MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Agenda for Board Meeting of the Authority May 8, 2024

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Authority Matters

Community Development

Incentives

Real Estate

Board Memoranda

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

April 10, 2024

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, Jamera Sirmans, Executive Representative, Elizabeth Dragon representing Commissioner Shawn LaTourette; and Jewell Antoine-Johnson, Second Alternate Public Member.

Members of the Authority present via conference call: Vice Chairman Charles Sarlo, Acting Commissioner Justin Zimmerman of the Department of Banking and Insurance; Aaron Binder representing State Treasurer Elizabeth Muoio of the Department of Treasury; Keith White representing Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; and Public Members Phil Alagia, Virginia Bauer, Marcia Marley, and Robert Shimko, First Alternate Public Member,

Members of the Authority absent: Public Members Fred Dumont, Aisha Glover, and Massiel Medina Ferrara.

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

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 March 7, 2024 meeting minutes. A motion was made to approve the minutes by Ms. Dragon, seconded by Ms. Antoine – Johnson, and approved by the twelve (12) 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.

PUBLIC COMMENT

There was no public comment.

Chair O'Toole provided the Policy Committee Report.

CLEAN ENERGY

ITEM: New Jersey Green Bank Subsidiary Approval
REQUEST: To approve the formation of a subsidiary to be called the New Jersey Green Bank of the NJEDA and created pursuant to the Subsidiary Act.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Antoine-Johnson AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

WIND INSTITUTE

ITEM: New Jersey Green Workforce Training Grant Challenge
REQUEST: To approve the creation of the Green Workforce Training Grant Challenge, a competitive grant program to implement workforce and skills development programs to strengthen and diversify New Jersey's green economy talent pipeline. Funding from the program will be provided by initiatives approved under the Offshore Wind Sector Initiatives MOU between NJEDA and NJBPU from October 2023 and the Council on the Green Economy MOU between NJEDA and NJDEP from March 2024.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Bauer AYES: 11
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

Mr. Shimko recused because labor unions may be applicants for the program.

ECONOMIC SECURITY

ITEM: Request for Additional Funds for the Child Care Facilities Improvement Program —Phase 1
REQUEST: To approve: (1) An amendment to the existing Memorandum of Understanding with DCA whereby the Authority will accept additional funding in ARP CSLFRF funds appropriated to the Authority pursuant to P.L. 2021, c. 144, to provide additional funds for the Child Care Facilities Improvement Pilot Program – Phase 1; (2) Utilization of State General Funds appropriated to the Authority pursuant to the supplemental appropriations act for State Fiscal Year 2024, P.L. 2023, c.66, to provide additional funds for the Child Care Facilities Improvement Pilot Program – Phase 1.
MOTION TO APPROVE: Ms. Sirmans SECOND: Ms. Dragon AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

AUTHORITY MATTERS

ITEM: Predevelopment Agreement between NJEDA, Rutgers University and University Hospital for Collaboration and Funding for Activities Related to the Development of the UH/RBHS Academic Health Center Campus in Newark

REQUEST: To approve: (1) entering into a Predevelopment Agreement with Rutgers University and University Hospital whereby the Authority will collaborate with the Parties and commit in funding for specific Predevelopment Activities in furtherance of the UH/Rutgers Biomedical and Health Sciences Academic Health Center Campus in Newark; (2) delegation of authority to the CEO: a) additional Predevelopment Activities be identified that are necessary to the completion of Phase 1, or b) additional costs be incurred as part of the Predevelopment Activities; and (3) delegation of authority to the CEO to execute contracts as necessary to carry out the defined Predevelopment Activities.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Sirmans AYES: 11
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

Ms. Antoine-Johnson recused because she works with a number of firms or may be involved with the project.

ITEM: Recommendation for Award – 2023-RFP-169 Maternal and Infant Health Innovation Center - Lead Roles
REQUEST: To approve the Authority's award recommendation for the Maternal and Infant Health Innovation Center (MIHIC) Lead Role 2023 Request for Proposal. The Members are further requested to delegate to the CEO the authority to finalize any remaining contract conditions as contained within the RFP documents.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Sirmans AYES: 11
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

Ms. Antoine-Johnson recused because she works with a number of firms or may be involved with the project.

Mr. Sullivan introduced Ms. Lisa Asare, Executive Director of the Maternal and Infant Health Innovation Authority. Ms. Asare addressed the Board about her new role and the role of the new Authority.

ITEM: Recommendation for Award M4010 – Business and Information Technology Consulting and Advisory Services
REQUEST: To award a contract for Business and Information Technology Consulting and Advisory Services for six months of service to support the Information Technology workstream.
MOTION TO APPROVE: Ms. Antoine-Johnson SECOND: Ms. Dragon AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

ITEM: Updates to Delegation of Authority: Litigation and Compromise and Settlement of Claims
REQUEST: To approve settlement and compromise delegations of authority.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Antoine-Johnson AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

Ms. Bauer provided the Incentives Committee Report.

ITEM: Updates to Delegation of Authority - New Jersey Innovation Evergreen Fund Qualified Venture Firm Approvals
REQUEST: To approve an update to the New Jersey Innovation Evergreen Program delegations of authority to include approvals and non-discretionary declinations of Qualified Venture Firms.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Sirmans AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

INCENTIVES

ASPIRE

ITEM: Aspire Program- Product #00312575 SUW K Urban Renewal LLC
REQUEST: To approve the issuance of tax credits from the Aspire program for a residential project located in Newark, New Jersey, Essex County, up to 60% of the total project cost. 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 one year after approval.
MOTION TO APPROVE: Mr. Shimko SECOND: Ms. Antoine-Johnson AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

ITEM: Aspire Program- Product #00313059 - Fulton Street Newark LLC
REQUEST: To approve the issuance of tax credits from the Aspire program for a mixed-income residential project located in Newark, New Jersey, Essex County, up to 60% of the total project cost. 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 one year after approval.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Antoine-Johnson AYES: 10
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Mr. O'Toole recused out of an abundance of caution, because his prior employer, Goldman Sachs, is a potential lender for this project.

Mr. Alagia recused because his employer, Essex County, is involved with the owner of the property.

ERG

ITEM: Parking Authority of the City of Paterson – Modification - Mixed-Use Parking ERG P45229/Prod-00184674
REQUEST: To approve the modification application for Parking Authority of the City of Paterson, that it is consistent with eligibility requirements of the Act.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Sirmans AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

Vice Chair Sarlo provided the Real Estate Committee Report.

REAL ESTATE

ITEM: Film and Digital Media Studio Infrastructure Program Grant Awards and Declinations
REQUEST: To approve: (1) Grant awards to applicants for Film and Digital Media Studio Infrastructure Program projects; (2) declination of award to an applicant for Film and Digital Media Studio Infrastructure Program project.
MOTION TO APPROVE: Ms. Antoine-Johnson SECOND: Ms. Sirmans AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

ITEM: Proposed Rule Amendments: Professional Services Contracts (N.J.A.C. 19:30-8.1 through 8.3)
REQUEST: To approve: (1) proposed amendments to EDA's Professional Services Contracts rules at N.J.A.C. 19:30-8.1 through 8.3 to permit professional service firms, as defined by N.J.A.C. 19:30-8.2, to submit to the Authority a current Professional Services Qualification Statement ("PSQS"), and supporting documentation, which is approved by another New Jersey State agency, authority, or bi/multi-state entity; and (2) authorize staff to (a) submit the proposed rule amendments to the Office of Administrative Law for publication in the New Jersey Register, subject to final review and approval by the Office of the Attorney General, the Governor's Rules Office, and the Office of Administrative Law; and (b) submit the proposed rules to the Office of Administrative Law as final adopted rules for publication in the New Jersey Register if no substantive formal comments are received, subject to final review and approval by the Office of the Attorney General, the Governor's Rules Office, and the Office of Administrative Law.
MOTION TO APPROVE: Ms. Dragon SECOND: Ms. Antoine-Johnson AYES: 12
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

BOARD MEMORANDA

FYI ONLY: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses, January - February 2024

There being no further business, on a motion by Ms. Dragon, and seconded by Ms. Bauer, the meeting was adjourned at 11:31am.

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

Danielle Esser
Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: May 10, 2024

Re: May 2024 Board Meeting – CEO Report

Throughout Small Business Month, the New Jersey Economic Development Authority celebrates the thousands of small businesses across the state and recognizes the incredible contribution entrepreneurs make to our state and economy. We are proud to support the growth of our small business community and remain dedicated to ensuring business owners have the resources and tools to succeed.

Since we last met, we continued our push to establish the Garden State as a national leader in several growing industries. New Jersey is making critical investments and forging major partnerships with key stakeholders in fields such as innovation, film, and Artificial Intelligence (AI).

Just yesterday, I joined Governor Phil Murphy at Stevens Institute of Technology in Hoboken to announce a new Strategic Innovation Center (SIC) that will serve as a hub for fintech and insurtech startups. The New Jersey Fintech Accelerator at Stevens Institute of Technology (NJ FAST) is the fourth SIC in the state and will support research and development, innovation, and entrepreneurship. I look forward to collaborating with our partners at Stevens Institute, Plug and Play, and Prudential as we develop NJ FAST and work to expand the state's innovation economy.

