



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Agenda for Board Meeting of the Authority February 7, 2024

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Community Development

Economic Security

Economic Transformation

Incentives

Authority Matters

Board Memoranda

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

December 14, 2023

MINUTES OF THE MEETING

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

Members of the Authority present in person: Chairman Terry O'Toole, and Public Members: Charles Sarlo, Vice Chairman; and Robert Shimko, First Alternate Public Member.

Members of the Authority present via conference call: Aaron Creuz, Executive Representative; Acting Commissioner Justin Zimmerman of the Department of Banking and Insurance; Keith White 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; and Public Members Philip Alagia, Virginia Bauer, Marcia Marley, Fred Dumont, and Jewell Antoine-Johnson, Second Alternate Public Member.

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

Members of the Authority absent: State Treasurer Elizabeth Muoio of the Department of Treasury; and Public Members Massiel Medina Ferrara, and Aisha Glover.

Chairman O'Toole called the meeting to order at 10:00 am.

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

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the November 16, 2023 meeting minutes. A motion was made to approve the minutes by Mr. Shimko, seconded by Ms. Antoine-Johnson, and approved by the eleven (11) voting members present.

The next item of business was the approval of the November 16, 2023 Executive Session meeting minutes. A motion was made to approve the minutes by Ms. Antoine-Johnson, seconded by Ms. Dragon, and approved by the eleven (11) voting members present.

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

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

Mr. Dumont left the meeting at this time.

The next item was a presentation providing an update on the NJ Manufacturing Voucher Program, followed by a presentation on the Cannabis Equity Grant Program.

ITEM: Approval of Grant Agreement between the New Jersey Economic Development Authority and The New Jersey Technology Council, Inc. d/b/a TechUnited

REQUEST: To approve entering into a Grant Agreement with The New Jersey Technology Council, Inc., d/b/a TechUnited, for the Authority to provide operational funding for TechUnited's Women and Minority Business Owners Mentorship Program and to an administrative fee to support the administration of the program.

MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Alagia **AYES: 12**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

ITEM: Memorandum of Understanding with the New Jersey Board of Public Utilities for Payment for Federal Broadband Grant Application Assistance

REQUEST: To approve the signing of a Memorandum of Understanding between the NJ Board of Public Utilities (BPU) and the NJ Economic Development Authority (NJEDA) for the transfer of funds for payment for federal broadband grant application assistance under the Authority's current contract for CHIPS and IRA support services.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

FOR INFORMATION ONLY: The next item was a summary of the Incentives Committee meeting from November 29,

INCENTIVES

ASPIRE

ITEM: Aspire Program- Product #310922 Sayreville Seaport Associates Urban Renewal L.P. ("Applicant")

REQUEST: To approve the issuance of tax credits from the Aspire Program for a phased Transformative residential Project located in Sayreville, New Jersey, Middlesex County up to 50% of the total project cost ("eligible costs") and 50% of eligible costs for any given phase.

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

ITEM: Aspire Program- Product #00312676 Observer Highway Urban Renewal LLC ("Applicant")

REQUEST: To approve the issuance of tax credits from the Aspire program for a residential project located in Hoboken, New Jersey, Hudson County up to 60% of the total project cost ("eligible costs").

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

RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

Ms. Bauer left the call at this time.

FILM & DIGITAL MEDIA TAX CREDIT

Film Tax Credit Program

Stalwart Productions – Summit PROD-00310671

MAX AMOUNT OF TAX CREDITS: \$24,543,329

MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Sarlo **AYES: 11**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

Apple Studios – Wildvale PROD-00311174

MAX AMOUNT OF TAX CREDITS: \$11,167,228

MOTION TO APPROVE: Ms. Antoine-Johnson SECOND: Ms. Dragon AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM APPEALS

ITEM: 2023 Technology Business Tax Certificate Transfer Program (NOL) - Appeal Thinkster Learning, Inc.

Mr. Raj Elayavalli, Founder and CEO, Thinkster Learning, Inc. addressed the Board after the staff presentation.

THIS ITEM WAS TABLED FOR FURTHER CONSIDERATION.

ITEM: 2023 Technology Business Tax Certificate Transfer Program (NOL), Declination Appeal of Cornerstone Pharmaceuticals, Inc.

REQUEST: Uphold the NJ Economic Development Authority Board’s determination denying Cornerstone Pharmaceuticals, Inc.’s 2023 Technology Business Tax Certificate Transfer Program application.

Mr. Sanjeev Luther, CEO and Chairman of the Board of Cornerstone Pharmaceuticals, Inc., addressed the Board prior to the Board’s vote on the matter.

MOTION TO APPROVE: Ms. Dragon SECOND: Mr. Alagia AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

FOR INFORMATION ONLY: The next item was a summary of the Audit Committee meeting from November 30.

AUTHORITY MATTERS

ITEM: 2022 Comprehensive Annual Report

REQUEST: To approve the Authority’s comprehensive annual report for 2022, as required under N.J.S.A. 4:1B-4 and Executive Order No. 37 (2006).

MOTION TO APPROVE: Mr. Alagia SECOND: Ms. Antoine-Johnson AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

ITEM: FY 2024 Fiscal Plan

REQUEST: To approve the Authority’s FY 2024 Fiscal Plan.

MOTION TO APPROVE: Mr. Shimko SECOND: Ms. Antoine-Johnson AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

ITEM: Recommendation for Award - #2023-RFP-183 Independent Compliance Auditor

REQUEST: To approve an Independent Compliance Auditor contract award for a three- year base term, with two (2) one-year extension options, to provide audit and risk assessment services.

MOTION TO APPROVE: Mr. Shimko SECOND: Ms. Antoine-Johnson AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

ITEM: Delegations of Authority – Procured Contracts and Memoranda of Understanding

REQUEST: To approve increasing thresholds and updates to delegations of authority for procured contracts and Memoranda of Understanding. Consistent with the Delegation Policy approved on March 9, 2022, all delegations are to the Chief Executive Officer unless specified otherwise.

MOTION TO APPROVE: Mr. Creuz SECOND: Mr. Zimmerman AYES: 11

RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

ITEM: Updates to Delegation of Authority: Issuing final administrative decisions for credit and loan products and expanded approval thresholds for HDSRF and PUST

REQUEST: To approve updates to delegations of authority, specifically to: (1) for NJDEP grant and loan products and NJEDA business banking loan products, authorize staff the ability to hear and decide appeals from non-discretionary declinations and issue final administrative decisions for grant and loan products, consistent with how this is handled for other programs at the Authority; and to (2) Increase application approval thresholds for the Hazardous Discharge Site Remediation Fund (HDSRF) Program and the Petroleum Underground Storage Tank (PUST) Program. Consistent with the Delegation Policy approved on March 9, 2022, all delegations are to the Chief Executive Officer unless specified otherwise.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Ms. Antoine-Johnson **AYES: 11**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

FOR INFORMATION ONLY: The next item was a summary of Director’s Loan Review Committee meeting from November 29.

BONDS

ITEM: Defeasance and Redemption of Certain Outstanding NJEDA/School Facilities Construction Bonds, 2016 Series AAA - PROD-00174158

REQUEST: To approve a resolution authorizing an Authorized Officer of the Authority to enter into one or more Escrow Deposit Agreements for the purpose of defeasing and redeeming all or a portion of certain of the Authority’s Outstanding School Facilities Construction Bonds, 2016 Series AAA and to approve the use of professionals and authorize Authority staff to take all necessary actions incidental thereto.

MOTION TO APPROVE: Mr. Sarlo **SECOND:** Mr. Alagia **AYES: 10**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

Ms. Antoine-Johnson recused from this vote out of an abundance of caution due to potential school construction opportunities.

Ms. Marley left the meeting at this time.

REAL ESTATE

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

REQUEST: To approve entering into the First Amendment to Real Estate Advisory Consulting Services Contract to increase the contract funding amount, including any Authority discretionary extensions. The additional funds will be used to assist with real estate programs and to perform due diligence, market, and other studies on potential properties to be acquired under the Property Assemblage Fund and other Authority real estate project initiatives.

MOTION TO APPROVE: Ms. Dragon **SECOND:** Mr. Sarlo **AYES: 10**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 18

ITEM: Fund Increase to Pooled Consulting Services

REQUEST: To approve: increasing funding for pooled consulting services to be used on an as needed basis, including appraisal consulting services, environmental consulting services, survey services, and delegated authority to the CEO to increase the amount of each contract in for the approved task order amount not to exceed the total amount of funds available in each pool.

MOTION TO APPROVE: Mr. Shimko **SECOND:** Mr. Sarlo **AYES: 10**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 19

BOARD MEMORANDA - FYI ONLY

- Hazardous Discharge Site Remediation Fund (HDSRF) Applications Approved Under Delegated Authority, Q3 2023
- Petroleum Underground Storage Tank Applications (PUST) Approved Under Delegated Authority, Q3 2023
- Economic Security Products: Delegated Authority Approvals, Declinations, and Other Actions Through Q3 2023
- Wind Institute Programs: Delegated Authority Approvals, Declinations, & Other Actions, Q4 2023

PUBLIC COMMENT

There was no public comment.

EXECUTIVE SESSION

The next item was to adjourn the public portion of the meeting and move into Executive Session to discuss a potential negotiation regarding a real estate matter, where disclosure could adversely impact the public interest, the minutes of which will become available when the need for confidentiality no longer exists.

MOTION TO APPROVE: Mr. Shimko SECOND: Mr. Sarlo AYES: 10
RESOLUTION ATTACHED AND MARKED EXHIBIT: 20

The Board returned to Public Session.

There being no further business, on a motion by Mr. Shimko, and seconded by Mr. Sarlo, the meeting was adjourned at 12:53pm.

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
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Main Street Acquisition Support Grant

Summary

The Members are asked to approve:

1. Creation of the Main Street Acquisition Support Grant product - a pilot product under the Main Street Recovery Fund that will offer a grant of up to \$50,000 to reimburse an eligible NJ small business for closing costs related to a New Jersey commercial property that the business will purchase to operate from.
2. Utilization of funding from the Main Street Recovery Fund, as follows:
 - Up to \$5 million to capitalize the Main Street Acquisition Support Grant pilot product, with delegation to the Chief Executive Officer to increase total grant funding up to \$10 million if demand exceeds the \$5 million in available funding.
 - Up to \$500,000 to support the Authority's administrative costs for the Main Street Acquisition Support Grant product.
 - Up to \$500,000 to hire temporary staff if application volume requires additional administrative support.
3. Delegation of authority to the Chief Executive Officer to approve eligible applications for the Main Street Acquisition Support Grant in accordance with the terms set forth in this memo and attached program specifications.

Background

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 position New Jersey to build a stronger and fairer economy that invests in innovation, in our communities, and in our small

businesses the right way, with the protections and oversight taxpayers deserve. Tax incentives and other investment tools are critical to economic development, and when used correctly they can drive transformative change that uplifts communities and creates new opportunities for everyone. On July 7, 2021, Governor Murphy signed P.L. 2021 c.160, further improving the programs established under the New Jersey Economic Recovery Act of 2020.

One of the 15+ programs created by the ERA is the Main Street Recovery Finance Program, a small business support program under which individual financial assistance products have been created with a common purpose of supporting the growth and success of small businesses in New Jersey. As of today, \$200 million has been appropriated for the Main Street Recovery Fund, which funds several individual products.

On August 11, 2021, the Members approved special adopted rules creating the Main Street Recovery Finance Program. These rules established two initial products under the Main Street Program – the Small Business Lease Assistance Grant and the Small Business Improvement Grant. The Members later approved the creation of additional products under Main Street including the Main Street Micro Business Loan, Main Street Lenders Grant and the Small Business E-commerce Program. Over the course of approving each of these individual products, Members were advised that requests to create additional products under the Main Street Recovery Fund may be forthcoming. This item represents a request to create another pilot product under the Main Street Fund – the Main Street Acquisition Support Grant.

This product will provide a grant to NJ small businesses after they have recently closed on the purchase of a commercial property. This product aligns with other grant products established under Main Street and by the NJEDA, which provide direct funding to small and micro businesses in the form of lease assistance and business improvement grants, as well as low-interest, forgivable loans and E-commerce technical assistance support. With this new product, the Authority is seeking to support NJ small business owners that are looking to grow into a New Jersey commercial property from which they will be operating. This grant will also help the NJ small business owner have more liquidity after a major purchase to be able to support their operating needs. This will result in the higher chance of survival and longevity through this post-COVID time period.

Product Details

The Main Street Acquisition Support Grant will be a grant product that will offer a reimbursement of closing costs up to \$50,000 to eligible NJ small businesses that have purchased a commercial property in which their business will operate from. This product will help support small business that have made a substantial investment and recently purchased a commercial building, the closing must occur after the application for this product is made available to the public, and the application for the grant must be made no later than one year from closing in order to be eligible.

As part of the process to acquire a commercial property, the small business would go through an underwriting and closing process and must close on a loan through a conventional lender, ensuring that the applicant meets the necessary debt service coverage ratio to qualify for the loan. For the purposes of this product, the Authority will consider a conventional lender to be any SBA lender, CDFI, MDI, bank, credit union, or any state, county, city administered loan

with underwriting standards.

Once the closing on the commercial property is complete, the small business owner would then apply to NJEDA for the grant.

The Main Street Acquisition Support Grant is only available to small businesses after a real estate closing, and businesses are not eligible to apply in advance of a scheduled closing. This is to ensure that the business has adequately demonstrated to their lender the ability to repay their mortgage. However, despite the fact that this grant is a reimbursement of a portion of closing costs, it will still provide a liquidity infusion during the early stage of property ownership, which can be a financially stressful time, particularly if the property needs renovations or improvements.

The NJEDA will require that the property remains occupied by the grantee for a minimum of five years. If the property is sold, fully leased, or the applicant no longer occupies their minimum square footage prior to the end of the five-year compliance period, then the grant recipient will be required to repay a pro-rated portion of the grant. Repayment of the grant will be prorated based on the years of compliance, with 20% reductions for each full year the applicant is compliant with the terms of the grant.

Application Process

This pilot product will be available online at njeda.com until the total funding pool is exhausted or for three years from the date applications are made available to the public, unless the Authority closes the application period earlier in order to modify or amend this product prior to launching a new phase. Applications will be reviewed on a first-come, first-served basis, based on the date and time that the Authority receives the completed application. Staff will market and promote this product to our lending partners and the community during our normal outreach efforts.

Eligible Applicants

Applicants, which can be for-profit or non-profit entities, must also meet the following requirements to be eligible under this grant product:

- Must meet the SBA definition of a small business based on their NAICS code.
- Closing must have taken place after the application was open to the public and grant application date must be no later than one year from date of closing.
- Applicants must provide a current Tax Clearance Certificate from the NJ Division of Taxation prior to receiving NJEDA approval.
- Applicants must be in substantial good standing prior to approval with NJEDA, the NJ Department of Labor, and NJ Department of Environmental Protection, with all decisions of substantial good standing at the discretion of those entities.
- Only a new purchase is eligible; the closing cannot be a refinance of an existing loan.
- Vacant land is not eligible for this grant.
- If a real estate holding company purchases the property, the small business that will be occupying the location must apply and the holding company will be a co-applicant. The applicant must still meet the SBA's definition of a small business that will be located on and operate from the purchased property. Furthermore, the real estate holding company must either be wholly owned by the applicant small business or have the same owners and

ownership percentage as the small business. If the holding company that purchased the property is not wholly owned by the applicant or does not have the same owners and ownership percentage as the small business, then the applicant will be ineligible for this product.

Completed Applications

As per 19:31-5.4 applicants must provide a completed application which includes:

- The name of the applicant;
- The contact information of the applicant;
- The prospective future address of the applicant (if different);
- The organizational type of the applicant;
- The principal products and services and three-digit North American Industry Classification System number;
- The New Jersey tax identification number;
- The Federal tax identification number;
- The most recent three Federal tax returns filed (if applicable);
- The total number of full-time and part-time employees of the applicant, in New Jersey at the time of application, and three months prior to the submission of the application;
- The comprehensive list of the applicant's locations in New Jersey and the function performed at each location;
- 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;
- Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101;
- WR 30, payroll reports, or equivalent documentation for the quarter preceding submission of application;
- A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and
- Any other necessary and relevant information as determined by the Authority for any product or for a specific application. Which may include:
 - A deed that has been filed after the closing of the property.
 - HUD-1 Statement or other closing documents to verify closing costs paid out.
 - Any of the following to document a relationship between a real estate holding company and small business (applicant) – partnership agreement, bylaws, formation documents, or operating agreement to establish ownership structure and ownership percentages.
 - A certification provided by the holding company, if any, that it will provide a five-year deed restriction on the property that restricts a property transfer.
- The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable.

While the Authority anticipates that most applications will provide a complete set of required information needed to evaluate the application, staff will follow up with applicants if additional

information or documentation is needed.

Grant Awards

Eligible applicants can receive up to \$50,000 per EIN and for a single eligible location.

The grant amount will be determined by utilizing a HUD1 statement or other satisfactory closing statement such as a Closing Disclosure or Settlement statement to identify all the closing costs associated to the loan. The grant will be based off the closing costs paid minus the purchase price of the building, business, or any payoffs. The loan must result from an arm's length commercial transaction with a conventional lender, including a CDFI, MDI, SBA lender, credit union or any state, county, or municipality that administers commercial loans with standard underwriting criteria. Only closing costs paid by the applicant are eligible to be reimbursed.

Terms and Conditions

As part of the application, the business must certify that they will operate from this property for a five-year compliance term period that begins after execution of the grant agreement with the NJEDA. Properties without a commercial building are not eligible for this grant. There is no minimum square footage that the commercial building must be in order to be eligible, and a business may lease a portion of the building so long as the grant recipient is also operating from the building. NJEDA will not be requiring that the grant recipient occupy 51% of the building based on the fact that this requirement is a barrier for small businesses in downtowns to be able to access the product as commercial properties within a downtown often have layouts in which a sizable portion of the building is inoperable space. However, NJEDA will require that the small business (applicant) occupy at least 1,000 square feet of the total usable square footage of the purchased property. There is no restriction on the size of the property that was purchased.

To ensure the property is not sold or transferred without its knowledge, NJEDA will file a deed restriction on the property. The restriction may be released after five years if the applicant is in compliance with the grant. If the property is sold or fully leased out, or if the grantee no longer occupies the minimum of 1,000 square feet prior to satisfaction of the 5-year compliance period, repayment of all or a portion of the grant will be necessary. Repayment of the grant will be prorated based on the years of the compliance, with 20% reductions for each full year of compliance.

In case of a grant default, the five-year compliance period and the term of the deed restriction will be extended for as long as the default remains outstanding and uncured. At the sole discretion of the NJEDA, grantees may be able to cure a default by restoring its good standing and satisfying the remaining (extended) compliance period, or by repaying all or a prorated amount of the grant based on the years of compliance.

NJEDA Small Business Lease Grant awardees are eligible for this product. Any time remaining on their compliance period for their lease grant will be added to the 5-year deed restriction for this product.

Since the grant is not exceeding the \$50,000 threshold under ERA Main Street Recovery Program statute, the purchased property site will not be subject to New Jersey labor compliance

requirements. Also due to the statute, grantees must enforce minimum wage requirements for their employees and/or co-applicant employees occupying the purchased property. This means that each full-time or part-time employee employed by the small business be paid not less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips for the entire compliance period. Any tenants, other than the grantee, that occupy the purchased property are not subject to the minimum wage requirement.

Awardees will certify annually that they are operating out of the property and meeting the wage requirements per section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4) if they have employees.

Diversity & Inclusion

The Main Street Recovery Finance Program statute requires the Authority to complete a disparity study for the purposes of establishing policies, practices, protocols, and, if appropriate, minimum percentages of Main Street Recovery Finance Program funding to be set aside for eligible small businesses and microbusinesses that are minority-owned business enterprises or women-owned business enterprises. The Authority is currently in the process of undertaking this study and does not yet have the ability to reserve a portion of funding specifically for minority or women-owned businesses. Instead, staff proposes that Authority reserves 40% of the initial program pool (\$5 million) for applicants that purchase property in a census tract that was eligible to be selected as eligible New Jersey Opportunity Zone (i.e., a New Market Tax Credit census tract). Should the CEO execute delegated authority to increase funding to up to \$10 million, the additional funding would not be subject to the 40% set aside.

There are 715 census tracks that were eligible to be Opportunity Zones in New Jersey. Setting aside a portion of available funding of at least 40% to support entities located in these census tracts further reinforces the State's commitment to helping to ensure all Opportunity Zone eligible tracts in New Jersey receive opportunities for investment that are equitable and inclusive. If the requests for this product exceed and the window is closed NJEDA will process all the eligible applications to utilize the funding. If additional funds are added to the \$5 million, then staff is seeking delegated authority for the CEO to decide how the funds should be utilized.

Fees & Administrative Expenses

Staff is also requesting up to 5% of total program funding (up to \$250,000 for the first \$5 million in program funding, and up to an additional \$250,000 if funding is increased by the second \$5 million) to cover the Authority's administrative costs. This amount would be in addition to the amount requested for this product and would be funded from the Main Street Recovery Fund.

Staff also requests up to \$500,000 to hire temporary staff if the volume of applications requires additional staffing support. This additional amount would also be funded from the Main Street Recovery Fund.

Eligible applicants will be required to pay a \$500 approval fee once they are approved for their grant. After they have paid their fee, they will then execute their grant agreement and their funds will be disbursed.

Delegated Authority

Finally, the Members are requested to approve delegation to the Authority's CEO to designate staff to approve individual applications to the Main Street Acquisition Support Grant in accordance with the terms set forth in the attached product specifications. Then the delegated authority for the CEO to allocate up to \$5 million in additional grant funding if needed, not to exceed \$10 million for this product.

Recommendation

The Members are asked to approve:

1. Creation of the Main Street Acquisition Support Grant - a pilot product under the Main Street Recovery Fund that will offer a grant of up to \$50,000 to reimburse an eligible NJ small business for closing costs related to a New Jersey commercial property that the business will purchase to operate from.
2. Utilization of funding from the Main Street Recovery Fund, as follows:
 - Up to \$5 million to capitalize the Main Street Acquisition Support Grant pilot product, with delegation to the Chief Executive Officer to increase grant funding to up to \$10 million if demand exceeds the \$5 million in available funding.
 - Up to \$500,000 to support the Authority's administrative costs for the Main Street Acquisition Support Grant product.
 - Up to \$500,000 to hire temporary staff if application volume requires additional administrative support.
3. Delegation of authority to the Chief Executive Officer to approve eligible applications for the Main Street Acquisition Support Grant in accordance with the terms set forth in this memo and attached program specifications.



Tim Sullivan, CEO

Prepared by: Christina Fuentes and Naimah Marshall

Attachments

Exhibit A – Product Specifications

Main Street Acquisition Support Grant - Proposed Product Specifications	
Funding Source	<p>Utilization of Main Street Recovery Fund as follows:</p> <ul style="list-style-type: none"> • \$5,000,000 to capitalize this pilot product, with delegation to CEO to add additional funds not to exceed \$10 million if there is exceeding demand in the product. • 5% of funding or up to \$500,000 to be used by NJEDA to cover administrative expenses. • \$500,000 to be used to hire temporary staff, if needed, based on application volume. <p>40% of the initial program pool of \$5 million will be reserved for applicants that purchase commercial buildings located in an eligible NJ Opportunity Zone census tract. Should the program funding be increased with the CEO’s requested delegated authority, the additional funding would not be subject to the 40% set aside.</p>
Program Purpose and Objective	<p>This pilot grant product will offer a reimbursement of closing costs up to \$50,000 to eligible NJ small businesses that have purchased a commercial property in which their business will operate from. The grant amount will be determined by utilizing a HUD1 statement (or other satisfactory closing statement) to identify all the closing costs associated to the loan. Grant will be based on line 1400 of HUD1 (due from borrower column minus the business purchase price or any payoffs) or its equivalent. The loan must result from an arm’s length commercial transaction with a conventional lender, including a CDFI, MDI, SBA lender, credit union or any state, county, or municipality that administers commercial loans with standard underwriting criteria.</p>
Eligible Applicants	<p>Eligible applicants, which can be for-profit or non-profit entities, must also meet the following requirements:</p> <ul style="list-style-type: none"> •Must meet the SBA definition of a small business based on their NAICS code. •Closing must have taken place after the application was open to the public and grant application date must be no later than one year from date of closing. •Applicants must provide a current Tax Clearance Certificate from the NJ Division of Taxation prior to receiving NJEDA approval. •Applicants must be in substantial good standing prior to approval with NJEDA, the NJ Department of Labor, and NJ Department of Environmental Protection, with all decisions of substantial good standing at the discretion of those entities. •Only a new purchase is eligible; the closing cannot be a refinance of an existing loan. The property purchased can’t be for residential use only, and vacant land is not eligible. •If a real estate holding company purchases the property, the small business that will be occupying the location must apply, however it

Main Street Acquisition Support Grant - Proposed Product Specifications

must meet the SBA’s definition of a small business that will be located on and operate from the purchased property. The small business must either wholly own the real estate holding company, or the ownership of both entities, and percentage of ownership, must be the same. In such situations, the small business will be the applicant and the holding company will be a co-applicant. If the holding company that purchased the property does not have the same owners or ownership percentage as the small business or is not wholly owned by the applicant, then the applicant will be ineligible for this product. Loan must be an arm’s length transaction with a conventional lender (SBA, CDFI, MDI, bank, credit union, or any state, county, city administered loan with underwriting standards accepted) Awardee must certify to operating a commercial business from the NJ project location/building that was purchased for a five-year compliance period.

Applicants are permitted to lease a portion of the purchased property to a third-party.

Applicant must meet the following requirements to be eligible under this grant product:

- Provide a HUD-1 statement (may be in the applicant or real estate holding company associated to the applicant) to identify all closing costs the applicant was required to pay at the time of closing. Grant will be based on line 1400 of HUD1 (due from borrower column minus the business purchase price or any payoffs). If applicant doesn’t have a HUD-1 then it must provide Closing Disclosures or Settlement Statements to support the closing costs paid minus the purchase price of the building, business, or any payoffs.
- Closing must have taken place after the application was open to the public and grant application date must be no later than one year from date of closing.
- Small business must occupy at least 1,000 square feet of total usable square footage of the building.

Eligible Applicants and Co-Applicants (continued)

Businesses that are engaged in the following are not eligible for funding: the conduct or purveyance of "adult" (i.e., pornographic, lewd, prurient, obscene or otherwise similarly disreputable) activities, services, products or materials (including nude or semi- nude performances or the sale of sexual aids or devices); any auction or bankruptcy or fire or "lost-our-lease" or "going-out-of- business" or similar sale; sales by transient merchants, Christmas tree sales or other outdoor storage; or any activity

Main Street Acquisition Support Grant - Proposed Product Specifications

	<p>constituting a nuisance.</p> <p>NJEDA Small Business Lease Grant awardees are eligible for this product. Any time remaining on their compliance period for their lease grant will be added to the 5-year deed restriction for this product.</p>
<p>Application Process, Board Approval, and Delegated Authority</p>	<p>Applications will be available online at njeda.com, after applications are received, they will be reviewed on a rolling basis (first-come, first-served as applications are completed) until all funds are committed or program expires (3 years).</p> <p>As per 19:31-5.4 applicants must provide a completed application which includes:</p> <ul style="list-style-type: none"> • The name of the applicant; • The contact information of the applicant; • The prospective future address of the applicant (if different); • The organizational type of the applicant; • The principal products and services and three-digit North American Industry Classification System number; • The New Jersey tax identification number; • The Federal tax identification number; • The most recent three Federal tax returns filed (if applicable); • The total number of full-time and part-time employees of the applicant, in New Jersey at the time of application, and three months prior to the submission of the application; • The comprehensive list of the applicant's locations in New Jersey and the function performed at each location; • 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; • Submission of a tax clearance certificate, pursuant to P.L. 2007, c. 101; • WR 30, payroll reports, or equivalent documentation for the quarter preceding submission of application; • A certification under the penalty of perjury from the applicant, or an authorized agent of the applicant, that the information provided in the application is true; and • Any other necessary and relevant information as determined by the Authority for any product or for a specific application. Which may include: <ul style="list-style-type: none"> o A deed that has been filed after the closing of the property. o HUD-1 statements, or other documentation to verify closing costs.

Main Street Acquisition Support Grant - Proposed Product Specifications

	<ul style="list-style-type: none"> o Any of the following to document a relationship between a real estate holding company and small business (applicant) – partnership agreement, bylaws, formation documents, or operating agreement to establish ownership structure and ownership percentages. o A certification provided by the holding company, if any, that it will provide a five-year deed restriction on the property that restricts a property transfer. • The Authority will confirm with the New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and the Department of the Treasury that the applicant is in compliance by being in substantial good standing with the statutes, rules, and other enforceable standards of the respective department, or, if a compliance issue exists, the eligible business has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable. <p>While the Authority anticipates that most applications will provide a complete set of required information needed to evaluate the application, staff will follow up with applicants if additional information or documentation is needed.</p> <p>Delegation of authority to the Chief Executive Officer to approve eligible applications for the Main Street Acquisition Support Grant</p> <p>Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which must be at least 10 business days). Appropriate staff will review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will recommend a final administrative decision. For final appeal decisions on non-discretionary reasons, delegated authority is requested.</p>
Grant Amounts	<ul style="list-style-type: none"> • Up to \$50,000 • One grant per EIN for a maximum of one location (verified by the business's employer identification number, or EIN).
Grant Agreement Terms	<ul style="list-style-type: none"> • NJEDA will file a deed restriction on the property. The restriction may be released after five years if the applicant is in compliance with the grant.

Main Street Acquisition Support Grant - Proposed Product Specifications

- If the property is sold or fully leased out, or if the grantee no longer occupies the minimum of 1,000 square feet prior to satisfaction of the 5-year compliance period, repayment of all or a portion of the grant will be necessary.
- The deed restriction may be released after 5-years if the applicant is in compliance with the grant.
- In case of the sale of the property prior to satisfaction of the 5-year compliance period, repayment of all or a portion of the grant will be necessary. Repayment of the grant will be prorated based on the years of compliance, with 20% reductions for each full year the applicant is compliant with the terms of the grant.
- If case of an applicant default, the deed restriction will be tolled for as long as the default remains outstanding and uncured, and the compliance period for the grant will be extended by such time. Applicants may cure a default by restoring its good standing under the grant agreement and satisfying the remaining (extended) compliance period or by repaying all or a prorated amount of the grant, based on the years of compliance, at the sole discretion of the NJEDA.
- Since the grant is not exceeding the \$50,000 threshold under ERA Main Street Recovery Program statute, the purchased property site will not be subject to New Jersey labor compliance requirements.
- Awardees must enforce minimum wage requirements for the applicant and/or co-applicant occupying the purchased property. This means that each full-time or part-time employee employed by the small business be paid not less than \$15.00 per hour or 120 percent of the minimum wage fixed under subsection (a) of section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4), whichever is higher, except that the small business shall pay not less than 120 percent of the minimum wage to an employee who customarily and regularly receives gratuities or tips for the term of the grant agreement.
- Tenants other than the applicant or co-applicant that occupy the purchased property are not subject to the minimum wage requirement.
- Applicant will certify annually, beginning 12 months after the execution of their grant agreement and for term of grant agreement, that the applicant or co-applicant identified in the application is operating out of the property and is

Main Street Acquisition Support Grant - Proposed Product Specifications	
	meeting the wage requirements per section 5 of P.L. 1966, c. 113 (N.J.S.A. 34:11-56a4) if they have employees.
Fees	\$500 fee is due at time of approval.
Disbursements	Grant amount to be fully disbursed after execution of grant agreement.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Award and Declination of Activation, Revitalization and Transformation (ART) Real Estate Grants

Summary

The Members are asked to approve:

- 1) Subject to the availability of funding, grant awards in the total amount of \$9,849,778 to the following Atlantic City real estate projects:
 - Grant award of (\$2,000,000) to 155 S Tennessee QOZB, LLC
 - Grant award of (\$604,609) to MudGirls Studios, a NJ Nonprofit Corporation
 - Grant award of (\$2,785,319) to 2702 Arctic Ave Associates LLC (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$1,975,000) to 1519 Boardwalk QOZB LLC (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$2,484,850) to MAP 3 Partners LLC (conditioned upon the Authority's receipt of funding)

- 2) Subject to the availability of funding, grant awards in the total amount of \$15,301,852 to the following Newark real estate projects:
 - Grant award of (\$1,061,312) to RBH-TRB East Mezz Urban Renewal Entity, LLC
 - Grant award of (\$3,494,933) to Delta's Newark II, LLC (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$1,010,189) to Project for Empty Space (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$1,500,000) to New Jersey Performing Arts Center (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$2,518,297) to Ablem Food Services NJ, LLC (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$400,000) to Newark Science and Sustainability, Inc. (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$3,309,720) to Hospitality Concepts, LLC (conditioned upon the Authority's receipt of funding)
 - Grant award of (\$2,007,401) to EqualSpace, LLC (conditioned upon the Authority's receipt of funding)

- 3) Declination of awards to the following real estate applicants for Atlantic City projects:

- Jemal's Tate LLC
 - Silk Road AC LLC
 - 171 Developers LLC
- 4) Declination of awards to the following real estate applicants for Newark projects:
 - Uncle Willy Green's Wings, LLC
 - Ironbound Community Health Center
 - MCI Property Management, LLC
 - QAVA, LLC
 - Weequahic Park Association
 - 5) Utilization of \$6,349,778 from \$30 million appropriated for "Atlantic City Initiatives" in the Fiscal Year 2024 Appropriations Act (P.L. 2023, c.74) from American Rescue Plan ("ARP") Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") for ART Real Estate Grant for projects in Atlantic City and associated administrative costs.
 - 6) Delegation to the Chief Executive Officer ("CEO") of the New Jersey Economic Development Authority ("Authority") to enter a Memorandum of Understanding ("MOU") with the New Jersey Department of Community Affairs ("DCA") to accept and use \$6,349,778 in the SLFRF funds and deposit into ERF for the Activation, Revitalization and Transformation ("ART") Grant Program and agree to comply with federal requirements for the use of those funds.
 - 7) Utilization of \$11,801,852 from \$50 million appropriated for "Urban Investment Fund" in the Fiscal Year 2024 Appropriations Act (P.L. 2023, c.74) from American Rescue Plan ("ARP") Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") for ART Real Estate Grant for projects in Newark and associated administrative costs.
 - 8) Delegation to the Chief Executive Officer ("CEO") of the New Jersey Economic Development Authority ("Authority") to enter a Memorandum of Understanding ("MOU") with the New Jersey Department of Community Affairs ("DCA") to accept and use \$11,801,852 in the SLFRF funds and deposit into ERF for the Activation, Revitalization and Transformation ("ART") Grant Program and agree to comply with federal requirements for the use of those funds.

Background

On October 11, 2022, the NJEDA Board approved the Activation, Revitalization and Transformation ("ART") Grant Program. The goal of the ART program is to partner with local entities to proactively address the negative economic impacts of the pandemic by investing in projects that create the environment necessary to attract and retain residents and talent, enable business creation and attractions, enhance downtown vitality, and help local governments.

The program was capitalized with \$10,000,000 in funds derived from a \$5,000,000 American Rescue Plan ("ARP") allocation to the Casino Reinvestment Development Authority ("CRDA") for Atlantic City, as well as a \$5,000,000 ARP allocation dedicated to municipalities with dwindling commuters due to COVID-19. As per data collected in the 2015 - 2019 U.S. Census American Community Survey and as analyzed by the New Jersey Department of Community Affairs, the City of Newark was the municipality that, prior to the COVID-19 pandemic, had a daytime population with the largest total difference between the residential population and the total daytime population.

Each city was allocated \$5,000,000, with a split of 70% (or \$3,500,000) focused on real estate projects and 30% (or \$1,500,000) focused on public space activation projects. All projects must be located within a commercial corridor, which is all locations in the City of Atlantic City and the City of Newark, within one and one-half mile radius of an active New Jersey rail transit station.

The Authority received that initial \$10 million in 2023. Half of that funding was allocated to projects in Atlantic City; half was allocated to projects in Newark. The Board approved grant awards totaling \$3 million at its December 14, 2023, Board meeting: \$1.5 million for Atlantic City projects; \$1.5 million for Newark projects. Of the original \$10 million, \$7 million remains. The Authority received far more than \$7 million in eligible applications for real estate projects (projects that received a minimum score of 65 points). The monetary value of all eligible applications received totaled \$38,875,441.70. In order to fund as many of those applications as possible, approval is sought to utilize two other sources of funding.

The Fiscal Year 2024 Appropriations Act (P.L. 2023, c.74) appropriated \$50 million for “Urban Investment Fund” from American Rescue Plan (“ARP”) Coronavirus State and Local Fiscal Recovery Funds (“SLFRF”). Of that amount, \$11,801,852 will be used for ART Real Estate Grant for projects (and associated administrative costs). The Authority has not yet received any of that funding. The Authority submitted an SFRF application for that funding to the NJ Department of Community Affairs on January 26, 2024. Once approved, an MOU will be negotiated. We anticipate receipt of the remaining funding in the next few months.

The Fiscal Year 2024 Appropriations Act (P.L. 2023, c.74) also appropriated \$30 million in SFRF for “Atlantic City Initiatives”. Of that amount, \$6,349,778 will be used for ART Real Estate Grant for projects in Atlantic City and associated administrative costs. The Authority submitted an SFRF application for an additional \$6,350,000 to the NJ Department of Community Affairs on January 26, 2024. Once approved, an MOU will be negotiated. We anticipate receipt of the remaining funding in the next few months.

Projects must also demonstrate how the proposed expenditure will mitigate the impact of COVID-19 in either Newark or Atlantic City. As part of the application, each project was required to submit a narrative explicitly stating the negative externality that the proposed project will address, and how this expenditure will increase the economic resilience and vitality of the commercial corridor. Funded projects must be completed by December 31, 2026. Additional funds from the Urban Investment Fund in the amount of \$11,801,852 and Atlantic City Initiatives in the amount of \$6,349,778 are being allocated to the ART Program due to the volume of projects that applied. The total amount of awards that will be allocated to ART real estate applicants in Atlantic City is \$9,849,778 and in Newark is \$15,301,852 (based on the addition of the requested funding). The additional funds from the Urban Investment Fund and Atlantic City Initiatives were limited by the monies available to fund ART Real Estate Awardees. All Awardees are being approved, subject to the availability of funding, for the grant amount requested in their application; however, one applicant is being conditionally approved for an award that is \$500 less than the amount requested due to the limited funds available for the program.

For real estate projects, funds are disbursed at 50% of the total award amount upon 50% of project completion as demonstrated through their AIA document, with a second disbursement occurring when the applicant can provide a Certificate of Occupancy and proof of completion.

Public Space Activation awards were approved at the December 14, 2023, meeting.

Real Estate Space Application Review Process

The program began accepting applications on May 30, 2023. The 60 business-day acceptance window ended August 22, 2023. Of the 24 real estate applications that were received for the program, 22 applications were moved to the scoring committees for review and 2 were deemed ineligible as the project location was outside of the program geographic boundaries. Below are the gross numbers of evaluated applications by municipality:

- Atlantic City Real Estate – 8 applications
- Newark Real Estate – 14 applications

One Newark real estate applicant withdrew their application after scoring was complete due to material changes of the project after the time of application. Applications were reviewed for completeness and eligibility before being presented to their respective scoring committee. The scoring committee met in October and returned applications in November. As part of the review process, applications recommended to the Board met or exceeded the minimum scoring threshold of 65 out of 100 possible points.

The real estate application scoring committee was composed of subject-matter experts in real estate, community development and urban planning among NJEDA staff, who determined scores for each of the applications-based project-class specific components.

Real estate applications were evaluated by scoring committee against the following three criteria for a total of 100 points:

Criteria #1 Project Qualification – Scoring, 19 points are possible with a focus on how the project meets federal qualification requirements (if an application received a score of less than 17 points in this category, this would be considered failure to demonstrate how the project meets federal qualification requirements, thus disqualifying the project from further review).

Criteria #2 Background Information – Scoring, 5 points possible with a focus on project background.

Criteria #3 Project Readiness and Programmatic Considerations – Scoring, 76 points possible with a focus on changing use of public space in the area during the pandemic, project's long-term impact on the community, project contributions to the community's vision and priorities that addresses COVID response and community resilience, and how project activates public space for businesses, for recreation, and with accessibility for all.

Real Estate Scoring Committee Results

The real estate scoring committee determined that the applications listed below scored the highest point totals. After staff review, the application scores were found to have exceeded the requisite overall score as listed in the authorizing Board Memo of October 2021 and are the top scoring applicants in its respective category.

