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests by; or (3) whose direction of investments are controlled by, a tax credit purchaser. Through the various Evergreen Program applications, Staff will inquire about the above three situations at the time of applications for both tax credit purchases and for qualified and follow-on investments. Additionally, the Evergreen Program statute requires the Chief Executive Officer of the Authority to certify that these steps are taken to prevent undue financial advantage.

Qualified Venture Firm Certification Requirements

Venture firms must be certified as qualified venture firms under the Program to apply for Evergreen Fund investment capital to support early-stage investments in New Jersey. Applicant firms can apply for certification either before identifying a potential qualified investment, or in conjunction with an application for a qualified investment. Venture firm applications for Program certification will be reviewed by staff on a rolling basis and will be presented to the Board of the Authority for approval.

Venture firm applicants that meet all program minimum requirements (detailed in N.J.A.C. 19:31-25.7 of the proposed rules) and that have submitted all required documentation will be scored based on the Program's weighted criteria for venture firms. The minimum requirements must be met both at the time of application for initial certification and at the time of application for investment.

- 1) Number of Investors Employed by the Firm: Qualified venture firms must employ at least two full-time investors with the authority to direct investment capital with at least five years of money management experience (each) at the time of application. Relevant money management experience shall include, but is not limited to, operational and investment oversight, in the venture capital or private equity sectors, including but not limited to, investment firms, investment banks, asset management or similar investment management institutions, family office funds, or significant angel investment experience. To be significant, angel investment experience shall consist of \$100,000 of aggregate investments and two investments per year. The experience shall be met as of the date the determination for certification is made.
- 2) Minimum Assets Under Management: Qualified venture firms must demonstrate at least \$10,000,000 in assets under management at the time of application, which will be measured as the sum of a firm's net assets of the funds managed by the qualified venture firm, equity capitalization

of the funds managed by the qualified venture firm, and written commitments of cash or cash equivalents committed by investors.

- 3) Diversity, Equity & Inclusion: The evaluation methodology places a material emphasis on venture firms' diversity, equity, and inclusion policies and track record against such policies. Diversity, equity, and inclusion are foundational elements of building a stronger and fairer State economy. Applicant responses to diversity equity and inclusion policy categories will be evaluated by the Authority's Diversity, Equity, and Inclusion team using a checklist to test conformity with industry best practices which will be identified on the Authority's website. The checklist, which will be posted on the Program website, may include such criteria as policies on investments in underrepresented founders, diversity metrics of portfolio company Board of Directors, diversity metrics of the venture firm, and recruitment and retention of diverse staff. Consideration will also be given to timeliness of policies, for example, policies in place prior to the events of 2020 and the increased focus on diversity, equity, and inclusion that followed. Firms that do not initially meet the requirements of the diversity, equity and inclusion policy weighted criteria may develop robust policies that adhere to industry best practices and reapply.

Please refer to **Appendix C** for the specific proposed evaluation criteria, weights, minimum acceptable score, and further clarification on each of the different proposed aspects the Authority will consider in its scoring evaluation of qualified venture firm applicants.

Qualified Investment Requirements

Applications for investment will be completed jointly by qualified venture firms and businesses seeking capital. Staff will review investment applications on a first-come, first-served basis and will screen both qualified venture firms and businesses for eligibility. The NJEDA staff underwriting process will be limited to ensuring qualified businesses meet all requirements of the Program. The Program does not establish a review for the merits of the proposed investment. Rather, the Program will rely on qualified venture firms that will share aligned interests with the NJEDA through incentive-based carried interest compensation to identify strong investment opportunities. Venture firms will evaluate the quality of investment opportunities through their normal course of business. Eligible qualified investment applications, along with approval requests for associated fees and expenses, will be submitted to the Board of the Authority for approval following staff review.

Please refer to **Appendix D** for the specific proposed eligibility criteria and further clarification on each of the different proposed aspects the Authority will consider in its scoring evaluation of qualified investment applicants.

Qualified Venture Firm Requirements at Time of Initial Investment

Qualified venture firms must both demonstrate they continue to meet the initial certification requirements through the time of initial investment approval. Firms will not be requalified based on the Program's weighted scoring criteria at this time.

- 1) Limit on Size and Number of Investments: Qualified venture firms may only complete two qualified investments per calendar year. Applications for investments shall not be less than \$100,000 per qualified investment must be limited to \$5,000,000 per investment. If the business is a NJ university spin-off, utilizes intellectual property developed at a NJ university that is core to its business model, or is certified by the State as a “minority business” or a “women’s business” pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.), the businesses will qualify for a qualified investment of up to \$6,250,000. In cases where multiple qualified venture firms apply for investments into the same business, applications will be approved on a first-come, first-served rolling basis until the initial investment dollar limit for any given business is reached. Multiple firms can invest into the same qualified business up to a \$5,000,000 aggregate initial investment limit, or \$6,250,000 limit for select types of companies, if the investments occur in the same fundraising round.

To mitigate concentration risk, qualified venture firms may only receive aggregate Program capital across investments up to 15 percent of the firm’s total assets under management, to be tested at the time of initial and follow-on investment application. At the time of application for follow-on investments, the Program will also limit aggregate investments into any qualified businesses based on a percent of the Program’s uninvested and invested capital. The proposed regulations permit the Program to set a business concentration cap of up to 15 percent. Staff is recommending that the Board approve setting this cap initially at 10 percent to limit concentration risk to ensure a broad disbursement of investment funds at the outset of the program while market learnings are accumulated. This metric will be evaluated annually and staff will seek Board approval to revise it up or down as program intelligence is accumulated.

If the Program is unable to fulfill a firm’s entire request for investment due to investment size and concentration risk policies or an availability of funds, a qualified venture firm may amend the amount requested through its investment application.

- 2) Initial Investments by a Firm: Any initial investment by the Program must represent the qualified venture firm’s first investment into the business. This is intended to prevent venture firms from using Program capital to prop-up failing investments.
- 3) Timing of Investment Application: Qualified venture firms must have at least begun negotiations over a draft term sheet with a business before applying for NJIEF funding. In all cases, an executed stock purchase agreement, which finalizes the terms of the investment between the venture firm and the business, must be submitted by qualified venture firms in order to close on an investment from the Fund. Ideally, Program investments will be made contemporaneously with investments by venture firms’ funds, however, the NJIEF Program may accept applications for investment in a qualified business up to 90 days after a qualified venture firm investment. The investments must be part of the same fundraising round and on equal terms. This look-back period is required to ensure Program approval processes move efficiently enough to participate in fast-moving, competitive venture capital investments.

Please refer to **Appendix C** for specific criteria and additional clarification for the qualified venture firm evaluation, and to **Appendix D** for a detailed description of the Program’s initial and follow-on investment approval process.

Qualified Business Requirements

To receive an investment from the NJIEF, a business must meet several eligibility requirements at the time of application for investment, some of which are highlighted below.

- 1) New-Jersey Based: The business has its “principal business operation,” as defined above, in the State. Additionally, businesses must maintain a place of business in New Jersey.
- 2) Targeted Industry: The business must be engaged in a targeted industry, as defined above.
- 3) Limit on Size: The business must employ fewer than 250 full-time employees.
- 4) High-growth Business: Qualified businesses must meet one of the Program’s high-growth tests. The statute requires that the determination of “high growth” be based on the company growing “faster than the average growth rate of the economy.” The proposed rules provide that the Authority will determine and publish the specific metrics on the Authority’s website and lists three possible categories in which to measure the business’s growth: revenue, customers, and valuation. At the outset, staff is proposing that the Board approve using only those three categories and use a 25% threshold to determine “high growth.” Thus, to qualify, businesses must demonstrate annual revenue or customer growth of at least 25%, or valuation growth of 25% since their prior fundraising round. The statute also permits applicants that are too early in their life cycle to record one year of sales or customers or that have not previously raised third-party equity capital to meet the requirements for a high-growth business on a projected basis. To substantiate the projections, the proposed rules require the investing qualified venture firm to submit its base case projections. To qualify, the analysis prepared by the qualified venture firm must project 25% revenue, customer, or valuation growth in any one-year period over the subsequent 3-5 years.

Follow-on Investment Requirements

The Program authorizes follow-on investments alongside the qualified venture firm into the qualified businesses after the initial qualified investment. The screening process for follow-on investments requires EDA staff to verify that firms and businesses continue to meet Program requirements. Qualified venture firms will not be recertified at that time. Because follow-on investments may present an opportunity for the State to increase its exposure to a valuable investment, the proposed rules permit the Authority to decide whether to approve or decline a follow-on investment if the qualified venture firm is decertified or the qualified venture firm or qualified business are not in compliance with Program requirements, subject to approval by the Board of the Authority. Examples of scenarios the Authority may deem an investment is in the best interest of the State are cases of atypical financial promise, such as ‘unicorn’ investments that are rapidly appreciating in value, or while significant economic development is still anticipated in New Jersey, despite a shortfall in technical compliance.

The maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of: i. \$5,000,000 (or up to \$6,250,000 if so approved) on an aggregate basis of follow-on investments in a twelve-month period; ii. a business concentration cap based on a percentage of invested plus uninvested capital of the fund; and iii. 15 percent of the total invested with the qualified venture firm by all of its investors, including investments in any Evergreen special purpose vehicles (total assets under management). The proposed regulations permit the Program to set a business concentration cap of up to 15 percent. Staff is recommending that the Board approve setting this cap initially at 10 percent to limit concentration risk to ensure a broad disbursement of investment funds at the outset of the program while market learnings are accumulated. This metric will be evaluated annually and staff will seek Board approval to revise it up or down as program intelligence is accumulated.

Appendix D notes specific proposed criteria at the time of initial and follow-on investment and further clarification on evaluation of the Program's requirements at the time of investment.

Post-Approval Process

Tax Credit Auction

Upon selection as a tax credit purchaser, corporations will execute a tax credit purchase agreement outlining their obligations under the Program. Failure by the purchaser to pay the amount agreed on time may make the purchaser ineligible from NJIEF auction participation in the next twelve months. In such event, the Authority may offer the tax credits for purchase to other purchasers based on score ranking, without re-auction, on the same or better terms as in the other purchaser's tax credit purchase offer.

There will be annual reporting of strategic commitments and annual monitoring advisory board participation post-auction. An annual EDA staff review will evaluate corporate tax credit purchasers' compliance in meeting their approved strategic commitments. A failure to meet at least 80% of a strategic commitment component will result in the requirement for the company to pay to the Authority an amount equal to the difference between the value of the missed strategic commitment, as identified at the time of application, and the amount actually spent. The tax credit purchase contract will be grant a one-year cure period to tax credit purchasers to return to compliance before payment is due.

At time of application, each auction applicant must designate a relevant individual in their organization who will participate on the Evergreen Advisory Board. Ideally, this individual will have a professional background and role in innovation, startups, or research and development, and serve in a senior position within the organization. The statute requires the CEO to establish a process to appoint the members of the Evergreen Advisory Board from the tax credit purchaser representatives. Upon execution of the purchase agreement by the tax credit purchaser the appointed Advisory Board member (or in case of unavoidable conflict, a different representative) will serve for a year-long period and shall be required to engage in the majority of Evergreen Advisory Board meetings and events. Staff anticipates that this will include quarterly meetings and ecosystem-building events in the State. NJEDA-convened quarterly meetings will enable Evergreen Advisory Board members to present learnings from their strategic commitment, share feedback for the next auction, and offer guidance on programmatic initiatives to support the innovation economy. Examples of other Evergreen Advisory Board commitments such as networking and ecosystem-

building events include NJ Founders and Funders and pitch competitions. Evergreen Advisory Board member requirements will be clearly outlined in the tax credit purchase agreements. If the tax credit purchaser does not comply with the Evergreen Advisory Board requirements, the company will not be eligible to participate in an auction in the following year.

After initial purchase, the tax credit purchaser has the option to resell the tax credit for no less than 85 percent of the transferred credit amount. If this option is chosen, the tax credit purchaser is obligated to pay ten percent of the sale to the General Fund of the State. The initial bidder will remain obligated to fulfill the strategic commitment detailed in the executed purchase agreement. There are no additional resales.

More information about these post-approval monitoring processes can be found in **Appendix B**.

Qualified Venture Firm

Following Board approval of the certification as a qualified venture firm, venture firms will be notified and will receive a qualified venture firm agreement to execute detailing guidelines and expectations for program participants, including, but not limited to:

- Make qualified investments in qualified businesses as the managing member of uniquely created Evergreen special purpose vehicles that align with the matching private investment fund (or qualified venture firm active fund);
- Cause an audit of the qualified venture firm's books and accounts of the Evergreen special purpose vehicle holding qualified investments following the completion of a NJIEF qualified investment;
- Agree that the qualified venture firm will publicize its participation in the "New Jersey Innovation Evergreen Fund".

Once the qualified venture firm is approved for a qualified investment, the qualified venture firms will need to establish a special purpose vehicle to invest NJIEF capital. The terms of the Evergreen special purpose vehicle governing agreements will be standard across the Program. Each Evergreen special purpose vehicle agreement will incorporate select terms, such as management fees and carried interest rates, from the governing documents of the qualified venture firm's active fund that will co-invest alongside the Evergreen special purpose vehicle. Other terms that will be matched are the right to participate in non-equity investments such as options or warrants. Decisions to invest in non-equity follow-on opportunities will be made by the Authority at that time, subject to availability of capital in the Evergreen Fund and the approval of the Board of Authority.

The NJIEF will pay the firm's management fee, direct expenses (only those necessary to comply with the Program), and carried interest rate up to a limit established by the Authority based on peer industry norms, to be updated from time to time. Initially the Program will limit management fees and carried interest rates to 2.5 percent and 30 percent, respectively, which represents a standard ceiling for premium venture capital rates (per Preqin industry data). Upon establishing the Evergreen special purpose vehicle, qualified venture firms will issue capital calls to fund the approved investments, expenses and the firm's management fees.

Annual Certification Test

Qualified venture firms will be evaluated for continued certification annually upon receipt of firms' required reporting documents. Completed annual reports must be submitted by qualified venture firms each year following certification. If the qualified venture firm is managing qualified investments through Evergreen special purpose vehicles, the annual report must also contain information about the qualified businesses, including employment information. Reports are due within 120 days of qualified venture firms' tax year end. Absent prior approval by the Authority, if a qualified venture firm fails to comply with its annual reporting requirements, the NJEDA may withhold management fees, direct expenses, and carried interest incentive payments until the firm is back in compliance with reporting requirements. Firms that fail to report for two consecutive years will be decertified and deemed no longer eligible for new NJIEF initial investments. The Authority may also remove the qualified venture firm from the Evergreen special purpose vehicle or require termination of the Evergreen special purpose vehicle.

The annual report includes, but is not limited to:

- All qualified investments made during the preceding calendar year;
- Financials, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the qualified venture firm active fund and the Evergreen special purpose vehicle;
- The number of full-time employees of each qualified business, along with payroll and other employee information, as of the end of the preceding year (or at time of investment termination);
- Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

The annual report must be certified by an independent certified public accountant. The statute requires firms to continue to maintain at least two professional investors with at least five years of money management experience and at least \$10,000,000 in net assets, equity capitalization, or committed capital. If the annual report does not demonstrate such ongoing compliance, the qualified venture firm will be decertified. Additionally, firms must demonstrate continued compliance with its firm's diversity, equity, and inclusion policies, or (as applicable) with best efforts to invest in incentive areas, will be rescored and decertified if their score falls below the Program's minimum acceptable score. A decertified venture firm shall no longer be eligible to qualify for new qualified investments, until recertified, but it will retain the management of the existing qualified investments for which the qualified venture firm was initially approved. A firm can be re-certified if they re-apply and are again certified.

Certain failures by a venture firm to comply with the Evergreen Program requirements, such as material misrepresentation in any submission to the Authority, failing to submit two consecutive annual reports, or other defaults that the Authority concludes merits ending the relationship with the venture firm, the Authority may replace the venture firm or force a termination of the special purpose vehicle, either of which may result in the forfeiture any management fees or carried interest associated with prior investments.

More information about qualified venture firms' annual reporting requirements, including a full list of requirements can be found in **Appendix E**.

Qualified Business

Following Board approval of a qualified investment, the NJEDA will execute a contract with qualified businesses, either directly or indirectly through the special purpose vehicle established for the purposes of the investment. The agreement will outline the business's requirements to maintain a place of business in New Jersey and to either: a) maintain its "principal business operations" (as defined above) in the State, or b) maintain at least 50 percent of full-time employees "filling a position in New Jersey" or pay 50 percent of wages to full-time employees "filling a position in New Jersey." For this program, "filling a position in New Jersey" requires the employee to spend 80% of the employee's time in New Jersey.

In the event of a failure to comply with this requirement during two consecutive years, the Authority *may* exercise its right to require the qualified business to redeem the shares of stock purchased with the qualified investment for an amount equal to the greater of the sum of the qualified investment and follow-on investments or the fair market value of the shares of stock at the time of the redemption demand. If, for example, such failure results from a decline of NJ employment or employee residency relative to total qualified business employment, the qualified business will have one year to come into compliance prior to the Authority having the redemption right described in this section. If the qualified venture firm or any other investor offers to purchase such qualified investment for the same amount as set forth above, the Authority may accept such purchase instead of redemption. Any decision forgo this redemption right will be approved by the Board of the Authority. These requirements will remain in place for the duration of the qualified business compliance period, as defined herein.

To monitor the qualified businesses's adherence to the ongoing Program requirements, the qualified venture firm annual report must include independent Certified Public Accountant-certified employee and wage logs for full-time employees as of December 31st, lease agreements demonstrating a place of business in New Jersey, and any other information the Authority may require for Program compliance.

Evergreen Fund Reserve Policy

Once initial investments into qualified businesses are approved by the Board of the Authority, Staff will reserve capital in the Evergreen Fund for potential follow-on investments into those businesses. Qualified venture firms will provide NJEDA staff with information about the amount reserved by the firm relative to the size of the firm's initial investment. Updated reserve estimates will be provided annually by qualified venture firms, which will inform staff allocation decisions about changes to Program reserves.

As stated in the rules, staff will reserve amounts for follow-on investments in lock-step proportion with the venture firm up to a limit of \$5,000,000 for typical investments, or up to \$6,250,000 for qualifying businesses, within a 12-month period, subject to all applicable caps on follow-on investments (as described previously).

In addition to reserving capital for follow-on investments, the Program will reserve funds to pay qualified venture firm management fees and direct administrative expenses necessary to comply with the Program

(such as costs for establishing the Evergreen special purpose vehicles and compiling the annual reports). As described above, the NJIEF will pay firms their standard management fee and carried interest rate up to the limit established by the Authority based on peer industry norms. Reserves for management fees will be guided by a management fee schedule provided by the venture firm at the time of initial investment, to be updated annually.

Additional direct administrative expenses paid by the NJIEF to qualified venture firms will be limited to a budgeted cap applied to all NJIEF investments, established by the Authority based on industry standard costs of establishing and winding down a special purpose vehicle, auditing a special purpose vehicle, and other direct miscellaneous administrative and accounting costs. If a qualified venture firm's direct expenses exceed the budgeted limit, of \$15,000 per special purpose vehicle for formation and wind down costs, and \$12,500 per special purpose vehicle per year for the life of the special purpose vehicle for ongoing administrative costs such as an annual audit, the firm must cover any excess costs.

The Evergreen Program statute establishes a goal to reserve 25 percent of the Evergreen Fund money that's allocated to qualified venture firms for investment in businesses located in opportunity zone eligible census tracts in the State. One way Staff proposes to further this goal is by awarding points in the Program weighted scoring criteria to venture firms that either have offices located in incentive areas (which include qualified opportunity zones and Metropolitan areas as designated through the State Planning Act) or that agree to establish a policy to dedicate a greater portion of Program funding to investments into businesses located in incentive areas. Staff anticipates that such firms will likely invest in businesses located in opportunity zone eligible census tracts. Moreover, of the 75 basis points of Evergreen Fund capital statutorily dedicated for the administration of programming to support the innovation ecosystem, Staff intends to include a notable emphasis on opportunity zone eligible census tracts, including such activities as investor and founder networking events, targeted marketing, and targeted support for startups in opportunity zone eligible census tracts. Authority staff will track all Program investments into qualified businesses located in opportunity zones and will make amendments to its approach if the 25 percent goal does not appear to be achievable based on the experience of the Program.

Additionally, the Evergreen Program statute requires that EDA undertake a study to identify potential disparity in the magnitude of venture capital funding to women- and minority-owned businesses in the State, and, depending on the outcome of such study, the Authority may institute a set-aside plan to ensure allocation of funding from the Fund for investment in women-owned and minority-owned businesses. This study, conducted by Rutgers University (initiated in 2021), is nearly complete. If supported by the study, Staff will return to the Board to recommend any changes, such as a reservation or set aside policy.

As permitted by the statute, Staff will also reserve up to 100 basis points of the Evergreen Fund capital for any other expenses the Authority must incur in administering the Program, such as outside legal counsel or an external fund administration service to help track the portfolio. Utilizing the Evergreen Fund for the Authority's own administrative expenses means that the Program does not need to charge application fees to cover these costs, other than the standard fee for third-party costs.

Finally, the statute requires a reserve of 75 basis points for programs that support the growth of innovation in New Jersey. This reserve will be used for additional programs to support the innovation economy.

These funds will be reserved following the successful completion of a tax credit auction and upon the deposit of investment returns into the fund.

Request for Delegation

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

i) To establish a date/s for the corporate business tax auction (no more than annually). Any change to the tax credit auction scoring criteria and the approval of tax credit purchasers will be brought to the Board. Please refer to **Appendix B** for a complete description of the auction process, including a summary timeline of activities.

ii) To approve follow-on investments unless (1) the qualified venture firm is decertified or (2) the qualified venture firm or qualified business is not in compliance with the requirements of this program (including any agreements). The NJIEF statute authorizes follow-on investments from the Evergreen Fund into qualified businesses that previously received a program qualified initial investment approved by the Board of the Authority. The maximum size of follow-on investments will be capped as described in the **Qualified Investment Requirements** section of the memorandum, and a full description of the follow-on investment approval process is described in **Appendix D**. Typically, follow-on investments follow a formulaic review process. Delegated authority will allow Authority staff to expeditiously screen and approve applications for follow-on investments to mitigate the risk of forgoing the Authority's pro-rata investment rights. Additionally, the Evergreen Fund's ability to reserve capital for and execute follow-on investments may be an important tool in incenting qualified venture firms and qualified businesses to apply for NJIEF qualified investments.

Additionally, Staff may exercise operational authority to execute standard portfolio management obligations of Program investments that may arise during the normal course of business, including any shareholder votes, decisions to extend the life of an Evergreen special purpose vehicle, or other industry standard activities. Such operational authority does not include any action that creates a new obligation or liability of the Authority (other than continuing existing obligations, such as continuing to pay management fees if the life of an Evergreen special purpose vehicle is extended); such actions will be brought to the Board.

Rulemaking Process

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

Compliance with Executive Order 63

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

The Authority staff convened two virtual roundtables which provided an overview of the Evergreen Program and the opportunity for the public feedback, on:

- Thursday, January 6th, 2022 at 9:30 a.m.
- Thursday, January 6th, 2022 at 2:00 p.m.

Additionally, the public were able to submit written feedback through the NJEDA's Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) or through the newly established email account (njief@njeda.com) from January 6th through January 14th, 2022.

Fees

There are no external fees associated with any element of the Evergreen program (auction, venture firm qualification, investment qualification) except for the standards costs of due diligence, , including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority. Although not an application fee, at the time of auction, a 10% deposit up to \$500,000 must be paid by bidders at the time of application. This deposit will serve as a qualifier to ensure corporate bidders maintain sufficient capital to participate in the auction and the seriousness of their bid. If awarded, the deposit will be attributed to the final award payment. If there is another reason (documentation, etc.) that a bid is denied, this amount will be refunded to the auction participant.

Reports on Implementation of Program

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

As required by the statute, Staff will prepare a report on the implementation of the Program to be submitted to the Governor and the State Legislature every two years. Each report shall include the following information: 1) the names and locations of qualified businesses receiving capital, 2) the amount of each qualified investment, 3) a CPA-certified report on the consolidated performance of the fund, 4) the cumulative amount of capital committed by tax credit purchasers, 5) the rate and amount of fees charged by each qualified venture firm, 6) the classification of each qualified business

according to the industrial sector and size of the business, 7) the State's return on investment, 8) the total number of jobs created in the State by the qualified business after the qualified investment, 9) the average wages paid for the jobs, and, 10) any other metrics the Authority determines are relevant based upon national best practices.

Recommendation

The Members are requested to approve: (1) The attached special adopted new rules and concurrent proposed new rules for the new Evergreen Program and to authorize staff to (a) submit the special adopted new rules and concurrent proposed program rules for promulgation in the New Jersey Register and (b) submit the proposed program rules as final adopted rules for promulgation in the New Jersey Register if no formal comments are received; subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law; and; (2) the creation of the Evergreen Program, a tax incentive program authorized by the New Jersey Economic Recovery Act of 2020 (Sections 20 through 34 of P.L. 2020, c. 156), to encourage economic development, targeting the Governor's priority sectors through job creation and investment into the innovation economy; and; (3) Delegation to the Authority's Chief Executive Officer, to establish a date/s for the corporate business tax auction (no more than annually) and to approve follow-on investment (with certain exceptions) as explained in this memorandum.



Tim Sullivan, CEO

Prepared by:

Alexander Pachman, Sr. Product Officer;
Emmanuel Esochaghi, Sr. Product Officer;
Timothy Rollender, Director – Venture Programs

Attachments:

Appendix A – Proposed New Rules – Evergreen Program
Appendix B – Auction Application and Review Process
Appendix C – Qualified Venture Firm Requirements and Weighted Criteria Evaluation
Appendix D – Qualified Investment Evaluation
Appendix E – Qualified Venture Firm & Business Annual Reporting Requirements

DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Evergreen

Specially Adopted and Concurrently Proposed New Rules: N.J.A.C. 19:31-25

Specially Adopted and Concurrently Proposed New Rules Authorized: April __, 2022, by Tim Sullivan, Chief Executive Officer, New Jersey Economic Development Authority.

Filed: April __, 2022, as R.2022 d.____.

Authority: P.L. 2020, c. 156 and P.L. 2021, c. 160.

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

Concurrent Proposal Number: PRN 2022-____.

Effective Date: April __, 2022 [Date Filed].

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

Submit written comments by July 15, 2022, to:

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

In accordance with P.L. 2020, c. 156 and P.L. 2021, c. 160, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156.

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

Concurrently, the provisions of the new rules are being proposed for re-adoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act,

N.J.S.A. 52:14B-1 et seq. The adopted amendments will become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-6.4(f)) if filed on or before the 180-day expiration date from the date of filing.

The specially adopted and concurrently proposed new rules follow:

Summary

The following paragraphs summarize the contents of each section of the new rules implementing the New Jersey Innovation Evergreen Act:

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing rules to establish a tax credit sale process, innovation ecosystem engagement platform and investment program pursuant to the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-288 through 34:1B-302).

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

The New Jersey Innovation Evergreen Act is created to foster an ecosystem of innovation and investment in early-stage businesses as a component of economic development. The Act authorizes the Authority to sell up to \$300 million of corporate tax credits through the auction of no more than \$60 million of tax credits annually for the entirety of the seven-year program. In exchange for the tax credits, the New Jersey Innovation Evergreen Fund (“Evergreen Fund” or “Fund”) will receive capital from the tax credit purchasers along with strategic commitments to support early-stage businesses and the innovation ecosystem in the State. The Evergreen Fund will serve as a source of capital to co-invest with qualified professional venture capital investment firms in early-stage businesses based in New Jersey, helping to foster innovation in the State.

Any dividends and returns to the Evergreen Fund resulting from qualified investments will be reinvested from the Fund in perpetuity by design, or until the Fund capital is exhausted. Once the Fund has received total deposits from dividends and returns from qualified investments equaling \$500 million, the Authority shall pay 50 percent of any return on investment that exceeds two times the amount invested for that qualified investment to the General Fund of the State. The Authority will utilize 75 basis points of the total funding amount in the Evergreen Fund to establish and administer additional programs that support the growth of innovation in the State.

To be eligible to purchase tax credits, a potential tax credit purchaser must meet criteria including, but not limited to:

- Specify the requested amount of tax credits the potential tax credit purchaser proposes to purchase, which shall not be less than \$500,000;
- Specify the percentage amount the potential tax credit purchaser proposes to pay in exchange for the requested amount of tax credits, which shall not be less than 75 percent of the requested dollar amount of credits;
- Specify and quantify the nature and cost of its strategic commitment, including but not limited to, mentorship hours, internship offerings, sales, and distribution pipeline access;
- Commit to serve on the New Jersey Innovation Evergreen Advisory Board for one-year from the time of tax credit approval; and
- Provide a refundable deposit for 10 percent of the tax credit purchase offer, not to exceed \$500,000, at the time of application.

The Authority shall evaluate and score each completed bid application received before the application period has closed. If the amount of tax credits requested for purchase exceeds the total amount available for purchase, the Authority may pro rate the amount of tax credits allocated to each tax credit purchaser. In no event shall any tax credit purchaser receive less than \$500,000 of tax credits. If the proration were to result in any tax credit bidder receiving less than \$500,000, the Authority shall award tax credits only to the highest scored bidders that would result in a proration of at least \$500,000 to each bidder. Failure by the tax credit purchaser to meet the commitments identified in its auction bid will make the bidder ineligible in future competitive auctions unless the bidder makes a monetary payment equal to the dollar value of the unmet strategic commitment.

In order to invest the Evergreen Fund monies, the Authority shall establish an application process through which a venture firm may apply for certification as a qualified venture firm. Approval will enable the qualified venture firm to apply for funding from the Fund to make qualified investments in early-stage New Jersey businesses. To be eligible to become a qualified venture firm, a venture firm must meet various eligibility criteria, including but not limited to:

- Not less than \$10 million in any combination of one or more of the following: net assets of the funds managed by the qualified venture firm, equity capitalization of the funds managed by the qualified venture firm, or written commitments of cash or cash equivalents on the date the determination that the certification is made;
- At least two principals or persons employed to direct the qualified investment capital, each of which shall have at least five years of significant angel investment experience or professional money management experience in the venture capital or private equity sectors; and
- Additional weighted evaluation criteria, which may be amended by the Authority, including: the management structure of the applicant, the applicant's investment strategy, the location of the venture firm, and the applicant's proposed structure and policy of investments in qualified businesses.

The agreement with the qualified venture firm will contain language that will require the qualified venture firm to, in summary:

- Make qualified investments in an amount equal to or greater than that provided by the Fund in qualified businesses as the manager of uniquely created special purpose vehicles;
- Cause an audit of the qualified venture firm’s books and accounts of the Evergreen special purpose vehicle holding qualified investments and other reporting requirements;
- Consent to specific application and reporting information disclosures in the interest of transparency; and
- Agree that the qualified venture firm will publicize its participation in the New Jersey Innovation Evergreen Fund.

If a qualified venture firm fails to continue to meet the requirements for certification as a qualified venture firm, the venture firm shall no longer be eligible to make qualified investments, but it will retain the management of the existing qualified investments for which the qualified venture firm was initially approved. Further, certain actions by the qualified venture firm, such as failure to submit the required annual reports for two consecutive years or making a material misrepresentation, may result in the disassociation of the qualified venture firm from the qualified investment and the forfeiture of any associated management fees, direct expenses, or carried interest.

Upon the approval by the Authority of applications from qualified venture firms for a qualified investment into a qualified business, the Authority shall transfer money from the Evergreen Fund for the qualified investment. The Authority shall evaluate the qualified venture firm’s proposed investment and shall approve a qualified investment into a qualified business that, at minimum, among other possible criteria:

- Is registered to do business in New Jersey with the Director of the Division of Revenue and Enterprise Services in the Department of Treasury;
- Has principal business operations in the State;
- Is engaged in a targeted industry;
- Employs fewer than 250 full-time employees; and
- Meets the definition of a high-growth business.

Individual initial qualified investment amounts shall be considered on a ratio of no greater than one-to-one with the initial investment from the qualified venture firm active fund, but shall not be less than \$100,000 or greater than \$5,000,000, unless permitted under specified conditions. A qualified investment may be an amount of up to \$6,250,000 if the qualified business is a New Jersey university spin-off, utilizes intellectual property developed at a New Jersey university that is core to its business model, or is certified by the State as a “minority business” or a “women’s business” pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.). The Authority shall have a goal for 25 percent of the Fund money allocated to qualified venture firms to be reserved for investment in qualified businesses located in qualified opportunity zones. The Authority shall have the right to make a follow-on investment from the Fund into the qualified business in the same ratio as the qualified venture firm’s follow-on investment relative to the qualified venture firm’s initial investment. The maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of: i. the cap on the qualified investment (\$5,000,000 or \$6,250,000) on an aggregate basis of follow-on investments in a twelve-month period; ii. 15 percent of invested plus uninvested capital of the Fund; and iii.

15 percent of the total invested with the qualified venture firm by all of its investors, including investments in any Evergreen special purpose vehicles (total assets under management).

A qualified venture firm shall report the following annually after certification, within 120 days of the qualified venture firm's tax year:

- All qualified investments made during the preceding calendar year;
- The number and wages of full-time employees of each qualified business at the time the venture firm made the qualified investment and as of the end of the qualified venture firm's tax year (or at the time of investment termination) and information relating to full-time employees located in New Jersey;
- Financials, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or the laws of another state, of the qualified venture firm active fund and the Evergreen special purpose vehicle; and
- Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

During the qualified business compliance period, the qualified business must maintain a place of business in New Jersey and must maintain one of the following: its principal business operations in New Jersey (which is defined as two tests in relation to the employee's residency), at least 50 percent of its full-time employees filling a position in New Jersey, or at least 50 percent of wages paid to employees filling a full-time position in New Jersey. If qualified business fails to do so for two consecutive years, the Authority may exercise its right of redemption and require the qualified business to redeem the Evergreen Fund investment for an amount equal to the greater of the qualified investment or the fair market value of the qualified investment at the time of the redemption demand. If the qualified venture firm or any other investor offers to purchase such qualified investment for the same amount as set forth above, the Authority may accept such purchase instead of redemption.

The following paragraphs summarize the contents of each section of the new rules implementing the New Jersey Innovation Evergreen Act:

N.J.A.C. 19:31-25.1 Applicability and scope – Addresses the statutory authority for the program and summarizes the scope and purpose of the program, which is to auction tax credits to establish and maintain a dedicated fund to be known as the New Jersey Innovation Evergreen Fund to catalyze investment in the innovation economy, pursuant to sections 20 through 34 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160.

N.J.A.C. 19:31-25.2 Definitions – Incorporates terms defined at P.L. 2020, c. 156 pertaining to the program, clarifies statutory terms, and defines additional terms included in the implementation of the program.

N.J.A.C. 19:31-25.3 New Jersey Innovation Evergreen Fund – Establishes the New Jersey Innovation Evergreen Fund to receive funding from the auctioned sale of tax credits,

make investments with the funds, and provide for administrative and operating expenses of the Fund and programs to support the innovation ecosystem.

N.J.A.C. 19:31-25.4 Sale of tax credits – Authorizes the sale of tax credits through a competitive auction application consisting of a tax credit purchase offer, strategic commitment, and refundable deposit, to be evaluated, scored, and awarded.

N.J.A.C. 19:31-25.5 Tax credit purchaser contract – Requires a purchaser contract with the Authority including payment information with credit to the Fund and the commitments made by the purchaser in its auction bid, as well as assurance of no undue financial advantage to purchaser.

N.J.A.C. 19:31-25.6 Tax credit transfer certificate – Allows the purchaser of a credit, upon application to and approval by the Division of Taxation in the Department of the Treasury and the Chief Executive Officer of the Authority, to sell its credit, for not less than 85 percent of the transferred credit amount and pay ten percent of the sale to the General Fund of the State.

N.J.A.C. 19:31-25.7 Qualified venture firm application, certification, and agreement – Establishes an application process, minimum qualifications, good standing requirements, weighted evaluation criteria, and approval of a qualified venture firm.

N.J.A.C. 19:31-25.8 Qualified business and qualified investments – Creates an application and evaluation process that allocates funding to make up to two qualified investments per qualified venture firm per year; establishes a goal of up to 25 percent of the allocation for qualified businesses in qualified opportunity zones; and, based on the findings of the disparity study, authorizes the Authority Board to institute a set-aside plan for investments in women- and minority-owned business enterprises in this State.

N.J.A.C. 19:31-25.9 Qualified venture firm annual report – Imposes annual reporting requirements on the qualified venture firm, and outlines the actions the Authority may take if the qualified venture firm fails to comply with such reporting requirements.

N.J.A.C. 19:31-25.10 Recapture, Decertification and Redemption – Identifies conditions for payment for strategic commitments and recapture of tax credit discount from a tax credit purchaser; decertification and repayment from qualified venture firms; and redemption from a qualified business.

N.J.A.C. 19:31-25.11 Affirmative action and prevailing wage – Provides for when affirmative action and prevailing wage apply under this program.

N.J.A.C. 19:31-25.12 Fees – Provides that third party retention cost will be paid by tax credit purchaser, venture firm or business if necessary, and no fees will be charged to program applicants.

N.J.A.C. 19:31-25.13 New Jersey Innovation Evergreen Advisory Board – Establishes the New Jersey Innovation Evergreen Advisory Board in, but not of, the Authority for the purposes of providing guidance and networking opportunities to qualified businesses.

N.J.A.C. 19:31-25.14 Appeal Process – Outlines the requirements for an applicant to appeal an action of the Authority Board and the process by which the Authority shall consider each appeal in a timely manner.

N.J.A.C. 19:31-25.15 Reports on implementation of program – Details the provisions of P.L. 2020, c. 156 establishing requirements for a report every two years to the Governor and Legislature.

N.J.A.C. 19:31-25.16 Severability – States that if any portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of the subchapter are severable and shall not be affected by that determination.

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

Social Impact

The proposed new rules, which establish the New Jersey Innovation Evergreen Fund and encourage venture capital investment into early-stage businesses in New Jersey, are intended to have a positive social impact.

The Fund is a key component of the State's broader economic development plan. Investments from the Fund balances economic impact; for example, accelerating the growth of venture capital investment in New Jersey, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the New Jersey Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Act is primarily focused on providing resources to help foster innovation in New Jersey by increasing the availability of venture capital to early-stage businesses, and facilitating a collaborative environment between these early-stage businesses and existing corporations operating in New Jersey. Similar to other programs, the program established by the Act and these rules also focuses on maintaining employment in New Jersey.

Fostering innovation in New Jersey helps create an environment in which innovative ideas in high-wage, high-growth sectors can be developed and scaled into significant businesses. These businesses will become future economic drivers for New Jersey, contributing tax revenues and employing New Jersey residents. The New Jersey Innovation Evergreen Fund also supports investment in diverse entrepreneurs, reflective of New Jersey's rich cultural makeup.

Economic Impact

The proposed new rules are intended to bolster the State's economy by providing resources to drive investment into high-wage, high-growth innovation sectors that best support

New Jersey's long-term economic future. The New Jersey Innovation Evergreen Fund will grow the availability of venture capital investment in New Jersey, which is the key resource needed to commercialize, test, and scale research and ideas that can positively impact New Jersey's economy. The resulting investments from the Fund into early-stage New Jersey businesses will support their continued growth, which will lead to economic benefits in the form of tax revenues and employment opportunities in high-wage, high-skill industries. Additionally, the New Jersey Innovation Evergreen Fund will provide resources, beyond financial resources, for engagement and interaction between existing corporations and early-stage businesses.

Federal Standards Statement

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

Jobs Impact

As the core focus of this program is encouraging investment in high-wage, high-growth sectors, this program will result in job creation driven by business growth enabled through Fund investments in early-stage businesses. This includes the creation of high-skill, high-wage jobs needed to perform specific technical functions. Prior to implementation, it is not possible to accurately forecast the number of jobs that will be supported by the New Jersey Innovation Evergreen Fund.

Agriculture Industry Impact

The proposed new rules may have a positive impact on the agricultural industry, which includes aquaculture and fisheries, through the targeted inclusion of the non-retail food and beverages industry. Specifically, an investment from the New Jersey Innovation Evergreen Fund may be made within the agricultural industry through involvement with research and development activities that advance agricultural food innovation technologies. As a result, new or advanced technologies may benefit the State's agricultural industry operations for the production, processing, preservation, and distribution of raw agricultural goods into consumer food products.

Regulatory Flexibility Analysis

The proposed new rules may impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.; however, any costs will be minimal and fully offset by the amount of equity infusion received by the businesses.

Housing Affordability Impact Analysis

The proposed new rules will not impact the amount or cost of housing units, including multi-family rental housing and for sale housing in the State. The proposed new rules implement the New Jersey Innovation Evergreen Act which authorizes the sale of tax credits, the proceeds

of which will be used to capitalize the New Jersey Innovation Evergreen Fund that will invest in early-stage New Jersey businesses.

Smart Growth Development Impact Analysis

The proposed new rules will not impact the number of housing units or result in any increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan. The proposed new rules implement the New Jersey Innovation Evergreen Fund which authorizes the sale of tax credits, the proceeds of which will be used to capitalize the Fund that will invest in early-stage New Jersey businesses.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

SUBCHAPTER 25. EVERGREEN

19:31-25.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Innovation Evergreen Act (Act), sections 20 through 34 of P.L. 2020, c. 156, as amended. Under the Act, the Authority shall administer a program to invest in innovation as a catalyst for economic growth and to advance the competitiveness of the State's businesses in the global economy. The Authority shall auction corporate business tax credits and will deposit the amounts received in a dedicated fund to be known as the New Jersey Innovation Evergreen Fund (Fund). The Authority shall use the money in the Fund to carry out the purposes enumerated in this subchapter.

19:31-25.2 Definitions

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

“Act” means the New Jersey Innovation Evergreen Act, sections 20 through 34 of P.L. 2020, c. 156, as amended (N.J.S.A. 34:1B-288 to 34:1B-302).

“Affiliate” means an entity that directly or indirectly controls, is under common control with, or is controlled by, another entity. Control exists in all cases in which the entities are members 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 entities are 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).

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

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

“Evergreen special purpose vehicle” means an entity controlled by or under common control with a qualified venture firm that is formed solely by the qualified venture firm for the purpose of the fund investing in a qualified business alongside the investment from the qualified venture firm active fund.

“Evergreen special purpose vehicle manager” means the managing member or general partner of an Evergreen special purpose vehicle.

“Follow-on investment” means a subsequent investment in a qualified business made by the fund, through an Evergreen special purpose vehicle, corresponding to the additional investment made by a qualified venture firm which has a previous qualified investment in such qualified business.

“Filling a position in New Jersey” means filling a position with a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of the employee’s time in New Jersey, or any other period of time generally accepted by custom or practice as full-time employment at a location, as determined by the Authority.

“Full-time employee” means a person who is in a position in the United States that is employed by a qualified business on a permanent or indefinite basis for consideration for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment, or who is a partner of a qualified business who works for the partnership for at least 35 hours a week, or any other standard of service generally accepted by custom or practice, as determined by the Authority, as full-time employment. A “Full-time employee” shall not include any person who works as an independent contractor or on a consulting basis for qualified business; any person who works as an intern, as a temporary employee, or in a temporary position; or any employee in a position that is primarily engaged in final point-of-sale retail.

“Fund” means the “New Jersey Innovation Evergreen Fund” established by section 23 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-291).

“High-growth business” means a business that is growing significantly faster than the average growth rate of the economy or, in the absence of historic data necessary to verify the business’s past operations, is a start-up business that is investing in developing a product or new business model that will allow it to grow significantly faster than the average growth rate of the economy within the next three to five years. The Authority shall establish and publish on its website metrics for determining the growth rate of the economy and the relative rate of growth of

businesses, which may be based on revenues, number of customers, or valuation and may take into consideration the growth rate of the industry of the high-growth business.

“Incentive area” means an area in this State: designated pursuant to the “State Planning Act,” P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan); or that has been designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1.

“Innovation ecosystem” means funding, programs, and events that support the establishment and expansion of high-growth business in targeted industries. Examples of such funding, programs, and events include, but are not limited to, mentoring programs for start-ups, meet-up or networking events, funding for locating a business in a collaborative workspace, programs that provide business services, and entrepreneurial education to businesses.

“Intellectual property” means property protected by patent pending, patent awaiting approval, approved patent, registered copyright or intellectual property licensed from a college or university in New Jersey. For purposes of this definition, “licensed” means intellectual property used pursuant to an agreement that states therein that it is granting an exclusive license that authorizes the licensee to control aspects of the development of the protected proprietary intellectual property.

“New Jersey S corporation” means the same as the term is defined in section 12 of P.L. 1993, c. 173 (N.J.S.A. 54A:5-10).

“Opportunity zone” means a federal population census tract in this State that was eligible to be designated as a qualified opportunity zone pursuant to 26 U.S.C. s.1400Z-1 as may be amended.

“Partnership” means an entity classified as a partnership for federal income tax purposes.

“Principal business operations” means at least 50 percent of the business’s full-time employees reside in the State, or at least 50 percent of the business’s payroll for full-time employees is paid to individuals living in this State. For purposes of this definition, payroll shall mean wages.

“Program” means the New Jersey Innovation Evergreen Program established by section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290).

“Qualified business” means a high-growth business that, at the time of the first qualified investment in the business and throughout the qualified business compliance period, is registered to do business in this State with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury; has its principal business operations located in the State and intends to maintain its principal business operations in the State after receiving a qualified investment under the program; is engaged in a targeted industry; and employs fewer than 250 full-time employees at the time of the qualified investment.