The Governor and I attended the grand opening of HAX, LLC's newly constructed headquarters in downtown Newark last week. HAX, a startup development program for pre-seed hard tech companies, supports startups and entrepreneurs through investment capital, mentorship, and collaboration. Through our NJ Accelerate Program, the NJEDA will match investments into startups that locate in New Jersey within six months after graduating from HAX's accelerator's program. HAX is one of five startup development programs currently approved to participate in NJ Accelerate.

In April, the New Jersey Motion Picture and Television Commission hosted a Film Ready Workshop at the Morris Museum. The Film Ready Program prepares municipalities and counties to market their community as a lucrative filming location and provides resources to best accommodate major productions. There were dozens of communities represented at the workshop, showing the growing interest from across the state in hosting productions. Just recently, the Film Commission announced 14 municipalities and four counties were newly designated as Film Ready.

The Film Ready Workshop came on the heels of our trip to California. During the second half of our trip, I, along with the Governor, First Lady Tammy Murphy, Choose New Jersey leadership, and Film Commission Executive Director Jon Crowley met with film executives to promote the Garden

State and highlight our expanding role in the film industry. In our meetings we underscored our incentives, as well as our diverse landscape and talented workforce. As more productions choose New Jersey to film, the industry will support small businesses and good-paying jobs across the state.

While we were in Silicon Valley, we met with AI industry leaders and highlighted the Princeton AI Hub. We also discussed the recent New Jersey AI Summit that was held at Princeton University right before our trip. The summit was attended by leaders from across the region to discuss health, finance, sustainable energy, and technology, as well as the societal implications of AI and the opportunities to advance AI education and workforce development.

It's been a remarkable month with some incredible announcements and events. I thank the entire staff for their hard work every single day moving our mission forward. We remain committed to investing in our economy, our communities, and our nine million residents.

Tim Sullivan, CEO

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

RE: Memorandum of Understanding between EDA, Trenton Board of Education, and New Jersey Schools Development Authority for EDA's Purchase of Block 3901, Lot 48, Block 3902, Lot 1, Block 3903 Lot 1, Trenton, Mercer County (the "Battle Monument Site") to construct the Maternal and Infant Health Innovation Center

Request

The Members are requested to:

1. Approve entering into a three-year Memorandum of Understanding ("MOU") with the Trenton Board of Education ("BOE") and New Jersey Schools Development Authority ("SDA") whereby

   a. the Authority will explore a potential purchase from the BOE, as-is, of the Battle Monument Site in Trenton for approximately $2.6M by transmitting those funds to the SDA to satisfy a lien held by SDA on the parcel,

   b. SDA will hold those funds for the future use by the BOE when working with SDA to acquire and construct a new school project in the City of Trenton,

   c. the Authority will partner with the BOE and the lead Institution of Higher Education within the MIHIC to establish career lattice pathways and comprehensive training opportunities for public school students in Trenton, and

   d. the Authority, SDA, and BOE agree to meet regularly to review available parcels in the City of Trenton where a new school could be located in the future;

2. Allocate up to $3 million of the $50 million from the 2023-24 State fiscal year Appropriations Act appropriated to the Economic Recovery Fund ("ERF") for the Strategic Innovation Center and the Maternal and Infant Health Innovation Center to be used for the acquisition of the Battle Monument Site and the construction of the Maternal and Infant Health Innovation Center; and

3. Approve a clarification to the "Targeted Industries" Definition as applied to the ERF to specify that outpatient health care services done in conjunction with and as part of a Strategic Innovation Center are permitted.

Background

Released by the First Lady in January 2021, the Nurture NJ strategic plan features nine action areas, and dozens of recommendations, including to "establish a Center in the state capital [Trenton] that focuses on innovation and research in maternal and infant health through partnerships with the state's academic, funder, business, and faith communities" and charged the Authority with a central role in implementing this recommendation, with support from the Departments of Health, Human Services, and Office of the Secretary of Higher Education. Trenton has amongst the highest maternal and infant health disparities in the state, making it the natural choice to host the MIHIC. Only 47 percent of women in Trenton receive prenatal care in their first trimester and the city has the largest Medicaid population in the state. The MIHIC will work to achieve the Nurture NJ goal of making New Jersey the safest and most equitable place in the nation to give birth and raise a baby.

In April 2021, the EDA issued a Request for Information ("RFI") about its plans to establish the Center and received more than 50 responses. Many respondents emphasized that the Center should prioritize offering prenatal and postpartum services and community-based education and health programs. Respondents also recommended that the Center engage in workforce development through trainings and certifications to develop a diverse, high-quality perinatal workforce (e.g., midwives, doulas, community health workers).

In March 2022, the Board approved the Authority to work with real estate advisory firm Jones Lang LaSalle ("JLL") to conduct site analysis and planning to inform the eventual location and footprint of the Center. This work, in tandem with community engagement efforts, identified the specific area within the City of Trenton that is most conducive to the long-term success of the MIHIC. Following that analysis, EDA began reviewing the available parcels of land in that area and quickly identified the Battle Monument Site located at the Southwest corner of Pennington and Warren Street in Trenton, as the most attractive location for the MIHIC due to its proximity to existing community resources and neighborhoods. The Authority further validated that conclusion through community listening sessions conducted by the Watson Institute at Kean University in which community members voiced their support for the Center to be located in this neighborhood.

As a result, in early 2023, the Authority began to engage with the BOE and communicated an interest in purchasing the land. Throughout 2023, the Authority conducted initial environmental analysis to understand the geotechnical status of the parcel to assist in planning for future construction. In addition, the Authority worked with the BOE and the SDA to understand the nature of an equitable lien that exists on the property. Previously, the BOE and SDA engaged in activities to assess, develop, and maintain the Battle Monument Site for a potential future educational purpose that resulted in SDA spending $2,573,685 towards that effort. The BOE and SDA recognize this expenditure as an equitable lien against the Battle Monument site, which must be reimbursed to the SDA as part of any disposition of the property. The Authority's purchase price for the property is based on the need to satisfy this lien. To ensure that the funds paid by the Authority remain available to the BOE for the future acquisition and/or construction of a school, the SDA will maintain these funds for this express purpose.

The full form of MOU is attached for reference as Exhibit A. The final document may be subject to revision, although the basic terms and conditions will remain consistent with the attachment. The final terms of the Agreement will be subject to the approval of the Chief Executive Officer and the other parties to the Agreement.

Upon approval by the Board and full execution of the MOU, staff will return to the Board for approval of the Purchase and Sale Agreement and final payment terms.

Funding

The 2023-24 State fiscal year Appropriations Act dedicated $50 million in ERF to "Strategic Innovation Centers and Maternal and Infant Health Innovation Center," P.L. 2023, c. 74 (A5669) at p. 208, l. 20. Staff seeks the Members' approval to allocated up to $9 million of that $50 million to the acquisition of the Battle Monument Site and construction of the Maternal and Infant Health Innovation Center at that location.

"Targeted Industry" Definition

Among other things, the ERF statute (at N.J.S.A. 34:1B-7.13 Use of moneys in fund), provides that the Authority may use the moneys in the fund to establish an economic growth account for programs and initiatives, which will support and invest in small and medium-size businesses and other entities engaged in economic, community, and workforce development that have the greatest potential for creating jobs and stimulating economic growth through such elements including, but not limited to, a fund to provide grants, financing, or equity in innovation centers, research centers, incubators, and accelerators, and other similar innovation-oriented entities, which are focused on the targeted industries as defined by the Authority's Board.

As defined throughout the Economic Recovery Act, P.L. 2020, c. 156, and in particular for the Emerge program, "Targeted industry" means "any industry identified from time to time by the Authority which shall initially include advanced transportation and logistics, advanced manufacturing, aviation, autonomous vehicle and zero-emission vehicle research or development, clean energy, life sciences, hemp processing, information and high technology, finance and insurance, professional services, film and digital media, non-retail food and beverage businesses including food innovation, and other innovative industries that disrupt current technologies or business models."

As part of the approval to establish the Emerge program, the Board previously approved definitions for each of the listed industries within the definition of "targeted industry," including "life sciences industry." Specifically ***(emphasis added):***

> "Life sciences industry" includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal and human life. Examples of life science industry practices include specialization in biomedicine, biochemistry, pharmaceuticals, biophysics, neuroscience, cell biology, biotechnology, medical devices, nutraceuticals, health-technology, botany and advanced agricultural development, cosmeceuticals, and life systems technologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components.

Exclusions from this industry include direct provision of health care services in hospitals, outpatient facilities, dentist offices, nursing homes, or within a home setting.

On July 14, 2021, the Board approved the use of the Emerge program list and definitions of targeted industries for purposes of ERF.