Recommendations for Award-Atlantic City-Project Descriptions

- 1) 155 S Tennessee QOZB, LLC requested \$2,000,000 for a mixed use residential- retail project at 155 South Tennessee Ave. The “Surf Lodge” project will create first floor retail space, a surf shop, and 12 residential units with a focus on building Atlantic City’s underdeveloped yet significant surfing destination status. Community surf culture will be developed through education/lessons while leveraging the Orange Loop’s scalable model of small, yet purposeful development on the beach blocks of Atlantic City.
- 2) MudGirls Studios, a NJ Nonprofit Corporation, requested \$604,609 for the rehabilitation of a vacant storefront at 3711 Ventor Avenue into a ceramics/ pottery arts studio with retail, training, and office space. The new space will help grow Mud Girls mission by providing opportunities and training in art and entrepreneurship to economically disadvantaged and at-risk women which will help transition them out of poverty and onto a pathway of self-sufficiency.
- 3) 2702 Arctic Ave Associates LLC requested \$2,785,319 for the rehabilitation of a vacant and blighted former hardware store location at 2702 Arctic Avenue into a shared arts and co-working space with a small residential component. “The Key” project will include a 5,000 square foot open span, maintaining flexibility to be activated as community gathering space for senior and cultural activities; exhibit space for visual arts; or performing arts venue. Two residential units will provide ongoing income source for project operations.
- 4) 1519 Boardwalk QOZB LLC requested \$1,975,000 for the rehabilitation of the former James Salt Water Taffy factory located at 1519 Boardwalk into a boutique hotel and fine dining restaurant. 1519 Boardwalk project plans include the buildout of the 28 room, 5 story “James Hotel”, a boutique luxury hotel concept, along with a 180-seat restaurant, “Kelsey's’ on The Boardwalk”; a Southern/soul food fine dining venue.
- 5) MAP 3 Partners LLC requested \$2,484,850 for the new construction of The Orange Loop Container Park (OLCP), which will use renovated shipping containers transform the vacant lot located at 1400 Pacific Ave in Atlantic City with a unique business concept. Twenty-eight 8 ft x 20 ft shipping containers will be outfitted to house a hydroponic farm (for growing vegetables and mushrooms), retail spaces for local vendors, classroom/community activation space, a record pressing facility and recording/rehearsal studios. Plans also include utilizing the rooftops for outdoor seating and art installations, roadside murals along the backside of the containers, and installing a stage for live performances.

Recommendations for Award Newark-Project Descriptions

- 1) RBH-TRB East Mezz Urban Renewal Entity, LLC requested \$1,061,312 for the renovation of vacant storefront in the Teacher’s Village complex located at 23 William Street. The project will create a new Newark Glass Art Center, including studios, classrooms, and offices, for GlassRoots, the 22-year-old Newark-based glassmaking nonprofit. The project will include galleries, educational spaces, offices, and arts workshops that serve as an anchor arts institution within Newark’s Arts and Education District and deepen its impact through continued and new programs with schools and community partners.
- 2) Delta’s Newark II, LLC requested \$3,494,933 for the renovation of a historic bank building/hotel project located at 810 Broad Street. The new southern-Soul inspired fine dining project will include a 110-seat restaurant/music venue and a 120-seat rooftop

lounge. The restaurant will occupy the existing 8,500 square foot of vacant restaurant space on the basement, first floor and rooftop levels.

- 3) Project for Empty Space requested \$1,010,189 for the renovation of renovation of former office space into nearly 36,500 square feet of studio and public programming space on four floors of 800 Broad Street and renovation of former lobby space into a public gallery with 3,700 square feet of ground floor, park-facing space at 110 Edison Place in Ironside Newark. The project would allow Project for Empty Space to provide more public programming for growing audiences, and provide additional studio space, art production workshop, materials, and career development opportunities at a more deeply subsidized rate for local, working artists.
- 4) New Jersey Performing Arts Center requested \$1,500,000 to fund the Acquisition of land for the renovation and adaptive reuse of a former Episcopal Church office building. The “Cooperman Family Arts Education and Community Center Annex”, located at 31 Mulberry Street, will house educational classrooms, community gathering spaces and office space for NJPAC’s staff. The project will accommodate additional space needed for NJPAC’s expanding programs in Arts Education, Community Engagement, Arts & Well-being, and the creation of new performance work.
- 5) Ablem Food Services NJ, LLC requested \$2,518,297 for the rehabilitation of former office building space at 550 Market Street. “Melba’s 550” will include a 250-seat soul food inspired fine dining restaurant and large commissary kitchen for catering and satellite locations. The project is intended to create up to 250 jobs and looks to create long-term impact on the neighborhood by fostering community engagement, supporting local businesses, and increasing foot traffic.
- 6) Newark Science and Sustainability requested \$400,000 for the new construction of classroom, office and workspaces for an urban agricultural center located at 5 Fairmount Ave. The “Garden of Hope Agriculture Hub and Sustainability Training Center” will create a Farm-to-Table cooperative, hold workshops on nutrition, urban farming, and generational sustainability, increase access to local food via farmers markets and the develop policy that encourages more consumption of local foods via SNAP, WIC, and other assistance programs.
- 7) Hospitality Concepts, LLC requested \$3,309,720 for the buildout of a vacant space at 110 Edison Place. “Katherine’s” will be a 175-seat restaurant, bar, microbrewery, and retail bakery. The project focus will be to revitalize downtown Newark by filling a void of much needed restaurant and event space and will support Newark's arts & entertainment, catering, business events for the arts & entertainment, board of education, local/state government agencies, corporate partnerships, small businesses, and residential family needs. In addition, the brewery is planned to be leveraged as a tourist attraction for the city of Newark.
- 8) EqualSpace, LLC requested \$2,007,401 for the renovation of multiple floors at 550 Market Street. The “=SPACE” is a shared space and incubator dedicated to providing a safe space for black and brown women, men, and those within the LGBTQIA+ community. The project includes three floors with resources for multiple types of entrepreneurs including virtual desk options up to head quarter office spaces for small business to medium size businesses. Amenities will include conference rooms, pod cast studio, classroom space, multimedia studio, and an event space.

Declinations-Atlantic City

The following real estate activation applications for Atlantic City projects are not recommended for an award based on the comparatively lower results of the scoring committee:

- Jemal's Tate LLC
- Silk Road AC, LLC
- 171 Developers LLC

Declinations-Newark

The following real estate activation applications for Newark projects are not recommended for an award based on the comparatively lower results of the scoring committee:

- Uncle Willy Green's Wings
- Ironbound Community Health Center
- MCI Property Management

The following real estate activation applications for Newark projects are not recommended for an award as the applications failed to meet minimum scoring criteria for Board presentation:

- QAVA, LLC
- Weequahic Park Association

Recommendations

The Members are asked to approve:

- 1) Subject to the availability of funding, grant awards in the total amount of \$9,849,778 to the following Atlantic City real estate projects:
 - Grant award of (\$2,000,000) to 155 S Tennessee QOZB, LLC
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 - 6) Delegation to the Chief Executive Officer ("CEO") of the New Jersey Economic Development Authority ("Authority") to enter a Memorandum of Understanding ("MOU") with the New Jersey Department of Community Affairs ("DCA") to accept and use \$6,349,778 in the SLFRF funds and deposit into ERF for the Activation, Revitalization and Transformation ("ART") Grant Program and agree to comply with federal requirements for the use of those funds.
 - 7) Utilization of \$11,801,852 from \$50 million appropriated for "Urban Investment Fund" in the Fiscal Year 2024 Appropriations Act (P.L. 2023, c.74) from American Rescue Plan ("ARP") Coronavirus State and Local Fiscal Recovery Funds ("SLFRF") for ART Real Estate Grant for projects in Newark and associated administrative costs.

- 8) Delegation to the Chief Executive Officer (“CEO”) of the New Jersey Economic Development Authority (“Authority”) to enter a Memorandum of Understanding (“MOU”) with the New Jersey Department of Community Affairs (“DCA”) to accept and use \$11,801,852 in the SLFRF funds and deposit into ERF for the Activation, Revitalization and Transformation (“ART”) Grant Program and agree to comply with federal requirements for the use of those funds.



Tim Sullivan, CEO

Attachment:

Appendix A - A.R.T Real Estate Scores - Criteria by Average

Appendix A

A.R.T Real Estate Scores - Criteria by Average

Location	Applicant	Criteria #1 Average Score	Criteria #2 Average Score	Criteria #3 Average Score	Totaled Average Score
Newark	RBH-TRB East Mezz Urban Renewal Entity, LLC	19.0	5.0	68.7	92.7
Newark	Delta's Newark II, LLC	19.0	4.7	64.7	88.4
Newark	Project for Empty Space	19.0	4.3	64.0	87.3
Newark	New Jersey Performing Arts Center	19.0	5.0	62.3	86.3
Newark	Ablem Food Services NJ, LLC	19.0	3.3	63.0	85.3
Newark	Newark Science and Sustainability, Inc	19.0	3.3	56.3	78.6
Newark	Hospitality Concepts LLC	19.0	3.7	55.0	77.7
Newark	EQUALSPACE LLC	19.0	4.0	53.7	76.7
Newark	Uncle Willie Green Wings LLC	19.0	4.7	52.0	75.7
Newark	Ironbound Community Health Center	19.0	3.7	47.0	69.7
Newark	MCI Property Management, LLC	19.0	3.7	44.3	67.0
Newark	Qava LLC	19.0	2.3	38.3	59.6
Newark	Weequahic Park Association	19.0	3.7	35.0	57.7
Atlantic City	155 S TENNESSEE QOZB, LLC	19.0	4.0	63.0	86.0
Atlantic City	MudGirls Studios	19.0	4.0	61.0	84.0
Atlantic City	2702 Arctic Ave Associates LLC	19.0	3.7	61.3	84.0
Atlantic City	1519 Boardwalk QOZB LLC	19.0	4.0	59.0	82.0
Atlantic City	MAP 3 PARTNERS LLC	19.0	3.3	54.0	76.3
Atlantic City	Jemal's Tate LLC	19.0	3.7	51.3	74.0
Atlantic City	Silk Road AC LLC	19.0	4.0	48.3	71.3
Atlantic City	171 Developers LLC	19.0	3.0	48.7	70.7



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Food Desert Relief Tax Credit Sale

Request

The Members are asked to approve:

- 1) The sale of up to \$35 million in available tax credits in calendar year 2024 in a manner consistent with the Board-approved specifications from April 2023 and consistent with the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to hear and decide appeals from non-discretionary declinations and issue final administrative decisions.

New Jersey Economic Recovery Act

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

Included in the ERA is the Food Desert Relief Act (FDRA), sections 35 through 42 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq). The FDRA allows the New Jersey Economic Development Authority (NJEDA) to sell a portion of the \$240 million in tax credits allocated by the FDRA (\$40 million annually).

In April 2023, the Board approved the sale of up to \$50 million in available tax credits in calendar year 2023, in a manner consistent with the Food Desert Relief Act. In accordance with the delegated authority in the Board approval, the Chief Executive Officer determined to offer \$15

million for auction. The 2023 Food Desert Relief Tax Credit Auction was open from September 18, 2023 to October 18, 2023. Seven bids were received. Of those seven bids, three ineligible bids were declined. The remaining four bids totaled \$20 million in tax credit requests, more than the \$15 million that EDA had made available through the auction. Because the auction was oversubscribed, the remaining bidders proceeded to a best and final offer process. Four eligible bids were approved in December 2023 for a total of \$15 million in tax credits approved and \$13.075 million in proceeds.

Discussions around the use of the auction proceeds have highlighted the ongoing need to support food security and led to the request in this memo. Staff intends to recommend programs to be funded with the \$13.075 million raised by the 2023 auction at later Board meetings in 2024. As described in the ERA, proceeds from a FDRA tax credit sale can be used in numerous ways to strengthen food security in New Jersey Food Desert Communities, including but not limited to:

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

This memorandum requests approval of the sale of up to \$35 million in tax credits through a 2024 Food Desert Relief Tax Credit Sale, which will be subject to the specifications approved by the Board in April 2023, attached. Requests to fund specific grant, loan, or technical assistance programs with proceeds from the tax credit sale will be brought to the Board.

Sale Purpose and General Description

The Food Desert Relief Act allocates \$40 million annually in Corporate Business and Insurance Premiums Tax credits over six years, beginning with fiscal year 2021. The FDRA authorizes NJEDA to either award these credits to eligible applicants through the Food Desert Relief Tax Credit Program or to sell all or a portion of the tax credits through a competitive auction process or publicly advertised solicitation for offers. Any unused allocation of tax credits carries forward to future years, meaning that a cumulative total of \$160 million of tax credits have become available to date, and an additional \$40 million will become available as of July 1, 2024, bringing the cumulative total available to \$200 million later this year. Because \$15 million in tax credit awards were approved through the 2023 Food Desert Relief Tax Credit Sale, the total amount of credits currently available is \$145 million.

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

Staff is seeking Board approval to sell up to \$35 million of the \$145 million in currently available tax credits in calendar year 2024. Staff may seek Board approval to sell additional credits in the future, after considering demand for the Food Desert Relief Tax Credit Program from supermarket and grocery store developers and operators as well as market conditions. A range of approaches is necessary to have an impact on the structural conditions that have led to the persistence of food deserts, and auctioning tax credits to fund grants, loans, and/or technical assistance, alongside launching the Food Desert Relief Tax Credit Program allows NJEDA to take a multipronged

approach to this issue. As stated in the April 12, 2023 board memorandum, the Chief Executive Officer will establish the amount of tax credits to be auctioned, up to the amount approved by the Board, based on an assessment of economic and market conditions.

Request for Delegation

The Board of the Authority is asked to approve delegation of authority to the Authority's Chief Executive Officer to hear and decide appeals from non-discretionary declinations and issue final administrative decisions. In April 2023, the Board approved delegation of authority to the CEO to approve and decline tax credit purchasers based on the non-discretionary described in the board memorandum. As eligibility is based on non-discretionary criteria and the ranking of bidders is based solely on purchase price, staff does not anticipate bringing appeals to the Board.

Recommendation

The Members are asked to approve:

- 1) The sale of up to \$35 million in available tax credits in calendar year 2024 in a manner consistent with the Board-approved specifications from April 2023 and the Food Desert Relief Act, sections 35 through 42 of the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2022, c. 47 (N.J.S.A. 34:1B-303, et seq), to receive funds for subsequent grant, loan, and/or technical assistance programs in line with the uses specified by the Food Desert Relief Act.
- 2) Delegated authority to the Chief Executive Officer to hear and decide appeals from non-discretionary declinations and issue final administrative decisions.



Tim Sullivan, CEO

Prepared by:

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



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Child Care Facilities Improvement Pilot Program – Phase 2

Request:

The Members are asked to approve:

1. Creation of the Child Care Facilities Improvement Pilot Program – Phase 2, a grant program to provide grants between \$10,000 and \$20,000 for registered Family Child Care homes (FCCs) in New Jersey to make facility improvements that will contribute to high quality early childhood learning environments and improve the health and safety of the spaces where children are cared for, and the waiver of applicant fees due to the availability of other sources of funding for the Authority’s administrative costs.
2. Utilization of up to \$5,000,000 of state funds appropriated to NJEDA for the Child Care Facilities Fund to fund the Child Care Facilities Improvement Pilot Program – Phase 2.
3. Delegation of authority to the Chief Executive Officer to approve individual applications for the Child Care Facilities Improvement Pilot Program – Phase 2 in accordance with the terms set forth in this memo and the attached program specifications.
4. Amendment of the Child Care Facilities Improvement Program – Phase 1 such that the deadlines for obligating and expending the ARP SLFRF funds will follow the federal deadlines, and any extension of those deadlines will be passed on to the grantees.

Background:

Ensuring that parents have access to quality child care options that meet their specific needs is vital to enabling economic productivity. Working families require reliable, safe, affordable, accessible, and quality child care. Investing in the child care sector promotes workforce participation, particularly among women, early childhood development, child safety, growth of small businesses, and parental well-being, contributing to a stronger and fairer economy for all. Access to high-quality child care positively impacts children above all. Research has shown that quality care improves children’s language skills, reasoning abilities, test outcomes, and overall happiness. Parents can experience reduced stress with the ability to pursue educational and work opportunities, contributing to stable family incomes.

As part of the State’s commitment to supporting the child care sector, in June 2021 the New Jersey State Legislature passed and Governor Phil Murphy signed into law (P.L. 2021, c.144) a bill appropriating \$100 million of American Rescue Plan State and Local Fiscal Recovery Fund (ARP SLFRF) to the New Jersey Department of Community Affairs (DCA) to support child care providers and the child care workforce through a number of initiatives, including making \$54.5 million available to the Authority for facilities improvements and technical assistance to licensed child care providers (i.e., child care centers serving 6 or more children) and registered family child care homes (i.e., home-based child care businesses registered with the New Jersey Department of Children and Families (DCF) serving 5 or fewer children)¹. Additionally, the Fiscal Year 2023 Appropriations Act, P.L. 2022, c. 49, (“FY23 Appropriations Act”) makes available an additional \$30 million in ARP SLFRF to the Authority for the “Child Care Facilities Fund” to further invest in facility improvements for the child care sector.

New Jersey has dedicated \$24.95 million in state funding to supporting facilities improvements for child care providers in addition to the federal funding. In 2022, EDA entered into an MOU with the New Jersey Department of Human Services (DHS) to utilize \$4.45 million in state funding for Phase 1 of the Child Care Facilities Improvement Program. New Jersey then further reappropriated \$20.5 million in state funding to the Child Care Facilities Fund in the June 2023 State Fiscal Year 2024 supplemental appropriations bill, from two prior appropriations made to EDA in June 2022. One of these prior appropriations was originally for the Child Care Employer Innovation Pilot Program, for which \$12.5 million in state funding was appropriated to EDA. The second was Thriving by Three, for which \$8 million in state funding was appropriated to EDA to provide grants for child care facilities projects to increase capacity for infants and toddlers. Phase 1 was receiving strong demand from applicants, and its goals overlapped with those of the prior appropriations, so funding was shifted to support child care facilities more broadly to enable NJEDA to meet the demand.

Staff proposes utilizing up to \$5 million of the \$20.5 million of state funds in the Child Care Facilities Fund for the Child Care Facilities Improvement Pilot Program – Phase 2 (“Phase 2”), which will be open solely to eligible registered Family Child Care homes (FCCs or FCC providers).

In May 2022, the Board established the Child Care Facilities Improvement Pilot Program – Phase 1 (“Phase 1”) and approved the use of up to \$20 million of the \$54.5 million available to the Authority through P.L. 2021, c.144, as well as the additional \$4.45 million in state funds transferred to EDA from DHS, to capitalize the program. Phase 1 provides grants for total project costs between \$50,000 and \$200,000 to licensed child care providers (also referred to as “centers”) to make improvements to their child care facilities. In May 2023, in response to demand that far outpaced the amount of Phase 1 funding initially approved by the Board, the Board approved the use of an additional \$20 million of the funding appropriated through P.L. 2021, c. 144, as well as the use of \$30 million appropriated in the FY23 Appropriations Act, bringing the total amount allocated to support facility improvements at child care centers across the state to nearly \$75 million.

¹ On January 29, 2024, with coordination and support from EDA, the State Senate introduced legislation to remove the requirement to serve FCCs from P.L. 2021, c. 144. In Bill S2344 (<https://www.njleg.state.nj.us/bill-search/2024/S2344>). The legislation notes that “The Economic Development Authority is currently developing a facilities improvement grant program, to be funded with State resources that have already been appropriated to the authority, for family child care providers. Both the sponsor and the authority believe that a State-funded program will provide a less burdensome application, implementation, and compliance experience for family child care providers.”

Applications for Phase 1 opened on November 15, 2022 and closed on October 20, 2023. In that time, NJEDA received 749 applications from child care centers across New Jersey that serve over 60,000 children and employ over 15,000 members of the vital early childhood workforce. As of January 17, the NJEDA has approved 123 of those applications for a combined \$24.86 million in funding and will continue to approve more applications in the coming weeks and months. The first 123 centers approved through the program are located in 19 counties, serve more than 11,000 children – including more than 5,200 infants and toddlers – and employ over 2,800 teachers and administrators.

Phase 1 of the Program has demonstrated the significant demand for grants for facilities improvements, and NJEDA staff will continue to review and approve Phase 1 applications in the coming months. However, eligibility for Phase 1 was limited to licensed child care centers (i.e., facilities licensed by the New Jersey Department of Children and Families (DCF) to serve six or more children). The other significant component of New Jersey’s mixed delivery child care system is home-based child care, which is provided by FCCs.

At least nine other states have implemented grant programs for FCC providers, with programs in several states, including California, Colorado, and Indiana, specifically aimed at bolstering quality for FCC providers through facility improvements. Notably, New Jersey is one of only two states in the country that does not require home-based child care providers to be licensed. Instead, family child care homes (i.e. home-based child care providers serving five or fewer children at a time) may voluntarily register with New Jersey DCF through their county Child Care Resource & Referral Center (CCR&R). Only registered FCCs will be eligible for Phase 2.

As of October 2023, New Jersey was home to 1,313 registered FCCs, serving as many as 6,500 children across all 21 counties. More than 3,600 of the children in registered FCCs received funding through the federal Child Care Assistance Program (CCAP), which is administered by DHS. FCCs are an essential component of the state’s mixed delivery system for child care, but FCC providers face challenges maintaining their facilities due to limited resources. FCCs help to meet the varied needs of New Jersey’s diverse population. FCCs are located in the same neighborhoods where families live, and many offer child care that is affordable and culturally and linguistically appropriate. In addition, FCCs are often the only resource that provides flexible hours of operation that can serve parents who work non-traditional hours. Investing in the quality of FCC facilities is essential to ensure that all families have access to these positive effects of quality child care. NJEDA aims to provide FCCs with support that promotes long-term stability and ensures that the child care environment that they provide is safe, healthy, accessible, and conducive to high-quality early learning.

Based on extensive research and review of government funding both in the state and across the country, the Authority has determined that FCCs do not typically have access to the capital they would need to fund facility improvements. Very few business-oriented grant programs are open to home-based businesses. NJEDA offers the Small Business Improvement Grant (SBIG), which does provide funding to home-based businesses for furniture, fixtures, and equipment. However, SBIG funds are provided on a reimbursement basis and only cover 50% of the total project cost. As of January 2024, more than 2,000 applications have been submitted to the Authority for the SBIG. Of those 2,000, an extremely small number – potentially as small as just one (1) application – are from home-based child care providers, reinforcing the need to develop this specialized program. FCCs are typically microbusinesses with very low margins, and do not have the cash flow necessary to cover significant costs up-front and wait for a partial reimbursement. To address this challenge, this program covers the full cost of eligible furniture, fixtures, and equipment on a prospective basis, with 50% of the approved

grant award provided up-front so the FCC provider can use the grant funds to purchase the eligible items.

Program Details:

Phase 2 of the Child Care Facilities Improvement Pilot Program will provide up to \$5 million in grants for total project costs between \$10,000 and \$20,000 to eligible registered FCCs to make improvements that will support the health, safety, accessibility, and quality of the spaces where children are cared for within the FCC.

These grants are provided as direct benefits to the FCC providers and are in line with the Murphy Administration's commitment to supporting the child care sector. The Program will also have broader economic benefits:

- Provide funding to businesses that otherwise may not have access to resources to fund facility improvements. According to a study of home-based child care ownership nationwide, many are minority- and women-owned businesses.
- Promote healthy childhood environments for children, families, and child care providers.
- Engage FCC providers to participate in New Jersey's child care quality improvement rating system, Grow NJ Kids.
- Target resources to communities of greater need due to historic disinvestment, through a set-aside for FCC providers located in Opportunity Zones and an eligibility requirement that applicants serve low-income children receiving Child Care Assistance subsidies.

Eligibility:

Eligibility for Phase 2 of the Program will be limited to FCCs registered with NJ DCF through their local New Jersey county Child Care Resource & Referral Center (CCR&R). Applicants will be required to provide proof of registration at time of application submission. Applicants may be for-profit businesses or nonprofit organizations. There will be a limit of one grant award per registered FCC.

Applicants may own or lease the home from which the FCC operates. Landlords are not eligible to apply directly for this program.

At the time of application, applicants must currently enroll or have enrolled in the 12 months prior to application, at least one child receiving support through the DHS Child Care Assistance Program (CCAP). The Authority will confirm enrollment of children receiving CCAP at the FCC location with DHS.

Applicants must offer care for at least 6 hours per day, 5 days a week, 10 months of the year. In the application, applicants must certify that they will enroll in DHS' Grow NJ Kids Quality Rating Improvement System within one (1) year of the date of grant execution, if not already enrolled, and that they will maintain registration with DCF to provide child care for two (2) years following execution of the grant agreement, which the Authority will verify with DCF.

In addition to the eligibility parameters already stated above, the applicant must also be in substantial good standing with the New Jersey Department of Labor and Workforce Development (DOL), and New Jersey Department of Environmental Protection (DEP). Applicants will also be responsible for providing a current Tax Clearance Certificate before approval to demonstrate that they are properly registered to do business in New Jersey and are in substantial good standing with the New Jersey Division of Taxation.

Diversity, Equity and Inclusion:

Up to 40% of total grant funding made available in Phase 2 of the Program will be reserved for eligible applicants in Opportunity Zone eligible census tracts. If the Authority does not receive sufficient eligible applications from applicants in Opportunity Zone eligible census tracts prior to the application deadline, the Authority may use funds for grants to eligible applicants not located in Opportunity Zone eligible census tracts.

In combination with the set-aside funds for Opportunity Zones, the Authority is further ensuring a focus on child care providers that serve low-income children by requiring that eligible applicants must currently enroll or have enrolled in the 12 months prior to application at least one child receiving support through CCAP. Families eligible for CCAP must fall below 200% of the federal poverty line (\$60,000 for a family of 4), far below the New Jersey median household income of more than \$96,000. This criterion ensures a targeted focus on providers more likely to serve low-income children that can significantly benefit from facilities improvements and high-quality early childhood learning environments.

In addition to the specific reservation of program funding for applicants in Opportunity Zone eligible census tracts, the program more broadly supports diversity and inclusion by allocating funding to the child care sector, in which a high percentage of businesses are owned and staffed by women, particularly women of color. While comprehensive demographic data on home-based child care providers is limited, according to the Center for the Study of Child Care Employment at the University of California – Berkeley, nearly one-third of FCCs nationally are owned and operated by Black and Latina women. Within Phase 1 of CCFIP, nearly 60% of applicants self-identified as women-owned and more than 41% self-identified as minority-owned.

Eligible Funding Uses:

Grants will be used for prospective costs of furniture, fixtures, and equipment (FFE). The aggregate amount of all quotes for eligible costs will be used to determine the base grant amount, with a minimum eligible project cost of \$10,000 and a maximum eligible project cost of \$20,000. The Program will not provide reimbursement for costs already incurred prior to execution of a grant agreement.

Applicants will be required to submit a narrative describing how the requested FFE fits within the eligibility categories: Health, Safety, and Accessibility; and/or High-Quality Learning Environment. This will include a description of why the requested FFE is needed, where in the home it will be, and how it will improve health, safety, accessibility, or the quality of the learning environment. Applicants will also be asked to submit photos that support the FFE request, showing existing FFE that will be replaced and/or where new FFE will be located.

The table below provides illustrative examples of potential eligible FFE under each category. The listed examples include FCC requirements, standards, and recommendations gathered from the following sources:

- DCF's Manual of Requirements for Family Child Care Registration,
- Family Child Care Environment Rating Scale, Third Edition (FCCERS-3, used by GNJK),
- DHS and DCF staff observation of most needed FCC facility improvements.

Applicants may propose FFE beyond this list, subject to the review and approval of NJEDA, but all FFE must fit within one of the eligible use categories.

Health, Safety, and Accessibility	High Quality Learning Environment
<ul style="list-style-type: none"> • Smoke detectors • Child-proofing mechanisms • Safety barriers for stairs • Replacing broken/hazardous furniture, fixtures, or equipment • Replacing appliances used in food storage, food preparation, or laundry for child care 	<ul style="list-style-type: none"> • Child-friendly furniture • Diaper-changing units • Sleeping cots/cribs • Stepstools for sink • Low shelving for play area • Soft/comfortable furniture • Rugs • Classroom materials • Playground equipment (not requiring installation)

Ineligible Uses:

NJEDA staff will determine whether requested FFE is eligible. Applicants will be allowed a cure period to substitute additional eligible FFE requests for any FFE deemed ineligible. Ineligible FFE requests will not be included in the grant award. Examples of ineligible requests include, but are not necessarily limited to:

- Repairs, renovations, construction, or installation requiring a construction contract;
- FFE that is not directly related to the care of children (e.g. a computer for the FCC provider to use for professional development courses); and
- Proposed uses that do not improve health, safety, accessibility or quality of the learning environment.

Application Process:

The application process for the Program will determine whether the applicant entity is eligible (e.g., is a registered FCC that currently enrolls or has enrolled in the prior 12 months at least one child receiving support through CCAP, providing full-time care, and in good standing with all sister agencies) and whether the FFE the applicant proposes purchasing is eligible and fits within the eligible use categories.

In the application, the Authority will request information and certifications from the applicant including, but not limited to:

- Evidence of applicant’s DCF Certificate of Registration
- Certification that the applicant currently enrolls, or enrolled in the 12 months prior to application, as least one child receiving assistance through the Child Care Assistance Program
- Certification that the applicant offers care for at least 6 hours per day, 5 days a week, 10 months of the year
- Certification that the applicant commits to enroll in DHS’ Grow NJ Kids Quality Rating Improvement System within one (1) year of the date of grant execution, if not already enrolled
- Certification that the applicant commits to maintain registration with DCF to provide child care for two (2) years following execution of the grant agreement, which the Authority will verify with DCF.
- A detailed description of proposed FFE purchase(s) and how they fit within one of the two eligibility categories.
- Itemized quotes that detail the cost(s) of proposed FFE purchase(s). This can be a formal bid from a vendor and/or printouts/screenshots with prices from online retailer(s) for item(s) to be purchased and should include taxes and shipping costs.
- Photos and/or video of the space(s) where the proposed FFE will be located.

The certifications described above will be included as covenants in the grant agreement with the possibility for repayment by the FCC provider if the certifications are not adhered to, at the discretion of the Authority. The Authority understands that there may be circumstances that may impact the continuation of child care services. As such, the applicant shall notify the Authority in writing (email or letter) of those circumstances and the Authority shall review and determine whether a grantee shall return or repay the amount of grant funds they received.

Applications will be reviewed for completeness, applicant eligibility, and whether requested FFE fits the eligibility categories described above. Applications will enter the review process in the order in which they are received. Applications will proceed through the review process according to readiness. If there are questions about the application, or if an applicant does not submit all required materials, staff will follow up with the applicants and applicants will be allowed a cure period to respond, clarify, and/or resubmit any needed materials. If at the end of the cure period the applicant is non-responsive, the application will be deemed incomplete and will be withdrawn. If an applicant is responsive but does not provide sufficient information/documentation within the cure period, the application will be declined, providing a right of appeal. Applications will be accepted on a rolling basis until all funding is exhausted or until September 30, 2025, whichever is sooner.

Delegated Authority:

The Members are requested to approve delegated authority to approve individual applications to the Child Care Facilities Improvement Pilot Program – Phase 2 in accordance with the terms set forth in the attached product specifications. These approvals are appropriate for delegated authority because the maximum financial assistance under this program is comparable to financial assistance amounts approved under delegated authority in other programs. Additionally, this program is not competitive; each application will be reviewed on its own.

Post Approval:

Following a delegated authority approval, the applicant will be notified of the approved grant amount. After notification is issued, the FCC provider will execute a grant agreement with the EDA.

Grant funds will be provided to each grantee in two disbursements. Fifty percent (50%) of the approved grant amount will be disbursed to the FCC provider upon full execution of the grant agreement. After purchasing eligible FFE with the funds from the initial disbursement, the grantee must submit to EDA satisfactory evidence of completed purchase and payment totaling an amount equal to or higher than the initial disbursement. The remaining fifty percent (50%) of funds will be disbursed to the grantee upon EDA staff review and approval of this documentation submitted by the grantee. Following this second disbursement, the grantee will have three months to submit evidence of completed purchase and payment for eligible FFE purchased with the second disbursement.

EDA reserves the right to also conduct site visits, as deemed appropriate by the Authority, to confirm that funds are being used in accordance with eligible uses for the Program. If a grantee does not purchase approved items and/or does not submit proof of purchase within three months from their second disbursement, this would be considered an event of default and EDA may pursue recapture. In addition, the FCC provider's organization would be flagged in EDA's customer relationship management system, so that if they were to apply for future assistance, their default status would appear in a future Product Operations team review of good standing.

EDA intends to use a portion of administrative costs allocated to this program (not to exceed \$250,000) to issue a purchase order to Temporary Employment Services in accordance with State Blanket PO# 18-GNSV2-00348. The intent of the State's Blanket P.O. is to provide the State and its Cooperative Purchasing Program participants (the Authority is one of the State's Cooperative Purchasing Program participants) staffing for administrative support functions, which will be needed for this program due to limited staff capacity to review applications.

Program Funding

The Members are requested to approve the utilization of up to \$5,000,000 of state funds appropriated to NJEDA for the Child Care Facilities Fund to fund the Child Care Facilities Improvement Pilot Program – Phase 2. This includes an allocation of up to 5% for NJEDA's administrative costs associated with Phase 2. These funds were originally appropriated to NJEDA in 2022 as part of an \$8 million appropriation to NJEDA for the Thriving by Three program and were shifted to the Child Care Facilities Fund in the supplemental appropriations bill for State Fiscal Year 2024.

Amendment to Child Care Facilities Improvement Program – Phase 1

In addition to requests related to creating and funding Phase 2, the members are requested to approve an amendment to Phase 1. In the event that Congress extends the deadlines for obligating and expending the ARP SLFRF funds, this change that will allow those extensions to flow through to Phase 1 grantees. Without this change, some Phase 1 grantees may needlessly remain tied to a project completion deadline of December 31, 2026 despite the federal extension.

Recommendation:

The Members are asked to approve:

1. Creation of the Child Care Facilities Improvement Pilot Program – Phase 2, a grant program to provide grants between \$10,000 and \$20,000 for registered Family Child Care homes (FCCs) in New Jersey to make facility improvements that will contribute to high quality early childhood learning environments and improve the health and safety of the spaces where children are cared for, and the waiver of applicant fees due to the availability of other sources of funding for the Authority's administrative costs.
2. Utilization of up to \$5,000,000 of state funds appropriated to NJEDA for the Child Care Facilities Fund to fund the Child Care Facilities Improvement Pilot Program – Phase 2.
3. Delegation of authority to the Chief Executive Officer to approve individual applications for the Child Care Facilities Improvement Pilot Program – Phase 2 in accordance with the terms set forth in this memo and the attached program specifications.

4. Amendment of the Child Care Facilities Improvement Program – Phase 1 such that the deadlines for obligating and expending the ARP SLFRF funds will follow the federal deadlines, and any extension of those deadlines will be passed on to the grantees.



Tim Sullivan, CEO

Prepared by:

Riley Edwards – Team Lead, Economic Security Projects

Shireen Sathu – Intern, Economic Security



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: February 7, 2024

RE: Memorandum of Understanding with the NJ Department of Labor & Workforce Development for funding from the Workforce Development Partnership Fund to support workforce development programs and projects

Request

The Members are requested to approve entering into a five-year Memorandum of Understanding (MOU) with the New Jersey Department of Labor & Workforce Development (NJDOL) to accept up to \$20,000,000 in funding from the Workforce Development Partnership Fund (WDPF) to support the design and execution of workforce development programs and related projects, with delegated authority to accept up to an additional \$50,000,000 in WDPF funding in the future.

Background

Pursuant to N.J.S.A. 34:15D-9, the WDPF is a restricted, non-lapsing, revolving fund managed by the State Treasurer for use by NJDOL. The statute requires that a certain percent of the WDPF be used for specific purposes: employment and training services to qualified displaced, disadvantaged and employed workers by means of training grants or customized training services; provide for the other costs for the Workforce Development Partnership Program (indicated in N.J.S.A. 34:15D-4); for the Office of Customized Training; for the New Jersey Innovation and Research Fellowship Program as provided for in section 3 of P.L. 2015, c. 235(C.34:15D-26); occupational safety and health training; for the Talent Network Program as provided for in section 2 of P.L. 2019, c. 125(C.34:15D-29); certain administrative costs (as defined in N.J.S.A. 34:15D-3); for the State Employment and Training Commission; and facilitate the provision of education and training to youth by means of grants provided by the Youth Transitions to Work Partnership pursuant to the provisions of P.L. 1993, c.268 (C.34:15E-1 et al.). In addition to the above purposes, which are annually authorized through the appropriations act, certain amounts from the WDPF have been specifically appropriated for other programs and purposes.

In furtherance of the purpose of the Fund and due to the Authority's expertise and experience in creating and administering programs and initiatives that support workforce development, the NJDOL has agreed to provide the NJEDA with an initial allocation of \$20M, which are currently

appropriated and available, to support NJEDA's efforts to develop and deliver workforce development programs that will train and support New Jersey residents in pursuing employment in New Jersey. In addition, NJDOL and NJEDA agree that future allocations may be necessary to support further creation and sustainment of such programs. In exchange for these funds, NJEDA will support and invest in such innovative workforce development approaches and programs authorized by NJEDA's own enabling act and Economic Recovery Fund statutes that are consistent with the terms of the Fund, including collaborating with governmental, not-for-profit or for-profit entities as necessary to achieve the stated goals.

The MOU, attached as Exhibit A with substantially final key terms and subject to ongoing review by the NJDOL, contemplates a five-year agreement between the parties. During that time, NJDOL and NJEDA will work together to design and implement these workforce development programs and projects. Unless authorized by existing delegation of authority, Authority staff will present to the NJEDA Board the projects, initiatives, and programs designed pursuant to this MOU and associated funding allocation. In addition, the NJDOL Commissioner will have the opportunity to review and approve any use proposed by Authority staff of the WDPF allocated funds. No funds will be transferred to the Authority until both the Authority and the NJDOL Commissioner approve a specific use (project, initiative, or program) of WDPF allocated funds.

Recommendation

The Members are requested to approve entering into a five-year Memorandum of Understanding with the New Jersey Department of Labor & Workforce Development whereby the Authority will accept \$20,000,000 in funds from the Workforce Development Partnership Fund to create and sustain workforce development programs and projects, subject to final approval by the Chief Executive Officer of the NJEDA of final terms consistent with the key terms of the attached MOU. The Members are further requested to approve a delegation of authority to the Chief Executive Officer of the NJEDA to accept up to an additional \$50,000,000 in funding from the WDPF, subject to the terms of the MOU, the appropriation of funds into the WDPF, and the availability of appropriated funds.



Tim Sullivan, CEO

Prepared by: Tara Colton, Mary Maples

**MEMORANDUM OF UNDERSTANDING
BETWEEN
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
AND
THE NEW JERSEY DEPARTMENT OF LABOR**

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this ____ day of February, 2024, and effective as of the date of the last signature of the parties hereto (the "Effective Date"), is between NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY, with its principal office at 36 West State Street, Trenton, NJ 08625 ("NJEDA"); and NEW JERSEY DEPARTMENT OF LABOR & WORKFORCE DEVELOPMENT, with its principal office at 1 John Fitch Plaza, Trenton, New Jersey 08611 ("NJDOL") (each a "Party", and collectively "the Parties").

WHEREAS, the NJEDA is an independent State agency, in but not of the Department of the Treasury, that serves as the State's principal agency for driving economic growth and is committed to making New Jersey a national model for inclusive and sustainable economic development by focusing on key strategies to help build strong and dynamic communities, create good jobs for New Jersey residents, and provide pathways to a stronger and fairer economy; and

WHEREAS, N.J.S.A. 34:15D-9 establishes the Workforce Development Partnership Fund ("Fund") to be managed and invested by the State Treasurer and to be used by NJDOL for the purposes of the Fund; and

WHEREAS, the purpose of the Fund, as set forth in N.J.S.A. 34:15D-9(a), is to provide employment and training services to qualified displaced, disadvantaged and employed workers by means of training grants or customized training services; provide for the other costs indicated in subsection a. of section 4 of P.L. 1992, c.43 (C.34:15D-4); provide for the New Jersey Innovation and Research Fellowship Program as provided for in section 3 of P.L. 2015, c. 235(C.34:15D-26); provide for the Talent Network Program as provided for in section 2 of P.L. 2019, c. 125(C.34:15D-29); and facilitate the provision of education and training to youth by means of grants provided by the Youth Transitions to Work Partnership pursuant to the provisions of P.L. 1993, c.268 (C.34:15E-1 et al.); and

WHEREAS N.J.S.A. 34:15D-9(b) sets forth the allocation of revenue dedicated to the Fund; and

WHEREAS, N.J.S.A. 52:14-2 authorizes the head of any state institution, commission, board, department, bureau or state agency in the carrying out of its work to request the assistance of any other state institution, commission, board, department, bureau or state agency; and

WHEREAS, in order to develop the infrastructure and support for workforce development in New Jersey, NJDOL has determined that it would be beneficial to partner with the NJEDA.