“Qualified business compliance period” means the period starting with the qualified investment in a qualified business and ending on the sale or other disposition of all shares of stock of the qualified business from the Evergreen special purpose vehicle, including any distribution of the shares to the Authority. If the distribution of the shares of stock from the Evergreen special purpose vehicle to the Authority occurs in less than five years after the qualified investment, the qualified business compliance period shall be five years or such other shorter qualified business compliance period determined by the Authority, which may be based on factors including, but not limited to, the number of the qualified business full-time employees filling a position in New Jersey.

“Qualified business side agreement” means the agreement entered into by the Authority, the qualified venture firm, and the qualified business relating to the qualified investment in the qualified business.

“Qualified investment” means the direct investment of money by the fund, through an Evergreen special purpose vehicle, corresponding with a qualified venture firm’s initial investment in a qualified business for the purchase of shares of stock, which may include option or warrant rights, and the right to make a follow-on investment at a later date, all of which is matched by the initial investment by a qualified venture firm. The exercise of the option or warrant, or the decision to make a follow-on investment, shall be in the discretion of the Authority.

“Qualified venture firm” means a venture firm that is certified by the Authority as a qualified venture firm pursuant to section 29 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-297) and N.J.A.C. 19:31-25.7.

“Qualified venture firm active fund” means the entity managed by the qualified venture firm or an affiliate of the qualified venture firm from which the qualified venture firm invests in a qualified business alongside the qualified investment.

“Qualified venture firm agreement” means the agreement entered into by the Authority and the qualified venture firm regarding the participation of the qualified venture firm in the program.

“Qualified venture firm managing individual” means the individual with the authority to execute and bind the qualified venture firm to agreements.

“Reserves” means capital in the fund which has been reserved for the purposes set forth in N.J.A.C. 19:31-25.3(e).

“Strategic commitment” means the commitment by the tax credit purchaser to strengthen the State's innovation ecosystem, which may include, but is not limited to, providing mentorship, networking, sales and distribution pipeline access, and collaboration opportunities to qualified business that receive qualified investments.

“Targeted industry” means any industry identified from time to time by the Authority that 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-final point of sale retail food and beverage businesses, including food innovation, and other innovative industries that disrupt current technologies or business models. A qualified business shall be considered to be in a targeted industry if the business is engaged primarily in a targeted industry. The Authority may consider whether a qualified business is engaged primarily in another innovative industry that disrupts current technologies or business models, by assessing factors including, but not limited to, whether businesses in the industry are offering products or services that significantly improve current market offerings on the basis of price or other performance levels, whether the new industry creates opportunities for new businesses to enter and redefine the supply chain or value chain of an industry, or whether the industry utilizes new technology or business processes that allow New Jersey-based businesses to collect a share of revenues that were traditionally only available to companies in other geographies.

“Tax credit bid” means the submission of the strategic commitment, the tax credit purchase offer, and all other documents required pursuant to N.J.A.C. 19:31-25.4(e) for a bid for tax credit as part of the tax credit auction.

“Tax credit purchase offer” means the specific cash dollar amount offered by a potential tax credit purchaser to purchase a specific amount of tax credits.

“Tax credit purchaser” means an entity registered to do business with the Director of the Division of Revenue and Enterprise Services in the Department of the Treasury, subject to tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), and that purchases an allocation of tax credits under the program.

“University spin-off business” means a business whose primary function is to commercialize proprietary intellectual property developed at a New Jersey-based college or university, or a business that was created by a then current faculty member or then currently enrolled student utilizing the facilities and/or resources of such college or university. To be a “university spin-off business,” the business must have been formed less than 10 years prior to the date of the qualified investment application. Formation shall be based on the earliest use of the intellectual property of a predecessor entity, irrespective of the corporate structure or tax status of the business.

“Venture firm” means a partnership, corporation, trust, or limited liability company that invests cash in a business during the early or expansion stages of a business in exchange for an equity stake in the business in which the investment is made. Venture firm may include a venture capital fund, a family office fund, or a corporate investor fund, provided that a professional manager administers the venture firm.

19:31-25.3 New Jersey Innovation Evergreen Fund

(a) The Authority shall establish and maintain a dedicated fund to be known as the New Jersey Innovation Evergreen Fund. The Authority shall use the money in the fund to carry out the purposes enumerated in the Act and this subchapter.

(b) The Authority shall credit the fund with money paid by tax credit purchasers from the sale of tax credits pursuant to N.J.A.C. 19:31-25.4; distributions from payments or repayments made to the Authority in accordance with subsection c. of section 31 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.8(l); earnings received, if any, from the investment or reinvestment of money credited to the fund; money received pursuant to payments, repayments, or redemptions required by N.J.A.C. 19:31-25.10 except for the recapture of tax credits pursuant to N.J.A.C. 19:31-25.10(b); and any money which, from time to time, may otherwise become available for the purposes of the Fund.

(c) Subject to availability of funds, the Authority shall allocate the money in the fund to qualified venture firms to make qualified investments in qualified businesses through an Evergreen special purpose vehicle in accordance with section 30 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-298) and N.J.A.C. 19:31-25.8 and to pay the administrative, legal, and auditing expenses of the Authority incurred in the administration of the program. In addition, the Authority shall use 75 basis points of the total amounts deposited in the fund, calculated on an annual basis, for programs administered by the Authority that create an innovation ecosystem that supports and promotes high-growth businesses in the State.

(d) The Authority shall deposit into the Fund dividends and returns on investments paid to the Authority by or on behalf of a qualified business. Upon the Fund receiving total deposits from such Fund dividends and returns from qualified investments of \$500,000,000, the Authority shall pay 50 percent of any return on investment in excess of twice the original and follow-on investment to the General Fund of the State.

(e) The Authority shall account for, and calculate reserves for, follow-on investments and qualified venture firm management fees and direct expenses as set forth in N.J.A.C. 19:31-25.8(k); programs that support the State's innovation ecosystem pursuant to (c) above; and administrative, legal, and auditing expenses of the Authority in administering the program, plus such other amounts as shall be determined by the Authority. The Authority may also reserve such amounts as it considers necessary to achieve the goal set forth in N.J.A.C. 19:31-25.8(b) and any goals that may be developed pursuant to the disparity study completed and performed in accordance with N.J.A.C. 19:31-25.8(c). The Authority shall not include these reserves when calculating the amount in the Fund available for new qualified investments.

19:31-25.4 Sale of Tax Credits

(a) The Authority shall auction up to \$300,000,000 in tax credits against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) in annual amounts not to exceed the limitations set forth in section 98 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-362). The Authority shall not undertake an auction if, exclusive of all reserves pursuant to N.J.A.C. 19:31-25.3(e), more than \$15,000,000 is available to the Authority, from moneys received from any prior auction of tax credits pursuant to the program, to allocate to qualified venture firms.

(b) The Authority shall sell the tax credits authorized pursuant to section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and subsection (a) above to tax credit purchasers through a competitive auction process. Except when the amounts in the fund exceeds the minimum as provided in section 22 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-290) and subsection (a) above, the Authority shall hold one competitive auction per calendar year.

(c) The Authority may contract with an independent third party to conduct the competitive bidding process through which State tax credits issued by the Authority may be sold.

(d) Prior to a competitive auction, the Authority shall establish the dates for the competitive auction and the weighted criteria the Authority will utilize to evaluate tax credit bids. The Authority shall base the criteria on the price offered to purchase the tax credits and the quality of the commitment to mentorship and networking opportunities and other support of the State's innovation ecosystem. The Authority may also determine whether to request a best and final offer process. The Authority shall provide public notice of the dates and weighted criteria through its website in advance of the competitive auction.

(e) To be considered for an award of a tax credit under the program, a potential tax credit purchaser shall submit a tax credit bid application which shall include the following information in an application format prescribed by the Authority:

1. The name, secondary or doing business as name(s), address, entity form, country and state of formation, date of formation, federal and state tax identification number, phone number, and website address of the potential tax credit purchaser;

2. The name, title, email, address, and phone number of the primary point of contact authorized by the potential tax credit purchaser to submit the application to the Authority;

3. The name, title, email, address, and phone number of any legal counsel, accountant, and consultant assisting the potential tax credit purchaser with the tax credit bid application;

4. Description of the potential tax credit purchaser and its business;

5. Legal structure of the potential tax credit purchaser;

6. The names of all venture firms managed by potential tax credit purchaser; all venture firms of which the potential tax credit purchaser beneficially owns, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; and all venture firms for which the potential tax credit purchaser controls the direction of investments;

7. The tax credit purchase offer consisting of:

- i. The requested amount of tax credits, which shall not be less than \$500,000;

ii. The percentage amount the potential tax credit purchaser will pay in exchange for the requested amount of tax credits, which shall not be less than 75 percent of the requested dollar amount of tax credits;

8. Commitment to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), if appointed, and to comply with the requirements of such appointment as set forth in N.J.A.C. 19:31-25.13(b), along with the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;

9. The strategic commitment, which shall specifically describe each activity and provide the financial cost to the potential tax credit purchaser of each activity;

10. A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c.101, which shall also satisfy the requirement for registration to do business in this State;

11. 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;

12. An agreement by the potential tax credit purchaser that, subject to the terms of the program, its tax credit bid application and terms contained therein shall be binding on the potential tax credit purchaser for 120 days following submitting its tax credit bid application;

13. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the potential tax credit purchaser is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The potential tax credit purchaser shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, stating that the potential tax credit purchaser satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

14. A list of all the development subsidies, as defined at P.L. 2007, c. 200, that the potential tax credit purchaser 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;

15. A certification by the chief executive officer, or equivalent officer for North American operations, of the potential tax credit purchaser that the officer has reviewed the tax credit bid application information submitted and that the information contained in the application is true and accurate under penalty of perjury; and

16. Any other information that the Chief Executive Officer of the Authority determines is necessary to review a tax credit bid application under this program.

(f) To be considered a complete tax credit bid application under the program, the potential tax credit purchaser shall remit to the Authority via wire transfer of immediately available funds a refundable deposit in an amount equal to the lesser of ten percent of the tax credit purchase offer or \$500,000.

(g) A potential tax credit purchaser shall not be eligible absent extenuating circumstances or written consent by the Authority, if:

1. In the prior twelve months, it was previously approved for the purchase of tax credits and failed to timely make the full payment required to receive the tax credits;

2. It previously received tax credits and has not complied with prior strategic commitments unless it has repaid the amount due under N.J.A.C. 19:31-25.10(a); or

3. In the prior twelve months it has been appointed to the New Jersey Innovation Evergreen Advisory Board and has not complied with the requirements of such appointment as set forth in N.J.A.C. 19:31-25.13(b).

(h) The Authority shall evaluate and score each complete tax credit bid application.

1. If the aggregate amount of tax credits requested for purchase by all potential tax credit purchasers exceeds the total amount available for purchase, the Authority may pro rate the amount of tax credits allocated to each tax credit purchaser, rounded down to the nearest dollar amount, based on factors including, but not limited to, the tax credit purchaser's score or percentile rank, provided that in no event shall prorations result in an tax credit bid to purchase less than \$500,000 of tax credits. If the proration were to result in any potential tax credit purchaser receiving less than \$500,000 of tax credits, the Authority shall award tax credits only to the highest scored potential tax credit purchasers that would result in a proration with at least \$500,000 of tax credits to each potential tax credit purchaser.

2. If the aggregate amount of tax credits requested for purchase is less than the total amount available for purchase, the Authority may offer the tax credit purchasers the opportunity to request additional amounts, on the same or better terms as in the tax credit purchaser's tax credit purchase offer, provided that the aggregate request does not exceed the total tax credit available for purchase.

3. A potential tax credit purchaser that submits a bid for tax credits under this section shall receive a written notice from the Authority indicating whether the Authority has approved it as a tax credit purchaser of tax credits and, if so, the amount of tax credits approved.

(i) Prior to awarding tax credits to a potential tax credit purchaser, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the potential tax credit

purchaser is in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the respective department as set forth in N.J.A.C. 19:31-25.7(e). The Authority may contract with an independent third party to perform a background check on the potential tax credit purchaser.

(j) A tax credit purchaser shall apply a credit awarded pursuant to this section against the State tax liability due pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) of the tax credit purchaser for the current privilege period as of the date of the approval of the award of the tax credit. A tax credit purchaser may carry forward an unused credit resulting from the limitations of (k) below, if necessary, for use in the seven privilege periods next following the privilege period for which the credit is awarded.

(k) The Director shall prescribe the order of priority of the application of the credits awarded under this program and any other credits allowed by law. The amount of a credit applied under this Act and this program against the tax imposed pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5) for a privilege period, together with any other credits allowed by law, shall not reduce the tax liability of the tax credit purchaser to an amount less than the statutory minimum provided in subsection (e) of section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5).

(l) Credits awarded 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 accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(m) The Authority shall publish on its Internet website the following information concerning each tax credit award approved by the Authority pursuant to this section:

1. The name of the tax credit purchaser;
2. The face value of the tax credit purchase;
3. That the tax credit may be applied against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
4. The price paid by the tax credit purchaser.

19:31-25.5 Tax Credit Purchaser Contract

(a) A tax credit purchaser that submits a successful bid for the purchase of tax credits pursuant to section 24 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall enter into a contract with the Authority that includes payment information and the strategic commitment. The tax credit purchaser contract shall include, but shall not be limited to, the following:

1. The face-value of the purchased tax credits and the price paid by the tax credit purchaser in exchange for such awarded tax credits;
2. The privilege period in which the tax credit purchaser may apply the awarded tax credit;
3. A detailed description of the tax credit purchaser's strategic commitment approved by the Authority in awarding any tax credits under the program;
4. A requirement that the tax credit purchaser comply with the strategic commitments made in its auction bid and a provision requiring the tax credit purchaser to repay all or part of the value of the strategic commitment as set forth in N.J.A.C. 19:31-25.10(a);
5. A requirement for the tax credit purchaser to report annually on the status of each component of the strategic commitments made in its auction bid until the component is completed and to provide, within 30 days of completion of the component, verification that the tax credit purchaser completed the activities for that component;
6. An ongoing requirement to provide the Authority with information that will enable the Authority to administer the program;
7. An agreement that the refundable deposit provided pursuant to N.J.A.C. 19:31-25.4(f) shall become non-refundable on the effective date of the tax credit purchaser contract;
8. An agreement to remit, within thirty (30) business days of the effective date of the tax credit purchaser contract, to the authority via wire transfer of immediately available funds the balance of its tax credit purchase offer;
9. An agreement to provide a representative to serve on the New Jersey Innovation Evergreen Advisory Board, established pursuant to section 32 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-300) and N.J.A.C. 19:31-25.13(a), and to provide the name, title, phone number, address, and email of the proposed tax credit purchaser representative to the New Jersey Innovation Evergreen Advisory Board;
10. A covenant by the tax credit purchaser that during the twelve-month period after the approval of the award of tax credits, the tax credit purchaser shall not manage; beneficially own, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or control the direction of investments of a qualified venture firm that applies for a qualified investment;
11. A provision permitting an audit of the records of the tax credit purchaser supporting the strategic commitment activities, from time to time, as the Authority deems necessary;
12. A provision permitting the Authority to amend the agreement;
13. A provision establishing the conditions under which the Authority, the tax credit purchaser, or both, may terminate the agreement;

14. Indemnification and insurance requirements;

15. Default and remedies, including, but not limited, to a default if a tax credit purchaser made a material misrepresentation on its application or if the Authority debars or disqualifies the tax credit purchaser under N.J.A.C. 19:30-2; and

16. Such other provisions as shall be required by the Authority.

(b) A potential tax credit purchaser that submits a successful tax credit bid for the purchase of tax credits pursuant to section 24 of P.L.2020, c.156 (N.J.S.A. 34:1B-292) and N.J.A.C. 19:31-25.4 shall pay by wire transfer of immediately available funds, within thirty (30) business days of the tax credit purchaser contract being fully executed, the balance of the tax credit purchase offer. The balance of the tax credit bid due to the Authority shall be an amount equal to the amount specified in its tax credit purchase offer to the Authority less the deposit remitted by the tax credit purchaser upon submitting its tax credit bid application. Upon receipt thereof, the Chief Executive Officer shall notify the Director to issue tax credits in the amount approved. If the tax credit purchaser fails to timely pay the balance, the Authority may offer the tax credits for purchase to other approved tax credit purchasers in the order of score on the same or better terms as in that tax credit purchaser's tax credit purchase offer.

(c) The Authority shall credit to the Fund any money paid to the Authority by a tax credit purchaser for an allocation of tax credits under the program. The deposit shall be credited to the Fund on the effective date of the tax credit purchaser contract in accordance with (a)7 above.

(d) No undue financial advantage shall inure to a tax credit purchaser due to its participation in this program. During the twelve-month period after the approval of the award of tax credits to a tax credit purchaser, the Authority shall not approve a qualified investment or follow-on investment to a venture firm that is managed; beneficially owned, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests; or whose direction of investments are controlled by a tax credit purchaser. The Chief Executive Officer of the Authority shall certify that the Authority is monitoring the activities of such tax credit purchasers and has taken appropriate steps to ensure no undue financial advantage inures to the tax credit purchasers.

19:31-25.6 Tax credit transfer certificate

(a) A tax credit purchaser may apply to the Authority and the Director for a tax credit transfer certificate, in the privilege period during which the Director allows the tax credit purchaser a tax credit pursuant to N.J.A.C. 19:31-25.5(b), in lieu of the tax credit purchaser being allowed to apply any amount of the tax credit against the tax credit purchaser's State tax liability. A tax credit may be sold or assigned, in full or in part, to another person that may have a tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5), in an amount not less than \$100,000. The tax credit transfer certificate provided to the tax credit purchaser shall include a statement waiving the tax credit purchaser's right to claim the credit that the tax credit purchaser has elected to sell or assign. If all or part of a tax credit sold or assigned is subject to recapture,

then the Authority shall pursue recapture from the initial tax credit purchaser and not from the subsequent purchaser or assignee of the tax credit transfer certificate.

(b) The tax credit purchaser shall not sell or assign a tax credit transfer certificate allowed under this section for consideration received by the tax credit purchaser of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The tax credit transfer certificate issued to a tax credit purchaser by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to section 26 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-294), this subchapter, 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.

(c) A buyer 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.

(d) Ten percent of the consideration received by a tax credit purchaser from the sale or assignment of a tax credit transfer certificate pursuant to this section shall be remitted to the Director prior to the issuance of the tax credit transfer certificate. The Director shall deposit the funds in the General Fund of the State.

(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. That the tax credit may be applied against State tax liability pursuant to section 5 of P.L. 1945, c. 162 (N.J.S.A. 54:10A-5); and
5. The consideration paid by the transferee, identified as the consideration received by the transferor and the amount paid to the State pursuant to (d) above.

19:31-25.7 Qualified venture firm application, certification, and agreement

(a) The Authority shall establish an application process and determine the form and manner through which a venture firm may make and file an application for certification as a qualified venture firm. The Authority may accept applications on a rolling basis or on a date set by the Authority.

(b) Each applicant venture firm shall first submit an application for certification as a qualified venture firm including the following information and supporting documentation in an application format prescribed by the Authority:

1. The name of the venture firm, address, entity form, country and state of formation, date of formation, federal and state tax identification number, phone number, and website address of the venture firm;

2. The name, title, email, address, and phone number of the primary point of contact of the venture firm;

3. The name, title, email, phone number and address of the consultant assisting with the application, if applicable, and of the legal counsel and the accountant for the venture firm;

4. The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;

5. The limited partnership or limited liability company agreement for the venture firm active fund(s) that the qualified venture firm anticipates will co-invest alongside the Fund;

6. The most recent annual audited financial statement, a list of all funds managed or controlled by the venture firm, the most recent quarterly financial statement for all such funds, the assets under management of the venture firm, and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)1 below, all of which must be current as of the date of its application. The venture firm shall agree to submit to the Authority any valuations of the equity capitalization and net assets completed subsequent to the valuation included in its most recent financial statements and through the date the determination for certification is made and as may be required by the Authority;

7. Any current and past organizational charts of the venture firm, which shall list of all principals, managers, and any other employees of the venture firm that will direct qualified investment; if the firm does not have any current or past organizational charts, current and past lists of such principals, managers, and employees; a description of the professional experience, including, but not limited to, the number of years of investment experience in the venture capital or private equity sectors, detailed work history, and employment references, of the senior management team of the venture firm and of the principals, managers, and employees that will direct qualified investment; and any other documentation demonstrating that the venture firm is not excluded from eligibility pursuant to (d)2 below, all of which must be current as of the date of its application. The venture firm shall agree to report any change to the organizational chart and list of principals, managers, and employees through the date the determination for certification is made and as may be required by the Authority;

8. Any current and past policies or plans for diversity, equity and inclusion for the venture firm's internal operations, including, but not limited to, hiring, and for the venture firm's investments, and information and documentation evidencing the venture firm's compliance with such policies;

9. A tax clearance certificate from the New Jersey Division of Taxation pursuant to P.L. 2007, c.101, which shall also satisfy the requirement for registration to do business in this State;

10. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the venture firm is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The venture firm shall also submit a written certification by the qualified venture firm managing individual stating that the venture firm satisfies the criteria at (e) below to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

11. 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;

12. Agreement and consent for the Authority to publicize the venture firm's participation in the program, once qualified, and to publicize the qualified venture firm's approved qualified investments into qualified businesses;

13. A list of all office locations, and associated lease agreements, the qualified venture firm has in the State, if applicable;

14. The name of any businesses with a place of business in the State in which the venture firm has invested during the five calendar years prior to the date of application, and the dates of investment(s), location of business headquarters, and documents as shall be required by the Authority to evidence such investments;

15. A description of any regional investment policy of the venture firm that includes the State;

16. An investor pitch deck for the intended qualified venture firm active fund or, if not yet available, the most recent investor pitch deck prepared by the venture firm;

17. If a venture firm proposes to agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas as set forth in (c)4 below, the list of all investments in the past five years in businesses located within incentive areas;

18. A certification by the qualified venture firm manager that the information contained in the application is true and accurate under the penalty of perjury; and

19. Any other relevant information as determined by the Authority for a specific application.

(c) The Authority shall certify or refuse to certify a venture firm as a qualified venture firm based on the criteria for certification set forth in section 28 and subsections b. and c. of section

29 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-296), (d) and (e) below, and the weighted criteria by which the Authority will evaluate all venture firms applying in the same calendar year. The Authority shall establish, and provide public notice through its website, of the weighted criteria and a minimum acceptable score. The weighted criteria shall include, but not be limited to:

1. The management structure of the venture firm, including, but not limited to:

i. The quality of the leadership of the venture firm in the innovation ecosystem in the State, including, but not limited to, the venture firm's willingness to work with the Authority to support targeted industries and the innovation ecosystem in the State and to locate in the State;

ii. The investment experience of the principals and the venture firm with qualified businesses;

iii. The knowledge, experience, and capabilities of the venture firm in subject areas of its investment focus relevant to high-growth businesses in the State;

iv. The tenure and turnover history of principals and senior investment professionals of the venture firm;

v. Whether the State's approved maximum aggregate qualified investments with the venture firm under this program, if the State were to approve up to two such qualified investments, would exceed 15 percent of the total invested with the venture firm by all of its investors, including investments in any Evergreen special purpose vehicles;

vi. The venture firm's stage of fundraising for their proposed qualified venture firm active fund; and

vii. Whether management fees, carried interest, expenses, and the remuneration of the general partner or manager for their proposed qualified venture firm active fund is similar to those of peer venture firm investors;

2. The venture firm's investment strategy, including, but not limited to:

i. The venture firm's track record of investing in high-growth businesses;

ii. Whether the investment strategy of the venture firm's proposed qualified venture firm active fund is focused on high-growth businesses, including the percentage of the investment identified to be invested in New Jersey or surrounding geographic areas; and

iii. The performance history of the general partner or fund manager and the venture firm based on a review of investment returns on individual funds on an absolute basis and relative to peers;

3. The venture firm's business location(s), with preference given to venture firms that are located in incentive areas; and

4. The venture firm's proposed structure and policy of investments in qualified businesses, with preference given to venture firms that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas compared to past investments made by the venture firm.

(d) The Authority shall not certify a venture firm as a qualified venture firm if the venture firm:

1. Has less than \$10 million in any combination of one or more of the following: equity capitalization of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, net assets of funds managed by the qualified venture firm or an affiliate of the qualified venture firm, or written commitments of cash or cash equivalents. The evaluation of such equity capitalization and net assets shall be the included in the most recent financial statement reported by the venture firm, which must be dated within 150 days prior to the date the determination for certification is made. The value of equity capitalization and net assets shall be the lesser of the value included in the most recent financial statement or subsequent valuation prior to the date the determination for certification is made. The written commitments must be executed and in effect on the date the determination for certification is made;

2. Has fewer than two principals or persons employed to direct the qualified investment with at least five years of money management experience, which shall be either professional money management experience or significant angel investment experience. Professional money management experience shall include, but is not limited to, operational and investment oversight, in the venture capital or private equity sectors, including but not limited to, investment firms, investment bank, asset management or similar investment management institution or family office fund. To be significant, angel investment experience shall consist of \$100,000 of aggregate investments and two investments per year. The experience shall be met as of the date the determination for certification is made; or

3. Is not in compliance with the requirements of any agreement, whether related to the program or otherwise, with the Authority.

(e) Prior to certifying a venture firm as a qualified venture firm, the Authority shall confirm with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury that the venture firm is in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the venture firm has entered into an agreement with the respective department that includes a practical corrective action plan as applicable.

1. Substantial good standing shall be determined by each department and mean, at a minimum, that the venture firm:

i. As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(1) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the venture firm; and

(2) 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

ii. 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.

2. 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 a venture firm is in substantial good standing.

3. The Authority may contract with an independent third party to perform a background check on the venture firm.

(f) The Authority shall provide written notification to each venture firm that is certified as a qualified venture firm by the Authority and shall provide written notification to each venture firm that the Authority refuses to certify as a qualified venture firm, communicating in detail the grounds for the Authority’s refusal.

(g) The Authority shall provide the qualified venture firm with a qualified venture firm agreement. Absent extenuating circumstances or prior written consent by the Authority, the Authority’s approval of certification shall expire if the qualified venture firm does not execute and return the qualified venture firm agreement within the time prescribed by the Authority. The qualified venture firm agreement shall include, but not be limited to, the following:

1. The amount of capital allocated to the qualified venture firm from the Fund to make a qualified investment in the qualified business, which shall be subject to the availability of funds in the Fund and the requirements in N.J.A.C. 19:31-25.8. An allocation of funds shall not reserve funds;

2. A requirement for the qualified venture firm to make investments in qualified businesses that equal or exceed the amount of capital that the qualified venture firm receives from the Fund under the program;

3. A requirement that the qualified venture firm cause an audit of the qualified venture firm’s books and accounts of any Evergreen special purpose vehicle holding qualified investments, which a certified public accountant, licensed in accordance with the “Accountancy Act of 1997,” P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, shall conduct at least once in each year in which the qualified venture firm is in receipt of Fund money or in which the qualified venture firm is responsible for the management of Fund money allocated to the qualified venture firm by the Authority;

4. A requirement that the qualified venture firm enter into a qualified business side agreement, either directly or as the Evergreen special purpose vehicle member, with each qualified business that receives a qualified investment, which agreement shall, at a minimum, require the qualified business to:

i. Use the qualified investment to support its business operations in this State by maintaining a place of business in the State and by:

(1) Maintaining its principal business operations in this State;

(2) Having at least 50 percent of its full-time employees filling a position in New Jersey; or

(3) Having at least 50 percent of wages paid to employees filling a full-time position in New Jersey;

ii. Provide the information pertaining to the qualified business necessary for the qualified venture firm to submit the annual report required under section 31 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-299) and N.J.A.C. 19:31-25.9(a);

iii. Permit the Authority to exercise the remedies as set forth in N.J.A.C. 19:31-25.10(h), (i), and (j) for the events set forth in those subsections;

iv. Adhere to an ongoing requirement to provide the qualified venture firm and the Authority with information that will enable the Authority to administer the program;

v. Accept indemnification and insurance requirements;

vi. Comply with a provision permitting an audit of the records of the qualified business related to the qualified business's requirements under the program, including, but not limited to, use of the qualified investments and employee information, from time to time, as the Authority deems necessary; and

vii. Agree with default and remedies, including, but not limited, to a default if the qualified business made a material misrepresentation to the Authority or if the Authority debars or disqualifies the qualified business under N.J.A.C. 19:30-2;

5. A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, create an Evergreen special purpose vehicle, utilizing such forms of agreement as shall be approved by the Authority, for the qualified investment of the Fund. The Evergreen special purpose vehicle shall be managed by the qualified venture firm or the same affiliate of the qualified venture firm that manages the qualified venture firm active fund. The Authority, at its own discretion, may determine that the qualified investment shall be made through the same Evergreen special purpose vehicle as other qualified investments with the same qualified venture firm active fund;

6. A requirement that the qualified venture firm, upon the identification of a qualified investment and approval by the Authority of the qualified investment, indicate the amount of follow-on investment the qualified venture firm shall reserve, and periodically, but no less frequently than annually through the annual report required pursuant to N.J.A.C. 19:31-25.9(a) below, provide updates concerning this amount;

7. Agreement by the qualified venture firm that it shall charge an Evergreen special purpose vehicle only management fees, carried interest, and direct expenses necessary solely to comply with this program; that the Authority shall transfer funds to an Evergreen special purpose vehicle for payment of management fees and direct expenses only upon a capital call; and that the management fees, carried interest, and direct expenses that the qualified venture firm may charge shall be no greater than the maximum established by the Authority from time to time, and published on the Authority's website, based on management fees and carried interest charged by peer venture firms and on reasonable costs of direct expenses;

8. A requirement that the qualified venture firm notify the Authority of any follow-on investment by the qualified venture firm active fund as set forth in N.J.A.C. 19:31-25.8(j) and agree to fund follow-on investments from the Evergreen special purpose vehicle;

9. Agreement and consent by the qualified venture firm that the Authority may publicly disclose the qualified venture firm on the list of qualified venture firms participating in the program and publicize any qualified investment and follow-on investment by the qualified venture firm from the Fund;

10. Agreement to provide to the Authority, and consent that the Authority may publicly disclose, any tax expenditure information as described in paragraph (8) of subsection b. of section 1 of P.L. 2009, c. 189 (N.J.S.A. 52:27B-20a) and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15;

11. Agreement by the qualified venture firm that once funds are allocated and received for a qualified investment, such qualified investment must be made within 90 days of the approval of the qualified investment unless the Authority gives prior written consent to an extension;

12. A requirement to provide all fully executed agreements evidencing all qualified venture firm active fund investments in the qualified business, including any follow-on investments by the qualified venture firm active fund;

13. A requirement to provide all fully executed agreements evidencing the qualified investment and any follow-on investment in the qualified business;

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

15. A provision authorizing the Authority to withhold or cease paying management fees and direct expenses as set forth in N.J.A.C. 19:31-25.9(d), forfeiting the carried interest as set forth in

N.J.A.C. 19:31-25.9(e), and permitting the Authority to exercise the remedies as set forth in N.J.A.C. 19:31-25.10(c), (d), (e), (f), and (g) for the events set forth in those subsections;

16. Representations that the qualified venture firm is in substantial good standing or meets the agreements requirements set forth in (e) above;

17. A provision permitting an audit of the records of the qualified venture firm related to the qualified venture firm's participation in the program, including, but not limited to, the management of all Evergreen special purpose vehicles and any qualified investment into a qualified business, from time to time, as the Authority deems necessary;

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

19. A provision establishing the conditions under which the Authority, the qualified venture firm, or both, may terminate the agreement;

20. Indemnification and insurance requirements;

21. Default and remedies, including, but not limited, to a default if the qualified venture firm made a material misrepresentation on its application or if the Authority debar or disqualifies the qualified venture firm under N.J.A.C. 19:30-2; and

22. Such other provisions as shall be required by the Authority.

19:31-25.8 Qualified businesses and qualified investments

(a) The Authority shall allocate and transfer money credited to the Fund to one or more qualified venture firms for qualified investments as set forth in this subsection; provided that no more than two qualified investments shall be made with each qualified venture firm in a calendar year.

(b) The Authority shall have a goal for 25 percent of the Fund money that is allocated to qualified venture firms to be reserved for investment in qualified businesses located in opportunity zones. A qualified business shall be considered as located in an opportunity zone if the qualified business has its primary business location in an opportunity zone. For purposes of this subsection, a primary business location is the location of a qualified business that has the most full-time employees, provided that if two business locations have the same number of full-time employees and each such location has more full-time employees than all other locations, then either of such locations shall qualify as a primary business location.

(c) The Authority shall undertake a disparity study of investment by venture firms in women- and minority-owned business enterprises in this State. Based on the finding of the disparity study, the Authority, following Authority Board approval, may institute a set-aside plan to ensure that Fund money allocated to qualified venture firms is reserved for investment in women- and minority-owned business enterprises in this State.

(d) Any venture firm that has been decertified pursuant to N.J.A.C. 19:31-25.10(c) shall not be approved for a qualified investment unless and until the venture firm reapplies and is approved for certification pursuant to N.J.A.C. 19:31-25.7.

(e) The Authority shall establish an application process and determine the form and manner through which a qualified venture firm may make and file an application for a qualified investment. The Authority may accept applications on a rolling basis or on a date set by the Authority, provided that the Authority shall not accept an application based on a qualified venture firm initial investment made more than 90 days prior to the submission of the completed application. The Authority shall provide public notice of the dates for the submission of applications on its website in advance of the initial date for applications. The qualified venture firm shall provide the following information in an application format prescribed by the Authority:

1. With regard to the qualified venture firm and the proposed qualified investment:

i. Information requested pursuant to N.J.A.C. 19:31-25.7(b);

ii. Size of proposed qualified investment requested by the qualified venture firm in the proposed business and the amount invested or proposed to be invested by the qualified venture firm;

iii. Executed stock purchase agreement for the co-investment from the qualified venture firm active fund, or most recent draft term sheet if the co-investment has not yet been made; the limited partnership agreement or equivalent agreement for the qualified venture firm active fund; and the executed subscription documents for the qualified venture firm active fund;

iv. The amount of the reserve set aside by the qualified venture firm for future investments in the proposed business and any related reserve policy applicable to such reserve;

v. The name of any company managing the venture firm; the list of all companies beneficially owning, through rights, options, convertible interests, or otherwise, more than 15 percent of the voting securities or other voting ownership interests of the venture firm; and all companies controlling the direction of investments of the venture firm;

vi. Investment analysis for the qualified venture firm's investment in the qualified business and supporting documentation, and a certification from the qualified venture firm managing individual that any projections or forecasts provided to the Authority are prepared in good faith and are based upon assumptions which the qualified venture firm managing individual concludes, in light of the circumstances in which they are made, are reasonable. If the proposed business has not yet recorded twelve months of revenues or customers and has not raised third-party capital, the investment analysis shall include qualified venture firm's prepared base case future projections with projected revenues, customers, or fundraising for the next three to five years;

vii. Names of individuals or entities with ownership, through rights, options, convertible interests, or otherwise, of the venture firm; that manage the venture firm; or that have rights to control the direction of investments of the venture firm; and

viii. 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;

2. With regard to the proposed business:

i. The name, address, entity form, country and state of formation, date of formation, copy of formation documents and New Jersey registration, federal and state tax identification number, phone number, and website address of the proposed business;

ii. The name, title, email, address, and phone number of the primary point of contact for the proposed business;

iii. A description of the proposed business, including, but not limited to, how the proposed business is engaged in a targeted industry, the primary existing or expected revenue streams, and the primary existing or expected expenses;

iv. Capitalization table of the proposed business;

v. One or more of the following to substantiate that the proposed business is a high-growth business if the business has recorded twelve months of revenues or customers or has raised third-party capital:

(1) Current and past audited, reviewed, or management prepared income statements of the proposed business;

(2) Current and past customer lists of the proposed business if the proposed business has customers;

(3) Executed term sheet and stock purchase agreement of the prior priced round of equity fundraising of the qualified business;

vi. If the qualified venture firm is applying for the proposed business to be a university spin-off business, a copy of the certificate of incorporation or formation for the proposed business and its earliest predecessor entity, documentation evidencing the proposed business's intellectual property, and an explanation of how the proposed business is a university spin-off business;

vii. If the qualified venture firm is applying for the proposed business under (g)5i below, documentation evidencing the proposed business's intellectual property, how the intellectual property is core to the proposed business, and how the intellectual property was developed at a New Jersey-based college or university;

viii. If the qualified venture firm is applying for the proposed business as a “minority business” or “women’s business” under (g)5iii below, the certification from the State of the proposed business as such a business;

ix. Tax clearance certificate from the New Jersey Division of Taxation for the proposed business pursuant to P.L. 2007, c. 101, which shall also satisfy the requirement for registration to do business in this State;

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

xi. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities with which the proposed business is associated with or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The proposed business shall also submit a written certification by the chief executive officer, or equivalent officer for North American operations, stating that the proposed business satisfies the criteria at N.J.A.C. 19:31-25.7(e) to be in substantial good standing, or if a compliance issue exists, has entered into an agreement, with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

xii. All locations of the proposed business in New Jersey, the number of full-time employees in each such location, and a copy of the deed, lease agreement, or other agreement evidencing each location;

xiii. A list of all full-time employees, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for the most recent quarter, and offer letters for all full-time employees hired after the filing of such forms;

xiv. If the qualified venture firm has made its initial investment in the proposed business, certification from each of the qualified venture firm and proposed business that there has been no material adverse change in the business, finances, or operations of the proposed business since the date of such investment;

xv. Acknowledgement and consent by the proposed business that the Authority will publicly disclose the qualified investment into the proposed business once a qualified investment is approved and any information necessary for the report required pursuant to N.J.S.A. 34:1B-301 and N.J.A.C. 19:31-25.15; and

xvi. Certification by the chief executive officer of the proposed business, or equivalent officer for North America, that all information provided by the proposed business to allow the Authority to evaluate the proposed business is true and accurate under the penalty of perjury;

3. Certification by the qualified venture firm managing individual that all information provided pertaining to the qualified venture firm is true and accurate under the penalty of perjury; and

4. Any other information relevant to the evaluation of the qualified investment and the qualified business as determined by the Authority.

(f) The Authority shall evaluate the proposed business to determine if such business is a qualified business as defined under the program and satisfies the requirement that such business meets the definition of a high-growth business.

(g) The Authority shall approve a qualified investment into the qualified business if, absent extenuating circumstances or the Authority's prior written consent, the qualified venture firm is in compliance with the requirements of the qualified venture firm agreement and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, and the proposed business is a qualified business, based on the following:

1. The Authority shall not make a qualified investment in an amount exceeding the funds available and not reserved in the Fund;

2. The Authority shall not make a qualified investment that exceeds the maximum amounts of investment established from time to time by the Authority based upon the aggregate amount of qualified investments into a single qualified business, into a single targeted industry, or as determined by other categories or factors based on diversification of funds or the investment policies and goals of the State. The Authority shall publish these maximum amounts on its website;

3. The Authority shall not make a qualified investment if the Authority determines that a qualified investment would create an undue financial advantage pursuant to N.J.A.C. 19:31-25.5(d);

4. The Authority shall invest the amount of funds requested for a qualified investment by a qualified venture firm in an amount equal to the qualified venture firm's initial investment, subject to all other restrictions in the Act and this subchapter;

5. The maximum amount of a qualified investment in a qualified business and any affiliates of the qualified business shall not exceed \$5,000,000, except that such \$5,000,000 limit shall be increased to \$6,250,000 if the qualified business:

i. Utilizes intellectual property that is core to its business model and was developed at a New Jersey-based college or university;

ii. Is considered a university spin-off business, as determined by the Authority; or

iii. Is certified by the State as a "minority business" or a "women's business" pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.);

6. If a qualified venture firm requests to make a qualified investment in the qualified business in the same round of equity fundraising for which the Authority has previously approved a qualified investment by a different qualified venture firm, the Authority shall approve the later request provided that the aggregate qualified investments in the qualified business does not exceed the maximum in 5 above;

7. In no event shall the Authority make a qualified investment of less than \$100,000 per qualified investment;

8. The Authority shall not make a qualified investment if the Authority determines that the qualified venture firm or the proposed business is not in substantial good standing or if a compliance issue exists, has entered into an agreement, as set forth in N.J.A.C. 19:31-25.7(e);

(h) The Authority shall provide written notification to the qualified venture firm of the approval or declination of the application for a qualified investment and, if approved, the amount allocated for the qualified investment.

(i) A qualified venture firm that has made and entered into a qualified venture firm agreement is authorized to make qualified investments in one or more qualified businesses approved by the Authority from Fund money allocated to the qualified venture firm by the Authority at the times, in the amounts, and subject to the terms and conditions that the qualified venture firm determines to be necessary and appropriate, subject to the terms and conditions of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, the qualified business side agreement, this subchapter, and the Act.

(j) A qualified venture firm shall provide written notice to the Authority within 30 days after the date the qualified venture firm decides to make a follow-on investment from a qualified venture firm active fund in a qualified business. A qualified venture firm will be considered to have decided if there is an agreed upon or executed term sheet with the qualified business. The Authority shall determine whether to make a follow-on investment based on the following:

1. The Authority shall not make a follow-on investment if the Authority determines that the qualified venture firm or the qualified business is not in substantial good standing, or if a compliance issue exists, has not entered into an agreement, as set forth in N.J.A.C. 19:31-25.7(e). The Authority may require updated information from the qualified venture firm or the qualified business to make this determination;

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

3. The Authority shall not make a follow-on investment in an amount exceeding the funds available in the Fund that are not reserved or are reserved for a follow-on investment with the qualified venture firm into the qualified business;

4. The Authority shall have the right to make a follow-on investment from the Fund through the corresponding Evergreen special purpose vehicle into the qualified business in the same ratio to the qualified venture firm's follow-on investment as the ratio of the qualified investment to the qualified venture firm's initial investment;

5. At its discretion, the Authority may decline to make a follow-on investment if the qualified venture firm is decertified or is not in compliance with the requirements of the qualified venture firm agreement, the Evergreen special purpose vehicle governing agreement, and this program, including, but not limited to, the annual report pursuant to N.J.A.C. 19:31-25.9, or if the qualified business is not in compliance with the requirements of the qualified business side agreement or any requirement of the program;

6. Notwithstanding any provision in this subchapter to the contrary, the maximum follow-on investment from the Fund into a qualified business shall not exceed the lesser of:

i. The amount remaining after reducing the maximum amount allowed for the qualified investment by the aggregate of all follow-on investments in the qualified business through any Evergreen special purpose vehicle in the previous twelve months;

ii. The amount that would cause the aggregate amount invested from the Fund in the qualified business and any affiliates of the qualified business to exceed a percentage of the total amount in the Fund plus all capital currently invested as established by the Authority from time to time, but in no event greater than 15 percent; and

iii. The amount that would cause the aggregate amount invested from the Fund through any Evergreen special purpose vehicle managed by the qualified venture firm, or an affiliate of the qualified venture firm, in any qualified business to exceed 15 percent of the total invested in such qualified business by all funds managed by the qualified venture firm and any affiliates of the qualified venture firm, including investments through any Evergreen special purpose vehicles.

(k) The Authority shall reserve the following amounts for each qualified venture firm in relation to a qualified business as follows:

1. For follow-on investments, an amount in the same ratio to the reserve to which the qualified venture firm has certified in its annual report pursuant to N.J.A.C. 19:31-25.9(a)6 as the ratio of the qualified investment to the qualified venture firm's initial investment;

2. The Authority shall reserve the amount equal to the lesser of the projected management fees payable to the Evergreen special purpose vehicle manager or the maximum management fees allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7; and

3. The Authority shall reserve the amount equal to the lesser of the expenses projected by the qualified venture firm or the maximum direct expenses allowed by the Authority pursuant to N.J.A.C. 19:31-25.7(g)7;

(l) Unless the Authority otherwise gives prior written consent, within 30 days of receipt of dividends or proceeds from the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the Evergreen special purpose vehicle manager shall cause such funds to be transferred to the Authority. The Evergreen special purpose vehicle manager may not reinvest such funds without the approval of the Authority. Not later than 60 days after the sale, redemption, or other disposition of the shares of stock or other security comprising a qualified investment or any follow-on investments, the qualified venture firm shall provide to the Authority a report on the amount of the stock or other security sold, redeemed, or disposed of and the consideration received for the sale, redemption, or disposition. The report shall detail the cumulative effect of sequentially introduced positive or negative values and include the gross income and details of any offsetting fees, including, but not limited to, carried interest, that reduce the net distribution. Any dividend or proceeds received by the Authority for the sale, redemption, or other disposition of the shares of stock or other security shall be deposited into the Fund and used in accordance with section 23 of P.L. 2020, c. 156 (N.J.S.A. 34:1B-291) and this subchapter.