After a review of the definitions and in light of the legislative appropriation for the MIHIC through ERF, staff proposes revising the definition of "life sciences industry" to be for purposes of ERF (***emphasis added***):

> "Life sciences industry" includes, but is not limited to, the research, development, commercialization, manufacturing, and implementation of innovative treatments, diagnostic tools, healthcare related software, medical devices, services, and equipment that supports the study, protection and improvement of plant, animal and human life. Examples of life science industry practices include specialization in biomedicine, biochemistry, pharmaceuticals, biophysics, neuroscience, cell biology, biotechnology, medical devices, nutraceuticals, health-technology, botany and advanced agricultural development, cosmeceuticals, and life systems technologies. This industry also includes firms that manufacture either finished or interim advanced technologies or components. Exclusions from this industry include direct provision of health care services in hospitals, outpatient facilities, dentist offices, nursing homes, or within a home setting***, unless provided in conjunction with and as part of a Strategic Innovation Center*****.**

Recommendation

The Members are requested to:

1. Approve entering into a three-year Memorandum of Understanding ("MOU") with the Trenton Board of Education ("BOE") and New Jersey Schools Development Authority ("SDA") whereby

    a. the Authority will explore a potential purchase from the BOE, as-is, of the Battle Monument Site in Trenton for approximately $2.6M by transmitting those funds to the SDA to satisfy a lien held by SDA on the parcel,

    b. SDA will hold those funds for the future use by the BOE when working with SDA to acquire and construct a new school project in the City of Trenton,

    c. the Authority will partner with the BOE and the lead Institution of Higher Education within the MIHIC to establish career lattice pathways and comprehensive training opportunities for public school students in Trenton, and

    d. the Authority, SDA, and BOE agree to meet regularly to review available parcels in the City of Trenton where a new school could be located in the future;

2. Allocate up to $3 million of the $50 million from the 2023-24 State fiscal year Appropriations Act appropriated to the Economic Recovery Fund ("ERF") for the Strategic Innovation Center and the Maternal and Infant Health Innovation Center to be used for the acquisition of the Battle Monument Site and the construction of the Maternal and Infant Health Innovation Center; and

3. Approve a clarification to the "Targeted Industries" Definition as applied to the ERF to specify that outpatient health care services done in conjunction with and as part of a Strategic Innovation Center are permitted uses.

____
Tim Sullivan, CEO

Prepared by: Mary Maples, Tara Colton, Jorge Santos

Attachments
Attachment A – Draft Memorandum of Understanding

Attachment A:

MEMORANDUM OF UNDERSTANDING
BETWEEN AND AMONG
NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY,
TRENTON BOARD OF EDUCATION, AND THE
NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

This **MEMORANDUM OF UNDERSTANDING** ("MOU"), made on this day of ____________, 20__, and effective as of the date of the last signature of the parties hereto (the "Effective Date"), is between and among the New Jersey Economic Development Authority ("NJEDA"), Trenton Public School District Board of Education ("BOE"), and the New Jersey Schools Development Authority ("SDA") (each a "Party", and collectively "the Parties").

WHEREAS, NJEDA is an independent State authority established pursuant to N.J.S.A. 34:1B-1, et seq., in but not of the Department of Treasury, which serves as the State's principal agency for driving economic growth; and

WHEREAS, the BOE is a school district located in Trenton organized and existing pursuant to N.J.S.A. 18A:10-1 et seq.; and

WHEREAS, the SDA is an independent authority of the State of New Jersey established pursuant to N.J.S.A. 52:18A-235 et seq., in but not of the Department of the Treasury that funds and manages the acquisition, construction, modernization, and renovation of school facilities projects in 31 school districts, collectively known as SDA Districts, of which the Trenton Public Schools is a part; and

WHEREAS, in 2019, Governor Phil Murphy and First Lady Tammy Snyder Murphy launched Nurture NJ, a statewide awareness campaign committed to both reducing maternal and infant mortality and morbidity and ensuring equitable care among women and children of all races and ethnicities because New Jersey is ranked 47th in the nation for maternal deaths and has one of the widest racial disparities for both maternal and infant mortality; and

WHEREAS, in January 2021, the First Lady released the Nurture NJ Strategic Plan with nine action areas, and dozens of recommendations to improve maternal and infant care, including a directive to NJEDA and the Departments of Health, Human Services, and Office of the Secretary of Higher Education to "[e]stablish a Center in the state capital that focuses on innovation and research in maternal and infant health through partnerships with the state's academic, funder, business, and faith communities"; and

WHEREAS, in April 2021, the NJEDA issued a Request for Information about its plans to establish the Center and received more than 50 responses. Respondents overwhelmingly emphasized that planning for the Center needed to be community-driven, with ample opportunity for Trenton community members and stakeholders to offer their perspectives on the Center's offerings, partnerships, and opportunities to leverage existing community assets in the city; and

WHEREAS, this first-of-its-kind Center will serve to advance workforce development, policy, and best practices focused on eliminating racial disparities in maternal and infant health outcomes that will benefit the City of Trenton, the State, and the entire country; and

WHEREAS, in March 2022, the NJEDA engaged Jones Lang LaSalle ("JLL") to conduct an analysis of potential locations in the City of Trenton for the Center, now known as the Maternal and Infant Health Innovation Center ("MIHIC"). Working closely with JLL and the Authority's community engagement partner, the Watson Institute for Urban Policy and Research at Kean University, the Authority concluded that the properties owned by the BOE located at 323 North Warren Street, Trenton, NJ 08618, also known as Block 3902, Lot 1, Block 3901, Lot 48 and Block 3903, Lot 1 on the tax map of the City of Trenton, County of Mercer, State of New Jersey ("Battle Monument site") are the best location for the MIHIC given the safe, accessible, and community-centered objectives of this project; and

WHEREAS, consistent with discussions between NJEDA and BOE regarding NJEDA's interest in obtaining ownership of the Battle Monument site, the BOE granted NJEDA right of entry to perform site due diligence on the Battle Monument site in March 2023, and that work remains ongoing; and

WHEREAS, the BOE and SDA previously engaged in activities to assess, develop and maintain the Battle Monument site for a potential future educational purpose that resulted in SDA spending TWO MILLION FIVE HUNDRED SEVENTY-THREE THOUSAND SIX HUNDRED EIGHTY-FIVE DOLLARS AND NO/100 CENTS ($2,573,685.00) towards that effort, which expenditure the Parties recognize as an equitable lien against the Battle Monument site (the "Lien") to be reimbursed to the SDA as part of any disposition of the Battle Monument site; and

WHEREAS, the BOE is willing to transfer ownership of the Battle Monument site to NJEDA, provided that NJEDA satisfies the Lien owed to SDA, and that SDA and NJEDA will help BOE find an alternate location for educational purposes; and

WHEREAS, the Parties have determined that they can assist each other with the goals outlined in this MOU by providing the support outlined below, and that it is mutually beneficial to enter into this MOU.

NOW THEREFORE, the Parties hereby agree as follows:

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. Sale of Battle Monument Site. NJEDA and BOE agree to negotiate in good faith a purchase sale agreement for the NJEDA to begin the process to purchase the Battle Monument site from the BOE, as-is, in the amount of $1 to BOE and TWO MILLION FIVE HUNDRED SEVENTY-THREE THOUSAND SIX HUNDRED EIGHTY-FIVE DOLLARS AND NO/100 CENTS ($2,573,685.00) ("Funds") in payment directly to the SDA. SDA will accept such Funds as satisfaction in full of the Lien and will provide NJEDA and BOE with written confirmation, simultaneous with closing, that the lien has been satisfied and approval that the Lien has been paid in full and has been discharged. Upon execution of a valid purchase sale agreement, BOE shall provide clear title to NJEDA.

4. Funds. SDA shall hold the Funds in a dedicated account for the advancement of a future school facilities project by the BOE, including but not limited to the acquisition, development and/or construction of a future school facilities project that is supported by the most current and approved long-range facilities plan prepared by the BOE, and that is approved by the Department of Education ("DOE"). The Funds shall be used solely for the purposes set forth in this MOU. The SDA shall provide the BOE with a letter indicating the receipt of the Funds, and an acknowledgment of the purpose for which it is being held. This letter shall have the effect of legally binding the SDA to hold these Funds for the stated purpose outlined above.

5. Center Lead Institution of Higher Education. NJEDA will partner with the BOE and the lead Institution of Higher Education ("IHE") within the MIHIC to establish career lattice pathways and comprehensive training opportunities for public school students in Trenton.

6. New School Facilities Project. The Parties will meet regularly, as mutually agreed upon, to seek to identify one school facilities project to be funded by the Funds, which satisfies the requirements of the most current, approved BOE long-range facilities plan and that is approved by the DOE ("Project"). Notwithstanding the foregoing, the Parties agree that, subject to any requisite DOE approval, BOE maintains full decision making authority over which proposed project will be funded by the Funds.

7. Designation of Contacts. The Parties have designated the following contacts, who will be responsible for day-to-day communications between the Parties related to this MOU. The Parties will notify each other of any designated contact change in writing within ten (10) business days of such change:

NJEDA	BOE	SDA
For Real Estate Matters: Juan Burgos VP, Real Estate Development Juan.Burgos@njeda.gov Nat Bottigheimer Director, Real Estate Special Projects Nat.Bottigheimer@njeda.gov For Maternal/Infant Health Matters: Tara Colton Chief Economic Security Officer Tara.Colton@njeda.gov		For Real Estate Matters: Gregory Voronov Managing Director Planning and Program Operations GVoronov@njsda.gov For Maternal/Infant Health Matters: N/A for SDA

8. Good Faith. The Parties will act with reasonable diligence and in good faith for the purpose of satisfying the conditions set forth herein.

9. Term and Extension. This MOU will be valid for a period of three years starting from the Effective Date, or until the selection of the Project, whichever occurs first. The Parties have the option to extend the MOU by mutual agreement. Any extension requires written

consent signed by authorized representatives from both Parties. Termination may be by either party upon 60 days prior written notice.