NOW, THEREFORE, it is agreed between NJEDA and NJDOL:

1. **INCORPORATION:** The recitals set forth above are hereby incorporated into and made part of this MOU.
2. **PURPOSE OF MOU:** The Parties are entering into this MOU to document the mutual understanding and intention of the Parties in carrying out their respective obligations under this MOU.
3. **DUTIES OF THE PARTIES:** To achieve the goals of this MOU, the Parties hereby agree as follows:

- a. NJDOL shall budget an amount from the Fund not to exceed \$20,000,000 (“Initial Allocation”), to be made available by NJDOL to the NJEDA in the manner prescribed in Section 3(b) below for purposes specifically delineated within the New Jersey Employment and Workforce Development Act, N.J.S.A. 34:15D-1 et seq., or that may be set forth in the annual State Appropriations Act.
- b. Within 15 days of the Effective Date of this MOU, NJDOL shall encumber the Initial Allocation in an account within the Fund that is identified for use by the NJEDA for the purposes set forth within this MOU. Thereafter, NJDOL shall begin accepting plans from NJEDA for the disbursement of monies by NJDOL to the NJEDA from the Initial Allocation.
- c. For any plan that requires NJEDA Board approval for the utilization of Fund Allocations, NJDOL may disburse to NJEDA money from the Fund Allocations and NJEDA may utilize the money disbursed to it from the Fund Allocations, only if the NJDOL Commissioner or his/her/their designee has approved the plan prior to the Board meeting. In those instances, the NJEDA will provide the NJDOL Commissioner with the Board materials associated with the expenditure of the monies from the Fund at least 5 days prior to the Board meeting. The Board materials will include a detailed description of the proposed use of the monies and a summary of any assistance outside of NJEDA and/or NJDOL that will be required to execute the plan. Should both the NJDOL Commissioner and the Board approve the plan, NJDOL will then disburse the monies to NJEDA from the Fund Allocations within 5 days of the earlier of the expiration of the Governor’s veto period or the Governor’s approval of the minutes reflecting the relevant NJEDA Board item.
- d. For any plan that does not require NJEDA Board approval pursuant to NJEDA delegation of authority policies and procedures, NJEDA will provide the NJDOL Commissioner with documentation that is substantially similar to the documentation contained in Board materials. In return, the NJDOL Commissioner will, within 10 business days of receipt of the documentation from the NJEDA, provide in writing to the NJEDA notification of either the NJDOL Commissioner’s approval or rejection of the NJEDA’s proposed plan.
- e. When and if the Initial Allocation has been fully allocated by NJEDA to approved plans, NJDOL and the NJEDA may agree to a future allocation(s) which would be encumbered and disbursed in the same manner as the Initial Allocation under Sections (b), (c), and (d) above.
- f. NJEDA will dedicate the Initial Allocation and future allocation(s) from the Fund under this MOU (collectively, “Fund Allocations”) to support and invest in innovative workforce development approaches and programs for purposes specifically delineated within the New Jersey Employment and Workforce Development Act, N.J.S.A. 34:15D-1 et seq., or that may be set forth in the annual State Appropriations Act, either undertaken directly by NJEDA or through procurement with or financial assistance to a governmental, not-for-profit, or for-profit entity, that align with Targeted Industries as defined by NJEDA’s Board or that support a high-demand occupation. All plans proposed by NJEDA will be subject to the powers in its enabling Act, amendments to the enabling Act, or other law applicable to NJEDA, including, but not limited to, that no portion of a Fund Allocation be issued by NJEDA directly to an individual.
- g. NJEDA shall provide NJDOL with written summary Staff Reports six months after disbursement by NJDOL to the NJEDA from the Fund Allocation pursuant to a plan

approved under Section 3(c) or Section 3(d) above, and every six (6) months thereafter until the monies disbursed by NJDOL to the NJEDA for execution of the approved plan are expended. The Staff Reports will also include any significant issues encountered in the execution of the plan and the resolution or proposed resolution of such issues, any expenditures; and anticipated plans for the next six (6) months. Staff Reports shall also include a report of expended and unexpended funds.

- h. NJEDA and NJDOL may schedule interim quarterly verbal status meetings at or about the midpoint of the six (6)-month periods that are subject to summary reports.
4. **TERM:** This MOU shall become effective as of the Effective Date first set forth above. This MOU, unless terminated sooner as set forth in Section 12 ("TERMINATION") herein, shall remain in effect until the earlier of (i) five (5) years from this MOU's Effective Date, or (ii) until the balance of any funds made available to NJEDA under this MOU are fully expended. The term of this MOU may be extended only by prior written agreement by the Parties.
5. **ADMINISTRATION FEE:** NJEDA may utilize up to 3% of the total Fund Allocations to support the administrative, personnel, and overhead costs of running the programs.
6. **SUBJECT TO THE AVAILABILITY OF FUNDING:** The Fund Allocations that NJDOL will provide under this MOU are subject to appropriations and the availability of funds. NJEDA hereby acknowledges that this may impact the originally contemplated amount of the Fund Allocations that NJDOL may provide to NJEDA under this MOU.
7. **THIRD-PARTY BENEFICIARIES:** This MOU shall not create in any individual or entity the status of a third-party beneficiary, and nothing in this MOU shall be construed to create such status. The rights, duties, and obligations contained herein shall operate only between the Parties and shall inure solely to the benefit of the Parties. The provisions of this MOU are intended only to assist the Parties in determining and performing the obligations set forth herein.
8. **ASSIGNMENT:** This MOU shall not be assignable but shall bind and inure to the benefit of the Parties hereto and their respective successors.
9. **DISPUTES:** If there are any disputes among the Parties concerning this MOU, the Commissioner of NJDOL and the CEO of NJEDA, or their authorized representatives, shall confer to resolve the dispute.
10. **APPLICABLE LAW:** The Parties shall retain all the powers, obligations and immunities provided by law. Each Party shall be responsible for adhering to all applicable laws, regulations, and its own Standard Operating Procedures in the performance its obligations under this MOU.
11. **AMENDMENT:** This MOU may be amended, supplemented, changed, modified, or altered only by mutual agreement of the Parties in writing. There shall be no limit to the number of times this MOU may be amended.
12. **TERMINATION:** Either Party may terminate this MOU upon thirty (30) business days written notice to the other Party of such intention to terminate. Such termination request shall be permitted, with or without cause. In the event of termination, the Parties agree to conduct a final accounting within sixty (60) business days of the termination effective date. Within five (5) business days of the final accounting, NJEDA will return any monies that are unencumbered or unexpended by NJEDA from the Fund Allocations remaining after all costs, direct or indirect, incurred by NJEDA under the terms of this MOU have been paid.

13. **NOTICE:** All correspondence and notices to NJDOL regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

[Insert Info]

All correspondence and notices to NJEDA regarding this MOU shall be addressed to the following person or his/her delegate or replacement:

[insert name]
 [insert title]
 New Jersey Economic Development Authority
 36 West State Street, PO Box 990, Trenton, NJ 08625
 [insert email]

14. **COUNTERPARTS:** This MOU may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.
15. **ELECTRONIC SIGNATURES:** The Parties agree that the execution of this MOU by electronic signature and/or by exchanging PDF signatures will have the same legal force and effect as the exchange of original signatures.
16. **ENTIRE AGREEMENT:** This MOU reflects the entire understanding of the Parties, and it supersedes any prior understandings of the Parties. It may not be amended, modified, or supplemented except by mutual consent of the Parties in writing and signed by the authorized representatives of each Party.

IN WITNESS WHEREOF, the Parties have caused this MOU to be executed by their duly authorized representatives.

For NJEDA	For NJDOL
Name:	Name:
Title:	Title:
Signature:	Signature:
Date:	Date:



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

Subject: Wind Institute for Innovation and Training Grant Agreement – New Jersey Economic Development Authority (NJEDA) and New Jersey Department of the Treasury

Request:

1. Members of the Board are requested to approve a Second Grant Agreement between the New Jersey Economic Development Authority (NJEDA) and the New Jersey Department of the Treasury (Treasury Department). On June 30, 2023, Governor Murphy signed New Jersey Fiscal Year 2024 Budget as P.L.2023, Chapter 74. The Appropriations Act includes \$5 million Grant-in-Aid to “New Jersey Wind Institute for Innovation and Training, EDA.” P.L. 2023, c. 74, p. 224. This agreement enables the Treasury Department to provide the \$5 million to NJEDA to support the Wind Institute for Innovation and Training, which is a part of the NJEDA. The funds will be used for the administration and implementation of workforce training, education, research, and innovation programs that will empower New Jerseyans to participate in the offshore wind industry.

The full text of the Second Grant Agreement is included as Exhibit A of this memorandum.

Background:

Governor Murphy established clear and aggressive clean energy goals, including generating 11 GW of electricity from offshore wind energy by 2040 as part of the State’s plan to transition to 100 percent clean energy by 2035. To successfully reach these goals, New Jersey must invest in and coordinate workforce training, education, research, and innovation efforts. Through Executive Order 79, the Governor established the WIND Council, a cross-governmental effort that developed a plan for creating the Wind Institute for Innovation and Training (Wind Institute).

Since the issuance of the WIND Council’s report in April 2020 and with funding provided to NJEDA through September 2020, July 2021, October 2021, October 2022 MOUs with the NJ Board of Public Utilities and through a February 2023 grant agreement with the Treasury Department, NJEDA has been charged with fulfilling the goals of the Wind Institute by developing programs that further its two objectives: 1) to accelerate the development of a robust and diverse offshore wind workforce, and 2) to champion research and innovation that unlock market potential. NJEDA has made significant advancements and financial commitments in offshore wind workforce training, education, research, and innovation. These efforts include:

- Conducting grant challenges like the Offshore Wind Safety Training Challenge that led to Atlantic Cape Community College being selected to create a Global Wind Organization Basic Sea and Survival facility and program, and the Offshore Wind Turbine Technician Training Challenge where Rowan College of South Jersey was selected to establish a suite of wind turbine technician training programs.
- Supporting the development of training programs in construction trades, construction management, mechatronics, forklift operations, and math and verbal skills development with a focus on participants from NJ Overburdened Communities
- Establishing MOUs with Rutgers University, NJ Institute of Technology, Rowan University, and Montclair State University to create the Wind Institute Fellowship and University Initiatives to Advance Offshore Wind.
- Entering into MOUs with Gloucester County Institute of Technology and Salem County Vocational Technical Schools to expand their welding and painting programs to help meet the needs of monopile fabrication and other component manufacturing for offshore wind
- Establishing the Wind Institute Fellowship Program to support university student research in offshore wind with Montclair State University, NJ Institute of Technology, Princeton University, Rowan University, Rutgers University, Seton Hall, Stevens Institute of Technology, and Stockton University
- Supporting the development of New Jersey Institute of Technology's POWERCERTS program which will include two graduate certificate programs in offshore wind management
- Conducting a feasibility study and releasing a Request for Expressions of Interest to develop a Wind Innovation Center to advance research, product development, and testing in core focus areas including climate smart modeling, environmental impact assessment technologies, transmission, energy storage and power to X, and turbine component design
- Hosting a series of offshore wind workforce and industry engagements and trainings for small businesses and stakeholders to engage the offshore wind supply chain

In New Jersey's Fiscal Year 2024 budget, \$5 million was appropriated as a Grant-in-Aid for the Wind Institute for Innovation and Training to continue the State's efforts to accelerate offshore wind workforce training, education, research, and innovation.

Grant Agreement Description:

The Grant Agreement will provide \$5 million in funding to support NJEDA's costs associated with administering and operating the Wind Institute for Innovation and Training. The funding will support:

- Administrative expenses, including, but not limited to, staff, office supplies, travel, consultants and technology.
- Development and execution of programs through deploying funding and resources to organizations or providing other supports for offshore wind workforce and skills training; stakeholder engagement and education initiatives that promote and explain the opportunities and benefits of growing the offshore wind industry; research that furthers the development of offshore wind in the State; and/or efforts to support innovation that furthers efficiencies in offshore wind technology and development.

NJEDA will establish a separate bank account to manage and track these funds. All funds must be encumbered by June 30, 2024 and expended by June 30, 2025. NJEDA will submit a final report by July 31, 2025.

Recommendation:

The Members of the Board are requested to approve the Second Grant Agreement between the NJEDA and the Treasury Department, attached as Exhibit A, that enables the Treasury Department to provide \$5 million in funding to NJEDA for administration, operations and program costs for the Wind Institute for Innovation and Training related programs.



Tim Sullivan, CEO

Prepared by: Jen Becker

Exhibit A: Second Grant Agreement between NJ Department of the Treasury and NJ Economic Development Authority for the Wind Institute for Innovation and Training

Exhibit A

**SECOND GRANT AGREEMENT BETWEEN THE NEW JERSEY DEPARTMENT OF
THE TREASURY AND THE NEW JERSEY ECONOMIC DEVELOPMENT
AUTHORITY FOR THE WIND INSTITUTE FOR INNOVATION AND TRAINING**

This Grant Agreement, together with the Standard Terms and Conditions for Grant Agreements attached hereto as Exhibit A and made a part hereof (collectively, the “Agreement”), made as of the ___ day of _____, 2023, by and between the New Jersey Department of the Treasury (“Treasury”) of the State of New Jersey (the “State”) and the New Jersey Economic Development Authority (“Grantee”), an independent authority of the State will confirm the mutual understanding and the intention of the parties hereto as to the following:

WHEREAS, on June 30, 2023, Governor Murphy signed into law the New Jersey Fiscal Year 2024 Budget as P.L.2023, Chapter 74 (hereinafter the “Budget”); and

WHEREAS, the Budget appropriated \$5,000,000.00 (five million dollars) through Treasury accounts (“Appropriated Funds”) in support of the New Jersey Wind Institute for Innovation and Training; and

WHEREAS, Governor Murphy signed Executive Order No. 79 which established the Wind Council, a cross-governmental effort to develop the Wind Institute to serve as a center for education, research, innovation and workforce training related to the development of offshore wind in New Jersey, the Northeast and the Mid-Atlantic region, now referred to as the Wind Institute for Innovation and Training (Wind Institute), which is currently part of the NJEDA; and

WHEREAS, on February 24, 2023 Treasury and Grantee into a “Grant Agreement Between the New Jersey Department of the Treasury and the New Jersey Economic Development Authority for the Wind Institute for Innovation and Training,” which enabled Treasury to transfer \$5,000,000 to NJEDA to support NJEDA’s efforts related to the administration and operations of the Wind Institute pursuant to the Fiscal Year 2023 Appropriations Act, PL 2022, c.49, which included \$5 million Grant-in-Aid to “New Jersey Wind Institute for Innovation and Training, EDA.” P.L. 2022, c. 49, p. 208;

WHEREAS, the Grantee has previously advanced numerous initiatives to further the intended purpose of the Wind Institute’s stated objectives and

WHEREAS, the Grantee is best positioned to use the \$5 million appropriation to support the costs associated with personnel and administrative operating costs associated with the advancement of the Wind Institute’s objectives and the development and execution of programs through deploying funding and resources to partner organizations or providing other supports for offshore wind workforce and skills training; stakeholder engagement and education initiatives that promote and explain the opportunities and benefits of growing the offshore wind industry; research that furthers the development of offshore wind in the State; and efforts to support innovation that furthers efficiencies in offshore wind technology and development.

NOW, THEREFORE, Treasury and Grantee do hereby agree as follows:

1. The WHEREAS clauses set forth above are hereby incorporated into this Agreement.
2. The Grant is for \$5,000,000.00. The Grant shall be paid to the Grantee within thirty (30) days of the execution of this Agreement.
3. Grantee agrees to maintain a separate bank account for the Grant.
4. The Grant is to be expended by Grantee solely to fund the Grantee's administration and operations associated with the Wind Institute and designing, establishing, funding, and implementing Wind Institute related programs, and may be used to pay for administrative expenses, including, but not limited to, staff, office supplies, travel, consultants and technology. These funds must be encumbered by June 30, 2024 and expended by June 30, 2025. Absent a written approval from the Treasurer of a request for extension, any monies remaining at such time must be returned to the Treasurer.
5. Grantee agrees to submit to Treasury the following material by July 31, 2025, so that staff can perform a reasonable review:
 - a. A full accounting of all expenditures that were funded from the Grant. This will include a description of all services made and their associated costs. Proof of payment, such as vendor receipts, will also be required.
 - b. Bank statements for the separate account in which Grantee deposits the Grant; and
 - c. Such additional information as the Department of the Treasury, Division of Administration may request.

The documentation and material submitted in accordance with this Section 5 above shall be provided via email Catherine Nichols (Department of the Treasury, Division of Administration) at Cathy.Nichols@treas.nj.gov.

6. Grantee agrees that all funds not expended in accordance with this Agreement will be returned to the Treasurer no later than July 31, 2025.
7. To the extent permitted by law, the Grantee shall be solely responsible for and shall keep, save, and hold the State of New Jersey, its officers and employees harmless from all claims, loss, liability, expense, or damage resulting from all mental or physical injuries or disabilities, including death, and any other claim (including any action, liability, loss, expense, or damage) that may arise out of the project as funded by this Agreement. The Grantee's responsibilities under this paragraph shall also include payment of all legal fees and costs that may arise from any such claims or actions. The Grantee's liability under this Agreement shall continue after the termination or expiration of this Agreement with respect to any claim resulting from action or inaction occurring prior to termination.
8. All notices and communications, exchanged in accordance with or in furtherance of this Agreement, except those submitted in accordance with Section 5 above, shall be deemed given when (i) hand delivered with receipt acknowledged, (ii) sent by telecopy, telegraph, telex, facsimile transmission, or any other similar means of electronic communication, (iii) mailed by first class mail, certified, return receipt requested, or (iv) sent by recognized overnight carrier, postage prepaid and with acknowledgement of delivery to the party at

the address or numbers set forth below or as to each party at such other or additional address or numbers as shall be designated by such party in a written notice to the other party hereto:

New Jersey Department of the Treasury
Division of Administration
P.O. Box 211
Trenton, New Jersey 08625-0211
Attention: Catherine Nichols
Cathy.Nichols@treas.nj.gov

New Jersey Economic Development Authority
36 West State Street
Trenton, New Jersey 08625-0211
Attention: Jen Becker
Jen.becker@njeda.gov

9. Remedies: If Grantee fails to comply with the terms of this Agreement whether stated in a State or Federal statute or regulation, an assurance, in a State plan or application, a notice of award, or elsewhere, the Treasurer may take one or more of the following actions, as appropriate in the circumstances:
 - d. Disallow all or part of the cost of the activity or action not in compliance;
 - e. Wholly or partly suspend or terminate the Grant;
 - f. Withhold further awards, if applicable;
 - g. Request the balance of the Appropriated Funds to be returned and/or seek reimbursement for funds expended that were not in compliance with the terms and conditions of this Agreement;
 - h. Take other remedies that may be legally available.
10. The terms and conditions set out in the Department of the Treasury Circular 07-05-OMB are incorporated into this Agreement by reference and Grantee agrees to comply with such terms and conditions.
11. This Agreement shall be governed by and construed in accordance with the laws of the State of New Jersey.
12. This Agreement may be executed in any number of counterparts, all of which counterparts, taken together, shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the Department of the Treasury and the New Jersey Economic Development Authority have executed this Agreement as of the date and year first written above:

DEPARTMENT OF THE TREASURY OF THE STATE OF NEW JERSEY

By: _____
Elizabeth Maher Muoio
State Treasurer

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

By: _____
Tim Sullivan
Chief Executive Officer



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: MOU with Salem County to support NJWP-related economic development

Request

Members of the Board are asked to approve the Authority entering into a Memorandum of Understanding (“MOU”) with Salem County. The MOU commits the Authority to provide \$100,000 in the calendar year 2024 with the option for two further one-year extension options for an additional \$100,000 each, meaning a total potential cost to the Authority of \$300,000 over three years. Use of funds is limited to the operating costs of the County’s Office of Economic Development (the “Office”), which will directly support and contribute to the success of the New Jersey Wind Port (“NJWP”).

Members are also asked to approve delegated authority for the Chief Executive Officer to approve granting an extension of the term and the release of funds for years two and three, with such approval to be contingent on the County meeting compliance requirements in the prior year as outlined below.

Background

Since the NJWP project was announced in 2020 the Authority and Salem County have actively collaborated on economic development initiatives with the shared aim of maximizing the local economic opportunities resulting from the Port. The MOU serves to strengthen the County’s economic development capabilities to enable it to realize business attraction and job creation opportunities stemming from the NJWP project, a once-in-a-generation investment in the region. In particular, parties have been focused on attracting sub-component (i.e., Tier 2 and Tier 3) manufacturers that could be utilized by Tier 1 component manufacturers expected to locate at the Port. European wind sector experience, as well as automotive, aviation and defense manufacturing in the US, have demonstrated this clustering of sub-component suppliers close to original equipment manufacturers (OEMs). Concurrently, through its Wind Institute, the Authority and County have partnered on workforce development initiative both to grow the NJWP labor pool and attract manufacturers.

Since 2022 the County has established an Office of Economic Development, a critical first step in strengthening the County’s business attraction capabilities and overall commercial environment which will directly and indirectly benefit the NJWP. The Office has executed several key initiatives including:

- Initiating a “Choose Salem” marketing campaign, underpinned by an online commercial and industrial site identification and marketing platform;

- Creation of an online business directory, connecting local businesses and workers with resources related to business planning and coaching, grants, training and workforce development;
- Coordination of a local leadership summit, comprising county and local leaders, elected officials and other key stakeholders, to resolve and operationalize key economic development priorities;
- Organizing tours and forums for local businesses and residents, business lenders, real estate brokers and state agencies to showcase site development opportunities and funding grants; and
- Ongoing social media outreach.

The establishment of the Office, which is led by a dedicated full-time director, has materially increased the County's ability to identify and pursue opportunities stemming from the NJWP and broader wind sector.

The Agreement

The MOU before the Board serves to further build on the progress made to date. Under the proposed MOU, the Authority will provide \$100,000 to support the implementation of ongoing and new initiatives of the Office. The proposed MOU requires that the County provide matching funding. Uses of Authority funds by the Office is further limited to programs and strategies consistent with the Office's operating costs. Funding is further contingent on the County providing an annual operating plan and budget for the Office of Economic Development as well as end-of-year actuals. No later than fifteen (15) days following MOU execution, and prior to the transfer of Authority funds, the County will be required to provide its Office's annual operating plan and budget, as well as actual annual expenditures no later than fifteen (15) days following year's end. Funding and reporting requirements will be on a calendar year basis.

Staff are seeking delegated Authority for the Chief Executive Officer to approve release of funds for years two and three, such approval to be contingent on the County providing the reporting documentation outlined above and the Authority's review of same in the prior year.

The full text of the MOU is included in Exhibit A.

Recommendation

Approve the Authority (1) entering into a MOU with Salem County to support NJWP-related economic development efforts, at a cost to the Authority of \$100,000 per year for an initial term expiring on December 31, 2024 with two, one-year extension options and (2) to approve delegated authority to the Chief Executive Officer to grant an extension of the term and the release of funds for years two and three, with such approval to be contingent on the County meeting compliance requirements in the prior year as outlined below.



Tim Sullivan, CEO

Prepared by: Wilson Pichardo

Attachment: Exhibit A – MOU with Salem County to support NJWP-related economic development

EXHIBIT A:

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), made as of this _____ day of _____, 2024 - ("the Effective Date"), is between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY ("NJEDA") and SALEM COUNTY ("County"), (collectively the "Parties").

WHEREAS, the NJEDA, established pursuant to N.J.S.A. 34:18-1 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 NJEDA's Economic Growth Division focuses 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 NJEDA has a role in supporting the development of the offshore wind industry in the State of New Jersey; and

WHEREAS, the State of New Jersey and NJEDA recognize the importance of developing infrastructure to facilitate the growth of the offshore wind industry within the State, and are strategically pursuing these developments; and

WHEREAS, on behalf of the State, the NJEDA is developing the New Jersey Wind Port, the first purpose-built offshore wind port in the United States and New Jersey's flagship investment to catalyze the offshore wind industry within the State; and

WHEREAS, the New Jersey Wind Port will be located in Lower Alloways Creek Township, Salem County; and

WHEREAS, the New Jersey Wind Port will accommodate offshore wind project developers and turbine component manufacturers, each of which will employ workers in high-quality, skilled jobs across a wide array of manufacturing and technical roles related to the fabrication and marshalling of offshore wind turbine components; and

WHEREAS, the New Jersey Wind Port will ground the offshore wind supply chain in South Jersey and Salem County, motivating other firms, including suppliers of turbine and transmission system sub-components and offshore wind service providers, to locate in southern New Jersey and Salem County, creating new, skilled jobs within the region; and

WHEREAS, the growth of the offshore wind industry in Salem County will induce new economic activity across the broader South Jersey economy that will benefit existing small businesses and attract new businesses to the region; and

WHEREAS, the NJWP is projected to boost state GDP by \$500 million per year once fully built and operational, and Salem County is positioned to derive significant economic benefits, with Port tenants and their employees expected to draw on local small and medium-sized businesses in sectors such as retail, food and beverage, accommodation/housing, and ancillary services; and

WHEREAS, Salem County is amongst the State's most economically-distressed regions and has experienced decades of industrial decline, resulting in the loss of local jobs and a lack of economic opportunities for residents and small businesses; and

WHEREAS, both NJEDA and the County recognize the need to capitalize on the economic opportunities that will emerge for businesses and working families in Salem County because of the once-in-a-generation Wind Port investment in Lower Alloways Creek Township; and

WHEREAS, both the NJEDA and the County recognize that growing existing and attracting new manufacturers and ancillary services businesses to the County will require a strategic approach to business growth and attraction and the development of targeted supports; and

WHEREAS, the County has developed an Economic Development Vision and Action Plan ("Action Plan") utilizing CARES Act Supplementary Planning Grant ("CARES") monies to explore methods to maximize local economic benefits arising from the development of the Wind Port and other long-term strategic infrastructure investments within Salem County; and

WHEREAS, in alignment with the State's vision to create a stronger and fairer New Jersey economy, the Action Plan seeks to ensure that anticipated future economic activity in Salem County cultivates economic resilience and prosperity in diverse local communities, fosters local entrepreneurship, prompts businesses to base their operations within the County, and suits the particular economic challenges and interests of differing areas within the County; and

WHEREAS, the effort to produce the Action Plan included the gathering of substantial feedback from businesses, business groups, and local leadership within the County regarding the creation of a Salem County Office of Economic Development, and has resulted in the formation of an economic development framework centered around the establishment of an Office of Economic Development with clearly-defined principles and goals; and

WHEREAS, the Action Plan identifies strategies to be executed by the Salem County Office of Economic Development that will drive the realization of its defined economic development goals, as well as potential public and industry partners and prospective funding sources that could support strategy execution; and

WHEREAS, implementation of the Action Plan will facilitate the revitalization of Salem County communities and will act as a springboard for equitable and sustainable economic development in the region; and

WHEREAS, support of the Salem County Office of Economic Development is imperative to ensure a robust and purposeful economic development framework, as outlined in the Action Plan, can be enacted well in advance of the commencement of operations at the New Jersey Wind Port; and

WHEREAS, in an effort to provide support of the County's Action Plan, the NJEDA seeks to provide the County with funding for an initial period of the 2024 calendar year, provided the County uses the funds for the implementation of the County's Action Plan and support the Salem County Office of Economic Development; and

WHEREAS, the Parties wish to set forth the terms and conditions for the provision and expenditure of the funds to the County by entering into this MOU; and

WHEREAS, the Parties intend for this MOU to have a term of the 2024 calendar year, which may be extended for two (2) one-year additional terms upon mutual consent of the Parties; and

NOW, THEREFORE, in order to effectively support the implementation of Salem County's Action Plan, the Parties do hereby agree to the following:

1. The WHEREAS clauses set forth above are hereby incorporated into this Agreement.
2. The County agrees to provide matching funds to support the implementation of the County's Action Plan, in, at a minimum, the amount provided by NJEDA for this same purpose.
3. The County, through the Salem County Office of Economic Development, agrees to submit to the NJEDA the following material:
 - a) A detailed annual plan and operating budget for the Salem County Office of Economic Development based on funding to be allocated by NJEDA and Salem County, for NJEDA's reasonable review and comment. The annual plan and operating budget should be submitted to the NJEDA within fifteen (15) calendar days of the MOU's effective date identified above, and thereafter annually within fifteen (15) calendar days of the end of each calendar year. The annual plan and operating budget should at a minimum:

- Outline the initiatives that the Office of Economic Development intends to undertake over the course of the year;
 - Outline the Office's plan to pursue funding opportunities as outlined in the Action Plan, including public grant program applications and potential non-public funding streams; and
 - A breakdown of the Office of Economic Development's proposed spending by expenditure type, e.g., salary, fringe, miscellaneous.
- b) An end-of-year report detailing actual expenditures to ensure funding is limited in use to the implementation of the Office's Action Plan for NJEDA's reasonable review. The report shall be submitted within fifteen (15) calendar days of the end of the first calendar year, and thereafter annually within fifteen (15) calendar days of the end of each calendar year.
4. The documentation and material submitted in accordance with Sections 3 above shall be provided via email to NJEDA pursuant to the notice provision in Section 9 below.
5. NJEDA will undertake the following activities:
- a) Upon receipt of the documentation and material in accordance with Section 3 above provide funding in the amount of One Hundred Thousand Dollars (\$100,000.00) to be used to support the Salem County Office of Economic Development's implementation of the Action Plan.
 - b) Monitor and review on a yearly basis, the Office's use of funds and progress in the enactment of the Action Plan, using end of the year reports as described in Section 3 above.
6. Funding obtained from the County, NJEDA, and other miscellaneous sources shall be used to operate the Salem County Office of Economic Development consistent with the detailed annual operating budget, which may be used for such purposes as hiring staff and designing and implementing programs and strategies outlined in the Action Plan.
7. The MOU shall not take effect unless executed by the authorized representatives of NJEDA and the County. This MOU becomes effective immediately upon execution and shall remain in effect for the 2024 calendar year, unless extended pursuant to Section 9 below or terminated sooner pursuant to Section 10 below.
8. Upon the County's request and subject to NJEDA's approval, the MOU may subsequently be extended for two (2) additional one (1) year terms. NJEDA shall provide the County additional funding in the amount of One Hundred Thousand Dollars (\$100,000.00) for each one-year extension that is agreed to by NJEDA. The County's request shall come in the form of a written notice no later than thirty (30) calendar days prior to the end of the calendar year. The NJEDA shall not unreasonably withhold a decision and shall render a judgement within thirty (30) calendar days of receipt of the documentation and material in accordance with Section 3 above. The total term of this MOU shall not exceed three (3) years or Three Hundred Thousand Dollars (\$300,000.00).
9. The Parties are entering into this MOU for the sole purpose of evidencing the mutual understanding and intention of the Parties with respect to the NJEDA funding of the County's Action Plan. It may be amended, modified, and supplemented at any time by mutual consent of the Parties and in writing signed by the undersigned or their designees. This MOU may also be terminated by NJEDA staff or the County upon sixty (60) days prior written notice to the other party.
10. 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. To the extent permitted by law, the County shall be solely responsible for and shall keep, save, hold the NJEDA, its officers and employees harmless from all claims related to loss, liability, expense, or damage that may arise out of the County's Action Plan as funded by this MOU. The County's responsibilities under this MOU shall continue after the termination or expiration of this MOU with respect to any claim resulting for action or inaction occurring prior to termination.
11. All notices, demands, or communications exchanged in accordance with or in furtherance of this MOU shall be deemed given when (i) hand delivered with receipt acknowledged, (ii) sent by telecopy,

telegraph, telex, facsimile transmission, or any other similar means of electronic communication, (iii) mailed by first class mail, certified, return receipt requested, or (iv) sent by a recognized overnight carrier, postage prepaid and with acknowledgment of delivery to the party at the address or number set forth below or as to each party at such other or additional address or numbers as shall be designated by such party in a written notice to the other party hereto:

New Jersey Economic Development Authority
36 West State Street
Trenton, NJ 08625-0211
Attention: Monica Coffey
monica.coffey@njeda.gov

Salem County
110 Fifth Street
Salem, NJ 08079
Attention: Ben Laury
blaury@bensproserv.com

12. If the County fails to comply with the terms of this MOU whether stated or in a State or Federal statute or regulation, an assurance, in a State plan or application, or elsewhere, the NJEDA may take one or more of the following actions, as appropriate in the circumstances:
 - a) Disallow all or part of the cost of the activity or action not in compliance;
 - b) Wholly or partly suspend or terminate the Fund amount;
 - c) Withhold further award of the Fund amount, if applicable;
 - d) Request the balance of the Fund amount to be returned and / or seek reimbursement for funds expended that were not in compliance with the terms and conditions of this MOU.
13. The County shall not assign or transfer any interest in this MOU except as may be provided for in this MOU or without express written approval of the NJEDA.
14. This MOU shall be governed by and construed in accordance with the laws of the State of New Jersey.
15. This MOU may be executed in any number of counterparts, all in which counterparts, taken together, shall constitute but one and the same Agreement.

IN WITNESS WHEREOF, the New Jersey Economic Development Authority and Salem County have executed this Community Benefit Agreement as of the date and year first written above:

For Salem County:

Name:

Signature:

Title:

For New Jersey Economic Development Authority:

Name:

Signature:

Title:



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

RE: Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2 Award Amendment

REQUEST

The Members of the Board are requested to approve an amendment to the Phase 2 Commuter and Transit Bus Private Carrier Relief and Jobs Program's award methodology.

BACKGROUND

On November 16th, 2023, Members of the Board approved the second phase of the Commuter and Transit Bus Private Carrier Relief and Jobs Program, granting amounts to eligible applicants based on a flat award of \$1,000,000, capped at unmet need. Following input from the industry, legislative sponsor, and the Governor's office, the NJEDA has reevaluated the award methodology. The initially approved recommendation featured a flat award amount to all eligible applicants. However, the current recommendation reinstates the previous program methodology, which is grounded in NTD miles operated. The NTD miles methodology effectively tailors the award size to the scale of miles operated.

PROPOSED PROGRAM STRUCTURE & DESIGN:

The proposed amended award methodology is to allocate funds proportionally to eligible applicants based on their total vehicle revenue miles (VRM), capped at unmet need. Award allocations will be based on each eligible applicant's proportional share of the total vehicle revenue miles in New Jersey for 2022 for all eligible applicants, as reported in the NTD directly or through NJ Transit as a private carrier. This methodology is being used to account for additional variable revenue losses as companies cope with the new realities of hybrid work schedules.

The maximum award will not exceed the applicant's unmet need. The unmet need is defined as 2022 New Jersey revenue losses (calculated as the difference between each applicant company's 2022 revenues reported in New Jersey and 2019 revenues reported in New Jersey) less any other public or private funds that a company received for 2022.

Any funding that exceeds unmet need will be re-allocated to the pool proportionally based on vehicle revenue miles, to be disbursed to other eligible applicants.

Award Methodology:

Grants will be allocated to eligible applicants as a proportion to the applicant's total vehicle revenue miles (VRM), capped at unmet need. Any leftover funds would be reallocated proportionally based on VRM. The basic formula is shown below.

$$\text{Award amount} = \left(\frac{\text{Applicant VRM}}{\text{Total VRM}} \right) * \text{Total Grant Pool}$$

Total grant pool = \$11,400,000

Applicant VRM = Vehicle Revenue Miles submitted to NTD for NJ in 2022

Total VRM = Sum of Vehicle Revenue Miles submitted to NTD for NJ in 2022 for all eligible applicants

Total base awards = Sum of base awards for all applicants

All other program details remain the same.

LETTERS OF SUPPORT

In addition to this proposal, attached is Exhibit B: Letter of Support from the Bus Association of New Jersey and Exhibit C: Letter of Support from State Senator Diegan. The support from industry and influential stakeholders underscores the significance and potential success of the proposed amendment.

SUMMARY

The Members of the Board are requested to approve an amendment to the Phase 2 Commuter and Transit Bus Private Carrier Relief and Jobs program's award methodology.



Tim Sullivan, CEO

Prepared by: Oliva Barone, Sr. Project Officer

Attached:

Exhibit A: Phase 2 Board Memo

Exhibit B: Letter of Support from Bus Association of New Jersey

Exhibit C: Letter of Support from Senator Diegan



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: November 16, 2023
RE: Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2

REQUEST

The Members of the Board are requested to approve:

1. The creation of the Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2, a second phase of a relief program that provides grants to eligible commuter and transit bus private carriers in New Jersey that are experiencing reduced ridership due to the new realities of remote and hybrid work schedules.
2. Utilization of \$12 million appropriated to the Authority through the SFY2024 State Budget to fund Phase 2 of the Commuter and Transit Bus Private Carrier Relief and Jobs Program of up to 5% (\$600,000) would be utilized by the Authority to support administrative costs associated with operating the program.
3. Delegation of authority to the Chief Executive Officer to approve eligible applications and decline based solely on non-discretionary reasons for the Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2 in accordance with the terms set forth in this memo and attached program specifications
4. Delegation of authority to the Chief Executive Officer to accept up to \$20,000,000 in additional program funds 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.

BACKGROUND

On March 9, 2020, Governor Phil Murphy issued Executive Order 103, declaring a State of Emergency and a Public Health Emergency to ramp up New Jersey’s efforts to contain the spread of COVID-19. Containing the COVID-19 pandemic necessitated restrictions on public gatherings and led to mandated closing for non-essential businesses. New Jersey businesses and residents faced significant economic challenges due to these public health measures. Even essential services that maintained operations through the public health shutdown faced additional financial strain due to increased sanitation protocols and reductions in customers.

The transportation industry was among one of the industries hardest hit during the pandemic. It was defined as an essential service in P.L. 2020, c. 84, signed by Governor Murphy on September 14th, 2020. Executive Order No. 125, signed by Governor Murphy on April 11th, 2021, mandated additional

mitigation requirements on NJ Transit and all private carriers to limit the spread of COVID-19, including requirements that both directly and indirectly decreased ridership, resulting in a significant loss of revenue to private transportation companies. Despite public health-related restrictions being lifted and the broader economy showing signs of recovery, ridership had still not returned to its pre-pandemic levels. As such, grant funding was necessary to help private carriers recover from their lost revenues, allowing them to retain or create jobs.

Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program Phase 1

To provide financial relief to address the continued impact of COVID-19 on the economy, the Federal government passed the American Rescue Plan Act (ARP) of 2021. Within the ARP, the Coronavirus State and Local Fiscal Recovery Fund (SFRF) provided approximately \$6.2 billion in funds to the State of New Jersey for a variety of recovery-specific uses. The State's Fiscal Year 2022 Appropriations Act allocated \$25,000,000 of these monies to the Authority, and the Members approved the Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program (Phase 1 of the Program) in February 2022. Phase 1 of the Program provided a one-time grant to thirteen (13) eligible commuter and transit bus private carriers that operate essential services in New Jersey.

OVERVIEW

Based on an additional \$12 million in funding appropriated to the Authority through the SFY2024 State Budget, the Members are requested to approve a second phase of the Commuter and Transit Bus Private Carrier Relief and Jobs Program to help commuter and transit bus transportation companies alleviate continued revenue loss resultant from the effects of this new normal economy and the new realities of remote work. Helping the state's private carrier industry will both benefit New Jerseyans who rely on the state's commuter bus services as well as the residents employed by the private carrier companies.

The objective of Phase 2, similar to Phase 1, is to provide financial relief and support to private carrier companies facing reduced ridership due to the new realities of remote work. Providing financial relief to private carrier companies aligns with the economic development priority of "investing in communities to build world-class cities, towns, and infrastructure statewide" which EDA previously adopted pursuant to (13)of the ERF Act (34:1B-7.13(a)(13)). By supporting these companies, we contribute to the overall well-being of communities, help maintain essential transportation services, and foster economic resilience within the state. Incorporating the policy of providing relief grants to private carrier companies facing reduced ridership due to remote work not only addresses their financial challenges but also advances our priority of investing in communities and infrastructure. By adapting to the evolving transportation landscape, these private carriers can continue to serve their communities effectively, contributing to the overall success of our state's development goals.