19:31-25.9 Qualified venture firm annual report

(a) A qualified venture firm shall submit an annual report to the Authority with respect to a qualified investment within 120 days following the conclusion of the qualified venture firm's tax privilege period. The annual report shall include, but not be limited to, the following:

1. The amount of the qualified investment, if any, uninvested at the end of the preceding calendar year;
2. All qualified investments made during the preceding calendar year;
3. For each qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, a list of all full-time employees as of the end of the preceding calendar year, including, but not limited to, employee residency, payroll records, a copy of New Jersey WR-30 and Federal Form 941 for all quarters, and offer letters for any new full-time employee hired after the filing of such forms. For any qualified investment in which the qualified venture firm no longer has a position as of the end of the calendar year, the information must be provided as of the date the investment was terminated;
4. Certification by the chief executive officer, or equivalent officer for North America, of any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm or an affiliate of the qualified venture firm, that all factual information provided by the qualified business is true and accurate under the penalty of perjury;
5. Financial statements, audited by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of each qualified venture firm active fund, if any, and each Evergreen special purpose vehicle, if any. For the Evergreen special purpose vehicle, the financial statement shall include a consolidated summary of the

performance, specifying the total value to paid-in capital ratio, and distribution to paid-in capital ratio. Any information about the performance of an individual business, including the qualified business, shall be considered confidential and not subject to the requirements of P.L. 1963, c. 73 (N.J.S.A. 47:1A-1 et seq.);

6. Certification by the qualified venture firm managing individual as to the qualified venture firm's reserve policy as it relates to each qualified investment, if any;

7. If applicable, evidence that the qualified venture firm has made best efforts to comply with its commitment to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas;

8. Any updates to the policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 and evidence that the qualified venture firm has made best efforts to comply with its current policies or plans;

9. Any update to the information provided as part of the venture firm's application for certification pursuant to N.J.A.C. 19:31-25.7(b) pertaining to the criteria in N.J.A.C. 19:31-25.7(d), and a certification by the qualified venture firm managing individual that all other information pertaining to that criteria remains true and accurate under the penalty of perjury;

10. Certification by the qualified venture firm managing individual that all factual information provided to the Authority pertaining to the qualified venture firm is true and accurate under the penalty of perjury, including, but not limited to, information contained in the application for certification, the qualified venture firm agreement, any amendment to that agreement, and any other information submitted by the qualified venture firm to the Authority pursuant to the Act, this subchapter, and the qualified venture firm agreement; and

11. Any other information the Authority requires to evaluation compliance with the program by the qualified venture firm and by any qualified business with shares of stock held by an Evergreen special purpose vehicle managed by the qualified venture firm; and

12. Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

(b) With respect to the information required under paragraphs (a)1 through a11 above, the report shall include a statement prepared by an independent certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, certifying that the accountant has reviewed the report and that the information and representations contained in the report are accurate.

1. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority.

2. The Authority may qualify certified public accountants for certification of paragraph (a)3 above. If the Authority qualifies any certified public accountants, the Authority shall provide to the qualified venture firm the list of qualified certified public accountants and the information provided under paragraph (a)3 shall be certified by a qualified certified public accountant. Notwithstanding this paragraph, the qualified venture firm may select an independent certified public accountant that is not on the Authority's list of qualified certified public accountants if the qualified venture firm demonstrates an extenuating circumstance prohibiting the qualified venture firm 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 qualified venture firm.

(c) A qualified venture firm shall, as required at the discretion of the Authority, submit to the Authority satisfactory evidence supporting the information detailed in the annual report.

(d) Absent extenuating circumstances or prior written consent by the Authority, if a qualified venture firm fails to comply with the reporting requirements of this section, the Authority shall withhold the management fees and direct expenses due to such qualified venture firm or an affiliate of the qualified venture firm for any Evergreen special purpose vehicle managed by the qualified venture firm or affiliate. If the qualified venture firm submits the complete annual report within 120 days from the date the annual report was due, the Authority shall pay the management fees and direct expenses withheld and resume payment of management fees and direct expenses. If the qualified venture firm fails to comply with the reporting requirements after the additional 120 days, the qualified venture firm shall forfeit all management fees and direct expenses due for a period of a year.

(e) If a qualified venture firm is not in compliance with the reporting requirements of this section at the time that any distribution is made by a qualified business to the Evergreen special purpose vehicle holding a qualified investment, whether as a result of a sale or public registration of securities of the qualified business or for any other reason, no distribution of cash or equity for carried interest shall be made to the qualified venture firm or affiliate, provided that if the qualified venture firm comes into compliance with such reporting requirement within 120 days of the date of such distribution, the Evergreen special purpose vehicle shall make the distribution for carried interest to the qualified venture firm or affiliate.

19:31-25.10 Recapture, Decertification, and Redemption

(a) Absent extenuating circumstances or written consent by the Authority, if a tax credit purchaser fails to fund at least 80 percent of any component of its strategic commitment, the Authority shall require the tax credit purchaser to pay to the Fund the amount equal to the difference between the value of such strategic commitment component, as set forth in the tax credit purchaser contract, and the actual amount funded by the tax credit purchaser.

(b) If, at any time, the Authority determines that a tax credit purchaser made a material misrepresentation on the tax credit purchaser's tax credit bid application or any submissions to the Authority under this program, the Authority may recapture any or all of 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 tax credit purchaser and the respective officer may be subject. Any such recapture amount 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 amount, 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.

(c) The Authority shall review each qualified venture firm's annual report for the disqualifying criteria set forth in N.J.A.C. 19:31-25.7(d) or other reasonable industry-accepted standards as determined by the Authority. The Authority shall publish any such standards on its website. Upon such review, if the qualified venture firm does not satisfy the criteria or standards, the Authority shall decertify a qualified venture firm. If the annual report does not demonstrate best efforts to comply with the diversity policies or plans submitted pursuant to N.J.A.C. 19:31-25.7(b)8 or, for a qualified venture firm that proposed to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas, best efforts to achieve such greater portion of qualified investments compared to the investment information provided pursuant to N.J.A.C. 19:31-25.7(b)17, then the Authority shall reduce the qualified venture firm's evaluation score by the weight for such criteria. If the reduced evaluation score is below the minimum, the Authority shall decertify the qualified venture firm. Decertification shall not affect any previously made qualified investment or the Fund's commitment to make a follow-on investment in a qualified business.

(d) If a qualified venture firm fails to timely submit the completed annual report pursuant to N.J.A.C. 19:31-25.9 for two consecutive years, the Authority shall decertify the qualified venture firm and may remove the qualified venture firm from the Evergreen special purpose vehicle or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

(e) If a qualified venture firm fails to comply with the requirements of the qualified venture firm agreement or Evergreen special purpose vehicle governing agreement other than the failure to submit a complete annual report, or if the qualified venture firm or affiliate of the qualified venture firm is removed from the qualified venture firm active fund, the Authority may withhold or cease paying management fees and direct expenses, decertify the qualified venture firm, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

(f) If, at any time, the Authority determines that a qualified venture firm made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority shall cease paying management fees and direct expenses. The Authority shall decertify the qualified venture firm and may demand repayment of all management fees and direct expenses previously paid, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the qualified venture firm agreement or the Evergreen special purpose vehicle

governing agreement and any criminal or civil penalties to which the qualified venture firm and the respective officer may be subject.

(g) If an Evergreen special purpose vehicle is terminated pursuant to (d), (e), or (f) above, the qualified venture firm shall transfer the shares of stock to the Authority. The Authority may, at its discretion, accept payment of an amount equal to the greater of the qualified investment and all follow-on investments or the fair market value of the qualified investment at the time of the demand. Upon such termination, the Authority may require the qualified venture firm to forfeit any carried interest.

(h) If a qualified business fails to support its business operations in this State as set forth in N.J.A.C. 19:31-25.7(g)4i, or fails to provide the necessary documentation to demonstrate its compliance, during two consecutive years during the qualified business compliance period, the Authority may require the qualified business to redeem the shares of stock purchased with the qualified investment and any follow-on investment for an amount equal to the greater of the aggregate amount of the qualified investment and follow-on investments or the fair market value of the shares of stock at the time of the redemption demand. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the qualified venture firm or any other investor in lieu of redemption.

(i) If a qualified business fails to comply with any requirement under this program other than the failure set forth in (h) above, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth in (h) above.

(j) If, at any time, the Authority determines that a qualified business made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority may determine not to make any follow-on investments or may demand a redemption as set forth in (h) above. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the qualified business and the respective officer may be subject.

(k) In determining whether to require the termination of an Evergreen special purpose vehicle or the redemption of the shares of stock of a qualified business, the Authority may consider if retaining the Evergreen special purpose vehicle or the shares of stock of the qualified business furthers the purposes of the program, including, but not limited to, the likelihood of an increase in value of the shares of stock and the continued employment of full-time employees filling a position in New Jersey.

19:31–25.11 Affirmative action and prevailing wage

The Authority's affirmative action requirements at N.J.S.A. 34:1B–5.4 and N.J.A.C. 19:30–3.1 et seq. and prevailing wage requirements at N.J.S.A. 34:1B–5.1 and N.J.A.C. 19:30–3.2 shall apply only to the management fees and direct expenses received by the qualified venture firm.

19:31–25.12 Fees

(a) A tax credit purchaser, venture firm, or business 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.

(b) No fees shall be charged from tax credit purchasers, venture firms, or businesses.

19:31-25.13 New Jersey Innovation Evergreen Advisory Board

(a) The New Jersey Innovation Evergreen Advisory Board is established in but not of the Authority for the purposes of providing guidance and networking opportunities to qualified businesses. The members of the New Jersey Innovation Evergreen Advisory Board shall serve in a voluntary capacity, to be appointed through a process to be determined by the Chief Executive Officer of the Authority from among tax credit purchasers and other strategic partners identified by the Chief Executive Officer, to support the State's innovation ecosystem. The terms of the voluntary members so appointed, after the initial appointments, shall be one year, and each member may be reappointed thereafter if the tax credit purchaser purchases tax credits in the following year's tax credit auction or if the tax credit purchaser consents.

(b) The members of the New Jersey Innovation Evergreen Advisory Board shall also be required to attend at least the majority of meetings and events that the Authority schedules each year for participation by the members.

19:31-25.14 Appeal Process

(a) The Authority 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 Authority Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Authority Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

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

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Authority 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, provided that if the Authority decision was based on a competitive process, the Authority cannot consider any new evidence or information about the application other than evidence or information that would demonstrate that the applicant met all of the application criteria by the application deadline.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Authority Board containing the hearing officer's finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant 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 Authority 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 Authority Board shall issue a final decision on the appeal.

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

19:31-25.15 Reports on implementation of program

Beginning in 2022 and every two years thereafter, the Authority shall prepare a report on the implementation of the program, and submit the report to the Governor, and, pursuant to section 2 of P.L. 1991, c. 164 (N.J.S.A. 52:14-19.1), to the Legislature. Each biennial report required under this section shall include the names and locations of qualified businesses receiving capital including whether they are located in an opportunity zone; the amount of each qualified investment; a report by a certified public accountant, who is licensed in accordance with the "Accountancy Act of 1997," P.L. 1997, c. 259 (N.J.S.A. 45:2B-42 et seq.), or licensed in accordance with the laws of another state, of the consolidated performance of the Fund; the cumulative amount of capital committed by tax credit purchasers; the rate and amount of management fees and carried interest charged by each qualified venture firm, including performance-based earnings and carried interest; the classification of each qualified business, according to the targeted industry and the size of the qualified business; the State's return on investment; the total number of jobs created in the State by the qualified business after the qualified investment; the average wages paid for the jobs; and any other metrics the Authority determines are relevant based upon national best practices.

19:31-25.16 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 – Auction Application and Review Process

Overview

The NJEDA will raise capital for the New Jersey Innovation Evergreen Fund by auctioning \$60 million of tax credits annually (for up to 5 years) to corporations registered to do business in New Jersey. Auction bids will be evaluated and scored according to the price (“Purchase Offer”) and strategic commitment(s) the corporate tax credit purchasers make to support the State’s broader innovation ecosystem. The actual price paid for the tax credits will only consider the purchase offer.

The tax credit auction is built to both raise capital and increase engagement into New Jersey’s innovation ecosystem, notably, with established mid- to large-sized corporations. To help foster engagement and collaboration, all applicants are required to make a strategic commitment to support New Jersey’s innovation ecosystem. These Strategic Commitments are oriented to categorically support aspects of the New Jersey innovation ecosystem such as investing into people (develop talent), developing the ecosystem (commit to hold start-up events and programs), providing investment (provide resources, access to customer channels or distribution networks, monetary support) and marketing (promote Evergreen and provides public relations support around the support of innovation in New Jersey). Other examples appear in the corporate tax credit bidder pamphlet (Appendix G). Ultimately, the strategic commitment is an open-ended proposition put forward by the bidder as a unique contribution. These strategic commitments will be evaluated in conjunction with the purchase offer to determine each corporate tax credit bidder score.

The following provides an overview of the auction component of the Program. The process includes an approach to marketing the program, how to execute the program application period, application review process, closing process and post-closing/monitoring process.

Auction Process

The Authority may execute up to one competitive auction per calendar year. The Authority may not conduct a tax credit auction if the Fund maintains more than \$15 million of unallocated capital. This measure will support discipline in management of State revenue. Allocated capital will include reserves for follow-on investment, administration of innovation ecosystem support programs, management fees and organizational expenses of the qualified venture firm. Staff will assess multiple factors to determine auction timing, including, but not limited to, availability of funds, competing and coordinating resources, market feedback, etc.

The auction will be run as a competitive process. Bid submissions will be reviewed by an EDA staff committee according to an established scoring rubric (contained, herein). All criteria will be communicated to the market in advance of the auction. Thirty days in advance of the application open, the Q&A period will begin, with a non-fillable form application posted to the Evergreen site. Once the formal application launches (Day 1 noted below), potential purchasers will have two months to submit their application. The Q&A period will close two weeks after the auction opens to allow open market questions and equal dissemination of information. All applications are due two months after the

application opens, along with a refundable deposit equal to 10% of the purchase price. Once the application closes, NJEDA staff will review the applications for completeness and request any missing documents, if needed. Once all missing documents are received, staff will score and rank the bids. Staff will communicate the bid spread to the purchasers. At this time, applicants are permitted to alter and resubmit their bids to increase financial and strategic offerings to remain competitive and uptake any unallocated credits. Bids may not be lowered or rescinded. The final rescore will determine the rank order of bid allocation in the event of pro-ration. In the event of an auction over-allocation, EDA will pro-rate the bids according to the process detailed, herein.

Award recommendations will be presented for Authority Board approval and announcement. A written notice will be sent to all bidders indicating approval, after which purchase agreements will be executed and funds transferred. If a corporate bidder does not wish to (or is unable to) follow through on their submitted bid application, the credits can be reassigned by the authority to the next-highest scoring bidder (without need of re-auction). As a penalty for not closing on the commitment, the withdrawing bidder is not permitted to participate in the following year auction. Once all final bids are submitted, they will be re-evaluated and scored.

Post-closing operations will commence and include ongoing monitoring of strategic commitment adherence and participation in the New Jersey Innovation Evergreen Fund Advisory Board.

Summary Timeline

Auction Timeline for Corporate Bidders	
<ul style="list-style-type: none"> • Example application posted to website • <u>Q&A period opens</u>, with questions answered on a rolling basis and posted to website 	Day -30
<ul style="list-style-type: none"> • Online Application launches 	Day 1
<ul style="list-style-type: none"> • Q&A period closes 	Day 14
<ul style="list-style-type: none"> • All applications due – any missing documents are communicated to the bidder 	Day 60
<ul style="list-style-type: none"> • All missing docs are due and NJEDA staff ranks bids 	Day 70
<ul style="list-style-type: none"> • Bid Feedback to Purchasers who can revise initial bids 	Day 75
<ul style="list-style-type: none"> • Final Bids Due 	Day 85
<ul style="list-style-type: none"> • Bid scoring completed 	Day 90
<ul style="list-style-type: none"> • Bids presented to Board 	Day 100
<ul style="list-style-type: none"> • NJEDA staff transmits approvals to taxation 	Day 115
<ul style="list-style-type: none"> • Following taxation review, and bid contracts executed, Purchaser wires total amount (sans initial 10% deposit) 	Day 130

Evaluation / Scoring

Upon submission of an auction bid application, NJEDA staff will review the application 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), strategic commitment (including supporting documentation and associated list of documents to verify completion of the commitment.), business registration certificate), CEO certification, legal debarment, and NJ tax clearance certificate. Sister agency checks will be performed on all applicants.

Staff will ensure applications comply with program regulations. Eligible applications must consider, at minimum:

- Tax credit requests of at least \$500,000 (face value)
- A purchase offer price to be paid of at least 75 percent of face value
- Valid Strategic Commitment
- A refundable deposit for 10% of the tax credit purchase offer, not to exceed \$500,000
- Affirmative Evergreen Advisory Board commitment if approved

A valid strategic commitment will specifically identify the objective of the commitment, details of how the strategic commitment will be achieved and milestones to indicate when the commitment is achieved, including the forms of documentation that will be provided to EDA staff to verify achievement. As part of the application, bidders will indicate the attributable cost of the strategic bid as this will be a requirement in scoring, as well as, compliance). Given the open-ended nature of possible strategic commitments, the specific list of verification will be memorialized in the execute tax credit purchase agreement. Additional clarification is noted in the strategic commitment section below.

Following submission, EDA staff will inform the potential purchaser's primary contact if there is a discrepancy or lapse in the application information. Only complete applications will be eligible for consideration. Missing documents may be submitted during the 10 business-day period following notification by staff.

Purchase Offer

The purchase offer is comprised of two components: the amount offered per dollar of tax credit (with a minimum floor of 75 percent of face value), and the volume of request (with a minimum floor of \$500,000). This floor is mandated in legislation, and in addition to requiring strong purchase offers. The Evergreen Program minimum floor is closely aligned with the minimum transfer prices utilized in other ERA tax credit incentive programs.

The applicant must submit a refundable deposit of 10% of the purchase offer at the time of application. The amount will be applied to the final amount paid. If the approved applicant does not close the transaction the 10% deposit will be returned but the applicant may be banned from participating the following year. An example of a purchase offer evaluation is below:

<i>Purchase offer Value</i>	Example
<i>Purchase offer Price (cents/dollar)</i>	0.75
<i>Amount of Tax Credits Requested (pre-discount)</i>	\$10,000,000
<i>Total Purchase offer</i>	\$7,500,000
	0.75

Strategic Commitment Evaluation

All Evergreen Program tax credit auction bids must include a strategic commitment, whereby, tax credit purchasers offer strategic support to strengthen the State's innovation ecosystem. The strategic commitment is submitted in tandem with the purchaser offer for tax credits. The corporate bidder determines the components of its strategic commitment, which can include, but is not limited to, people (develop talent), ecosystem (commit to hold start-up events and programs), investment (provide resources, access to customer channels or distribution networks, monetary support) and marketing (promotes the Program and provides public relations support around the support of innovation in New Jersey). A tax credit purchaser must specify and quantify the cost of each component of its strategic commitment in its tax credit bid, including, but not limited to, mentorship hours, internship offerings, customer and distribution pipeline access as specific considerations within the aforementioned bid categories. The score of the financial and strategic commitment components will make up the total bid score. All bids need to substantiate the strategic commitment's estimated cost to the corporation and explanation of the potential benefit to the innovation economy through documentation.

The strategic commitment scoring rubric is built to evaluate a myriad of potential open-ended scenarios put forward by corporate bidders. Categorically, it is anticipated that bids will be classified to benefit people, ecosystem & space, investment or marketing. A strategic commitment is scored based on ten criteria:

1. **External partners** (government agencies, corporations, municipalities, universities, trade groups, etc.) involved with the initiative - One of the main goals of the Evergreen program is ecosystem-building and the creation of a more robust innovation landscape in New Jersey. By partnering with existing entities that have a lasting and important role within New Jersey, it is expected that the value of the strategic commitment will multiply.
 - a. 1 point for no external partners
 - b. 2 points for 1 or 2 external partners (in addition to the bidder)
 - c. 3 points for 3+ external partners (in addition to the bidder)
 - d. An additional 2 points are achievable for those who are **working with established entities in the New Jersey innovation sector** (such examples are, trade-groups, entrepreneurship development programs, and annual pitch events).

2. **Educational Institutions** – A strategic commitment that offers internships, apprenticeships, or on the job training to students at several NJ schools versus prioritizing a single campus has a larger reach and impacts more communities.
 - a. 1 point for <2 institutions
 - b. 2 points for 2-3 institutions
 - c. 3 points for 4+ institutions
3. **Opportunity Zone Outreach** - Commitments that are geographically focused on opportunity zones show a focus on underserved communities in New Jersey. As part of the Governor’s Economic Development plan diversity, equity and inclusion are all key to building a stronger, fairer New Jersey.
 - a. 1 point for <2 opportunity zones
 - b. 2 points for 2-3 opportunity zones
 - c. 3 points for 4+ opportunity zones
4. **Duration of the strategic commitment** - A short term strategic commitment is useful, but a longer term commitment will have a more lasting impact to support a more robust innovation ecosystem.
 - a. 1 point for <1 year
 - b. 2 points for 1-2 years
 - c. 3 points for 3+ years
5. **Frequency of the strategic commitment** – Commitments have an opportunity to create a larger impact over multiple iterations versus fewer iterations. A strategic commitment that occurs multiple times has a potentially larger impact than those accomplished in a single instance.
 - a. 1 point for <1 time/year
 - b. 2 points for 2-3 times/year
 - c. 3 points for 4+ times/year
6. **Staff members involved in this initiative** – A greater allocation of staff by the corporate bidder shows that a strategic commitment is more meaningful to the company—allocated staff time also helps to support success of the strategic commitment.
 - a. 1 point for staff time of 10 hours monthly
 - b. 2 points for staff time of 40 hours monthly
 - c. 3 points for staff time of 100 hours monthly

7. **Investment Target** – A greater dollar investment into businesses in New Jersey (with no existing common ownership or control by the corporate bidder) indicates a more practical commitment to support innovation in New Jersey, regardless of the form of investment (grants, equity, loans).
 - a. 1 point for <\$50,000
 - b. 2 points for \$50,000-\$125,000
 - c. 3 points for \$125,000+
8. **Marketing Self-Valuation**– A greater attributable spend toward marketing New Jersey’s innovation ecosystem indicates corporate buy-in to the program. The marketing self-valuation should be expressed in the application with rationale as to the assigned value.
 - a. 1 point for <\$10,000
 - b. 2 points for \$10-\$20,000
 - c. 3 points for \$20,000+
9. **Strategic Commitment Ratio** –The strategic commitment ratio can be calculated by dividing the strategic commitment value (\$ cost of the strategic commitment) by the purchase offer. A greater ratio indicates higher strategic buy-in and significant value toward the innovation economy. (e.g., if a strategic commitment is worth \$1M and a purchase offer is for \$4M, \$1M/\$4M is 0.25)
 - a. 1 point for <0.1
 - b. 2 points for 0.1-0.3
 - c. 3 points for 0.3+
10. An additional point is achievable for those that have **never previously been approved for auction participation**. The objective is to support those new to the program and expand participation over time.

In all cases, offering up a greater commitment increases the score of the bid. For example, including an external partner is more beneficial than not including an external partner, putting forth a 2-year commitment to internships is more valuable and will score higher than putting forth a 1-year commitment, etc.

Objectively, the strategic commitment may represent one third of the total bid score (including the purchase offer, as discussed below). The maximum strategic score achievable is 0.5 in order to demonstrate the importance of the strategic commitment as a component of auction participation, while still placing an emphasis on fiscal responsibility to maximize the financial outcome of the auction. In order to achieve this scaling, the strategic commitment raw score is divided by 60 to get the strategic commitment final score. The strategic score can impact the amount of tax credits awarded but is scaled

such that the strategic commitment score does not overshadow the purchase offer score (which ranges between 0.75-1.00).

In cases where a Purchaser puts forth multiple strategic commitments, the commitments are scored separately. The separate scores are combined through a weighted average based on the financial value of each portion of the commitment.

For example, if a purchaser puts forth two separate strategic commitments, one self-valued at \$300,000 to internships and one self-valued \$40,000 commitment to a pitch night, the final strategic score is calculated as follows:

Strategic Commitment A: \$300,000 commitment with a strategic score of 0.303

Strategic Commitment B: \$40,000 commitment with a strategic score of 0.242

Strategic Final Score = $(\$300,000 * 0.303) + (\$40,000 * 0.242) / \$340,000 = 0.296$

The weighted average ensures that the larger commitment makes up a greater proportion of the total score.

Total Bid Score

The purchase offer score and the strategic commitment score will be added together to create a final overall score for each applicant. In the example below, the bidder achieved a strategic commitment score of 0.45 and put forward a purchase offer of 75 per cent of face value. The total bid score equals 1.2.



Rank order of applicant scores will be used to determine priority for tax credit awards and potential proration scenarios.

Oversubscription and Proration

In the event the requested amount of tax credits exceeds the \$60 million of credits available in a single auction, awards will be prorated. All qualified bids are ranked in sequential order from the highest overall total bid score to the lowest overall total bid score. A percentile rank is calculated to determine how the applicants compare to the wider field. All qualified applicants receive a \$500,000 minimum, along with a prorated amount of tax credits based on their total score, their tax credit request, and percent of total amount requested. The percentage allocation is decreasing in equal increments. Rank matters because the higher ranked applicants will receive a greater proportion of their requested amount of tax credits, while the lower ranked applicants will receive a smaller award as percentage of the total requested.

Example

In this example, four bidders requested \$68M of tax credits.

Bidder A: Requested \$40M with a total score of 1.32

Bidder B: Requested \$15M with a total score of 1.3

Bidder C: Requested \$12M with a total score of 1.25

Bidder D: Requested \$1M with a total score of 1.2

Bounds = 1.32 and 1.2

The spread between the highest and lowest rank becomes the bounds (1.32 and 1.2) for the calculation. The spread is broken down into equal parts using the Goal Seek function in Excel and the total percentage allocation is divided amongst these steps. As per the formula, each step equals roughly 6.93%.

A bidder with a raw score of 1.30 (two “steps” below the maximum ask) will receive 86.15% (100% - 6.93% - 6.93%) of their request, not including the minimum allocation of \$500,000.

				Percent of Allocation received (outside minimum)
1.33				
1.32	A	6.93%		100.00%
1.31		6.93%		
1.3	B	6.93%		86.15%
1.29		6.93%		
1.28		6.93%		
1.27		6.93%		
1.26		6.93%		
1.25	C	6.93%		51.52%
1.24		6.93%		
1.23		6.93%		
1.22		6.93%		
1.21		6.93%		
1.2	D	6.93%		16.88%
1.19				

This same process is applied for each bidder such that while the top ranked bid (Bidder A) receives the entirety of their ask, the bottom bidder (Bidder D) is significantly prorated, receiving \$84,415 in addition to the \$500,000 minimum.

This example shows the methodology for how this process will work for four bidders – were there to be a different number of bidders and a different spread, the calculation would have to be updated accordingly.

	Original Request	Request (subtracting \$500K minimum)	Percent of Allocation received (outside minimum)	Final Prorated Amount	Final Award +\$500K minimum
A	\$ 40,000,000.00	\$ 39,500,000.00	100.00%	\$ 39,500,000.00	\$ 40,000,000.00
B	\$ 15,000,000.00	\$ 14,500,000.00	86.15%	\$ 12,491,341.99	\$ 12,991,341.99
C	\$ 12,000,000.00	\$ 11,500,000.00	51.52%	\$ 5,924,242.42	\$ 6,424,242.42
D	\$ 1,000,000.00	\$ 500,000.00	16.88%	\$ 84,415.58	\$ 584,415.58
	\$ 68,000,000.00	\$ 66,000,000.00		\$ 58,000,000.00	\$ 60,000,000.00

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 application. Those specific bidders will be contacted and can purchase the remainder of tax credits without having to re-up their strategic commitment. Priority is assigned by total final bid score with the credits offered at the lowest clearing price bid. This mechanism offers an incentive to the highest bidder(s) and secure a strong bid from all parties.

In the case of the Fund still holding unallocated tax credits after the auction process has concluded, remaining funds will be carried over to future auctions.

Appendix C – Qualified Venture Firm Requirements and Weighted Criteria Evaluation

Overview of Process

Venture firms may apply to become NJIEF qualified venture firms on a rolling basis. Once qualified, venture firms may apply for qualified investments through the Program. Approval from the Board of the Authority will be required for both certifying qualified venture firms and approving initial qualified investments.

The qualified venture firm application process is objective, relying on accompanying documentation provided by the qualified venture firm applicant. Authority staff will review applicant responses and supporting documentation to ensure the questions are answered accurately. Staff will ensure qualified venture firm applicants meet all minimum requirements for Program participation by reviewing a minimum requirement checklist and supporting documentation. If an applicant is missing documents, they will have an opportunity to resubmit the missing components of their application. Applications that meet all Program minimum requirements will be scored on the Program’s weighted criteria evaluation to ensure venture firms meet the Program’s minimum acceptable score. The NJEDA venture programs team will collaborate with the NJEDA operations team and Diversity, Equity and Inclusion team to score firms using the Program’s objective ‘yes’ or ‘no’ weighted criteria scoring framework. Qualified venture firm applicants that meet or exceed the Program’s minimum acceptable score will be submitted to the Board of the Authority for approval as a qualified venture firm.

Part 1: Qualifying Questionnaire

Staff will review venture firm applicants’ qualifying questionnaire submissions and verification materials to ensure all Program minimum requirements are met. NJIEF venture firm minimum requirements are detailed in section N.J.A.C. 19:31-25.7 of the Program regulations. The venture firm qualifying questionnaire will be made publicly available to allow potential applicants to self-assess alignment with Program requirements and likelihood of qualification.

Table 1: Venture Firm Qualifying Questionnaire at Initial Certification

Criteria Number	Qualifying Question at Time of Certification
1	Does the firm employ at least two full-time investors with the authority to direct the investment of capital with at least five years of professional money management experience?
2	Does the firm have at least \$10,000,000 in assets under management, including net assets, equity capitalization, and written commitments of cash or cash equivalents?

3	Is the firm in substantial good standing with sister agencies?
4	Were the results of a background and legal debarment check satisfactory? (if applicable)
5	If the firm is a current or former partner in any other NJEDA program, is the applicant up to date on reporting requirements? ¹
6	Has the firm agreed to publicize participation in the program and authorize the Authority to publicly disclose the name of the firm as a participant?
7	Does the firm have a valid New Jersey tax clearance certificate and New Jersey business registration? ¹
8	Has the firm committed to meet New Jersey prevailing wage and affirmative action requirements should management fees be used for expenses that may trigger those requirements? ¹
9	Applicants may be required to provide any other information deemed necessary by the NJEDA.

Note¹: Additional requirements added to the legislative requirements through the Program regulations.

The majority of qualifying questions listed in Table 1 are required by Section 29 of the statute with additional criteria added in alignment with legal and compliance standards. These additional criteria are as follows:

- **If the firm is a current or former partner for any other NJEDA program, is the applicant up to date on its reporting requirements?** This check ensures no applicants that may be in default of their requirements related to other NJEDA programs are provided Program capital.
- **Does the firm have a valid New Jersey tax clearance certificate and New Jersey business registration?** All NJIEF participants will be required to register to do business in the State.
- **Has the firm committed to meet New Jersey prevailing wage and affirmative action requirements should management fees be used for expenses that may trigger those requirements?** It is not anticipated that qualified venture firms will utilize the management fees paid by the NJEDA to support a firm's day-to-day management of Program investments on expenses that will trigger prevailing wage and affirmative action requirements, however, firms must certify they understand the requirements under State law.

Part 2: Required Document Checklist

The following non-exhaustive list represents initially recognized forms of documentation which may verify application responses. Additional forms of verification may be accepted if sufficient. To support the evaluation of an application for certification as a qualified venture firm, the Authority will require audited financial statements of funds under management, a valid NJ tax clearance certificate and business registration, current and historical organizational charts, biographical backgrounds of investment staff, a recent pitch deck, a certified list of limited partners commitments (if applicable), a Limited Partnership Agreement of the fund that will likely co-invest alongside the NJIEF, current and historical DE&I policies including relevant metrics, NJ office lease agreement (if applicable), evidence of prior NJ investments (if applicable), regional investment policy (if applicable), NJ incentive area investment policy (if applicable), and any other information deemed necessary by the Authority.

Part 3: Weighted Criteria and Scoring

In addition to program minimum requirements, venture firms must also meet the NJIEF's minimum acceptable score on its weighted criteria scoring model to be certified as a qualified venture firm. Section 28 of the NJIEF statute, P.L. 2020, c. 156 (amended by P.L. 2021, c. 160) outlines the required categories to be included (further clarified in N.J.A.C. 19:31-25.7 of the Program's regulations). The specific scoring criteria and weights, and the Program's minimum acceptable score are NJEDA policy decisions. The scoring criteria and weights will be evaluated on a continual basis by staff for potential annual adjustments.

Dynamic Scoring

The weighted criteria model uses dynamic scoring to increase the total possible points and total acceptable score by 7 points for firms that have had a diversity, equity, and inclusion policy in place for at least one year. These firms will be required to demonstrate a track record of making progress towards achieving their policy goals to receive the additional 7 points. Firms unable to do so will be able to earn 5 points if they are able to demonstrate a track record of best efforts towards achieving their policy goals. Venture firm applicants with a newly created diversity, equity, inclusion policy will not be penalized for a failure to demonstrate a track record of achieving policy goals. For those firms, criteria #3a and #3b are removed from the scoring model, reducing the maximum achievable score and the minimum acceptable score by 7 points. This dynamic approach to the Program's total possible score and minimum acceptable score will enable the NJIEF to serve as a catalyst within the venture capital ecosystem, requiring firms that lack diversity, equity, and inclusion policies to establish such policies, while also requiring firms with pre-existing policies to demonstrate progress made towards achieving policy goals.

Minimum Acceptable Scores

Venture firm applicants with diversity, equity, and inclusion policies that have been in place for at least one year must receive a score of at least 24 out of a possible 37 points on the Program's weighted criteria scoring model to be certified as a qualified venture firm. Firms with a newly created diversity, equity, and inclusion policy, including firms that may be creating a policy in conjunction with their Program application, must receive a score of at least 17 points out of a possible 30 points. In both cases, it will not

be possible for firms to achieve the minimum acceptable score without robust diversity, equity, and inclusion policies.

Applicant responses to diversity equity and inclusion policy categories will be evaluated by the Authority’s Diversity, Equity, and Inclusion team using a checklist to test conformity with industry best practices which will be identified on the Authority’s website. The checklist, which will be posted on the Program website, may include such criteria as policies on investments in underrepresented founders, diversity metrics of portfolio company Board of Directors, diversity metrics of the venture firm, and recruitment and retention of diverse staff. Consideration will also be given to timeliness of policies, for example, policies in place prior to the events of 2020 and the increased focus on diversity, equity, and inclusion that followed. Firms that do not initially meet the requirements of the diversity, equity and inclusion policy weighted criteria may develop robust policies that adhere to industry best practices and reapply.

The NJIEF venture firm weighted criteria and scoring weights are listed in Table 3, followed by additional explanatory narrative in the text below.

Table 3: Venture Firm Weighted Criteria

Criteria Number	Scoring Criteria	Score Weight
1	Does the firm have a clearly articulated internal policy promoting diversity, equity, and inclusion within the venture firm/management company, specifying relevant evaluation metrics when applicable?	8.5
2	Does the firm have a clearly articulated investment policy promoting diversity, equity, and inclusion within their portfolios, specifying relevant evaluation metrics when applicable?	5.0
	<i>Have any of the firm’s diversity, equity, and inclusion policies been in place for at least one year?</i>	
3a	Does the firm have a demonstrable track record of making progress against its diversity, equity, and inclusion policy goals?	7.0/0.0
3b	If not, does the firm have a demonstrable track record of making best efforts towards achieving its diversity, equity, and inclusion policy goals?	5.0/0.0
4	Has the NJEDA been an investor in a current or prior fund with the firm?	0.5
5	Has the firm worked with other NJEDA programs or participated in NJEDA organized functions to support targeted industries and the innovation ecosystem?	0.5
6	Does the firm have a New Jersey office (as will be clarified in the FAQ)?	0.5

7	Has the firm made at least two investments into NJ startups from funds raised in the past five years?	0.5
8	Does at least one member of the firm's senior management team have at least 2 years of relevant experience working for a business in a targeted industry?	1.0
9	Does at least one member of the firm's senior management team have at least 5 years of relevant experience working for a business in a targeted industry?	1.0
10	Does the senior management team have at least 2 years of experience working together?	1.0
11	Does the senior management team have at least 5 years of experience working together?	1.0
12	Does the firm control sufficient assets under management such that a \$5M investment would represent less than 15% of the firm's total assets under management?	1.0
13	Does the firm control sufficient assets under management such that a \$10M investment would represent less than 15% of the firm's total assets under management?	1.0
14	Has the firm formally raised capital for the fund that will co-invest alongside the NJIEF in the coming year?	1.0
15	Regarding the fund that would co-invest alongside the NJIEF in the coming year, does the fund have an annual management fee less than or equal to 2.5% of capital committed by investors?	1.0
16	Regarding the fund that would co-invest alongside the NJIEF in the coming year, is the fund's incentive compensation rate (commonly referred to as carried interest rate) at or below 20% of investment profits?	1.0
17	Has the firm previously raised and invested an institutional fund?	1.0
18	Does the firm have a regional investment policy, directing at least 25% of invested capital to New Jersey or surrounding geographic areas, not to encompass more than the Mid-Atlantic region?	0.5
19	Does the firm have at least one fund, raised within the past 10 years, that has performed better than the median relative to its peer group of investors with the same strategy for the same vintage year?	1.0

20	Have all the firm's funds, raised within the past 10 years, performed better than the median relative to peer group investors with the same strategy for the same vintage years?	1.0
21	Have any of the firm's institutional funds distributed more capital back to its investors than they have invested, including fees.	1.0
22	Does the firm have an office in an incentive area in New Jersey?	0.5
23	Does the firm's senior management team agree to create policy certifying that the firm will dedicate a greater portion of Evergreen funding into businesses located in New Jersey incentive areas?	0.5
	Total Possible Points	37.0/30.0
	Minimum Acceptable Score	24.0/17.0

The model's scoring methodology is designed to offer a holistic review of applicant venture firms. The proposed Program weights and minimum acceptable score were selected to support the qualification of strong, established managers from across the country, while retaining a pathway for promising emerging managers with an orientation to invest in New Jersey. Criteria relating to investment activity in New Jersey have a proposed weight of 0.5 points, while other categories have a proposed weight of 1.0 point. These relative weights were selected to ensure the Program can attract strong venture firms from outside the region that may bring new sources of investment capital to startups in the state, fueling job creation. The opportunity to crowd in new investment capital will catalyze economic development and job growth within the State for years to come.

It will be difficult for emerging venture firms that lack experience to achieve the minimum acceptable score. However, experienced emerging venture firms with a nexus to the State enjoy a viable pathway to certification as a qualified venture firm. Strong established firms both from the New Jersey area and beyond will also likely meet the Program requirements.

Detailed Explanation of Venture Firm Weighted Criteria and Scoring Weights

The categories in the following section stem from Section 28 of the NJIEF statute and Section N.J.A.C. 19:31-25.7 of Program regulations, while the specific criteria and weights are NJEDA policy decisions.

Category 1: Quality of the leadership in the innovation ecosystem in the State, including willingness to work with the Authority to support targeted industries and the innovation ecosystem in the State, and to locate in the State.

- **Criteria 1: Does the firm have a clearly articulated internal policy promoting diversity, equity, and inclusion within the venture firm/management company, specifying relevant evaluation metrics when applicable?** Diversity, equity, and inclusion are foundational elements of building a

stronger and fairer State economy. According to industry research, 43% of venture capital firms had a diversity policy in place in 2021, up from 24% in 2016ⁱ. The NJIEF venture firm weights will require all firms that participate in the Program to have a DE&I policy in place at the time of certification as a qualified venture firm. With a scoring weight of 8.5 points, this criterion is the most heavily weighted in the Program. Not only are firms with diverse teams more statistically likely to perform better and invest in diverse businesses, but the Evergreen Fund may catalyze firms' development of these internal diversity, equity, and inclusion policies, helping build a stronger and fairer innovation ecosystem here in the State.

The Authority's DE&I team will determine if an applicant maintains a policy that satisfies the requirement for the 8.5 points, using a checklist derived from venture capital industry best practices to confirm a policy is applicable to firms' core functions. Applicants that do not have a qualifying DE&I policy at the time of application will be given an opportunity to create such a policy with support from the NJEDA's DE&I team, and resubmit their application, catalyzing further DE&I efforts across the industry.

Firms that meet the requirements for this criterion will be tested annually to ensure they continue to meet the requirements and are making demonstrable best efforts towards achieving their policy goals. Firms unable to demonstrate best efforts made towards achieving policy goals will lose the associated points and be decertified as a qualified venture firm should their point total fall below the Program's minimum acceptable score.

- **Criteria 2: Does the firm have a clearly articulated investment policy promoting diversity, equity, and inclusion within their portfolios, specifying relevant evaluation metrics when applicable?** Venture firms' diversity, equity, and inclusion policies relating to portfolio companies and investment targets are also critical to building a robust and inclusive innovation economy in the State. Nationwide, only 1% of venture capital-backed founders are Black and fewer than 2% are Latinxⁱⁱ. The statistics around women-led businesses, especially for businesses led by women of color, are equally disheartening. A weight of 5.0 points represents a high weight relative to other Program categories. It will not be possible for firms to meet the Program's minimum acceptable score without a robust internal or investment diversity, equity, and inclusion policy in place.

As is the case for internal DE&I policies, the Authority's DE&I team will determine if applicants investment policies are sufficiently robust to qualify for points under the program, using a checklist guided by industry best practices. Firms that meet the requirements for this criterion will also be tested annually to ensure they still meet the requirements needed to maintain the associated points.

- **Criteria 3a: Does the firm have a demonstrable track record of making progress against its diversity, equity, and inclusion policy goals?** For firms with a DE&I policy in place for at least one year, 7 points will be awarded for successfully demonstrating a history of progress towards achieving their policy goals. While having a policy in place is a start, to successfully build a stronger and fairer innovation ecosystem in the State, firms must take actionable steps to achieve their DE&I policy goals.

- **Criteria 3b: Does the firm have a demonstrable history of making best efforts towards achieving its DE&I policy goals?** For firms with a DE&I policy in place for at least one year, that fail to meet the requirements of criterion 3a, 5 points will be awarded for successfully demonstrating a history of making best efforts towards achieving their policy goals. Moreover, all firms must demonstrate best efforts towards achieving their DE&I policy goals as part of their annual reporting requirements. A failure to do so will result in a rescoring and potential decertification as a qualified venture firm.
- **Criteria 4: Has the NJEDA been an investor in a current or prior fund with the firm?** This criterion awards 0.5 points to firms that have demonstrated leadership within New Jersey’s innovation ecosystem by partnering with the Authority’s venture program. A weight of 0.5 points is awarded to criteria relating to regional or state-specific investment activity to avoid overly disadvantaging applicants from outside the region. In addition to catalyzing local investments, the NJIEF was envisioned to crowd in new investment capital from outside the region to help grow the State’s innovation ecosystem.
- **Criteria 5: Has the firm worked with other NJEDA programs or participated in NJEDA organized functions to support targeted industries and the innovation ecosystem?** This criterion awards 0.5 points to firms that have demonstrated leadership within New Jersey’s innovation ecosystem by participating in other NJEDA programs geared towards growing the State’s innovation ecosystem.
- **Criteria 6: Does the firm have a New Jersey office?** This criterion awards 0.5 points to firms that have demonstrated leadership within New Jersey’s innovation ecosystem by establishing a place of business in the state. Firms that have no physical office may qualify for criterion points if at least one senior investor (managing partner, general partner or equivalent) resides full-time in New Jersey.

Category 2: The investment experience of the principals with qualifying businesses.

- **Criteria 7: Has the firm made at least two investments into New Jersey startups from funds raised in the past five years?** This criterion awards 0.5 points to firms that have demonstrated experience investing in qualified businesses by investing in at least two New Jersey startups within a fund’s typical investment period.

Category 3: The knowledge, experience, and capabilities of the applicant in subject areas of its investment focus relevant to high-growth businesses in the State.

- **Criteria 8: Does at least one member of the firm's senior management team have at least two years of relevant experience working for a business in a targeted industry?** This criterion awards 1.0 points to firms with relevant industry operating experience that will enable investors to add operational value to help grow startups that receive Program investments. The period of two years was selected to allow for the possibility of emerging venture firms with fewer years of industry

experience and who may be investing out of their first or second fund to successfully meet the requirement.

- **Criteria 9: Does at least one member of the firm's senior management team have at least five years of relevant experience working for a business in a targeted industry?** This criterion awards an additional 1.0 point to firms with even more relevant industry operating experience. With at least five years of relevant industry operating experience, investors will be able to add more meaningful operational value to help grow the New Jersey startups that receive Program capital.

Category 4: The tenure and turnover history of principals and senior investment professionals of the applicant.

- **Criteria 10: Does the senior management team have at least 2 years of experience working together?** This criterion awards 1.0 points to firms with that demonstrate tenure and a low turnover history by measuring the number of years the senior management team of the firm have worked together. The average life of a venture fund persists over a long period, typically at least 10 years. Prior work experience between the senior management team can be an important indicator that a partnership will survive the duration of the fund.
- **Criteria 11: Does the senior management team have at least 5 years of experience working together?** This criterion awards an additional 1.0 points to firms that have worked together for five years, which is the typical investment period for a venture capital fund.

Category 5: Whether the State's approved maximum aggregate qualified investments with the applicant under this program would exceed 15 percent of the total invested in the applicant by all of its investors, including investments in any Evergreen special purpose vehicles.

- **Criteria 12: Does the firm control sufficient assets under management such that a \$5,000,000 investment would represent less than 15% of the firm's total assets under management?** This criterion awards 1.0 points to firms that have assets under management sufficient to invest \$5M, the maximum investment size for typical transactions under the Program, without exceeding the Program's limit on firms' aggregate Program investments as a percentage of total assets under management. This requirement is designed to help mitigate risk by ensuring NJIEF capital does not account for too high of a percentage of a firm's total assets under management. Effectively, firms with assets under management of at least \$33,333,333 will successfully meet the requirements of this criterion.
- **Criteria 13: Does the firm control sufficient assets under management such that a \$10,000,000 investment would represent less than 15% of the firm's total assets under management?** This criterion awards an additional 1.0 points to firms that have assets under management sufficient to invest \$10,000,000 of Program capital, which would represent the maximum amount of capital qualified venture firms can invest into typical businesses in a calendar year. Passing this test demonstrates the manager may be a more effective conduit to efficiently deploy capital into at least

one high-quality deal, before reaching a statutory investment limit. Effectively, firms with assets under management of at least \$66,666,667 will successfully meet the requirements of this criterion.