The Parties understand and agree that SDA's obligations outlined in Paragraph 4 will survive the expiration or termination of this agreement.

10. Notices. All legal notices (not including day-to-day business communications) from one Party to the other regarding this MOU shall be sent to the designated contacts provided below. The Parties will notify each other in writing of any change in these contacts within ten (10) business days:

NJEDA	BOE	SDA
Tim Sullivan Chief Executive Officer 36 West State Street P.O. Box 990 Trenton, NJ 08625	James Earle Chief School Administrator Trenton Public Schools 108 North Clinton Avenue Trenton, NJ 08609	Janice Venables Vice President Corporate Governance New Jersey Schools Development Authority 32 East Front Street P.O. Box 991 Trenton, New Jersey 08625

11. Assignment. This MOU may not be assigned by a Party without the prior written consent of the other Parties.

12. Third-Party Beneficiaries. This MOU is intended for the sole benefit of the Parties and shall not be construed to create any third-party beneficiary.

13. Dispute Resolution. In the event a dispute arises between the Parties concerning this MOU, the CEO of NJEDA, the CSA of BOE, the CEO of SDA or their appointed representatives, shall meet to resolve such dispute.

14. Applicable Law. The Parties shall retain all the powers, obligations and immunities provided by the laws of New Jersey. Each Party shall be responsible for adhering to all applicable State and Federal laws, regulations, and its own Policies and Procedures in the performance its obligations under this MOU. By signing this MOU, the signatories below certify that they possess the legal authority to perform the respective responsibilities outlined herein.

15. Publicity and Public Announcements. Each Party agrees to obtain permission of the other Party before using the name of the other Party in any public announcement or other publicity.

16. 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.

17. 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.

18. 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.

19. Miscellaneous.
    a. The Parties acknowledge that the successful completion of each Party's duties hereunder will require cooperation between the Parties. The Parties agree to work cooperatively to achieve the goals of this MOU.

    b. The Parties agree to strictly control the use and retention of any personal and confidential information provided by the other Party so that only personnel who have a need to know have access to such information. No further dissemination or use of such information is authorized without written permission of the Party from which such information originated, unless required by law.

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

For New Jersey Economic Authority	For Trenton Board of Education	For New Jersey Schools Development Authority
Name: Tim Sullivan	Name: James Earle	Name: Manuel Da Silva
Title: CEO	Title: CSA	Title:CEO
Signature:	Signature:	Signature:
Date:	Date:	Date:

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Activation, Revitalization, and Transformation (A.R.T.) Program
Phase II - Public Space Activation Product.

The Members are asked to approve:

1) Utilization of $15 million in appropriated funding through the Fiscal Year 2023 Budget Appropriations Act (P.L. 2022, c.49) identified as Arts Support and Placemaking to fund a second round of awards for the Activation, Revitalization, and Transformation ("A.R.T.") Program Phase II – Public Space Activation Product.

2) Product revisions for the pilot program Activation, Revitalization, and Transformation ("A.R.T.") according to this Board memo and specifications.

3) Delegated authority to the New Jersey Economic Development Authority (NJEDA) Chief Executive Officer (CEO) to enter a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (DCA) whereby the NJEDA CEO will accept $15,000,000 in funds from the American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and agree to comply with federal requirements for the use of those funds. Delegation to the Authority's Chief Executive Officer to decline individual applications for non-discretionary reasons for the A.R.T. Program in accordance with the terms set forth in the attached product specifications.

4) Utilization of an additional $375,000 (2.5% of the $15 million budget appropriation) for the Authority's administrative fees associated with operating this program.

Background

The American Rescue Plan (ARP), signed into law by President Joe Biden on March 11, 2021, is a $1.9 trillion economic stimulus bill designed to rebuild and restart the American economy in the wake of the Coronavirus (COVID-19) public health emergency by investing in families, communities, and small businesses. Through the Coronavirus State and Local Fiscal Recovery Funds (SLFRF), the ARP delivers $350 billion to state, local, and tribal governments to support their response to, and recovery from COVID-19. As the New Jersey economy continues to rebound in the wake of COVID-19, catalytic investment into commuter hub cities is essential for jumpstarting local economies and promoting strong, resilient, and equitable economic recoveries. Governor Murphy's Fiscal Year 2024 Budget affirms these objectives and continues the Administration's efforts to build a stronger and fairer New Jersey economy by making new, impactful, and strategic investments in commuter hub cities with commercial corridors.

The Activation, Revitalization and Transformation ("A.R.T.") Program, approved in October 2022, was designed to help revitalize commercial corridors in Newark and Atlantic City that were negatively impacted by COVID-related commuter decreases. The loss of vital customer traffic during the pandemic impacted all of New Jersey, but especially those municipalities with major transit hubs. The A.R.T. Program aimed to proactively address those economic impacts by investing in projects that would attract residents and talent, enable business creation, and build amenities that enhance downtowns.

The A.R.T. Program was initially divided into real estate and public space activation products with an appropriation of $7MM for real estate projects and $3MM for public space activation for a total program capitalization of $10MM. The A.R.T. program launched in June of 2023 and received significant public interest. Seventeen (17) public space applications and Twenty-four (24) real estate applications were submitted for consideration. A high demand for real estate funding led to additional allocations ($11.8MM for Newark projects from the Urban Investment Fund and $6.3MM for Atlantic City projects from Atlantic City Initiatives).

Since NJEDA received an additional $15 million to support this program, staff is seeking to utilize the additional funding to focus on just one product this time, the Public Space Activation Grant Product. This will allow NJEDA staff to focus efforts on the economic recovery of the downtowns in these corridors to support placemaking efforts through arts and culture. The funds listed as, "Arts Support and Place making Grant Program," allocated in the FY 2023 Appropriations Act will be transferred to the Authority; the funds will be assigned to the Economic Recovery Fund. The assignment of funds to the Economic Recovery Fund will allow the Authority to authorize a grant program as listed under N.J.S.A § 34:1B-7.13(a)(13) for the purposes of meeting stated economic priorities as identified by the Board in the December 8, 2021. The funds will support place making activities that invest in communities to build resilient towns, and infrastructure statewide.

Purpose

The A.R.T. Phase II Program will catalyze community placemaking efforts, by leveraging New Jersey's arts and cultural sector as a creative force for change, specifically in Downtowns of select municipalities. Downtowns and commercial corridors play a vital role in both urban and rural geographies, serving as economic engines for communities by empowering entrepreneurs, creating cultural hubs, and building community wealth.

This program will aid in the recovery of these communities through arts and culture-focused placemaking efforts, as it will play a vital role in creating job-sustaining revenue for New Jersey's Main Streets and communities by directly driving foot traffic to New Jersey's most depleted commercial corridors. The impact that this industry has on the local economy is illustrated and driven by the following data points: The 2023 Arts and Economic Prosperity Study (*Americans for the Arts)* demonstrates that in 2021 Arts & Culture industries contributed 4.2% to the overall national GDP and here in NJ, 3.5% to the overall GDP, as well as comprising 3.1% of NJ's workforce. In 2022, NJ's non-profits, created $532.3 million in economic stimulus: with $338.5 million in direct spending by arts and culture organizations and an additional $193.8 million in event-related expenditures, with an average arts event attendee spending over $32.68 on restaurants, retail, and services outside of their arts experience in the local community.

The revised A.R.T. Program (phase II) aims to replicate the success of the first launch of the A.R.T. Program through a multi-faceted, strategic approach that will continue to mitigate the economic impact of the COVID-19 pandemic by supporting the development and recovery of New Jersey's commercial corridors and invigorating community focused arts and cultural organizations.

Eligible Applicants

Eligible applicants are nonprofit organizations with a 501c (3), 501c (6), or 501c (19) status. Municipalities, governments, and for-profit entities are not eligible to apply. Any Applicant that received a grant from Phase I of the A.R.T. program is ineligible for Phase II of the Program.

Applicants must be in substantial good standing with the New Jersey Department of Labor and Workforce Development, New Jersey Department of Environmental Protection, and NJEDA prior to approval. The Program requires Applicants to provide a current tax clearance certificate at time of application to demonstrate the applicant is in good standing with the New Jersey Division of Taxation.

Grants will be subject to federal Duplication of Benefit requirements. Applicants cannot have received state or federal funding to support a similar expense identified in the project costs at time of application and will have to submit a Duplications of Benefits certification at time of application. Approvals will be contingent upon a cost reasonableness analysis that will be reviewed prior to approval and disbursement.

Eligible Project Uses and Restrictions

The A.R.T. Program is a grant product that will support the creation of public space activation initiatives, such as placemaking projects, public art installations, and arts-based projects. These activities may include, but are not limited to art exhibitions, performances, festivals, parades, concerts or concert series, film and video screenings, and cultural programming. Funding can also be granted to support operational costs for the applicant to execute art or placemaking projects.

Ineligible project activities may include but are not limited to acquisition costs of real estate, leases for real estate with expiration dates past December 31, 2026, incubator space, and real estate construction. Also, major infrastructure improvements are ineligible, such as capital expenditures including but not limited to sewer, wastewater, electrical grid, road paving, drinking water systems, and structures that are intended to remain in place after December 31, 2026, including demolition to create vacant land.