TRANSPORTATION INDUSTRY-SPECIFIC DEFINITIONS

The National Transit Database (NTD) is a publicly available repository of data about the financial, operating, and asset condition of transit systems, providing a public accounting of these services. The NTD is designed to support local, state, and regional planning efforts through the availability of multi-year data for trend analyses. Transit agencies report data on a number of key metrics including Vehicle Revenue Miles (VRM), Vehicle Revenue Hours (VRH), Passenger Miles Traveled (PMT), Unlinked

Passenger Trips (UPT), and Operating Expenses (OE). This resource, as a Federally maintained and validated register, will serve as the basis for the allocation of funds within the Program.

The Program will use the definitions of the following terms as quoted from the Federal Transit Administration in the NTD Glossary:¹

Vehicle Revenue Miles are the miles that vehicles are scheduled to or actually travel while in revenue service. Vehicle revenue miles include layover and recovery time. Vehicle revenue miles exclude deadhead, operator training, vehicle maintenance testing, and other non-revenue uses of vehicles.

Fixed Route Services are services provided on a repetitive, fixed schedule basis along a specific route with vehicles stopping to pick up and deliver passengers to specific locations; each fixed route trip serves the same origins and destinations, such as rail and bus (MB); unlike demand responsive (DR) and vanpool (VP) services.

Commuter Bus (CB) is a local fixed-route bus transportation primarily connecting outlying areas with a central city. Characterized by a motorcoach (aka over-the-road bus), multiple trip tickets, multiple stops in outlying areas, limited stops in the central city, and at least five miles of closed-door service.

Charter Service is a vehicle hired for exclusive use that does not operate over a regular route, on a regular schedule and is not available to the general public.

For the purposes of the Program, Vehicle Revenue Miles reported to the NTD, as recorded in Annual Data Tables, in the most current Service data available for New Jersey, or through NJ Transit as their private carrier in the most current year, will be used as an eligibility criteria.

For the purposes of the Program, eligible applicants need to provide a fixed route service by bus (MB); other transit modes are not eligible.

Proposed Program Structure & Design:

To streamline the program and ensure the Authority can efficiently deploy this funding, program eligibility will be based on certain non-discretionary criteria, and grant amounts will be calculated based on a predefined formula.

To be eligible, an applicant must demonstrate the following in a manner acceptable to the Authority:

- Have been in business prior to February 15, 2020;
- Be a for-profit business (non-profits are excluded from the Program based on other required criteria); public agencies, authorities, or government entities are not eligible;

¹ Federal Transit Administration (2023, March 8th). *National Transit Database (NTD) Glossary*. United States Department of Transportation. Retrieved September 19, 2023 from <https://www.transit.dot.gov/ntd/national-transit-database-ntd-glossary>

- Be registered to do business in and operating in the state of New Jersey, as evidenced by a current New Jersey Tax Clearance Certificate;
- Provide fixed route bus service (MB) or commuter bus (CB) service as defined in the Federal Transit Administration’s *National Transit Database (NTD) Glossary*. Other services, including but not limited to those provided by charter buses, school buses, municipal shuttles, vanpool, and on-demand bus services, are not eligible;
- Have reported Vehicle Revenue Miles for fixed route bus service (MB) or commuter bus service (CB) greater than 0 in New Jersey directly to the NTD, as recorded in the current Annual Data Tables Service, or through NJ Transit as a private carrier;
- Demonstrate systemic decrease in revenues (losses) in the state of New Jersey in 2022 due to the new realities in working habits (calculated as the difference between each applicant company’s 2022 NJ-generated revenues and 2019 NJ-generated revenues as reported in the respective NJ CBT-100 or CBT-100S tax returns, Schedule J) that has not been fully addressed by other public or private relief funding sources
- Certify bus service, through peak vehicle requirements or notice of service changes, has not voluntarily reduced since 2021, from time of application, at milestone stages, and through the end of the grant compliance period.
- Satisfy the Authority’s debarment/disqualification review and not have any defaults or outstanding obligations to the Authority; and
- Be in good standing with the following sister agencies: New Jersey Department of Labor, New Jersey Department of Environmental Protection, New Jersey Division of Taxation, and New Jersey Transit.

The Program will be structured as a non-competitive grant. As such, the Program’s application will remain open for a fixed period of time (to be determined based on anticipated demand, but not less than two weeks), and all eligible applicants that apply within this period will receive a grant. Once the application period closes, staff will review all applications for completeness and eligibility. Applicants who have not provided the Authority will all necessary information will be given the opportunity to remedy, per Program’s standard operating procedures. Grant amounts will be determined for all eligible applicants based on a flat award amount of \$1,000,000, if applicable, with total grant amount capped at unmet need.

The flat amount of \$1,000,000 was determined based on about 80% of the overall Program budget (at least \$11,400,000), using the anticipated Program applicant pool of approximately ten eligible organizations. The rationale behind using a flat grant amount is a means to equitably address base overhead costs, for example, the cost of vehicle maintenance, employee salaries, and garage depots for buses. However, if there are more than twelve eligible applicants with unmet needs greater than \$1,000,000, the flat amount provided to each eligible applicant will be reduced such that all applicants receive an equal share of the funding pool. Any amounts unused from the maximum available for the flat grant amount, inclusive of any bonus funding, in aggregate will be included in the allocation of the remainder of the funds.

The maximum award, inclusive of the flat amount will not exceed the applicant’s unmet need. The unmet need is defined as 2022 New Jersey revenue losses (calculated as the difference between each applicant company’s 2022 revenues reported in New Jersey and 2019 revenues reported in New Jersey) less any other public or private funds that a company received for 2022.

Any funding, flat amount or pro-rata share, that exceeds unmet need will be re-allocated to the pool to be disbursed to other eligible applicants.

Award Methodology:

Grants will be allocated to eligible applicants using a predefined formula, consisting of a flat award amount for eligible applicants, capped at unmet need. The basic formula is shown below.

$$Award\ amount = Base\ award + \left(\frac{balance\ of\ total\ grant\ pool - total\ base\ awards}{Number\ of\ applicants} \right)$$

Potential total grant pool = \$11,400,000

Base award = \$1,000,000 (unless capped by unmet need)

Total base awards = Sum of base awards for all eligible applicants

Funding Disbursements:

There is an ongoing commitment to sustain essential service providers, therefore Phase 2 of the Program will introduce a milestone-based disbursement process. As part of this approach, successful applicants will receive half of their awarded funds upon the completion and execution of the grant agreement.

The second disbursement of the remaining half of the award, will be contingent upon the outcome of the 2024 NJ Transit review of peak vehicle requirements, which will be available in Q3 2024. Approved applicants will only receive their final disbursement once NJ Transit confirms no variances in peak vehicle requirements. In the event of review of peak vehicle requirements is less than amount confirmed at time of application, or if there is a notice of decreased service, the awardee will forfeit the remaining reserved approved funds.

This milestone-based disbursement strategy aims to streamline the allocation process and ensure that funding aligns with evolving service demands.

In the event an awardee forfeits the remainder of their grant funds, the funds will be redistributed to the remaining eligible awardees and disbursed accordingly.

Fees

To support the administrative costs associated with operating this program, the Members are requested to approve the utilization of up to 5% of the appropriation (\$600,000) to cover costs such as staff time, technology development, marketing, etc. NJEDA Staff will be responsible for reviewing applications, coordinating good standing reviews, disbursing funds, maintaining a program website, and providing educational resources, such as FAQs and webinars, to applicants when needed.

As allowed by EDA's recently revised fee rules, no application fee will be charged because EDA is using part of the funds for EDA's administrative costs.

Diversity, Equity, and Inclusion:

This program has a tightly defined purpose targeted to provide support to private carrier companies. To support NJEDA's commitment to diversity, equity, and inclusion, the application will include voluntary disclosures about applicant company demographic data and request a diversity, equity, and inclusion plan, policy, or statement for their organization.

Appeals:

Applicants will have the right to appeal the Authority's determination of eligibility and award amount. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 business days but no longer than 10 business days). The CEO or delegate(s) will designate Hearing Officers, who will be a staff member who has not up until that point been directly involved, to review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a Final Administrative Decision, which must be approved by the CEO or delegate(s). Due to the proportional distribution of funds, all funds will be held from assignment until all appeals are resolved, after which funds will be disbursed.

SUMMARY

The Members of the Board are requested to approve: (1) the creation of the Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2, a second phase of a relief program that provides grants to eligible commuter and transit bus private carriers in New Jersey that are experiencing reduced ridership due to continued remote and hybrid work schedules following the COVID-19 pandemic; (2) utilization of \$12 million appropriated to the Authority through the SFY2024 State Budget to fund Phase 2 of the Commuter and Transit Bus Private Carrier Relief and Jobs Program, of up to 5% (\$600,000) would be utilized by the Authority to support administrative costs associated with operating the program; 3) Delegation of authority to the Chief Executive Officer to approve eligible applications and decline based solely on non-discretionary reasons for the Commuter and Transit Bus Private Carrier Relief and Jobs Program – Phase 2 in accordance with the terms set forth in this memo and attached program specifications; and 4) Delegation of authority to the Chief Executive Officer to accept up to \$20,000,000 in additional program funds 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: Oliva Barone, Sr. Project Officer

Exhibit A - Commuter and Transit Bus Private Carrier Relief and Jobs – Phase 2 Program Specifications

Exhibit A

Commuter and Transit Bus Private Carrier Relief and Jobs – Phase 2 Program Specifications

These specifications are provided as a summary. In the case Exhibit A does not specify details or requirements or utilizes different language from the memorandum, the memorandum takes precedence.

Funding Source	The Commuter and Transit Bus Private Carrier Relief and Jobs Program (“the Program”) is funded through the SFY2024 State Budget
Program Budget	\$12,000,000 (up to 5% of the appropriation (\$600,000) for admin costs)
Program Expiration	The Program will be structured as a non-competitive grant. As such, the Program’s application will remain open for fixed period of time (no less than two weeks) and all applicants that apply within this period and meet the eligibility requirements will receive a grant. Program will expire when all funds are disbursed.
Program Purpose	The Commuter and Transit Bus Private Carrier Relief and Jobs Program is a non-recurring grant program to help commuter and transit bus transportation companies alleviate continued revenue loss resultant from the effects of a post pandemic economy and the new realities of remote work. Helping the state’s private carrier industry will both benefit New Jerseyans who rely on the state’s commuter bus services as well as the residents employed by the private carrier companies.
Applicant Eligibility Requirements	<p>To be eligible, an Applicant must:</p> <ul style="list-style-type: none"> • Have been in business prior to February 15, 2020; • Be a for-profit business (non-profits are excluded from the Program based on other required criteria); public agencies, authorities, or government entities are not eligible; • Be registered to do business in and operating in the state of New Jersey, as evidenced by a current New Jersey Tax Clearance Certificate; • Provide fixed route bus service (MB) or commuter bus (CB) service as defined in the Federal Transit Administration’s National Transit Database (NTD) Glossary. Other services, including but not limited to

	<p>those provided by charter buses, school buses, municipal shuttles, vanpool, and on-demand bus services, are not eligible;</p> <ul style="list-style-type: none">• Have reported Vehicle Revenue Miles for fixed route bus service (MB) or commuter bus service (CB) greater than 0 in New Jersey directly to the NTD, as recorded in the current Annual Data Tables Service, or through NJ Transit as a private carrier;• Demonstrate systemic decrease in revenues (losses) in the state of New Jersey in 2022 due to the new realities in working habits (calculated as the difference between each applicant company's 2022 NJ-generated revenues and 2019 NJ-generated revenues as reported in the respective NJ CBT-100 or CBT-100S tax returns, Schedule J) that has not been fully addressed by other public or private relief funding sources• Certify bus service, through peak vehicle requirements or notice of service changes, have not voluntarily reduced since 2021, from time of application, at milestone stages, and through the end of the grant compliance period.• Satisfy the Authority's debarment/disqualification review and not have any defaults or outstanding obligations to the Authority; and• Be in good standing with the following sister agencies: New Jersey Department of Labor, New Jersey Department of Environmental Protection, New Jersey Division of Taxation, and New Jersey Transit.
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<p>Program funding levels and Calculation of Award:</p>	<p>Grant amounts will be determined for all eligible applicants based on a flat award amount of \$1,000,000, if applicable, with total grant amount capped at unmet need.</p> <p>The flat amount of \$1,000,000 was determined based on about 80% of the overall Program budget (at least \$11,400,000), using the anticipated Program applicant pool of approximately ten eligible organizations. The rationale behind using a flat grant amount is a means to equitably address base overhead costs, for example, the cost of vehicle maintenance, employee salaries, and garage depots for buses. However, if there are more than twelve eligible applicants with unmet needs greater than \$1,000,000, the flat amount provided to each eligible applicant will be reduced such that all applicants receive an equal share of the funding pool. Any amounts unused from the maximum available for the flat grant amount, inclusive of any bonus funding, in aggregate will be included in the allocation of the remainder of the funds.</p> <p>The maximum award, inclusive of the flat amount will not exceed the applicant’s unmet need. The unmet need is defined as 2022 New Jersey revenue losses (calculated as the difference between each applicant company’s 2022 revenues reported in New Jersey and 2019 revenues reported in New Jersey) less any other public or private funds that a company received for 2022.</p> <p>Any funding, flat amount or pro-rata share, that exceeds unmet need will be re-allocated to the pool to be disbursed to other eligible applicants.</p>
<p>Funding Disbursement</p>	<p>The Program will introduce a milestone-based disbursement process. As part of this approach, successful applicants will receive half of their awarded funds upon the completion and execution of the grant agreement.</p> <p>The second disbursement of the remaining half of the award, will be contingent upon the outcome of the 2024 NJ Transit review of peak vehicle requirements, which will be available in Q3 2024. Approved applicants will only receive their final disbursement once NJ Transit confirms no variances in peak vehicle requirements. In the event of review of peak vehicle requirements is less than amount confirmed at time of application, or if there is a notice of decreased service, the awardee will forfeit the remaining reserved approved funds.</p>

	<p>In the event an awardee forfeits the remainder of their grant funds, the funds will be redistributed to the remaining eligible awardees and disbursed accordingly.</p>
<p>Fee Schedule</p>	<p>To support the administrative costs associated with operating this program, the Members are requested to approve the utilization of up to 5% of the appropriation (\$600,000) to cover costs such as staff time, technology development, marketing, etc. NJEDA Staff will be responsible for reviewing applications, coordinating good standing reviews, disbursing funds, maintaining a program website, and providing educational resources, such as FAQs and webinars, to applicants when needed.</p> <p>As allowed by EDA's recently revised fee rules, no application fee will be charged because EDA is using part of the funds for EDA's administrative costs.</p>
<p>Appeals</p>	<p>Applicants will have the right to appeal the Authority’s determination of eligibility and award amount. Appeals must be filed within the timeframe set in the declination letter (which must be at least 3 business days but no longer than 10 business days). The CEO or delegate(s) will designate Hearing Officers, who will be a staff member who has not up until that point been directly involved, to review the applications, the appeals, and any other relevant documents or information. The Hearing Officer will prepare a Final Administrative Decision, which must be approved by the CEO or delegate(s). Due to the proportional distribution of funds, all funds will be held from assignation until all appeals are resolved, after which funds will be disbursed.</p>



Mr. Tim Sullivan, Chief Executive Officer
Ms. Kathleen W. Coviello, Chief Economic Transformation Officer
New Jersey Economic Development Authority
NJ Bioscience Center
675 US Highway One
North Brunswick, NJ 08902
Sent via email

Dear Mr. Sullivan and Ms. Coviello,

I write on behalf of the Bus Association of New Jersey to thank you for considering changes to the allocation formula for the Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program. Our association would be very supportive of a Board action to amend the program to better match grant amounts to services provided, by allocating the grants according to miles contributed by each applicant to the National Transportation Database (NTD).

The Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program, as you know, was first funded in 2022 and was designed, fundamentally, to allocate emergency aid funds to operators based on their share of total miles contributed to the National Transit Database (NTD) during the review period.

The formula provided a base \$500,000 award to all applicants with the remaining funds allocated by calculating each company's NTD miles divided by the total NTD miles for the grant pool. The funding amount was \$25 million less administrative costs for the NJEDA.

Given that after the award of the \$500,000 base to each carrier the remainder of the total available funding was significant enough to be allocated proportionately to service provided, every carrier accepted the program, and the allocations were made.

The current grant amount is half of that earlier funding -- \$12 million (gross) -- and as adopted by the Board last November, the minimum base award is doubled to \$1 million from \$500 thousand. That means that the base awards will essentially consume the entire funding allowance. This allocation format penalizes operators who generate the most miles to the NTD -- that is, the ones that have been providing the most service and incur the greatest cost to operate and sustained losses.

For the reasons outline above we recommend and support an amendment to the program by the NJEDA Board to eliminate the base awards and allocate the relief funds solely by NTD miles operated. This new formula will fairly provide funds to applicants based on the buses and miles they operate and the service provided to the people of New Jersey. We believe that this measure will better achieve the NJEDA's goals as stated at its November 16, 2023 Board meeting

Thank you very much for your consideration of views and our support for this measure.

Sincerely yours,

Scott Sprengel

Scott Sprengel
President, Bus Association of New Jersey
TITLE, Academy Bus Lines
(201) 420-7000
scott@academybus.com

cc. Dennis Zeveloff, Chief Policy Advisor, Office of the Governor
Christopher D'Elia, Transportation Policy Advisor to the Governor
Carol Katz, President, Katz Government Affairs, LLC



NEW JERSEY SENATE

PATRICK J. DIEGNAN, JR.

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COMMITTEES
TRANSPORTATION, CHAIR
BUDGET AND APPROPRIATIONS

January 25, 2024

Mr. Tim Sullivan, Chief Executive Officer
Ms. Kathleen W. Coviello, Chief Economic Transformation Officer
New Jersey Economic Development Authority
NJ Bioscience Center
675 US Highway One
North Brunswick, NJ 08902

Dear Mr. Sullivan and Ms. Coviello,

I write to encourage the New Jersey Economic Development Authority (NJEDA) Board to consider making changes to the allocation formula for the Commuter and Transit Bus Private Carrier Pandemic Relief and Jobs Program as approved on November 16, 2023.

As you know, the allocation formula approved by the Board in November provides a \$1 million minimum base award to each eligible carrier. Unfortunately, this format may penalize the operators who generate the most miles to the National Transportation Database (NTD). However, the miles generated are indicative of the operators that have been providing the most service and likely incur the greatest cost (and greater losses) to operate.

This approved formula is also a departure from how the NJEDA allocated awards when the program was first funded in 2022.

Accordingly, I respectfully request the NJEDA Board consider an amendment to the program to eliminate the base awards and allocate the relief funds solely by miles operated as indicated by the NTD database, as was done in 2022. This formula will more fairly provide funds to applicants based on the buses and miles they operate and the service provided to the people of New Jersey.

Additionally, I respectfully request the NJEDA Board consider this change at its earliest possible convenience so approved carriers can gain some much-needed relief and focus on continuing to provide valuable transportation services statewide.

Very truly yours,

A handwritten signature in black ink, appearing to read "Patrick J. Diegnan, Jr.", written over a white background.

Patrick J. Diegnan, Jr.

cc. Dennis Zeveloff, Chief Policy Advisor, Office of the Governor
Christopher D'Elia, Transportation Policy Advisor to the Governor



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: February 7, 2024

RE: Aspire Program- Product #00312280
New Jersey Performing Arts Center (“Applicant”)

Request

Issuance of tax credits from the Aspire program (“the Program”) for a single-phase Transformative residential project located in Newark, New Jersey, Essex County up to 60% of the total project cost (“eligible costs”), not to exceed \$199,690,465.

Aspire Program Background

The New Jersey Economic Recovery Act of 2020, N.J.S.A. 34:1B-322, et seq., provides that the “authority shall administer the program to encourage redevelopment projects through the provision of incentive awards to reimburse developers for certain project financing gap costs.” N.J.S.A. 34:1B-324. As authorized by recently enacted revisions, P.L. 2023, c. 98 (“Chapter 98”), this application is proceeding under the act and rules in effect immediately prior to Chapter 98 (respectively, “Former Act” and “Former Rules,”) . However, Chapter 98 also allows for projects to proceed under the Former Act and Former Rules while benefitting from increases to project award caps contained in these revisions. Such projects would also be reviewed using the Chapter 98 definition of “reasonable and appropriate return on investment,” which requires both a deferred developer fee and a cash flow internal return on investment analysis for residential projects with Low-Income Housing Tax Credits and returns on equity other than federal or local grants. To do so, an applicant would need to provide a complete application to the Authority, a statement in writing electing to proceed under this option and obtain all applicable approvals under the Municipal Land Use Law prior to November 4th, 2023. This Applicant has provided a complete application and received Final Site Plan Approval from the City of Newark on September 26, 2022.

Accordingly, this application was evaluated to determine eligibility in accordance with the Former Act and the Former Rules with the exception of the new project award cap and “reasonable and appropriate return on investment” definition. To meet basic eligibility requirements, developers of residential projects must demonstrate (1) that without the incentive award, the Redevelopment Project is not economically feasible, (2) that a project financing gap exists after the developer has contributed an equity participation of at least 20 percent of the total development cost, and (3) the project meets specific cost thresholds, depending on where the project is located.

The Program provides tax credits for ten years (the “Eligibility Period”). The amount of tax credits a real estate development project or “Redevelopment Project,” receives is generally a percentage of the project’s costs and is subject to a statutory cap determined by project location and other aspects of each project.

Project Description

The Project, known as NJPAC District, is a 577,940 square foot mixed-use development that will connect the existing New Jersey Performing Arts Center (NJPAC) location with the larger Newark community serving as a touchpoint between the City Center and the new Riverfront Park through significant investment in public space in addition to the mixed-use real estate development. The Project will include a residential component known as ArtSide representing 350 units and totaling 384,840 residential square feet, with an additional 10,500 square feet of office space for WBGO’s (Newark-based public radio station) new headquarters as well as 12,600 square feet of retail space. The Project will also include a new 53,000 square foot arts-education and community facility known as the Cooperman Center coupled with the renovation of the 17,000 square foot Episcopal Church building for related arts education activities, improvements to the existing 100,000 square foot NJPAC facility, as well as significant infrastructure improvements to the larger site needed to accommodate the development such as the complete overhaul of NJPAC’s front lawn, Chambers Plaza.

The Authority acquired the land on which the existing NJPAC facility was built from the State and ground leased it to NJPAC by-way of a corresponding sublease in 1996; ultimately providing a significant part of the construction funding through the issuance of several series of bonds. As such the Authority was formerly NJPAC’s landlord prior to those bonds being retired, at which point the existing lease reverted to a direct ground lease between NJPAC and the State.

In April of 2022, NJPAC was awarded their first \$2 million New Jersey Arts and Innovation Festival Challenge Grant by the Authority. In December 2023, the Board approved a second allocation of this grant funding to the Applicant, as authorized by an appropriation in the Fiscal Year 2024 State budget.

Project Ownership

The Applicant, NJPAC, has obtained site control for the site of the Project by multiple avenues. For the existing NJPAC facility, site control was obtained by way of the forementioned ground lease with the State that has a remaining term of 72 years.

NJPAC executed a Purchase Sale Agreement with the Episcopal Diocese of Newark for the acquisition of an existing church structure at 31 Mulberry Street. Closing of the building is expected to take place in the fourth quarter of 2024.

The Cooperman Center will be constructed on a surface parking lot adjacent to the Episcopal Church building that was conveyed to NJPAC from the State by deed dated December 18th, 2018. NJPAC will directly own the existing NJPAC facility in addition to the Episcopal Church building. NJPAC will ultimately ground lease the Cooperman Center site to TS 2 Development Corporation, which will then sublease the completed Cooperman Center back to NJPAC.

The State conveyed the land where the ArtSide component of the Project will be developed to NJPAC through a deed dated December 18th, 2018, mentioned previously in relation to the Cooperman Center site.

The ArtSide component will be owned in combination by two urban renewal entities; with Center Street Owners Urban Renewal LLC owning the mixed-use multifamily component as well as the associated infrastructure improvements and CSO Townhouse Developer Urban Renewal LLC

owning the rental townhomes. CSO Holdco LLC will be the sole member of each of the urban renewal entities. NJPAC TSD 1 LLC, a wholly owned subsidiary of NJPAC, will receive title to the property from NJPAC and lease this property to the respective urban renewal entities by way of a distinct 97-year ground lease with each entity.

NJPAC TSD 1 LLC (80%) and ArtSide Managers LLC (20%) represent the ownership of CSO Holdco LLC, with Artside Managers LLC and NJPAC TSD 1 LLC being the co-managing members. As previously noted, NJPAC TSD 1 LLC is wholly owned by NJPAC. LMXD OZ Investor LLC is a 90% co-managing member of Artside Managers LLC and is controlled by the Lead Development Entity, LMXD, while Mulberry Center Partners LLC is the other 10% co-managing member of Artside Managers LLC and is wholly owned by Siree Morris.

Affiliates:

Aspire program rules allow for eligible project costs to be incurred by a previously identified Affiliate of the Applicant on behalf of the Applicant. Site control may also be established on behalf of the Applicant by a previously identified Affiliate of the Applicant. An Affiliate of the Applicant shall not have any rights to the Aspire tax credits they would not otherwise have based upon Program Rules.

NJPAC TSD 1 LLC is wholly owned by the Applicant and will be the ground lessor for the ArtSide component of the Project.

CSO Holdco LLC is an Affiliate of the Applicant by way of NJPAC TSD 1 LLC and will wholly own the development entities associated with the ArtSide portions of the Project.

Center Street Owners Urban Renewal LLC, which is wholly owned by CSO Holdco LLC, will own the multi-family, mixed-use portion of the Project.

CSO Townhouse Developer Urban Renewal LLC, which is wholly owned by CSO Holdco LLC, will own the townhome rental portion of the Project.

TS 2 Development Corporation which is a New Jersey not-for-profit of which NJPAC will fill at least 80% of the Board member positions with sitting Board members of NJPAC and will ultimately lease the completed Cooperman Center facility back to NJPAC following its construction.

Lead Development Entity:

LMXD is the Lead Development Entity for the Project and will be overseeing the development and operations of the residential components of the project. LMXD is a newly formed L+M Development Partners (L+M) affiliated company responsible for building transit oriented, mixed-income, and mixed-use communities in the Northeast and around the country. LMXD builds upon L+M's 35-year history. L+M and LMXD together have acquired or preserved 40,000 residential units, manage 18,000 units, and have invested and developed \$10 million of capital.

While not the Lead Development Entity, NJPAC will be performing a variety of functions typical of a Lead Development Entity such as directing the construction, financing, and ongoing operations for the portions of the Project it will directly own.

Architect:

Master planning and design for ArtSide has been undertaken by Skidmore Owings and Merrill, a full-service design firm providing architecture, master planning, urban design, interior architecture, planning and predevelopment.

Founded in 1936, SOM has with a wide range of completed work including 1] Lever House – New York, New York; an office building 2] San Francisco International Airport – San Francisco, California; 3] The Burj Khalifa – Dubai 4] 35 Hudson Yards – New York, New York; a mixed-use apartment and retail development.

Weiss/Manfredi Architects, a New York based architecture firm, is the firm that designed the plans for the Cooperman Center. Weiss/Manfredi Architects focuses architecture, art, ecology, landscape architecture, engineering, and urban planning.

General Contractors:

The general contractor for the Project is Turner Construction Company, a North America-based, international construction services company that completes \$15 billion of construction on 1,500 projects every year and specializes in the areas of virtual design, health and safety, and lean construction. Turner Construction Company was founded in 1902 and is currently led by Peter Davoren – Chairman, President and CEO.

Construction Timeline:

Construction is expected to commence in July of 2024 and the project will take 41 months to complete.

Project Details

The Project has three main components:

1) Residential development that has apartment units, townhome rentals, and retail space. ArtSide will include residential development consisting of 384,840 square feet of which 356,900 square feet make up the multi-family space, and 27,940 square feet make up the townhome rental space. 335 apartment units will be located in a high-rise tower and mid-rise building, and 15 units will be included in low-rise townhomes, totaling residential 350 units. The Project will also include 10,500 square feet of office space for WBGO's (Newark-based public radio station) new headquarters and 12,600 square feet of additional ground floor retail space.

The residential mix includes 280 market rate units and 70 affordable units, making the development 20% affordable. Market rate units include 61 studios, 146 one-bedroom units, 49 two-bedroom units, and 24 three-bedroom units. Affordable units include 7 studios, 6 one-bedroom units, 40 two-bedroom units, and 17 three-bedroom units.

2) NJPAC improvements that include the revitalization of the existing 100,000 square foot performing arts center building and the development of a new hub for arts education, which includes the Cooperman Center and the acquisition and renovation of the adjacent Episcopal Church. The upgrades made to NJPAC's main building will be the first in the institution's 30-year history, and will make the building more accessible, welcoming, and functional. These improvements consist of seating and decorative floor replacements to the 68,000 square foot theater space, kitchen & event space renovations to the 3,000 square foot Nico's Restaurant, an expansion of the 3,000 square foot loading docks, and the repurposing of the 18,000 square foot Center for Arts Education, also known as 24 Rector Street. NJPAC will preserve a significant portion of the 24 Rector Street structure including the facade and it will be used as a reformulated auditorium for community meetings and other similar uses. The current services offered in this building will be relocated to the new Cooperman Center, while the back of the building will be

demolished to make way for new loading dock operations at the existing NJPAC facility. The loading dock expansion and reorientation will be critical to the loading operations for the entire development as reorienting the loading docks will allow for the connection of Mulberry Street from Center to Rector Street, as well as the new of future phase projects.

The Cooperman Center will be the new, 53,000 square foot facility for NJPAC's arts education and community programming, as well as dedicated state of the industry rehearsal space for performing artists. This arts education hub also includes the rehabilitation of the 17,000 square foot building acquired from the Episcopal Diocese. The Cooperman Center will contain a 175-seat studio theater for educational initiatives and free community events, a dozen multipurpose classrooms at varying sizes, a children's arts reading room, office space for NJPAC Arts Education staff, and a suite of professional rehearsal studios with ancillary spaces.

3) Sitewide infrastructure improvements that will make the development feasible and activate the space for the new buildings and the construction of several new publicly accessible streets and open spaces. These improvements include significant upgrades to the city's utility infrastructure to support the vertical development by relocating a sewer pipe that will introduce water, sewer, gas, and power service. The Project will establish a new network of streets and open spaces that will be accessible to the public. The Mulberry extension will run between NJPAC and the new development and will be the Project's spine of activity. As a shared and curb-less street, the design blurs the separation between pedestrian and vehicular zones, which reduces car traffic and creates a safer zone for pedestrians, while enabling the closure of the street for events.

Improvements will also be made to NJPAC's front lawn, known as Chambers Plaza, to further serve as an outdoor venue and community meeting space. The Plaza will be reconfigured into a public park that is open throughout the year and will host outdoor concerts, farmers markets, and a winter skating rink.

The Project will satisfy the Authority's Green Building Standards through the Pay for Performance incentive administered by New Jersey Clean Energy for new construction and substantially rehabilitated components of the Project. The existing NJPAC facility will abide by the minimum requirement standards for Type 2 renovation/alteration projects within the Authority's Green Building Standards.

Transformative Project

The Aspire statute provides for a category of Redevelopment Projects that may be either residential or commercial projects, which are referred to as "transformative projects." Such projects must meet certain significant criteria and can receive tax credit awards up to the lesser of \$400 million or 60 percent of eligible costs.

For any project to be transformative it must have eligible costs that are at a minimum \$100 million. In addition, the project square footage, exclusive of any parking component must be 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space or 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production. Having eligible costs of \$332,817,442 and representing more than 577,940 in total square feet of new or substantially renovated residential and commercial space, this Project satisfies the requirement for a non-Film Transformative project.

A Residential Transformative project must demonstrate special economic significance by one of the following criteria:

1. Being located in a government-restricted municipality, enhanced area, or distressed municipality;
2. If not located in a government-restricted municipality, enhanced area, or distressed municipality include at least 20 percent of new residential units for low- and moderate-income households or workforce housing, in addition to the 20 percent of the new residential units for occupancy by low- and moderate-income households required pursuant to N.J.A.C. 19:31-23.11(e) of the Former Rules ; or
- (3) Involve the substantial renovation of a vacant commercial building.

This project is located in Newark which is an enhanced area.

A transformative project shall not include a Redevelopment Project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail. Residential Transformative projects must include one of the following: (1) 1,000 or more newly-constructed residential units; or (2) 100,000 square feet or more of commercial space, exclusive of any parking component and with the majority of such non-residential use being commercial as well as either: 250 or more newly-constructed residential units if located in a government-restricted municipality; 350 or more newly-constructed residential units if located in an enhanced area; or 600 or more newly-constructed residential units if located anywhere else. Having 350 newly constructed residential units and more than 100,000 square feet of commercial space with the majority being non-retail, this Project satisfies this requirement as a mixed-use Residential Transformative project in an enhanced area.

Lastly, all transformative projects must leverage the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing. With its proximity to the NJ Light Rail Station, Newark Penn Station, Rutgers University, and other State sponsored institutions, this Project leverages economic development advantages of the State. The cultural and retail amenities as well as the high-quality housing created by this Project will all serve to attract and retain skilled workers to the area.

As noted above, the Project satisfies these eligibility criteria to be a Residential Transformative project.

Project Uses and Sources

The Applicant proposes the following uses for the Project:

	Total Development Costs	Project Costs
Acquisition	\$5,500,000	\$2,350,000
Hard construction costs	\$266,961,869	\$266,961,869
Professional services	\$25,366,006	\$19,366,006
Financing and other soft costs	\$47,745,895	\$44,139,567
Developer Fee (Non-Deferred Total)	\$10,513,919	\$0
Total	\$356,087,689	\$332,817,442

The total project cost is the cost included in total development costs that is used for sizing the tax credit. The total project cost excludes developer fee(s) as well as various reserves to fund interest and operating expenses during lease-up. The eligible acquisition costs in project costs reflect the

costs of acquisition limited to the Episcopal Church building, as various land acquisition costs associated with both the ArtSide component, and the Episcopal Church building are excluded from eligible project costs. Of these excluded land costs, \$1.5 million is attributable to the Episcopal Church building and NJPAC has a pending application for an Activation, Revitalization, and Transformation (ART) Program grant with the NJEDA limited to the funding of this otherwise ineligible Aspire project cost. Additionally, \$6 million in professional services costs are excluded from project costs to account for Federal Grants awarded to NJPAC to support the project.

The Applicant proposes the following Sources for the Project during construction:

Sources	Type	Amount
Citibank Construction Loan	Debt	\$184,337,000
TD Bank Tax Exempt Loan	Debt	\$50,000,000
NMTC Leverage Loan	Debt	\$24,000,000
LIHTC Proceeds	Tax Credit Equity	\$5,087,345
NMTC Equity	Tax Credit Equity	\$11,329,000
Goldman Sachs Sponsor Equity	Equity	\$30,770,000
LMXD Sponsor Equity	Equity	\$22,101,824
Developer Fee Paid at Permanent Refi	Other	\$3,133,309
Conversion Costs Paid at Permanent Refi	Other	\$255,338
NJPAC Cash	Equity	\$19,073,873
NJPAC Federal Grants	Equity	\$6,000,000
	Total	\$356,087,689

Developer Contributed Equity

Based on the equity requirement of 20% of total development costs for a residential project not in a government-restricted municipality, the required equity in this Project equates to \$71,217,538. Equity consists of \$52,871,824 of sponsor equity, \$19,073,873 in cash, \$6,000,000 of Federal Grants, New Market Tax Credit Equity of \$11,329,000, and LIHTC Equity of \$5,087,345.

Statutory Aspire Award Cap

Effective immediately pursuant to Chapter 98, this is a Residential Transformative project utilizing LIHTC and located in multiple relevant geographies that would increase the cap, therefore it is subject to an Aspire tax credit cap of the lesser of 60 percent of eligible costs or \$400 million. Total development costs of the project (“TDC”) are estimated to be \$356,087,689 with eligible costs per the Aspire Program Rules estimated to be \$332,817,442. As such the Project is eligible for an Aspire tax credit not to exceed \$199,690,465, which is the lesser of \$400 million and 60 percent of the eligible costs. This is the maximum potential award and will subsequently be subject to caps related to the project financing gap and the relevant State fiscal impact analysis.

Financing Gap Analysis

NJEDA staff has reviewed the application to determine if there is a financing gap pertaining to the return on the investment for the developer and ability to attract the required investment. Staff analyzed the pro forma and projections and compared the returns with and without the Aspire award over 14 years. The investment analysis assumes that the Applicant will utilize a 48-month timeframe to build and stabilize the Project. It also assumes a 10-year cash flow with an exit through the sale of the Project in year 14. For purposes of this analysis income considered includes all those related to the Artside component of the project, as well as incremental rental income associated with the NJPAC owned portions of the project such as studio rental income at the

Cooperman Center, related parking revenue, and new rental income at the catering and events space in the existing NJPAC facility.

IRR without Aspire tax credit	2.06%
IRR with Aspire tax credit	13.88%

Without the benefit of the Aspire tax credit, the Equity IRR is 2.06%, which is below the Hurdle Rate provided by EDA's contracted consultant Jones Lang LaSalle (“JLL”) for comparable multi-family residential developments in Newark, NJ of 18.00%. As indicated in the chart above, a developer would not generally complete the Project without the benefit of the Aspire tax credit. Additionally, the Equity IRR with the Aspire tax credit award is below the Hurdle Rate. The Applicant has elected to move forward with the Project even though the IRR with the award is still below the market hurdle rate.

Because the Project is receiving Low-Income Housing Tax Credits, NJHMFA’s deferred fee model was also used to measure the appropriate and reasonable rate of return. The total developer fee is \$10,513,919

with none of the fee deferred to project cash flows. This conforms to the Agency’s policy, as the total development fee is less than 15% of total development costs and the non-deferred fee is less than the cap on non-deferred fees of 8% of total development costs.

Aspire Tax Credit Sale Price:

For projects that represent the new construction of residential units utilizing Low-Income Housing Tax Credits the consideration for the sale or assignment of the Aspire tax credits can be no less than 65 percent of the transferred credit amount before considering any further discounting to present value. The Applicant has provided documentation to the Authority that the consideration contemplated in the current financing structure is 92 percent of the transferred credit amount before considering any further discounting to present value. Currently it is anticipated that the sale of the tax credits will be retained as cash flow for the Project and as such no construction sources in the Sources table above currently reflect loans secured by these sale proceeds. The ultimate financing structure and any changes in the future will be subject to this requirement and the Applicant will need to evidence this prior to any assignment or transfer of Aspire tax credits.

Net Positive Benefit Analysis:

The NJEDA shall conduct a fiscal impact analysis to determine and ensure that the overall public assistance provided to an Aspire awarded project will result in a net positive economic benefit to the State. In the Former Act, exceptions to the requirement are capital investment for a residential project, a capital investment for a food delivery source, or a health care or health services center with a minimum of 10,000 square feet of space devoted to health care or health services that is located in a municipality with a Municipal Revitalization Index distress score of at least 50 lacking adequate access. The Project is a residential project and, therefore, the entire award and capital investment are not subject to the net positive economic benefit analysis.

Other Statutory Criteria

Scoring:

The Applicant is required to achieve a minimum score to be eligible for an Aspire award. The Project was scored in the areas of Equitable Development, Smart Growth, Environmental Justice, and Climate Resilience. The Applicant has satisfactorily evidenced to staff that the Project is consistent with the policy objectives represented by this scoring criteria.

Community Benefits Agreement:

For a Redevelopment Project whose total project cost equals or exceeds \$10 million, a community benefits agreement is required to be entered into by the Authority, chief executive of the municipality and the Applicant. The Applicant has provided a letter of support from the chief executive of the municipality acknowledging this requirement and affirming that the municipality shall proceed to negotiate a community benefits agreement in good faith with the Applicant and will execute the community benefits agreement within the time required.

Labor Harmony Agreement:

NJEDA shall not enter into an incentive award agreement for a Redevelopment Project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment which will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. However, a labor harmony agreement shall be required only if the State has a proprietary interest in the Redevelopment Project and shall remain in effect for as long as the State acts as a market participant in the Redevelopment Project. Although the State owns some of the land, the State does not have a proprietary interest in the Redevelopment Project itself. Therefore, the Project is not subject to this requirement.

Prevailing Wage Obligations:

For any project awarded Aspire tax credits all workers employed to perform construction work or building services work at the Redevelopment Project shall be paid prevailing wages, which continue through the end of the Eligibility Period. The Applicant has acknowledged this requirement and that in any year where this is found not to be the case, the Applicant shall forfeit the tax credit for that year.