Category 6: The applicant's stage of fundraising for their proposed qualified venture firm active fund.

- **Criteria 14: Has the firm formally raised capital for the fund that will co-invest alongside the NJIEF in the coming year?** Funds that are still fundraising for their fund that will invest through the Program may apply for certification as a qualified venture firm. However, this criterion awards 1.0 points to firms that have already raised the capital that will be used to invest through the Program. This status demonstrates a venture firm's ability to achieve critical mass or readily invest at scale.

Category 7: Whether fees, expenses, and the remuneration of the general partner or manager for their proposed qualified venture firm active fund is similar to those of peer venture firm investors.

- **Criteria 15: Regarding the fund that would co-invest alongside the NJIEF in the coming year, does the fund have an annual management fee less than or equal to 2.5% of capital committed?** According to industry research, most venture capital firms have a management fee rate less than or equal to 2.5% of capital committed to a given fund.ⁱⁱⁱ This criterion awards 1.0 points to firms with industry standard or better management fee rates.
- **Criteria 16: Regarding the fund that would co-invest alongside the Evergreen SPV in the coming year, is the fund's incentive compensation rate (commonly referred to as carried interest rate) at or below 20% of investment profits?** According to industry research, most venture capital firms have an incentive compensation rate, commonly known as a carried interest rate, of 20% of investment profits.^{iv} This criterion awards 1.0 points to firms with industry standard or better incentive compensation rates.

Category 8: The applicant's track record of investing in high-growth businesses.

- **Criteria 17: Has the firm previously raised and invested an institutional fund?** This criterion assesses an applicant's track record of investing in high-growth businesses by awarding 1.0 points to firms that are at least onto their second professional institutional fund. Firms that have previously raised and invested an institutional fund have demonstrated a track record of deploying capital into startups.

Category 9: Whether the investment strategy of the proposed qualified venture firm active fund of the applicant is focused on high-growth businesses, including the percentage of the investment identified to be invested in New Jersey or surrounding geographic areas.

- **Criteria 18: Does the firm have a regional investment policy, directing at least 25% of invested capital to New Jersey or surrounding geographic areas, not to encompass more than the Mid-Atlantic region?** This criterion awards 0.5 points to firms with a regional investment policy focused on New Jersey or the surrounding area. Firms with a regional investment focus are more likely to

have the networks required to successfully deploy capital into New Jersey startups through the program and the experience to drive a successful investment here.

Category 10: The performance history of the general partner or fund manager based on a review of investment returns on individual funds on an absolute basis and relative to peers.

- **Criteria 19: Does the firm have at least one fund, raised within the past 10 years, that has performed better than the median relative to its peer group of investors with the same strategy for the same vintage year?** This criterion assesses a firm's track record of performance relative to peer investors. Firms with at least one fund raised within the past 10 years, which is the typical duration of a venture capital fund, that is performing at or better than the median per the industry data provider Pitchbook will be awarded 1.0 points. Firms' performance will be measured through a common industry measure referred to as a net total value to paid-in capital ratio, which measures a firm's performance as a ratio of the total value of the portfolio, net of fees, over the total capital contributed by investors into the fund. Funds will be compared to other North American venture capital firms that began investing in the same year.
- **Criteria 20: Have all the firm's funds, raised within the past 10 years, performed better than the median relative to a peer group of investors with the same strategy for the same vintage year?** This criterion awards an additional 1.0 points to firms if all their recent funds performed better than the median relative to peer funds. This additional measure awards points to firms that have demonstrated excellent consistency of performance.
- **Criteria 21: Have any of the firm's institutional funds distributed more capital back to its investors than they have invested, including fees?** As a measure of absolute performance, firms with any funds that have distributed more capital back to its investors, net of fees than they had invested will receive 1.0 points. This criterion describes a common industry performance measure called a net distribution to paid-in capital ratio, which measures investment proceeds distributed to a fund's investors as a ratio over the capital invested by those investors. Firms with any funds that have a net distribution to paid-in capital ratio of above 1.0x will meet the requirements of this scoring criterion.

Category 11: The location of the applicant's venture firm, with preference given to applicant venture firms that are located in incentive areas.

- **Criteria 22: Does the firm have an office in an incentive area in New Jersey or does a senior investment partner live in an incentive area in New Jersey full-time?** This criterion awards 0.5 points to firms with a place of business in a qualified opportunity zone located in New Jersey or in a Metropolitan Area (Planning Area 1) area pursuant to the New Jersey State Planning Act. Firms that have no physical office may qualify for criterion points if at least one senior investor (managing partner, general partner or equivalent) resides full-time in a New Jersey incentive area.

Category 12: The applicant's proposed structure and policy of investments in qualified businesses, with preference given to applicant venture firms that agree to dedicate a greater portion of qualified investments into qualified businesses located within incentive areas.

Criteria 23: Does the firm's senior management team agree to create policy certifying that the firm will dedicate a greater portion of Evergreen funding into businesses located in New Jersey incentive areas? This criterion awards 0.5 points to firms willing to create a policy to invest a portion of NJIEF investments into businesses located in qualified opportunity zones within New Jersey or in Metropolitan Areas (Planning Area 1) pursuant to the New Jersey State Planning Act. To receive the related points, firms must establish a baseline of recent historical investment activity in New Jersey incentive areas and agree to establish a policy certifying the firm's Evergreen investment activity will target an increased proportion of investment activity in New Jersey incentive areas. Firms that meet the requirements for this criterion will be tested annually to ensure they are making demonstrable best efforts to achieving their policy targets.

Appendix D – Qualified Investment Evaluation

Overview of Process

Venture firms may apply for qualified investment funding immediately after (or simultaneously with) certification as a qualified venture firm. Investment applications will be screened by NJEDA staff to ensure businesses meet all program requirements. Staff will not independently underwrite investment opportunities. The Program will rely on the expertise of the qualified venture firms to select strong investment opportunities, and then approve those applications that meet the programmatic requirements.

Similar to the venture firm application process, the deal evaluation process is objective. Staff will ensure qualified business applicants meet all minimum requirements with required supporting documentation. An applicant may have an opportunity to submit the missing components of their application. Applications for investment will have two parts: 1) business qualifying questionnaire and 2) qualified venture firm additional requirements at the time of investment. However, qualified venture firms may submit applications on businesses' behalf. In all cases, the CEO of a business applicant must attest to the truthfulness of all application materials.

Qualified investment applications that meet the Program's requirements will be submitted to the Board of the Authority for approval of investment. Qualified investment approvals will provide delegated authority to staff to provide follow-on funding to qualified businesses at the NJEDA's option, pursuant to program regulations. Once an investment into a qualified business is approved by the Board of the Authority, the qualified venture firm will have 90 days to establish the relevant special purpose vehicle and call the capital for investment.

Part 1: Business Qualifying Questionnaires

The Program's minimum eligibility requirements are detailed in Section 25.8 of the Program rules and in Table 1 below. The investment qualifying questionnaire will be made publicly available to allow potential applicants to self-assess alignment with program requirements and likelihood of qualification.

In addition to the criteria listed in Table 1, qualified businesses must meet the requirements of a high-growth business. Qualified venture firms will submit the information required to confirm businesses qualify as a high-growth business under the Program through the venture firm investment application detailed in Table 4.

Table 1: Business Qualifying Questionnaire

Criteria Number	Qualifying Question
1	Does the qualified business applicant have a valid tax clearance certificate and New Jersey business registration?
2	Is the qualified business applicant in substantial good standing with sister agencies? ¹

3	Were the results of a legal debarment check satisfactory? ¹
4	If the qualified business applicant has participated in any other NJEDA program, is the business current on all reporting requirements? ¹
5	Does the qualified business applicant have a place of business in New Jersey? ¹
6	Is the qualified business applicant located in an opportunity zone? ² <i>Not a program requirement, however data will be tracked to measure success against Program opportunity zone investment goal.</i>
7	Do at least 50% of full-time employees of the qualified business applicant reside in New Jersey?
8	Does at least 50% of the qualified business applicant's payroll go to employees that reside in New Jersey?
9	Does the qualified business applicant operate in a Program targeted industry?
10	Does the qualified business applicant utilize intellectual property that is core to its business model and was developed at a NJ-based college or university? ³ <i>Only a requirement for investments above \$5,000,000.</i>
11	Is the qualified business applicant a university spin-off? ³ <i>Only a requirement for investments above \$5,000,000.</i>
12	Is the qualified business applicant currently certified by the State as a "minority business" or a "women's business"? ³ <i>Only a requirement for investments above \$5,000,000.</i>
13	Applicants may be required to provide any other information deemed necessary by the NJEDA.

Note¹: Additional requirements added to the legislative requirements through NJIEF rules.

Note²: Not a program requirement, however data will be tracked to measure success against Program opportunity zone investment goal.

Note³: Not a program requirement, but applicants requesting funding between \$5,000,000 and \$6,250,000 must meet one of the associated criteria.

The majority of qualifying questions listed in the business qualifying questionnaire are required by the NJIEF statute. However, select additional criteria were added through Section 25.8 of the Evergreen program rules to bolster the program's legal and compliance standards. These additional criteria are as follows:

- **Is the qualified business applicant in substantial good with standing sister agencies?**
This requirement was added to Program rules to ensure any business that receives capital from the NJEDA is in good standing with sister agencies.

- **If the qualified business applicant has participated in any other NJEDA program, is the business current on all reporting requirements?** This check ensures no applicants that may be in default of requirements of other NJEDA programs are provided NJIEF capital.
- **Does the qualified business applicant have a place of business in New Jersey?** This requirement was added to the Program rules to address a requirement in Section 30 of the statute, which states Program capital to be used by qualified businesses to support its business operations in the State.
- **Has the qualified business applicant certified to the truthfulness of the application?** Business applicant CEOs will certify to the truthfulness of their application under the penalty of perjury. Any business that misrepresents information on their application will be subject to the Program’s redemption policy.

Qualified Business Requirements at the Time of Follow-on Investment

Qualified businesses must also meet the requirements of a ‘yes’ or ‘no’ qualification checklist to qualify for Program follow-on investment funding. This checklist will retest several business qualifying requirements previously tested at the time of initial investment, including questions 1-8 and 13-14 from Table 1 above. Additionally, businesses may meet the New Jersey requirement at the time of follow-on investment by maintaining at least 50% of employees working in the State or by paying 50% of total wages to employees working in the state, in addition to the principal business operations requirement tested at the time of initial investment.

Part 2: Business Applicant Required Document Checklist

The following list represents initially recognized forms of documentation which may verify answers. Additional forms of verification may be accepted if sufficient. The required documents may either be submitted by the qualified business applicant, or by the qualified venture firm submitted on behalf of the businesses. To support the evaluation of an application for a qualified investment, the following information (or similar) about the business is required: CEO certified employee residency and payroll records, Forms NJ-WR30 and Federal 941, employee offer letters, description of target industry, valid NJ tax clearance certificate and business registration, lease agreement, capitalization table, current and prior unaudited or audited income statements (if applicable), current and prior customer lists (if applicable), prior financing round stock purchase agreement (if applicable), patents or copy right agreements (if applicable), description of affiliation with NJ-based college or university (if applicable), NJ state certification as minority or women-owned (if applicable), and any other information deemed necessary by the Authority.

Part 3: Additional Venture Firm Requirements at the Time of Initial Investment

Qualified venture firms must meet additional requirements at the time of application for investment. Additionally, firms that may have been previously certified as a qualified venture firm must demonstrate they still meet the minimum program requirements that were previously tested at the time of certification as a qualified venture firm. These minimum requirements at the time of initial certification are listed in

Table 1 of Appendix C. Below, Table 4 lists the additional requirements firms must demonstrate adherence to at the time of investment.

Table 4: Venture Firm Qualifying Questionnaire at Time of Investment

Criteria Number	Additional Qualifying Questions at Investment
1	Is the qualified venture firm requesting an amount of at least \$100,000? ¹
2	Is the qualified venture firm requesting an amount no greater than \$5,000,000?
3	If not, is the qualified venture firm requesting an amount no greater than \$6,250,000?
4	Would the qualified venture firm's current co-investment into the qualified business applicant be the firm's first investment into the business? ¹
5	Does the amount being invested by the qualified venture firm into the qualified business applicant at least match the desired investment from the NJIEF?
6	Would the proposed investment size bring the aggregate NJIEF investments made with the qualified venture firm above 15% of the firm's total assets under management? ¹
7	Is the qualified venture firm beneficially owned (at least 15%) by a tax credit purchaser that purchased Program tax credits in the past 12 months? ¹
8	Has the qualified venture firm agreed to the terms of a stock purchase agreement with the qualified business applicant? ¹
9	If not, has the qualified venture firm begun negotiations over a draft term sheet with the qualified business applicant? ¹
10	Is the current valuation of the qualified business candidate at least 25% greater than the valuation of the prior funding round? ¹
11	Did the qualified business applicant record year-over-year revenue growth of at least 25%? ¹
12	Does the qualified business candidate have year-over-year customer growth of at least 25%? ¹
13	Does the qualified venture firm certify that the business has had less than one year of prior revenues and customers and has not previously raised third-party equity capital? ¹
14	Do the base case projections prepared by the qualified venture firm indicate the qualified business applicant will grow revenues by, or record a compound annual growth rate of, at least 25% in any of the next three to five years? ¹

15	Do the base case projections prepared by the qualified venture firm indicate the qualified business applicant will grow customers by, or record a compound annual growth rate of, at least 25% in any of the next three to five years? ¹
16	Do the base case projections prepared by the qualified venture firm indicate the qualified business applicant will grow valuation by, or record a compound annual growth rate of, at least 25% in any of the next three to five years? ¹
17	Applicants may be required to provide any other information deemed necessary by the NJEDA.

Note¹: Additional requirements added to the legislative requirements through the Program regulations.

As with the requirements at the time of initial certification, select additional criteria were added to the statutory minimum requirements for venture firms at the time initial investments in Section 25.8 of the NJIEF regulations. These additional criteria are as follows:

- **Is the current valuation of the qualified business candidate at least 25% greater than the valuation of the prior funding round?** A 25% growth in valuation represents the average median growth rate for later stage venture capital investments between 2006 and 2017^v, representing a significantly faster growth rate than the average economy, as required by the statute.
- **Did the qualified business applicant record year-over-year revenue growth of at least 25%?** A 25% growth rate represents the average revenue growth rate across select public market indices that most closely represent the Program’s investment universe. While the companies in these indices may be more mature and thus slower growing than privately owned startups, they also represent the best companies in their peer group and are still a valuable comparison group.
- **Does the qualified business applicant have year-over-year customer growth of at least 25%?** A 25% customer growth rate of new and unique customers was selected based on industry research which indicates most startups experience customer growth of at least 20% in the year of their initial public offering.^{vi} This peer group again represents a later-stage, but best in class, pool of companies and is a valuable comparison group to determine a significantly faster growth rate than the average economy.
- **Does the qualified venture firm certify the business has less than one year of revenue or customers, and has not previously raised third-party equity capital?** This is not a requirement for all investments. However, in cases when a business is too early in its life cycle to utilize historical data to meet the Program’s high-growth requirement, qualified venture firms may submit base case projections prepared by the firm and used in the firm’s own underwriting analysis of the investment to forecast revenue, customer, or valuation growth over the three-to-five-year period following the date of investment application.

In these cases, businesses must meet one of the following requirements of a high-growth business: 1) annual revenue growth of at least 25%, or a compound annual growth rate of at least 25%, in any year over the next three to five years, 2) annual customer growth of at least 25%, or a compound annual growth rate of at least 25%, in any year over the next three to five years, 3) valuation growth of at least 25%, or a compound annual growth rate of at least 25%, in any year over the next three to five years.

- **Is the qualified venture firm requesting an amount of at least \$100,000?** A minimum transaction size was introduced to the Program regulations to ensure investments justify the administrative costs associated with approving, executing, and monitoring a NJIEF investment.
- **Is the qualified venture firm's current co-investment into the qualified business the firm's first investment into the company?** To prevent firms from using NJIEF capital to buttress faltering portfolio companies, any Program investment must represent the firm's first investment into the business.
- **Would the proposed investment size bring the total NJIEF investments made with the qualified venture firm above 15% of the firm's total assets under management?** Qualified venture firms may only receive aggregate Program investments up to 15% of the firm's assets under management, which will help mitigate concentration risk by ensuring NJIEF capital does not represent too high of a percentage of a firm's assets under management.
- **Is the qualified venture firm beneficially owned (at least 15%) by a tax credit purchaser that purchased tax credits through the Program in the past twelve months?** To ensure no undue financial advantage inure to tax credit purchasers, qualified venture firms cannot receive an investment from the Program for a given year if any beneficial owner of the venture firm purchased Program tax credits within the past 12 months.
- **Are any members of the senior management team owners of a management company of a venture firm that has completed any investments with the NJIEF this calendar year?** Qualified venture firms can only make two investments through the Program per calendar year. To ensure venture capitalists do not exceed this limit by investing through multiple firms, staff will ensure members of a senior management do not own other venture firms that have participated in the program. If cross ownership is identified, they will be treated as one firm with regards to the limit of two Program investments per calendar year.
- **The qualified venture firm must have at least begun negotiations over a draft term sheet with the qualified business applicant.** To ensure the NJIEF approval process can move quickly enough to successfully participate in startup financing rounds, staff may begin reviewing applications before investment transactions are finalized between

qualified venture firms and the businesses. In all cases, an executed stock purchase agreement must be submitted by qualified venture firms before any Program capital is disbursed to a qualified venture firm.

Venture Firm Requirements at the Time of Follow-on Investment

Follow-on investments will be approved by NJEDA staff with delegated authority from the NJEDA Board, based on the successful completion of a ‘yes’ or ‘no’ requirement checklist for qualified venture firms and qualified businesses. Qualified venture firms will not be reevaluated through the qualified venture firm weighted criteria scoring matrix at this time. The venture firm follow-on investment qualifying questionnaire checklist will retest several qualifying requirements previously tested at the time of initial certification and investment, including criteria 1-5 and 7-9 in Table 1 of Appendix C and criteria 2-3 and 5-9 in Table 4 of Appendix D.

The size of follow-on investments will be limited to \$5,000,000 for most qualified businesses, or \$6,250,000 for businesses that qualified for additional investment funds above \$5,000,000 at the time of initial investment. Qualified venture firms will be limited to one follow-on investment per qualified business per 12-month period, unless the Board of the Authority determines additional follow-on investments are in the best interest of the State and approves additional follow-on investments in a 12-month period for that qualified venture firm.

At the time of follow-on investments, capital invested by the Program will also be limited by two concentration limit tests. First, the concentration limit which caps aggregate NJIEF investments with any qualified venture firm to 15% of the firm’s total assets under management at the time of initial investment will also be tested at the time of follow-on investments. Additionally, The NJIEF regulations permit the Program to limit aggregate investments in any qualified business to up to 15 percent of Program invested and uninvested capital. Staff is recommending that the Board approve setting this cap initially at 10 percent to limit concentration risk to ensure a broad disbursement of investment funds at the outset of the program while market learnings are accumulated. This metric will be evaluated annually and staff will seek Board approval to revise it up or down as program intelligence is accumulated. As is the case for initial investments, qualified venture firms must at least match all follow-on investments from the Program.

The Evergreen Fund will not make follow-on investments alongside venture firms that fail to meet these and any other Program requirements, unless such investments are deemed to be in the best interest of the State and are approved by the Board of the Authority.

Part 4: Venture Firm Required Document Checklist at Time of Investment

The following list represents initially recognized forms of documentation which may verify answers. Additional forms of verification may be accepted if sufficient. To support the evaluation of an application for investment by a qualified venture firm, the following information (or similar) is required by the qualified venture firm: Limited Partnership Agreement of fund to co-invest alongside the NJIEF, description of follow-on reserves and follow-on reserve policy, list of beneficial owners of the investment firm with an ownership stake above 15%, draft term sheet (if applicable), investment analysis and supporting documentation and

certification of reasonableness of projections, and any other information deemed necessary by the Authority.

Appendix E – Qualified Venture Firm & Business Annual Reporting & Requirements

Qualified Venture Firm Annual Certification Test

Once per year, NJEDA staff will test qualified venture firms for continued certification. Section 25.8 of the NJIEF rules describes the requirements to be tested, which require qualified venture firms to:

- Maintain at least two full-time employees with the authority to direct investment capital with at least five years of professional money management experience;
- Maintain at least \$10,000,000 in assets under management at the time of application, which will be measured as the sum of a firm’s net assets of the funds managed by the qualified venture firm, equity capitalization of the funds managed by the qualified venture firm, and written commitments of cash or cash equivalents;
- Maintain a valid New Jersey tax clearance certificate and New Jersey business registration;
- Have searched for investment opportunities in the state;
- Remain in compliance with the requirements of any agreement, whether related to the Program or otherwise; with the Authority.

Additionally, firms that met the requirements for certain prospective criteria under the NJIEF weighted scoring criteria during initial certification will be retested for continued adherence to those criteria requirements. Any firm that falls below the minimum acceptable score will be decertified. The following criteria from the qualified venture firm weighted criteria will be retested annually for adherence:

- Does the firm have a clearly articulated internal policy promoting diversity, equity, and inclusion within the venture firm/management company, specifying relevant evaluation metrics when applicable?
- Does the firm have a clearly articulated investment policy promoting diversity, equity, and inclusion at portfolio companies, specifying relevant evaluation metrics when applicable?
- Does the firm have a demonstrable track record of making progress against its diversity, equity, and inclusion policy goals?
- If not, does the firm have a demonstrable track record of making best efforts towards achieving its diversity, equity, and inclusion policy goals?
- Does the firm's senior management team agree to create a policy certifying that the firm will dedicate a greater portion of Evergreen funding into businesses located in New Jersey incentive areas?
- If an annual report submitted by a qualified venture firm fails to demonstrate the firm has maintained a clearly articulated diversity, equity, and inclusion policy and made best efforts to

comply with the diversity, equity and inclusion or incentive area investment policy described in their application for certification as a qualified venture firm, the Authority shall reduce the firm's evaluation score by the weights associated with such criteria 1 and 2 in Table 3 of Appendix C. If the reduction in score brings the firm below the minimum acceptable score, they will be decertified. Given the strong weight associated with diversity, equity, and inclusion policies, any firm that fails to demonstrate it has made best efforts to comply with its diversity, equity, and inclusion policy over the prior year will be decertified as a qualified venture firm under the Program.

Annual Report Requirements

Each year, a qualified venture firm must prepare an annual report for the program within 120 days of the qualified venture firm's tax year end. The requirements of the report are detailed in Section 25.9 of the program rules and include:

- Any updates to firms' diversity equity and inclusion policy and evidence demonstrating firms' best efforts towards achieving its diversity equity and inclusion policy goals;
- Demonstrable best efforts towards achieving a New Jersey incentive area policy, if applicable;
- Supporting evidence to demonstrate venture firms continued adherence with the prospective criteria under the NJIEF weighted scoring criteria noted above, and;
- Documentation supporting continued adherence to program requirements, such as the requirement to maintain \$10,000,000 in net assets, equity capitalization, and written commitments of cash or cash equivalents, and to maintain at least two professional investors with at least five years of money management experience;
- A valid tax clearance certificate and New Jersey business registration;
- The amount of the qualified investment, if any, uninvested at the end of the preceding calendar year;
- A list of all qualified investments made during the preceding calendar year;
- The number and wages of full-time employees of each qualified business at the time the venture firm made the qualified investment and as of December 31 of that year and information relating to full-time employees located in New Jersey;
- A copy of lease agreement(s) to demonstrate a New Jersey place of business of qualified businesses that receive NJIEF investment capital from the firm;
- For any qualified investment in which the qualified venture firm no longer has a position as of the end of the calendar year, the number of full-time employees of the business as of the date the investment was terminated and information relating to full-time employees located in New Jersey;

- Financials, audited by a certified public accountant of the qualified venture firm's fund co-investing alongside the NJIEF and the Evergreen special purpose vehicle that include a consolidated summary of the performance;
- A certification as to a qualified venture firm's reserve policy as it relates to each qualified investment;
- Updated management fee schedule as it relates to each qualified investment;
- Any other information the Authority requires to ascertain the impact of the program on the economy of the State.

Absent extenuating circumstances or prior written consent by the Authority, if a qualified venture firm fails to comply with its annual reporting requirements, the Authority shall withhold the management fees and direct expenses due. If the qualified venture firm submits the complete annual report within 120 days from the date the annual report was due, the Authority shall pay the management fees and direct expenses withheld and resume payment of management fees and direct expenses. If the qualified venture firm fails to comply with the reporting requirements after the additional 120 days, the qualified venture firm shall forfeit all management fees and direct expenses due for a period of a year.

If a qualified venture firm is not in compliance with its reporting requirements at the time that any distribution is made by a qualified business to the Evergreen special purpose vehicle holding a qualified investment, no distribution of cash or equity for carried interest shall be made to the qualified venture firm, provided that if the qualified venture firm comes into compliance with such reporting requirement within 120 days of the date of such distribution, the Evergreen special purpose vehicle shall make the distribution for carried interest to the qualified venture firm.

Finally, if a qualified venture firm fails to timely submit the completed annual report for two consecutive years, the Authority shall decertify the qualified venture firm and may remove the qualified venture firm from the Evergreen special purpose vehicle or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

Other Compliance Requirements

If a qualified venture firm fails to comply with the requirements of the qualified venture firm agreement or Evergreen special purpose vehicle governing agreement other than the failure to submit a complete annual report, or if the qualified venture firm or affiliate of the qualified venture firm is removed from the qualified venture firm active fund, the Authority may withhold or cease paying management fees and direct expenses, decertify the qualified venture firm, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle.

Additionally, if, at any time, the Authority determines that a qualified venture firm made a material misrepresentation on the qualified venture firm's application for certification, application for a qualified investment, annual report, or any submissions to the Authority under this program, the Authority shall

cease paying management fees and direct expenses. The Authority shall decertify the qualified venture firm and may demand repayment of all management fees and direct expenses previously paid, remove the qualified venture firm from the Evergreen special purpose vehicle, or require the qualified venture firm to terminate the Evergreen special purpose vehicle. The actions by the Authority pursuant to this subsection shall be in addition to any other remedies in the qualified venture firm agreement or the Evergreen special purpose vehicle governing agreement and any criminal or civil penalties to which the qualified venture firm and the respective officer may be subject.

ⁱ Deloitte VC Human Capital Survey. Third Edition. Deloitte, Venture Forward, and NVCA, 2021. <https://www2.deloitte.com/us/en/pages/audit/articles/diversity-venture-capital-human-capital-survey.html>.

ⁱⁱ Ibid.

ⁱⁱⁱ Preqin Special Report: Private Capital Fund Terms. Preqin, October 2017.

^{iv} Ibid.

^v VC Valuations 3Q 2021. Pitchbook. 2021.

^{vi} Salijoughian, Parsa. "How Fast Should You Be Growing." TechCrunch. August 24, 2013. <https://techcrunch.com/2013/08/24/how-fast-should-you-be-growing/>



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Offshore Wind Painting and Submerged Arc Welding Memorandum of Understanding (MOU) – New Jersey Economic Development Authority (NJEDA) and Salem County Vocational Technical School (SCVTS)

Request

The Members are requested to approve a Memorandum of Understanding (MOU) between NJEDA and Salem County Vocational Technical School (SCVTS) that will enable NJEDA to provide up to \$200,000 in funding to SCVTS to support expansion of painting and welding programs. These expanded programs will prepare students and workers for jobs in heavy steel offshore wind component manufacturing, including the jobs proposed by EEW American Offshore Structures' (EEW) offshore wind monopile manufacturing facility under construction at the Port of Paulsboro. This MOU complements the MOU between NJEDA and Gloucester County Institute of Technology (GCIT) entered into in December 2021 and will develop a robust pipeline of trained residents in South New Jersey. Through this MOU, NJEDA would help fund equipment, materials, instructor time, and other expenses required to train secondary and post-secondary students for the specific skills required for large scale turbine component manufacturing. This MOU utilizes funding from the Offshore Wind Initiatives MOU signed between NJEDA and the NJ Board of Public Utilities dated July 14, 2021.

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

The proposed MOU has a term of twenty-four (24) months. Members are also requested to provide delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

Background

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. The growth of specialized welder and painter occupations for the offshore wind industry, particularly for EEW's forthcoming monopile fabrication facility, in New Jersey represent an opportunity to realize these priorities. NJEDA is currently supporting the launch of the Wind Institute to coordinate and support offshore wind related workforce training.

In December 2020, EEW Offshore Structures announced a \$250 million investment in a state-of-the-art manufacturing facility to build steel components, known as monopiles, for offshore wind turbines that will serve the entire United States offshore wind industry. The facility, which will be located at the Paulsboro Marine Terminal in Gloucester County, is the largest industrial offshore wind investment in the United States to date. Construction on the facility broke ground earlier this year and hiring of specialized welders and painters will begin by the end of next year. Production is expected to begin by 2023. These occupations will be high quality and permanent job opportunities and will require specialized training to meet skillset needs for offshore monopile welding (known as submerged arc welding¹) and painting; these skillsets would also be required for offshore wind tower manufacturing, an emerging industry in the U.S. offshore wind sector. These skills will also prepare students for jobs in other manufacturing facilities, including potentially at the New Jersey Wind Port.

SCVTS provides career and technical education programs that serve over 700 secondary and postsecondary students for an array of technical careers. One of its most popular offerings, SCVTS's Welding Technology Program helps students develop skills in shielded metal arc, tungsten inert gas (TIG), metal inert gas (MIG), and oxy-fuel welding techniques. SCVTS's Automotive Studies Program offers students a foundation in automotive and collision repair and includes instruction in professional grade painting. The students that participate in these two programs are developing core skills; the funding provided through this MOU will enable the curriculum and offerings to be expanded to include additional skills essential for offshore wind-related manufacturing.

Recently, SCVTS's welding instructor participated in a submerged arc training coordinated by EEW and GCIT. EDA will coordinate shared curriculum development between SCVTS and GCIT, with input from EEW, to support a regional pipeline of trained residents for offshore wind component manufacturing employment. SCVTS has additionally secured \$3 million to construct additional classroom space, including an expansion of their welding classroom. This MOU will provide complementary financial support to help SCVTS secure specialized welding and painting equipment and related materials, market and promote these new programs, fund instructor time for additional evening/weekend classes that will train adults, and other program expenses.

MOU Description

The proposed MOUs will provide up to \$200,000 to SCVTS to support expansion of their welding and painting programs to prepare students for specialized positions in monopile fabrication and other large-scale manufacturing. These funding supports may cover the following:

- Equipment and materials for welding and painting programs,
- Marketing and promotional materials,
- Instructional and professional development time for welding and painting instructors,
- Scholarships or tuition discounts to provide affordable and accessible training, and
- Other related costs to support the delivery of welding and painting training.

Recommendation

It is the recommendation of Authority staff that the Members (1) approve the MOU between NJEDA and SCVTS, attached as Exhibit A, to provide up to \$200,000 to support expansion of the school's welding and painting programs in order to prepare students for specialized positions in monopile fabrication and other large-scale

¹ Note: Submerged arc welding, also known as "sub-arc welding," refers to welding under sand, not underwater. This welding occurs onshore in fabrication facilities using specialized machines.

manufacturing. The funding for this MOU comes from the MOU between NJEDA and BPU for Offshore Wind Initiatives dated July 14, 2021 and (2) provide delegated authority to the CEO to extend the MOU by up to twelve (12) months if needed.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Jen Becker and Favio German

Exhibit A

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this day of _____, 2021 (the "Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("EDA") and the Salem County Vocational Technical School ("SCVTS"), (collectively the "Parties").

WHEREAS, the EDA, established pursuant to N.J.S.A. 34:1B-1 et seq., is an independent State authority, in but not of 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 the Wind Institute to coordinate and advance offshore wind workforce, education, research and innovation efforts; 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 specialized training will be required to meet skillset needs for welding (known as submerged arc welding) and painting of monopiles and other heavy steel components to support the growth of the offshore wind sector; and

WHEREAS, it is in the best interest of the Parties to enter into this MOU regarding the provision of EDA support of SCVTS's welding and painting programs for monopile and other large scale steel component manufacturing.

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

1. SCVTS will undertake the following activities:
 - a. Provide to EDA a budget estimating unfunded costs SCVTS anticipates it will incur for its expansion of welding and painting programs prior to undertaking any activities and requests for EDA to support funding gaps. SCVTS may elect to provide separate budgets for the programs so long as the total combined budget does not exceed \$200,000.
 - b. Utilize funding to expand its welding and painting programs to support the specialized training and skills required by the offshore wind industry.
 - c. Provide plan to EDA to determine and achieve positive enrollment and employment outcomes as a result of this funding support before expending EDA funding support.
 - d. Track and report use of funding from EDA and ensure resources only go toward related welding and painting equipment, materials, and instructional time.
2. The EDA will undertake the following activities:
 - a. Provide technical assistance and staff time as needed to support program expansion rollouts.
 - b. Provide up to \$200,000 in funding to support related equipment, material, instructor time, marketing, and other program related expenses, including scholarships or other means to provide affordable and accessible training. Funding may be allocated in multiple disbursements if SCVTS elects to submit separate budgets for the welding and painting programs.
 - c. Monitor program progress, expansion, and funding support to ensure EDA resources are expended appropriately.
3. The MOU shall not take effect unless executed by the authorized representatives of EDA and SCVTS. This MOU becomes effective immediately upon execution and shall remain in effect for twenty-four (24) months. This MOU may subsequently be extended for one (1) year upon mutual written consent of the Parties.
4. The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to offshore wind welding and painting program expansions. 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 staff or SCVTS upon 60 days prior written notice to the other. There are no third-party beneficiaries of this MOU.

5. This MOU shall not be assignable, except for the NJEDA's ability to partner and/or assign their responsibilities to the NJ Wind Institute upon its establishment.
6. 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.
7. All notices, demands or communications to any party to this MOU shall be send to the addresses set forth below or as may be otherwise modified in writing:

EDA: 36 West State
 Street PO Box 990
 Trenton, NJ 08625

SCVTS:

IN WITNESS HEREOF, EDA and SCVTS have executed this MOU on the dates below:

For SCVTS:

Name:

Signature: _____ Title:

Date: _____

For EDA:

Name: Tim Sullivan

Signature: _____

Title: Chief Executive Officer

Date: _____



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 13, 2022

RE: Food Security Planning Grant Program

Summary

The Members are asked to approve:

1. The creation of the Food Security Planning Grant Program – up to \$1,500,000 pilot program that will competitively award grants up to \$125,000 to municipal governments, county governments, and/or redevelopment agencies to improve food access and food security by leveraging distressed assets in New Jersey’s Food Desert Communities (as approved by the Board on February 9, 2022)¹.
2. Utilization of up to \$1,500,000 of funding from the Economic Recovery Act of 2020, as authorized under Section 127.d of P.L. 2020, c. 156, to capitalize the Food Security Planning Grant Program.
3. Delegation of authority to the Chief Executive Officer to approve individual applications to the Food Security Planning Grant program in accordance with the terms set forth in this memo and the attached program specifications
4. Delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendations of the Hearing Officer for appeals based on non-discretionary declinations.
5. Delegated authority to the Chief Executive Officer to accept up to \$1,500,000 in additional funds to expand the funding pool for this pilot program from any available governmental funding (State or County) 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.

¹ <https://www.njeda.com/wp-content/uploads/2022/02/Food-Desert-Communities-Designation-Final-2-9-22.pdf>

Background

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 will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

One of the programs established under the ERA is the Food Desert Relief Act (FDRA), which directs the New Jersey Economic Development Authority (EDA 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 deserts². Through the FDRA, the Authority will award tax credits to establish and retain new supermarkets and grocery stores in food desert communities; offer technical assistance on best practices for increasing the accessibility of nutritious foods; provide grants and loans for food retailers of all sizes to fund equipment costs and technology costs associated with providing fresh food, technology costs associated with supporting Supplemental Nutrition Assistance Program (SNAP) and Supplemental Nutrition Program for Women, Infants, and Children (WIC) payments; and support innovative initiatives to ensure food security.

The FDRA required the Authority, in consultation with the Departments of Community Affairs (NJCA) and Agriculture (NJDA), to designate up to 50 Food Desert Communities (FDCs) that have limited access to nutritious foods. 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 value³. 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.

On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA. In addition to the FDRA and other economic development programs specifically created or modified by the Act, Section 127.d of P.L. 2020, c. 156 also established the sum of \$5,000,000 to be used to award competitive grants for zoning and economic planning services in government-restricted municipalities or economic redevelopment plans for distressed assets in other municipalities.

² [New Jersey Economic Recovery Act - NJEDA](#)

³ <https://www.njeda.com/wp-content/uploads/2022/02/Food-Desert-Communities-Designation-Final-2-9-22.pdf>

Program Summary

To advance the goals of the FDRA consistent with the uses of the economic planning services funds, staff propose utilizing up to \$1,500,000 of the funds under Section 127.d of P.L. 2020, c. 156 to create a competitive planning grant program that will focus on leveraging distressed assets in designated FDCs in New Jersey (approved by the Board in February 2022) to improve food access and food security. The Food Security Planning Grant Program is the Authority's first pilot program to fund development of plans to improve food access specifically within the newly designated FDCs. NJEDA can leverage the findings and outcomes from such local plans as a tool for developing and deploying future comprehensive food security initiatives and economic development across the state while equipping municipalities with the tools to think about how to repurpose distressed assets.

Food access is not simply a health issue but also a community development issue. Many residents in low-income neighborhoods—rural, suburban, and urban—have limited access to fresh produce and other healthy foods. New Jersey faces a crisis of food insecurity that has only been exacerbated by the COVID-19 pandemic and its economic impacts on families across the state. A February 2022 survey by the U.S. Census Bureau found that nearly one in 11 New Jersey households reported not having enough to eat in the past seven days. Not having access to food, and more specifically nutritious food, has a direct impact on one's health. For this reason, access to nutritious, affordable, and culturally relevant food is a key component not only in a healthy, sustainable local food system, but also in vibrant, growing communities and aligns with building a stronger and fairer New Jersey. The Food Security Planning Grant Program is one tool that NJEDA will deploy to empower local government entities and redevelopment agencies to develop and submit plans to improve food access while transforming distressed assets that have presented a hindrance to economic growth. Local plans have the potential to address community needs, develop a community-driven approach to improve food access and develop distressed assets to promote local economic development.

For the Food Security Planning Grant program, a distressed asset shall be defined as a commercial building or series of buildings, its attachments, and appurtenances; or vacant land that is fully or partially vacant for at least one year, that due to deteriorated condition or appearance of its exterior (because of deferred maintenance such as deteriorated paint or overgrown vegetation, boarded up door and/or windows), that can be leveraged to improve food access and food security.

The Food Security Planning Grant Program will support the development of an action plan leveraging distressed assets located in FDCs across New Jersey to improve food access and food security. Grants will be competitively awarded based on applications that meet all applicable eligibility criteria and achieve a minimum of 55 points based on the evaluation criteria set forth in the program specifications, subject to the availability of funding. In the event that applications from eligible entities who meet the minimum requisite score exceed the amount of funding that is available, funding will be prioritized based on the highest scoring applications. There will be a limit of 1 grant award per qualifying Food Desert Community. However, if there is still funding available after the above restriction is satisfied, the Authority may award the remaining funding to additional applications within an already funded FDC based on the overall score of the applications, until all funds have been exhausted or until all eligible applicants have received a grant.

All applicants must submit a budget and budget justification with a 20% match which can include in-kind resources.

- The requested level of funding must be broken down by line items and clearly illustrated in the budget narrative
- The requested level of funding must be reasonable for proposed activities within the timeline

- A 20% match of grant amount required – Match can be either financial, or in-kind resources with demonstrated value greater than or equal to 20% of the grant amount as determined by the Authority.

Applicant Eligibility Requirements

Eligibility under the program will be limited to New Jersey municipal governments, county governments, and redevelopment agencies whose geographic catchment areas include an FDC. While the applicant may serve or have offices in a broader geographic area, proposals must be for a distressed asset located within the borders of an FDC⁴.

For the Food Security Planning Grant program, the proposed plan must be for an asset which meets the above-mentioned definition of a distressed asset, and the proposed plan must leverage a distressed asset within one of the 50 FDCs.

Along with their application, applicants must provide a letter of support from the Office of the Mayor or chief executive of the municipality where the asset is located and at least one stakeholder located within the boundaries of the FDC, detailed below in the ‘Application’ section. For a property owned by a New Jersey County, the applicant must provide a letter of support from the property owner or their designee for the proposed project; this must be signed by the Chief Executive of the government entity, independent agency or authority or their designee. For a property owned by a private individual or by a non-governmental for-profit or non-profit entity; the applicant is required to provide a letter of support signed by the owner, co-owner, corporate officer, or their designee. Proposals for directly owned New Jersey state land will not be considered. Eligible entities should have a tax clearance certificate from the New Jersey Division of Taxation or verification by the Authority from the Division of Taxation as to good standing as applicable.

A municipality, a county, or redevelopment agency may submit multiple applications in a lead role and can be included as a partner in additional applications where they play a non-lead role. A municipality, county, and redevelopment agency whose geographic catchment areas include an FDC can each submit a proposal but are encouraged to coordinate their applications.

To ensure that the Authority’s resources can be utilized as widely as possible across New Jersey, the Authority intends to award a maximum of one grant per FDC. For example, if a municipality applies for a distressed asset in Municipality X FDC, and the county applies for a different distressed asset in Municipality X FDC, a maximum of one award will be made within that FDC. However, in the event that there is still funding available after the above restriction is satisfied, the Authority may award the remaining funding to additional applications within an already funded FDC based on the overall score of the applications, until all funds have been exhausted or until all eligible applicants have received a grant.

Awards will be made to applicants with the highest scores of all eligible applicants, with a minimum qualifying score of 55 points.

Grant amounts will range from \$75,000 and \$125,000 and will be solely determined based on the FDC’s

⁴ Most FDCs are not inclusive of the entire municipality, only parts of a municipality. Potential applicants can see if potential distressed assets are located within the boundaries of an FDC by viewing the FDC map at <https://njca.maps.arcgis.com/apps/webappviewer/index.html?id=cd59d206f39c40a691d6ba38598134fb>

composite factor score⁵ where the distressed asset is located:

- Applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 86.5 – 63.9 will be eligible to receive an award of \$125,000.
- Applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 61.2 – 51.5 will be eligible to receive an award of \$100,000.
- Applicants with a distressed asset in an FDC with a Composite Food Desert Score between 51.2 -24.1 will be eligible to receive an award of \$75,000.

Eligible Grant Uses

The Food Security Planning Grant Program will support the development of an action plan focused on improving food access and food security in newly designated FDCs across New Jersey by leveraging distressed assets. Applicants must have identified a distressed asset within the borders of a FDC to be eligible for this grant.

The action plan for specific deliverables, must be completed within 9 months after the effective date of the grant agreement between EDA and recipient.

- Upon written request, Authority may authorize a three-month extension to the grant recipient's deadline for plan completion.

All applicants must submit:

- An overview on potential viable uses of the distressed asset property in an FDC
- A proposal to utilize the distressed assets to improve food access/security based on the community needs.
- A detailed timeline of activities that must be completed along with resources needed to accomplish the proposed plan
- A letter of support from the Office of the Mayor or the Chief Executive of the municipality where the asset is located
- At least one letter of support from a stakeholder located within the boundaries of the FDC (stakeholder defined in greater detail below)

The proposed plan may include but are not limited to strategies such as:

1. Identification and development of a community-based initiative/program or resource that improves access to affordable, fresh, and healthy produce and other food items
2. Determining cost-benefits of retrofitting, redeveloping or regreening the distressed asset as it relates to food access and food security
3. Developing a plan to drive economic growth for the locality by implementing innovations around food access and food security solutions
4. Creating greater social, economic, and environmental sustainability by identifying ways to grow, process and sell fresh produce
5. Stakeholder engagement and facilitation to identify community desires and needs pertaining to food access and food security
6. The identification of appropriate additional funding sources to support community led re-use of one or more properties to support food access and food security
7. Feasibility study for a supermarket or food retailer

⁵ Composite factor scores included in list of FDC designations found at: <https://www.njeda.com/wp-content/uploads/2022/02/New-Jersey-Food-Desert-Community-Designation-Methodology-Final-2-9-22.pdf>

Application Process

For each application, a lead applicant must be identified, which can only be a municipal government, county government, or a redevelopment agency, whose geographic catchment areas include an FDC. While the applicant may serve or have offices in a broader geographic area, proposals must be for a distressed asset located within the borders of an FDC. The lead applicant is the entity that is the sole recipient of grant funds and responsible for compliance with all terms of the grant agreement. The lead applicant will also serve as the primary point of contact with the Authority, submit any requests for fund disbursement, and be responsible for providing all required reports to the Authority.

Applicants may include a strategic partner or partners whose experience, knowledge, skills, and ability may provide an advantage in the development of the plan. The grant recipient is solely responsible for determining if and how the grant funds are distributed by the grant recipient to strategic partner(s).

Applications will be accepted for a 60-day period from the date the application is opened to the public, which will be communicated to all potential applicants via the Authority's website and social media accounts. Applications submitted after the application deadline will not be accepted or reviewed. 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 for failure to meet the application requirements will be given five business days to cure any deficiencies. If at the end of the five-day period, the applicant has not cured the deficiencies, their application will be deemed incomplete, and they will be declined by staff under the proposed delegation of authority for non-discretionary declines.

Application Fees

A non-refundable fee of \$1000 shall accompany every application for Authority assistance.

Application and Scoring Criteria

The Food Security Planning Grant Program is a competitive grant program. It is not first-come, first-served. Applications must be submitted within 60 days of the application's release. To ensure competitiveness of the grant, a minimum score of 55 points, out of a maximum total score of 100, will be required. Only applications scoring at least the minimum score will be considered for award. The proposed plan must leverage a distressed asset within one of the 50 FDCs. Please refer to Attachment A for the program specifications including the scoring criteria.