All applicants must submit a Source and Use analysis on the application's Source &-Use Form. The line items in the Source section must list all sources of project funding including the funds requested in the EDA A.R.T. grant application. If the amount requested on the EDA A.R.T. Grant application is not listed as a Source or if the Total Sources do not equal the Total Uses, then the Source & Use document will be considered incomplete, and the application will receive a non-discretionary declination.

Project Eligibility Considerations (necessary for federal guidelines)

Applicants will self-certify, at time of application, the project meets the following federal eligibility considerations:

- COVID Impact: Applicants must address how the proposal is responsive to the negative public health and/or economic impacts of the COVID-19 pandemic and complies with all the ARP program requirements.
- Capacity: The applicant must have experience implementing a minimum of one project that is similar to the project being proposed.
- Long-term impact: Competitive applicants must articulate via the application process how the proposal will have a positive long-term impact in its community and the overall benefit to the community at large.
- Financial Viability: Must demonstrate long-term financial viability of the project and evidence that the project will be completed prior to 12/31/26.
- U.S. Treasury reporting: Ability (if applicable or requested by US Treasury) to provide the U.S. Department of Treasury with relevant reporting for all project expenditures exceeding $1, specifically, all proposals must provide a narrative on how the project will address the impacts of COVID-19 in their municipality and why this capital expenditure is the most appropriate to address the economic harms caused by COVID.

Per federal program guidelines, all A.R.T. funds must be obligated by December 31, 2024, and must be expended by December 31, 2026. Applicants will be required to submit a Project Timeline as evidence that the project can meet these federal program guidelines. Applicants will also respond to scored questions as to how the project can meet these federal program guidelines.

Eligible Project Locations

The Project location must meet the following criteria:

1) Projects must be in a commercial corridor defined for this program as being in either; a municipality designated as a "Target Urban Municipality," by the Housing and Mortgage Finance Agency, or designated as a Neighborhood Preservation Program (NPP) Eligible Municipality by the Department of Community Affairs, or a municipality with a designated Department of Transportation, "Transit Village".

2) Projects must be in a municipality ranked in the Top 25% of the Department of Community Affairs 2023 Municipal Revitalization Index.

3) Projects must be located within 1.5 miles of an active New Jersey Transit, PATCO, PATH, or SEPTA passenger rail or light rail station operating in the same municipality meeting above criteria. (Locations are based on NJ Department of Community Affairs geographic information systems passenger rail station point data.)

The 31 municipalities with areas eligible for the program are: Asbury Park, Bayonne, Belleville, Burlington City, Camden, City of Orange, Clifton, Dover, Dunellen, East Orange, Egg Harbor City, Elizabeth, Garfield, Hackensack, Hammonton, Jersey City, Linden, Lindenwold, Long Branch, Netcong, New Brunswick, North Bergen, Passaic, Paterson, Pennsauken, Perth Amboy, Plainfield, Rahway, Riverside, Trenton, and Union City.

Atlantic City and Newark are municipalities that also meet the above location eligibility criteria. Both cities are ineligible for this phase of the program due to additional funding each city received from the first round of this program, including other FY24 budget appropriations each city has received through the Urban Investment Fund and the Atlantic City Revitalization Grant Program.

Application Process

A competitive application process will be established for this product. Online applications will be accepted during a defined, minimum 60-calendar day application period. All applications will be reviewed following the closure of the application period. Applications are limited to one Application per EIN. The minimum grant request for the program is $100,000, the maximum grant request is $500,000. The Authority will perform a review of all submitted applications for eligibility documentation on or after the closing date of the application period.

Applicants will be given 10-business days to submit document cures related to eligibility. If the application remains incomplete after the 10-day cure period, or fails to establish program eligibility, the application will receive a non-discretionary declination.

Staff may also request additional responses from applicant to clarify eligibility documentation and application responses.

Applications will be reviewed and scored by staff of the Authority formed as part of an evaluation scoring committee. Applications will be scored on a scale of 0 - 100 points, with award recommendations limited to applications that meet or exceed the minimum score requirement of 65 points. Applicants who meet or exceed the minimum scoring criteria will be recommended to the Board for award in order with the highest scoring applicant being first and remaining applicants in order of their score. Scoring criteria are listed in Exhibit A (Scoring).

Fees and Administrative Expense

As allowed by EDA's recently revised fee rules, an application fee will not be charged as EDA is receiving funds for administrative costs. Staff propose utilization of an additional $375,000 (2.5% of the $15 million budget appropriation) for the Authority's administrative operating costs associated with this program.

Board Approval

The revised A.R.T. Program will proceed to Board for all approvals and for declinations for discretionary reasons. Any applicant unable to provide a complete application will not proceed to scoring. As a pilot program, decisions based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, the CEO will delegate to the appropriate staff on all appeal decisions for non- discretionary reasons.

Grant Awards and Agreement Terms

Staff will allocate funds to applicants based on scored ranking in the full dollar amount requested. This process will continue, in descending order of the application scores, always allocating the full dollar amount requested, until all program funds have been exhausted. Awards will be recommended to the board after this process is complete.

If there are remaining applicants, who cannot be funded at the full dollar amount requested, NJEDA staff will notify them and specify the amount of project funds that are available. The applicant will have 15 business days from the date of being notified to accept the amount of funds available and must provide proof of an additional funding source to complete the proposed project budget. Proof can be in the form of a Letter of Intent, commitment letter, or bank statements. If the applicant decides not to accept the amount available or does not identify additional funding to complete the project, the application will be incomplete and deemed withdrawn by NJEDA. Staff will recommend awardees to the Board for approval in ranked order based on scoring. Applicants who score below 65 and applicants that cannot be partially or fully funded will be recommended for discretionary decline to the Board.

Prevailing Wage

All projects will be subject to compliance with New Jersey prevailing wage law and the Public Works Contractor Registration Act (NJSA 34:11-56.48 et seq.) which requires all contractors, subcontractors, or lower tier subcontractors (including subcontractors listed in bid proposal) who bid on or engage in the performance of any public work in New Jersey to register with the NJ Department of Labor and Workforce Development.

Disbursements

The Authority will disburse grants only to the applicant. The applicant shall be responsible for assuring the compliance of the project with all terms and conditions of the application and the Program funding requirements.

Under the revised A.R.T. Program, the Applicant will receive the full grant disbursement upon execution of the grant agreement and will then be required to submit quarterly reports until project completion. NJEDA will provide the applicant with a template that will include documentation indicating proper use of funds.

Quarterly reports must include:
- Summary of funds expended to date.
- Narrative detailing milestones achieved and overall progress of project.
- Proof of prevailing wage/Affirmative Action compliance.

Diversity & Inclusion

Prior to the COVID-19 pandemic, economic shifts adversely impacted commercial corridors – resulting in uneven growth and high vacancy rates, especially in corridors located in low-income communities. The pandemic further amplified these economic hardships, as many of the businesses hit hardest by the pandemic were also the ones that populate and contribute to the dynamism of commercial corridors, with Black and Brown owned businesses proving to be exceptionally vulnerable.

This, combined with the huge transition to remote work has resulted in decreased capacity, foot-traffic, and revenue across economically vital commercial corridors. The latest yearly report from NJ Transit shows heavy rail has only recovered to 45%, and light rail to 68% of pre-pandemic levels. (NJ Transit, “Facts at a Glance,” 3/1/2023). Decreased ridership has become a system-wide issue which effects all towns whose economies depend on transit.

Utilizing funding provided from the ARP SLFRF, the A.R.T. Program aims to provide financial support to municipalities that were disproportionately impacted by COVID-19. By providing funding to support catalytic A.R.T. activities and placemaking initiatives that increase foot-traffic to Downtowns, the program will help to mitigate the harms by increasing local spending and promoting economic stability in vital commercial corridors.

Recommendation:

The members are asked to approve:

1) Utilize $15 million of appropriated funding through the Fiscal Year 2023 Budget Appropriations Act (P.L. 2022, c.49) identified as Arts Support and Placemaking to fund another round of the Activation, Revitalization, and Transformation (A.R.T.) Phase II– Public Space Activation Product.
.
2) Incorporate product revisions for the Activation, Revitalization, and Transformation (A.R.T.) product according to this Board memo and specifications.

3) Grant authority to the New Jersey Economic Development Authority (NJEDA) Chief Executive Officer (CEO) to enter a Memorandum of Understanding (MOU) with the New Jersey Department of Community Affairs (DCA) whereby the NJEDA CEO will accept $15,000,000 in funds from the American Rescue Plan (ARP) Coronavirus State and Local Fiscal Recovery Funds (SLFRF) and agree to comply with federal requirements for the use of those funds.

   Delegation to the Authority's Chief Executive Officer to decline individual applications for non-discretionary reasons for the A.R.T. Program in accordance with the terms set forth in the attached product specifications.

4) Utilization of an additional $375,000 (2.5% of the $15 million budget appropriation) for the Authority's administrative fees associated with operating this program.

Tim Sullivan, CEO

Prepared by: Matt Boyle
Attachments:
(Exhibit A) Scoring Criteria:
(Exhibit B) Product Specifications

(Exhibit A) Scoring Criteria:

1. Describe the project, including cost estimates.

   (8 Points for final plans and cost estimates, 3 points for preliminary plans or estimates, 0 if otherwise.)

2. Describe site use and access. Does the entity currently have the ability to use, or obtain permission to use, the site for the purposes described in the project?