Substantial Good Standing/Subcontractor and Contractor Requirements:

For the duration of the Eligibility Period, the developer must be in substantial good standing (or have entered into an agreement) with the Department of Labor and Workforce Development, Environmental Protection, and the Treasury for any project awarded Aspire tax credits and ensure that each contractor and subcontractor performing work at the Redevelopment Project: is registered as required by the Public Works Contractor Registration Act, has not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possesses a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

Availability of Emerge/Aspire Resources

At the time of this recommendation, there are \$1,828,813,098 in unallocated tax credit resources available to Transformative Aspire projects in the State.

Recommendation

Authority staff has reviewed the application for New Jersey Performing Arts Center and finds that it satisfies the eligibility requirements of the Former Act and Former Rules. It is recommended that the Members approve and authorize the Authority to execute an incentive award agreement. The tax credit award would be credited against the total available North Jersey award authority.

Issuance of the Aspire tax credits are contingent upon the Applicant submitting documentation evidencing project financing and planning approvals with respect to the Project within the time required in the Former Rules (one year after approval), which includes:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the Aspire tax credit;
2. Evidence of site control, including all subleases and ground leases between either the Applicant and affiliates or between any affiliates of the Applicant noted previously, and site plan approval for the Project; and
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.

Additionally, Applicant must submit an executed Community Benefits Agreement consistent with all of the requirements included in the Former Rules within six months after approval.

Additionally, and pending the existing application for an Activation, Revitalization, and Transformation (ART) Program grant from NJEDA mentioned previously, this award is conditioned upon the Applicant evidencing that any total development costs funded by the pending grant have been excluded from eligible project costs without regard for whether they would otherwise be excluded from eligible project costs.

Additionally, the sources included previously do not reflect the pending grant, as such any subsequent review of this approval at project certification and during the eligibility period will need to reflect the implications of the pending grant on the Project's economics including the existence of a financing gap and whether the Project has exceeded the reasonable and appropriate return on investment for the Project.

The recommendation is approval of an award of up to 60% of the total project cost, not to exceed \$199,690,465 in Aspire tax credits based upon the financing gap illustrated by the Project's actual capital stack at time of commitment.



Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Special Adoption and Concurrently Proposed Rule Amendments and New Rules:
New Jersey Film & Digital Media Tax Credit Program (N.J.A.C. 19:31-21)

Request:

The Members are asked to approve the attached special adoption concurrently proposed rule amendments and new rules for the New Jersey Film & Digital Media Tax Credit Program based on statutory amendments pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97; and authorize staff to (a) submit for publication in the New Jersey Register and (b) submit as final adopted rules for publication in the New Jersey Register if no substantive comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.

Background:

The film tax credit program was first created in 2005 by P.L. 2005, c. 345 (“Chapter 345”). Since that time, it has been repeatedly amended, sunset, and ultimately reinstated in 2018 by P.L. 2018, c. 56 (“the Garden State Film and Digital Media Jobs Act” or “Film and Digital Media Act”) and recodified at N.J.S.A. 54:10A-5.39b and N.J.S.A. 54A:4-12b. It was significantly amended by the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, and additional laws. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey. These specially adopted concurrently proposed rule amendments and new rules revise the current Garden State Film and Digital Media Rules, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c.97.

On January 21, 2020, Governor Murphy signed P.L. 2019, c. 506 (“Chapter 506”). The law extended the availability period of the tax credits through 2028, increased the annual film tax credit cap to \$100 million and created a process for the Authority to certify any unused credit amounts in one fiscal year to be used in the subsequent year.

Film & Digital Media Tax Credit Program Rules

On January 7, 2021, Governor Murphy signed the ERA into law. The ERA created a package of tax incentive, financing, and grant programs to address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy, including amendments to the New Jersey Film & Digital Media Tax Credit Program. Most significantly, these amendments created “film partners” and “film-lease partners.”

On July 2, 2021, Governor Murphy signed P.L. 2021, c. 160 (“Chapter 160”), extending the program through 2034, adding a definition of “incurred in New Jersey,” removing “film partner” and adding “studio partner,” restricting the use of unredeemed and unused credits in subsequent years, providing additional specification to the Authority’s review of the taxpayer’s required certified public accountant report, and increasing the tax credit percentage and bonus amounts available for film projects.

On January 12, 2022, Governor Murphy signed P.L. 2021, c. 367 (“Chapter 367”). This law reestablished the Authority’s ability to certify unused and unredeemed tax credits from one State Fiscal Year for use in the subsequent State Fiscal Year. It also created an additional two percent diversity bonus for productions that submit a diversity plan, which includes specific goals for hiring certain local, on-screen talent. Chapter 367 also increased the tax credit percentage for Digital Media productions from 20 percent to 30 percent, while increasing the allocation from \$10 million to \$30 million annually.

In June 2022, the NJEDA Board approved proposed rule amendments and proposed new rules to implement P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367. On August 1, 2022, the NJEDA published proposed amendments and proposed new rules in the New Jersey Register. See 54 NJR 8(1). Significant public comments were received. Thereafter, legislative changes were enacted and the rules proposal was allowed to expire so that the rules attached to this memo that are responsive to new legislative changes could be prepared.

On July 6, 2023, Governor Murphy signed P.L. 2023, c. 97 (“Chapter 97”), which extended the program through 2039 and removed the “film-lease partner” allocation category and created the “film-lease production company” allocation category. This new category has an annual allocation of \$150 million. The “studio partner” allocation was increased from \$100 million to \$150 million as well. Chapter 97 also created the “film-lease production facility” designation, available to up to three large studios who meet certain requirements and increased the tax credit amount available for “studio partners” and “film-lease production companies” to 40 percent. In addition, this newest legislation also authorized NJEDA to adopt immediately effective (“special adoption”) rules to implement the statutory changes.

Summary of Rules Changes:

The attached rule proposal includes numerous changes based on direct statutory amendments newly reflected in rules. In addition to the legislative changes, the new rules contain several changes based on Staff’s proposals for policy decisions. These decisions will impact the

Film & Digital Media Tax Credit Program Rules

implementation and operation of the program. The proposed policy decisions are described below:

Based on statutory changes requiring the Authority to continue approving projects even when allocation for the current state fiscal year have been exhausted, the definition of “vintage year” is amended to reflect instances where a project is approved in one state fiscal year while the award is based on a subsequent fiscal year’s allocation. The proposed policy decision is to make the vintage year of a credit be the tax year of the applicant when allocation is first available.

The legislation allows tax credits for “deferred compensation.” The proposed policy decision is to make clear what types of compensation can be considered when calculating the amount of deferred compensation an individual receives.

The definition of a “film” is amended to make clear that documentary feature films and documentary television shows may be considered eligible content. The statutory definition does not address them specifically. The proposed policy interpretation is that a film or television show or series may be a documentary and still be eligible. The new language makes this clear.

The new rules include a definition for “homeowner” and “personal residence”. These definitions are necessary because the new legislation includes as qualified film production expenses the costs paid to a homeowner for use of their personal residence under certain circumstances. The proposed definitions include policy decision as to who is a homeowner and what types of dwellings or structures can be considered when evaluating qualifying payments to use these structures for filming. These definitions exclude multi-family residential structures with more than four units and any residential units someone other than the homeowner occupies. It is expected that these excluded structures would be operated by a business who could provide proof of vendor registration.

The definition of “principal photography” is amended to remove the requirements for lead actors be involved in the shooting to qualify as principal photography. The definition now more aligns with industry norms and requires the director to be present on set. Additionally, the new rules include an express requirement that the film must have at least one principal photography day shot within New Jersey.

These new rules include a new definition for “shoot day,” which was added to provide clarity on what the Authority would consider as a shoot day for the purposes of qualifying certain projects submitting applications as film-lease production companies. The applicants need to provide evidence of meeting the requirements of shooting at least 50 percent of the total shoot days in New Jersey and 50 percent or more of their New Jersey shoot days need to be at a designated film-lease partner facility.

The threshold for the diversity hiring goal a production must meet to be eligible for the diversity bonus has been increased in the attached rules. The minimum goal must be at least 25 percent, up from 15 percent. Staff (including the Authority’s Diversity Equity and Inclusion team) proposes to increase the threshold to better align with industry norms. The Authority has seen an increase

Film & Digital Media Tax Credit Program Rules

in applicants seeking the bonus, and a majority of applicants have been easily exceeding the initial 15 percent requirement.

Designations for studio partners and film-lease partner facilities are limited by statute to only three each. Because of this limit, Staff proposes to require projects seeking the designations to be as close to operational as possible. Thus, the new rules include the requirement that the potential projects must have either site plan approval or a redevelopment agreement in place before applying, and they must commit to being able to obtain a temporary certificate of occupancy (TCO) for the first 250,000 sqft of the film facility within 36 months of approval. Failure to provide this TCO would result in the forfeiture of the designation.

Instead of annual reporting and ongoing monitoring of the studio partner and film-lease partner facilities, each subsequent project application submitted on the basis of either a studio partner or film-lease partner facility designation would be required to include a signed certification from the owner of the studio partner facility or film-lease partner facility, that the designee remains in compliance with the requirements of the program.

The new rules contain specific recapture language for studio partners and film-lease production companies. The new legislation requires that the Authority recapture from a studio partner that fails to comply with program requirements, all additional tax credits that the studio partner received on the basis of its designation. Additionally, the legislation requires that the termination of the approval of all studio partner film tax credits for films that have been approved but have not submitted its final report. Staff proposes making clear that the studio partner's designation will be revoked in such case and treating film-lease production facilities the same. Although a film-lease production facility does not receive tax credits, the film-lease production facility designation may be the basis for additional tax credits for film-lease production companies.

These new rules include the requirement that any construction contracts entered into by a film project applying for assistance to comply with all prevailing wage, affirmative action, and contractor registration requirements, even if the project was already completed before receiving approval. Additionally, all construction activity completed by studio partner or film-lease partner facilities after the later of the designation or the effective date of these rules would also have to comply with Authority prevailing wage requirements.

Compliance with Executive Order 63

In accordance with Executive Order 63, which ensures outreach efforts are made to the public and affected stakeholders during rule drafting, the Authority posted draft rule amendments and draft new rules to its website at <https://www.njeda.gov/economicrecoveryact/program-specific-feedback/> where the public is able to submit written feedback on Authority programs.

In addition, the Authority issued a news release advising the public that the draft Film and Digital Media Tax Credit Program rule amendments and draft new rules were available for review and invited informal input. Furthermore, several known stakeholder groups were contacted directly by the Authority and notified that the draft was available for feedback via the Authority's website.

Chief Compliance Officer Certification

Pursuant to the ERA, the Chief Executive Officer is required to appoint a Chief Compliance Officer (CCO) to, among other things, “review and certify that the provisions of program rules or regulations provide the authority with adequate procedures to pursue the recapture of the value of an economic development incentive in the case of substantial noncompliance, fraud, or abuse by the economic development incentive recipient, and that program rules and regulations are sufficient to ensure against economic development incentive fraud, waste, and abuse.” N.J.S.A. 34:1B-365.

Jignasa Desai-McCleary has been designated the CCO. In that capacity, Mrs. Desai-McCleary has reviewed the special adoption and concurrently proposed rule amendments and new rules for the New Jersey Film & Digital Media Tax Credit Program and is prepared to sign the certification, subject to the Board taking action to approve the same and expiration of the Governor’s veto period for submission to the New Jersey Office of Administrative Law for publication in an upcoming issue of the New Jersey Register.

Recommendation

The Members are requested to approve the attached special adoption and concurrently proposed amendments to the rules and new rules for the New Jersey Film & Digital Media Tax Credit Program based on statutory amendments pursuant to P.L. 2019, c. 506, P.L. 2020, c. 156, P.L. 2021, c. 160, P.L. 2021, c. 367, and P.L. 2023, c. 97, and authorize staff to (a) submit for publication in the New Jersey Register and (b) submit as final adopted rules for publication in the New Jersey Register if no substantive comments are received, subject to final review and approval by the Office of the Attorney General and the Office of Administrative Law.



Tim Sullivan, CEO

Prepared by:
Matt Sestrich

Attachments: Appendix A – Specially Adopted and Concurrently Proposed Rule
Amendments and New Rules – New Jersey Film & Digital Media Tax Credit
Program

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Garden State Film and Digital Media Jobs Program

Proposed Amendments: N.J.A.C. 19:31-21.1 through 21.10

Proposed New Rules: N.J.A.C. 19:31-21.8, 21.9, and 21.14

Authorized By: New Jersey Economic Development Authority, Tim Sullivan, Chief Executive Officer.

Authority: P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160, P.L. 2021, c. 367; and P.L. 2023, c. 97.

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

Proposal Number: PRN 2024-____.

Submit written comments by _____, 2024, to:

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

Take notice that in accordance with P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c.97, the New Jersey Economic Development Authority (“NJEDA” or “Authority”) has specially adopted the following amendments and new rules to implement the provisions of The Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and 54A:4-12b.

Appendix A – Specially Adopted and Concurrently Proposed Rule Amendments and New Rules –
New Jersey Film & Digital Media Tax Credit Program

The specially adopted amendments and new rules became effective on February __, 2024, upon acceptance for filing by the Office of Administrative Law (OAL). The specially adopted amendments and new rules shall be effective for a period not to exceed 365 days from the date of filing, that is, until February __, 2025.

Concurrently, the provisions of the amendments and new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before February __, 2025, the expiration date is extended 180 days to June __, 2025 pursuant to N.J.S.A. 52:14B-5.1c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before June __, 2025.

The specially adopted concurrently proposed amendments and new rules follow.

Summary

The Garden State Film and Digital Media Jobs Act, N.J.S.A. 54:10A-5.39b and 54A:4-12b, 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 in New Jersey. The goal of the program is to incentivize production companies to film and create digital media content in New Jersey.

The New Jersey Economic Development Authority (“NJEDA” or “Authority”) is proposing amendments to the existing rules as well as new rules to incorporate provisions of recent statutory revisions, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c.97 and to incorporate industry and stakeholder input received via comments both in the prior formal rulemaking and the informal rulemaking process engaged in by the Authority prior to this rulemaking.

Summary of the Rulemaking and Legislative History

The film tax credit program was first created in 2005 by P.L. 2005, c. 345 and codified at N.J.S.A. 54:10A-5.39; N.J.S.A. 54A:4-12. Since that time, it has been repeatedly amended, sunset, reinstated in 2018 by P.L. 2018, c. 56 as “the Garden State Film and Digital Media Jobs Act” and recodified at N.J.S.A. 54:10A-5.39b and N.J.S.A. 54A:4-12b, and significantly amended in the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, as amended by P.L. 2021, c. 160, and additional bills. These specially adopted concurrently proposed rule amendments revise the Garden State Film and Digital Media Rules, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c.97.

On August 1, 2022, the NJEDA published proposed amendments and proposed new rules for the Garden State Film and Digital Media Jobs Program rules, pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; and P.L. 2021, c. 367 in the New Jersey Register. See 54 NJR 8(1). As summarized below significant public comments were received.

Thereafter, Legislative changes were enacted. On July 6th, 2023, Governor Murphy signed S3748 signed into law as P.L. 2023, c. 97. This new law modified the Garden State Film and Digital Media Program in various ways including:

- extending the privilege period through 2039 and increasing the amount of tax credits available;
- replacing the concept of “film-lease partners” with a new concept of “film-lease production companies,” and creating the concept of a “film-lease partner facility”;
- expanding the definitions of “film” and “qualified film production expenses,” adding definitions of “commitment period” and “eligibility period,” and amending the definitions of “film” and “studio partner,” and “full-time or full-time equivalent employee”;
- enumerating certain rescind and recapture penalties for “studio partners”;
- revising requirements related to the diversity plan credit;
- making certain changes to deferred compensation payments; and

- clarifying provisions related to filming at a personal residence.

In addition, P.L. 2023, c. 97 authorized NJEDA to specially adopt rules to be immediately effective for a period not to exceed 180 days from the date of the filing. The August 1, 2022 proposal was superseded by the legislation and allowed to expire. This new proposal incorporating the legislative changes and comments received follows.

Summary of the Public Comments and Agency Responses

In response to the August 1, 2022, notice of proposal at 54 N.J.R. 1530(a), the Authority received comment from Kathy Banuelos, Senior Vice President, State Government Affairs, Motion Picture Association, John C. Biggins, Executive Managing Director, Biggins Lacy Shapiro and Company, LLC., Jason Hariton, EVP & Chief Real Estate Officer, MBS Group, Nick Maniatis, Director Studio and Production Affairs – North America, Christine Cascio Peluso, Esq., Tax Credits US and Fred Siegel, CPA.

COMMENT: The commenter requested that the Authority expedite approvals of initial applications, specifically related to tax clearance and good standing determinations.

RESPONSE: The Authority is determined to complete reviews as expeditiously as possible; however, the Authority obtains tax clearances from every applicant and to determine that applicants are in good standing with the New Jersey Department of Labor and Workforce Development, the New Jersey Department of the Treasury, and the New Jersey Department of Environmental Protection.

COMMENT: The commenter indicated that the requirements that the construction at the production facility comply with the prevailing wage and affirmative action requirements should only apply to the work performed by the studio partner and not its's landlord or potential landlord under an executed lease or lease term sheet.

RESPONSE: Revised N.J.A.C. 19:31-21.12 sets forth that, for studio partners and film-lease partner facilities, the Authority’s affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to work performed at the production facility after the effective date of these amendments and the Authority’s approval of the designation.

COMMENT: Several of the commenters inquired as to the necessity of the publication of certain information related to tax credit transfers.

RESPONSE: The requirement is amended as part of this rulemaking at N.J.A.C. 19:31-21.10(e).

COMMENT: The commenter requested removal of the requirement that the information provided by the taxpayer pursuant to N.J.A.C. 19:31-21.4 be submitted with a certification that it is true as the information may include discrepancy between what is truthfully submitted and what is ultimately approved by the Authority.

RESPONSE: Information provided to the Authority regarding eligible costs that is thought to be true at the time of submittal, but is subsequently deemed ineligible by the Authority, would not be considered an untruthful.

COMMENT: The commenter requested an expansion of the list of executives qualified to provide the report required by N.J.A.C. 19:31-21.4. The commenter also indicated that the information the Authority requires regarding estimates of future productions activities will be projections only and may be subject to change.

RESPONSE: This requirement has been removed as part of this rulemaking.

COMMENT: The commenter suggested clarifying the definition of “qualified film production expenses” at N.J.A.C. 19:31-21.2.

RESPONSE: The Authority agrees with this comment and has clarified the definition of “qualified film production expenses” as suggested by the commenter in this rulemaking.

COMMENT: The commenter requested an amendment to the rules to expand the definition of “combined group.”

RESPONSE: “Combined group” is a defined term utilized in other programs and by other State Agencies; therefore, its meaning cannot be changed for this program.

COMMENT: The commenter requested timely processing of applications for the studio partner designation.

RESPONSE: The Authority processes applications in as timely a manner as possible on a first-in-time basis. The Authority may institute a competitive process if interest in the studio partner designation so warrants.

COMMENT: The commenter requested an amendment to the definition of “studio partner” to expand the designation to those other than content creators.

RESPONSE: The Authority is bound by the statutory definition of “studio partner” at N.J.S.A. 54:10A-5.39b(h) and N.J.S.A. 54A:4-12b(h).

COMMENT: The commenter requested additional time to satisfy the requirements of the studio partner designations beyond the thirty-six-month time period in addition to the potential for two six-month extensions.

RESPONSE: The Authority has determined that the time period set forth at N.J.A.C. 19:31-21.8 is sufficient to satisfy the requirements of the studio partner designations. There are a limited number of designations and the timeframes set forth at N.J.A.C. 19:31-21.8 are necessary to

ensure that the studio partner designations are utilized, and construction of production facilities is completed in a timely manner.

COMMENT: The commenter suggested amendment to the requirement that the studio partner remain in compliance with the award agreement, including maintaining minimum site control of the facility as a result of sale, sublicense, and/or sublease of the facility.

RESPONSE: The requirement to maintain the minimum site control pursuant to the award agreement is necessary to ensure that the applicant can fulfil the requirements of the Program throughout the commitment period. The minimum site control requirement does not wholly prohibit sale, sublicense, or sublease of the facility. However, to be eligible for and remain in compliance with the designation, any modifications of site control will require the prior consent and approval of the Authority. A studio partner may sublease in certain circumstances pursuant to N.J.A.C. 19:31-21.8(h)2.

COMMENT: The commenter requested that the Authority add “an executed lease term sheet” in addition to ownership or a lease.

RESPONSE: The Authority requires a completed application to be designated as a studio partner to include an executed deed, lease, sublease, purchase contract for the production facility, or letter of intent with a governmental authority for the purchase of property for the purpose of developing a production facility. The executed lease or sublease shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period. See N.J.A.C. 19:31-21.4(b)1.

COMMENT: The commenter requested that the Authority accept a letter of intent in lieu of the required lease required by N.J.A.C. 19:31-21.2

RESPONSE: Due to the limited number of designations, the Authority requires more substantial evidence of a commitment than a letter of intent; however, a lease with contingencies is acceptable. Site control by a studio partner applicant is required.

COMMENT: The commenter inquired as to the commencement of the commitment period and the requirement to maintain site control throughout the commitment period as evidenced by a lease for the appropriate time frame.

RESPONSE: “Commitment period” is defined by statute at N.J.S.A. 54:10A-5.39b(h), N.J.S.A. 54A:4-12b(h). The commencement of the “commitment period” is clarified in this rulemaking, see N.J.A.C. 19:31-21.2.

COMMENT: The commenter requested amendment to the application of the Columbus Circle 30-mile radius tax credit reduction at N.J.A.C. 19:31-21.4.

RESPONSE: The Authority is bound by the statutory requirement to apply the Columbus Circle 30-mile radius tax credit reduction found at N.J.A.C. 19:31-21.4 pursuant to N.J.S.A. 54A:4-12b(2) and N.J.S.A. 54:10A-5.39b(2).

COMMENT: The commenters asked for clarification of the reduction provisions for film-lease partners and specifically the impact of non-compliance with the requirement to expend the minimum annual average of qualified film production expenses at N.J.A.C. 19:31-21.2.

RESPONSE: This is removed as part of this rulemaking pursuant to statutory amendments.

COMMENT: The commenter requested clarification on the determination of the completion of a film.

RESPONSE: The completion of a film is conditioned upon the approval of the New Jersey Motion Picture and Television Commission (“Commission”). The Commission is required to take into account factors including, but not limited to, the budget and audience of the film,

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marketing materials promoting the State as a film and entertainment production destination, placement of a “Filmed in New Jersey” or “Produced in New Jersey” statement or an appropriate logo approved by the Commission in the end credits of the film. See N.J.A.C. 19:31-21.3(a)3, N.J.S.A. 54:10A-5.39b(a)1(c) and N.J.S.A. 54A:4-12b(a)1(c).

COMMENT: The commenter requested clarification of the meaning of “authorized to do business in New Jersey.”

RESPONSE: The term “vendor authorized to do business in New Jersey” is amended by this rulemaking. See N.J.A.C. 19:31-21.2, N.J.S.A. 54A-4-12b(h) and N.J.S.A. 54:10A-5.39b(h).

COMMENT: The commenter requested clarification of what costs may be “incurred in New Jersey” specifically related to real property and intangible property when included in qualified film production expenses.

RESPONSE: The terms “incurred in New Jersey,” “homeowner,” and “personal residence” are added and/ or amended by this rulemaking to clarify the inclusion of certain real property and exclusion of intangible property at N.J.A.C. 19:31-21.2. See N.J.S.A. 54A-4-12b(h) and N.J.S.A. 54:10A-5.39b(h).

COMMENT: The commenter requested an expedited qualification of certified public accountants pursuant to N.J.A.C. 19:31-21-7(d).

RESPONSE: The Authority is currently developing this process, which is beyond the scope of the Program rules.

COMMENT: The commenter requested that the Authority amend the certification requirement of the certified public accountant report required to be submitted upon application for film tax credits. o N.J.A.C. 19:31-21,7(c)6).

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RESPONSE: The Authority requires that the information provided in the certified public accountants report to be certified to ensure the truthfulness and accuracy of the information.

COMMENT: The commenter requested the publication of the currently available tax credit funding under the program.

RESPONSE: The Authority publishes this information quarterly on the Authority’s website. Authority staff are able to provide more frequent updates to this information upon request.

COMMENT: The commenter requested confirmation of the amount of funding available to studio partners under the Program beginning in 2025 pursuant to N.J.A.C. 19:31-21.11.

RESPONSE: The caps on funding are amended in this rulemaking pursuant to statutory amendment N.J.S.A. 34:1B-362. The Authority publishes this information quarterly on the Authority’s website. Authority staff are able to provide more frequent updates to this information upon request.

COMMENT: The commenters objected to the fee amounts of the program as established at N.J.A.C. 19:31-21.5.

RESPONSE: The Authority has amended N.J.A.C. 19:31-21.5 to reduce fees while still offsetting the cost to the Authority of administering the Program.

COMMENT: The commenter requested clarification as to whether certain services performed within the 30-mile radius described in N.J.A.C. 19:31-21.6(a)2 that are qualified production expenses qualify for a credit rate of 35 or 30 percent.

RESPONSE: Qualified wage and salary payments made to a loan out company or an independent contractor providing services used directly in a production and qualified wages of

W2 employees are not included in the reduction to 30 percent and are eligible to receive 35 percent as long as they are incurred in New Jersey.

COMMENT: The commenter requested that the Authority clarify and distinguish the meaning of “non-payroll expenses” and “qualified wages.”

RESPONSE: “Non-payroll expense” includes expenses outside of compensation. “Qualified wages” includes all wages subject to New Jersey gross income tax, including payments made to loan out companies and independent contractors performing services directly related to the production.

Summary of the Amendments and New Rules

N.J.A.C. 19:31-21.1 Applicability and Scope

The amendments revise the section to include citations to statutory revisions to the Garden State Film and Digital Media Jobs Act.

N.J.A.C. 19:31-21.2 Definitions

The amendments define certain new terms used in this subchapter, and incorporate terms defined at P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97. Specifically, the following terms are amended to support the Program: “Commission,” “digital media content,” “film,” “full-time or full-time equivalent employee,” highly compensated individual,” “independent contractor,” “loan out company,” “primary place of business,” “principal photography,” “qualified digital media content production expenses,” “qualified film production expenses,” “selling business,” “taxable year,” “tax credit transfer certificate,” “tax credit vintage year,” “total digital media content production expenses,” “total film production expenses,” and “vendor authorized to do business in New Jersey.” The amendments also create additional terms, including: “applicant,” “approved applicant,” “commitment period,” “deferred compensation,”

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“eligibility period,” “film production uses,” “homeowner,” “incurred in New Jersey,” “New Jersey film-lease partner facility or “film-lease partner facility,” “New Jersey film-lease production company” or “film-lease production company,” “New Jersey studio partner or studio partner,” “personal residence,” “production facility,” “reality show,” “shoot day,” “square feet,” and “taxpayer.”

N.J.A.C. 19:31-21.3 Eligibility Criteria

N.J.A.C. 19:31-21.3, which outlines the criteria for a taxpayer to be eligible for the Program, is revised as follows:

N.J.A.C. 19:31-21.3(a) and -21.3(a)1 are amended to add the term “applicant” and clarify the eligibility of wages and salaries in the calculation of total film production expenses and qualified film production expenses.

N.J.A.C. 19:31-21.3(a)2 is amended to clarify the required commencement of that principal photography must be commenced within 180 days from the date of the completed application for the tax credit.

N.J.A.C. 19:31-21.3(a)4 is amended to include the term “applicant.”

N.J.A.C. 19:31-21.3(a)5 is amended to include the term “applicant” and “homeowner.”

N.J.A.C. 19:31-21.3(a)6 is added to require that at least one principal photography day is shot within New Jersey.

N.J.A.C. 19:31-21.3(a)7 is added to require that, for a studio partner or film-lease production company, the principal photography of the film must commence after the designation of the studio partner or the corresponding film-lease partner facility.

N.J.A.C. 19:31-21.3(b), N.J.A.C. 19:31-21.3(b)1 and N.J.A.C. 19:31-21.3(b)2 are amended for clarity to add the term “applicant” and remove “taxpayer.”

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N.J.A.C. 19:31-21.3(c) is amended to include the title of the “New Jersey Gross Income Tax Act,” add the term “approved applicant,” “applicant,” “homeowner,” “personal residence,” as well as to remove “taxpayer.”

N.J.A.C. 19:31-21.3(d) is added to set forth the application and eligibility requirements to be designated a studio partner and provides that no more than three film production companies may be designated as a studio partner.

N.J.A.C. 19:31-21.3(e) is added to set forth the application and eligibility requirements to be designated as a film-lease partner facility.

N.J.A.C. 19:31-21.3(e)1 sets forth that with certain exceptions, in order for a production facility to be designated as a film-lease partner facility, the owner or developer shall accept the acquisition by the Authority of equity in the production facility.

N.J.A.C. 19:31-21.3(e)2 sets forth that no more than three New Jersey production facilities may be designated as a film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a studio partner.

N.J.A.C. 19:31-21.3(f) is added and sets forth the application and eligibility requirements for a reality show.

N.J.A.C. 19:31-21.3(g) is added and provides that for two or more buildings to qualify as a production facility the buildings must be proximate to each other.

N.J.A.C. 19:31-21.3(g)1, N.J.A.C. 19:31-21.3(g)2, and N.J.A.C. 19:31-21.3(g)3 set forth examples of buildings that are proximate.

19:31-21.4 Application submission requirements

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N.J.A.C. 19:31-21.4(a) is amended to remove the wording “, but not limited to, the following.”

N.J.A.C. 19:31-21.4(a)4 is amended to differentiate the required breakout of projected costs for applications filed before July 2, 2021, versus on or after July 2, 2021.

N.J.A.C. 19:31-21.4(a)5 is amended to add the term “film.”

N.J.A.C. 19:31-21.4(a)8 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)9.

N.J.A.C. 19:31-21.4(a)9 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)10.

N.J.A.C. 19:31-21.4(a)10 is removed and replaced with the language formerly found at N.J.A.C. 19:31-21.4(a)11. Language is added to clarify that an executed letter of interest, lease, sublease, deed, or purchase contract is required.

N.J.A.C. 19:31-21.4(a)11 is revised to set forth the requirement if the applicant is seeking a film tax credit as a studio partner.

N.J.A.C. 19:31-21.4(a)12 is added to set forth the requirement if the applicant is seeking a film tax credit as a film-lease production company.

N.J.A.C. 19:31-21.4(a)13 is added to allow the Authority to obtain any other necessary and relevant information, as determined by the Authority, for a specific application.

N.J.A.C. 19:31-21.4(b) is added to set forth what is required in a completed application to be designated as a studio partner.

N.J.A.C. 19:31-21.4(c) is added to set forth what is required in a completed application to be designated as a film-lease partner facility.

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N.J.A.C. 19:31-21.4(d) is amended to set forth what is required in a completed application for digital media tax credits.

19:31-21.5 Fees

N.J.A.C. 19:31-21.5(a) is amended to set forth the revised application fees for the Program.

N.J.A.C. 19:31-21.5(b) is added to set forth the revised fees prior to approval for the Program.

N.J.A.C. 19:31-21.5(c) is amended to set forth the revised fees required prior to receipt of tax credits for the Program.

N.J.A.C. 19:31-21.5(d) is amended to set forth the revised fees required upon application of a tax credit transfer certificate for the program.

N.J.A.C. 19:31-21.5(e) is added to set forth the fees required upon extension to the date the temporary certification of occupancy for the production facility is due.

N.J.A.C. 19:31-21.5(f) is added to sets forth the fees required for each request for any minor administrative changes, additions, or modifications and for each request for any major administrative changes, additions, or modifications.

N.J.A.C. 19:31-21.5(g) is amended to set forth that 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, shall be paid by the applicant.

19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits

N.J.A.C. 19:31-21.6(a) is amended to remove and replace the term “taxpayer” with the term “approved applicant,” revise a citation to N.J.A.C. 19:31-21.7(e), and revise language

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clarifying the percentage of qualified film production expenses pursuant to P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160, P.L. 2021, c. 367; and P.L. 2023, c. 97.

N.J.A.C. 19:31-21.6(b) is amended to remove and replace the term “taxpayer” with the term “approved applicant,” and revise language clarifying the percentage of qualified film production expenses pursuant to P.L. 2020, c. 156, set forth at N.J.A.C. 19:31-21.6(b)1 through N.J.A.C. 19:31-21.6(b)3.

N.J.A.C. 19:31-21.6(c) is amended to add language clarifying that no tax credit shall be allowed for expenses in an application if it has already been included in the calculation of an award pursuant to N.J.A.C. 19:31-21.6(a) or N.J.A.C. 19:31-21.6(b).

N.J.A.C. 19:31-21.6(d) and N.J.A.C. 19:31-21.6(e) are amended to add the title of the “Corporation Business Tax Act” and add “under this program” to clarify certain circumstances where a business may be an eligible applicant.

N.J.A.C. 19:31-21.6(f) is amended to add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31-21.6(g) is amended to delete “section” and replace it with “subchapter” as well as add “gross income” to clarify the application of the tax credit to a gross income taxpayer.

N.J.A.C. 19:31-21.6(i) is amended to clarify that the amount of the tax credit applied under this section against the tax imposed pursuant to N.J.S.A. 54:10A-5 for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce the tax liability of the corporate business taxpayer to an amount less than the statutory minimum provided in N.J.S.A. 54:10A-5.

N.J.A.C. 19:31-21.6(j) is amended to add “gross income” to clarify that the amount of the tax credit applied under this section against the tax otherwise due under N.J.S.A. 54A:1-1 et seq.,

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for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law, shall not reduce the tax liability of the gross income taxpayer to an amount less than zero.

N.J.A.C. 19:31-21.6(k) is amended to correct the citation to N.J.S.A. 54A:1-1 et seq.

N.J.A.C. 19:31-21.6(l) is amended to include the limits found a N.J.A.C. 19:31-21.6(b), include reference to the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq., and include in N.J.A.C. 19:31-21.6(l)1(i) the eligibility for an increase in the tax credit to 25 percent for applicants approved after the effective date of these rules.

N.J.A.C. 19:31-21.6(l)2 is repealed and replaced to reflect the increase to a 25 percent goal of hiring persons as performers in the film and digital media production who are women or members of a minority group (N.J.A.C. 19:31-21.6(l)2(i)), have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording, and are members of a labor union.

N.J.A.C. 19:31-21.6(l)3 is deleted.

19:31-21.7 Evaluation process for tax credits; initial approval for tax credits, award of tax credits

The title of N.J.A.C. 19:31-21.7 is amended to remove “appeals.” The appeals language can now be found at N.J.A.C. 19:31-21.13.

N.J.A.C. 19:31-21.7(a) is amended to clarify that applications “for film tax credits” shall be submitted to the Commission, which, upon review for content eligibility, will forward the application to the Authority with the Commission's recommendation.

N.J.A.C. 19:31-21.7(a)1 is amended to clarify that application for tax credits shall be considered by the Authority for initial approval on a first in time basis, subject to the annual caps set forth at N.J.A.C. 19:31-21.11.

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N.J.A.C. 19:31-21.7(a)2 is amended to set forth that the Authority may retain a third-party consultant, at the cost of the applicant, to review the budget submitted by the applicant to determine if the qualified film or digital media expenses are reasonable based on industry standards.

N.J.A.C. 19:31-21.7(a)3 is amended to clarify the Authority shall issue an initial approval letter to the approved applicant that will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports and the date by when final documentation pursuant to N.J.A.C. 19:31-21.7(b) is required. N.J.A.C. 19:31-21.7(a)3 is further amended to set forth that the approval letter shall constitute the non-binding, administrative pre-certification process for potentially eligible projects and failure to submit timely reports may lead to the forfeiture of the tax credit.

N.J.A.C. 19:31-21.7(b) is amended to replace the term “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.7(c) is amended to replace the term “taxpayer” with “approved applicant” and clarify that the documentation related to the total film production expenses or the total digital media content production expenses are for the privilege period or taxable year identified in the initial approval.

N.J.A.C. 19:31-21.7(c)1 is amended to remove language regarding the time period from the initial approval by the Authority and clarify that is from the date of the completed application for the tax credit.

N.J.A.C. 19:31-21.7(c)2 is added to set forth that if the approved applicant is a studio partner or film-lease production facility, a certification must be provided by the designated studio partner or film-lease partner facility that it has continued to satisfy the requirements of a studio partner or film-lease production facility from the commencement of principal photography.

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N.J.A.C. 19:31-21.7(c)3 is amended to clarify that actual budgets and proof of total and qualified film production expenses or total and qualified digital media content production expenses, including a listing of the name of the company or person paid as well as federal identification number are required.

N.J.A.C. 19:31-21.7(c)4 is amended to add “approved” to applicant and remove “and.”

N.J.A.C. 19:31-21.7(c)4(i) is amended to remove and replace the term “taxpayer” with “approved applicant” and to add that the report shall include the date of the last total film production expense excluding any deferred compensation payments.

N.J.A.C. 19:31-21.7(c)4(i)(1) through N.J.A.C. 19:31-21.7(c)4(i)(5) are added to set forth reviews required by the report set forth at N.J.A.C. 19:31-21.7(c)4.

N.J.A.C. 19:31-21.7(c)4(ii) is added to set forth that in the report, the approved applicant’s qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified.

N.J.A.C. 19:31-21.7(c)4(iii) is added to set forth that the amount of the qualified film production expenses or qualified digital media content production expenses in the report shall not be increased regardless of additional expenses after the date of the report.

N.J.A.C. 19:31-21.7(c)4(iv) is added to set forth that if the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments, the report shall include information necessary and relevant, as determined by the Authority, to demonstrate such deferred compensation payments.

N.J.A.C. 19:31-21.7(c)4(v) is added to set forth that if the applicant is a film-lease production company, the report shall also include verification of principle photography shoot days as necessary to demonstrate eligibility as a film-lease production company.

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N.J.A.C. 19:31-21.7(c)5 is amended to remove language regarding the New Jersey Division of Taxation conducting verification of partners or members of pass-through entities and add language regarding what is required in the report for approved applicants that received initial approval for the production of a reality show.

N.J.A.C. 19:31-21.7(c)5(i) through N.J.A.C. 19:31-21.7(c)5(v) are amended to set forth the additional requirements for approved applicants that received initial approval for the production of a reality show.

N.J.A.C. 19:31-21.7(c)6 is amended to set forth that, with respect to a film, what is required is evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31- 21.3(a)3.

N.J.A.C. 19:31-21.7(c)7 is amended to set forth that if the approved applicant was initially approved for a bonus amount for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l), evidence of achieving the relevant percentage in the diversity plan or good faith efforts to undertake the diversity plan must be provided. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the New Jersey Division of Taxation.

N.J.A.C. 19:31-21.7(c)8 is added to set forth that if the approved applicant is a film-lease production company, the executed lease, sublease, or license to occupy production space in a film-lease partner facility is required in the report.

N.J.A.C. 19:31-21.7(c)9 is added to set forth that a certification from the approved applicant that the information provided in the report is true under the penalty of perjury.

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N.J.A.C. 19:31-21.7(c)10 is added to set forth that the Authority may request any other information necessary for the Authority and the Director to determine compliance with the Program.

N.J.A.C. 19:31-21.7(d) is amended to replace “certification” with “report” and “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.7(e) is amended to add “approved,” replace “taxpayer” with “approved applicant,” and revise a citation.

N.J.A.C. 19:31-21.7(f) is amended to set forth that if a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments, the studio partner shall submit a supplemental report prepared by a certified public accountant pursuant to agreed-upon procedures prescribed by the Authority and the Director no later than two years after the date on which the production concludes as established by the date of the last total film production expense excluding any deferred compensation payments. The appeal section is moved to N.J.A.C. 19:31-21.11.

19:31-21.8 Evaluation process and designation of studio partner and film-lease partner facility

A new N.J.A.C. 19:31-21.8 is added to set forth the evaluation process and designation of studio partner and film-lease partner facility.

N.J.A.C. 19:31-21.8(a) sets forth that an application for designation as a studio partner or a film-lease partner facility shall be submitted to the Authority.

N.J.A.C. 19:31-21.8(b) sets forth that the completed application for designation as a studio partner or film-lease partner facility shall be considered by the Authority for approval on a first in time basis. If interest in studio partner or film-lease partner facility designation so warrants the Authority may institute a competitive application process.