- Highest Possible Score: 100 points
- Minimum Score to be considered for award: 55 points

Along with their application, applicants must provide a letter of support from the Office of the Mayor or the Chief Executive of the municipality where the asset is located and at least one stakeholder located within the boundaries of the FDC. Stakeholders can include organizations such as but not limited to community-based organizations, state or local universities, food advocacy groups, business associations, food retailers, foundations, and other entities working on initiatives focused on strengthening a community. In addition to the required letter of support from an entity within the FDC, applicants can submit additional letters of support from other stakeholders (who may or may not be located within the FDC) along with their application.

After all applications are reviewed for baseline eligibility, applications that successfully demonstrate

eligibility will proceed to be reviewed, evaluated, and scored by an internal EDA committee. Applications must meet or exceed the minimum score of 55 out of 100 to be eligible for recommendation to the Board for award. If funding is oversubscribed, recommended funding awards will be based on the highest scoring applications until all available funding is committed. If multiple applications are received for the same FDC, only the highest scoring application will be eligible to receive funding. However, in the event that there is still funding available after the above restriction is satisfied, the Authority may award the remaining funding to additional applications within an already funded FDC based on the overall score of the applications, until all funds have been exhausted or until all eligible applicants have received a grant.

All eligible applicants must propose an action plan that leverages an existing distressed asset within the FDC to improve food access and food security. All applicants will be required to complete an online grant application and will be evaluated for competitiveness based on the following scoring criteria:

Criteria # 1: Composite Food Desert Factor Score (5 to 10 points) – Points will be awarded based on the Composite Food Desert Factor Score where the distressed asset is located⁶.

- Composite Food Desert Factor Score between 86.5 – 63.9 = 10 points
- Composite Food Desert Factor Score between 61.2 - 51.5 = 7 points
- Composite Food Desert Factor Score between 51.2 – 24.1 = 5 points

Applications that do not include one or more of the following sections will be disqualified and considered ineligible regardless of other materials provided.

Criteria # 2: Plan Description/Specifications/Statement of Work (up to 20 points) – All applicants must provide a narrative outlining how they intend to use the distressed asset (as defined in the memo) to improve food access and food security. The proposed plan must leverage a distressed asset within one of the 50 FDCs. Statement of work must include, at minimum:

- Must identify current food security needs and challenges in the FDC
- Must identify opportunities for creating a viable and sustainable solution to address food access and food security in the community
- Emphasis on long term viability and adaptability of a given concept
- Identify and collaborate with other key stakeholders to create an inclusive plan

Criteria # 2 will be measured using the scale below:

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 3: Work Plan (up to 20 points) – Applications demonstrating the ability to seamlessly execute the proposed plan will be given higher scores.

- Applicant must provide Specific Measurable Achievable Relevant Time-bound (SMART) objectives demonstrated clearly in the work plan with a timeline.
- Applicant must identify appropriate staff responsible for implementing each activity
- Applicant must describe goals/outcomes for each activity
- Clearly describe the length of time needed to implement each activity within the grant period

Criteria # 3 will be measured using the scale below:

⁶ Composite factor scores included in list of FDC designations found at: <https://www.njeda.com/wp-content/uploads/2022/02/New-Jersey-Food-Desert-Community-Designation-Methodology-Final-2-9-22.pdf>

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 4: Organizational Capacity (up to 20 points) – The applicant is equipped to successfully complete the proposed plan in a timely manner. Factors considered but are not limited to:

- Applicant has experience that demonstrates their ability to work effectively on a collaborative project with a state or a federal agency or on a multi-stakeholder project. Applicant must provide at least one example of working successfully within the FDC and with other collaborators
- Applicant must clearly state how this project aligns with and will impact their overall efforts to address the diverse food security and food access needs of people that live within the FDC they serve

Criteria # 4 will be measured using the scale below:

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 5: Community Engagement (up to 20 points) – Applicants must demonstrate a track record of:

- Partnership and engagement with various stakeholders across different sectors to address community needs. This can be demonstrated through letters of support and/or descriptions in the narrative section of the application.
- Applicant must demonstrate prior experience working with community members, stakeholders, and/or advocates in addressing food insecurity
- Efforts to ensure programs are built to promote social and economic equity
- Ability to consider and mitigate any past difficulties that created challenges for the given asset
- Engagement with various stakeholders across different sectors to address community needs. This can be demonstrated through letters of support and/or descriptions in the narrative section of the application.
- Applicant should demonstrate experience in community redevelopment with focus on equitable redevelopment projects, community focused adaptive reuse or innovative food distribution concepts (as applicable)

Criteria # 5 will be measured using the scale below:

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 6: Budget and Budget Justification (up to 10 points) – Preference will go to applications with a clear and justified budget.

- The requested level of funding must be broken down by line items and clearly illustrated in the budget narrative
- The requested level of funding must be reasonable for proposed activities within the timeline
- Reference the 20% match

Criteria # 6 will be measured using the scale below:

- 1 - 3 points – Element is present/shows minimal efficacy towards goals/objectives attainment

- 4 - 7 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 8 - 10 points – Element is present/shows superior efficacy towards goals/objectives attainment

Grant Disbursement

The full amount of the grant award will be made over the course of two disbursements. The first disbursement, equal to 50% of the grant award, will be disbursed upon the effective date of the grant agreement. Second disbursement, equal to the remaining 50% of the grant funding will be made upon receipt of and review of a final plan and final report by the Authority. During the term of the grant, the grantee will be required to provide two reports to the Authority. The first will be a mid-term report on grant progress. This mid-term report must include, but is not limited to, a summary of activity related to planning and expenditure of funds. The final report must provide summary of grant expenditure, project activities, results and impacts, lessons learned and potential next steps to leverage the distressed asset to address food security of residents within the FDC.

The term of the grant is to be nine months from the effective date of grant agreement with an extension of three months at the sole discretion of the Authority.

If grantee fails to comply with requirements under grant agreement executed between the grantee and the Authority, the Authority may choose to terminate the grant agreement and upon such termination the grantee shall be required to repay the disbursed grant funding, in whole or in part, as adjusted by the Authority to account for any completed and accepted work.

Delegated Authority

Staff is requesting delegated authority to the Chief Executive Officer to approve individual applications. Delegated authority is appropriate for this program because the grant size is no more than \$125,000, which is comparable to other delegated authority. Staff is also requesting delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendation of the Hearing Officer for appeals based on related to these non-discretionary declinations.

Recommendation

The Members are asked to approve:

1. The creation of the Food Security Planning Grant Program – up to \$1,500,000 pilot program that will competitively award grants up to \$125,000 to municipal governments, county governments, and/or redevelopment agencies to improve food access and food security by leveraging distressed assets in New Jersey’s Food Desert Communities (as approved by the Board on February 9, 2022)⁷.
2. Utilization of up to \$1,500,000 of funding from the Economic Recovery Act of 2020, as authorized under Section 127.d of P.L. 2020, c. 156, to capitalize the Food Security Planning Grant Program.
3. Delegation of authority to the Chief Executive Officer to approve individual applications to the Food Security Planning Grant program in accordance with the terms set forth in this memo and the attached program specifications
4. Delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendations of the Hearing Officer for appeals based on non-discretionary declinations.
5. Delegated authority to the Chief Executive Officer to accept up to \$1,500,000 in additional funds to expand the funding pool for this pilot program from any available governmental funding (State or County) 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.



Tim Sullivan, CEO

Prepared by: Rucha Gadre, Senior Advisor, Food Security + Innovation

Attachments:

1. Attachment A – Program Specifications – Food Security Planning Grant Program

⁷ <https://www.njeda.com/wp-content/uploads/2022/02/Food-Desert-Communities-Designation-Final-2-9-22.pdf>

Attachment A

Food Security Planning Grant Program Specifications

Funding Source	Up to \$1,500,000 - NJ Economic Recovery Act of 2020.
Administrating Agency	EDA
Program Purpose	<p>To advance the goals of the FDRA consistent with the uses of the economic planning services funds, staff propose utilizing up to \$1,500,000 of the funds under Section 127.d of P.L. 2020, c. 156 to create a competitive planning grant program that will focus on leveraging distressed assets in designated FDCs in New Jersey (approved by the Board in February 2022) and to improve food access and food security. The Food Security Planning Grant Program is the Authority’s first pilot program to fund development of plans to improve food access specifically within the newly designated FDCs. NJEDA can leverage the findings and outcomes from such local plans as a tool for developing and deploying future comprehensive food security initiatives and economic development across the state while equipping municipalities with the tools to think about how to repurpose distressed assets.</p> <p>Food access is not simply a health issue but also a community development issue. Many residents in low-income neighborhoods—rural, suburban, and urban—have limited access to fresh produce and other healthy foods. New Jersey faces a crisis of food insecurity that has only been exacerbated by the COVID-19 pandemic and its economic impacts on families across the state. A February 2022 survey by the U.S. Census Bureau found that nearly one in 11 New Jersey households reported not having enough to eat in the past seven days. Not having access to food, and more specifically nutritious food, has a direct impact on one’s health. For this reason, access to nutritious, affordable, and culturally relevant food is a key component not only in a healthy, sustainable local food system, but also in vibrant, growing communities and aligns with building a stronger and fairer New Jersey. The Food Security Planning Grant Program is one tool that NJEDA will deploy to empower local government entities and redevelopment agencies to develop and submit plans to improve food access while transforming distressed assets that have presented a hindrance to economic growth. Local plans have the potential to address community needs, develop a community-driven approach to improve food access and develop distressed assets to promote local economic development.</p>

	<p>The Food Security Planning Grant Program will support the development of an action plan leveraging distressed assets located in FDCs across New Jersey to improve food access and food security. Grants will be competitively awarded based on applications that meet all applicable eligibility criteria and achieve a minimum of 55 points based on the evaluation criteria set forth in the program specifications, subject to the availability of funding. If applications from eligible entities who meet the minimum requisite score exceed the amount of funding that is available, funding will be prioritized based on the highest scoring applications. There will be a limit of 1 grant award per qualifying Food Desert Community. However, in the event that there is still funding available after the above restriction is satisfied, the Authority may award the remaining funding to additional applications within an already funded FDC based on the overall score of the applications, until all funds have been exhausted or until all eligible applicants have received a grant.</p> <p>All applicants must submit a budget and budget justification with a 20% match which can include in-kind resources.</p> <ul style="list-style-type: none"> • The requested level of funding must be broken down by line items and clearly illustrated in the budget narrative • The requested level of funding must be reasonable for proposed activities within the timeline • A 20% match of grant amount required – Match can be either financial, or in-kind resources with demonstrated value greater than or equal to 20% of the grant amount as determined by the Authority. <p>For the Food Security Planning Grant program, a distressed asset shall be defined as a commercial building or series of buildings, its attachments, and appurtenances; or vacant land that is fully or partially vacant for at least one year, that due to deteriorated condition or appearance of its exterior (because of deferred maintenance such as deteriorated paint or overgrown vegetation, boarded up door and/or windows), that can be leveraged to improve food access and food security.</p>
<p>Applicant Eligibility Requirements</p>	<p>Eligibility under the program will be limited to the following entities whose geographic catchment areas include an FDC.</p> <ul style="list-style-type: none"> • New Jersey municipal government, • County governments, and • Redevelopment agencies <p>While the applicant may serve or have offices in a broader geographic area, proposals must be for a distressed asset located within the borders of an FDC⁸.</p>

⁸ Most FDCs are not inclusive of the entire municipality, only parts of a municipality. Potential applicants can see if potential distressed assets are located within the boundaries of an FDC by viewing the FDC map at <https://njdca.maps.arcgis.com/apps/webappviewer/index.html?id=cd59d206f39c40a691d6ba38598134fb>

For the Food Security Planning Grant program, the proposed plan must be for an asset which meets the above-mentioned definition of a distressed asset, and the proposed plan must leverage a distressed asset within one of the 50 FDCs.

Along with their application, applicants must provide at least one letter of support from the Office of the Mayor or Chief Executive of the municipality where the asset is located and at least one stakeholder located within the boundaries of the FDC, detailed below in the 'Application' section. For a property owned by a New Jersey County, the applicant must provide a letter of support from the property owner or their designee for the proposed project; this must be signed by the Chief Executive of the government entity, independent agency or authority or their designee. For a property owned by a private individual or by a non-governmental for-profit or non-profit entity; the applicant is required to provide a letter of support signed by the owner, co-owner, corporate officer, or their designee. Proposals for directly owned New Jersey state land will not be considered. Eligible entities should have a tax clearance certificate from the New Jersey Division of Taxation or verification by the Authority from the Division of Taxation as to good standing as applicable.

A municipality, a county, or redevelopment agency may submit multiple applications in a lead role and can be included as a partner in additional applications where they play a non-lead role. A municipality, county, and redevelopment agency whose geographic catchment areas include an FDC can each submit a proposal but are encouraged to coordinate their applications.

To ensure that the Authority's resources can be utilized as widely as possible across New Jersey, the Authority intends to award a maximum of one grant per FDC. For example, if a municipality applies for a distressed asset in Municipality X FDC, and the county applies for a different distressed asset in Municipality X FDC, a maximum of one award will be made within that FDC. However, in the event that there is still funding available after the above restriction is satisfied, the Authority may award the remaining funding to additional applications within an already funded FDC based on the overall score of the applications, until all funds have been exhausted or until all eligible applicants have received a grant.

Awards will be made to applicants with the highest scores of all eligible applicants, with a minimum qualifying score of 55 points.

	<p>Grant amounts will range from \$75,000 and \$125,000 and will be determined based on the FDC’s composite factor score⁹ where the distressed asset is located:</p> <ul style="list-style-type: none"> • Applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 86.5 – 63.9 will be eligible to receive an award of \$125,000. • Applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 61.2 – 51.5 will be eligible to receive an award of \$100,000. • Applicants with a distressed asset in an FDC with a Composite Food Desert Score between 51.2 -24.1 will be eligible to receive an award of \$75,000.
<p>Eligible Grant Uses</p>	<p>The Food Security Planning Grant Program will support the development of an action plan focused on improving food access and food security in newly designated FDCs across New Jersey by leveraging distressed assets. Applicants must have identified a distressed asset within the borders of a FDC to be eligible for this grant. All applicants must include plan for specific deliverables, which must be completed within 9 months after the effective date of the grant agreement between EDA and recipient.</p> <ul style="list-style-type: none"> • Upon written request, Authority may authorize a three-month extension to the grant recipient’s deadline for plan completion. <p>All applicants must submit:</p> <ul style="list-style-type: none"> • An overview on potential viable uses of the distressed asset property in an FDC • A proposal to utilize the distressed assets to improve food access/security based on the community needs. • A detailed timeline of activities that must be completed along with resources needed to accomplish the proposed plan <p>The proposed plan may include but are not limited to strategies such as:</p> <ol style="list-style-type: none"> 1. Identification and development of a community-based initiative/program or resource that improves access to affordable, fresh, and healthy produce and other food items 2. Determining cost-benefits of retrofitting, redeveloping or regreening the distressed asset as it relates to food access and food security 3. Developing a plan to drive economic growth for the

⁹ Composite factor scores included in list of FDC designations found at: <https://www.njeda.com/wp-content/uploads/2022/02/New-Jersey-Food-Desert-Community-Designation-Methodology-Final-2-9-22.pdf>

	<p>locality by implementing innovations around food access and food security solutions</p> <ol style="list-style-type: none"> 4. Creating greater social, economic, and environmental sustainability by identifying ways to grow, process and sell fresh produce 5. Stakeholder engagement and facilitation to identify community desires and needs pertaining to food access and food security 6. The identification of appropriate additional funding sources to support community led re-use of one or more properties to support food access and food security 7. Feasibility study for a supermarket or food retailer
<p>Application Process</p>	<p>For each application, a lead applicant must be identified, who can only be a municipal government, county government, or a redevelopment agency, whose geographic catchment areas include an FDC. While the applicant may serve or have offices in a broader geographic area, proposals must be for a distressed asset located within the borders of an FDC. The lead applicant is the entity that is the sole recipient of grant funds and responsible for compliance with all terms of the grant agreement. The lead applicant will also serve as the primary point of contact with the Authority, submit any requests for fund disbursement, and be responsible for providing all required reports to the Authority.</p> <p>Applications will be accepted for a 60-day period from the date the application is opened to the public, which will be communicated to all potential applicants via the Authority’s website and social media accounts. Applications submitted after the application deadline will not be accepted or reviewed. EDA staff will be responsible for reviewing the application. After the application window closes, EDA anticipates notifying each applicant if the application has been deemed complete. Applicants whose applications have been deemed incomplete for failure to meet the application requirements will be given five business days to cure any deficiencies. If at the end of the five-day period, the applicant has not cured the deficiencies, their application will be deemed incomplete, and they will be declined by staff under the proposed delegation of authority for non-discretionary declines. Under delegated authority to the CEO and based on the CEO’s subdelegated authority, staff will approve projects for assistance and may decline applications that do not meet non-discretionary eligibility requirements.</p>
<p>Application Requirements</p>	<p>The Food Security Planning Grant Program is a competitive grant program. It is not first-come, first-served. Applications must be submitted within 60 days of the application’s release. To ensure competitiveness of grant, a minimum score of 55 points, out of a maximum total score of 100, will be required.</p>

Only applications scoring at least the minimum score will be considered for award. The proposed plan must leverage a distressed asset within one of the 50 FDCs.

All applicants must meet the following general requirements:

- All applicants must show clear alignment with the proposed work and have identified an asset that meets the definition of a distressed asset.
- Along with their application, applicants must provide one letter of support from the Office of the Mayor or Chief Executive of the municipality where the asset is located and at least one stakeholder located within the boundaries of the FDC.
- For a property owned by a New Jersey County, the applicant must provide a letter of support from the property owner or their designee for the proposed project; this must be signed by the Chief Executive of the government entity, independent agency or authority or their designee.
- For a property owned by a private individual or by a non-governmental for-profit or non-profit entity; the applicant is required to provide a letter of support signed by the owner, co-owner, corporate officer, or their designee.
- Proposals for directly owned New Jersey state land will not be considered.
- Eligible entities should have a tax clearance certificate from the New Jersey Division of Taxation or verification by the Authority from the Division of Taxation as to good standing as applicable.
- All applicants must submit a mid-term grant progress report. This will include, but is not limited to, a summary of activity related to planning and expenditure of funds.
- All applicants must submit a final plan and final report at the end of the grant period. The final report must provide summary of grant expenditure, project activities, results and impacts, lessons learned and potential next steps to leverage the distressed asset to address food security of residents with the FDC.
- Unless applicant seeks and is granted, a time extension for project completion, final report must be completed and submitted within 9-months from grant agreements.
- All applicants will be required to complete and submit an online application for consideration
- A 20% match of grant amount required – Match can be either financial, or in-kind resources with demonstrated value greater than or equal to 20% of the grant amount.

<p>Application and Scoring Criteria</p>	<p>Criteria # 1: Composite Food Desert Factor Score (5 to 10 points) – Points will be awarded based on the Composite Food Desert Factor Score where the distressed asset is located¹⁰.</p> <ul style="list-style-type: none"> • Composite Food Desert Factor Score between 86.5 – 63.9 = 10 points • Composite Food Desert Factor Score between 61.2 - 51.5 = 7 points • Composite Food Desert Factor Score between 51.2 – 24.1 = 5 points <p>Applications that do not include one or more of the following sections will be disqualified and considered ineligible regardless of other materials provided.</p> <p>Criteria # 2: Plan Description/Specifications/Statement of Work (up to 20 points) – All applicants must provide a narrative outlining how they intend to use the distressed asset (as defined in the memo) to improve food access and food security. The proposed plan must leverage a distressed asset within one of the 50 FDCs. Statement of work must include, at minimum:</p> <ul style="list-style-type: none"> • Must identify current food security needs and challenges in the FDC • Must identify opportunities for creating a viable and sustainable solution to address food access and food security in the community • Emphasis on long term viability and adaptability of a given concept • Identify and collaborate with other key stakeholders to create an inclusive plan <p>Criteria # 2 will be measured using the scale below:</p> <ul style="list-style-type: none"> • 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment • 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment • 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment <p>Criteria # 3: Work Plan (up to 20 points) – Applications demonstrating the ability to seamlessly execute the proposed plan will be given preference.</p> <ul style="list-style-type: none"> • Applicant must provide Specific Measurable Achievable Relevant Time-bound (SMART) objectives demonstrated clearly in the work plan with
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¹⁰ Composite factor scores included in list of FDC designations found at: <https://www.njeda.com/wp-content/uploads/2022/02/New-Jersey-Food-Desert-Community-Designation-Methodology-Final-2-9-22.pdf>

a timeline.

- Applicant must identify appropriate staff responsible for implementing each activity
- Applicant must describe goals/outcomes for each activity
- Clearly describe the length of time needed to implement each activity within the grant period

Criteria # 3 will be measured using the scale below:

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 4: Organizational Capacity (up to 20 points) –

The applicant is equipped to successfully complete the proposed plan in a timely manner. Factors considered but are not limited to:

- Applicant has experience that demonstrates their ability to work effectively on a collaborative project with a state or a federal agency or on a multi-stakeholder project
Applicant must provide at least one example of working successfully within the FDC and with other collaborators
- Applicant must clearly state how this project aligns with and will impact their overall efforts to address the diverse food security and food access needs of people that live within the FDC they serve
- Applicant has experience that demonstrates their ability to work effectively on a collaborative project with a state or a federal agency and/or on a multi-stakeholder project

Criteria # 4 will be measured using the scale below:

- 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment
- 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment
- 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment

Criteria # 5: Community Engagement (up to 20 points) –

Applicants must demonstrate a track record of:

- Partnership and engagement with various stakeholders across different sectors to address community needs. This can be demonstrated through letters of support

	<p>and/or descriptions in the narrative section of the application.</p> <ul style="list-style-type: none"> • Applicant must demonstrate prior experience working with community members, stakeholders, and/or advocates in addressing food insecurity • Efforts to ensure programs are built to promote social and economic equity • Ability to consider and mitigate any past difficulties that created challenges for the given asset • Engagement with various stakeholders across different sectors to address community needs. This can be demonstrated through letters of support and/or descriptions in the narrative section of the application. • Applicant should demonstrate experience in community redevelopment with focus on equitable redevelopment projects, community focused adaptive reuse or innovative food distribution concepts (as applicable) <p>Criteria # 5 will be measured using the scale below:</p> <ul style="list-style-type: none"> • 1 -10 points – Element is present/shows minimal efficacy towards goals/objectives attainment • 11 -15 points – Element is present/shows moderate efficacy towards goals/objectives attainment • 16 – 20 points – Element is present/shows superior efficacy towards goals/objectives attainment <p>Criteria # 6: Budget and Budget Justification (up to 10 points) – Preference will go to applications with a clear and justified budget.</p> <ul style="list-style-type: none"> • The requested level of funding must be broken down by line its and clearly illustrated in the budget narrative • The requested level of funding must be reasonable for proposed activities within the timeline • Reference the 20% match <p>Criteria # 6 will be measured using the scale below:</p> <ul style="list-style-type: none"> • 1 - 3 points – Element is present/shows minimal efficacy towards goals/objectives attainment • 4 - 7 points – Element is present/shows moderate efficacy towards goals/objectives attainment • 8 - 10 points – Element is present/shows superior efficacy towards goals/objectives attainment
Grant Amount	Funding amount will be based on the Composite Food Desert Factor Score used by NJEDA to rank the FDCs where the proposed distressed asset is located.

	<p>If a county, municipality, or redevelopment agency comprises more than one Food Desert Community, the Composite Food Desert Factor Score will reflect the location of the distressed asset itself.</p> <ul style="list-style-type: none"> • Eligible applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 86.5 – 63.9 will be eligible to receive an award of \$125,000 • Eligible applicants with a distressed asset in an FDC with a Composite Food Desert Factor Score between 61.2 – 51.5 will be eligible to receive an award of \$100,000 • Eligible applicants with a distressed asset in an FDC with a Composite Food Desert Score between 51.2 -24.1 will be eligible to receive an award of \$75,000
<p>Disbursement</p>	<p>The full amount of the grant award will be made over the course of two disbursements.</p> <ul style="list-style-type: none"> • The first disbursement, equal to 50% of the grant award, will be disbursed upon the effective date of the grant agreement. • Second disbursement, equal to the remaining 50% of the grant funding will be made upon receipt of and review of a final plan and final report by the Authority. <p>During the term of the grant, the grantee will be required to provide two reports to the Authority. The first will be a mid-term report on grant progress. This mid-term report must include, but is not limited to, a summary of activity related to planning and expenditure of funds. The final report must provide summary of grant expenditure, project activities, results and impacts, lessons learned and potential next steps to leverage the distressed asset to address food security of residents with the FDC.</p> <p>The term of the grant is to be nine months from the effective date of grant agreement with an extension of three months at the sole discretion of the Authority.</p> <p>If grantee fails to comply with requirements under grant agreement executed between the grantee and the Authority, the Authority may choose to terminate the grant agreement and upon such termination the grantee shall be required to repay the disbursed grant funding, in whole or in part, as adjusted by the Authority to account for any completed and accepted work.</p>

<p>Grant Cancellation/Recapture</p>	<p>In the case of substantial noncompliance with the grant agreement, the Authority may terminate the agreement and avail itself of the remedies provided for in the grant agreement including but not limited to recapturing all or a portion of grant funds disbursed.</p> <p>Decision as to what action the Authority will take will be based on the infraction committed by the applicant and will consider the overall value, if any, of any work product produced and submitted. When evaluating monetary value of work product submitted, the Authority may take into consideration estimated cost to complete work as originally proposed and approved within the grant proposal and agreement.</p>
<p>Application Process and Board Approval/Delegated Authority</p>	<p>The Food Security Planning Grant Program is a competitive grant program. Applications must be submitted within 60 days of the application’s release. To ensure competitiveness of grant, a minimum score of 55 points, out of a maximum total score of 100, will be required. Only applications scoring the highest score will be recommended to the board for approval.</p> <ul style="list-style-type: none"> • For a property owned by a New Jersey County, New Jersey independent agency or New Jersey authority, the applicant must provide a letter of support from the property owner or their designee for the proposed project; this must be signed by the Chief Executive of the government entity, independent agency or authority or their designee. • For a property owned by a private individual or by a non-governmental for-profit or non-profit entity; the applicant is required to provide a letter of support signed by the owner, co-owner, corporate officer, or their designee. • Proposals for directly owned New Jersey state land will not be considered • All eligible applicants must provide a letter of support from at least one stakeholder within the FDC along with their application • Applications will be reviewed and scored for competitiveness based on pre-set scoring criteria made publicly available <p>Delegated authority to the Chief Executive Officer to approve individual applications. Delegated authority is appropriate for this program because the grant size is no more than \$125,000, which is comparable to other delegated authority.</p> <p>Delegated authority to the Chief Executive Officer to</p>

	decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendation of the Hearing Officer for appeals based on related to these non-discretionary declinations.
Applicant Fees	A non-refundable fee of \$ 1000 shall accompany every application for Authority assistance.
Appeal Process	<p>Businesses whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter.</p> <p>An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority’s action. Appeal much include and explanation as to how the applicant has met the application criteria.</p>



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Historic Property Survey Grant Program

Summary

The Members are requested to approve:

1. The creation of the Historic Property Survey Grant Program – a \$400,000 pilot program that will provide grants to municipal and county government entities, and non-profit organizations working in collaboration with or on behalf of municipal or county government entities. Financial assistance will be in the form of grants for the preparation of Historic Property Surveys throughout the state that include, within the defined scope, properties located within a Government Restricted Municipality or properties that would be considered distressed assets.
2. Utilization of \$400,000 of funding from the Economic Recovery Act of 2020, which established under Section 127.d of P.L. 2020, c. 156 to capitalize the Historic Property Survey Grant Program.
3. Delegation of authority to the Chief Executive Officer to approve individual applications to the Historic Property Survey Grant Fund Program in accordance with the terms set forth in this memo and the attached program specifications.
4. Delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendation of the Hearing Officer for appeals based on non-discretionary declinations.

Background

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 will address the ongoing economic impacts of the COVID-19 pandemic and position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone.

The ERA includes 15+ economic development programs, including:

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

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

In addition to the 15+ economic development programs specifically created or modified by the Act, Section 127d. of P.L. 2020, c. 156 also established the sum of \$5,000,000 “to be used to award competitive grants for zoning and economic planning services in government-restricted municipalities or economic redevelopment plans for distressed assets in other municipalities.” Funds under this section are being used for the creation of the Historic Property Survey Grant Program, a planning grant program that will focus on the preparation of Historic Property Surveys throughout the state.

Historic property surveys provide an inventory of the built environment by systematically documenting historic properties by geographic location (e.g., entire village, specific neighborhood, municipality, or county) or theme (properties associated with specific time period/event, or a specific group). They can be tailored to fit goals based on the type of resources they are looking to identify and document, as well as potential future use for investigation (local zoning and planning, creation or support of historic preservation ordinance). They provide assistance to state and local officials in making informed decisions regarding project planning, as well as policy decisions and development.

Program Details

The Historic Property Survey Grant Program (Grant Program) seeks to increase the overall understanding of existing historic resources throughout the state and to serve as a planning tool to be used as part of comprehensive economic development planning. The program seeks to further the knowledge and understanding of historic resources throughout the state by facilitating the completion of city, county or statewide historic surveys.

This memorandum provides a summary of the Grant Program, including general program information, program limits, eligibility criteria, specific program requirements, and application process. Specific program details are included in the attached program specifications.

Eligibility under the program will be limited to municipal and county governments, and non-profit organizations working on behalf of, in coordination with, or with the support and endorsement of a municipal or county government. Non-profit applicants will be required to provide documentation showing close co-operation with a government entity located within the geographical area covered by the proposed project boundary. Additionally, they will be required to certify that the government entity will be provided full copies of the survey (including a hard copy and digital copy in native format) and rights to the utilization of the entirety of the survey and all data collected as part of the investigation.

Historic property surveys are an invaluable tool in the identification of historic properties at the state and local level. They provide a comprehensive inventory of historic resources by either geographic location or by theme and help provide background information and context with regards to existing historic resources to assist state and local land-use and planning officials. They are a fundamental component of preservation planning and provide invaluable information to historic preservation professionals as well as to local officials.

Under the Historic Property Survey Grant Program, entities that meet the criteria outlined in the attached program specifications may apply for grant funding of up to \$125,000 per entity. As part of the evaluation of each applicant's grant application, each applicant will agree to the following:

- All work conducted for the authorized project will be completed by a professional or consultant meeting professional qualifications for either "Historian", or "Architectural Historian" as outlined in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 Fed. Reg. 44716, as updated and revised by the National Park Service, and which were previously published in 36 CFR Part 61.
- To qualify for the program, the scope of work must include surveying of properties that are located within a Government Restricted Municipality (GRM) or include the surveying of properties that fit the program's definition of distressed assets based on the type of survey proposed as follows:
 - Municipal Survey – Scope of work for the survey must include the surveying of properties associated by location and located within a specific municipality. Such municipality must be a GRM.
 - Thematic Survey – Scope of work for survey must include the surveying of properties closely associated by a theme such as a historic event/time period, industry, architectural type/style, or group of individuals (race, ethnicity, LGBTA+, etc.). Geographic boundary for investigation may be regional (municipal or county) or statewide. Unless all properties to be surveyed are

located within a GRM, the applicant must demonstrate that at least 10% of properties expected to be surveyed fit the program's definition of distressed asset by providing a site map showing proposed survey boundaries and location of identified distressed assets with accompanying photographs of buildings to demonstrate condition.

- Under the program, a distressed asset will be defined as a building that is fully or partially vacant, or that due to deteriorated appearance of its exterior (because of deferred maintenance such as deteriorated paint or overgrown vegetation, boarded up door and/or windows), could be seen as a deterrent to economic growth to the surrounding area.
- Survey will be completed following NJDEP's Historic Preservation Office's (HPO) *Guidelines for Architectural Survey*. Survey forms and guidelines can be found on HPO's website at: <https://www.nj.gov/dep/hpo/1identify/survarchit.htm>.
- Projects submitted for consideration must, at a minimum, document all potential resources at time of application which may include within a distinctly defined area/community, municipality and/or county. For thematic surveys, applicant must show larger areas of study (such as a municipality, county or statewide) that will allow for a better understanding of theme.
- Projects must include detailed written historic background and context information that addresses all resources included.
- A minimum contribution by the applicant of 10% of the total cost of the project will be required, and the applicant will be required to provide proper documentation to demonstrate that funds equaling at least 10% of the total cost of the investigation, as identified within the submitted proposal, will be available at time of approval.
- Unless applicant seeks, and is granted, a time extension for project completion, draft report must be completed and submitted within 1 year from the execution of the grant agreement. Any request for a time extension (of no longer than six months beyond the original one year) must be submitted in writing to the Authority.

Additionally, applicants must be in good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, or provide documentation showing that they have entered into an agreement with the respective department that includes a practical corrective action plan, as applicable. Furthermore, the eligible entity will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

Applicants will be asked to complete an online grant application that will include:

- Narrative proposal detailing project description and approach to conducting the investigation; and
- Detailed geographic boundary description and map. For proposed thematic surveys, a general description of desired investigation area with justification as to the appropriateness of defined study area will be required in lieu of a detailed geographic boundary.

Additionally, applicants will be required to submit a full and current proposal (dated no earlier than 1 month prior to application submission) to conduct the proposed investigation that is prepared by a professional or consultant meeting professional qualifications for either “Historian” or “Architectural Historian.”

Competitive grant applications will be accepted and reviewed on a rolling basis until all funds are committed. They will be evaluated on the following criteria:

- Need & Benefit to community: 1) There is no existing survey for proposed survey area or survey theme (for thematic surveys), or existing survey is over 20 years old; 2) At least one municipality or County Government within the proposed survey area has provided a letter of support indicating that the survey is a desired tool that will be used by the government entity for planning purposes. Existence and/or date of prior survey will be confirmed using New Jersey’s Historic Preservation Office’s Cultural Resources Geographic Information System “LUCY”, which can be accessed from their website at: <https://nj.gov/dep/hpo/identify/gis.htm>.
- Community support for project to be demonstrated with at least one letter of support from a community organization which may include a non-profit entity, governmental entity, or for-profit entity located within a geographic area to be included within the proposed survey project.
- Additional points will also be granted to projects that will survey properties within the boundaries of a NJ municipality that is ranked among the top 50 municipalities under the 2020 Municipal Revitalization Index (MRI) as established by DCA, or to those with a scope of work that proposes to focus the investigation in the survey and identification of resources associated with underrepresented groups or periods of history (such as minority groups and communities, LGBTQ, women history, or the civil rights movement). Applicants seeking additional points based on underrepresented history will need to submit a justification on the claim. The justification provided will be reviewed by the New Jersey Historic Trust following established parameters in keeping with their Underrepresented Histories Special Initiative (a part of their current competitive grant program). The Trust will provide NJEDA a final validation of whether parameters for the underrepresented history have been met. Applicants found to meet the parameters will receive additional points as outlined in the program specifications.

To ensure competitiveness of grant, a minimum score of 20 Points, out of a maximum total score of 30, will be required. The points awarded per eligibility criteria is shown in the program specifications. Awards will be first-come-first-served, based on completed application and until such time as funds are depleted.

Six months after approval of grant, grantee will be required to provide a progress report outlining progress of the investigation. The required progress report must include, but will not be limited to, the following information: number of structures surveyed/documented to date, draft copy of report, draft samples of survey forms completed. Additionally, the progress report must include a project schedule showing, at a minimum, dates for completion of all

fieldwork, projected dates for submission of complete draft report, and final project completion. A draft historic survey report with all survey forms and necessary attachments must be completed and submitted within 1 year from the execution of the grant agreement, except that if the grantee has requested, and been granted a time extension, then such report will be due no later than 18 months following the execution of the grant agreement. Draft report will be reviewed by the NJEDA and/or HPO. Following review, NJEDA, in coordination with the HPO, will issue comments as needed to address any deficiencies. Once comments are issued, the grantee will have 60 calendar days to address comments and submit a final historic survey report (including all survey forms and necessary attachments) to HPO for final acceptance. HPO will confirm acceptance of final report to NJEDA.

If grantee fails to comply with requirements under grant agreement executed between the grantee and the Authority, the Authority may choose to terminate the grant agreement and the Authority may request the grantee to repay the disbursed grant funding, in whole or in part, as adjusted by the Authority to account for any completed and accepted work.

Upon approval of the grant application from the Authority, the entity will be disbursed 50% of the grant funding for the uses described in their approved application. Disbursement of final 50% of funds will occur after submission and approval of final historic survey report, all forms and attachments, as verified by HPO.

Delegated Authority

Staff is requesting delegated authority to the Chief Executive Officer to approve individual applications. Delegated authority is appropriate for this program because the grant size is limited to \$125,000, which is comparable to other delegated authority. Staff is also requesting delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendation of the Hearing Officer for appeals based on related to these non-discretionary declinations.

Recommendation

The Members are asked to approve:

1. The creation of the Historic Property Survey Grant Program – a \$400,000 pilot program that will provide grants to municipal and county government entities, and non-profit organizations working in collaboration with or on behalf of municipal or county government entities. Financial assistance will be in the form of grants for the preparation of Historic Property Surveys throughout the state that include, within the defined scope, properties located within a Government Restricted Municipality or properties that would be considered distressed assets.
2. Utilization of \$400,000 of funding from the Economic Recovery Act of 2020, which established under Section 127.d of P.L. 2020, c. 156 to capitalize the Historic Property Survey Grant Program.

3. Delegation of authority to the Chief Executive Officer to approve individual applications to the Historic Property Survey Grant Fund Program in accordance with the terms set forth in this memo and the attached program specifications.
4. Delegated authority to the Chief Executive Officer to decline applications for solely non-discretionary reasons, and to approve Final Administrative Decisions upon recommendation of the Hearing Officer for appeals based on non-discretionary declinations.



Tim Sullivan
Chief Executive Officer

Prepared by: C. Aidita Milsted

Attachment:

Exhibit A – Program Specifications – Historic Property Survey Program Fund

Historic Property Survey Grant Program

April 2022

Funding Source	\$400,000 - NJ Economic Recovery Act of 2020.
Program Expiration	Pilot program will run until funds are exhausted (for a maximum of 3 years).
Program Structure Purpose	<p>The program will provide financial assistance in the form of grants for the preparation of Historic Property Surveys throughout the state that include within the defined scope, properties located within a Government Restricted Municipality or that would be considered distress asset/s. Projects considered would include historic survey of properties/resources based on association by location (municipal surveys), or thematically.</p> <p>A distressed asset shall be defined as a building that is fully or partially vacant, or that due to deteriorated appearance of its exterior (because of deferred maintenance such as deteriorated paint or overgrown vegetation, boarded up door and/or windows), could be seen as a deterrent to economic growth to the surrounding area.</p> <p>Historic Property Surveys provide a full assessment of an area’s existing historic resources and are a fundamental part of historic preservation planning. The program seeks to increase the overall understanding of existing historic resources throughout the state (many of which may be identified as distressed assets), as a planning tool to be used as part of future comprehensive economic development planning within the state.</p>
Eligible Applicants	<ul style="list-style-type: none"> • The program will consider proposed projects by municipal and county governments, and by non-profit organizations who are working on behalf of, in coordination with, or with the support/endorsement of a municipal or county government. • Non-profit applicants must show close co-operation from a government entity (state, county, municipal) included within the geographic area for the proposed project, demonstrated through letter/s of support.
Eligibility Requirements	<p>General Requirements for eligibility:</p> <ul style="list-style-type: none"> • Work must be completed by a professional or consultant meeting professional qualifications for either “Historian”, or “Architectural Historian” outlined in the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, 48 Fed. Reg. 44716, as updated and revised by the National Park Service, which are currently defined and used by the National Park Service, and as previously published in 36 CFR Part 61. • Applicant must be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury, or provide documentation showing that they have entered into an agreement with the respective department that includes a practical corrective action plan. • Applicant must submit a Current Tax Clearance Certificate provided by

	<p>the NJ Division of Taxation</p> <ul style="list-style-type: none"> • The scope of work must include surveying of properties that are located within a Government Restricted Municipality (GRM); or include the surveying of properties that fit the program’s definition of distressed assets based on the type of survey proposed as follows: <ul style="list-style-type: none"> ○ Municipal Survey – Scope of work for the survey must include the surveying of properties associated by location and located within a specific municipality. Such municipality must be a GRM. ○ Thematic Survey – Scope of work for survey must include the surveying of properties closely associated by a theme such as a historic event/time period, industry, architectural type/style, or group of individuals (race, ethnicity, LGBTA+, etc.). Geographic boundary for investigation may be regional (municipal or county) or statewide. Unless all properties to be surveyed are located within a GRM, the applicant must demonstrate that at least 10% of properties expected to be surveyed fit the program’s definition of distressed asset by providing a site map showing proposed survey boundaries and location of identified distressed assets with accompanying photographs of buildings to demonstrate condition. • All applications will be evaluated based on criteria and scoring as follows: <ul style="list-style-type: none"> ▪ Need & Benefit to community. Points for need and benefit will be given based on the following: <ul style="list-style-type: none"> - There is no existing survey for proposed survey area or survey theme (for thematic surveys), or existing survey is over 20 years old. (10 points) - At least one municipality or County Government within the proposed survey area has provided letter of support indicating that survey will be a tool that is desired and will be used by the government entity for future planning purposes. (5 Points) ▪ Community support for project to be demonstrated with at least one letter of support from a community organization located within a geographic area to be included within the proposed survey project. (5 Points) ▪ Additional points will be given to projects that: <ul style="list-style-type: none"> - Will include survey within a NJ municipality that is ranked among the top 50 municipalities under the 2020 Municipal Revitalization Index (MRI) as established by DCA. (5 Points) - Will include in its focus the identification of resources representing underrepresented groups or periods of history (such as minority groups and communities, LGBTQ, women history, or the civil rights movement). Validation by the New Jersey Historic Trust will be required. (5 Points) • To ensure competitiveness of grant, a minimum score of 20 Points will be required. Only applications scoring above the set minimum score will be reviewed and considered for award.
<p>Program Requirements</p>	<p>Once approved, the grantee must comply with the following project specific requirements:</p>

	<ul style="list-style-type: none"> • Projects submitted for consideration must, at a minimum, document all potential resources included within a distinctly defined area/community, municipality and/or county. For thematic surveys, applicant must show larger areas of study (such as county or statewide) that will allow for a better understanding of theme. • Projects must include detailed written historic background and context information that addresses all resources included. • Survey must be completed following NJDEP’s Historic Preservation Office’s (HPO) <i>Guidelines for Architectural Survey</i>. Survey forms and guidelines can be found on HPO’s website at: https://www.nj.gov/dep/hpo/1identify/survarcht.htm. • Deliverable requirements: <ul style="list-style-type: none"> ▪ Scope of work for all projects submitted for consideration shall require submission of one hard copy of the final survey (including all survey forms) to be submitted to HPO, and a corresponding electronic version (also inclusive of all forms) in pdf format. ▪ Final deliverables must include GIS data consistent with the NJDEP’s Historic Preservation Office’s approved formats, and minimum requirements as specified in NJDEP’s <i>Mapping and Digital Data Standards</i>. • All non-profit applicants must include a certification stating that in addition to the deliverable requirements outlined above, the government entity with whom the applicant has a close co-operation agreement with will: <ul style="list-style-type: none"> ▪ Receive, at a minimum, one hard copy of the entire, completed and approved survey, and an electronic copy of the completed survey and all data collected as part of the investigation. Hard copy must be a high-quality print (not a photocopy) will all text clearly legible and clear photographs. ▪ Have full authorized use of the final survey completed and all data collected as part of the investigation. • Unless applicant seeks and is granted, a time extension for project completion, draft survey report with all survey forms and necessary attachments must be completed and submitted within 1 year from execution of grant agreement. Any request for a time extension (of no longer than six months beyond the original one year) must be submitted in writing to the Authority. Draft report will be reviewed by the NJEDA and/or HPO. • NJEDA, in coordination with the HPO, will issue comments as needed to address any deficiencies of draft report, forms and any attachments. The grantee will have 60 calendar days to address comments and submit a final historic survey report (including all survey forms and necessary attachments) to HPO for final acceptance. HPO will confirm acceptance of final report to NJEDA.
Grant Amount	<ul style="list-style-type: none"> • Maximum grant amount will be \$125,000 per applicant. Applicants are eligible to receive only one award.
Funding Disbursement	<p>Grants will be disbursed as follows:</p> <ul style="list-style-type: none"> • 50% of Grant Amount will be disbursed upon execution of grant

	<p>agreement.</p> <ul style="list-style-type: none"> Final disbursement of remaining 50% will occur after NJEDA has confirmed approval of final product by HPO.
Grant Cancellation/Recapture	<p>In the case of substantial noncompliance, fraud, or abuse by the grant recipient, the NJEDA may take the following actions:</p> <ul style="list-style-type: none"> Cancel/void all or partial payment of final disbursement. Seek to recapture previously disbursed funds. <p>Decision as to what action the Authority will take will be based on the infraction committed by the applicant and will take into account the overall value, if any, of any work product produced and submitted. When evaluating monetary value of work product submitted, the Authority may take into consideration estimated cost to complete work as originally proposed and approved within the grant proposal and agreement.</p>
Exclusions and Additional Requirements	<ul style="list-style-type: none"> A full and current proposal (dated no earlier than 1 month prior to application submission) prepared by a professional or consultant meeting professional qualifications for either “Historian”, or “Architectural Historian” outlined in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 Fed. Reg. 44716, as updated and revised by the National Park Service, which are currently defined and used by the National Park Service, and as previously published in 36 CFR Part 61. A minimum contribution by the applicant of 10% of the total cost of the project will be required. The applicant will be required to provide proper documentation to demonstrate that funds equaling at least 10% of the total cost of the investigation, as identified within the proposal, will be available at time of approval.
Application Process and Board Approval/ Delegated Authority	<ul style="list-style-type: none"> Applications will be reviewed for competitiveness (based on pre-set criteria) on a rolling basis if funds are available until all funds are committed. EDA staff will be responsible for reviewing applications. Under delegated authority to the CEO and based on the CEO’s subdelegated authority, staff will approve projects for assistance and may decline application that do not meet non-discretionary eligibility requirements.
Appeal Process	<p>An applicant may appeal an action by the Authority by submitting in writing to the Authority, within 10 business days from the effective date of the Authority’s action. Appeal must include an explanation as to how the applicant has met the application criteria.</p>
Fees:	<p>A non-refundable application fee of \$1,000 will be due at time of application submission.</p>



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Recommendation for Award - #2022-RFP-IPM-051
Investment/Cash Management Consulting Services

Summary

The Members' approval is requested to enter into a contract with PFM Asset Management of Ewing, N.J. to provide investment/cash management consulting services and discretionary investment advisory advice to the New Jersey Economic Development Authority ("Authority").