   (7 Points if the applicant has demonstrated site use and access, 0 if otherwise.)

3. Describe how this project will increase foot traffic in the local community based on existing historic traffic data such as foot traffic measurements, ticket sales, audience counts or other similar measures.

   (5 Points if the applicant has demonstrated significant increase in foot traffic [greater than 50% increase], 3 if partial increase [1% to 50% increase], 0 if no increase.)

4. Explain the level of experience the applicant organization has with similar projects demonstrating their ability to complete the proposed project successfully. Please include any previous projects that involved arts-based activity in spaces open to the public or municipal spaces and explain the status of those projects.

   (15 points for two projects completed, 8 points for one project completed and 0 points for no relevant examples.)

5. Describe how your project will:

   a. **Contribute to the resilience of your community post-COVID and mitigate COVID impacts.**
      Provide examples of how this project will mitigate COVID impacts and build community resilience through its short-term impact (within 1 year of completion) on the local economy, as it relates to local businesses, local employment, local arts and culture production/performance, exhibition, preservation and or education. Provide additional examples of the same for the project's long-term impact (beyond 1 year of completion).

b. **Activate vacant or underutilized space post-COVID.**
The activation of vacant or underutilized spaces can include but is not limited to facilities, classrooms, production areas, galleries, exhibition and performance spaces, public and private buildings, or parts of buildings, public or private empty/vacant lots or parcels; streets, blocks and/or neighborhoods; public spaces such as parks, playgrounds, or arts installations that have been impacted by COVID.

c. **Contribute to the community's vision post-COVID.**
Describe how this project addresses the community's vision as expressed by county, municipal, or neighborhood-level plans, studies and/ or statements. Examples include plans and studies focused on community arts and arts education, economic development, Main Street, Sustainable NJ, small business entrepreneurship, cultural and heritage plans, local arts and culture development, historic preservation, travel and tourism promotion, local beautification and placemaking, neighborhood redevelopment, neighborhood revitalization or other plans.

(35 points TOTAL:

6a) Up to 15 pts for a response that demonstrates short & long-term impact;

6b) Up to 10 pts for a response that demonstrates activation of underutilized space;

6c) Up to 10 pts for a response that demonstrates how the project addresses the community vision;

0 points for ***a, b, or c*** *if project fails to demonstrate engagement with the community in ways specified by* ***a, b, or c.)***

6. Describe how the primary focus of the Applicant organization is centered around arts and culture. Provide a narrative of no more than 250 words and no more than three (3) pieces of supporting documentation that show organizational focus.

Supporting documentation can include but is not limited to charter or formation documents; awards of other federal/ state/ local government and/or private public philanthropic grants, awards, prizes or other benefits for arts and culture related activities or projects; membership documents in a local, state, national or international organization related to arts and culture advocacy, promotion or public service; proof of previous teaching or exhibition work related to arts and culture; participation in or collaboration on an academic, economic or government study related to arts and culture, annual programming documentation, annual report, annual financials and other documents that prove arts & culture focus.

(20 points if narrative and supporting documentation provided to demonstrate this is an Arts & Culture focused organization; 0 points if it is not.)

7. If the Applicant organization is partnering with an individual artist, artist collective, an arts and cultural non-profit, a municipal entity, a community group, or private sector entity, provide proof of partnership with a Letter of Intent approved by both entities that includes:

    a) the benefit that the partnership brings to the project,

    b) commitment to the scope of the project,

    c) the timeline for executing and completing the project,

    d) the expected final product, and

    e) any other personal, material, or financial resources committed to the project (if applicable).

    (10 points for letter of commitment from one or more partners, 0 points for no letter of commitment from a partner.)

In the event of a tie, the recommendation for award will be made based on scores as listed in point 1. If point 1 is equal; then recommendation for award will be made on score as listed in point 2. If point 2 is equal; then recommendation for award will be made on score as listed in point 3.

1) MRI Index- project host municipality with lowest MRI score will be recommended to the Board.

2) Question 4- project with the higher score on question 4 (the level of experience the applicant organization has with projects of similar scope) will be recommended to the Board for award.

3) Question 5- project with the higher score on question 5 (how the project will impact the local economy, activate vacant or underutilized space, and contribute to the resiliency of the community overall) will be recommended to the Board for award.

(Exhibit B) Product Specifications

Activation, Revitalization, and Transformation (ART) Program- Public Space Activation Product May 2024	
Funding Source	$15 million in appropriated funding through the Fiscal Year 2023 Budget Appropriations Act (P.L. 2022, c.49) identified as "Arts Support and Placemaking" to fund the Activation, Revitalization, and Transformation ("A.R.T.") Phase II – Public Space Activation Product.
Eligible Uses	The A.R.T. Program is a grant product that will support the creation of public space activation initiatives, such as placemaking projects, public art installations, and arts-based projects. These activities may include, but are not limited to art exhibitions, performances, festivals, parades, concerts or concert series, film and video screenings, and cultural programming. Funding can also be granted to support the operational costs for the applicant to execute their art or place making project. Ineligible project activities include but are not limited to acquisition costs of real estate, leases for real estate with expiration dates past December 31, 2026, and incubator space, real estate construction, major infrastructure improvements and demolition to create vacant land. Major infrastructure improvements are ineligible, such as capital expenditures including but not limited to sewer, wastewater, electrical grid, road paving, drinking water systems and structures that are intended to remain in place after December 31, 2026.
Eligible Applicant Entity	-Eligible entities are nonprofit organizations with a 501c (3), 501c (6), or 501c (19) status as evidenced in the Applicant's IRS determination letter. -Municipalities, governments, and for-profit entities are not eligible to apply. . - Eligible Entities must be in substantial good standing

	with the New Jersey Department of Labor and Workforce Development, New Jersey Department of Environmental Protection, and NJEDA prior to approval. -Eligible entities must submit a current tax clearance certificate at time of application to demonstrate the applicant is in substantial good standing with the New Jersey Division of Taxation. -Any Applicant that received a grant from Phase I of the A.R.T. program is ineligible for Phase II of the Program. -Grants will be subject to federal Duplication of Benefit requirements. Applicants cannot have received State or federal funding to support a similar expense identified in the project costs at time of application and will have to submit a Duplications of Benefits certification at time of application. -Approvals will be contingent upon a cost reasonableness analysis that will be reviewed prior to approval and disbursement.
Eligible Project Locations	Project location must meet each of the following criteria: Projects must be in a commercial corridor defined for this program as being in either; a municipality designated as a "Target Urban Municipality," by the NJ Housing and Mortgage Finance Authority, or designated a Neighborhood Preservation Program (NPP) Eligible Municipality by the NJ Department of Community Affairs, or a municipality with a designated NJ Department of Transportation, "Transit Village". Projects must be in a municipality ranked in the Top 25% of the Department of Community Affairs 2023 Municipal Revitalization Index.

	Projects must be located within 1.5 miles of an active New Jersey Transit, PATCO, PATH, or SEPTA passenger rail or light rail station operating in the same municipality meeting above criteria. (Locations are based on NJ Department of Community Affairs geographic information systems passenger rail station point data.) The 31 municipalities with areas eligible for the program are: Asbury Park, Bayonne, Belleville, Burlington City, Camden, City of Orange, Clifton, Dover, Dunellen, East Orange, Egg Harbor City, Elizabeth, Garfield, Hackensack, Hammonton, Jersey City, Linden, Lindenwold, Long Branch, Netcong, New Brunswick, North Bergen, Passaic, Paterson, Pennsauken, Perth Amboy, Plainfield, Rahway, Riverside, Trenton, and Union City. Projects located within the City of Newark and the City of Atlantic City are ineligible.
Project Eligibility (federal guidelines):	Applicants will self-certify, at time of application, the project meets the following federal eligibility considerations: 1) COVID Impact: Applicants must address how the proposal is responsive to the negative public health and/or economic impacts of the COVID-19 pandemic and complies with all the ARP program requirements. 2) Capacity: The applicant must have experience implementing a minimum of one project that is similar to the project being proposed. 3) Long-term impact: Applicants must articulate via the application process how the proposal will have a positive long-term impact in its community and the overall benefit to the community at large. 4) Financial Viability: Must demonstrate long-term financial viability of the project and evidence that the project completion date which must be prior to 12/31/26.