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N.J.A.C. 19:31-21.8(c) sets forth that, in order to assist the Authority in designating a studio partner or film-lease partner facility, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the New Jersey Motion Picture and Television Commission.

N.J.A.C. 19:31-21.8(d) sets forth that upon review of the application, the Authority's Board shall consider whether to designate the applicant as a studio partner or film-lease partner facility pursuant to N.J.A.C. 19:31-21.3(d) and (e) respectively. The designation shall expire at the end of the studio partner's commitment period.

N.J.A.C. 19:31-21.8(d)1 sets forth that, effective upon designation as a studio partner, a film production company shall be eligible for a credit as a studio partner pursuant to this subchapter, provided that the film production company otherwise complies with the eligibility requirements of the Program.

N.J.A.C. 19:31-21.8(d)2 sets forth that a film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority, provided that final approval of such agreement occurs on or before the date on which production commences at the facility.

N.J.A.C. 19:31-21.8(f) sets forth that, following approval by the Authority's Board, the Authority shall require the applicant to execute and return an approval letter to the Authority. The Board's designation shall be subject to conditions subsequent set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.

N.J.A.C. 19:31-21.8(f)1 sets forth that the conditions of approval shall include, but not be limited to: submission of periodic progress reports; executed financing commitments, if applicable; evidence of site plan approval or executed redevelopment agreement with a

governmental entity, as applicable; and evidence of site control of the production facility within one year from the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

N.J.A.C. 19:31-21.8(f)2 sets forth that, as set forth in N.J.A.C. 19:31-21.12, the conditions shall also include the requirement that construction at the production facility complies with prevailing wage and affirmative action requirements and that the production facility does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, et seq.

N.J.A.C. 19:31-21.8(f)3 sets forth that a studio partner or film-lease partner facility shall submit the final floor plan, or site plan if there are multiple buildings, indicating the uses and square footage of each area and one or more temporary certificates of occupancy for the minimum required square footage within 36 months from the later of Board approval of the designation and the effective date of this special adoption. The Authority shall grant no more than two six-month extensions of this deadline.

N.J.A.C. 19:31-21.8(f)4 sets forth that, absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's designation shall expire if the approved applicant does not provide the required documents within the period of time prescribed in this subsection (e).

N.J.A.C. 19:31-21.8(g) sets forth that, when deciding whether to make an equity investment in a film-lease partner facility and the terms of such investment, the Authority shall consider such factors as the financial structure of the production facility, the risk of the investment in the production facility, the developer contributed capital or equity, the magnitude of State or other

governmental support, the reasonable and appropriate return on investment to the developer and the Authority, and the terms offered to other equity owners and investors.

N.J.A.C. 19:31-21.8(h)1 and (h)2 set forth that a studio partner shall execute an award agreement that shall include, but not be limited to: the commencement of the commitment and eligibility periods and an agreement that the studio partner shall maintain the lease or ownership of the production facility for the duration of the commitment period.

N.J.A.C. 19:31-21.8(h)2(i) sets forth that the studio partner shall not lease, sublease, or license any part of the production facility such that the studio partner occupies less than the minimum amount of square feet for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period.

N.J.A.C. 19:31-21.8(h)2(ii) sets forth that unless otherwise allowed in this subchapter, the studio partner shall not receive any benefits from this Program for any activity of its tenant or subtenant and the tenant or subtenant shall not receive any benefits from this Program from the studio partner's designation.

N.J.A.C. 19:31-21.8(i)1 and (i)2 set forth that a film-lease partner facility shall execute an award agreement that shall include, but not be limited to: the commencement of the ownership, lease or operation; and if not owned, the length of the lease or other site control agreement and an agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation.

N.J.A.C. 19:31-21.8(i)2(i) sets forth that a film-lease partner facility shall not lease, sublease, or license any part of the production facility for uses other than film production uses such that the film-lease partner facility occupies less than the minimum amount of square feet.

N.J.A.C. 19:31-21.8(i)2(ii) sets forth that, absent the Authority’s written consent, the film-lease partner facility shall not sell any part of the production facility, provided that a film-lease partner facility may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet.

N.J.A.C. 19:31-21.8(i)2(iii) sets forth that unless otherwise allowed in this subchapter, the film-lease partner facility shall not receive any tax credits under this program for any activity of its occupant, tenant, or subtenant.

N.J.A.C. 19:31-21.8(j) sets forth what must be included in the award agreement for a studio partner and a film-lease partner facility.

19:31-21.9 Recapture and reduction of tax credits

A new N.J.A.C. 19:31-21.9 has been added. N.J.A.C. 19:31-21.9(a) sets forth that, if a studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a studio partner, the Authority shall recapture the portion of the tax credit from the studio partner that was only available to the studio partner by virtue of the studio partner’s designation as a studio partner, and all the studio partner’s films for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

N.J.A.C. 19:31-21.9(b) sets forth that, if a film-lease partner facility fails to operate the production facility developed, purchased, or leased as a condition of designation as a film-lease partner facility or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five year period, the Authority shall recapture the portion of the tax credit from the film-lease partner facility that was only available to film-lease production

companies by virtue of the film-lease partner facility’s designation as a film-lease partner facility, and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

N.J.A.C. 19:31-21.9(c) sets forth that if an approved applicant has received tax credits on the basis of deferred compensation and the supplemental report from the independent certified public accountant does not evidence actual payment of the deferred compensation, the Authority shall recapture the amount of the tax credit that was based on the projected deferred compensation. If the approved applicant fails to submit the supplemental report by the date required, the Authority shall recapture all of the tax credit based on the projected deferred compensation.

N.J.A.C. 19:31-21.9(d) sets forth that if, at any time, the Authority determines that an approved applicant made a material misrepresentation, the approved applicant shall forfeit and the Authority may recapture any or all of the tax credits awarded.

N.J.A.C. 19:31-21.9(e) sets forth that any funds recaptured pursuant to this section, including penalties and interest, shall be deposited into the General Fund of the State.

19:31-21.10 Application for tax credit transfer certificate

N.J.A.C. 19:31-21.10(a), formerly found at N.J.A.C. 19:31-21.8(a), is amended to remove and replace “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.10(b), formerly found at N.J.A.C. 19:31-21.8(b), is amended to remove and replace “taxpayer” with “approved applicant.”

N.J.A.C. 19:31-21.10(c), formerly found at N.J.A.C. 19:31-21.8(c), is amended to remove and replace “taxpayer” with “approved applicant.”

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N.J.A.C. 19:31-21.10(e) sets forth that the Authority shall publish on its Internet website information concerning each tax credit transfer certificate approved by the Authority.

19:31-21.11 Cap on total credits

N.J.A.C. 19:31-21.11(a) formerly found at N.J.A.C. 19:31-21.9(a)1, sets forth the total cap on tax credits.

N.J.A.C. 19:31-21.11(a)1 sets forth that pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), for qualified film production expenses of applicants other than for studio partners and film-lease production companies, the cumulative total shall not exceed \$100,000,000.

N.J.A.C. 19:31-21.11(a)2(i) sets forth that, for studio partners and film-lease production companies, pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), except as provided in subparagraphs ii and iii, the cumulative total shall not exceed \$100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of \$150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040.

N.J.A.C. 19:31-21.11(a)3 sets forth that if the applicable cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year exceeds the amount of tax credits available in that fiscal year, then applicants who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their applications approved by the Authority, provided the applications otherwise satisfies the requirements of the program, and shall be allowed the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates are not in excess of the amount of applicable credits available.

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N.J.A.C. 19:31-21.11(b) sets forth that the value of tax credits for digital media content production expenses, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director shall not exceed a cumulative total of \$30,000,000 in fiscal year 2019, and in each fiscal year thereafter prior to 2040. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year exceeds the amount of tax credits available in that year, then applicants who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates are not in excess of the amount of credits available.

N.J.A.C. 19:31-21.11(c) and (d) set forth the process by which the Authority shall certify available tax credits under the Program.

N.J.A.C. 19:31-21.11(e) sets forth that notwithstanding any provision of this section or other law to the contrary, if a film production company designated as a studio partner ceases to qualify for its designation as a studio partner and becomes designated as a film-lease partner facility, the Authority shall reduce the cumulative total amount of tax credits made available to studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for film-lease production companies.

19:31-21.12 Affirmative action and prevailing wage

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N.J.A.C. 19:31-21.12(a) is amended to clarify when the Authority’s affirmative action and prevailing wage requirements apply to qualified film production expenses and qualified digital media content production expenses.

N.J.A.C. 19:31-21.12(b) is added to clarify when the Authority’s affirmative action and prevailing wage requirements apply to studio partners and film-lease partner facilities.

19:31-21.13 Appeals

N.J.A.C. 19:31-21.13 sets forth the appeal process. This provision was formerly codified at N.J.A.C. 19:31-21.7. The amendment to this rule set forth that the Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

N.J.A.C. 19:31-21.13(c) is added and sets forth that appeals that are timely submitted shall be handled by the Authority.

19:31-21.14 Severability

The severability provision formerly codified at N.J.A.C. 19:31-21.11 is now codified at – 21.14.

Social Impact

The Garden State Film and Digital Media Jobs Program authorizes corporation business and gross income tax credits for certain expenses incurred for the production of certain films and digital media content in New Jersey, with additional benefits for production companies making long-term film production commitments, or significant capital investments in New Jersey. The specially adopted concurrently proposed amendments and new rules will have a positive social impact by attracting motion picture, television, and digital media production in New Jersey, which create both permanent production jobs as well as construction jobs, promote New Jersey's diverse

locations and landscapes, incentivize diversity in recruitment and hiring, revitalize local economic activity, catalyze tourism activity, and reestablish New Jersey's competitiveness in the motion picture and television industry.

Economic Impact

The total amount of film tax credits available pursuant to the legacy program is \$100 million, per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2039, for a total available pool of \$2 billion. The total amount of film credits available for studio partners is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, and beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039 is \$150 million per State Fiscal year for a total available pool of \$2.65 billion. The total amount of film credits available for film-lease production companies is \$100 million per State fiscal year, beginning in State Fiscal Year 2019 and ending in State Fiscal Year 2023, the total amount of tax credits available to film-lease production companies is \$150 million beginning in State Fiscal Year 2024 and ending in State Fiscal Year 2039 for a total available pool of \$2.65 billion. The total amount of digital media tax credits available under the Program is \$30 million per State fiscal year, beginning with State Fiscal Year 2019 and ending with State Fiscal Year 2034, for a total available pool of \$450 million.

The specially adopted concurrently proposed amendments and new rules will impose appropriate costs on applicants. The fees for the Program are intended to ensure a source of necessary administrative fee revenue for the NJEDA to more fully cover the costs of administering the Program.

Federal Standards Statement

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

Jobs Impact

In New Jersey, average annual employment in the motion picture and video industry totals over 7,000 or 0.6 percent of the State's private sector workers, with wages paid of more than \$374 million or 0.4 percent of the State's total wages. The Authority anticipates that the specially adopted concurrently proposed amendments and new rules will spur an indeterminate amount of job creation, which includes direct job creation through film, television, and digital media production companies producing content in New Jersey, and indirectly through local businesses and vendors that provide support services to film, television, or digital media production. The specially adopted concurrently proposed amendments and new rules, which offer additional benefits for production companies making long-term film production commitments and/or significant capital investment in New Jersey, will result in the creation of jobs that are less transient relative to individual film productions, and more permanent relative to sustained and ongoing film and television production.

Agriculture Industry Impact

The specially adopted concurrently proposed amendments and new rules will not have any impact on the agriculture industry of the State of New Jersey.

Regulatory Flexibility Analysis

The specially adopted concurrently proposed amendments and new rules may impose minimal reporting, recordkeeping, and other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, eligible businesses will be required to comply with the Authority's standard online application process and

regular incentive compliance requirements, however, any costs due to reporting, recordkeeping, and other compliance requirements on qualifying businesses will be fully offset by the amount of financial assistance received, and the only professional services required for such purposes are fully offset by the amount of financial assistance received and the only professional services required for such purposes are from a certified public accountant.

Housing Affordability Impact Analysis

The specially adopted concurrently proposed amendments and new rules will not have any effect on the average costs associated with housing, nor will it affect the affordability of housing in the State.

Smart Growth Development Impact Analysis

The specially adopted concurrently proposed amendments and new rules will have an insignificant impact on smart growth and there is an extreme unlikelihood that they would evoke a change in housing production in Planning Areas 1 or 2, or in designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

The specially adopted concurrently proposed amendments and 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 21. GARDEN STATE FILM AND DIGITAL MEDIA JOBS PROGRAM

19:31-21.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority in consultation with the New Jersey Motion Picture and Television Development Commission and the New Jersey Division of Taxation to implement the Garden State Film and Digital Media Jobs Act, P.L. 2018, c. 56[.], as amended by P.L. 2019, c. 506; P.L. 2020, c. 156; P.L. 2021, c. 160; P.L. 2021, c. 367; and P.L. 2023, c. 97.

19:31-21.2 Definitions

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

“Applicant” means:

- 1) A film production company applying for designation as a studio partner;
- 2) An entity applying for designation as a film-lease partner facility;
- 3) A person or entity applying for a tax credit for qualified film production expenses. Such entity includes, but is not limited to, a designated studio partner or an entity applying for a tax credit as a film-lease production company; or
- 4) A person or entity applying for a tax credit for qualified digital media content production expenses.

“Approved applicant” means an applicant for a tax credit for qualified film production expenses or qualified digital media content production expenses that has received initial approval from the Authority.

...

"Commission" means the New Jersey Motion Picture and Television [Development]

Commission.

"Commitment period" means for studio partners, the period beginning with the commencement of the eligibility period and expiring 10 years following:

- 1) **in the case of studio partner developing or purchasing a production facility, the issuance of a temporary certificate(s) of occupancy for the production facility developed or purchased as a condition of designation as a studio partner; or**
- 2) **in the case of studio partner leasing a production facility, commencement of the lease term for the production facility leased as a condition of designation as a studio partner.**

“Deferred compensation” means additional payments made to highly compensated individuals such as writers, directors, producers, and performers, other than background actors with no scripted lines, that increase the total remuneration received for services performed on a production. Deferred compensation payments may include, but are not limited to, payments and advance payments for profit participations, residuals, launch bonuses, buy-out fees, or any other compensation due a highly compensated individual as a result of their services performed on, or the financial exploitation of a film or commercial audiovisual product.

"Digital media content" means any data or information that is produced in digital form, including data or information created in analog form, but reformatted in digital form, text, graphics, photographs, animation, sound, and video content. "Digital media content" [does] **shall** not mean content offerings generated by the end user (including postings on electronic bulletin boards and chat rooms); content offerings comprised primarily of local news, events, weather, or local market reports; public service content; electronic commerce platforms (such as retail and wholesale websites); websites or content offerings that contain obscene material as defined pursuant to N.J.S.A. 2C:34-2 and 2C:34-3; websites or content that are produced or

maintained primarily for private, industrial, corporate, or institutional purposes; or digital media content acquired or licensed by the [taxpayer] **approved applicant** for distribution or incorporation into the [taxpayer's] **approved applicant's** digital media content.

...

"Eligibility period" means, with respect to studio partners, the period in which a studio partner may claim a tax credit for qualified film production expenses, including expenses that would not constitute qualified film production expenses but for the applicant's designation as a studio partner, beginning the earlier of (1) the commencement of the principal photography for the studio partner's initial film in New Jersey or (2) (i) in the case of a studio partner developing or purchasing a production facility, at the issuance of a temporary certificate(s) of occupancy for the production facility developed or purchased as a condition of designation as a studio partner, (ii) in the case of a studio partner leasing a production facility, at the commencement of the lease term for the production facility leased as a condition of designation as a studio partner, and extending thereafter for a term of not more than 10 years.

"Film" or "film project" means a feature film, a television series, or a television show of 22 minutes or more in length, intended for a national audience, or a television series or a television show of 22 minutes or more in length intended for a national or regional audience, including, but not limited to, (1) **documentary feature film, documentary television series, or documentary television shows** (2) a game show, [award show,] (3) **talk show, (4) competition or variety show filmed before a live audience, or (5) award show or other gala event** filmed and produced at a nonprofit arts and cultural venue receiving State funding. "Film" shall not include a production

featuring news, current events, weather, and market reports or public programming, [talk show], or sports event, a production that solicits funds, a production containing obscene material as defined under N.J.S.A. 2C:34-2 and 2C:34-3, or a production primarily for private, industrial, corporate, or institutional purposes, or a reality show, except for [taxpayers] **applicants** applying for a tax credit against the tax imposed pursuant to section 5 of P.L. 1945, c. 165, if the production company of the reality show owns, leases, or otherwise occupies a production facility [of no less than 20,000 square feet of real property] for a minimum term of 24 months, and [invests] **makes a capital investment**, after July 1, 2018, **of** no less than \$ 3,000,000 in such a facility within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2. The **capital** investment of the production company may include the **capital** investment of its landlord after July 1, 2018. To determine the **capital** investment of the landlord, the Authority shall multiply the owner's total capital investment in the building by the fraction, the numerator of which is the leased net leasable area and the denominator of which is the total net leasable area. "Film" shall not include an award show or other gala event that is not filmed and produced at a nonprofit arts and cultural venue receiving State funding.

"Film production uses" means film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for producing films or other commercial audiovisual products, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back-office use and that backlots shall not exceed 20 percent of the required minimum size of the production facility.

...

"Full-time or full-time equivalent employee" means an individual employed by the [taxpayer] **approved applicant** for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., **regardless of whether the individual is a resident or nonresident gross income taxpayer**, or who is a partner[, the taxpayer] **of an approved applicant**, who works for the partnership for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as full-time or full-time equivalent employment, and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq. "Full-time or full-time equivalent employee" shall not include an individual who works as an independent contractor or on a consulting basis for the [taxpayer] **approved applicant**.

"Highly compensated individual" means an individual who directly or indirectly receives compensation in excess of \$ 500,000 for the performance of services used directly in a production. An individual receives compensation indirectly when the [taxpayer] **approved applicant** pays a loan out company that, in turn, pays the individual for the performance of services.

“Homeowner” means an individual who owns and occupies a personal residence, whether as their primary residence or otherwise.

"Incurred in New Jersey" means, for any application submitted after the effective date of P.L.2018, c.56 (July 3, 2018), pursuant to which a tax credit has not been allowed prior to the effective date of P.L.2021, c.160 (July 2, 2021), service performed within New Jersey and tangible personal property used or consumed in New Jersey. A service is performed in New Jersey to the extent that the individual performing the service is physically located in New Jersey while performing the service. Notwithstanding where the property is delivered or acquired, rented tangible property used or consumed in New Jersey to the extent that the property is located in New Jersey during its use or consumption and is rented from a vendor authorized to do business in New Jersey or, at the Authority's discretion, the film production company provides to the Authority the vendor's information in a form and manner prescribed by the Authority. Purchased tangible property is not used and consumed in New Jersey unless it is purchased from a vendor authorized to do business in New Jersey and is delivered to or acquired within New Jersey; provided, however, that if a production is also located in another jurisdiction, the purchased tangible property is used and consumed in New Jersey if the acquisition and delivery of purchased tangible property is located in either New Jersey or another jurisdiction where the production takes place. Payment made to a homeowner for the use of a personal residence located in the State for filming shall be deemed an expense incurred in New Jersey notwithstanding the fact that such homeowner is not a vendor authorized to do business in New Jersey, provided that the approved applicant has made the withholding required by N.J.S.A. 54:10A-5.39b(g), N.J.S.A. 54A:4-12b(h), and N.J.A.C. 19:31-21.3(c).

"Independent contractor" means an individual treated as an independent contractor for Federal

and State tax purposes who is contracted with by the [taxpayer] **approved applicant** for the performance of services used directly in a production.

"Loan out company" means a personal service corporation or other entity that is contracted with by the [taxpayer] **approved applicant** to provide specified individual personnel, such as artists, crew, actors, producers, or directors for the performance of services used directly in a production. "Loan out company" [does] **shall** not include entities contracted with by the [taxpayer] **approved applicant** to provide goods or ancillary contractor services, such as catering, construction, trailers, equipment, or transportation.

"New Jersey film-lease partner facility" or "film-lease partner facility" means one of the following for which the owner, developer, or tenant has made the commitment to build, lease, or operate for a period of at least five successive years beginning with the later of the date of Authority approval or the issuance of the temporary certificate(s) of occupancy:

- 1) a production facility;
- 2) a production facility built, leased, or operated by a production company designated as a studio partner, which the studio partner no longer occupies;
or
- 3) a portion of a production facility owned by a studio partner that is in excess of the space being utilized by the studio partner; provided that the space utilized by the studio partner both exceeds the minimum size for a studio partner and film-lease partner facility, respectively.

"New Jersey film-lease production company" or "film-lease production company"

means an applicant, including any applicant that is a member of a combined group under N.J.S.A. 54:10A-4.11 or any other entity in which the film-lease production company has a material ownership interest of at least 30 percent and material operational role in the production, including, but not limited to, as a producer, that otherwise complies with the eligibility requirements of the program and has made a commitment to lease or otherwise occupy production space in a film-lease partner facility and who will shoot at least 50 percent of the total principal photography shoot days of the film project within New Jersey at the film-lease partner facility. A "New Jersey film-lease production company" may include an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated film-lease production company contracts to perform film production services on its behalf such that the designated film-lease production company controls such film or product during preproduction, production, and postproduction, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the film-lease production company pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.

"New Jersey studio partner" or "studio partner" means a film production company that has made a commitment to produce films or commercial audiovisual products in New Jersey and has developed, purchased, or executed a 10-year contract to lease a production facility, or has executed a purchase contract with a governmental authority for the purpose of developing a production facility, which purchase contract must be executed within 48 months from the date of designation as a New Jersey studio partner; provided, however, the Authority Board, in its discretion, may extend the time to execute a purchase contract

for an additional 12 months. A “studio partner” shall also include a film production company that executes at least a 10-year lease for a production facility that is a portion of a film-lease partner facility. A "New Jersey studio partner" may include any other member of an applicant’s combined group, pursuant to N.J.S.A. 54:10A-4.11. For the purpose of applying for film tax credits pursuant to N.J.A.C. 19:31-21.3, a “New Jersey studio partner” shall also mean an unrelated entity principally engaged in the production of a film or other commercial audiovisual product with whom a designated studio partner contracts to perform film production services on its behalf such that the designated studio partner controls such film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, "works made for hire" for the studio partner pursuant to the provisions of the federal "Copyright Act of 1976," 17 U.S.C. § 101 et seq.

...

"Personal residence" means a residential unit, the land on which the residential unit is located, and any other structures on such land. A personal residence includes, but is not limited to, a condominium, a unit in a horizontal property regime, or a unit in a cooperative or mutual housing corporation of a residential shareholder. A personal residence excludes a multi-family residential structure of more than four units and a residential unit that another person occupies as that person's primary residence.

...

Appendix A – Specially Adopted and Concurrently Proposed Rule Amendments and New Rules –
New Jersey Film & Digital Media Tax Credit Program

“Primary place of business” means, for purposes of determining the amount of tax credit pursuant to N.J.A.C. 19:31-[21.6(l)2 and 3]**21.6(a) and (b)**, the headquarters or commercial facility of a vendor at which the qualified expense transaction occurs.

“Principal photography” means the filming of major and significant portions of a qualified film that involves the **director of the film on set**[lead actors or actresses]. For animated films, “principal photography” means the point at which the models created during the pre-production phase are complete and the staff begins to choreograph, animate, and render the animations.

...

“Production facility” means a building or buildings in New Jersey used for film production uses of no less than 20,000 square feet for a production company of a reality show and no less than 250,000 square feet for a film-lease partner facility or a studio partner.

...

“Qualified digital media content production expenses” means expenses incurred in New Jersey after July 1, 2018, for the production of digital media content. “Qualified digital media content production expenses” shall include, but [shall] not be limited to, wages and salaries of individuals employed in the production of digital media content on which the tax imposed by the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs of computer software and hardware, data processing, visualization technologies, sound synchronization, editing, and the rental of facilities and equipment. Payments made to a loan out company or to an independent contractor shall not be **deemed** a “qualified digital media content production expenses” unless the payments are made in connection with a trade, profession, or occupation

carried out in this State or for the rendition of personal services performed in the State and the [taxpayer] **approved applicant** has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). “Qualified digital media content production expenses” shall not include expenses incurred in marketing, promotion, or advertising digital media or other costs not directly related to the production of digital media content. Costs related to the acquisition or licensing of digital media content by the [taxpayer] **approved applicant** for distribution or incorporation into the [taxpayer's] **approved applicant’s** digital media content, **or other costs for intangible personal expenses**, shall not be **deemed** “qualified digital media content production expenses.”

“Qualified film production expenses” means an expense incurred in New Jersey after July 1, 2018, for the production of a film, including pre-production costs, and post-production costs incurred in New Jersey. “Qualified film production expenses” shall include, but [shall] not be limited to: wages and salaries of individuals employed in the production of a film on which the tax imposed by N.J.S.A. 54A:1-1 et seq., has been paid or is due; and, the costs for tangible personal property used and services performed, directly and exclusively in the production of a film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be **deemed** a “qualified film production expense[s]” unless the payments are made in connection with a trade, profession, or occupation [carried on] **performed** in this State or for the rendition of personal services performed in this State and the [taxpayer] **approved applicant** has made the withholding required [by] **pursuant to** N.J.A.C. 19:31-21.3(c). **As of the effective date of P.L. 2023, c. 97 (July 6, 2023) payment made to a homeowner, who is otherwise not a vendor authorized to do business in New Jersey, for the use of a personal residence for filming shall not be deemed a “qualified film**

production expense” unless the approved applicant has made the withholding required by N.J.S.A. 54:10A-5.39b(g), N.J.S.A. 54A:4-12b(h), and N.J.A.C. 19:31-21.3(c). For the purposes of this definition, wages and salaries of individuals employed in the production of a film shall include deferred compensation, including advances on deferred compensation, incurred by studio partners, provided the studio partner files a supplemental report as set forth in N.J.A.C. 19:31-21.7(f). “Qualified film production expenses” shall not include: costs for intangible personal expenses incurred after the effective date of these amendments; expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines[.], except as follows, based on the qualified film production expenses in the State without including the excess amounts paid to highly compensated individuals:

- 1) for a studio partner that incurs less than \$ 50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$ 18,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and**
- 2) for a studio partner that incurs \$ 50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$ 72,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and**

performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and

- 3) for a film-lease production company that incurs less than \$ 50,000,000 in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$ 15,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses; and**
- 4) for a film-lease production company that incurs \$ 50,000,000 or more in qualified film production expenses in the State, in excess of amounts paid to highly compensated individuals, an additional amount, not to exceed \$ 60,000,000, of the wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, shall constitute qualified film production expenses.**

“Reality show” means content that is centered around the filming of people in real-life, predominantly unscripted or soft-scripted, situations.

"Selling business" means [a taxpayer] **an approved applicant** that has unused tax credits, which it wishes to sell.

“Shoot day” means a minimum of eight hours from first unit crew call to wrap.

“Square feet” means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and

shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces. For backlot, “square feet” means the area dedicated by the applicant for backlot use as evidenced on a site plan.

"Taxable year" means the calendar or fiscal accounting period for which a tax is payable under N.J.S.A. 54A:1-1 et seq., and commencing on or after July 1, 2018, but before July 1, [2023] **2039**.

...

"Tax credit transfer certificate" means the certificate issued by [the Division of] Taxation certifying to the selling business the amounts of film tax credit being sold. The certificate shall state that the transferor waives its right to claim the credit shown on the certificate. The certificate shall [show the fiscal year in which the application was initially approved and] have the same tax credit vintage year as the original tax credit certificate.

"Tax credit vintage year" means the applicant's privilege period or taxable year in which the Authority issued the initial approval of the application, **until the cumulative total amount of tax credits, and tax credit transfer certificates, allowed to applicants exceeds the amounts of tax credits available in a fiscal year, after which “tax credit vintage year” shall mean the next subsequent privilege period or taxable year of the applicant in which tax credits are available** [and the tax credit may be applied].

“Taxpayer” means, for the purposes of this subchapter, an applicant, a designated studio partner, a designated film-lease partner facility, or an approved applicant.

Appendix A – Specially Adopted and Concurrently Proposed Rule Amendments and New Rules –
New Jersey Film & Digital Media Tax Credit Program

“Total digital media content production expenses” means costs for services performed and property used or consumed in the production of digital media content **including, but not limited to, wages and salaries.** “Total digital media content production expenses” shall not include costs for intangible personal expenses incurred after the effective date of these amendments.

“Total film production expenses” means costs for services performed and tangible personal property used or consumed in the production of a film **including, but not limited to, wages and salaries.** “Total film production expenses” shall not include costs for intangible personal expenses incurred after the effective date of these amendments.

“Vendor authorized to do business in New Jersey” means a vendor that, **at the time the expense was incurred in New Jersey,** has obtained authorization to conduct business in this State by filing the appropriate documents with the State of New Jersey Department of the Treasury, Division of Revenue and Enterprise Services.

19:31-21.3 Eligibility criteria

(a) [A taxpayer] **An applicant** shall be eligible for the program for film tax credits if the Authority finds that:

1. The [taxpayer] **applicant** will incur after July 1, 2018:

i. [, at] **At least 60 percent** of the total film production expenses, exclusive of post-production costs, for services performed, and goods purchased, through vendors authorized to do business in New Jersey, **including wages and salaries,** or

Appendix A – Specially Adopted and Concurrently Proposed Rule Amendments and New Rules –
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(b) [A taxpayer] **An applicant** shall be eligible for the program for digital media tax credits if the Authority finds that:

1. The [taxpayer] **applicant** will incur qualified digital media content production expenses during a privilege period or taxable year, provided that:

i. At least \$ 2,000,000 of the total digital media content production expenses of the [taxpayer] **applicant** are incurred for services performed, and goods purchased, through vendors authorized to do business in New Jersey, **including wages and salaries**;

ii. At least 50 percent of the qualified digital media content production expenses of the [taxpayer] **applicant** are for wages and salaries paid to full-time or full-time equivalent employees in New Jersey; and

iii. The [taxpayer] **applicant** submits a tax credit verification report prepared by an independent certified public accountant licensed in this State in accordance with N.J.A.C. 19:31-21.7(c)4; and

2. The [taxpayer] **applicant** complies with the withholding requirements provided for payments to loan out companies and independent contractors in accordance with (c) below

(c) [A taxpayer] **An approved applicant** shall withhold from each payment to a loan out company, [or] to an independent contractor, **or, for an applicant for a film tax credit, to a homeowner for the use of a personal residence** an amount equal to 6.37 percent of the payment otherwise due. The amounts withheld shall be deemed to be withholding of liability pursuant to **the “New Jersey Gross Income Tax Act,”** N.J.S.A. 54A:1-1 et seq., and the [taxpayer] **approved applicant** shall

be deemed to have the rights, duties, and responsibilities of an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes. The director shall allocate the amounts withheld for a taxable year to the accounts of the individuals who are employees of a loan out company in proportion to the employee's payment by the loan out company in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during the taxable year. A loan out company that reports its payments to employees in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State during a taxable year shall be relieved of its duties and responsibilities as an employer pursuant to chapter 7 of Title 54A of the New Jersey Statutes for the taxable year for any payments relating to the payments on which the [taxpayer] **approved applicant** withheld.

(d) For any applicant applying to be designated as a studio partner, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a studio partner for purposes of designation and that it shall satisfy the conditions of approval in N.J.A.C. 19:31-21.8(f) within the prescribed time. No more than three film production companies may be designated as a studio partner.

(e) For any applicant applying to be designated as a film-lease partner facility, the applicant shall be eligible if the applicant demonstrates to the Authority that the applicant meets the definition of a film-lease partner facility and that it shall satisfy the conditions of approval in N.J.A.C. 19:31-21.8(f) within the prescribed time.

- 1) Except for a production facility, or portion thereof, owned, built, leased, or operated by a film production company designated as a studio partner by the Authority on or**

before the 181st day next following the effective date of P.L. 2023, c. 97 (July 6, 2023), in order for a production facility to be designated as a film-lease partner facility, the owner or developer shall accept the acquisition by the Authority, at the Authority's discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility and on the condition that the Authority's may require the applicant to redeem the investment if the applicant is not compliant with the program. The Authority may, at its discretion, accept the offer to purchase the shares of stock by the film-lease partner facility or any other investor in lieu of redemption.

- 2) No more than three New Jersey production facilities may be designated as a film-lease partner facility; provided, however, this limitation shall not apply to production facilities, or portions thereof, owned, built, leased, or operated by a film production company designated as a studio partner.**

(f) For any applicant applying to produce a reality show, the applicant will be eligible for the program if the Authority finds the applicant meets the requirements set forth in (a) of this section and demonstrates to the Authority that the applicant's production meets the definition of a reality show and meets the requirements for reality show productions set forth in the definition of a film.

(g) For two or more buildings to qualify as a production facility, the buildings must be proximate to each other. Proximate buildings shall include, but not be limited to, buildings that are adjacent to each other or across a single public right-of-way from each other. The following are examples of buildings that are proximate:

- 1) **A production facility consists of building A and building B, which are both on the same block, but separated by other buildings.**
- 2) **A production facility consists of building A and building B, which are adjacent to each other, but have separate entrances.**
- 3) **A production facility consists of building A and building B, which are located in an industrial park and are separated solely by a parking lot.**

19:31-21.4 Application submission requirements

(a) A completed application for film tax credits shall include [, but not be limited to, the following]:

1. – 3. (No change.)
4. **For applications filed before July 2, 2021, the effective date of P.L. 2021, c. 160, [A] a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(h)2 or 3, for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County; and for applications filed on or after the effective date of P.L. 2021, c. 367 (July 2, 2021), a breakout of projected costs, including pre-production and post-production costs, to be incurred, pursuant to N.J.A.C. 19:31-21.6(a)2 for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park**

South, New York, New York;

5. A description of the **film** project, which must include:

i. – iv. (No change.)

6. – 7. (No change.)

8. [An election by the taxpayer as to whether the tax credit will be based on total film production expenses, exclusive of post-production costs, or on qualified film expenses during a privilege period or taxable year, that exceed \$ 1,000,000 per production;

9.] If the applicant is a partnership or limited liability company, a list of members or owners applying for a tax credit under this program, including the percentage of ownership interest of each;

[10.] **9.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)1i through iv; and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)2i through iii;

[11.] **10.** If the film production involves an eligible reality show, a description of the capital investment, which shall be no less than \$ 3,000,000, and a description of the production facility, which shall be no less than 20,000 square feet of real property, respectively, within a designated enterprise zone established pursuant to the New Jersey Urban Enterprise

Zones Act, N.J.S.A. 52:27H-60 et seq., or a UEZ-impacted business district established pursuant to N.J.S.A. 52:27H-66.2 [.] **and an executed letter of interest, lease, sublease, deed, or purchase contract;**

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. Submission of a tax clearance certificate;

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

14. If the applicant is seeking a film tax credit as a studio partner:

i. A certification from the studio partner that it remains eligible as a studio partner;

and

ii. If the applicant is not the designated studio partner, one of the following:

(1) Written verification that the applicant is a member of the studio partner’s group pursuant to N.J.S.A. 54:10A-4.11; or

(2) For “works made for hire” for the studio partner:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the studio partner to perform film production services for the film on the studio partner’s behalf such that the studio partner controls the film or product during preproduction, production, and post-production and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the studio partner pursuant to the provisions of the federal “Copyright Act of 1976,” 17 U.S.C. § 101 et seq.; and

(C) Opinion of counsel that the executed contract with the studio partner satisfies the criteria in (B) above;

15. If the applicant is seeking a film tax credit as a film-lease production company:

i. A certification from the film-lease partner facility that it remains eligible as a film-lease partner facility;

ii. Filming schedule including all locations in and out of the State of New Jersey;

iii. An executed lease, license, or letter of intent to occupy production space in a film-lease partner facility during the required principal photography shoot days at the facility; and

iv. If the applicant is not the film-lease production company, one of the following:

(1) Written verification that the applicant is a member of the film-lease production company’s combined group;

(2) Any documentation evidencing the film-lease production company’s ownership interest in the applicant and any agreement evidencing the film-lease production company’s operational role in the film production; or

(3) For “works made for hire” for the film-lease production company:

(A) Documentation evidencing that the applicant is principally engaged in the production of film and other commercial audiovisual product;

(B) An executed contract with the film-lease production company to perform film production services for the film on the film-lease production company’s behalf such that the designated film-lease production company controls the film or product during pre-production, production, and post-production, and all results and proceeds of such services constitute, from the moment of creation, “works made for hire” for the New Jersey studio partner

**pursuant to the provisions of the federal “Copyright Act of 1976,” 17 U.S.C. §
101 et seq.; and**

**(C) Opinion of counsel that the executed contract with the studio
partner satisfies the criteria in (B) above; and**

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

(b) A completed application to be designated as a studio partner shall include:

- 1. An executed deed, lease, sublease, purchase contract for the production facility, or letter of intent with a governmental authority for the purchase of property for the purpose of developing a production facility. The executed lease or sublease shall have a term that extends for the commitment period based on the anticipated commencement of the commitment period;**
- 2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility, and the square footage of any backlot;**
- 3. Evidence, including but not limited to a certification, that the applicant has made a commitment to produce films or commercial audiovisual products in New Jersey;**

4. Except for an applicant that will execute a purchase contract with a governmental authority, preliminary site plan approval or temporary certificate(s) of occupancy for the production facility, an adopted redevelopment plan by a municipality or municipalities which contemplates the development of the production facility, or an executed redevelopment agreement with a municipality or municipalities for the development of the production facility;

5. 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;

6. Submission of a tax clearance certificate; and

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

(c) A completed application to be designated as a film-lease partner facility shall include:

1. An executed lease, sublease, deed, or purchase contract for the production facility. The executed lease or sublease shall have a term that extends for the minimum five-year period;

2. A detailed floor plan or, if the production facility comprises multiple buildings, a site plan, indicating the uses of each area, the total square footage of the production facility and the square footage of any backlot;

3. Preliminary site plan approval or temporary certificate(s) of occupancy for the production facility, an adopted redevelopment plan by a municipality or municipalities which contemplates the development of the production facility, or an executed redevelopment agreement with a municipality or municipalities for the development of the production facility;

4. Written acceptance by the applicant of the acquisition by the Authority, at the Authority’s discretion, of equity in the production facility, on commercially reasonable and customary terms and conditions determined by the Authority and the film-lease partner facility.

5. 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;

6. Submission of a tax clearance certificate; and

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

[b] **(d)** A completed application for digital media tax credits shall include [, but not be limited to, the following]:

1. A preliminary or actual budget demonstrating **the minimum required** [at least \$ 2,000,000 of] total digital media content production expenses [incurred for services performed and goods purchased through vendors authorized to do

business in New Jersey] **pursuant to N.J.A.C. 19:31-21.3(b)1i;**

2. If applicable pursuant to N.J.A.C. 19:31-21.6(b)1i or 2i, a breakout of qualified digital media expenses for services performed and tangible personal property purchased through a vendor whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County;

[2.] **3.** A breakout of projected digital media content production expenses for wages and salaries paid to full-time or full-time equivalent employees in New Jersey;

[3.] **4.** The total number of current full-time or full-time equivalent digital media employees, plans for anticipated new full-time or full-time equivalent employees, and current non-digital media full-time or full-time equivalent employees;

[4.] **5.** A **detailed** description of the [project] **digital media content** [; which must include an overall summary of digital media content; and];

6. If the digital media content relates to any film, a list of all such films;

[5.] **7.** If the applicant intends to participate in the bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)1, satisfaction of the requirements under N.J.A.C. 19:31-21.6(l)1i through iv, and for the increased bonus amount of tax credits pursuant to N.J.A.C. 19:31-21.6(l)2, satisfaction of the requirements in N.J.A.C. 19:31-21.6(l)2i through iii; **and**

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

19:31-21.5 Fees

(a) A non-refundable fee shall accompany every application [for tax credits], as follows:

1. For [projects] **applications** with total **qualified film production expenses or digital media production expenses of [tax credits]** of \$ 1,000,000 or less, the fee to be charged at application shall be [~~\$ 500.00~~] **\$ 100.00**; [and]
2. For [projects] **applications** with total **qualified film production expenses or digital media production expenses** of \$ 1,000,000, **but less than \$ 6,000,000**, the fee to be charged at application shall be [~~\$ 2,500.~~] **\$ 250.00**;
3. For **applications with total qualified film production expenses or digital media production expenses of \$ 6,000,000 but less than \$ 15,000,000**, the fee to be charged at application shall be **\$ 2,000.00**;
4. For **applications with total qualified film production expenses or digital media production expenses of \$ 15,000,000 but less than \$ 30,000,000**, the fee to be charged at application shall be **\$ 5,000.00**;
5. For **applications with total qualified film production expenses or digital media production expenses of \$ 30,000,000 or more**, the fee to be charged at application shall be **\$ 10,000.00**;
6. For **applications to be designated as a studio partner**, the fee to be charged at application shall be **\$ 10,000.00**; and

7. For applications to be designated as a film-lease partner facility, the fee to be charged at application shall be \$ 5,000.00.