The contract provides for an initial one (1) year term and allows for two (2) two (2) year extension options, to be exercised at the sole discretion of the Authority with a maximum-not-to-exceed contract price of \$900,000.00. Based on the results of a publicly advertised procurement and evaluation of price and other factors, PFM Asset Management was the highest scoring firm.

Background

On January 26, 2022, the Authority issued a Request for Proposals (RFP), #2022-RFP-IPM-051 Investment and Cash Management Consulting Services to solicit proposals from well-qualified firms, licensed by the Securities and Exchange Commission with demonstrated experience in providing Investment & Cash Management Consulting Services to other client entities, in both the public and private sectors, to implement the Authority's investment objectives, as outlined in its specific investment policy guidelines.

In addition to idle, short-term cash that the Authority invests in the State of New Jersey Cash Management Fund ("NJCMF"), the Authority also maintains two, separate portfolios, which contain cash and marketable securities. One is a fixed income managed portfolio which contains both unrestricted cash as well as funds specifically earmarked for the Authority's various financing programs. The second, is a retiree benefit trust, which provides funding for post-employment healthcare insurance premiums for eligible participants of the Authority's postemployment healthcare plan, which is part of the New Jersey State Health Benefits Program. The objective of these portfolios is to preserve capital and minimize risk of principal loss, while maximizing investment return by taking advantage of longer terms than exist in typical money market accounts or the NJCMF.

RFP for Investment/Cash Management Consulting Services

This RFP was advertised in two (2) newspapers, posted to the Authority's website and the State Business Portal and distributed to potentially interested Bidders, via broadcast email. In response to this solicitation, one (1) proposal was received by the stated deadline.

The one (1) responsive proposal was then reviewed and scored, using a group of pre-established evaluation criteria, published in the RFP, including documented experience in successfully completing contracts of similar scope, size and complexity; demonstrated understanding of investment policies and philosophies; evidence of average annual returns on investment for clients similar to the Authority; depth and experience of the firm's management and staff, among other factors. Based on a scoring of "1" through "5" with "1" representing "Poor" and "5" representing "Excellent" the RFP required bidders to receive a total minimum score of "3" or higher to be considered for the Award; PFM Asset Management received an overall score of 5.0.

The proposal and supporting documentation, including IPM's Recommendation memo, are on file with the IPM Division.

Process, Budget and Payment

The contract award will be billed on a monthly basis and the amount will vary based on the amount of cash and investments under management. Based on the proposal submitted by the vendor, the current year management and advisory services are estimated to be approximately \$180,000, (up to .006% per monthly balance in the fixed income portfolio, and .006% per monthly balance in the retiree benefit trust), based on anticipated cash balances in the respective portfolios. Significant capital infusions or use of funds by the Authority for projects and initiatives will impact this amount.

Recommendation

Based on the results of the 2022-RFP-IPM-051, it is recommended that the Members approve entry into the Investment & Cash Management Consulting Services contract with PFM Asset Management for a maximum of \$900,000.00 for (1) one year with (2) two (2) year extension options to be exercised by Authority staff, at the same prices, terms and conditions. Pricing, as indicated in PFM Asset Management's "Fee Schedule" shall remain firm throughout the term of the contract, and any extensions, thereto.



Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Request for Approval of a Design Services Agreement with Atlantic City Electric (ACE) for a transmission line connection to the New Jersey Wind Port

REQUEST

The Members of the Board are asked to approve the Authority entering into a Design Services Agreement with Atlantic City Electric (ACE) for the design, engineering and permitting of a transmission line and associated infrastructure for the New Jersey Wind Port. ACE owns and operates a state and federally regulated distribution and transmission system serving wholesale and retail customers in New Jersey, including the area in which the Port is located. The Authority's total obligation under the Agreement, enclosed in Exhibit A, is \$5.14 million. This not-to-exceed amount is based on ACE's estimate of probable cost and includes a 20 percent contingency.

The Agreement commits ACE to design a transmission line, distribution system and upgraded substation. It commits the Authority to pay ACE \$2 million as a deposit with ACE's actual costs reimbursed on a monthly invoicing basis. All ACE subcontractors will be competitively bid in order to ensure value for money. The Authority has the right to terminate the agreement upon 30 days' notice but will be liable for actual costs including demobilization costs. The Authority will draw on state project funding to cover all costs incurred under its agreement with ACE.

BACKGROUND

Design services agreement

ACE holds the exclusive franchise to a service area in Southern New Jersey totaling 2,800 square miles and servicing 560,00 customers, including the area in which the Wind Port is located. On July 23, 2020, staff submitted an Application for Electric Service outlining the Port's projected electricity needs and development timeframe. Following a period of dialogue, on October 20, 2020, ACE provided the Authority with a high-level capital cost estimate for providing a power connection to the Port and an indicative development timeframe. Owing to the lack of an existing transmission line to the site, ACE would be required to construct an approximately 12-mile extension from one of several existing regional substations as well as upgrade its substation.

At its January 2021 meeting, the Authority's Board approved \$740,000 in funding for ACE to conduct a feasibility assessment to identify the routing for the new transmission line. On August 18, 2021, ACE produced its Segment and Alternative Route Analysis, which evaluated different routes for the transmission line and made a recommendation of one route as optimal to construct the transmission line from the ACE 69kV substation in Quinton to the Port. Following a review by WSP, the Authority's technical advisor on the Port project, NJEDA accepted ACE's route recommendation. ACE procured certain engineering services using remaining funding from the feasibility assessment. In order to continue design ACE has requested that the Authority enter into a new Design Services Agreement covering the balance of design and preconstruction activities.

As detailed in Figure 1, the Authority's total obligation under the Agreement is \$5.14 million. This not-to-exceed amount is based on ACE's estimate of probable cost and includes a 20 percent contingency. The Agreement commits the Authority to reimburse ACE for its actual internal and external costs, to be invoiced monthly. The Authority is also required to provide ACE with a \$2 million deposit within 10 days of execution of the Agreement. Payment of a deposit is in recognition of ACE's regulatory obligations concerning protection of its existing ratepayers from capital project risk. Once total reimbursements of actual costs exceed the sum of the maximum costs less the deposit amount, ACE will draw down on the deposit to cover actual costs and shall provide the Authority with monthly statements showing the application of the deposit monies. Any deposit monies that are not used when work is completed shall be applied to the cost of construction should the parties continue with negotiating a separate agreement for construction or returned to the Authority should the Authority provide notice to ACE that it will not proceed with the construction phase. In the event of termination by either party the Authority shall be reimbursed by ACE within 30 days for any deposit balance remaining after accounting for actual costs.

Value for money for the state will be achieved by:

- Requiring that ACE competitively bid all works;
- Review of invoicing prior to reimbursement;
- Upfront and ongoing close coordination between ACE and the Authority's engineer-of-record, Moffatt & Nichol (M&N), in order to manage interface between ACE's grid connection and on-site substation which M&N is concurrently designing; and
- Upfront and ongoing close coordination with ACE and PSEG to identify the most cost effective route once the grid connection enters PSEG's property.

Staff will return to the Board for approval of construction funding once the transmission line's design reaches a sufficient degree of completion and costs become more certain. Staff may also return to the Board prior to seeking full construction funding for the purchase of long lead materials if satisfied there is a schedule benefit and that material types and quantities are sufficiently fixed.

Figure 1 – Breakdown of ACE’s estimated cost plus contingency

Discipline	Activity	Estimated Cost	Contingency	Total	
Substation	Design and Studies	\$350,000	\$70,000	\$420,000	
	Internal Charges	\$120,000	\$24,000	\$144,000	
Substation Total		\$470,000	\$94,000	\$564,000	
Transmission	Engineering OH	\$290,000	\$58,000	\$348,000	
	Engineering UG	\$200,000	\$40,000	\$240,000	
	Environmental Cons.	\$570,000	\$114,000	\$684,000	
	Soil Borings	\$600,000	\$120,000	\$720,000	
	Traffic Study, Guide Rail	\$200,000	\$40,000	\$240,000	
	Real Estate Easements	\$100,000	\$20,000	\$120,000	
	Survey	\$200,000	\$40,000	\$240,000	
	UG Utility, GPR	\$400,000	\$80,000	\$480,000	
	Internal Charges	\$200,000	\$40,000	\$240,000	
	Trans Total		\$2,760,000	\$552,000	\$3,312,000
	Distribution	Design and Studies	\$200,000	\$40,000	\$240,000
Internal Charges		\$50,000	\$10,000	\$60,000	
Dist. Total		\$250,000	\$50,000	\$300,000	
Est. Indirects		\$800,000	\$160,000	\$960,000	
TOTAL		\$4,280,000	\$856,000	\$5,136,000	

Other key terms of the Agreement include:

- The right for the Authority to terminate upon 30 days’ written notice with any deposit balance remaining after accounting for ACE’s actual costs to be repaid;
- The right for ACE to terminate the Agreement for cause;
- Compliance by ACE and its contractors with prevailing wage requirements; and
- The right for the Authority to assign the Agreement to another state entity.

There are limitations to information provided to the Authority regarding ACE's procurement requirements. One example is that while the Agreement requires that contractors are “subject to a bidding process and selected competitively”, it does not require that ACE provide information for the Authority on its procurement process, which may become necessary at a later point should the Authority seek federal funding for this aspect of the Port project. Staff will continue to work with ACE to better understand their procurement and bid process.

Assessment of alternative power connection options

ACE has increased its estimate for the total construction cost for the line and associated infrastructure from \$37 million at the outset of discussions in 2020 to \$51.8 million following the conclusion of a feasibility study late last year. This cost increase led Staff to assess potential alternative options including connecting to the adjacent nuclear generating facilities. This assessment considered cost, timing (including to secure necessary regulatory approvals and achieve construction completion), redundancy, as well as other risks factors. Options considered are summarized in Figure 2. Ultimately, this analysis concluded that ACE's proposed solution presented best overall value when all regulatory and technical risk factors are considered. Specific decision factors included:

- PJM regulatory complications in progressing localized options given the Port is located within ACE's regulated franchise area – with the potential to add significant uncertainty to the schedule for connecting the Port to the grid at a time when the Authority is negotiating subleases with prospective subtenants;¹
- Regulatory complications stemming from nuclear compliance and security requirements – with the potential need for Nuclear Regulatory Commission (NRC) review; and
- A quicker restoration time in the event of a downed powerline under ACE's proposed grid solution. ACE advise that power is typically restored within 24 hours compared with up to a month in the case of localized options due to site complexities; and up to a year if a new transformer is required. Restoration of power would be further complicated in the event of a localized option by the need for maintenance teams to work within the secure area of PSEG's nuclear generating facilities and, relatedly, by the potential risk that works will coincide with nuclear plant maintenance activities which would take priority.

¹ PJM is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia.

Figure 2 – Alternative power supply options

Option	Overview	Estimate	Schedule	Other factors
PSE&G connection - 13kV	Connection to a PSE&G 500/230 kV transformer tertiary winding in PSE&G’s switchyard on the Artificial Island property.	\$20-\$25M	1-2 years	This option was considered untenable by PSE&G due to potential reliability impacts. The 500/230 kV transformer and its 500 kV and 230 kV connections were put in place under a PJM project to improve operational performance of the bulk electric system facilities in this area, including stability and high voltage reliability issues. PSEG Nuclear compliance requirements were also cited as adding significant complexity, time and cost.
PSE&G connection - 230kV	Addition of a 230/69 kV transformer and 230 kV equipment in the PSE&G substation that would connect to the new 69-13.8kV transformer being built to service the port.	>\$50M	4-5 years	The cost and timing of repairing or replacing a 230/69kV transformer, given its lead time and its location within the PSE&G Switchyard on the PSEG Nuclear property, would create a significant risk to port operations – with the potential for the port to be without power for several months. PSEG Nuclear compliance requirements were also cited as adding significant complexity, time and cost.
LS Power/ Silver Run - 230kV	Connection to the recently-constructed LS Power 230kV transmission line that connects PSE&G 230 kV switchyard with SRE 230 kV switchyard in Delaware.	>\$50M	4-5 years	Requisite regulatory reviews and approvals were identified as a key schedule constraint, and risk to the project given a lack of certainty in respect to the outcome.

RECOMMENDATION

The Members of the Board are asked to approve the Authority entering into a Design Services Agreement with Atlantic City Electric (ACE) for the design, engineering and permitting of a transmission line connection and associated infrastructure for the New Jersey Wind Port. The Authority's total obligation under the Agreement, enclosed is \$5.14 million.

A handwritten signature in blue ink, appearing to read 'T. Sullivan', is positioned above a horizontal line.

Tim Sullivan, CEO

Exhibit A - Design Services Agreement

DESIGN SERVICES AGREEMENT

This Design Services Agreement (“Agreement”) is entered into on this ____ day of April, 2022, by and between the New Jersey Economic Development Authority (“EDA” or “Customer”), a body corporate and politic organized and existing under the laws of the State of New Jersey having its principal offices located at 36 West State Street, P.O. Box 990, Trenton, NJ 08625 and Atlantic City Electric Company (“ACE” or the “Company”), a New Jersey corporation. Customer and ACE may each be referred to herein as a “Party” and may be referred to collectively herein as the “Parties”.

RECITALS

WHEREAS, ACE owns and operates a state and federally regulated electric distribution and transmission system serving wholesale and retail customers throughout the State of New Jersey.

WHEREAS, the EDA requests and has applied for 69kV electric service from ACE at a new development site known as the New Jersey Wind Port as further described in the Attachment A: Scope of Work, which is incorporated by reference herein.

WHEREAS, the New Jersey Wind Port development will provide a location for essential staging, assembly, and manufacturing activities related to offshore wind projects on the East Coast.

WHEREAS, ACE will design the Project as further described in this Agreement for EDA. However, ACE will construct this under a separate agreement to be negotiated and mutually agreed upon the Parties at a later date.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, the Parties do hereby mutually agree and covenant as follows:

ARTICLE 1 DEFINITIONS

ACE’s Construction Supervisor shall mean an ACE employee authorized to act as ACE’s contact for all matters at the Project Site.

Actual Costs means all direct costs, and Indirect Charges as shown on Attachment C (Estimates), incurred to perform the Scope of Work, attached and incorporated as Attachment A herein (“SOW”). Actual Costs shall include Contribution in aid of Construction (“CIAC”) tax gross up on all billable charges, where applicable.

Affiliate of any entity means any other entity that directly or indirectly controls, is controlled by or is under common control with such entity. An entity shall be deemed to have control of another entity if the controlling entity owns 10% or more of any class of voting securities (or other ownership interests) of the controlled entity or possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of the controlled entity, whether through ownership of stock, by agreement or otherwise.

Agreement shall have the meaning set forth for such term in Article 3.1.

Agreement Documents shall have the meaning set forth in Article 3.1.

Agreement Change Authorization Form shall mean the form used by the Parties to effectuate a change in Agreement terms.

Dispute shall have the meaning set forth for such term in Article 5.

Dispute Resolution Procedure shall mean the procedure described in Article 5.

Effective Date shall mean the date upon which the Agreement is executed by the Parties.

Estimated Costs shall have the meaning set forth for such term in Article 2.4.

Extra Work shall mean changes in the amount of Work occasioned by an Agreement Change Authorization Form.

Force Majeure shall have the meaning set forth in Article 9.

Goods shall mean the product(s) identified in the Agreement to be delivered or erected by ACE.

Hazardous Chemicals shall have the meaning set forth in the Occupational Safety and Health Act Hazard Communication Standard (29 CFR 1910-1200).

Hazardous Materials shall have the meaning set forth in Article 4.

Material shall mean any apparatus, products, supplies, documentation drawings and designs to be provided by ACE and incorporated into the Goods and delivered by ACE under the Agreement.

Maximum Costs shall mean Estimated Costs plus 20%, as memorialized in Attachment C.

OSHA shall have the meaning set forth for such term in Article 7.2.

Parties shall mean ACE and Customer when referred to together. When referred to individually, each is sometimes referred to as a Party.

Project shall mean the overall effort of which the Goods provided and Services performed under this Agreement will be a component.

Project Schedule shall mean the MS Project schedule included as Attachment B.

Project Site(s) shall mean the site(s), location(s) and facility(ies) or area(s) of the Project

Scope of Work shall mean a description, included in Attachment A to the Agreement, of the Goods to be delivered and the Services to be performed by ACE under the Agreement.

Services shall mean any and all obligations, duties, and responsibilities necessary to the successful completion of the part of the Project assigned to, or undertaken by, ACE under the Agreement Documents. Services, as used herein, shall not be deemed to include the Goods actually delivered by ACE in compliance with the Agreement.

Subcontractor shall mean an individual, firm, or corporation having a direct agreement with ACE, or with any other Subcontractor of any tier, for the performance of a part of the Work, or any part thereof, including, without limitation, the supply of principal items of Services, Goods, Material and/or equipment to be used in or in connection with the Work.

Taxes shall be interpreted to include all taxes, duties, tariffs, and similar levies, charges, fees or costs, other than those related to income, regardless of nomenclature and method of determination, applied by any and all authorities and jurisdictions to any and all Goods and/or Services furnished in accordance with this Agreement.

Terms shall have the meaning set forth in Article 2.

Terms and Conditions shall mean these terms and conditions.

Work shall mean all of the Goods and Services provided by ACE under the Agreement. The term "Work" shall include the furnishing of all labor, Material, equipment, and other incidentals related to the design phase. Without limiting the generality of the foregoing, the term "Work" also includes, and ACE shall furnish, unless the context clearly indicates otherwise, all or any part of such labor (including the services of

all trades), supervision, methods, Materials, equipment, and transportation, or other facilities as may be necessary to complete the Agreement, whether or not fully listed or detailed in the Scope of Work.

ARTICLE 2 TERMS

- 2.1 ACE shall design the required electric transmission and distribution system facilities as set forth in the Attachment A: Scope of Work and in accordance with all applicable laws and as set forth more fully herein.
- 2.2 Customer shall pay to ACE all actual costs (herein "Actual Costs") incurred by ACE with respect to the Project, provided such Actual Costs shall not exceed Maximum Costs. Actual Costs shall include, but not be limited to, costs associated with design required to perform the Scope of Work. As applicable, Actual Costs shall include also CIAC tax gross up on all billable charges where applicable. Any additional costs exceeding Maximum Costs shall be subject to Customer's Board review and approval. Customer shall have no authorization to pay increased costs until such Board approval is obtained and ACE shall have no obligation to continue to perform the terms of this Agreement until such approval is obtained by Customer and provided to ACE in writing; if approval is not granted, ACE reserves the right to terminate this Agreement for cause. Customer will pay ACE \$2 Million (\$2,000,000) dollars as a deposit (the "Deposit") at execution of this Agreement within 10 days of the Effective Date. EDA shall make monthly payments within thirty (30) days of receipt. Once total reimbursements of Actual Costs exceed the sum of the Maximum Costs less the Deposit amount, ACE will draw down on the Deposit to cover Actual Costs and shall provide EDA with monthly statements showing the application of the Deposit monies. Any Deposit monies that are not used when work is completed shall be applied to the cost of construction should the parties continue with negotiating a separate agreement for construction or returned to EDA should EDA provide notice to ACE that it will not proceed with the construction phase. In the event of termination by either party pursuant to Article 6, Customer shall be reimbursed by ACE within 30 days for any Deposit balance remaining after accounting for Actual Costs.
- 2.3 ACE shall perform the Scope of Work ("SOW"), described on attached Attachment A to accommodate this Project. The estimated time to complete the Project shall be stated in the Scope of Work Attachment A. ACE shall provide Customer with a written update on the design status and shall meet at the minimum on a monthly basis with Customer to review the Project status. Within these updates, ACE will notify Customer of any reasonably anticipated or known impediments to the Project's progress. Upon such notification, the Parties shall determine together the best course of action to complete the SOW, at Customer's cost. Thereafter, Customer shall have the right, at its sole option, to consent to ACE's continuing performance of the SOW or to terminate the Agreement, and Customer shall be liable to ACE for Actual Costs as of the termination date and any such costs necessary to effectuate that termination.
- 2.4 This Agreement includes ACE's current estimate of the costs (the "Estimated Costs") that it will incur to perform the SOW. The Estimated Costs are estimates only and their inclusion in this Agreement does not affect Customer's obligation to pay ACE its Actual Costs.

ARTICLE 3 PRELIMINARY MATTERS

- 3.1 Agreement. The Agreement shall consist of the document executed by both Parties that describes the Scope of Work as well as all Attachments, amendments or modifications thereto, and any agreed upon Agreement Change Authorization Forms. The above documents shall be referred to collectively as the "Agreement Documents".
- 3.2 Unforeseen Conditions. ACE is entering into this Agreement based on the condition of the Project Site, to the extent ACE became aware of it, as of the Effective Date. ACE shall immediately notify Customer of its discovery of any subsurface or latent physical conditions at the Project Site differing from those that were known by ACE on the Effective Date and which may affect ACE's ability to perform the Work, the Estimated Costs or the Agreement Price.

ARTICLE 4 INTENTIONALLY OMITTED.

ARTICLE 5 DISPUTE RESOLUTION

(i) Executive Negotiation. During the first ten (10) days following the delivery of any Dispute notice (and during any extension agreed to by the Parties, the "Negotiation Period") an authorized executive officer of Customer (the "Customer's Executive") and an authorized executive officer of ACE (the "ACE Executive") shall attempt in good faith to resolve the Dispute through negotiations. If such negotiations result in an agreement in principle among such negotiators to settle the Dispute, they shall cause a written settlement agreement to be prepared, signed and dated (an "Executive Settlement"), whereupon the Dispute shall be deemed settled, and not subject to further dispute resolution.

(ii) Non-Binding Mediation is intended to assist the Parties in the resolution of disputes under this Agreement. Within ten (10) business days of submission of a dispute to Non-Binding Mediation, the Parties shall select a mediator by mutual agreement or, if agreement cannot be reached within such time period, the Parties shall promptly request a list of five (5) names of mediators from the American Arbitration Association and select a mediator from such list by mutual agreement within five (5) business days of receipt. Any mediator selected by the Parties shall: (i) be an appropriately experienced and qualified professional; (ii) have no current or ongoing relationship with any Party; (iii) agree to provide a decision within ten (10) business days of the submission to the mediator of the written statement of each Party's respective position; and (iv) be required to execute procurement and compliance forms and enter into a procurement agreement with EDA, in each case in a form acceptable to EDA in its sole discretion.

(iii) Unless otherwise agreed by the Parties, the Non-Binding Mediation shall be conducted in accordance with rules and procedures reasonably determined by the mediator which such rules and procedures shall require that the Parties submit to the mediator, within ten (10) business days of the selection of the mediator, their respective positions, in writing and that the mediator shall render a decision within ten (10) business days of the submission of the written positions of the Parties.

(iv) The Parties shall each be responsible for: (i) their own costs to participate in the Non-Binding Mediation, including the costs for experts, attendees, graphics or otherwise; and (ii) an equal share of the costs: (x) for the services of the mediator; and (y) of any administrative services used for the Non-Binding Mediation, such as conference facilities.

(v) No mediator will have the authority to render a binding decision as to any dispute or to impose a settlement upon the Parties. The Parties may reach a separate agreement in Non-Binding Mediation that will be final and binding on the Parties, subject to any necessary approvals.

(vi) For the avoidance of doubt:

(a) the use of Non-Binding Mediation by the Parties shall not be construed, in whole or in part, as a waiver, release or modification of any provisions of or requirements under the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., including but not limited to N.J.S.A. 59:13-5;

(b) neither the use of Non-Binding Mediation, nor anything in this Section, shall be construed as or constitute a waiver by the Parties of any claim or defense otherwise available in any subsequent legal action, including any defense that any claim or part of a claim fails to comply with the notice provisions of the Contractual Liability Act; and

(vi) Non-Binding Mediation shall not be a prerequisite to the commencement of legal action by either Party.

ARTICLE 6 TERMINATION

6.1 Term. This Agreement shall commence upon the Effective Date and shall remain in effect until the earlier of completion of the Project or other permitted termination under this Agreement, subject to payment obligations under Attachment A.

- 6.2 Termination by Default. Without limiting any other provision of this Agreement, the Parties reserve the right, without any liability or obligation to the other, to terminate all or any part of this Agreement upon written notice to the other in the event of the happening of any of the following:
- (i) Insolvency, the filing of a voluntary petition in bankruptcy, the filing of a petition to be involuntarily declared bankrupt, the appointment of a receiver or trustee, or the execution of an assignment for the benefit of creditors.
 - (ii) A material breach of any of the terms of this Agreement provided however, the non-breaching Party gives notice of such material breach and provides the breaching party thirty (30) days to cure the material breach before the non-breaching party has the right to terminate the Agreement; or
 - (iii) A material failure to comply with or perform any of the other material provisions of this Agreement.
- 6.3 Payment in the Event of Termination. In the event of termination of this Agreement by ACE prior to Final Completion, Customer shall owe ACE reimbursement for all Actual Costs incurred in providing the Services prior to the date of termination plus, only if termination is not due to a default by ACE or, any additional costs reasonably incurred as a result of such termination.

ARTICLE 7 COMPLIANCE WITH LAWS

- 7.1 Compliance with Employment Related Laws. The Parties shall comply with all applicable employment related international, federal, state and local laws, rules, and regulations.
- 7.2 Compliance with Safety Related Laws and Regulations. The Parties shall comply with the applicable federal Occupational Safety and Health Act ("OSHA") Construction Safety and Health Standards, Construction Industry Standards (29 CFR part 1926), General Industry Standards (29 CFR part 190), and all other applicable laws, ordinances, rules, regulations, and orders of any public body having jurisdiction for the safety of persons or property or to protect them from damage, injury, or loss.
- 7.3 Permits and Licenses. Permits and licenses necessary for performance of the Work shall be secured and paid for by ACE, unless otherwise agreed to by the Parties.
- 7.4 Prevailing Wages
ACE shall require that any contract related to the Agreement for work performed on property owned or controlled by the Customer or paid in whole or in part with Customer funds must provide that each worker employed on the project shall be paid not less than the prevailing wage rate for worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25. ACE and any contractors or subcontractors ACE may employ, will comply with the provisions of the Public Works Contractor Registration Act ("PWCRA"), N.J.S.A. 34:11-56.48 et seq., where applicable, including, but not limited to, the requirement that all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for "public work" as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development.

ARTICLE: 8 INTENTIONALLY OMITTED

ARTICLE 9 FORCE MAJEURE

- 9.1 Definition. Neither Party shall be considered to be in default in the performance of its obligations under this Agreement, to the extent that the performance of any such obligation is prevented or delayed by an event of "Force Majeure" which, for purposes of this Agreement, shall mean any event beyond the reasonable control of the affected Party (and the results of such events) including, but not limited to, any war, declared or not, hostilities, belligerence, blockade, revolution, insurrection, terrorism, riot, or public disorder; expropriation, requisition, confiscation, or nationalization; export or import restrictions by any Governmental Authorities; closing of harbors, docks, canals, or other assistances to or adjuncts of the shipping or navigation of or within any place; rationing or allocation, whether imposed by law, decree, or regulation, or by compliance of industry at the insistence of any Governmental Authorities; fire, earthquake, volcano, tide, tidal

wave, or perils of the sea; typhoons, hurricanes, tornadoes, lightning, storms and drought; epidemic, pandemic or quarantine (including, without limitation, conditions that may subsequently arise under the COVID-19 (a/k/a the 2019 Novel Coronavirus) outbreak or any similar disease(s)). A Force Majeure will also include failure of a government agency or other agency having legal jurisdictional authority to grant required permits and/or approvals to proceed with any section of the Project. Notwithstanding this Article 9.1, ACE acknowledges that pursuant to Executive Order 103 (Murphy 2020), New Jersey is presently under a declared State of Emergency, and that pursuant to Executive Order 280 (Murphy 2022), New Jersey is presently under a declared Public Health Emergency. At the time that this Agreement is executed, ACE affirms that it has the ability to complete performance of the Scope of Work at the Estimated Costs.

- 9.2 Notice of Event. If either Party's ability to perform its obligations under the Agreement is affected by an event of Force Majeure, such Party shall promptly, upon learning of such event and ascertaining that it will affect its performance under the Agreement, give notice to the other Party stating the nature of the event, its anticipated duration, and any action being taken to avoid or minimize its effect.
- 9.3 Excuse from Performance. In the event that the performance by either Party or a portion thereof is rendered impossible by a Force Majeure event, that portion of performance so affected shall be deemed terminated, and the Agreement Price shall be adjusted accordingly.

ARTICLE 10 MISCELLANEOUS

- 10.1 Non-Waiver. No waiver by ACE or Customer of any provision of this Agreement shall be effective unless expressly contained in a writing signed by ACE and Customer. Failure by ACE or Customer to enforce any provision of this Agreement or to exercise any right arising out of this Agreement shall not be deemed a waiver of that provision or right, or of any other provision or right, and no waiver by ACE or Customer of any breach shall be construed to be a waiver of any prior or succeeding breach.
- 10.2 Severability. If any term or condition of this Agreement shall be deemed to be unlawful or unenforceable by a Federal or state court or agency of competent jurisdiction, such determination shall have no effect on the validity and enforceability of the other terms and conditions of this Agreement and the challenged term or condition shall be deemed deleted or modified to the extent necessary for such term or condition to be effective to the fullest extent.
- 10.3 Entire Agreement and Interpretation. This Agreement constitutes the entire agreement between the Parties, and supersedes all prior proposals, agreements and understandings, whether oral or written, relating to the subject matter of the Agreement. No amendment to this Agreement shall be effective unless executed by authorized representatives of both Parties.
- 10.4 Representations. Each Party represents and warrants to the other (i) that it has full power and authority to execute and deliver this Agreement and to carry out the actions required of it by this Agreement; (ii) that the execution and delivery of this Agreement and the transactions contemplated hereby have been duly and validly authorized; (iii) that all Agreement Documents will be duly and validly executed by an authorized representative of the Party and constitutes a legal, valid and binding agreement of said Party; (iv) that it is not in violation of any applicable law, statute, order, rule, regulation, or judgment promulgated or entered by any federal, state, or local Governmental Authority, which violation could reasonably be expected to materially adversely affect the performance of its obligations under this Agreement; and (v) that it will comply with all laws, rules, regulations, codes, and standards of all federal, state, and local Governmental Authorities applicable to its compliance with this Agreement.
- 10.5 Independent Contractor. ACE's relationship to Customer under this Agreement shall be that of independent contractor and shall not be construed to constitute ACE, or any of its employees or Subcontractors, as an authorized representative, agent, associate, joint venturer, or partner of Customer.

- 10.6 Use of ACE Methods, Equipment and Facilities. ACE's methods, equipment, and facilities shall, at all times be owned by ACE.
- 10.7 Choice of Law and Venue. This Agreement is to be interpreted and enforced under the laws of the State of New Jersey (without regard to the choice of law provisions thereof), and any dispute involving the Agreement shall be heard in a court of competent jurisdiction in such jurisdiction. The forum and venue for all actions related to the matters which are the subject of this Agreement shall be a court of competent jurisdiction in the County of Mercer and the State.
- 10.8 ACE Remedies. All of the remedies hereunder enjoyed by, or given to, ACE, are cumulative, and are in addition to any other rights or remedies which ACE may have at law, in equity or otherwise, and each such remedy is not exclusive of, and does not limit, any other remedy in any way. The rights and remedies of ACE against Customer shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and any and all claims made or to be made against Customer based in tort law, including but not limited to, costs and expenses, shall be governed by and subject to the provisions of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq.
- 10.9 Assignment. This Agreement is not assignable by either Party without the written consent of the other Party; except, that (1) ACE shall be permitted to assign its rights and obligations hereunder to an Affiliate without the prior consent of Customer and (2) EDA shall have the right to directly assign or transfer its rights and obligations under this Agreement in whole or part to any state entity, without ACE's consent, on thirty (30) days' prior notice to ACE.
- 10.10 Limitation of Liabilities. Neither Party shall be liable to the other for consequential, incidental, punitive, exemplary or indirect damages suffered by said other Party including lost profits or other business interruption damages, by statute, in tort or agreement, under any indemnity provision or otherwise. The liability limitations herein imposed on remedies and the measure of damages shall be without regard to the cause or causes related thereto, including without limitation, either Party's negligence, whether such negligence is sole, joint or concurrent, or active or passive.
- 10.11 Notices. Any notice, demand for information or document required or authorized by this Agreement to be given to a Party shall be given in writing and shall be sufficiently given if delivered by electronic or overnight mail, overnight courier or hand delivered against written receipt, or if transmitted and received by facsimile transmission addressed as set forth below, or if sent to such Party by overnight mail, overnight courier or hand delivery to such other address as such Party may designate for itself by notice given in accordance with this Section 10.11. Any such notice shall be effective only upon actual receipt thereof by the addressee. All notices given by facsimile shall be confirmed in writing, delivered or sent as aforesaid, but the failure to so confirm shall not in any manner render ineffective the original notice. The address for the delivery of notices and bills to each Party and the respective telephone and facsimile numbers are as follows:

(i) For ACE:
Vernita Coverdale
Manager Customer Accounts
Atlantic City Electric Company
500 North Wakefield Drive
P.O. Box 231
Newark, DE 19702
Phone: (302) 451-5305
vernita.coverdale@delmarva.com

With a copy to:
General Counsel
Atlantic City Electric Company
500 North Wakefield Drive
P.O. Box 231
Newark, DE 19702

(ii) For Customer:

New Jersey Economic Development Authority
Attn: Infrastructure Group
P.O. Box 990
Trenton, New Jersey 08625-0990

10.12 ACE will use best efforts to provide advanced notice to Customer of any intended public outreach efforts in relation to the Project – including, but not limited to, disbursement of public notices, planned public hearings, meetings with local officials, and any additional forms of public engagement. ACE agrees to consult with Customer prior to the release of materials or scheduling of any such efforts, and to provide Customer with an opportunity to discuss and/or participate in any such efforts where mutually deemed acceptable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the date last set forth below.

ATLANTIC CITY ELECTRIC COMPANY

Name _____ Date _____
Title/Dept.: _____

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Name: _____ Date _____
Title: _____

ATTACHMENT A: SCOPE OF WORK

I. ACE Design Work for EDA's New Jersey Wind Port

Overall Project Description

The New Jersey Economic Development Authority ("EDA") has applied for 69kV electric service from Atlantic City Electric Company ("ACE") at a new development known as the New Jersey Wind Port. As such, the EDA is effectively the "Customer" requesting electric service for the New Jersey Wind Port project. The New Jersey Wind Port development will provide a location for essential staging, assembly, and manufacturing activities related to offshore wind projects on the East Coast. The New Jersey Wind Port is located within the ACE Service Territory on land owned by PSEG Nuclear to the north of the Hope Creek Generating Station, a nuclear generation facility. The New Jersey Wind Port site will contain factories, warehouses and ancillary structures to support the manufacturing of components for offshore wind generation (e.g. nacelles, blades, towers) and as well as a port for marshalling offshore wind projects.

The EDA intends to construct an interface substation ("Customer Substation") at the New Jersey Wind Port site where a new 69kV line would terminate to provide the single transmission source from ACE. To meet the Customer's proposed load of approximately 28 MVA, the ACE project team looked at options to serve this load based on the three (3) closest ACE Substations; Quinton, Roadstown and Salem. The Salem substation was ruled out due to an imminent planned retirement. The Roadstown substation was not deemed to be an optimal transmission source, due to its distance from the New Jersey Wind Port site as well as a lack of potential reasonable routing options (due to a scarcity of direct roadside paths and numerous environmental restrictions) between both remote ends the substation and the New Jersey Wind Port. The Quinton substation was determined to be the best option as it is geographically closest to the New Jersey Wind Port site; it, has space available for the addition of a new 69kV terminal; and it provides the most feasible options for line routing between the substation and the New Jersey Wind Port.

ACE hired AECOM to perform an Alternative Routing Analysis ("ARA") study for the routing of the new 69kV line between Quinton and the New Jersey Wind Port site. The ARA study has been completed and the preferred route between the two sites has been identified. The new line route measures 11 miles in length and follows approximately 9.8 miles of an existing right of way ("ROW"), (specifically, ACE ROW# 240,) for a retired 69kV line, which was known as the (Quinton-Hancock 69kV line). The retired Quinton-Hancock 69kV line was constructed in the 1960's to provide power to the PSEG Nuclear site during the construction and commissioning of the nuclear reactors. The Quinton-Hancock 69kV line was retired in the 1980's, but most of the wood poles remain in-place to support energized 12kV distribution that still exist on these poles. The old 69kV conductor from the Quinton-Hancock line also remains in place and has been re-purposed by ACE Distribution to serve as an emergency 12kV tie for the distribution system. The remainder of the proposed route follows distribution pole lines through the town of Quinton (approximately 0.5 miles in length, including the new getaway route out of Quinton Substation) as well as a path along the east edge of the PSEG nuclear site (approximately 0.7 miles in length to the approximate location of the proposed Customer Substation).

The proposed 69kV line will cross existing PSEG 500kV ROW areas at a total of four (4) separate locations as shown in the attached KMZ. There are two (2) crossings along Alloway Creek Neck Road where the old, retired Quinton-Hancock 69kV line crossed and ACE currently maintains an aerial crossing for the 12kV line beneath the 500kV conductor. ACE currently assumes that the new crossings will remain aerial as well. The remaining (2) crossings are new, greenfield locations near the perimeter of the Artificial Island site. Based on feedback from the NJ EDA's design consultant, (Moffatt & Nichol), it is assumed that these new, greenfield 69kV crossings of the 500kV ROW areas will need to be constructed via underground transmission cables. Due to possible reliability and protection concerns associated with multiple underground/overhead transitions, also known as (aka "dolphining,"), it is ACE that has assumed that one single underground section that will be used, which will encompass both new, greenfield 500kV ROW crossings as well as the area in between those crossings, (totaling approximately 0.7 miles in length) will be used. The existing infrastructure that will be rebuilt currently carries energized distribution cables and third-party attachments, which will be required to be reconducted as part of this project.

Surveys

To support the design of the transmission line construction, multiple studies and surveys will need to be completed during this design phase. These studies include the following:

- LiDAR Survey
- Right-of-way and property boundary survey
- Geotechnical investigation and soil boring report
- Underground utility investigation
- GPR scan
- Traffic control study
- Wetland delineation
- Plant, and animal survey
- Permitting review and support by an environmental contractor
- Any additional environmental studies, as may be required

After the above studies and design are complete, the following are the assumed construction quantities of material:

- (180,000) LF of Transmission Conductor 69kV 795 “Drake” conductor
- (60,000) LF of .638” 48SM (2,000) LF OPGW. 48 ct. ADSS fiber
- (268) steel poles of various heights, weights, and sizes
- Associated insulators and attachments
- Avian protection as required
- Caisson and drilled pier foundations
- Reconductor approximately (20,000) LF of single-phase copper primary
- Reconductor approximately (27,000) LF of three phase 477 AAC primary
- Reconductor approximately (14,000) LF of single-phase neutral wire
- Install approximately (250) cross-arms
- Replace approximately (30) overhead distribution transformers
- Remove existing distribution poles
- Remove existing approximately (20,000) LF of single-phase copper primary
- Remove approximately 20,000 feet of single-phase copper primary

*Note all quantities, construction methods, required studies and design needs are subject to change.

Future Construction Work

At the ACE-owned Quinton substation, a new terminal will be constructed to support the dedicated line to the New Jersey Wind Port. Building the new terminal, which will be evidenced in a separate agreement, will include installing one (1) 69kV 2000-amp circuit breaker, four (4) 69kV 2000 amp disconnect switches, one (1) 69kV CCVT, the equipment’s associated foundations and steel support structures, the cable, and the required relay and control upgrades.

*Note all quantities, construction methods, required studies and design needs are subject to change.

**In order to complete this work, ACE will require the support of its contractors as most studies, design, and construction are supported by contractors and not by ACE. Contractors are subject to a bidding process and selected competitively. ACE will utilize its standard internal resources which include but are not limited to Project Management, Transmission Engineering, Civil Engineering, Substation Engineering, Distribution Engineering, Environmental Project Management, Construction Management, Real Estate, Government Affairs, Project Controls, Large Customer Accounts, System Protection, Electric Maintenance, Telecomm and Fiber, and others as required. ACE has re-

estimated our original +/- fifty (50%) percent cost estimate to a total of fifty-three million eight hundred thousand (\$53.8) dollars. The most recent estimate is based off of the most recently identified route from the alternative route analysis and gaining understanding of the underground transmission requirements on PSEG's property.

Costs: The total estimated cost to design the transmission line is \$5,136,000, which includes the 20% contingency. The Deposit of \$ 2,000,000 will be paid at execution of the Agreement within 10 days of the Effective Date. After execution and payment of the Deposit, the Parties will determine the amount of subsequent payments and EDA shall make such subsequent payments within the timeframes as requested by ACE. ACE will provide invoices to the EDA. Attachment C provides a breakdown of the Estimated Costs. ACE shall notify Customer, within a reasonable time period upon becoming aware that the Actual Costs of the Project may exceed the Estimated Costs by twenty (20%) percent (that is, the Maximum Costs). Upon such notification, the Parties shall determine the best course of action to complete the SOW, at Customer's cost. Thereafter, Customer shall have the right, at its sole option, to consent to ACE continuing performance of the SOW or to terminate the Agreement, and Customer shall be liable to ACE for Actual Costs as of the termination date and any such costs necessary to effectuate that termination, provided that such costs shall not exceed Maximum Costs.

II. Service Classification; Charges for Service

Customer shall continue to take electric service under the General Service - Primary ("GS-P") Rate Classification and any successor service classification, on the terms and conditions set forth in ACE's Electric Service Tariff on file with the Commission and as such Electric Service Tariff may exist from time-to-time (the "Electric Service Tariff"), which is made a part of this Agreement. Customer shall pay all validly imposed reserved delivery service charges, taxes, fees, penalties, and other charges as provided in this Agreement or under the Electric Service Tariff.