Activation, Revitalization, and Transformation (ART) Program- Public Space Activation Product May 2024	
	U.S. Treasury reporting: Ability (if applicable or requested by US Treasury) to provide the U.S. Department of Treasury with relevant reporting for all project expenditures exceeding $1, specifically, all proposals must provide a narrative on how the project will address the impacts of COVID-19 in their municipality and why this capital expenditure is the most appropriate to address the economic harms caused by COVID.
Project Eligibility Criteria	Per federal program guidelines, all A.R.T. funds must be obligated by December 31, 2024, and must be expended by December 31, 2026. Applicants will be required to submit a Project Timeline as evidence that the project can meet these federal program guidelines. Projects must be located within 1.5 miles of an active New Jersey Transit, PATCO, PATH, or SEPTA passenger rail or light rail station operating in the same municipality meeting above criteria. (Locations are based on NJ Department of Community Affairs geographic information systems passenger rail station point data.) Applications are limited to one Application per EIN. If the amount requested on the EDA A.R.T. Grant application is not listed as a Source or if the Total Sources do not equal the Total Uses, then the Source & Use document will be considered incomplete, and the application will receive a non-discretionary declination. Eligible applicants are nonprofit organizations with a 501c (3), 501c (6), or 501c (19) Municipalities, government, and for-profit entities are not eligible to apply. Applicants must be in substantial good standing with the New Jersey Department of Labor and Workforce Development, New Jersey Department of Environmental Protection, and NJEDA prior to approval. The program requires applicants to provide a current tax clearance certificate at time of

Activation, Revitalization, and Transformation (ART) Program- Public Space Activation Product May 2024	
	application to demonstrate the applicant is in substantial good standing with the New Jersey Division of Taxation.
Application Process	A competitive application process will be established for this product. Online applications will be accepted during a defined, minimum 60-calendar day application period. All applications will be reviewed following the closure of the application period. Applications are limited to one Application per EIN. The minimum grant request for the program is \$100,000 and the maximum grant request is \$500,000. Applicants will be given 10-business days to submit document cures related to eligibility. If the application remains incomplete after the 10-day cure period, or fails to establish program eligibility, the application will receive a non-discretionary declination. Staff may also request additional responses from applicant to clarify eligibility documentation and application responses.
Approval	The revised A.R.T. Program will proceed to Board for all approvals and for declinations for discretionary reasons. Any applicant unable to provide a full application will not proceed to scoring. As a pilot program, decision based on non-discretionary reasons are subject to the existing delegated authority. Accordingly, CEO will delegate to the appropriate staff on all appeal decisions for non- discretionary reasons.
Program Fees	As allowed by EDA's recently revised fee rules, an application fee will not be charged as EDA is receiving funds for administrative costs. Staff proposes utilizing 2.5% in addition to the \$15 million grant program allocated for awardees (\$375,000) for the Authority's administrative fees associated to operating this program.
Disbursements	The Authority will disburse grants only to the applicant. The applicant shall be responsible for assuring the compliance of the project with all terms and conditions of the application and the Program funding requirements. Under the revised A.R.T. Program, the Applicant will receive the full grant amount upon execution of grant agreement, and

	then will be required to submit quarterly reporting until project completion. NJEDA will provide the applicant with a template report which will include documentation indicating proper use of funds.

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: May 8, 2024

RE: Atlantic City Revitalization Grant Award – Realty Management Services, Inc.

The Members are asked to approve:

1) A grant award of $1 million to Realty Management Services, Inc. under the Atlantic City Revitalization Grant Program.

Program Background

The Atlantic City Revitalization Grant Program was Board approved at the December 2023 meeting. This grant supports up to 50% of the project costs related to a capital project located in Atlantic City. The goal of this Program is to proactively address the negative economic impacts of the pandemic by investing in projects that demonstrate an ability to cultivate the environment and neighborhoods necessary to attract and retain a local workforce, enable business creation and tourism, enhance downtown vitality through small business support efforts, support clean and safe initiatives, address food insecurity issues, and buttress social impact supports for the community at large. Administered by the New Jersey Economic Development Authority ("Authority"), this Program will support real estate development, specifically capital projects (each, a "Project") in the form of grants to support rehabilitation or new construction, as well as other development costs associated with a maximum award of $10 million in grant funding to one Project. This will then meet the requirement of "Investing in Communities" by providing funding to activate underutilized properties for community focused investments and to activate projects that will catalyze new business sectors in NJ, support communities, and improve the business community within Atlantic City. This grant will improve investment in communities by working to activate underutilized, distressed, or vacant land for projects to promote equitable economic growth and community wealth building in Atlantic City.

Project Ownership

The property is owned by Callazzo Properties LLC, a real estate holding company that is owned wholly by Mark Callazzo. Realty Management Services, Inc., 51% owned by Richard Domanico and 49% owned by Mark Callazzo, is the applicant and awardee for the grant and manages this project.

Project Description

The grant proceeds will support "The Top Hat" - a monopoly themed boutique hotel that will be located at 215 South Tennessee Avenue in Atlantic City. This project will be addressing a negative impact from COVID through the community local impact consideration for the program of Downtown Vitality as identified at the time of application and based off eligibility.

The project will consist of a newly constructed three-story mixed-use building on a vacant lot that is currently owned by Callazzo Properties LLC. Realty Management Services, Inc. is the applicant and will oversee the Project and operation of the building. The first floor of the property will be utilized as retail commercial space (1,095 square feet) while the second and third floors will be designated for short term rentals. This property is zoned for hotels and this project will be considered a boutique hotel in Atlantic City. The second and third floors will consist of 3-bedroom rentals on each floor which will be managed and operated by the applicant. This type of property will complement the Orange Loop neighborhood in Atlantic City which consists of St. James Place, New York Avenue, and Tennessee Avenue in Atlantic City. The short-term rental component of the project will encompass six bedrooms, accommodating a maximum of 10 guests. This space will feature a rooftop deck, providing panoramic views of the city and enhancing the overall appeal of the establishment. The Top Hat at the Orange Loop aspires to contribute to the vibrant landscape of the area, offering a distinctive and engaging destination for both commercial and hospitality purposes.

The distinctive Monopoly-style design of the Top Hat at the Orange Loop is poised to serve as a dual catalyst for the project's success. Beyond its appeal to prospective guests seeking accommodation, the eye-catching design is anticipated to draw significant foot traffic from individuals eager to catch a glimpse of this unique architectural landmark. This location will also offer tourists a place that can accommodate a large group rental setting and in a location that is still close to the boardwalk, beach, and casinos as well as a neighborhood that now offers a night life setting. This will help compliment the neighborhood and allow for the activation of a vacant space to then have people walking through the neighborhood and contributing to the local economy as customers of the local establishments situated within the Orange Loop vicinity. The project, therefore, holds the potential to become a significant contributor to the economic and cultural landscape of Atlantic City.

Formerly designated a "Dead Zone" by City Officials, the Orange Loop has undergone a transformative journey, now home to over a dozen bars, restaurants, and businesses. Having experienced firsthand the impact of COVID-19 on these establishments owned or co-owned by the applicant the city's recovery and revitalization is necessary. The Top Hat at the Orange Loop project reflects not only a strategic business endeavor but also a commitment to the broader well-being and prosperity of Atlantic City by the applicant that has already invested into Atlantic City through various projects. The rental space, in addition to providing lodging for tourists, will also support tourism in Atlantic City by offering concierge services, including restaurant recommendations and reservations, thereby encouraging patronage of various dining establishments both within and outside the casinos. Situated within the dynamic corridor of the Orange Loop, renowned for its vibrant amalgamation of restaurants, nightlife, and live entertainment, the Top Hat is poised to become a focal point for tourists. By contributing to the allure of the area, the project is expected to drive foot traffic, instill renewed energy, and foster a sense of destination within the community. In essence, the Top Hat at the Orange Loop emerges as a proactive response to the challenges posed by the pandemic, positioning itself as a catalyst for economic recovery and a beacon of vibrancy within Atlantic City's commercial landscape.

The total costs of the Project are estimated to be $2,062,719. The recommendation is to award a grant of $1,000,000 to support this project to be completed prior to 12/31/26. The applicant's request is in line with the program and is less than 50% of the project costs.

Project Uses

The Applicant proposes the following uses for the Project:

Uses	***Total Project Costs***	***Grant Award***
Hard Construction	$1,480,000	
Soft Construction	$268,500	
Contingency	$161,425	
Development Fee	$152,794	
TOTAL USES	**$2,062,719.00**	**$ 1,000,000.00**

The applicant applied with project costs at $2 million at time of application. However, the program requires a developer fee cap at 8%, a contingency for soft costs at 5%, and a contingency for hard costs at 10%. When those caps and contingencies were applied, the numbers were adjusted to reflect the slightly increased project costs. However, the grant will remain at $1 million as requested by the applicant at the time of application.

Project Sources

Sources of Financing	***Amount***
Applicant to pursue a construction loan after approval	$1,062,719.00
Total	**$1,062,719.00**

Recommendation

Authority staff has reviewed the application and finds that it satisfies the eligibility requirements. It is recommended that the Members approve and authorize the Authority to issue a conditional approval letter to the Applicant, so they can move forward with executing a grant agreement after the conditions have been met with NJEDA for this project.

This applicant has demonstrated they have not secured their other funding needed for this project, so their award is contingent upon the Applicant meeting the following conditions within 6 months of the issuance date of an approval letter.

It is recommended that the members authorize the approval of this grant award and enter into a grant agreement after the awardee provides proof that their other funding sources have been secured by closing on their loan.

Total Estimated Eligible Project Costs: $ 2,062,719.00 and cannot be increased after approval in order to increase their grant award.

Recommended Award: The recommendation is to award $1,000,000.00 to support this project.

Tim Sullivan, CEO

Prepared by: Christina Fuentes

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: May 8, 2024

RE: Atlantic City Revitalization Grant Award – Authentic City Partners LLC

The Members are asked to approve:

1) A grant award of $3,498,067 to Authentic City Partners LLC under the Atlantic City Revitalization Grant Program.