(b) A non-refundable fee shall be paid prior to the approval of the application by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the credit:

1. For applications with total qualified film production expenses or digital media production expenses of less than \$ 1,000,000, the fee to be charged prior to approval shall be \$ 100.00;

2. For applications with total qualified film production expenses or digital media production expenses of \$ 1,000,000 but less than \$ 6,000,000, the fee to be charged prior to approval shall be \$ 500.00;

3. For applications with total qualified film production expenses or digital media production expenses of \$ 6,000,000 but less than \$ 15,000,000, the fee to be charged prior to approval shall be \$ 5,000.00;

4. For applications with total qualified film production expenses or digital media production expenses of \$ 15,000,000 but less than \$ 30,000,000, the fee to be charged prior to approval shall be \$ 12,000;

5. For applications with total qualified film production expenses or digital media production expenses of \$ 30,000,000 or more, the fee to be charged prior to approval shall be \$ 25,000;

6. For applications to be designated as a studio partner, the fee to be charged prior to approval shall be \$ 50,000; and

7. For applications to be designated as a film-lease partner facility, the fee to be charged prior to approval shall be \$ 50,000.

[(b)] (c) A non-refundable fee [of 0.5 percent of the approved tax credit amount] shall be paid to the Authority prior to the receipt of the tax credit as follows: [.]

1. For approved applicants with total qualified film production expenses or digital media production expenses of less than \$ 1,000,000, the fee to be charged shall be \$ 100.00;

2. For approved applicants with total qualified film production expenses or digital media production expenses of \$ 1,000,000 but less than \$ 6,000,000, the fee to be charged shall be \$ 500.00;

3. For approved applicants with total qualified film production expenses or digital media production expenses of \$ 6,000,000 but less than \$ 15,000,000, the fee to be charged shall be \$ 5,000;

4. For approved applicants with total qualified film production expenses or digital media production expenses of \$15,000,000 but less than \$ 30,000,000, the fee to be charged shall be \$12,000; and

5. For approved applicants with total qualified film production expenses or digital media production expenses of \$ 30,000,000 or more, the fee to be charged shall be \$25,000.

[(c)] **(d)** A non-refundable fee [of \$ 1,000] shall be paid to the Authority upon application for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-21.[8]**10 as follows: [.]**

1. For approved applicants with total qualified film production expenses or digital media production expenses of less than \$ 1,000,000, the fee to be charged shall be \$ 1,000; and

2. For approved applicants with total qualified film production expenses or digital media production expenses of \$ 1,000,000 or greater, the fee to be charged shall be \$ 5,000.

(e) A studio partner or a film-lease production facility shall pay to the Authority a non-refundable fee of \$ 5,000 for the first six-month extension and \$ 7,500 for each subsequent extension to the date the temporary certification of occupancy for the production facility is due pursuant to N.J.A.C. 19:31-21.8(e)**3.**

(f) A studio partner or a film-lease production facility shall pay to the Authority a non-refundable fee of \$ 5,000 for each request for any minor administrative changes, additions, or modifications and \$ 10,000 for each request for any major administrative changes, additions, or modifications, such as those requiring extensive staff time and Board approval, to the designation as a studio partner or a film-lease production facility.

[(d)] (g) The full amount of direct costs of [any analysis] **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, shall be paid by the applicant.

19:31-21.6 Tax credit amounts; bonus amount; carryforward of tax credits

(a) [A taxpayer] **An approved applicant**, upon final approval of an application to the Authority and the Director for film tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., [in an amount equal to 30 percent of the qualified film production expenses of the taxpayer, which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023] **corresponding to the tax credit vintage year, in an amount equal to:**

- 1. For applications received prior to the effective date of P.L. 2021, c. 160 (July 2, 2021), 35 percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**

2. For applications received prior to the effective date of P.L. 2020, c. 156 (January 7, 2021), 30 percent of the qualified film production expenses not included in paragraph 1 above.

3. For applications received on or after the effective date of P.L. 2020, c. 156 (January 7, 2021) and prior to the effective date of P.L. 2021, c. 160 (July 2, 2021), 35 percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year.

4. For applications received on or after the effective date of P.L. 2021, c. 160 (July 2, 2021), the following percent of the qualified film production expenses of the approved applicant during a privilege period or taxable year:

i. For such expenses that are incurred for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New York:

(1) For applications received after the effective date of P.L. 2023, c. 97 (July 6, 2023), 35 percent for applications from film-lease production companies and studio partners.

(2) 30 percent for all other applications.

ii. For all other expenses:

(1) For applications received after the effective date of P.L. 2023, c. 97 (July 6, 2023), 40 percent for applications from film-lease production companies and studio partners.

(2) 35 percent for all other applications.

5. For purposes of this subsection (a), wages, salaries and other compensation shall be considered State-wide expenses. (b) [A taxpayer] An approved applicant, upon final approval of an application to the Authority and the Director for digital media tax credits pursuant to N.J.A.C. 19:31-21.7[(d)](e), shall be allowed a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., **corresponding to the tax credit vintage year** in an amount equal to [20 percent of the qualified digital media content production expenses of the taxpayer which tax credit may be applied for a privilege period or taxable year commencing on or after July 1, 2018, but before July 1, 2023.]:

1. For applications received prior to the effective date of P.L. 2021, c. 367 (January 12, 2022):

i. 25 percent of the qualified digital media content production expenses

of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

- ii. 20 percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included in subparagraph i above.**

2. For applications received on or after the effective date of P.L. 2021, c. 367 (January 12, 2022):

- i. 35 percent of the qualified digital media content production expenses of the approved applicant during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.**
- ii. 30 percent of the qualified digital media content production expenses during a privilege period or taxable year of the approved applicant not included in subparagraph i above.**

3. For purposes of this subsection (b), wages, salaries and other compensation shall be considered State-wide expenses under subparagraphs 1(ii) and 2(ii).

(c) No tax credit shall be allowed pursuant to this subchapter for any costs or expenses included in the calculation of any other tax credit or exemption granted pursuant to a claim made on a tax return filed with the Director, or included in the calculation of an award of business assistance or incentive, for a period of time that coincides with the privilege period or taxable year for which a tax credit authorized pursuant to this subchapter is allowed. **No tax credit shall be allowed for expenses in an application if it has already been included in the calculation of an award pursuant to subsections (a) or (b) above.**

(d) A business that is not a "taxpayer" as defined and used in the **“Corporation Business Tax Act,”** N.J.S.A. 54:10A-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but is a business entity that is classified as a partnership for Federal income tax purposes and is ultimately owned by a business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4(c), or a limited liability company formed under the **“Revised Uniform Limited Liability Company Act,”** N.J.S.A. 42:2C-1 et seq., or qualified to do business in this State as a foreign limited liability company, with one member, and is wholly owned by the business entity that is a "corporation" as defined in N.J.S.A. 54:10A-4(c), but otherwise meets all other requirements of this subchapter, shall be considered an eligible applicant [and "taxpayer" as that term is used in this section] **under this program.**

(e) A business entity that is not a gross income "taxpayer" as defined and used in N.J.S.A. 54A:1-1 et seq., and, therefore, is not directly allowed a credit under this subchapter, but otherwise meets all the other requirements of this subchapter, shall be considered an eligible

applicant [and "taxpayer" as that term is used in this section] **under this program**, and the application of an otherwise allowed credit amount shall be distributed to appropriate gross income taxpayers pursuant to the other requirements of this subchapter.

(f) A business entity that is classified as a partnership for Federal income tax purpose shall not be allowed a tax credit pursuant to this section directly, but the amount of the tax credit of a **gross income** taxpayer in respect of a distributive share of entity income shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the entity that is equal to the **gross income** taxpayer's share, whether or not distributed, of the total distributive income or gain of the entity for its taxable year ending within or with the **gross income** taxpayer's taxable year.

(g) A New Jersey S Corporation shall not be allowed a tax credit pursuant to this [section] **subchapter** directly, but the amount of tax credit of a **gross income** taxpayer in respect of a pro rata share of S Corporation income, shall be determined by allocating to the **gross income** taxpayer that proportion of the tax credit acquired by the New Jersey S Corporation that is equal to the **gross income** taxpayer's share, whether or not distributed, of the total pro rata share of S Corporation income of the New Jersey S Corporation for its privilege period ending with the **gross income** taxpayer's taxable year.

(h) (No change.)

(i) The amount of the tax credit applied under this section against the tax imposed pursuant to N.J.S.A. 54:10A-5, for a privilege period, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **corporate business** taxpayer to an amount less than the statutory

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minimum provided in N.J.S.A. 54:10A-5.

- (j) The amount of the tax credit applied under this section against the tax otherwise due under N.J.S.A. 54A:1-1 et seq., for a taxable year, when taken together with any other payments, credits, deductions, and adjustments allowed by law shall not reduce the tax liability of the **gross income** taxpayer to an amount less than zero.
- (k) The amount of tax credit otherwise allowable under this section that cannot be applied for the taxable year due to the limitations of this subsection or under other provisions of N.J.S.A. 54:10A-1 et seq. or **N.J.S.A. 54A:1-1 et seq.**, may be carried forward, if necessary, to the seven privilege periods or taxable years following the privilege period or taxable year for which the credit was allowed.
- (l) Notwithstanding any limit in (a) **or (b)** above, the tax credits awarded may be increased pursuant to the following:
 - 1. [A taxpayer] **An applicant** shall be allowed an increase in the tax credit against the tax imposed pursuant to N.J.S.A. 54:10A-5, **or under the “New Jersey Gross Income Tax Act,” N.J.S.A. 54A:1-1 et seq.**, in an amount equal to two percent of the qualified film or digital media content production expenses, provided that the application is accompanied by a diversity plan, outlining:
 - i. The intention to prioritize the hiring of minority persons and women in an amount of not less than 15 percent **for applications approved prior to the effective date of these amendments and 25 percent for applications approved thereafter** of the total hired for the qualified film or digital medial production;
 - ii. – iv. (No change.)

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[2. The tax credit allowed pursuant to (a) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due for the taxable year under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 35 percent of the qualified film production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

3. The tax credit allowed pursuant to (b) above against the tax imposed pursuant to N.J.S.A. 54:10A-5 or the tax otherwise due under N.J.S.A. 54A:1-1 et seq., shall be in an amount equal to 25 percent of the qualified digital media content production expenses of the taxpayer during a privilege period or taxable year that are incurred for services performed and tangible personal property purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.]

2. The amount of the increase to a tax credit allowed pursuant to paragraph 1 above shall increase to four percent of the qualified film or digital media content production expenses of the approved applicant if the diversity plan, in addition to meeting the requirements of paragraph 1 above, outlines specific goals that include hiring no less than 25 percent of persons as performers in the film or digital media production who:

i. Are women or members of a minority group;

ii. Have been residents of New Jersey for at least 12 months preceding the beginning of filming or recording; and

iii. Are members of a bona fide labor union representing film and television performers.

19:31-21.7 Evaluation process for tax credits; initial approval for tax credits, award of tax credits
[; appeals]

(a) Applications **for film tax credits** shall be submitted to the Commission, which, upon review for **content** eligibility, will forward the application to the Authority with the Commission's recommendation.

1. The application **for tax credits** shall be considered by the Authority for initial approval on a first in time basis, subject to **the** [an] annual [cap of \$ 75 million for film production tax credits and \$ 10 million for digital production tax credits in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year 2024] **caps in N.J.A.C.**

19:31-21.11.

2. At initial approval, the Authority will designate the maximum amount of the tax credit and will assign a tax credit vintage year to the tax credit. **To assist the Authority in reviewing the application, the Authority may retain a third-party consultant, at the cost of the applicant, to review the budget submitted by the applicant to determine if the qualified film or digital media expenses are reasonable based on industry standards.**

3. The **Authority shall issue an** initial approval letter [received by] **to** the [taxpayer] **approved applicant that** will include conditions subsequent to receipt of the tax credit including, but not limited to, the requirement for progress reports and the date by when final documentation pursuant to (b) below is required. **The approval letter**

shall constitute the non-binding, administrative pre-certification process for potentially eligible projects. Failure to submit timely[,] periodic reports that demonstrate satisfactory progress or **timely** final documentation may lead to the forfeiture of the tax credit.

(b) In general, the final documentation required by (c) below shall be submitted to the Authority no later than four years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three years after the Authority's initial approval if the [taxpayer] **approved applicant** is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

(c) Upon completion of total film production expenses or the total digital media content production expenses **for the privilege period or taxable year identified in the initial approval**, [or the incurrence of qualified film production expenses during a privilege period or taxable year that exceed \$ 1,000,000 per production,] the [taxpayer] **approved applicant** shall submit the following final documentation, which the Authority, in consultation with the Director and the Commission, shall process and evaluate:

1. With respect to a film, evidence satisfactory to the Commission, and written confirmation from the Commission to the Authority that principal photography commenced within the earlier of 180 days from the date of **the** completed application **for the tax credit** [or 150 days from the date of initial approval by the Authority];

2. **If the approved applicant is a studio partner or film-lease production facility, a**

certification from the designated studio partner or film-lease partner facility that it has continued to satisfy the requirements of a studio partner or film-lease production facility from the commencement of principal photography;

3. [The Authority shall review and approve actual] **Actual** budgets and proof of total and qualified film production expenses or total and qualified digital media content production expenses, including a listing of the name of the company or person paid; his, her, or its Federal identification number;
4. [and a] **A** report prepared by an independent certified public accountant licensed in the State verifying the expenses claimed by the **approved** applicant. The report shall be prepared by the independent certified public accountant, pursuant to agreed-upon procedures prescribed by the Authority and the Director[; and].

- (i) The report shall include such information and documentation as shall be determined to be necessary by the Authority and the Director to substantiate the total and qualified film production expenses or the total and qualified digital media content production expenses of the [taxpayer] **approved applicant, and the date of the last total film production expense excluding any deferred compensation payments, including:**

(1) A review of all non-payroll qualified film production expense items and non-payroll digital media content production expense items over \$ 20,000;

(2) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are greater than \$ 2,500, but less than \$ 20,000;

(3) A review of 100 randomly selected non-payroll qualified film production expense items and non-payroll digital media content production expense items that are less than \$ 2,500;

(4) A review of the qualified wages for the 15 employees, independent contractors, or loan-out companies with the highest qualified wages; and

(5) A review of the qualified wages for 35 randomly selected employees, independent contractors, or loan-out companies with qualified wages other than the 15 employees, independent contractors, or loan-out companies with the highest qualified wages;

(ii) In the report, the approved applicant’s qualified film production expenses and digital media content production expenses shall be adjusted based on any discrepancies identified for the reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items and qualified wages. The approved applicant’s qualified film production expenses and digital media content production expenses also shall be adjusted based on the projection of any discrepancies identified based on the review of randomly selected expense items or wages in each strata pursuant to this subsection to the extent that the discrepancies exceed one percent of the total reviewed non-payroll qualified film production expense items, non-payroll digital media content production expense items, or qualified wages in each strata. The determination shall be provided by the independent certified public accountant in writing to the approved applicant, the Authority, and the

Director, and the approved applicant shall include a copy of the written determination in the filing of a return that includes a claim for a tax credit allowed pursuant to this section;

(iii) The amount of the qualified film production expenses or qualified digital media content production expenses in the **report [certification] shall not be increased regardless of additional expenses after the date of the **report** [certification];**

(iv) If the approved applicant is a studio partner and the qualified film production expenses include deferred compensation payments based on work or services provided on a production, the report shall include information necessary and relevant as determined by the Authority to demonstrate such deferred compensation payments.

(v) If the applicant is a film-lease production company, the report shall also include verification of principle photography shoot days as necessary to demonstrate eligibility as a film-lease production company.

[5. The Division shall conduct verification of partners or members of pass through entities, such as partnerships or LLCs].

5. For approved applicants that received initial approval for the production of a reality show:

i. The report required in (c) above shall include verification of the actual capital investment in the production facility. If the capital investment

in the report is less than the minimum eligibility requirement in the definition of film, the approved applicant shall no longer be eligible for tax credits for the production;

ii. The temporary certificate of occupancy;

iii. A detailed floor plan, indicating the uses of each area, of the production facility;

iv. The executed deed, lease, or sublease evidencing site control. If the approved applicant is a tenant and the lease or sublease has a term, including renewals and options, of less than the minimum eligibility requirement in the definition of film, the approved applicant shall no longer be eligible for tax credits for the production; and

v. Any other information necessary to determine compliance with the requirements of a reality show;

[3.] **6.** With respect to a film, evidence satisfactory to the Commission that the film includes marketing materials, as deemed appropriate, pursuant to N.J.A.C. 19:31-21.3(a)3;

[4.] **7.** If the **approved** applicant was initially approved for a bonus amount of tax credit for a diversity plan pursuant to N.J.A.C. 19:31-21.6(l)[1], evidence of **achieving the relevant percentage in the diversity plan or** good faith efforts to undertake the diversity plan. The bonus amount shall not be included in the amount of the final approval if the applicant fails to submit satisfactory evidence to the Authority and the Division;

8. If the approved applicant is a film-lease production company, the executed lease, sublease, or license to occupy production space in a film-lease partner facility;

9. A certification from the approved applicant that the information provided pursuant to this subsection (c) is true under the penalty of perjury; and

10. Any other information necessary for the Authority and the Director to determine compliance with this program.

(d) The Authority, in consultation with the Division and Commission, shall determine final approval of the tax credit in an amount based on the Authority's determination of the total and qualified film production expenses or total and qualified digital media content production expenses reported in the independent certified public accountant's [certification] **report**, but in no event shall the tax credit be greater than the amount stated in the Authority's initial approval. The Authority shall provide, in writing to the [taxpayer] **approved applicant**, the determination of the expenses, and a copy of the written determination shall be included in the filing of a return that includes a claim for a tax credit allowed pursuant to this section.

(e) If the Authority has approved the application, the Authority shall notify the Division of the final approval. The Division shall then issue the tax credit certificate to the **approved** applicant. The [taxpayer's] **approved applicant's** use of the tax credit shall be limited by N.J.A.C. 19:31-21.9(a) or (b), as applicable.

(f) If a studio partner received a tax credit for qualified film production expenses that included deferred compensation payments based on work or services provided on a production, the studio partner shall submit a supplemental report prepared by a certified public accountant

pursuant to agreed-upon procedures prescribed by the Authority and the Director no later than two years after the date on which the production concludes as established by the date of the last total film production expense excluding any deferred compensation payments.

[(f) An applicant may appeal the Authority's initial approval or denial under (a) above and final approval or denial under (c) above by submitting, in writing to the Authority, within 20 calendar days from the date of the Authority'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 Procedures Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administration Procedure Rules, N.J.A.C. 1:1. Appeals that are timely submitted shall be handled by the Authority as follows:

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Chief Executive Officer, or equivalent officer, of the Authority may also include a recommendation to the written report of the

- hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.
 4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.]

19:31-21.8 Evaluation process and designation of studio partner and film-lease partner facility

(a) An application for designation as a studio partner or a film-lease partner facility shall be submitted to the Authority.

(b) The completed application for designation as a studio partner or film-lease partner facility shall be considered by the Authority for approval on a first in time basis. If interest in studio partner or film-lease partner facility designation so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date.

(c) To assist the Authority in designating a studio partner or film-lease partner facility, the Authority may employ an independent consultant, at the cost of the applicant, or may consult with the Commission.

(d) Upon review of the application, the Authority’s Board shall consider whether to designate the applicant as a studio partner or film-lease partner facility pursuant to N.J.A.C. 19:31-21.3(d) and (e) respectively. The designation shall expire at the end of the studio partner’s commitment period.

1. Effective upon designation as a studio partner, a film production company shall be eligible for a credit as a studio partner pursuant to this subchapter, provided the film production company otherwise complies with the eligibility requirements of the program.

2. A film production facility may receive its film-lease partner facility designation prior to executing an equity agreement with the Authority provided final approval of such agreement occurs on or before the date on which production commences at the facility.

(e) Following approval by the Authority’s Board, the Authority shall require the applicant to execute and return an approval letter to the Authority. The Board’s designation shall be subject to conditions subsequent set forth in the approval letter. The conditions in the approval letter must be met to retain the designation.

1. The conditions of approval shall include, but not be limited to, submission of periodic progress reports; executed financing commitments, if applicable; and evidence of site plan approval or executed redevelopment agreement with a governmental entity, as applicable; and evidence of site control of the production facility within one year from

the Board approval of the designation. The Authority shall grant no more than two six-month extensions of this deadline.

2. As set forth in N.J.A.C. 19:31-21.10, the conditions shall also include the requirement that construction at the production facility complies with the prevailing wage and affirmative action requirements; and that the production facility does not violate any environmental law requirements, including, but not limited to, Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, et seq.

3. A studio partner or film-lease partner facility shall submit the final floor plan, or site plan if there are multiple buildings, indicating the uses and square footage of each area and one or more temporary certificates of occupancy for the minimum required square footage within 36 months from the later of Board approval of the designation **and [insert the effective date of these amendments]. The Authority shall grant no more than two six-month extensions of this deadline.**

4. Absent extenuating circumstances or the Authority's determination in its sole discretion, the Authority's designation shall expire if the approved applicant does not provide the required documents within the period of time prescribed in this subsection (e).

(f) When deciding whether to make an equity investment in a film-lease partner facility and the terms of such investment, the Authority shall consider such factors as the financial structure of the production facility, the risk of the investment in the production facility, developer contributed capital or equity, the magnitude of State or other governmental support,

the reasonable and appropriate return on investment to the developer and the Authority, and the terms offered to other equity owners and investors.

(g) A studio partner shall execute an award agreement that shall include, but not be limited to:

- 1. The commencement of the commitment and eligibility periods; and**
- 2. An agreement that the studio partner shall maintain the lease or ownership of the production facility for the duration of the commitment period. The studio partner shall:**

i. Not lease, sublease, or license any part of the production facility such that the studio partner occupies less than the minimum amount of square feet for more than 12 consecutive months or for a period longer than the remainder of the duration of the commitment period;

ii. Not sell any part of the production facility, provided that a studio partner may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet; and

iii. Unless otherwise allowed in this subchapter, not receive any benefits from this program for any activity of its tenant or subtenant and the tenant or subtenant shall not receive any benefits from this program from the studio partner's designation.

(h) A film-lease partner facility shall execute an award agreement that shall include, but not be limited to, the following:

1. The commencement of the ownership, lease or operation and if not owned the length of the lease or other site control agreement; and

2. An agreement that the film-lease partner facility shall maintain the lease or ownership of the production facility in order to maintain the designation. The film-lease partner facility shall:

i. Not lease, sublease, or license any part of the production facility for uses other than film production uses such that the film-lease partner facility occupies less than the minimum amount of square feet;

ii. Absent the Authority’s written consent, not sell any part of the production facility, provided that a film-lease partner facility may sell the production facility if it remains the tenant in the production facility occupying at least the minimum amount of square feet; and

iii. Unless otherwise allowed in this subchapter, not receive any tax credits under this program for any activity of its occupant, tenant, or subtenant.

(i) The award agreement for a studio partner and a film-lease partner facility shall also include:

1. A method for the approved applicant to certify that it has met the eligibility requirements of the program;

- 2. A provision permitting an audit of evidence and documentation of the approved applicant supporting any submissions demonstrating eligibility and site visit, as the Authority deems necessary;**
- 3. A provision permitting the Authority to amend the agreement;**
- 4. A provision establishing the conditions under which the Authority, the approved applicant, or both parties, may terminate the agreement;**
- 5. Indemnification and insurance requirements from the approved applicant;**
- 6. Events that would trigger forfeiture, reduction, or recapture of tax credits, including, but not limited to, provisions in this subchapter; and**
- 7. Default and remedies, including, but not limited to, a default if an approved applicant made a material misrepresentation on its application.**

19:31-21.9 Recapture and reduction of tax credits

(a) If a studio partner fails to occupy the production facility developed, purchased, or leased as a condition of designation as a studio partner for the duration of the commitment period or otherwise fails to satisfy the conditions for designation as a studio partner, the authority shall revoke the designation of the studio partner and recapture the portion of the tax credit from the studio partner that was only available to the studio partner or any film production company by virtue of the studio partner's designation as a studio partner, and all the studio partner's films for which an initial

approval has been given, but for which the Authority has not given final approval, shall terminate.

(b) If a film-lease partner facility fails to operate the production facility developed, purchased, or leased as a condition of designation as a film-lease partner facility or otherwise fails to satisfy the conditions for designation as a film-lease partner facility for the duration of the five year period, the authority shall revoke the designation of the film-lease partner facility and recapture the portion of the tax credit from the film-lease partner facility that was only available to film-lease production companies by virtue of the film-lease partner facility’s designation as a film-lease partner facility, and all films from film-lease production companies that relied on the film-lease partner facility designation for which an initial approval has been given, but for which the Authority has not given final approval, shall terminate.

(c) If an approved applicant has received tax credits on the basis of deferred compensation and the supplemental report from the independent certified public accountant does not evidence actual payment of the deferred compensation, the Authority shall recapture the amount of the tax credit that was based on the projected deferred compensation. If the approved applicant fails to submit the supplemental report by the date required, the Authority shall recapture all of the tax credit based on the projected deferred compensation.

(d) If, at any time, the Authority determines that a designated studio partner or film-lease partner facility made a material misrepresentation on its application or any submission pursuant to this program, the Authority shall revoke the designation and

studio partner or film-lease partner facility shall forfeit, and the Authority may recapture any or all of, the tax credits awarded to the studio partner or any film production company approved for tax credits by virtue of the designation, which shall be in addition to any other remedies in any approval letter, award agreement, and any criminal or civil penalties to which the approved applicant and the respective officer may be subject.

(e) If, at any time, the Authority determines that an approved applicant for a tax credit made a material misrepresentation on the approved applicant's application or any submission pursuant to this program, the approved applicant shall forfeit, and the Authority may recapture any or all of, the tax credits awarded under the program, which shall be in addition to any other remedies in any approval letter, award agreement, and any criminal or civil penalties to which the approved applicant and the respective officer may be subject.

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

19:31-21.[8]10 Application for tax credit transfer certificate

- (a) Tax credits, upon receipt thereof by [a taxpayer] **an approved applicant** from the Director and the Authority, may be transferred, by sale or assignment, in full or in part, pursuant to this section, subject to the cumulative total in N.J.A.C. 19:31-21.9(a), to any other taxpayer who may have a tax liability pursuant to N.J.S.A. 54:10A-5 or 54A:1-1 et seq. [A taxpayer] **An approved applicant** shall apply to the Authority and

the Director for a tax credit transfer certificate, in lieu of the [business] **approved applicant** being allowed any amount of the credit against the tax liability of the [taxpayer] **approved applicant**. Such application shall identify the specific tax credits to be transferred, the consideration received therefor, and the identity of the transferee. Once approved by the Chief Executive Officer of the Authority and the Director of the Division of Taxation, a tax credit transfer certificate shall be issued to the [taxpayer] **approved applicant**, naming the transferee. The certificate issued to the [business] **approved applicant** shall include a statement waiving the [taxpayer's] **approved applicant's** right to claim that amount of the tax credit against the taxes that the [business] **approved applicant** has elected to sell or assign. Any amount of a tax credit transfer certificate used by a purchaser or assignee against a tax liability shall be subject to the same limitations and conditions that apply to the use of the tax credits pursuant to N.J.A.C. 19:31-21.6.

- (b) The sale or assignment of any amount of a tax credit transfer certificate allowed under this section shall not be exchanged for consideration received by the [taxpayer] **approved applicant** of less than 75 percent of the transferred credit amount. In order to evidence this requirement, the [taxpayer] **approved applicant** shall submit to the Authority an executed form of standard selling agreement that evidences that the consideration received by the [taxpayer] **approved applicant** is not less than 75 percent of the transferred tax credit.
- (c) In the event that the [taxpayer] **approved applicant** is a partnership and chooses to allocate the income realized from the sale of the tax credits other than in proportion to the partners' distributive shares of income or gain of the partnership, the selling

agreement shall set forth the allocation among the partners that has previously been submitted to the Director of the Division of Taxation in the Department of the Treasury pursuant to N.J.A.C. 19:31- 21.6.

- (d) The Authority shall develop and make available forms of applications and certificates to implement the transfer processes described in this section.
- (e) **The Authority shall publish on its Internet website the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:**

- 1. The name of the transferrer;**
- 2. The name of the transferee;**
- 3. The value of the tax credit transfer certificate; and**
- 4. The State tax against which the transferee may apply the tax credit.**

19:31-21.[9]11 Cap on total credits

- (a) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Director and the Authority pursuant to N.J.A.C. 19:31-21.6(a) **shall be as follows:**

- 1. Pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), to approved applicants, other than studio partners and film-lease production companies, the [shall not exceed a] cumulative total shall not exceed [of \$75,000,000] \$ 100,000,000 in fiscal**

year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2040**, as indicated by the **tax credit vintage period** [fiscal year in which the tax credit was initially approved], to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

2. For studio partners and film-lease production companies:

i. Pursuant to N.J.S.A. 54:10A-5.39b(e)(1) and N.J.S.A. 54A:4-12b(f)(1), except as provided in subparagraphs ii and iii below, the cumulative total shall not exceed \$ 100,000,000 in fiscal year 2021 and in each fiscal year thereafter prior to fiscal year 2024, and shall not exceed a cumulative total of \$ 150,000,000 in fiscal year 2024 and in each fiscal year thereafter prior to fiscal year 2040, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to the "New Jersey Gross Income Tax Act," N.J.S.A. 54A:1-1 et seq.

ii. Pursuant to N.J.S.A. 34:1B-362(d), notwithstanding the provisions of any other law to the contrary, the uncommitted balance of the total value of tax credits authorized for award by the Authority pursuant to N.J.S.A. 34:1B-362(b)(1)(f) to the "New Jersey Aspire Program Act," N.J.S.A. 34:1B-322 through 34:1B-335, and the "Emerge Program Act," N.J.S.A. 34:1B-336 through 34:1B-348, \$ 250,000,000 shall be made available for tax credits allowed in fiscal years, 2023, 2024, and 2025.

iii. Pursuant to N.J.S.A. 34:1B-362(b)(1)(i), N.J.S.A. 54:10A-5.39b(e)(1), and N.J.S.A. 54A:4-12b(f)(1), beginning in fiscal year 2023, in addition to the

cumulative total tax credits made available for studio partners pursuant to subparagraphs i and ii above, up to an additional \$ 400,000,000 may be made available annually to studio partners and \$ 250,000,000 for film-lease production companies, in the discretion of the Authority, for the award of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, from the funds made available pursuant to N.J.S.A. 34:1B-362(b)(1)(i) from the tax credits made available pursuant to N.J.S.A. 34:1B-362(f) to the "New Jersey Aspire Program Act," N.J.S.A. 34:1B-322 through 34:1B-335, and the "Emerge Program Act," N.J.S.A. 34:1B-336 through 34:1B-348, not including tax credits awarded for transformative projects.

3. If the **applicable** cumulative total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(a) exceeds the amount of tax credits available in that fiscal year, then [taxpayers] **applicants** who have first applied for and have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their **applications approved by the Authority, provided the applications otherwise satisfies the requirements of the program, and shall be allowed** [tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application,] the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(a) are not in excess of the amount of applicable credits available.

- (b) The value of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, approved by the Authority and the Director pursuant to N.J.A.C. 19:31-21.6(b) shall not exceed a cumulative total of [~~\$ 10,000,000~~] **\$ 30,000,000** in fiscal year 2019, and in each fiscal year thereafter prior to fiscal year [2024] **2040**, as indicated by the tax credit vintage year, to apply against the tax imposed pursuant to N.J.S.A. 54:10A-5 and the tax imposed pursuant to **the "New Jersey Gross Income Tax Act,"** N.J.S.A. 54A:1-1 et seq. If the total amount of tax credits initially approved and tax credit transfer certificates approved for privilege periods or taxable years commencing during a single fiscal year under N.J.A.C. 19:31-21.6(b) exceeds the amount of tax credits available in that year, then [taxpayers] **applicants** who have first applied for and who have not been approved a tax credit or tax credit transfer certificate amount for that reason shall have their tax credits considered for initial approval and their tax credit transfer certificates considered for approval, in the order in which they have submitted an application, the amount of tax credit or tax credit transfer certificate on the first day of the next succeeding fiscal year in which tax credits and tax credit transfer certificates under N.J.A.C. 19:31-21.6(b) are not in excess of the amount of credits available.
- (c) **Notwithstanding any provision of subsection (a) above to the contrary, for any fiscal year in which the amount of tax credits approved to studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies pursuant to N.J.A.C. 19:31-21.6(a), N.J.S.A. 54:10A-5.39b(1)(a), and N.J.S.A. 54A:4-12b(2)(a) is less than the cumulative total amount of tax credits permitted to be approved to each such category, in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for**

approval to each such category in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved for studio partners, film-lease production companies, or approved applicants other than studio partners and film-lease production companies in the subsequent fiscal year by the certified amount remaining for each such category from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the approved applicant is not able to redeem or transfer to another taxpayer under this subchapter, and shall increase the cumulative total amount of tax credits permitted to be approved for studio partners, film-lease production companies, or applicants other than studio partners and film-lease production companies in the subsequent fiscal year by the amount of tax credits previously approved for each such category, but not subject to redemption or transfer.

- (d) Notwithstanding any provision of subsection (b) above to the contrary, for any fiscal year in which the amount of tax credits approved pursuant to N.J.A.C. 19:31-21.6(b), N.J.S.A. 54:10A-5.39b(1)(b), and N.J.S.A. 54A:4-12b(2)(b) is less than the cumulative total amount of tax credits permitted to be approved in that fiscal year, the Authority shall certify the amount of the remaining tax credits available for approval in that fiscal year, and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the certified amount remaining from the prior fiscal year. The Authority shall also certify, for each fiscal year, the amount of tax credits that were previously approved, but that the approved applicant is not able to redeem or transfer to another taxpayer under**

this section and shall increase the cumulative total amount of tax credits permitted to be approved in the subsequent fiscal year by the amount of tax credits previously approved, but not subject to redemption or transfer.

(e) Notwithstanding any provision of this section or other law to the contrary, if a film production company designated as a studio partner ceases to qualify for its designation as a studio partner and becomes designated as a film-lease partner facility, the Authority shall reduce the cumulative total amount of tax credits, including tax credits allowed through the granting of tax credit transfer certificates, made available to studio partners in each fiscal year and shall increase the cumulative total amount of tax credits permitted to be approved for film-lease production companies in each fiscal year by a corresponding amount equal to the lesser of

1. One third and

2. The greater of the percentage of the studio partner's number of film tax credit applications out of the volume of applications submitted by studio partners and film-lease production companies, the percentage of the cumulative total amount of tax credits approved for the studio partner out of the cumulative total amount of tax credits approved to studio partners and film-lease production companies in the prior fiscal year, and the percentage of the studio partner's square footage out of the total square footage of production facility space occupied in the State by studio partners and production facilities.

19:31-21.[10]12 Affirmative action; and prevailing wage

(a) The Authority’s affirmative action requirements, N.J.S.A. 34:1B-5.4, and prevailing wage requirements, N.J.S.A. 34:1B-5.1, [will apply to productions undertaken with financial assistance received under the Garden State Film and Digital Media Jobs Program] **shall apply to the qualified film production expenses and the qualified digital media content production expenses, including, but not limited to, the following:**

- 1. Construction contracts for work performed on or after the Authority’s initial approval; and**
- 2. Construction contracts for work performed before the application and after the effective date of these amendments.**

(b) For studio partners and film-lease partner facilities, the Authority’s affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3 and prevailing wage requirements at N.J.S.A. 34:1B-5.1 and N.J.A.C. 19:30-4 shall apply to work performed at the production facility after the later of the effective date of these amendments and the Authority’s approval of the designation.

19:31-21.13 Appeals

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

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

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

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Unless the application was submitted in response to a competitive application process, the Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

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

opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

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

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

19:31-21.[11]14 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.



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan
Chief Executive Officer
DATE: February 7, 2024
SUBJECT: Film and Digital Media Tax Credit Program –Certification of Unused or Unredeemed Credits in SFY2023 and Increase to SFY2024

Summary:

The Members are requested to approve:

1. The certification of \$38,817,249 in unused or unredeemed legacy¹ film tax credits for SFY2023 which will increase the legacy film tax credits available for SFY2024.
2. The certification of \$550,000,000 in unused or unredeemed studio partner film tax credits for SFY2023 which will increase the studio partner film tax credits available for SFY2024.
3. The certification of \$350,000,000 in unused or unredeemed film-lease production company film tax credits for SFY2023 which will increase the film-lease production company film tax credits available for SFY2024.
4. The certification of \$77,137,741 in unused or unredeemed digital media tax credits for SFY2023 which will increase the digital tax credits available for SFY2024.

Background:

P.L. 2019, c. 506, enacted on January 21, 2020, requires the Authority to certify the amount of film tax credits that remained available or that were unredeemed so that such tax credits can be used in the subsequent fiscal year, up to a maximum of \$50 million.

P.L. 2020, c.156, enacted on January 7, 2021, extended the statutory deadline for film and digital media tax credits until June 30, 2034, removed the cap on the amount of unused or unredeemed film tax credits that can be transferred to a subsequent fiscal year, and required the Authority to similarly certify unused or unredeemed digital media tax credits for use in the subsequent fiscal year. Additionally, the law added two additional allocation categories of \$100 million each for projects involving larger studio developments called studio partners and film-lease partners.

P.L. 2021, c.367, enacted on January 12, 2022, required the Authority to certify any unused or unredeemed tax credits for studio partner projects and film-lease partner projects, in a state fiscal year which then, at the discretion of the Authority, shall be used to increase the annual cap for any

¹ Legacy film tax credits are formally referenced in statute as “tax credits for those taxpayers other than a New Jersey studio partner or New Jersey film-lease production company.” See N.J.S.A 54:10A-5.39b e(1).

such category of allocation in the subsequent state fiscal year. The law allowed the Authority to transfer unused or unredeemed film tax credits between legacy film projects and film-lease partner projects, but did not allow the transfer of unused or unredeemed tax credits for studio partners to any other category. P.L. 2021, c.367, also increased the annual digital media tax credit cap from \$10 million to \$30 million beginning in SFY2019.

P.L. 2023, c.97, enacted on July 6, 2023, removed the Authority's ability to share unused or unredeemed amounts between legacy film projects and film-lease production company projects and increased the annual allocation for studio partners and film-lease production companies to \$150,000,000 beginning in state fiscal year 2023. Additionally, the statute directed the Authority to reallocate tax credit caps from the Aspire and Emerge programs to increase the amount available for the studio partner category and the film-lease production company categories.

These changes included both non-discretionary reallocations and discretionary reallocations from available tax credit allocation in the Emerge and Aspire programs. There is a non-discretionary reallocation of \$250,000,000 in Emerge and Aspire tax credits to the studio partner category as well as the film-lease production company category, in each year until state fiscal year 2025. Beginning in state fiscal year 2023, the Authority can, at its discretion, reallocate up to \$150,000,000 (for a possible total reallocation of \$400,000,000) to the studio partner category and, after state fiscal year 2025, up to \$400,000,000. For the film-lease production company category, starting in state fiscal year 2025, the Authority can, at its discretion, reallocate up to \$250,00,000.

Previous Certifications of Unused and Unredeemed Allocation Amounts:

On October 14, 2020, the Board approved the certification of \$64,321,724 in unused and unredeemed legacy film tax credits for SFY2020 which increased the allocation for SFY2021 by \$50 million to \$150 million. \$50 million was the maximum increase allowed by law at the time.

On May 12, 2021, the Board approved the certification of \$10 million in unused and unredeemed digital media tax credits for SFY2020 to increase the total credits available in SFY2021 to \$20 million.

On February 9, 2022, the Board approved the certification and carry forward from SFY2021 to SFY2022 in unused and unredeemed tax credits in the amount of \$124,405,825 in legacy film tax credits, \$100,000,000 in both studio partner and film-lease partner tax credits, and \$32,488,438 in digital media tax credits.

Due to eight projects being recorded in approvals for SFY2020 instead of SFY2021, the unused and unredeemed tax credits for legacy film tax credits in SFY2020 should have been \$89,996,905, not \$64,321,724. The allocation for SFY2021 was still increased to \$150 million due to the statutory \$50 million cap on the amount of unused or unredeemed credits that could be carried forward at that time.