ATTACHMENT B: Estimated Schedule

Activity ID	Activity Name	Original Duration	Remaining Duration	Classic WBS Layout - Beale	Start	Finish	Physical % Complete	Expected Finish	Total Float
75952: 12 Mile 69 KV Line to Artificial Island Windport									
75952 Plan Detailed Project Plan									
75952 Plan Transmission Lines									
A1000	Project Coordination & Oversight	680d	680d	0%	08/15/2021 A	04/30/2024	0%	05/15/2022	0d
75952 Plan Transmission Lines 1. Planning/Study									
A1030	Complete Project Plan	30d	30d	100%	08/15/2021 A	08/20/2021 A	100%	08/20/2021 A	0d
A1040	Determine Routing Methodology	5d	5d	100%	08/15/2021 A	08/20/2021 A	100%	08/20/2021 A	0d
A1050	Perform Routing Alternatives Analysis	60d	60d	100%	08/23/2021 A	10/01/2021 A	100%	10/01/2021 A	0d
A1060	Phase 2 Approval	0d	0d	0%	10/25/2021 A	10/25/2021 A	0%	10/25/2021 A	0d
A1010	Project Start	0d	0d	0%	08/15/2021 A	08/15/2021 A	0%	08/15/2021 A	0d
A1080	Receive Phase 2 Authorization	30d	30d	100%	08/30/2021 A	10/25/2021 A	100%	10/25/2021 A	0d
A1070	Request & Prepare +/- 25% Budgetary Estimate	39d	39d	100%	08/23/2021 A	10/15/2021 A	100%	10/15/2021 A	0d
A1020	Review Existing Route	5d	5d	100%	08/15/2021 A	08/20/2021 A	100%	08/20/2021 A	0d
A1060	Select Route	5d	5d	100%	08/23/2021 A	08/27/2021 A	100%	08/27/2021 A	0d
75952 Plan Transmission Lines 2. Planning/Design									
75952 Plan Transmission Lines 2.1.1. Project Design									
A1210	Complete & Submit Civil Package	24d	24d	0%	11/01/2021	11/07/2022	0%	03/25/2022	370d
A1200	Complete & Submit Underground Package	24d	24d	0%	08/09/2022	09/09/2022	0%	09/09/2022	97d
A1110	Perform 30% Design Constructability Review	2d	2d	0%	01/14/2022	01/18/2022	0%	01/18/2022	91d
A1150	Perform 60% Design Constructability Review	10d	10d	0%	05/19/2022	06/01/2022	0%	06/01/2022	91d
A1170	Perform Biobility Review	5d	5d	0%	07/19/2022	07/22/2022	0%	07/22/2022	97d
A1100	Prepare UG Transmission 30% Design	45d	45d	0%	11/01/2021	01/10/2022	0%	01/10/2022	91d
A1130	Prepare UG Transmission 60% Design	64d	64d	0%	01/31/2022	04/29/2022	0%	04/29/2022	91d
A1160	Prepare UG Transmission 90% Design	31d	31d	0%	06/02/2022	07/15/2022	0%	07/15/2022	91d
A1180	Request & Prepare +/- 10% Definitive Estimate	45d	45d	0%	07/19/2022	09/19/2022	0%	09/19/2022	91d
A1120	Validate UG Transmission 30% Design	8d	8d	0%	01/19/2022	01/28/2022	0%	01/28/2022	91d
A1140	Validate UG Transmission 60% Design	22d	22d	0%	05/02/2022	06/01/2022	0%	06/01/2022	91d
A1190	Validate UG Transmission 90% Design	15d	15d	0%	07/19/2022	08/05/2022	0%	08/05/2022	97d
75952 Plan Transmission Lines 2.1.2. Overhead Design									
A1360	Complete & Submit Lay Down Area Package	31d	31d	0%	10/01/2021 A	11/07/2022	0%	01/10/2022	370d
A1420	Complete & Submit Overhead Package	39d	39d	0%	09/14/2022	11/07/2022	0%	11/07/2022	197d
A1290	Complete Geotechnical Boring Report	22d	22d	0%	04/01/2022	05/02/2022	0%	05/02/2022	344d
A1250	Coordinate & Perform LIDAR Survey	10d	10d	100%	10/15/2021 A	10/26/2021 A	100%	10/26/2021 A	65d
A1430	Design Package Issued (Blectric)	0d	0d	0%	11/07/2022	11/07/2022	0%	11/07/2022	344d
A1220	Evaluate & Award Engineering Design Contract	8d	8d	100%	10/01/2021 A	10/26/2021 A	100%	10/26/2021 A	51d
A1310	Perform 30% Design Constructability Review	2d	2d	0%	01/14/2022	01/18/2022	0%	01/18/2022	61d
A1350	Perform 60% Design Constructability Review	10d	10d	0%	05/19/2022	06/01/2022	0%	06/01/2022	53d
A1330	Perform Additional Studies	65d	65d	0%	01/14/2022	04/18/2022	0%	04/18/2022	354d
A1400	Perform Biobility Review	5d	5d	0%	08/23/2022	08/29/2022	0%	08/29/2022	590d
A1240	Perform Land Survey	21d	21d	50%	11/15/2021 A	01/10/2022	50%	01/10/2022	175d
A1370	Prepare HRE (High Risk Evolution)	60d	60d	0%	06/20/2022	09/13/2022	0%	09/13/2022	43d
A1280	Prepare OH Transmission 30% Design	42d	42d	0%	11/04/2021 A	01/07/2022	0%	01/07/2022	43d
A1320	Prepare OH Transmission 60% Design	65d	65d	0%	01/31/2022	05/02/2022	0%	05/02/2022	344d
A1360	Prepare OH Transmission 90% Design	45d	45d	0%	06/20/2022	08/22/2022	0%	08/22/2022	353d
A1410	Request & Prepare +/- 10% Definitive Estimate	45d	45d	0%	08/23/2022	10/25/2022	0%	10/25/2022	43d
A1300	Validate OH Transmission 30% Design	14d	14d	0%	01/10/2022	01/28/2022	0%	01/28/2022	43d

TASK filter: All Activities

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	Physical % Complete	Expected Finish	Total Prol
75952- 12 Mile 69 KV Line to Artificial Island Windport								
Classic WBS Layout - Beale								
11/29/2021 11:48								
A1340	Validate OH Transmission 60% Design	33d		05/03/2022	06/17/2022	0%		43d
A1390	Validate OH Transmission 90% Design	15d		08/23/2022	09/13/2022	0%		344d
75952-Phas	Transmission Lines 2.1.3 Distribution Design	70d		06/02/2022	09/09/2022			97d
A1450	Complete & Submit Distribution Package	10d		08/25/2022	09/09/2022	0%		97d
A1440	Prepare Distribution Design	60d		06/02/2022	08/25/2022	0%		97d
75952-Phas	Transmission Lines 2.1.4 Electrical Design	60d		11/01/2021 A	01/31/2022	0%	01/31/2022	476d
A1460	Prepare Relay Settings	60d		11/01/2021 A	01/31/2022	80%	01/31/2022	476d
75952-Phas	Transmission Lines 2.1.5 Communication Design	100d		11/01/2021 A	03/29/2022	0%	03/29/2022	461d
A1470	Prepare Telecommunication Design	100d		11/01/2021 A	03/29/2022	20%	03/29/2022	461d
75952-Phas	Transmission Lines 2.2 Permitting & Licensing	333d		09/15/2021 A	04/11/2023	0%	04/11/2023	266d
75952-Phas	Transmission Lines 2.2.1 Environmental Field Studies	206d		09/15/2021 A	07/14/2022	0%	06/15/2022	12d
A1490	Bid, Evaluate & Award Environmental Service Contracts	50d		09/15/2021 A	11/12/2021 A	100%		
A1510	Conduct Cultural Resource Survey	9d		03/02/2022	07/14/2022	0%		12d
A1490	Conduct Environmental Site Assessment	80d		11/01/2021 A	06/15/2022	16.67%	06/15/2022	0d
A1480	Conduct Rare Threatened Endangered (RTE) Species Field Stu	41d		01/18/2022	03/15/2022	0%		21d
75952-Phas	Transmission Lines 2.2.2 Environmental Permits	350d		11/15/2021	04/11/2023			0d
A1560	Coordinate & Receive Federal Permits	20d		03/15/2023	04/11/2023	0%		0d
A1550	Coordinate & Receive State Permits	20d		03/02/2023	03/29/2023	0%		9d
A1520	Obtain Soil Borings Permit	40d		11/15/2021	01/14/2022	0%		65d
A1530	Prepare & Submit Federal Permit Applications	20d		06/16/2022	07/14/2022	0%		0d
A1540	Prepare & Submit State Permit Applications	11d		06/16/2022	06/30/2022	0%		9d
75952-Phas	Transmission Lines 2.2.3 Licenses	0d						0d
75952-Phas	Transmission Lines 2.2.4 Local Approvals	231d		01/19/2022	12/15/2022	0%		344d
A1620	Obtain DOT (Department of Transportation) Permits	116d		07/01/2022	12/15/2022	0%		344d
A1650	Obtain Erosion & Sediment Control Permit	167d		04/20/2022	12/15/2022	0%		344d
A1640	Obtain Incorporated City/County Approvals	116d		07/01/2022	12/15/2022	0%		344d
A1610	Obtain Lay Down Area Permit	125d		01/19/2022	07/15/2022	0%		450d
A1600	Obtain Outage Permits(s)	10d		06/02/2022	06/15/2022	0%		381d
A1670	Obtain Wet Construction/De-Watering Permit	116d		07/01/2022	12/15/2022	0%		61d
75952-Phas	Transmission Lines 2.3 Procure	251d		01/14/2022	01/30/2023	0%		316d
75952-Phas	Transmission Lines 2.3.1 Land or Easement Acquisition	161d		01/14/2022	09/01/2022	0%		416d
A1690	Acquire Lay Down Area	125d		01/19/2022	07/15/2022	0%		450d
A1680	Identify Easement/ROW Options	96d		01/14/2022	06/01/2022	0%		390d
A1700	Secure Easements/Purchase ROW	65d		06/02/2022	09/01/2022	0%		390d
75952-Phas	Transmission Lines 2.3.2 Construction Contractors	130d		06/20/2022	12/22/2022			339d
A1760	Award Lay Down Area Contract	4d		12/16/2022	12/21/2022	0%		61d
A1770	Award Overhead Contract	5d		12/16/2022	12/22/2022	0%		61d
A1780	Award Underground Contract	5d		12/16/2022	12/22/2022	0%		105d
A1720	Bid & Evaluate Lay Down Area Contract	53d		06/20/2022	09/01/2022	0%		416d
A1730	Bid & Evaluate Overhead Contract	26d		11/06/2022	12/15/2022	0%		344d
A1710	Bid & Evaluate Underground Contract	61d		09/20/2022	12/15/2022	0%		91d
A1750	Phase 3 Approval	0d			12/15/2022	0%		91d
A1740	Receive Phase 3 Authorization	61d		09/20/2022	12/15/2022	0%		91d
75952-Phas	Transmission Lines 2.3.3 Material	186d		05/03/2022	01/30/2023			43d
A1810	Long Lead Materials Requested	0d			06/29/2022	0%		43d
A1820	Manufacture Non-Stock Material	146d		06/29/2022	01/30/2023	0%		43d
A1790	Procure Non-Stock Material	39d		05/03/2022	06/27/2022	0%		44d
A1800	Procure Stock Material	40d		05/03/2022	06/29/2022	0%		43d

TASK filter: All Activities

Activity ID	Activity Name	Original Duration	Remaining Duration	Start	Finish	Physical % Complete	Expected Finish	Total Float
75952. 12 Mile 69 KV Line to Artificial Island Windport								
Classic WBS Layout - Beale								
11/29/2021 11:48								
75952.Plan,Transmission Lines.3 Execution								
A1830	Project Construction Coordination & Oversight	211d	211d	03/01/2023	12/29/2023	0%		85d
75952.Plan,Transmission Lines.3.1 Construction Prep								
A1850	Coordinate Construction	33d	33d	03/02/2023	04/17/2023	0%		61d
A1860	Mobilize Construction Crew(s)	12d	12d	03/12/2023	04/17/2023	0%		0d
A1840	Perform Clearing	12d	12d	03/15/2023	03/30/2023	0%		0d
A1870	Perform Construction Survey Staking	22d	22d	03/02/2023	03/31/2023	0%		61d
75952.Plan,Transmission Lines.3.2 Material Delivery								
A1900	Critical Path Materials Received	43d	43d	03/01/2023	04/28/2023	0%		43d
A1890	Deliver Non-Stock Material	43d	43d	03/01/2023	04/28/2023	0%		43d
A1880	Deliver Stock Material	43d	43d	03/01/2023	04/28/2023	0%		43d
75952.Plan,Transmission Lines.3.3 Field Construction								
A2060	Install Cable	128d	128d	05/02/2023	10/31/2023	0%		124d
A2030	Install Conduit	42d	42d	06/01/2023	07/31/2023	0%		61d
A2020	Install Manholes	21d	21d	05/02/2023	06/31/2023	0%		61d
A2050	Perform Restoration	21d	21d	10/03/2023	10/31/2023	0%		124d
75952.Plan,Transmission Lines.3.3.4 Overhead Construction								
A2190	[Enter Descriptive Outage Name] Quinton to Roadstown	5d	5d	04/18/2023	12/29/2023	0%		85d
A2300	Configure EMS	4d	4d	12/01/2023	12/06/2023	0%		172d
A2290	Construction Complete	0d	0d		12/01/2023	0%		3d
A2180	Construction Start	0d	0d		12/01/2023	0%		0d
A2320	Energize Line	5d	5d	12/21/2023	12/29/2023	0%		0d
A2230	Install ADSS (All Dielectric Self Supporting)	21d	21d	10/02/2023	10/30/2023	0%		26d
A2210	Install Calissons	65d	65d	05/01/2023	08/01/2023	0%		43d
A2200	Install Foundations	65d	65d	05/01/2023	08/01/2023	0%		0d
A2380	Install Marling	128d	128d	06/01/2023	12/01/2023	0%		103d
A2280	Install Phase Conductors	33d	33d	10/02/2023	11/15/2023	0%		9d
A2220	Install Poles & Assemblies	64d	64d	06/30/2023	09/29/2023	0%		0d
A2260	Install Static Wire	62d	62d	09/01/2023	11/30/2023	0%		0d
A2250	Install Switch(es)	20d	20d	09/01/2023	09/29/2023	0%		0d
A2310	Perform Testing & Commissioning	10d	10d	12/07/2023	12/20/2023	0%		0d
A2240	Remove Existing Line	42d	42d	10/02/2023	11/30/2023	0%		4d
75952.Plan,Transmission Lines.3.4.1 In-Service								
A2330	In-Service	0d	0d	12/29/2023	12/29/2023	0%		0d
75952.Plan,Transmission Lines.4 Closeout								
A2340	Perform Administrative Close	85d	85d	01/02/2024	04/30/2024	0%		0d
A2350	Perform Construction Close	70d	70d	01/02/2024	04/09/2024	0%		0d
A2360	Perform Project Management Close	15d	15d	04/10/2024	04/30/2024	0%		0d
A2370	Project Close-Out	0d	0d		04/30/2024	0%		0d
75952.Actuals Actuals								
AJ21TN001	EPS Actuals for AJ21TN001 - New 69KV line Quinton-AI	0d	0d	09/09/2021 A	11/01/2021	0%		912d

ATTACHMENT C: ESTIMATES

Discipline	Activity	Estimated Cost	Contingency	Total
Substation	Design and Studies	\$350,000	\$70,000	\$420,000
	Internal Charges	\$120,000	\$24,000	\$144,000
Substation Total		\$470,000	\$94,000	\$564,000
Transmission	Engineering OH	\$290,000	\$58,000	\$348,000
	Engineering UG	\$200,000	\$40,000	\$240,000
	Environmental Cons.	\$570,000	\$114,000	\$684,000
	Soil Borings	\$600,000	\$120,000	\$720,000
	Traffic Study, Guide Rail	\$200,000	\$40,000	\$240,000
	Real Estate Easements	\$100,000	\$20,000	\$120,000
	Survey	\$200,000	\$40,000	\$240,000
	UG Utility, GPR	\$400,000	\$80,000	\$480,000
	Internal Charges	\$200,000	\$40,000	\$240,000
	Trans Total		\$2,760,000	\$552,000
Distribution	Design and Studies	\$200,000	\$40,000	\$240,000
	Internal Charges	\$50,000	\$10,000	\$60,000
Dist. Total		\$250,000	\$50,000	\$300,000
Est. Indirects		\$800,000	\$160,000	\$960,000
TOTAL		\$4,280,000	\$856,000	\$5,136,000

Design Costs

\$ labor, overheads, vehicles, contractors, permits, etc.
 \$ Materials, associated charges
 \$ Subtotal

\$5,136,000 Total cost to Customer

PLEASE NOTE: In the event that actual costs are less than the estimated amount, any overage shall be returned to the Customer. In the event that Actual Costs exceed the Estimated Costs, such excess shall be invoiced by ACE to the Customer.

Costs reviewed/approved by: _____

ATTACHMENT D: DESIGN SPECIFICATIONS AND DRAWINGS

Design Specifications and Drawings will be provided at the 30, 60 and 90% completion phases of this Agreement.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 13, 2022

SUBJECT: End of Waiver of Required Time at a Qualified Business Facility and/or Project Site (collectively “work location”)

Request:

Approval of June 30, 2022 as the end of the waiver of the requirement that a full-time employee spends a certain percentage of their work time at the work location to qualify as an incented position.

Background:

On March 9, 2020, as part of the State’s coordinated response to address the novel coronavirus outbreak, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency, to contain the spread of COVID-19. On March 12, 2020, the Authority notified recipients of awards under the Business Employment Incentive Program (“BEIP”), Business Retention and Relocation Assistance Grant Program (“BRRAG”), Urban Transit Hub Program (“HUB”) and the Grow New Jersey Program (“Grow NJ”) that the requirement in each of the program rules for workers to be at the work location could be waived under certain conditions. At that time, none of the program statutes contained any such requirement.

The legislature then passed P.L. 2021, c.160 on July 2, 2021. That law added or revised definitions that reduced the requirement in the rules for an eligible full-time employee from the 80% standard in the rules to 60% but allowed the existing waiver to continue. Based on P.L. 2021, c. 103, which ended the original Public Health Emergency, the Authority notified its applicants that effective January 1, 2022 this new 60% requirement would go into effect. However, in January 2022 Governor Murphy signed executive order 280 declaring a Public Health emergency as a result of spread of the Covid-19 Omicron variant and signed Executive Order 281, which extended various actions, including the Authority’s waiver, for the duration of this second Public Health emergency. As a result of Executive Order 281, the Authority notified BEIP, BRRAG, HUB, and Grow NJ recipients that its waiver deadline was extended.

The Governor then issued Executive Order 292, which continues the actions listed in Executive Order 281, including the Authority's waiver, until it is expressly revoked by the Authority Board or until the State of Emergency is lifted by the Governor, whichever is sooner.

In order to assist companies to plan as they begin to bring staff back to their offices, companies need to know when this waiver will be terminated and the new statutory 60% requirement will be in effect. Accordingly, Authority staff is seeking approval from the Board for a deadline to the waiver of June 30, 2022 at which time businesses will be required to meet the 60% requirement for full-time eligible employee to be at the work location as described in P.L. 2021, c. 160.

Recommendation:

Approval of June 30, 2022 as the end of the waiver of the requirement that a full-time employee spends a certain percentage of their work time at the work location to qualify as an incented position.



Tim Sullivan, CEO

Prepared by: Bruce Ciallella



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 13, 2022

RE: **Parking Authority of the City of Paterson (“PPA”) - Modification
Mixed-Use Parking Economic Redevelopment and Growth Grant Program
 (“Mixed-Use Parking ERG”)
P45229 / Prod-00184674**

Request

Modify the scope of work of the proposed parking garage and the size of the project. The Project will be either a seven-level, 750 space garage or eight-level, 865 space garage along with 2,768 square feet of retail space. The project costs are estimated at \$42,717,945 with eligible project costs of \$33,065,6021. The ERG tax credit award approved by the Members of the Authority on December 11, 2018 is being reduced by \$2,034,400 to \$28,500,000.

Extend PPA’s Conditions to Maintain Approval due date from December 11, 2021 to December 31, 2022 which includes submitting financing commitments for all Project funding sources consistent with the information provided by the Applicant to the Authority for the Mixed-Use Parking ERG in their modification application dated January 5, 2022.

Background:

On December 11, 2018, the Members of the Authority approved the application of the PPA for a project located at 169 Ward Street, City of Paterson, Passaic County for the issuance of tax credits pursuant to the RES ERG program set forth in the New Jersey Economic Opportunity Act of 2013, P.L. 2013, c. 161 (“Act”). On July 13, 2015, legislation was enacted as P.L. 2015, c. 69 allowing municipal redevelopers to apply for tax credits under the Mixed-Use Parking ERG program for mixed use parking projects. The maximum ERG tax credit shall equal up to 100% of the total eligible project costs allocable to the parking component of the project and up to 40% of the total eligible project costs allocable to the office space / retail component of the project. The total costs of the Project were estimated to be \$43,825,161 and of this amount \$30,802,560 were eligible costs under the Mixed-Use Parking ERG program. PPA was eligible for a tax credit award of 100% of actual eligible Parking costs of \$30,355,710 and 40% of eligible non-parking costs of \$446,850, however the recommended tax credit award was not to exceed \$30,534,450.

The Project site is located at 169 Ward Street in the City of Paterson, Passaic County. The site is approximately 1.94 acres and sits adjacent to the Paterson Train Station in downtown Paterson. The approved project consisted of the demolition of the current parking garage and construction of a nine-

story, 940 space parking structure with 2,500 square feet of street level retail space.

The Authority's approval letter issued on February 26, 2019 provided for conditions to maintain approval to have been satisfied by December 11, 2019. Four, six-month extension requests were approved through December 11, 2021 and now the PPA seeks a modification of the now expired approval and has presented updates to the project scope and funding sources.

Due to rising construction and labor costs resulting from COVID - 19 pandemic induced supply chain issues, PPA has redesigned the parking garage by reducing it from a 940 space facility (9 levels, 8 stories) to a parking facility structure that will be between 750 spaces (7 levels, 6 stories) and 865 spaces (8 levels, 7 stories). Once contractor bids are received and a contract is awarded the exact pricing will be finalized. The revised bid documents prepared by PPA's Construction Manager and Architect will ask prospective bidders to provide bids on the revised designs. The purpose of this approach is to maximize the number of parking spaces in the garage while at the same time keeping the garage within cost parameters that maximizes the value of the ERG tax credits that are monetized into proceeds for the project. Upon receipt and analysis of the bids, the PPA will award the contract to the lowest responsible and responsive bidder whose bid is consistent with the PPA objectives. The Garage space will to include 2,768 square feet of street level retail space.

The PPA filed a modification application with the Authority on January 5, 2022 and the PPA continues to move forward with the necessary documentation and expects to close on bond financing and commence construction in the second quarter of 2022. The demolition of the existing parking garage is underway and expected to be completed by April 15, 2022. In September of 2021 PPA received \$2 million in funding from the City of Paterson. These funds for demolition were designed to partially compensate the PPA for its \$2 million reduction in ERG tax credits being sought under this modification as well as their withdrawal of the previously approved ERG tax credit allocation of \$5,895,001 (PROD 187728) pertaining to PPA's Van Houton Street Garage which was approved by the Members of the Authority on November 14, 2019. The PPA notified the Authority of their intention to reduce the Project ERG tax credit by \$2 million and their withdrawal of all the ERG tax credits awarded to the Van Houton Street Garage project on 12/10/21.

Due to the pandemic, the original financing plan was never consummated. In order to secure a more attractive financing plan, PPA has entered discussions with the City and the County of Passaic. The revised financing plan calls for a bond structure involving the issuance of bonds by PPA via the public markets or private placement. The bonds issued to finance the Ward Street Garage will consist of not less than two series; one to monetize the ERGG tax credits, the proceeds of which will be deposited into a Project construction fund (approximately \$19,900,000) to pay costs of the Garage and the work related thereto, and another series of Gap Bonds, the proceeds of which (approximately \$11,174,000) will also be deposited into the Project construction fund to pay the balance of the construction costs that cannot be funded with the proceeds of the Tax Credit Bonds. It is also noted that there will be another separate series of bonds that will be issued to refund all the outstanding PPA bonds aggregating approximately \$15 million. It is necessary to refund these bonds in order to discharge the lien of the PPA's exiting bond

resolution and in order to revise and/or eliminate onerous financial covenants. The ERG Tax Credit Bonds will be secured by the annual sale of the ERG tax credits purchased by a tax credit investor. In order to mitigate the risk of fluctuating annual tax credit pricing, the PPA has retained a tax credit consultant who is confident that under current market/economic conditions, the PPA can secure favorable pricing for the ten-year tax credit period. The Gap Bonds will be secured by Authority parking system revenues. All the bonds will be secured by full faith and credit guarantees of the City of Paterson.

The current timeline for the project calls for a construction period of 16 months. Commencement of construction is anticipated by May 30th with completion by September 2023. This is consistent with the Mixed-Use Parking requirement for a Temporary Certificate of Occupancy submission date by December 31, 2023 based upon the legislative amendment signed by the Governor in November 2020. Selection of contractor, issuance of bond offering prospectus and sale of bonds are all deliverables that are currently in process and expected to be completed by May 30, 2022. The Authority's approval letter for the ERG tax credits for this project is required to be delivered prior to the sale of bonds to investors as well as the party(s) which will purchase the tax credits annually at an estimated \$0.905 cents per \$1.00 which will mirror the required annual payments on the ERG bonds.

Project Ownership

The Parking Authority of the City of Paterson is a public body politic and corporate, created in 1948 by the City of Paterson and existing under the State of New Jersey's Parking Authority Law 40:11A. The PPA is governed by a Board consisting of seven commissioners. The PPA was created for acquiring, constructing, maintaining, and operating parking facilities. In addition, the PPA helps alleviate traffic congestion caused by excessive parking on the streets and improves the movement of traffic within the City. The PPA owns and or operates 20 parking facilities, a total of approximately 5,000 parking spaces are provided in these facilities. The PPA also has approximately 1,310 meters within the City streets and in designated parking lots throughout the City.

The Laws under which the PPA operates encourages expansion of parking facilities to meet the increasing demand for parking. The PPA recognizes that need continues to aggressively pursue expansion by building additional parking facilities, creating leasable retail space within the facilities, upgrading its current facilities, broadening the range of transportation related services and proposing reasonable adjustments to its rate schedules in order to further enhance its revenue potential. The PPA contributes significant revenues to the City of Paterson while successfully meeting its mandate to provide safe, attractive, conveniently located and competitively priced Public Parking Facilities.

Project Uses

The Applicant's uses for the project as per the original approval on December 11, 2018 were:

<i>Uses</i>	<i>Total Project Costs</i>	<i>MIXED USE PARKING ERG Eligible Amount</i>
Value of Land and Building	\$12,130,000	\$ 0
Construction & Site Improvements	25,273,448	25,273,448
Professional Services	2,125,000	2,125,000
Financing & Other Costs	3,296,713	2,404,112
Contingency	1,000,000	1,000,000
TOTAL USES	\$43,825,161	\$30,802,560

The Applicant proposes to modify the uses for the project as follows:

<i>Uses</i>	<i>Total Project Costs</i>	<i>MIXED USE PARKING ERG Eligible Amount</i>
Value of Land and Building	\$ 6,550,000	\$ 0
Construction & Site Improvements	27,140,000	25,140,000
Professional Services	1,875,263	1,875,263
Financing & Other Costs	5,842,832	4,739,908
Contingency	1,309,850	1,309,850
TOTAL USES	42,717,945	33,065,021

The change in the amount of project costs from the time of the original board approval in December 2018 reflect increased costs of construction materials and labor associated with the Covid 19 Pandemic as well as passage of over three years of time. The revised project is currently seeking contractor bids for an eight-story, parking garage with up to 865 spaces. Alternatively, the PPA has requested that contractors also give bids for a seven-story, parking garage with up to 750 spaces. The PPA will then choose between the two sizes based on the bids received to align the offers with the available financing. ERG eligible project costs exclude ineligible costs aggregating \$781,750 pertaining to escrows and reserves, ERG fees of \$310,342, the demolition costs as well as the \$6.55 million value of the land which is being contributed by PPA (upon which the existing garage is being demolished and the new garage will be built). For a Mixed-Use Parking project, the ERG tax credit shall equal up to 100% of the total eligible project costs allocable to the parking component and up to 40% of the total eligible project costs allocable to the office space / retail component. The total costs of the Project are estimated to be \$42,717,945 which includes \$415,200 representing the de minimis costs for the retail portion. Eligible parking costs are estimated at \$32,649,821 under the Mixed-Use Parking ERG program. PPA is eligible for an award of up to \$32,815,901 in tax credits however the recommendation is to award 100% of actual eligible Parking costs and 40% of eligible non-parking costs, not to exceed \$28,500,000. The PPA has agreed to a lesser tax credit award which is anticipated to be utilized by an unrelated project, Devco Great Falls, LLC (PROD 301573) which may seek an approval from the Authority for a mixed-use parking project in Paterson.

The Applicant's uses for the project as per the original approval on December 11, 2018 were:

<i>Sources of Financing</i>	<i>Amount</i>
Gap Bonds	\$ 13,788,507
ERG Bonds	17,906,654
Equity (via contribution of land)	12,130,000

Total	\$ 43,825,161
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The Applicant proposes to modify the sources for the project to:

<i>Sources of Financing</i>	<i>Amount</i>
Gap Bonds	\$ 12,953,579
ERG Bonds	21,214,366
Equity (Predevelopment Demolition funded by City of Paterson)	2,000,000
Equity (via contribution of land)	6,550,000
Total	\$ 42,717,945

The costs of the demolition of the existing garage are now being funded from grant funds from the City of Paterson to the City of Paterson Parking Authority. Bonds issued by PPA are anticipated to have a par amount aggregating \$31.62 million issued in two series; A] Gap Bonds of \$11,985,000 and B] ERG Tax Credit Bonds of \$19,635,000. Maturities will be 30 years and 10 years, respectively with average coupon of 5%. The proceeds will be used for the Ward Street parking garage project with expected premium of approximately \$2.6 million. \$31.62 million will be deposited into the project fund with an additional \$2,771,142 deposited into a capitalized interest fund, \$781,750 deposited into a debt service reserve fund and \$1.8 million in costs of issuance, underwriter discount and bond insurance.

Simultaneously with the bond issues for the Ward Street Garage, two series of refunding bonds will be issued by PPA; A] \$2,845,000 Taxable and B] \$12,105,000 Tax-Exempt with proceeds to retire all existing bonds owed by PPA. The refunding bonds will have maturities of 13.5 years (10/1/35) at anticipated average coupons of 3.85% and 5%, respectively. The refunding bonds will also have a guarantee from the City of Paterson as supported by resolutions received from City Council. Local Finance Board has provided a resolution from a meeting held 2/9/22 for the issuance of up to \$48 million in bonds. Findings include costs, financing proposal and terms & conditions all being reasonable. PPA has selected an experienced bond underwriter, Raymond James and tax credit purchaser, Dorfman Capital.

Mixed Use Parking ERG projects are required to have a minimum of 20% equity in the Project. The Applicant is contributing the value of the land at the project site (which is owned) with an appraised value of \$6,550,000 as of January 21, 2022. This land equity plus \$2 million contributed by the City of Paterson satisfies the 20% equity requirement.

Original Gap Analysis at time of approval December 11, 2018

Based on the Applicant’s original Application staff analyzed the pro forma and projections of the project and compared the returns with and without the Mixed-Use Parking ERG over 12 years (two years to build and 10 years of cash flow).

Without ERG	With ERG
Equity IRR 8.69%	Equity IRR 13.16%

The Authority received a revised pro forma for the modified project in order to evaluate if there is a shortfall in the project development economics pertaining to the return on the investment for the applicant and their ability to attract the required investment for this project. Staff analyzed this revised pro-forma and compared the internal rate of return with and without the Mixed-Use Parking ERG over 11 years (one year to build and 10 years of cash flow).

Revised Gap Analysis

Without ERG	With ERG
Equity IRR N/A	Equity IRR 5.59%

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. Without the ERG, the ERG bonds could not be issued which would result in a shortfall of approximately \$22 million in funds necessary to construct the new garage. With the benefit of the ERG, the Equity IRR is 5.59% which is significantly below the Hurdle Rate Model provided by EDA’s contracted consultant Jones Lang LaSalle which indicates a maximum IRR of 16.00% for a parking project located in the City of Paterson.

Recommendation

Authority staff has reviewed the modification application for Parking Authority of the City of Paterson and found that it is consistent with eligibility requirements of the Act. It is recommended that the Members approve and authorize the Authority to issue a revised approval letter to the Applicant.

Issuance of the Mixed-Use Parking ERG tax credits is contingent upon the Applicant meeting the following conditions by December 31, 2022:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the Mixed-Use Parking ERG.
2. Evidence of site control and site plan approval for the Project;
3. Copies of all required State and federal government permits for the Project and copies of all local planning and zoning board approvals that are required for the Project.

Tax Credits shall be issued upon:

1. Completion of construction and issuance of a Certificate of Occupancy (no later than December 31, 2023); and
2. Submission of a detailed list of all eligible costs, which costs shall be certified by a CPA and satisfactory to the NJEDA;

It is recommended that the Members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction.

Total Estimated Eligible Project Costs: \$ 33,065,021.

Eligible Actual Credits and Recommended Award: The recommendation is to award 100% of actual eligible parking costs and 40% of the total actual eligible project costs allocable to retail uses, not to exceed \$28,500,000. The \$25,000 modification fee has been paid by PPA.



Tim Sullivan

Prepared by: Michael A. Conte

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 13, 2022

RE: **The New Jersey Film and Digital Media Tax Credit Program:
Delegations of Authority**

Summary

The Members are asked to approve updates to delegations of authority for the New Jersey Film and Digital Media Tax Credit Program. Consistent with the Delegation Policy approved on March 9, 2022, all delegations are to the Chief Executive Officer unless specified otherwise.

Background

The Authority procured the services of a Board Governance consultant to improve overall Board functionality and governance, and to make recommendations to improve board practices, efficiency, and functionality. In November 2019, the Board approved the award of the Board Governance Consulting Services contract to Funston Advisory Services, LLC (Funston). Funston completed a thorough review of the Authority's board governance processes and practices. The Funston team solicited input from staff and Board Members. The Attorney General's Office was also consulted.

In its final written report dated October 9, 2020, Funston provided recommendations related to delegations of authority. Funston provided several specific recommendations for changes to the Authority's policies and processes surrounding delegations of authority:

1. The Board should continue to set policy, consistent with established New Jersey law and precedent but may delegate programmatic transactional approval/rejection decisions to the CEO, subject to any conditions the Board may desire and are necessary to ensure policy oversight, such as dollar thresholds and/or meeting defined criteria or minimum scoring thresholds. The Board may change, revoke, or add delegations at any point, and should review the efficacy of the delegation terms and conditions at least biennially.
2. The Board should, with input from the CEO and relevant committees, review the current thresholds for approval by the Board to determine whether more authority can be prudently delegated to staff.

Staff reviewed these recommendations and, in consultation with the Attorney General's Office, reviewed all existing delegations of authority and identified areas where it may be appropriate to delegate additional authority to staff. This review was performed consistent with the Delegation Policy approved by the Members on March 9, 2022. The intent was to identify areas where staff can handle more routine and non-discretionary decisions. These include areas where the Members have approved (or can set) specific, objective criteria that can be administered and implemented by staff.

Changes to delegations of authority are intended to improve the Authority's operating efficiency and responsiveness in program administration. These new and revised delegations will permit the Board to focus more time and attention on creation of new programs, program oversight and performance evaluation, and strategic planning, rather than reviewing routine individual transactions that do not involve setting policy or warrant consideration by the Board. Thus, as a general rule, Board approval will still be required for any decisions that involve setting policy (including but not limited to the creation of new programs), are not routine, have significant impact to the Authority or the State, or relate to the adoption of rules or changes to fee structures. In contrast, if staff can take action based on specific, objective criteria, or under dollar thresholds or specified circumstances, then delegation of authority is appropriate.

New Jersey Film & Digital Media Tax Credit Program

The Film and Digital Media Tax Credit Program is designed to incentivize production companies to produce film and digital media content in New Jersey. The program provides a transferable credit against the corporation business tax and the gross income tax for qualified expenses incurred for the production of certain film and digital media content. The applicable statute provides that the value of aggregate tax credits allowed in each fiscal year shall not exceed a specified amount. Currently, the annual allocations are: \$100,000,000 for studio partners; \$100,000,000 for film-lease partners; and \$100,000,000 for film projects (encompasses projects that are not studio partner or film-lease partner projects); and \$30,000,000 for digital media projects. Beginning in state fiscal year 2025, in the discretion of the Authority, up to an additional \$350,000,000 may be made available annually to New Jersey studio partners and up to an additional \$100,000,000 may be made available to film-lease partners.

The Members are asked to delegate authority to approve individual applications to the Film and Digital Media Tax Credit program for awards of 10% or less of the Film and Digital Media Tax Credit annual allocation per specific allocation category. For example, in 2022 this means that the CEO (or his or her delegate) would have authority to approve an eligible application for a film application up to \$10,000,000 and a digital media project up to \$3,000,000.

Since the program was reestablished in July 2018, there have been 68 approvals for the Film and Digital Media Tax Credit Program. Of those, 57 have involved applications for the Film Tax Credit that were for less than \$10,000,000, and one (1) application for the Digital Media Tax Credit that was for less than the \$3,000,000. Only eight (8) applications or approximately 12% of the film applications have been in excess of \$10,000,000, and two (2) of the digital media applications were in excess of \$3,000,000.

Over the last four years of the program, the review and approval by the Board has become routine, given each application undergoes many levels of scrutiny including reviews by the NJ Motion Picture and Television Commission, a third-party budget consultant, followed finally by NJEDA staff reviews that include sister agency checks and legal reviews. Although most of the approvals to date have involved film tax credits, digital media projects have the same program criteria and require the same type and level of review.

Board approval will still be required for projects with an award size exceeding 10% of the applicable annual allocation, due to the significance of the award amount and because projects with awards over 10% of each annual allocation category typically comprise more complex projects. Approvals for designation as film-lease partner and studio partner categories will continue to be brought for Board review and action.

The Members are also asked to delegate authority to decline Film and Digital Media Tax Credit 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) and to issue final administrative decisions if applicants appeal from those non-discretionary declinations. This delegation is consistent with other NJEDA programs, where staff handle not just approvals but also declinations and appeals when the bases for the decisions are non-discretionary. When an application does not meet objective eligibility criteria, such as when required documentation is not submitted or the applicant simply is not eligible under Board-approved criteria, then no subjective analysis is necessary, and the application must be declined. Staff already has authority to approve applications that meet eligibility criteria (and are below the Board-set monetary threshold), and this request is consistent with delegations in recent program approvals.

Appeals must be submitted within the timeframe set in the declination letter. If a declination is upheld, the applicant will have the right to appeal to the Appellate Division of the Superior Court of New Jersey.

Recommendation

The Members are asked to approve updates to delegations of authority for the New Jersey Film and Digital Media Tax Credit Program. Consistent with the Delegation Policy approved on March 9, 2022, all delegations are to the Chief Executive Officer unless specified otherwise.



Tim Sullivan, CEO

Prepared by:

Matthew Sestrich, Senior Program Officer, Tax Credit and Financing Programs

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Refunding Bond

APPLICANT: UMM Energy Partners, LLC

PROD-00301877

PROJECT USER(S): Same as applicant

PROJECT LOCATION: 100 Yogi Berra Drive Little Falls Township Passaic County

APPLICANT BACKGROUND:

UMM Energy Partners, LLC a wholly owned subsidiary of DB Energy Assets, LLC was formed in July 2011. In May 2012, the Company entered into a 30-year contract with Montclair State University to design, build, own and operate a central energy center and energy distribution system that will provide chilled water, steam and electricity to the University campus. The Company began commercial operation on September 1, 2013 and is currently providing full energy services to the campus.

This project qualifies for tax-exempt bond financing as an Exempt Public Facility - Local District Heating or Cooling Facility - under Section 142(a)(9) of the 1986 Internal Revenue Code as amended.

OTHER NJEDA SERVICES:

PROD-00170787 Stand-Alone Bond, \$79,405,000. Closed 8/22/2012

PROD-00179453 Large Scale CHP - Fuel Cells Program, \$2,380,100. Closed 6/4/2013

PROD-00174531 Stand-Alone Bond, \$14,750,000. Closed 12/20/2017

No compliance issues have been reported for the projects.

APPROVAL REQUEST:

Authority assistance will enable the Applicant to reduce its interest expense by refunding the outstanding balance of the 2012 bond issue.

The 2022 Bonds are expected to be rated investment grade by Moody's.

The project is being presented for final approval.

FINANCING SUMMARY:

BOND PURCHASER: RBC Capital Markets, LLC (Public Offering)

AMOUNT OF BOND:	Series A: Not to exceed \$62,500,000 Tax-Exempt AMT	Series B: Not to exceed \$22,500,000 Taxable (Part of total \$85,000,000 with Series A Tax-Exempt Bond)
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TERMS OF BOND:	25 years; Fixed interest not to exceed 6.00%.	25 years; Fixed interest not to exceed 7.00%
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ENHANCEMENT: N/A

PRODUCT COSTS:

Principal Amount of Bond to be Refunded	\$75,000,000.00
Finance Fees	\$9,700,000.00
Legal Fees	\$300,000.00

TOTAL COSTS: \$85,000,000.00

PUBLIC HEARING: 4/13/2022

BOND COUNSEL: Chiesa Shahinian & Giantomasi PC

DEVELOPMENT OFFICER: Kathy Durand

UNDERWRITER OFFICER: Steven Novak

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Stand-Alone Bond

APPLICANT: The Atlantic City Sewerage Company.

PROD-00302085

PROJECT USER(S): Same as applicant

PROJECT LOCATION: Various locations throughout the City of Atlantic City, County of Atlantic, New Jersey

APPLICANT BACKGROUND:

The Atlantic City Sewerage Company. ("ACSC"), a wholly owned subsidiary of SR Utility Holding Corp., was founded in 1888 and incorporated in 1890. The Company's principal office is located at 1200 Atlantic Avenue, Suite 300, Atlantic City, New Jersey. ACSC is a privately-owned, public utility corporation of the State of New Jersey that owns and operates a wastewater collection system that is comprised of approximately 100 miles of sewers and seven pumping stations with a combined capacity of 50 million gallons a day. This system services approximately 7,600 customers in its franchised area of Atlantic City. The actual sewerage treatment is provided by the Atlantic County Utilities Authority.

This project qualifies as an Exempt Public Facility- Sewage project under Section 142(a)(5) of the IRS Code and therefore is exempt from the \$20 million capital expenditure limitation under Section 144 of the Code.

OTHER NJEDA SERVICES:

PROD: 086310 Stand-Alone Bond for \$3,400,000, Closed 8/12/1983
PROD: 088429 Stand-Alone Bond for \$5,500,000, Closed 12/23/1991
PROD: 129811 Stand-Alone Bond for \$6,000,000, Closed 11/27/1998
PROD: 131421 Refunding Bond for \$3,655,000, Closed 6/27/2002
PROD: 131417 Stand-Alone Bond for \$2,040,000, Closed 6/27/2002
PROD: 157463 Stand-Alone Bond for \$6,000,000, Closed 12/29/2008
PROD: 167883 Stand-Alone Bond for \$8,000,000, Closed 12/17/2010
PROD: 179756 Stand-Alone Bond for \$6,000,000, Closed 12/30/2014
PROD: 152415 Stand-Alone Bond for \$5,000,000, Closed 8/21/2018
PROD: 129277 Refunding Bond for \$3,000,000, Closed 8/21/2018

No compliance issues have been reported for the bonds.

APPROVAL REQUEST:

Authority assistance will enable ACSC to finance the construction, rehabilitation, and upgrade and expansion of various sections and components of the sewer system required to meet the needs and demands of Atlantic City, while maintaining the environmental integrity of the region. Proceeds of the bond will also pay for the cost of issuance.

This project is being presented for Preliminary Approval.

FINANCING SUMMARY:

BOND PURCHASER:

AMOUNT OF BOND:

TERMS OF BOND:

ENHANCEMENT: N/A

PRODUCT COSTS:

Renovation of Existing Building	\$575,000.00	Upgrade Equipment	\$75,000.00
Construction of Roads, Utilities,	\$3,275,000.00	Interest During Construction	\$200,000.00
		Technology & Networking	\$100,000.00
Engineering & Architectural Fees	\$615,000.00	Environmental Investigation & Remediation	\$2,020,000.00
Finance Fees	\$135,000.00		

Legal Fees \$25,000.00
New Equipment \$1,080,000.00

TOTAL COSTS: \$8,100,000.00

JOBS:

NJ Full Time Jobs at Application Time	Expected New Full Eligible Jobs at Project Site	Full Time Maintained Jobs at Project Site	Estimated Construction Jobs
38	0	0	17

PUBLIC HEARING: April 13, 2022

BOND COUNSEL: Chiesa, Shahinian, Giantomasi PC

DEVELOPMENT OFFICER: Kathy Durand

UNDERWRITER OFFICER: Angela Kiel



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

SUBJECT: NJEDA School Facilities Construction Refunding Bonds PROD-00302128

DATE: April 13, 2022

SUMMARY OF PROPOSED FINANCING

The Authority is being asked to approve the issuance of one or more series of School Facilities Construction Refunding Bonds (the “Refunding Bonds”), and various related actions described herein.

The proceeds of the Refunding Bonds (to be issued in a principal amount not to exceed \$2,000,000,000) will be used to: (i) refund and defease portions of certain outstanding fixed rate School Facilities Construction (“SFC”) Bonds and SFC Refunding Bonds (the “Prior Obligations”); and (ii) pay the costs of issuance of the Refunding Bonds. The proceeds of the Refunding Bonds will be used for refunding purposes within the meaning of the Act (as defined below) and therefore will not count against the statutory debt issuance limitation set forth in the Act.

A list of the universe of existing SFC Bonds and Notes from which the Prior Obligations to be refunded will be selected can be found in the attached Appendix A. The transaction is expected to price in April 2022.

BACKGROUND

Since April 2001, the Authority has issued prior Series of Bonds and Notes in the original aggregate principal amount of \$11,851,804,000 for new money projects under the Educational Facilities Construction and Financing Act, L. 2000, c. 72, as amended and supplemented by L. 2007, c. 137 and L. 2008, c. 39 (the “Act”). Additionally, the Authority has issued prior series of refunding bonds in the aggregate principal amount of \$15,848,785,000 that refunded and restructured all or a portion of various Series of tax-exempt and taxable bonds and notes, previously issued under the Act.

The Authority has \$6,930,283,000 of tax-exempt and taxable bonds and notes outstanding as of March 1, 2022, in connection with the SFC Program.

PLAN OF FINANCE

The financing will be comprised of tax-exempt and taxable refundings on a current delivery basis as well as tax-exempt refundings on a forward delivery basis. The Refunding Bonds will be sold via a combination of one or more public market offerings and one or more direct purchases by Barclays, each pursuant to a bond purchase contract (the "Purchase Contract"). In the public market offering, the Authority sells certain Refunding Bonds to Barclays who resells the bonds to retail investors and institutional investors in the public securities market, while in the direct purchase transaction, the Authority sells certain Refunding Bonds directly to Barclays. As described in detail below, through Treasury's competitive RFQ process, Barclays was selected as the senior manager and direct purchaser for this transaction.

The Refunding Bonds will be issued under and pursuant to the SFC Bond Resolution adopted by the Authority on February 13, 2001, as amended and supplemented (the "Resolution") and will be special, limited obligations of the Authority which are payable primarily from payments to be made by the Treasurer of the State (the "Treasurer") pursuant to the State Contract with the Treasurer, as amended by Amendment No.1 to the State Contract dated April 22, 2010, to implement the funding provisions of the 2008 Amendment to the Act (P.L. 2008, c. 39) (the "State Contract"). The principal or redemption price of and interest on the Refunding Bonds are payable from and secured by a pledge and assignment of the Revenues (as defined in the Resolution), including the amounts received by the Authority pursuant to the State Contract, and other Pledged Property referred to in the Resolution.

This transaction will reshape the existing SFC debt service pattern in a manner that is expected smooth out the SFC debt service pattern and to improve the State's ability to fund new projects from pay-as-you go revenues.

The issuance of the Refunding Bonds is expected to meet the Treasurer's three-pronged test of: (i) generating net present value savings; (ii) generating cumulative savings; and (iii) having no extension of the final maturity of the series of Prior Obligations being refunded.

APPROVAL REQUEST

The Authority is being requested to approve the adoption of the Forty-Fourth Supplemental School Facilities Construction Bond Resolution (the "Forty-Fourth Supplemental Resolution") authorizing the issuance of the Refunding Bonds in an aggregate principal amount of not exceeding \$2,000,000,000 for the purposes of refunding and redeeming a portion of the Prior Obligations as described above.

The Refunding Bonds will be issued as fixed rate tax-exempt and fixed rate taxable bonds and will be subject to the following parameters, all as determined by an Authorized Officer of the Authority, in consultation with the Treasurer, the Office of Public Finance, the Attorney General's Office and Bond Counsel:

1. The final maturity of any Refunding Bonds will not, in aggregate, be later than the final

maturity of the Prior Obligations to be refunded;

2. The true interest cost of the Refunding Bonds issued as federally tax-exempt bonds will not exceed 6% per annum;
3. The true interest cost of the Refunding Bonds issued as federally taxable bonds will not exceed 7% per annum;
4. The Redemption Price for any Refunding Bonds shall not exceed one hundred three (103%) of the principal amount of such Refunding Bond; provided that the Redemption Price of any Refunding Bond issued as a federally taxable Bond subject to optional redemption by the Authority pursuant to a “make-whole” call provision may exceed one hundred three (103%) of the principal amount of such Refunding Bond.

The Authority is also being asked to approve certain actions of, and delegation of actions to, an Authorized Officer of the Authority with information provided by the Treasurer, Bond Counsel, and the Attorney General’s Office and in consultation with the Office of Public Finance, Bond Counsel and the Attorney General’s Office, as applicable, and as approved by the Treasurer, which actions are more fully set forth in the Forty-Fourth Supplemental Resolution, which is incorporated herein by reference, and will be memorialized in one or more Series Certificates, and may include, without limitation:

1. To determine the date of issuance, sale and delivery, the maturity dates, the principal amounts, the interest rates and the redemption provisions of the Refunding Bonds in accordance with the parameters set forth above;
2. To determine the maturities (or portions thereof) of the Prior Obligations to be refunded through the issuance of the Refunding Bonds;
3. To negotiate, execute, deliver and perform the Purchase Contracts relating to the Refunding Bonds;
4. To select and appoint any additional co-managers and/or underwriters upon recommendation of the Treasurer, utilizing Treasury’s competitive RFQ process and in accordance with Executive Order No. 26 (Whitman 1994) (“EO 26”) and Executive Order No. 37 (Corzine 2006) (“EO 37”); and
5. To purchase, or cause the Escrow Agent to purchase, United States Treasury Obligations, State and Local Government Series (“SLGS”) and/or Open Market Securities (“OMS”) with proceeds from any Refunding Bonds in order to provide for the defeasance and/or refunding of the Prior Obligations to be refunded.

In exercising the Authority’s discretion to approve specific transactions authorized under the Forty-Fourth Supplemental Resolution, it is anticipated that the Authorized Officers of the Authority will make decisions on behalf of the Authority in consultation with the Treasurer.

Subchapter 6.7 (Fee Waiver) of the Authority’s rules permits the chief executive officer, with the approval of the Members to waive, postpone or decrease the Authority’s closing fees for State agency projects. In the absence of Board action, the Authority’s statutory bond closing fee will apply. It is recommended the bond closing fee for this transaction be reduced to one-half of the statutory bond closing fee.

Professionals for the issuance of the Refunding Bonds were selected in compliance with Executive Order No. 26. M. Jeremy Ostow, Esq. was selected as Bond Counsel through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed transactions. Through Treasury's competitive RFQ process, the following professionals were chosen: Barclays as the Senior Manager and Direct Purchaser of the Refunding Bonds and U.S. Bank National Association as Trustee, Paying Agent, Registrar, and Escrow Agent. The Forty-Fourth Supplemental Resolution will also authorize Authority staff to take all necessary actions incidental to the issuance of the Refunding Bonds, including without limitation, the selection of additional professionals, if any, pursuant to the Treasury's competitive RFQ process in accordance with Executive Order No. 26 and Executive Order No. 37.

RECOMMENDATION

Based upon the above description, and subject to the criteria set forth above, the Members of the Authority are requested to: (i) approve the adoption of the Forty-Fourth Supplemental Resolution authorizing the issuance of Refunding Bonds in the total aggregate principal amount not to exceed \$2,000,000,000, as well as other matters in connection with the issuance and sale thereof and otherwise described above, including, but not limited to, the entry into the Purchase Contracts; (ii) approve the several actions and delegation of actions to an Authorized Officer of the Authority as may be necessary or advisable in order to issue the Refunding Bonds and to undertake the other transactions described in (i) above on terms which are in the best interest of the Authority and the State; (iii) authorize the use of the aforementioned professionals; and (iv) authorize Authority staff to take all necessary actions incidental to the issuance of the Refunding Bonds; subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Tim Sullivan, CEO

Prepared by: Steven Novak

Appendix A – Universe of Existing SFC Bonds and Notes from Which the Prior Obligations to be Refunded Will Be Selected

SFC Bonds & Notes	Par Amount Outstanding	Dated Date
2005 Series N-1	\$537,680,000	5/23/2005
2012 Series II	113,345,000	5/2/2012
2012 Series KK	14,105,000	10/3/2012
2013 Series I-SIFMA Notes	380,515,000	1/31/2013
2013 Series NN	617,390,000	1/31/2013
2014 Series PP	107,440,000	5/6/2014
2014 Series RR	46,045,000	5/6/2014
2014 Series SS	152,285,000	5/6/2014
2014 Series UU	306,385,000	10/17/2014
2015 Series WW	364,885,000	8/31/2015
2015 Series XX	850,210,000	8/31/2015
2016 Series AAA	287,110,000	12/8/2016
2016 Series BBB	87,915,000	12/8/2016
2016 Series CCC (Taxable)	65,545,000	12/8/2016
2017 Series DDD	282,370,000	10/5/2017
2018 Series EEE	350,000,000	11/28/2018
2018 Series FFF	50,505,000	11/28/2018
2019 Series GGG (Convertible)	434,765,000	6/5/2019
2019 Series HHH-1	21,060,000	6/5/2019
2019 Series HHH-2 (Taxable)	31,225,000	6/5/2019
2019 Series III	100,079,000	4/29/2019
2019 Series JJJ	32,137,000	6/9/2019
2019 Series KKK	54,157,000	3/24/2020
2019 Series LLL	350,000,000	11/19/2019
2019 Series MMM	98,945,000	11/19/2019
2019 Series NNN (Taxable)	246,730,000	11/19/2019
2020 Series OOO	299,250,000	6/15/2020
2020 Series PPP (Taxable)	298,205,000	6/15/2020
2021 Series QQQ	350,000,000	1/14/2021



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: April 13, 2022
SUBJECT: NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal project has been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summary:

HDSRF Municipal Grant:

Product 301883	Somerville Borough (Somerville Landfill - BDA)	\$5,000,000
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Total HDSRF Funding –April 2022	\$5,000,000
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A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation

APPLICANT: Somerville Borough – Somerville Landfill

PROD-00301883

PROJECT USER(S): Same as applicant

PROJECT LOCATION: Route 206 Camden City Camden County

APPLICANT BACKGROUND:

Between November 2006 and December 2017, Somerville Borough received an initial grant in the amount of \$297,045 under P17401, and supplemental grants in the amount of \$209,843 under P17977, \$2,138,292 under P28140, \$72,793 under P29648, \$1,193,833 under P34449, \$4,614,000 under P38794, \$2,793,984 under P40958 and \$392,247 under P42677 to perform Remedial Investigation (RI) and Remedial Action (RA) activities at the project site. The project site, identified as Block 124, Lots 1 & 21 is a former sanitary landfill which has potential environmental areas of concern (AOC's). Somerville Borough currently owns the project site, which is located in a Brownfield Development Area (BDA) and has satisfied Proof of Site Control. It is the Borough's intent, upon completion of the environmental investigation activities, to redevelop the project site for commercial re-use.

NJDEP has approved this supplemental request for RI and Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A. According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects within a BDA. The grant has been calculated off 75% of the RA costs (\$6,666,667). The developer will be providing the balance of funds for the project.

OTHER NJEDA SERVICES:

\$297,045, P17401; \$209,843, P17977; \$2,138,292, P28140; \$72,793, P29648; \$1,193,833, P34449; \$4,614,000, P38794; \$2,793,984, P40958; \$392,247, P42677

APPROVAL REQUEST:

The Borough of Somerville is requesting supplemental grant funding to perform RA in the amount of \$5,000,000 at the Somerville Landfill project site. Total grant funding including this approval is for a total funding to date of \$16,712,037.

FINANCING SUMMARY:

GRANTOR: Hazardous Discharge Site Remediation Fund

AMOUNT OF GRANT: \$5,000,000.00

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

Remedial Action	\$5,000,000.00	EDA Administrative Cost	\$500.00
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TOTAL COSTS: \$5,000,500.00

DATE: 4/1/2022



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

RE: New Jersey Bioscience Center at North Brunswick
691 South Route 1, North Brunswick
Shell Rehabilitation of Building 5

Date: April 13, 2022

Request

I request the Members approve: (1) renovating Building 5 consisting of approximately 25,000 SF at 691 South Route One, at the New Jersey Bioscience Center (“Center”), at a cost of \$4.75 million, consistent with the attached budget, (2) increasing the contract for pre-construction and construction services with Torcon, the Center’s Construction Management firm of record, based upon the previously established fee and incentive clause, and (3) increasing the contract with HDR, the Center’s Architectural and Engineering firm of record, consistent with the attached budget.

Background

Building 5’s History

Building 5 at the Center is over 50 years old and was one of the few existing buildings when the Authority purchased the site in 1995. The previous tenant, Advanced Care Products, vacated the property in 2004 and the building was then gutted. Building 5 has been vacant since then and has seen a variety of tenant interest over time. Building 5 is structurally sound but needs significant renovation to prepare for potential tenant occupancy.

In 2015, we engaged HDR and Torcon to commence design and construction work on Building 5. Real Estate had been negotiating with a prospective tenant and received Board approval to renovate this building to advance the project. The shell design was significantly complete, and we had begun to bid subcontracts through Torcon. The project was put on hold after the lease negotiations didn’t materialize. We are now seeking to re-engage the same firms to continue the renovation of Building 5, with updates to the initial design bringing the drawings up to current code.

Building 5 is not aesthetically pleasing to show prospective tenants due to the current state of disrepair. This renovation would add a new roof, a larger, new window system along with curtainwall entry, and an updated front façade to visually connect with the adjacent Building 4. Building 5 can be internally connected to Building 4 to allow for shared amenity spaces with the current Step-Out Labs. The potential fit-out of Building 5 could accommodate a variety of uses including additional Step-Out Labs, graduate space, biomanufacturing or a university-led innovation center. The proposed rehabilitation will facilitate a much quicker tenant improvement fit out, enabling the Authority to either pursue the innovation center option or market the space to tenants requiring timely occupancy.

Proposed Rehabilitation

NJEDA's costs to renovate the shell and design the interior improvements are estimated at \$4.75 million, as outlined in the attached budget included in Exhibit A to this memo. NJEDA will be completing a shell renovation along with some interior repairs. At the same time, we will be working with HDR to initiate design of the Building 5 interior improvements based upon the potential reuse alternates listed above.

The Architectural and Engineering services performed by HDR will be pursuant to the terms and conditions of the Board-approved contract. HDR's fees are consistent with current market rates, and design fees previously incurred for other construction projects at the Center.

In accordance with previous approvals, Torcon will be constructing the shell and future tenant improvements. Torcon's pre-construction services, including cost estimating, scheduling and value engineering, are estimated at a cost of \$50,000. Torcon's construction management fee, plus an incentive clause for timely completion, are below market rates and consistent with the Board approved contract. Pending final design, the fit-out construction costs will be presented to the Members at a later date.

Recommendation

I recommend the Members approve: (1) renovating Building 5 consisting of approximately 25,000 SF at a cost of \$4.75 million, (2) increasing the contract for pre-construction and construction services with Torcon, the Center's Construction Management firm of record, based upon the previously established fee plus an incentive clause, (3) increasing the contract with HDR, the Center's Architectural and Engineering firm of record, consistent with the attached budget.



Tim Sullivan, CEO

Attachments: Exhibit A Budget
Exhibit B Site Plan
Prepared by: Stephen Martorana
Director, Design & Construction

Bioscience Center Bldg. 5 Rehab
 Board Budget
 4/13/2022

IMPROVEMENTS (Torcon)	\$ BUDGET
Shell Building Upgrades	\$2,600,000
Fit-Out (TBD at later Board meeting)	\$0
Environmental Remediation	\$150,000
Sitework	\$100,000
Subguard Bonding	\$45,000
SUBTOTAL	\$2,895,000

CONSULTING	
Torcon Pre-Construction Fee (Shell)	\$50,000
Torcon CM Construction Fee (Shell)	\$70,000
EDA Insurance (Bldrs Risk)	\$15,000
HDR A/E Fees (Shell)	\$400,000
HDR A/E Fees (Fit-Out)	\$800,000
Environmental Consulting (Shell)	\$75,000
SUBTOTAL	\$1,410,000

FEEES	
Dept. of Labor Workforce Dev. Fee	\$15,000
Permit Fees	\$55,000
Contingency	\$375,000
SUBTOTAL	\$445,000

TOTAL	\$4,750,000
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MEMORANDUM

To: Members of the Board

From: Tim Sullivan, CEO

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge (“NJ AIF”) Grant Appeals

In line with Governor Murphy’s Economic Plan for a stronger, fairer New Jersey economy and goal of establishing New Jersey as the State of Innovation, the New Jersey Economic Development Authority (“Authority”, “EDA”) created and administered the New Jersey Arts and Innovation Festival Challenge Grant (“NJ AIF”) Program to support a festival in New Jersey highlighting creative arts and innovative technologies.

On December 8, 2021, the Members approved the creation of the NJ AIF program to make a \$2,000,000 grant to a business or nonprofit with experience organizing large-scale events for an arts and innovation festival in New Jersey featuring artists, technologists, creatives, entrepreneurs, researchers, and thought leaders to be held in Summer or Fall of 2022.

The EDA received twelve (12) applications by the specified deadline. Of those applications, four (4) applications were incomplete; eight (8) applications met the minimum criteria for scoring review. After scoring, the evaluation committee recommended highest scoring applicant to the Board for award of the grant. All other applicants were recommended for declination. Applicants that were declined have the opportunity to submit appeals, which are reviewed by an independent Hearing Officer.

I reviewed the attached Hearing Officer’s report regarding the appeals for M Plus Communications, DW Cultural Solutions Group, Voice Concepts Incorporated, Camden County Partnership, Bergen PAC, and B Pritchett Music in regards to the NJ Arts and Innovation Festival Challenge Grant Program. I concur with the recommendation that the appeals be denied and the Board’s declination of the NJ AIF applications be upheld.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO



MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant Appeals - Hearing Officer's Recommendations

Background:

In line with Governor Murphy's Economic Plan for a stronger, fairer New Jersey economy and goal of establishing New Jersey as the State of Innovation, the New Jersey Economic Development Authority ("Authority", "EDA") created and administered the New Jersey Arts and Innovation Festival Challenge Grant ("NJ AIF") Program to support a festival in New Jersey highlighting creative arts and innovative technologies. On December 8, 2021, the Members approved the creation of the NJ AIF program to make a \$2,000,000 grant to a business or nonprofit with experience organizing large-scale events for an arts and innovation festival in New Jersey featuring artists, technologists, creatives, entrepreneurs, researchers, and thought leaders to be held in Summer or Fall of 2022.

The Authority accepted applications from December 23, 2021 until January 21, 2022. Upon close, applications were reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. The Board approved four (4) such declines at its March 9, 2022 meeting.

All other applications were reviewed by an evaluation committee, comprised of NJEDA staff across the Authority, using Board-approved evaluation/scoring criteria. The evaluation committee scored each application on a total of six (6) factors, as outlined below. These factors were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The highest scoring applicant, New Jersey Performing Arts Center (NJ PAC), was then recommended to the Board for award of the grant. The other seven (7) applicants were concurrently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons of decline were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

1. Application Process

To be considered a complete application, the submission must have been in compliance with the requirements of the NJ AIF Program Specifications, as approved by the Board on December 8, 2021 and provided on the Authority's website. Each submission must have contained a completed Application which included documentation listing specific experience producing, directing and managing events in New Jersey; key team members; projected budget; projected funding plan; COVID-19 safety plan; diversity and inclusion plan, including a plan to partner with the host municipality or municipalities to provide free or subsidized tickets to residents of the host municipality or municipalities; and advertising/media plan. The applicant must submit a vision statement identifying programming, participants, and locations for the festival and must provide a list of events where they acted as the leadership team, promoted, managed, and/or produced since January 1, 2014. This list must include the location, focus, components, participants, attendance, financials, and a summary of media coverage.

In addition, applicants must have also included a signed letter of agreement stating that the entity assumes all liability for the event and will indemnify, defend, and hold harmless EDA for any action during the Arts and Innovation Festival. They must have provided proof of ability to obtain appropriate insurance coverage as recommended by EDA's insurance broker in the form of a substantially similar insurance policy for an event the applicant has previously organized; and a Strategic Partnership Memoranda of Understanding or Agreement with all named strategic partners on the application.

Lastly, the Grant applications must also have demonstrated that the applicants are legally registered to do business in the State of New Jersey, in good standing with the Department of Labor and the Federal System for Award Management. Applicants were also required to provide a tax clearance certification or verification from the Division of Taxation that the applicant is in good standing and does not have tax debts due to the State.

As stated above, failure to provide any of the above indicated materials or failure to comply with the NJ AIF Program Specifications were grounds for decline of the application. Applicants were provided the opportunity to appeal the decision within five (5) business days of the decline by submitting a written explanation and supporting documents.

2. Evaluation and Scoring Criteria

Once the Program Staff had initially reviewed and confirmed that the application submitted has all of the necessary material needed to be a complete application, the proposal was then reviewed and scored by the evaluation committee. All applications were reviewed and scored after the deadline of January 21, 2022.

As part of its review and evaluation, the Committee was given a scoring rubric sheet which is designed to give the scoring committee guidance on the process for scoring. The rubric also provided the committee with a set of pre-established evaluation criteria, which included six (6) factors. These six factors were provided to each applicant during the application process. The

rubric provided specific guidelines to be used in determining the applicants score and breaks down the minimum scoring requirements for each question.

To be considered for award of this grant, an application must have achieved or exceeded an overall score of fifty (50), with 100 being the highest rating score. The factors, and the maximum points associated with each, are listed here:

1. Past Experience (maximum 55 points). An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.
 - a. Number of events since 1/1/2014 with attendance of 5,000 or more (4 points per event; maximum 20).
 - b. Number of events since 1/1/2014 with attendance of 1,000 or more that took place in New Jersey (2 points per event; maximum 10)
 - c. Elements of event(s). Element must be featured in at least one event the applicant organized. (5 points per element; maximum 25)
 - i. Live music
 - ii. Keynote speaker(s)
 - iii. Tech demonstrations
 - iv. Trade show(s)
 - v. Panel discussions
2. Vision Statement (up to 4 points each; maximum 20 points). An application that does not include this section will be automatically disqualified and considered ineligible regardless of other materials provided.
 - a. Demonstrates effective plan to promote New Jersey as a destination for artists and creative businesses.
 - b. Demonstrates effective plan to promote New Jersey as a destination for innovation economy businesses and investors.
 - c. Demonstrates effective plan to attract tourists from throughout New Jersey and neighboring states.
 - d. Includes outreach plan that will generate local and national publicity.
 - e. Aligns with New Jersey's vision for stronger, fairer economic growth.
3. Fundraising Plan (10 points)- plan to raise all funds necessary to cover any budget items in excess of \$2,000,000.
4. Plan to coordinate with host municipality or municipalities to provide free or subsidized tickets to residents of host municipality or municipalities (5 points).
5. COVID-19 safety plan in compliance with all relevant executive orders, laws, and other guidelines applicable at the time of application (5 points).
6. Diversity and inclusion plan that sets forth strategies the applicant will implement related to hiring of minority persons and women across all staff, presenters, and performers (5 points).

In line with Governor Murphy and the EDA's goals of promoting New Jersey businesses and artists, applicants with experience organizing and managing events in New Jersey were scored higher than those that have not organized events in the State.

The EDA received twelve (12) applications by the specified deadline. Of those applications, four (4) applications were incomplete; eight (8) applications met the minimum criteria for scoring review. After scoring, the evaluation committee recommended highest scoring applicant to the Board for award of the grant. All other applicants were recommended for declination.

Notices were sent to all applicants on March 10, 2022. The EDA received six (6) appeals during the appeal period.

Appeals

Following receipt of the appeals, a Hearing Officer was assigned to review each appeal and provide a recommendation. For consideration today are recommendations regarding each of the below appeals. The Hearing Officer recommends that all six (6) appeals be denied and the Board affirms its prior declination of the below six (6) applicants for the NJ Arts and Innovation Festival Challenge Grant.

1. M Plus Communications:

Applicant, M Plus Communications, is appealing the declination of its Grant application for failure to achieve the highest score. Applicant scored 51 out of 100, while the winning applicant, NJ PAC, achieved the highest score of 97 out of 100. Applicant received a declination letter dated March 10, 2022, advising that its application was declined for not having achieved the highest score. Applicant did not provide any specific appeal grounds as to its scoring and review of the scoring sheets confirmed that there were no obvious irregularities. The Hearing Officer recommends that M Plus Communications' appeal be denied, and the Board's declination of M Plus Communications' application be upheld.

2. DW Cultural Solutions Group:

Applicant, DW Cultural Solutions Group, is appealing the declination of its Grant application for failure to achieve the highest score. Applicant scored 79 out of 100, while the winning applicant, NJ PAC, achieved the highest score of 97 out of 100. Applicant received a declination letter dated March 10, 2022. Applicant did not provide any specific appeal grounds as to its scoring and review of the scoring sheets confirmed that there were no obvious irregularities. The Hearing Officer recommends that DW Cultural Solutions Group's appeal be denied, and the Board's declination of DW Cultural Solutions Group's application be upheld.

3. Voice Concepts Incorporation:

Applicant, Voice Concepts Incorporation, was declined because its application was incomplete; it failed to provide appropriate proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specifications. Applicant received a declination letter dated March 10, 2022 and appealed. Upon review of the application, the Hearing Officer confirmed that the applicant failed to provide appropriate proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specifications. The Hearing Officer recommends that Voice Concepts Incorporation's appeal be denied, and the Board's declination of Voice Concepts Incorporation's application for failure to submit a complete application be upheld.

4. Camden County Partnership:

Applicant, Camden County Partnership, was declined because its application was incomplete; it failed to provide a Memorandum of Understanding ("MOU") or any formal agreement, proving a strategic partnership with the named Strategic Partner on the application, Camden County. Applicant received a declination letter dated March 10, 2022 and appealed. Upon review of the application, the Hearing Officer confirmed that during the application process, Program Staff requested a signed MOU memorializing the strategic partnership with Camden County, however, the applicant did not provide the necessary material. Applicant's failure to provide an MOU or signed agreement between it and the named Strategic Partner, as required by the NJ AIF Program Specifications, resulted in the application being incomplete. The Hearing Officer recommends that Camden County Partnership's appeal be denied, and the Board's declination of Camden County Partnership's application for failure to submit a complete application be upheld.

5. Bergen PAC

Applicant, Bergen PAC, was declined because its application was incomplete; it failed to provide a valid tax clearance certificate, as required by the Program Specification. Applicant received a declination letter dated March 10, 2022 and appealed. Upon review of the record, the Hearing Officer confirmed that the applicant was unable to provide a tax clearance certificate in time for submission. Applicant's failure to provide a valid tax clearance certification or verification, as required by the NJ AIF Program Specifications, resulted in the application being incomplete. The Hearing Officer recommends that Bergen PAC's appeal be denied, and the Board's declination of Bergen PAC's application for failure to submit a complete application be upheld.

6. B Pritchett Music

Applicant, B Pritchett Music, was declined for two reasons: (1) failure to provide a valid tax clearance and (2) failure to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specification. Applicant received a declination letter dated March 10, 2022 and appealed. Upon review of the record, the Hearing Officer determined that the application should not have been declined for failure to provide tax clearance, as applicant provided appropriate proof of tax clearance in its application, in accordance with the NJ AIF Program Specifications.

However, B Pritchett Music's application was still incomplete, as the applicant failed to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014. At the time the application was submitted the applicant did not provide sufficient evidence of a such event(s) with the final festival attendance total of greater than 5,000 and its application was appropriately declined. The Hearing Officer recommends that B Pritchett Music's appeal be denied, and the Board's declination of B Pritchett Music's application be upheld.

Recommendation:

As a result of careful consideration of the above appeals, it is recommended that the Members deny all six (6) appeals and uphold the declination of the above six (6) applicants for the NJ Arts and Innovation Festival Challenge Grant.

Gisselle Vega

Gisselle Vega
Hearing Officer



MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation - M Plus Communications

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of M Plus Communications' application to the New Jersey Arts and Innovation Festival ("NJAIF") Challenge Grant and deny applicant's appeal.

Purpose:

M Plus Communications' application to the New Jersey Arts and Innovation Festival Challenge Grant was declined based on the applicant's failure to achieve the highest score. Applicant scored 51 out of 100. The winning applicant, New Jersey Performing Arts Center (NJ PAC), achieved the highest score of 97 out of 100.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer's Discussion and Analysis:

Applicant, M Plus Communications, is appealing the declination of its Grant application for failure to achieve the highest score. Applicant scored 51 out of 100, while the winning applicant, NJ PAC, achieved the highest score of 97 out of 100. Applicant was subsequently declined and received a declination letter dated March 10, 2022, identifying that they were declined for not having achieved the highest score.

On March 16, 2022, applicant submitted an appeal letter via email. In its appeal, applicant highlighted its progress within their company since the submission of the application. M Plus Communications highlighted its growing relationships with NJ partners and offered a new proposal and presentation, for a subset of the festival called "The Phoenix Project" which is meant to "Beautify NJ through art and technology," which they believe could be incorporated into their original Arts & Innovation Festival proposal.

As noted previously, for the purposes of this appeal, any written explanation and documentation must pertain to the date the application was submitted, and new documentation and information cannot be considered. Applicant's appeal does not provide any particular grounds for appeal of their declination based on its scoring, but rather confirms their growing relationships and provides a new proposal that cannot be considered.

Although Applicant did not address any specific scoring issues or grounds for appeal based on appellant's own scoring, the evaluation criteria and all of the scoring sheets were reviewed to ensure that there were no apparent irregularities. As noted previously, evaluation criteria was established prior to the receipt of proposals. The evaluation committee reviewed all responsive proposals and each was scored independently. Review of the scoring sheets confirmed that there were no apparent irregularities. As appellant has not identified any grounds justifying the overturning of its declination based on scoring.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of M Plus Communications' application was proper and should be upheld.

Recommendation:

As a result of careful consideration, it is requested that M Plus Communications' appeal be denied, and the Board's declination of M Plus Communications' application be upheld.

Gisselle Vega

Gisselle Vega
Hearing Officer

MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation - Voice Concepts Incorporated

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of Voice Concepts Incorporated's ("VCI") application to the New Jersey Arts and Innovation Festival ("NJAIF") Challenge Grant and deny applicant's appeal.

Purpose:

Voice Concepts Incorporated's application to the New Jersey Arts and Innovation Festival Challenge Grant was declined based on the applicant's failure to provide a narrative in their application that described the previously worked on festival or event with a final attendance total of greater than 5,000, as required by the NJ AIF Program Specifications.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer's Discussion and Analysis:

Applicant, Voice Concepts Incorporated, is appealing the declination of its Grant application due to the applicants failure to provide a narrative in its application that described the previously worked on festival or event with a final attendance total of greater than 5,000, as required by the NJ AIF Program Specifications. Applicant was received a declination letter dated March 10, 2022.

On March 11, 2022, applicant submitted an appeal via email and attached the PDF Presentation of its initial proposal. The PDF Presentation included reproductions of invitations/flyers for events, promotional photos of artists and alleged partnerships. Appellant argues that these images are "highlights" of past major national event productions which should sufficiently demonstrate their experience in organizing and executing at least one (1) event with an attendance of 5,000 or more in the last 7 years.

In the March 11th appeal email, appellant also indicated that in 2014 and 2020 they partnered with Taste of The NFL, which was a Live Entertainment segment of "what is considered to be the largest Food & Wine Tasting Event in the USA." Applicant claims this event had more than 5,000 people in attendance. However, this narrative or any identification of attendance size for any noted events was not provided at the time the application was submitted.

Appellant also provided a follow-up email correspondence wherein they raised concerns that the Appeals email address identified in the declination letter was incorrect and that the proposed winner did not have the venue capacity to have held the required events. We note that the email address identified in the declination letter contained an error and applicants who had not yet appealed were provided with the correct address and given additional time to appeal.

The NJ AIF program specifications, available on the NJEDA website, explicitly state that the application must include a narrative that describes the previously worked on festival(s) or event(s) held after January 1, 2014, with specific information, including Festival Attendance Totals of 5,000 or greater. Appellant's submission included promotional materials for events allegedly held without any reference to attendance. There was no narrative provided in Voice Concepts Incorporated's submission identifying the attendance at any of the events identified, but rather provided promotional materials with the expectation that Authority staff would assume that these events exceeded the minimum attendee requirement of 5,000. Voice Concepts Incorporated did not comply with the Specifications by failing to provide the necessary information on its application and their application was appropriately declined.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of Voice Concepts Incorporated's application was proper and should be upheld.

Recommendation:

As a result of careful consideration, it is requested that Voice Concepts Incorporated's appeal be denied, and the Board's declination of Voice Concepts Incorporated's application for failure to submit a complete application be upheld.

Gisselle Vega

Gisselle Vega
Hearing Officer



MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation – Camden County Partnership

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of Camden County Partnership's application to the New Jersey Arts and Innovation Festival (NJAIF) Challenge Grant and deny applicant's appeal.

Purpose:

Camden County Partnership's application to the New Jersey Arts and Innovation Festival Challenge Grant was declined based on the applicant's failure to submit a complete application - specifically, failure to provide documentation, such as Memorandum of Understanding ("MOU") or any formal agreement, proving a strategic partnership with the named Strategic Partner on the application, Camden County.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer’s Discussion and Analysis:

Applicant, Camden County Partnership, is appealing the declination of its NJ AIF Grant application. The decline was based on the applicant’s failure to submit a complete application - specifically, failure to provide a Memorandum of Understanding (“MOU”) or any formal agreement, proving a strategic partnership with the named Strategic Partner on the application, Camden County.

In Camden County Partnership’s initial application, Camden County was named as a Strategic Partner and was also identified with respect to the COVID Plan and Safety Plan and identified as a co-host on its past events, however, an MOU was not included as required by the Program Specifications.

The NJ AIF Program Specifications, in pertinent parts, reads as follows:

“Strategic partnership must be recognized by a memorandum of understanding or a written agreement between the partner and the applicant and [must] be included in the application.”

On February 14, 2022, Program Staff reach out to the applicant, requesting a signed MOU or signed Agreement with their identified strategic partner. On February 16, 2022, Applicant advised the Program Staff, via email, that a signed MOU memorializing the strategic partnership with Camden County had to be approved by the county’s board of commissioners at their regular meeting on March 16, 2022, approximately two (2) months after the stated deadline of January 21st. Therefore, the applicant was not able to provide a signed agreement at the time of submission.

Applicant was subsequently declined and received a declination letter dated March 10, 2022, the declination letter read as follows:

Applicant failed to complete application due to missing or incomplete documentation:

- (1) Failed to provide documentation proving a strategic partnership
 - (a) Applicant failed to show proof of hosting, organizing or managing one event since 1/1/2014 with a total attendance of greater than 5,000 persons
 - (b) Applicant failed to provide the following application components:
 - a. Security Plan
 - b. COVID Plan

On March 14, 2022, applicant responded to the NJEDA declination letter via email and attached a copy of its original application. In the appeal email, applicant provided precise page numbers demonstrating where the proposed Security Plan and proposed COVID Safety Plan were located within the application. However, the reason for the declination was not addressed. Hearing Officer reviewed the declination letter and acknowledges that the declination letter was not clear as to the declination reason. This was reflected in applicant's appeal, which did not address the lack of MOU, but only its Security and COVID Safety Plan. The declination letter identified the failure to provide documentation proving a strategic partnership as the reason for decline, but then identified three areas in its application where the identified Strategic Partner was contributing. Without documentation proving a strategic partnership, these areas of the initial submission that relied on the Strategic Partner's support were not substantiated. The March 9, 2022 Board Memorandum clearly identified the reason for the decline (failure to provide the documentation proving a strategic partner.) The language in the declination letter suggested that the three unsupported areas were individual declination reasons.

Due to this lack of clarity on the declination letter, on March 16, 2022, Hearing Officer reached out to the appellant to reiterate the reason for decline using the March 9, 2022 Board Memorandum wording, which clearly articulated the reason for the applicant's denial which was for failure to provide a Memorandum of Understanding ("MOU") or any formal agreement, proving a strategic partnership with the named Strategic Partner on the application, Camden County, which was identified in its proposal as a partner in events, the Security Plan and the COVID Safety Plan. Hearing officer gave the applicant another opportunity to address the proper declination reason by providing a Memorandum of Understanding or any formal agreement entered into between Camden County Partnership and its identified Strategic Partner that was in effect at the time of the application. Applicant again did not provide a signed agreement.

Applicant's failure to provide an MOU or signed agreement between Camden County Partnership and the named Strategic Partner, as required by the NJ AIF Program Specifications, resulted in the application being incomplete.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of Camden County Partnership's application was proper and should be upheld.

Recommendation:

As a result of careful consideration, it is requested that Camden County Partnership's appeal be denied and the Board's declination of Camden County Partnership's application for failure to submit a complete application be upheld.

Gisselle Vega

Gisselle Vega
Hearing Officer

MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation - Bergen PAC

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of Bergen PAC's application to the New Jersey Arts and Innovation Festival (NJAIF) Challenge Grant and deny applicant's appeal.

Purpose:

Bergen PAC's application to the New Jersey Arts and Innovation Challenge Festival Grant was declined based on the applicant's failure to provide a valid tax clearance, as required by the Program Specifications.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer's Discussion and Analysis:

Applicant, Bergen PAC, appeals the declination of its NJ AIF Grant application. The decline was based on the applicant's failure to submit a complete application. Specifically, applicant failed to provide a valid tax clearance, as required by the Program Specifications. The NJ AIF Program Specifications, in pertinent parts, reads as follows:

“Satisfaction of the requirement by the New Jersey Division of Taxation with regard to taxes, which may be through a tax clearance certification or verification from the Division of Taxation that the [sic] is in good standing and does not have tax debts due to the State.”

At the time of the application, applicant did not provide a valid tax clearance by the New Jersey Division of Taxation. Applicant instead provided a statement explaining that the NJ Tax Clearance Certificate request was “pending”, and applicant was not going to be able to provide the necessary document by the grant deadline. Affixed to that statement was a PDF copy of a completed Application for Tax Clearance form as well as a copy of a \$200.00 check. Applicant was subsequently declined and received a declination letter dated March 10, 2022.

In its appeal email, dated March 16, 2022, applicant responded to the NJEDA declination letter conceding that, “[they] had some technical difficulties in securing the tax clearance within the required timeframe” and that it was “preparing to submit everything to the appeal email address in hopes that [the] application can still be considered for a full review.”

On March 16, 2022, the applicant was contacted by the Hearing Officer requesting the documents referenced in the appeal email as they were not provided. Applicant was given until the end of business day Monday, March 21, 2022, to submit the documents referenced in its appeal. On March 21, 2022, Applicant responded via email reiterating that as a result of “technical issues with the New Jersey Division of Taxation website and an unforeseen error made by [the] payroll contractor,” Bergen PAC was not able to obtain a valid tax certification in time for submission. Applicant also advised that while attempting to obtain the tax certification, a representative from the New Jersey Division of Taxation brought to their attention that Bergen PAC's payroll contractor failed to file the 2021 second and third quarter payroll tax returns, which further delayed the process of received the tax clearance certificate. Applicant subsequently remedied this discrepancy and received a tax clearance certificate on March 28, 2022. Applicant provided email correspondence between Bergan PAC, New Jersey Division of Taxation and its payroll contractor as proof of the delay. However, as noted above, any submission showing the resolution of a past issue will not be considered for purposes of this appeal. Applicant did not provide a valid NJ Tax

Clearance Certificate dating to back to the date of submission, as required by the Program Specifications. Therefore, the applicant's application is incomplete.

Applicant's failure to provide a valid tax clearance certification or verification, as required by the NJ AIF Program Specifications, resulted in the application being incomplete.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of Bergen PAC's application was proper and should be upheld.

Recommendation:

As a result of careful consideration of the above appeal, it is requested that Bergen PAC's appeal be denied, and the Board's declination of Bergen PAC's application for failure to submit a complete application be upheld.

Gisselle Vega

Gisselle Vega
Hearing Officer



MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation- B Pritchett Music

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of B Pritchett Music's application to the New Jersey Arts and Innovation Festival (NJAIF) Challenge Grant.

Purpose:

B Pritchett Music's application to the New Jersey Arts and Innovation Festival Challenge Grant was declined based on the applicant's failure to submit a complete application. Specifically, as stated in the declination letter, the applicant was declined for two reasons: (1) failure to provide a valid tax clearance and (2) failure to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specifications.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on

scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer's Discussion and Analysis:

Applicant, B Pritchett Music, appeals the declination of its NJ AIF application. The decline was based on the applicant's failure to submit a complete application. Specifically, as stated on the declination letter, the applicant was declined for two reasons: (1) failure to provide a valid tax clearance and (2) failure to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specifications.

First, with respect to tax clearance, in reviewing the application, it was found that the applicant provided a typed letter asserting that they were unable to provide a valid tax clearance certificate. However, in the alternative, in its initial submission, applicant provided an email dated January 20, 2022, from the New Jersey Division of Taxation, confirming that the applicant was cleared for the Business Assistance Clearance Certificate and that the Certificate would be available 3-7 days later. On March 20, 2022, NJEDA received the appellant's formal appeal and a tax certification letter dated March 18, 2022, via email.

Per the program specifications, the email correspondence from the NJ Division of Taxation that was initially provided in its application serves as appropriate verification that the business is in good standing. As such, the application should not have been declined for this reason, as B Pritchett Music provided appropriate proof of tax clearance in its application.

However, despite that requirement being met, applicant's application was still considered incomplete as the applicant failed to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014. In the application, applicant provided a narrative under the heading of "Past Projects" which specified that the appellant organized an event with the assistance from members of the community where more than 2,500 people were in attendance. Applicant did not specify any other events organized with attendance of greater than 5,000 people in the application. Although applicant did provide proof of a past event, the number of attendees for that event was not enough to satisfy the 5,000-attendee minimum. Due to the applicant's failure to provide proof of one (1) event with greater than 5,000 in attendance on or after January 1, 2014, as required by the NJ AIF Program Specification, appellants application was subsequently declined.

In the appeal email received on March 20, 2022, applicant provided narrative of five (5) additional organized events with attendees of greater than 5,000. However, for the purposes of this appeal, this new information that was not provided with its initial submission cannot be considered. At the time the application was submitted the applicant did not provide sufficient evidence of a worked-

on festival(s) or event(s) with the final festival attendance total of greater than 5,000 and its application was appropriately declined.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of B Pritchett Music's application was proper and should be upheld.

Recommendation:

As a result of careful consideration, it is recommended that B Pritchett Music's appeal be denied and the Board's declination be upheld.



Gisselle Vega
Hearing Officer



MEMORANDUM

To: Tim Sullivan, CEO

From: Gisselle Vega, Hearing Officer

Date: April 13, 2022

Subject: NJ Arts and Innovation Festival Challenge Grant
Hearing Officer's Recommendation – DW Cultural Solutions Group

Request:

It is recommended that the members consent to the Hearing Officer's recommendation to uphold the Board's declination of DW Cultural Solutions Group's application to the New Jersey Arts and Innovation Festival (NJAIF) Challenge Grant and deny applicant's appeal.

Purpose:

DW Cultural Solutions Group's application to the New Jersey Arts and Innovation Festival Challenge Grant was declined based on the applicant's failure to achieve the highest score. Applicant scored 79 out of 100. The winning applicant, New Jersey Performing Arts Center (NJPAC), achieved the highest score of 97 out of 100.

Background:

As noted in the cover memo, NJAIF is a competitive grant that provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events, to be used to produce an Arts and Innovation Festival in 2022. Applications were accepted from December 23, 2021 until January 21, 2022, on a rolling basis. Upon close, applications were first reviewed for completeness. If an applicant's submission was deemed incomplete, the applicant was recommended for decline for failure to provide a complete application. There were four (4) such declines brought to the Board for declination at the March 9, 2022 Board meeting.

However, if the Program Staff confirmed that a completed application had been submitted, the application is then scored by an evaluation committee. During this second review process, the applicant is scored on a total of six (6) factors, which were made publicly available in the board memo dated December 8, 2021 and were detailed in the application instructions and program specifications, all of which were posted to the Authority's website. The Authority scored eight (8) applications. The highest scoring applicant was then recommended to the Board for award of the grant. The other seven (7) applicants were subsequently recommended for declination based on scoring.

All applicants that were declined were given the opportunity to appeal and submit a written explanation and provide necessary documentation to verify that the reasons for the declination were inaccurate. We note that this explanation and documentation was to be related to the date that the application was submitted and any submissions showing the resolution of past issues would not be considered.

Hearing Officer's Discussion and Analysis:

Applicant, DW Cultural Solutions Group, is appealing the declination of its Grant application for failure to achieve the highest score. Applicant scored 79 out of 100, while the winning applicant, NJ PAC, achieved the highest score of 97 out of 100. Applicant was subsequently denied and received a declination letter dated March 10, 2022.

On March 21, 2022, applicant submitted a formal letter of appeal and offered a new Memorandum of Understanding with Newark International Film Festival as an additional strategic partner, via email. In the appeal letter, Appellant provided supplemental information regarding Budgeting and Fundraising, as well as further examples of prior festival experiences. As previously noted, any written explanation and documentation must pertain to the date that the application was submitted. Information showing that relevant issues have been resolved since the submission date cannot be considered.

In addition, Applicant requested that the committee consider awarding specific portions of the planning, in collaboration with NJPAC, to one of the small women and/or minority owned businesses that met all criteria but may have fallen short on some of the scoring in comparison to a larger entity such as NJPAC. As noted above, selection of the award recipient was based on a scoring rubric as described previously, in order to ensure fairness and equity among all applicants. Per design and specifications approved by the Board, this program provides a single award of up to \$2,000,000 to a business or nonprofit with experience organizing large-scale events.

Although Applicant did not identify any specific scoring issues or grounds for appeal based on appellant's own scoring, the evaluation criteria and all of the scoring sheets were reviewed to ensure that there were no apparent irregularities. As noted previously, evaluation criteria was established prior to the receipt of proposals. The evaluation committee reviewed all responsive proposals and each was scored independently. Review of the scoring sheets confirmed that there were no apparent irregularities. As appellant has not identified any grounds justifying the overturning of its declination, it is requested that DW Cultural Solutions Group's appeal be denied, and the Board's declination of DW Cultural Solutions Group's application be upheld.

Conclusion:

In considering the applicable documents and based upon the above analysis, I have concluded that the Board's declination of DW Cultural Solutions Group's application was proper and should be upheld.

Recommendation:

As a result of careful consideration, it is recommended the DW Cultural Solutions Group's appeal be denied and the Board's declination be upheld.

Gisselle Vega

Gisselle Vega
Hearing Officer



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Credit Underwriting Projects Approved Under Delegated Authority –
For Informational Purposes Only

The following project was approved under Delegated Authority in March 2022:

Small Business Fund Program:

- 1) Highstep Properties, LLC (PROD-00301604), located in Haddon Heights Borough, Camden County, is a real estate holding company that will own the project property. The operating company, Highstep Technologies Inc. is a software development and IT services company, with a focus on large and medium-sized companies. Clients include Chase Bank, PNC, Bank of America, Con Edison, among others. Services provided include design, development, implementation, maintenance, management, and support of Web, Mobile, Custom Software, Database, Cloud Computing, and Open-Source Expertise. The NJEDA approved a \$227,700 loan to purchase the project property. The Company currently has three employees and plans to create two new positions.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: G. Robins



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: April 13, 2022

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/
Licenses for First Quarter 2022 - *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/
Licenses in January, February and March 2022:

LEASES

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>
API Pharma Tech	Bioscience Center Incubator	Month to Month	Month to Month	1,600sf
Euprotein	Bioscience Center Incubator	Month to Month	Month to Month	2,400sf
Genomic Prediction	Bioscience Center Incubator	Month to Month	Month to Month	3,200sf
Angex Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	125sf
Innovaera Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	1,000sf
SPES Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	1,600sf
Delve Therapeutics	Bioscience Center Incubator	Lease Extension	One Year	900sf
Chromocell	Bioscience Center Incubator	New Lease-Special Project	One Year	1,300sf
Kamat Pharmatech	Step Out Labs	Lease Renewal	Three Years	1,610sf

RIGHT OF ENTRY/LICENSES/EXTENSIONS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>
None			

MISCELLANEOUS

<u>ENTITY</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>CONSIDERATION</u>
None			



Tim Sullivan, CEO

Prepared by: Cyndi Costello