This correction in approval amounts for SFY2020 impacted the amount of unused and unredeemed credits certified to for the next two years. For SFY2021, the amount of unused and unredeemed credits should have been \$99,458,105 for legacy film, not the \$124,405,825 previously certified too. This would have increased the total amount available for SFY2022 to \$199,4581,105. Based on that amount, the amount of unused and unredeemed credits in SFY2022 should have been \$4,233,127.

The corrections above change the amount of legacy film tax credit certified for transfer to subsequent state fiscal years but have no impact on any tax credit approvals.

Certification of Unused or Unredeemed Tax Credits:

The Authority determines the amount of “unused” tax credits based on the difference between the total amount of available tax credits in a given state fiscal year, and the total amount approved by the Authority within a state fiscal year, should the Authority not approve the full amount of available tax credits within a given state fiscal year. The Authority determines the amount of “unredeemed” tax credits based on projects that have been approved for some amount of tax credits but are unable to certify the full amount of qualified film production expenses on which the tax credit award was based, and therefore unable to utilize the full amount of their estimated tax credit award. For unredeemed tax credits, the Authority also looks at projects that may have been approved for a tax credit award, but missed the deadline required for principal photography, as required by statute, and are therefore no longer eligible to receive the tax credit for which they were approved.

Pursuant to P.L. 2023, c.97 the staff’s proposed certification of unused or unredeemed tax credits, for each allocation category, for State Fiscal Year 2023 is below:

Certification of Unused or Unredeemed Legacy Film Tax Credits:

SFY2023 Film Tax Credit Cap: \$304,233,127

SFY2023 – Legacy Film Tax Credit Approvals	
Applicant	Approved Total Award
AT Films, LLC	\$425,737
Bibi Productions, Inc.	\$317,908
DOTB Film LLC	\$1,438,157
Eternal Buzz Inc	\$946,324
Gadget Films LLC	\$1,719,603
Universal Television LLC	\$626,642
Minstinct, Inc.	\$3,903,597
ABC Signature NJ, LLC Formerly Touchstone Television Productions LLC	\$2,005,673
Universal Television LLC	\$2,286,581
Vacation Home Productions, LLC	\$1,883,490
TKR The Movie, Inc	\$3,162,368
Minim Productions Inc	\$25,692,631
Pacific 2.1 Entertainment Group, Inc.	\$22,821,846
Atomic Punk Films LLC	\$10,766,711
Queens LLC	\$383,307
Undertone Productions LLC	\$4,615,833
Becky 2 The Movie LLC	\$604,879
Plan B New Jersey LLC	\$231,666
Pink Opaque LLC	\$2,544,645
Otsego Production Services Corp	\$918,309
Zombie Wedding, LLC	\$810,111
Big Indie Hondo, Inc.	\$681,469
Universal Television LLC	\$15,811,024
WBMTY Entertainment Inc	\$1,691,578
Our Son Film, Inc	\$955,531

Call Her King, LLC	\$1,202,298
GHB Productions, Inc	\$3,787,250
Hug Without Screaming, Inc	\$3,319,052
Stalwart Productions LLC	\$20,165,136
Shelter S1 Productions LLC	\$17,967,771
GGGW2 LLC	\$458,404
Navesink River Productions LLC	\$6,687,775
Roaring Stonk Productions Inc	\$6,610,716
X-Ville Productions, LLC	\$4,173,752
Pink Chair Productions LLC	\$3,528,114
So Fly Christmas Movie LLC	\$768,017
Summer Man Inc.	\$1,117,946
Eternal Buzz Inc	\$1,406,433
Bury me, LLC	\$210,809
Happy Birthday Productions Inc	\$799,414
Moon Shot Productions, LLC	\$5,023,204
Breed of Greed 1, LLC	\$1,341,474
Sweethearts LLC	\$6,569,140
Sourdough Productions, LLC	\$2,780,013
Big Indie Musica, Inc.	\$7,822,817
Dope King, LLC	\$283,659
Lucky 8 TV, LLC	\$2,257,929
MALLARD FILMS, LLC	\$694,221
Little Films LLC	\$5,666,976
Muriel Is Alive Inc	\$838,630
PonyboiFilm LLC	\$1,789,700
LAMF ROB PEACE INC.	\$3,982,289
It Ends With Us Movie LLC	\$12,211,253
ONS Movie, LLC	\$833,443
Paramount Pictures Corporation	\$22,477,204
Paramount Pictures Corporation	\$13,023,212
Total Approved SFY2023 Tax Credits	\$267,043,671
Total Unused SFY2023 Tax Credits	\$37,189,456

SFY2023 – Unredeemed Legacy Film Tax Credits	
Applicant	Approved Total Award
Eternal Buzz Inc	\$946,324
Big Indie Hondo, Inc.	\$681,469
Total Unredeemed SFY2023 Tax Credits	\$1,627,793

SFY2023 Total Unused and Unredeemed Tax Credits: \$38,817,249

SFY2024 Annual Allocation for Legacy Films: \$100,000,000

Total SFY2024 Legacy Film Tax Credit Cap: \$138,817,249

Certification of Unused or Unredeemed Studio Partner Film Tax Credits:

SFY2023 Studio Partner Tax Credit Cap: \$300,000,000

SFY2023 Studio Partner Tax Credit Approvals: \$0

Total Unused or Unredeemed SFY2023 Studio Partner Tax Credit: \$300,000,000

Total Reallocation from Emerge / Aspire SFY2023: \$250,000,000

Total Studio Partner Carryforward from SFY2023 to increase SFY2024: \$550,000,000

SFY2024 Annual Allocation for Studio Partners: \$150,000,000

Total SFY2024 Studio Partner Tax Credit Cap: \$700,000,000

Total Reallocation from Emerge / Aspire SFY2024: \$250,000,000

Total Adjusted SFY2024 Studio Partner Tax Credit Cap: \$950,000,000

Certification of Unused or Unredeemed Film-lease Production Company Film Tax Credits:

SFY2023 Film-lease Production Company Tax Credit Cap: \$100,000,000

SFY2023 Film-lease Production Company Tax Credit Approvals: \$0

Total Unused or Unredeemed SFY2023 Film-lease Production Company Tax Credit: \$100,000,000

Total Reallocation from Emerge / Aspire SFY2023: \$250,000,000

Total Film-lease Production Company Carryforward from SFY2023 to increase SFY2024: \$350,000,000

SFY2024 Annual Allocation for Film-lease Production Companies: \$150,000,000

Total SFY2024 Film-lease Production Company Cap: \$500,000,000

Total Reallocation from Emerge / Aspire SFY2024: \$250,000,000

Total Adjusted SFY2024 Film-lease Production Company Cap: \$750,000,000

Certification of Unused or Unredeemed Digital Media Tax Credits

SFY2023 Digital Media Tax Credit Cap: \$84,550,293

SFY2023 – Digital Media Credit Approvals	
Applicant	Approved Total Award
Malka Media Group LLC	\$1,590,603
CNBC, LLC	\$5,821,949
Total Approved SFY2023 Tax Credits	\$7,412,552
Total Unused SFY2023 Tax Credits	\$77,137,741

SFY2023 Total Unused and Unredeemed Digital Media Tax Credits: \$77,137,741

SFY2024 Annual Allocation for Digital Media: \$30,000,000

Total SFY2024 Digital Media Tax Credit Cap: \$107,137,741

Recommendation:

The Members are requested to approve the following:

1. The certification of \$38,817,249 in unused or unredeemed legacy film tax credits for SFY2023 which will increase the legacy film tax credits available for SFY2024.
2. The certification of \$550,000,000 in unused or unredeemed studio partner film tax credits for SFY2023 which will increase the studio partner film tax credits available for SFY2024.
3. The certification of \$350,000,000 in unused or unredeemed film-lease production company film tax credits for SFY2023 which will increase the film-lease film tax credits available for SFY2024.
4. The certification of \$77,137,741 in unused or unredeemed digital media tax credits for SFY2023 which will increase the digital tax credits available for SFY2024.



Tim Sullivan, CEO

Prepared by: Matt Sestrich

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

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

As amended by P.L.2021, c.160, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Twentieth Century Fox Film Corp

PROD-00311139

APPLICANT BACKGROUND:

Twentieth Century Fox Film Corps, “American Horror Stories – Season 3” is a spin-off of Ryan Murphy and Brad Falchuk’s award-winning hit anthology series American Horror Story. American Horror Stories is a weekly anthology series that will feature a different horror story each episode.

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

ELIGIBILITY AND TAX CREDIT CALCULATION:

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

1. **Total Film Production Expenses:** A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2034 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$93,525,588.00
B. Total Post-Production Expenses	\$6,037,047.00
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$71,383,428.00
Percentage Calculation = C/(A-B)	82%
Criterion Met	YES

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except for other expenses above certain thresholds as set forth in P.L. 2021, c. 367. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$71,383,428.00
Criterion Met	YES

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Estimated Qualified Film Production Expenses incurred within 30-mile radius of Columbus Circle, NYC	\$27,237,852.00 x 30% =	\$8,171,355.60
35% of Estimated Qualified Film Production Expenses	(\$71,383,428.00- \$27,237,852.00) x 35% =	\$15,450,951.60
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$71,383,428.00x 2% =	\$1,427,668.56
Total Award		\$25,049,976

APPLICATION RECEIVED DATE:	4/26/2023
DATE APPLICATION DEEMED COMPLETE:	5/25/2023
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	5/8/2023
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Jersey City, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	9/20/2023
APPLICANT’S FISCAL YEAR END:	9/30/2023
TAX CREDIT VINTAGE YEAR(S):	2024
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	9/27/2024
STATE FISCAL YEAR ALLOCATION:	SFY2024

In general, the final documentation shall be submitted to the Authority no later than four (4) years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three (3) years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

APPROVAL REQUEST:

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

Prepared by:
Dan Madden

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

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

As amended by P.L.2021, c.160, the eligible tax credit for qualified film production expenses increased from 30% to 35% for applications received after Jan 7, 2021. Additionally, for applications received after July 2, 2021, the program amendment also eliminates the targeted county bonus and specifies a tax credit of 30% for services performed and tangible personal property purchased for use at a sound stage or other location that is located in the State within a 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York.

APPLICANT: Twentieth Century Fox Film Corp

PROD-00311140

APPLICANT BACKGROUND:

Twentieth Century Fox Film Corps, “American Sports Story – Season 1” is the story of a gifted young athlete, who takes the football world by storm, dominating at University of Florida, before becoming the youngest player ever drafted in the NFL. But behind his shiny celebrity persona is a man struggling to keep up with the pressures and expectations of professional football.

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

ELIGIBILITY AND TAX CREDIT CALCULATION:

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

1. **Total Film Production Expenses:** A minimum of 60% of the film’s total production expenses (calculated excluding post-production expenses) must be incurred after July 1, 2018 but before July 1, 2034 for services performed and goods purchased through vendors authorized to do business in New Jersey. The following film production expenses are projected by the applicant.

A. Total Film Production Expenses	\$119,911,170.00
B. Total Post-Production Expenses	\$7,801,800.00
C. Total expenses for services performed and goods purchased through vendors authorized to do business in New Jersey (excluding any post-production expenses)	\$93,407,634.00
Percentage Calculation = C/(A-B)	83%
Criterion Met	YES

2. **Qualified Film Production Expenses:** During a single privilege period, the film must have more than \$1 million in qualified film production expenses. “Qualified film production expenses” are expenses incurred in New Jersey after July 1, 2018 for the production of a film, including pre-production costs and post-production costs. “Qualified film production expenses” shall include, but shall not be limited to: wages and salaries of individuals employed in the production of a film on which the New Jersey Gross Income Tax has been paid or is due; and, the costs for tangible personal property used and services performed in New Jersey, directly and exclusively in the production of the film, such as expenditures for film production facilities, props, makeup, wardrobe, film processing, camera, sound recording, set construction, lighting, shooting, editing, and meals. Payments made to a loan out company or to an independent contractor shall not be a “qualified film production expenses” unless the payments are made in connection with a trade, profession, or occupation carried on in this State or for the rendition of personal services performed in this State and the taxpayer has made the withholding required by N.J.A.C. 19:31-21.3(c). “Qualified film production expenses” shall not include: expenses incurred in marketing or advertising a film; and payment in excess of \$500,000 to a highly compensated individual for costs for a story, script, or scenario used in the production of a film and for wages or salaries or other compensation for writers, directors, including music directors, producers, and performers, other than background actors with no scripted lines, except for other expenses above certain thresholds as set forth in P.L. 2021, c. 367. The following qualified film production expenses are projected by the applicant to be incurred in New Jersey:

Qualified Film Production Expenses incurred in NJ during a single privilege period after July 1, 2018.	\$93,422,634.00
Criterion Met	YES

AWARD CALCULATION

Base Award Criteria	Calculation	Result
30% of Estimated Qualified Film Production Expenses incurred within 30-mile radius of Columbus Circle, NYC	\$34,844,330.00 x 30% =	\$10,453,299.00
35% of Estimated Qualified Film Production Expenses	(\$93,422,634.00- \$34,844,330.00) x 35% =	\$20,502,406.00
Bonus Criteria Met		
Submission of Diversity Plan deemed satisfactory by EDA and NJ Taxation. 2% of Qualified Film Production Expenses.	\$93,422,634.00 x 2% =	\$1,868,453.00
Total Award		\$32,824,158

APPLICATION RECEIVED DATE:	4/26/2023
DATE APPLICATION DEEMED COMPLETE:	5/25/2023
PRINCIPAL PHOTOGRAPHY COMMENCEMENT:	4/24/2023
PRINCIPAL NJ PHOTOGRAPHY LOCATION:	Kearny Town, NJ
ESTIMATED DATE OF PROJECT COMPLETION:	9/27/2023
APPLICANT’S FISCAL YEAR END:	9/30/2023
TAX CREDIT VINTAGE YEAR(S):	2024
TAX FILING TYPE:	Corporate Business Tax
ANTICIPATED CERTIFICATION DATE:	6/28/2024
STATE FISCAL YEAR ALLOCATION:	SFY2025 (tax credit shall not be issued before 7/1/2024)

In general, the final documentation shall be submitted to the Authority no later than four (4) years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5 and three (3) years after the Authority's initial approval if the taxpayer is seeking a credit against the tax imposed pursuant to the N.J.S.A. 54A:1-1 et seq.

APPROVAL REQUEST:

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

Prepared by:
David Lieberman



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: February 7, 2024
SUBJECT: NJ Asset Activation Planning Grant - Declination of One Application

Summary

The Members are asked to approve:

- 1) Declination of award for Land Dimensions Engineering's application to conduct Land-use planning of the former Burlington County College site in Pemberton Township.

Background

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

Applications for the program are reviewed, scored, and recommended for awards in the order in which they were submitted. As part of the review process, an application must meet the minimum scoring threshold of 65 out of 100 possible points to demonstrate the ability to successfully complete the proposed planning activities and gauge the potential improved utilization and benefits from development of the public asset. The program scoring committee, composed of various subject matter experts among NJEDA staff, determines scores for each of the applications based on five components:

- 1) Asset Impact (40 points)
- 2) Project Purpose and Merits (20 points)
- 3) Previous Experience (20 points)
- 4) Community Engagement (10 points)

5) Municipal Revitalization Index Score (10 points)

In 2022 the program received eleven (11) applications in total. Staff recommended ten (10) applications for grant approval to the board following their respective review and scoring. The board approved all ten awards. Nine (9) of the awards were accepted by those applicants, and all projects from that round will be completed in the coming months.

The Board approved a second round of grants in April 2023, with \$500,000 in funds from the Fiscal Year 2023 Appropriations Act "Planning Grant" appropriation.

At the November 2023 meeting, the board approved the delegation of authority to staff allowing approval of applications that meet all eligibility and scoring requirements. This action, along with earlier delegated authorities, allows staff to finalize decisions on grant awards except when declinations are required based on discretionary reasons such as failing to meet minimum scoring requirements.

The program received seventeen (17) applications in total during the 2023 application period. Reviews of those applications have so far resulted in one (1) declination for discretionary reasons, also approved by the board at that November meeting. A second similar declination was recommended by staff.

Proposed Project Description

Land Dimensions Engineering has requested grant funding of \$50,000 to complete land-use planning with cost-benefit analysis for the former Rowan College at Burlington County site in Pemberton Township. The 225-acre site, within the Pinelands Management Area, has been mostly vacant after use as a college campus from 1971-2017. Structures on the site have required demolition after experiencing vandalism and fire. The site has been part of, or the focus of, ten different studies since 2009 including the EDA's 21st Century Redevelopment Program.

The scoring committee determined that the application from Land Dimensions Engineering received 59.3 out of 100 points, which does not meet the requisite overall score of 65. The Board is therefore requested to decline the grant award.

Recommendations

- 1) Declination of award for Land Dimensions Engineering's application to conduct land-use planning of the former Burlington County College site in Pemberton Township.



Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Brownfield Redevelopment Incentive Program Delegated Authority Reporting
For Informational Purposes Only

The Brownfields Redevelopment Incentive Program (BRIP) is a tax credit program that was approved by the Board on October 12, 2022. BRIP is one of the 15+ programs under the Economic Recovery Act. The purpose of the program is to encourage investment in remediating brownfields throughout New Jersey in order to prepare these sites for redevelopment. This memo covers the reporting period of October 12, 2022 (inception of the program) to the current date (February 14, 2024).

The BRIP program and rules were approved by NJEDA's Board on October 12, 2022. The rules were filed with the Office of Administrative Law (OAL) on November 2, 2022, and published in the December 5, 2022, NJ Register. No public comments were received, and the Final Rules were adopted on April 21, 2023, and published in the May 15, 2023, NJ Register.

The program began accepting applications for the first competitive round on June 21, 2023. The deadline to submit applications for the first round was September 21, 2023. Staff is currently reviewing the six applications that were submitted in the first round. Dates for the second round of funding have not yet been announced but are expected to be announced in the Spring 2024.

To date, no approvals have been made under the Delegated Authority for BRIP.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Community Development Products
Delegated Authority Approvals, Declinations, and Other Actions Through Q4 2023
For Informational Purposes Only

Main Street Micro Business Loan

The Main Street Micro Business Loan provides financing for future operating expenses of up to \$50,000 to eligible micro businesses in New Jersey with ten or fewer full-time employees and no greater than \$1.5 million in annual revenues. The Main Street Micro Business Loan is one of the five products funded through the Main Street Recovery Fund. The loan offers attractive features like a reduce credit score, standard 10-year term, interest rate of 2 percent, and eligible businesses can apply for forgiveness after their 5th year of successful payments, and there is no interest and no payments due for the first year.

Main Street Micro Business Loan – Q4 2023 Review

The online application opened in October 2022 and closed with a total of 1998 applications submitted requesting a total of \$94.3 million. Through the end of the third quarter, 1462 applications have been approved, for a total of \$69.5 million. These 1,462 micro businesses are located throughout all 21 counties, with 25% of loan recipients located in eligible Opportunity Zones. Through the end of the fourth quarter, 142 applications were declined, and 381 applications were withdrawn.

Declinations and appeals - 142 applicants were declined for non-discretionary reasons, and all had the right to appeal. 47 filled for an appeal and 5 appeals resulted in an overturned declination. 18 appeals remain to be reviewed.

See NJEDA Public Information page for a detailed list of all Main Street Micro Business Loan [applications that were approved](#) under delegated authority through the fourth quarter of 2023.

Small Business Improvement Grant

The Small Business Improvement Grant is another product under the Main Street Recovery Fund, . Funded with \$60 million, this product reimburses eligible small businesses and nonprofits for up to 50 percent of eligible project costs associated with building improvements, or the purchase and/or

installation of new furniture, fixtures, and equipment (FFE) made on or after March 9, 2020, but no more than two years prior to application. Grants are capped at \$50,000 per awardee. Of the \$60 million allocated for the program, 40 percent is reserved for businesses located in Opportunity Zone eligible census tracts.

Small Business Improvement Grant – Q4 2023 Rev

The online application opened in February 2022 and will continue to accept applications until funding is exhausted. Through the end of Q4, a total of 4,463 applications have been received requesting a total of \$100,008,092.70.

Of those applications received 83% have been fully processed resulting in 1,693 approved applications totaling \$40,863,296.99. 34% of grant recipients are located in eligible Opportunity Zones. Through the end of the fourth quarter, 308 applications were declined, and 1716 applications were withdrawn.

Declinations and appeals – 308 applicants were declined for non-discretionary reasons, and all had the right to appeal. 56 filled for an appeal and 5 appeals resulted in an overturned declination. As applications are still being accepted, the appeal process is ongoing.

See the NJEDA Public Information Page for a detailed list of all [Small Business Improvement Grant applications that were approved](#) under delegated authority through the fourth quarter of 2023.

Small Business Lease Grant

The Small Business Lease Grant another product support through the Main Street Recovery Fund. supports business that the growth and success of small businesses and nonprofits by providing grant funding to cover a portion of lease payments. These resources help the establishment and growth of small businesses, while also helping to fill space that is currently vacant and preventing future vacancies. The Small Business Lease Grant is funded through the Main Street Recovery Finance Program (NJ Economic Recovery Act). Of the \$20 million allocated for the program, 40 percent is reserved for businesses located in Opportunity Zone eligible census tracts.

To qualify for the Small Business Lease Grant Program, businesses and nonprofits must enter a new lease, lease amendment, or lease extension that includes at least 250 square feet of street-level office, commercial, or retail space. The lease must have been executed within 12 months prior to the application and applicants must also commit to remaining in the leased space for at least five years. Businesses and nonprofits that receive grants through these programs are required to agree to pay employees going forward for the five-year grant term at least \$15 per hour or 120 percent of the minimum wage. Tipped employees are exempt from the \$15 per hour requirement but must still be paid at least 120 percent of the minimum wage.

Small Business Lease Grant – Q4 2023 Rev

The online application opened in October 2021 and will continue to accept applications until funding is exhausted. Through the end of Q4, a total of 2,267 applications have been received requesting a total of \$45,994,859.35.

Of those applications received 92% have been fully processed resulting in 460 approved applications totaling \$11,344,216.48. 32% of grant recipients are located in eligible Opportunity Zones. Through the end of the fourth quarter, 1339 applications were declined, and 286 applications were withdrawn

Declinations and appeals - 1339 applicants were declined for non-discretionary reasons, and all had the right to appeal. 297 filled for an appeal and 30 appeals resulted in an overturned declination. As applications are still being accepted, the appeal process is ongoing.

See the NJEDA Public Information Page for a detailed list of all Small Business Lease Grant [applications that were approved](#) under delegated authority through the fourth quarter of 2023.

Small Business E-Commerce Support Program

The Small Business E-Commerce Support Program is a \$4 million pilot product funded by the Main Street Recovery Fund. This product leverages 7 consultants throughout the state that were awarded contracts to perform a set of services for eligible small businesses. To be eligible, a restaurant, retail store, or personal care business must be in a commercial location with a physical storefront and meet the U.S. Small Business Administration's (SBA) definition of a small business. Services small businesses can receive include web page design and development, online ordering implementation, online appointment booking implementation, e-commerce design and development, and online marketing plan development. Restaurants and personal care businesses can receive up to \$11,400 in consulting services, while retail stores can receive up to \$10,800.

Small Business E-Commerce Support Program – Q4 2023 Review

The in March 2023 and will continue to accept applications until funding is exhausted. Through the end of Q4, 167 applications were approved for the E-Commerce Support Program, for a total of \$1,320,778

See the NJEDA Public Information Page for a detailed list of all [Small Business E-Commerce Support applications that were approved](#) under delegated authority through the fourth quarter of 2023.

Main Street Lenders Grant

The Main Street Lenders Grant, which was created under the New Jersey Economic Recovery Act of 2020 and funded with \$15 million from the Main Street Recovery Program. This product offers eligible lenders grants of up to \$1.5 million each to lend out to micro businesses and another \$500,000 to provide technical assistance to micro businesses that need to access capital. .

Main Street Lenders Grant – Q4 2023 Rev

The online application opened in July 2022 and will continue to accept applications until funding is exhausted. Through the end of the fourth quarter, the program approved over \$11 million to eight lenders and financial institutions.

To date, the product has approved grant funding for the following lenders:

- [Elizabeth Development Company of New Jersey](#) will create a Post COVID Rebound Program (PCRP). The PCRP will offer loans of between \$10,000 and \$30,000 for existing or startup micro businesses in Elizabeth, Plainfield, and Hillside Township.
- [Pursuit Lending](#) (formerly New York Business Development Corporation Local Development

Corporation) will create a New Jersey Main Street Fund. The New Jersey Main Street Fund will offer loans of between \$10,000 and \$100,000 to low- and moderate-income and minority/women business enterprises in Opportunity Zones.

- [Union County Economic Development Corporation \(UCEDC\)](#) will create the Small Business Assistance Loan (SBAL) to offer loans ranging from \$10,000–\$15,000 at zero-percent interest and a five-year term for eligible micro businesses. This UCEDC program will require no collateral.
- [The Enterprise Center Capital Corporation](#) will utilize funding to create a New Jersey Acceleration Fund to support micro businesses in Camden and South Jersey.
- [Eastern American Certified Development Company](#) will create three micro loan products: 1) Fast and Easy Loan Program up to \$10,000. 2) Growing Loan Program for up to \$50,000 in funding. 3) Opportunity Loan Program for up to \$100,000 in funding.
- [Greater Newark Enterprises Corporation](#) will use the lending grant to support its Newark Entrepreneurs of Color Fund and offers loans from \$10,000 to \$50,000 for unbankable businesses.
- [Cooperative Business Assistance Corporation \(CBAC\)](#) will use the grant to provide working capital loans from \$10,000 to \$100,000 at a five-percent interest rate to qualified entities with a credit score at 650 or below.
- [Regional Business Assistance Corporation \(RBAC\)](#) will use funding to support existing businesses with capital loans ranging from \$10,000 to \$100,000. Each of RBAC’s loans will carry a two percent interest rate with a seven-year term.

Asset Activation Grant Program

To meet the priorities of the Governor’s Economic Plan, and advance of the State Planning vision, NJEDA leverages authority through the Economic Recovery Fund (N.J.S.A § 34:1B-7.13(a)(5) and (13)) to offers grants to New Jersey public, private, and nonprofit entities of up to \$50,000 for pre-development planning for projects that activate distressed and under-utilized public assets.

Delegated authority was approved to waive application fees based on the 2020 Municipal Revitalization Index. This fee waiver alleviates a barrier to this program for municipalities, authorities or commissions, and redevelopment agencies located in municipalities ranked in the top 10% of the 2020 MRI. Delegated authority was also approved to make awards and decline applications that do not meet eligibility requirements solely due to non-discretionary reasons, and to issue final administrative decisions for appeals of declinations based solely on non-discretionary reasons.

New Jersey Asset Activation Planning Grant Program – Q4 2023 Review

Eleven applications were submitted in 2022, with nine of those applicants accepting awards totaling \$407,800.

- **Meadowlands Regional 2040 Foundation Inc.** received \$50,000 and completed a market demand and financial feasibility study for a new multi-use convention, sports, and event center at the former IZOD center area.
- **Mount Holly Township** received \$11,000 and completed a feasibility study and concept plan to replace a municipal parking lot with a public park and dock.

- **RyArMo Photography Studio LLC** received \$50,000 and completed several design and analysis studies for re-development of a mixed-use site in Newark’s Lincoln Park area.
- **City of Atlantic City** received \$50,000 and will soon complete legal analysis and feasibility study for redevelopment and improvements to Renaissance Plaza.
- **Camden Special Services District** received \$50,000 and completed the Market Street Plaza: Placemaking and Activation Study.”
- **Trenton Parking Authority** received \$47,000 and completed community visioning and concept design for redevelopment of the Broad and Front Streets Garage.
- **Borough of Penns Grove** received \$50,000 and will soon complete economic analysis and feasibility study of the Borough’s waterfront area.
- **LTD, Unlimited** received \$49,800 and will soon complete needs assessment and feasibility study for 3 city-owned properties on Broadway and Market Streets in downtown Salem.
- **Financial Wellness Institute, Inc.** received \$50,000 and completed remediation needs assessment, and feasibility study for redevelopment of the "Old Sketch Club” theater in Woodbury.

4 Fee Waivers – Application fees were waived for City of Atlantic City (MRI rank #3), Camden Special Services District (MRI rank #1), Trenton Parking Authority (MRI rank #6), and the Borough of Penns Grove (MRI rank #4)

0 Declinations – no applications were declined from this round.

Seventeen applications were submitted in 2023. No awards have been made at this time, however the first several grant awards will be offered in the coming weeks, and several applications are still in review.

2 Fee Waivers – Application fees were waived for The City of Union City (MRI rank #25) later withdrawn, and The City of Paterson (MRI rank #9) still in review.

2 Declinations – One application was declined for non-discretionary reason, one application (Borough of Pennington) was declined for failure to meet the minimum application score.

*Another application (Land Dimensions Engineering) will be recommended for a similar declination at the February Board meeting

Brownfields Impact Fund

The Brownfields Impact Fund is a pilot program that was approved by the Board on October 13, 2021, which provides loans to private entities and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the transformation of these vacant and underutilized properties into community assets. The NJEDA received a \$800,000 grant from the U.S. EPA and authorized the utilization of \$160,000 of the Authority’s General Operating Budget and/or in-kind contributions (cost share) to fund this program. The subgrant funding is exhausted at this time. Currently, \$440,000 remains available for loans.

In line with the Authority’s goals of promoting equity and environmental justice, 100% of the previously approved projects under delegated authority were located within a Community Collaborative Initiative (CCI) city, an Opportunity Zone (OZ) eligible census tract, and were within the top 10% of the 2020 New Jersey Department of Community Affairs (DCA) Municipal Revitalization Index (MRI) for distressed municipalities.

Brownfields Impact Fund – Q4 2023 Review

There were no approvals made pursuant to delegated authority for the Brownfields Impact Fund in the 4th quarter of 2022 or in calendar year 2023.

NJ Indoor Amusement Park Grant Program

The New Jersey Indoor Amusement Park Grant Program provides eligible applicants with up to \$500,000 for applicants that are not in an Opportunity Zone eligible census tract and up to \$550,000 for applicants in an Opportunity Zone eligible census tract to offset losses incurred due to decreased business as a result of the COVID-19 pandemic. Specifically, grants are open to establishments that are primarily engaged in activities described by specific codes of the North American Industry Classification System (NAICS), Code 713110 or 713120.

Applicants must demonstrate a minimum 50 percent reduction in gross revenues from indoor operations for the 12-month period beginning April 1, 2019

NJ Indoor Amusement Park Grant Program – Q4 2023 Review

Six applications were approved for the Indoor Amusement Park Grant program, for a total of \$2,868,600.75 million.

ENTITY NAME	GRANT AMOUNT
THE GREAT STORY INC	\$ 318,600.75
The Falls Group, LLC	\$ 500,000.00
Stafford FEC Partners LP	\$ 500,000.00
iplay america	\$ 500,000.00
Altitude NJ, LLC	\$ 500,000.00
W AND O ASSOCIATES LLC	\$ 550,000.00
6 ENTITIES AWARDED	\$ 2,868,600.75

Cannabis

The Cannabis Equity Grant Program is focused on supporting businesses and startups in the recreational cannabis industry and ensuring communities that were adversely impacted by the War on Drugs have equitable access to the industry. The Joint Ventures grant allocates a total of \$12 million in funding to 47 entities that have a conditional or annual license, have obtained site control over their real estate, and have municipal approval. The Joint Ventures Grant supports businesses that do not need technical assistance but still have carrying costs and capital issues associated with converting their conditional license to an annual license. To this end, 40 percent of the program funding is reserved for qualifying social equity applicants primarily characterized as those who have previous cannabis convictions or live in economically disadvantaged areas. Additionally, 5 percent of the total program funding is reserved for businesses located in Impact Zones, which are areas targeted based on previous levels of marijuana arrests, population, unemployment rates, and other socioeconomic factors. The Joint Ventures Grant provides eligible startups with a grant of \$250,000.

Joint Ventures & Seed Equity Grant Programs – Q4 2023 Review

47 applications were approved for the Joint Venture Grant program, for a total of \$11,750.00 million.

See Appendix A for a detailed list of all Joint Venture Grant applications that were approved under delegated authority through the third quarter of 2023.

SSBCI- Recovery Loan Loss Reserve

The Recovery Loan Loss Reserve is a loan loss reserve which is funded through the State Small Business Credit Initiative (SSBCI). Eligible entities for this product are Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs), they can receive a 50% guarantee on eligible loans that have been approved and registered with NJEDA.

Recovery Loan Loss Reserve – Q4 2023 Review

Through the end of the fourth quarter, one application was approved for the Recovery Loan Loss Reserve, to NYBDC Local Development Corporation for a total of \$2.5 million.



Tim Sullivan, CEO

Appendix A: Joint Ventures Grant Program

ENTITY NAME	GRANT AMOUNT
Ascension Cannabis Brands Co.	\$ 250,000.00
Brighterside Canopy LLC	\$ 250,000.00
Brotherly Bud LLC	\$ 250,000.00
Canna P Farms LLC	\$ 250,000.00
Canna Remedies LLC	\$ 250,000.00
Cannaboutique by Greenhouse	\$ 250,000.00
Citi Roots LLC	\$ 250,000.00
City Leaf Corp	\$ 250,000.00
CLOUD NINE DISPENSARY LLC	\$ 250,000.00
E.V.LLC	\$ 250,000.00
Elevated by TheCannaBossLady	\$ 250,000.00
Ginger Hale LLC	\$ 250,000.00
Golden Door Dispensary, LLC	\$ 250,000.00
Green Knight Cannabis LLC	\$ 250,000.00
GREEN LEAF PHARMA NJ LLC	\$ 250,000.00
Greener On Grove LLC	\$ 250,000.00
Hamilton Farms LLC	\$ 250,000.00
Hamm & Chaz LLC	\$ 250,000.00
Hera Solutions LLC	\$ 250,000.00
HIGHGRADE LABS OF NEW JERSEY LLC	\$ 250,000.00
Hound Town 543 Inc	\$ 250,000.00
Illtown Growers LLC	\$ 250,000.00
Indigo Dispensary, LLC	\$ 250,000.00
J & J Flowers LLC	\$ 250,000.00
Jersey Roots Dispensary LLC	\$ 250,000.00
Jersey Shore Ventures Group LLC	\$ 250,000.00
Jersey Smooth, LLC	\$ 250,000.00
kind kush, llc	\$ 250,000.00
La Vida Gardens LLC	\$ 250,000.00
Lucky Buds, LLC	\$ 250,000.00
Mojo Botanica LLC	\$ 250,000.00
Molly Ann Farms, LLC	\$ 250,000.00
Nightjar Holdings LLC	\$ 250,000.00
NJ GreenCare LLC	\$ 250,000.00
Premo Cannabis Company LLC	\$ 250,000.00
Puffin Store NJ LLC	\$ 250,000.00
Queen City Wellness LLC.	\$ 250,000.00
Sensory Dispensary LLC	\$ 250,000.00
SERAPH AND SONS LLC	\$ 250,000.00

Stoke Industries	\$ 250,000.00
Sun Extractions Inc.	\$ 250,000.00
THE CANNABIS CLUBHOUSE LLC	\$ 250,000.00
Treehouse Ventures LLC	\$ 250,000.00
Urge New Jersey LLC	\$ 250,000.00
Vigor Dispensary LLC	\$ 250,000.00
XENA NJ LLC	\$ 250,000.00
Yerrr Canna LLC	\$ 250,000.00
47 ENTITIES AWARDED	\$ 11,750,000.00

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Credit Underwriting Projects Approved Under Delegated Authority –
For Informational Purposes Only

The following projects were approved under Delegated Authority in December 2023 and January 2024:

Premier Lender Program:

- 1) Klogan Properties LLC (PROD-00313493), located in Mantua Township, Gloucester County, was established in 2020 as a real estate holding company formed to purchase the project property. The operating company, Rivell LLC, was established in 2017 as an IT support and consulting services company. The Company provides comprehensive and customized technology solutions to businesses of all sizes. Services include network support, cloud solutions, data backup and recovery, cyber security, and IT consulting services. The Company was approved for a \$680,000 Republic Bank loan contingent upon a 50%, (\$340,000) Authority participation. Proceeds will be used to purchase the project property. Currently, the Company has ten employees and plans to create five positions within the next two years.

Small Business Fund Program:

- 1) Healthy Happy Children Medical Services PC DBA Health Happy Children Pediatrics (“HHCMS”) was formed in 2013 as a pediatric medical practice that provides a wide array of healthcare services including routine physical examinations, immunizations, sick visits, and newborn care. The NJEDA approved a \$400,000 loan to be used for working capital related to business expansion. This includes renting additional office space, hiring another pediatrician and support staff, purchasing furniture and equipment, marketing and advertising costs, supporting new lease payments, and other operational expenses. Currently, the company has four employees and plans to create three new jobs over the next two years.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: February 7, 2024
SUBJECT: Post Closing Incentives Delegated Authority Memo –4th Quarter 2023
(For Informational Purposes Only)

Since 2001, and most recently in April 2023, the Members have approved delegations to staff for post-closing incentive modifications that are administrative and do not materially change the original approvals of these grants.

Attached is a list of the Incentives Delegated Authority Modifications that were approved in the 4th Quarter ending December 31, 2023.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO

Prepared by: F. Saturne

ACTIONS APPROVED UNDER DELEGATED AUTHORITY

FOURTH QUARTER ENDING December 31, 2023

GROW NEW JERSEY ASSISTANCE PROGRAM

Applicant	Modification Action	Approved Award
LTC Consulting Services, LLC	Add 100 Blvd Mgmt. LLC to the Incentive Agreement effective June 11, 2021.	\$24,536,250
Surfside Seafood Products, LLC	Reset the statewide workforce number from 70 to 4 full-time employees	\$1,600,000
Fidessa Corporation	Reduce the number of new incented jobs from 340 to 188 for the 2020 tax year and all subsequent tax periods remaining in the commitment period.	\$30,600,000
Momentum Solar LLC	Suspend the reporting obligation for the 2021 tax year and extend the eligibility period through the 2029 tax year and the commitment period through the 2034 tax year.	\$7,218,090
Momentum Solar LLC	Suspend the reporting obligation for the 2022 tax year and extend the eligibility period through the 2030 tax year and the commitment period through the 2035 tax year.	\$7,218,090

GROW NEW JERSEY ASSISTANCE PROGRAM- COVID RELIEF

Nestle HealthCare Nutrition, Inc.	Approve termination of the Incentive Agreement effective 2021 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$14,455,000
RBC Capital Markets, LLC	Approve termination of the Incentive Agreement effective 2022 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$78,750,000
Solvay USA, Inc.	Approve termination of the Incentive Agreement effective 2021 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$9,652,500
Gaming Laboratories Int'l, LLC	Approve termination of the Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$9,990,000

BUSINESS EMPLOYMENT INCENTIVE GRANT PROGRAM

Grantee	Modification Action	Approved Award
Celgene Corporation	Consent to remove Anthrogenesis Corporation effective July 2017.	\$6,086,250
Eisai Inc. and Eisai Corporation of North America	Amend QBF location from 100 Tice Boulevard, Woodcliff Lake, NJ 07677 to 200 Metro Boulevard, Nutley, NJ 07110 effective January 1, 2022	\$1,203,750
Mechoshade Systems, Inc.	Consent to the removal of an affiliate listed in the BEIP Agreement and name change from Mechoshade Systems, Inc to Mechoshade Systems, LLC	\$268,233

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Post Closing Credit Delegated Authority Approvals for 4Q Quarter 2023
For Informational Purposes Only

The following post-closing action was approved under delegated authority during the fourth quarter of 2023:

Camden Economic Recovery Board Grant (EDA has no credit exposure)	
Camden Community Partnership, Inc (Formerly Cooper’s Ferry Partnership, Inc.)	One-year extension of the required construction completion date of the infrastructure grant.



Tim Sullivan, CEO

Prepared by: Sandra Foresta and Mansi Naik



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: February 7, 2024

SUBJECT: Post-Closing Delegated Authority Bond Modification Approvals for 4th Quarter 2023
(For Informational Purposes Only)

The following Post-Closing Bond action was approved under delegated authority in the 4th quarter ending December 31, 2023:

Stand Alone and Refunding Bonds - (EDA has no Credit Exposure)

Applicant	Product Number	Modification Action	Bond Amount
Bais Yaakov High School of Lakewood, Inc.	00147438	Consent to modify the adjustment to the interest rate spread.	\$1,600,000

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: **David A. Lawyer**