Program Background

The Atlantic City Revitalization Grant Program was Board approved at the December 2023 meeting. This grant supports up to 50% of the project costs related to a capital project located in Atlantic City. The goal of this Program is to proactively address the negative economic impacts of the pandemic by investing in projects that demonstrate an ability to cultivate the environment and neighborhoods necessary to attract and retain a local workforce, enable business creation and tourism, enhance downtown vitality through small business support efforts, support clean and safe initiatives, address food insecurity issues, and buttress social impact supports for the community at large. Administered by the New Jersey Economic Development Authority ("Authority"), this Program will support real estate development, specifically capital projects (each, a "Project") in the form of grants to support rehabilitation or new construction, as well as other development costs associated with a maximum award of $10 million in grant funding to one Project. This will then meet the requirement of "Investing in Communities" by providing funding to activate underutilized properties for community focused investments and to activate projects that will catalyze new business sectors in NJ, support communities, and improve the business community within Atlantic City. This grant will improve investment in communities by working to activate underutilized, distressed, or vacant land for projects to promote equitable economic growth and community wealth building in Atlantic City.

Project Ownership

The property is owned by 151 S. NY AVE LLC, a real estate holding company that is owned wholly by Evan Sanchez and Zenith Shah. Authentic City Partners LLC, 50% owned by Evan Sanchez and 50% owned by Zenith Shah, is the applicant and awardee for the grant and manages this project.

Project Description

The grant proceeds will support a mixed-use project located at 151 S. New York Avenue in Atlantic City. This project will be addressing a negative impact from COVID through the community local impact considerations for the program of Downtown Vitality and Small Business Support as identified at the time of application and based off eligibility.

The proposed project will be located on New York Avenue in the heart of the Orange Loop neighborhood, which consists of St. James Place, New York Avenue, and Tennessee Avenue in Atlantic City. The applicants/owners are committed to redeveloping this area and have other businesses in this neighborhood. This project will be a ground up new construction 17-unit mixed-use building with a "vanilla box" restaurant & bar on the commercial floor and rooftop bar. This project will be approximately a total of 18,000 square feet across 6 floors including the rooftop bar. Of the 18,000 square feet, there will be 5,971 square feet designated to the commercial use. This includes a first-floor restaurant that will utilize the rooftop as a bar. This project will provide long-term residential rentals by focusing on smaller efficiency style apartments, providing the opportunity for a new, high-quality food & beverage establishment to launch in the Orange Loop. This will include 15 studio units, 1 one-bedroom unit, and 1 two-bedroom unit. The restaurant will be owned and operated by Zenith Shah and Evan Sanchez; the same owners of Authentic City Partners LLC and tied to the application. They will look to fully fit out the restaurant space on their own as it is not part of this application. Once they open, they will look to hire 5 full-time employees and 40 part-time employees.

This project, since it pairs housing with a restaurant, should attract more people to the downtown and the Orange Loop neighborhood. This will help support the nearby businesses that also have been impacted by COVID-19 and can revive the neighborhood by pulling in residents and offering a small business to support those residents. The project's design and concept was inspired by Asbury Park and other "beach towns" that have undergone a renaissance in recent years. Surrounding it are several new and/or gut/renovated mixed-use buildings developed by Authentic City Partners that have transformed the Orange Loop into Atlantic City's go-to the downtown district. One of those businesses, Hayday Coffee, Atlantic City's first independent coffee shop (owned by Authentic City Partners), would sit next door to this building, as well as another bar/restaurant owned by Authentic City Partners set to open in the coming months.

The total costs of the Project are estimated to be $6,996,134. The recommendation is to award a grant of $3,498,067 to support this project to be completed prior to 12/31/26. The applicant's request is in line with the program and is 50% of the project costs.

Project Uses

The Applicant proposes the following uses for the Project:

Uses	***Total Project Costs***	***Grant Award***
Hard Construction	$6,706,439	
Soft Construction	$0	
Contingency 5%	$289,695	
Development Fee	$0	
TOTAL USES	**$6,996,134**	**$3,498,067**

The applicant applied with project costs at $7,249,968.34 at time of application. However, that was reduced by the soft costs of $253, 834.34 as they have already been paid by the real estate holding company. This resulted in the reduction of project costs to $6,996,134 and reduced the grant award amount from the time of application.

Project Sources

Sources of Financing	***Amount***
Applicant to pursue a construction loan after approval	$3,498,067
Total	**$3,498,067**

Recommendation

Authority staff has reviewed the application and finds that it satisfies the eligibility requirements. It is recommended that the Members approve and authorize the Authority to issue a conditional approval letter to the Applicant, so they can move forward with executing a grant agreement after the conditions have been met with NJEDA for this project.

This applicant has demonstrated they have not secured other funding needed for this project, so this award is contingent upon the Applicant securing financing for the remaining 50% of the project within 6 months of the issuance date of an approval letter.

It is recommended that the members authorize the approval of this grant award and enter into a grant agreement after the awardee provides proof that their other funding sources have been secured by closing on their loan.

Total Estimated Eligible Project Costs: $6,996,134 and cannot be increased after approval in order to increase their grant award.

Recommended Award: The recommendation is to award $3,498,067 to support this project.

Tim Sullivan, CEO

Prepared by: Christina Fuentes

MEMORANDUM

To: Members of the Authority

From: Tim Sullivan
Chief Executive Officer

Date: May 8, 2024

RE: Amendment to Net Benefit Test Requirement for Film Studio Projects

Request

The Members are asked to approve a change to the Authority's approach to measuring the net positive economic benefits (NPEB) under the Authority's Aspire program for commercial projects with film production uses ("Film Studio projects"). This amendment recognizes that Film Studio projects may also participate in the Authority's film tax credit incentive program and resolves the issue of incentivizing the same economic activity twice. Developers with Film Studio projects receiving an Aspire award would have the net present value of their NPEB reduced by forty percent during award calculation or would agree not to pursue the Authority's film tax credit program during the Aspire eligibility period. This change will ensure that the State is not over enriching applicants that participate in the Aspire and film tax credit program. The Members are also asked to apply to all Film Studio projects the same methodology that was previously approved for Transformative Commercial projects. Finally, the members are requested to approve counting incremental taxes or Payments In-Lieu of Taxes during the construction period alongside the calculation for construction benefits.

Background – Aspire Rules and Previous Board Changes

Under the New Jersey Economic Recovery Act, P.L. 2020, c. 156 as amended, the Aspire program has procedures in place to ensure fiscal prudence in awarding tax credits to program applicants. The NPEB test is one of these measures (although not applied to residential projects or to certain other components of projects such as grocery stores and medical care facilities).

As they relate to measuring NPEBs, Aspire program rules specify that:

- The NPEB must be measured over the 10-year Aspire eligibility period (or, for a phased transformative project, for the period beginning with the first phase eligibility period and ending with the last phase eligibility period), plus benefits associated with project construction that commenced after submission of the application (19:31-23A.6(c) and (d))
- The award of Aspire tax credits must yield a NPEB to the State of at least 160% of the award or 125% if the project is:

1. A redevelopment project located in a government-restricted municipality;

2. A commercial project that contains 50,000 or more square feet of space devoted to an incubator and conferencing facilities that are predominantly focused on research or technology that are used or managed by one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than $50 million;

3. A commercial project that receives a Federal historic rehabilitation tax credit pursuant to section 47 of the Federal Internal Revenue Code of 1986, 26 U.S.C. § 47, or a tax credit pursuant to the Historic Property Reinvestment Act, N.J.S.A. 34:1B-270 through 34:1B-276;

4. A commercial project that is located on land owned by the Federal government on or before December 31, 2005; and

5. A redevelopment project that is undertaken by a major cultural institution, or undertaken by a developer in which the major cultural institution has an ownership interest, to renovate existing space or expand services into additional space, including but not limited to, new construction. (19:31-23A.6 (c))

- Average wages in the region where the redevelopment project is located, rather than project-specific wages, are used to calculate employment-related economic benefits (19:31-23A.6(d)).

Of note, although the program rules do not establish precisely how NPEB is calculated, the November 2021 and February 2023 Board memos provide some specificity about how EDA staff is to evaluate commercial Aspire project benefits, and establish an approach based on an unvarying measurement process and a transparent, replicable benefit-measurement approach.

Key elements of this methodology include:

- Use of the IMPLAN regional input-output modeling tool;
- Use of standardized employment densities for each proposed land use type to estimate total employment for standard Aspire projects;
- Use of project specific employment densities with sufficient supporting materials which would be then be reviewed and corroborated or adjusted by a third-party consultant to NJEDA for Transformative Commercial projects;
- Measurable project-related economic benefits to State agencies and bodies that are substantially supported through State appropriations if generated; and
- Inclusion of local tax benefits that generally serve to reduce State funding obligations.

The underlying motivation for this methodology is to ensure predictability and transparency in the marketplace about the way net positive economic benefit tests for commercial aspire projects will be measured.

<u>Motivation for Methodology Change for Film Studio Projects.</u>
Staff recognize that some applicants, may wish to use multiple Authority programs to make a project viable as well to support the economic activity at the project site. Existing program regulations and policies address certain of these situations to avoid duplicating benefits. For

example, an Aspire project that receives a State grant would see its eligible project cost basis reduced by an equal amount of the grant thereby reducing their Aspire award.

By contrast, rather than requiring the Authority to calculate economic benefits to the State for each film project receiving tax credits, the Legislature determined that the program as a whole would provide economic benefits for the State and local communities as well as certain intangible benefits, such as promotion of the State through the use of the placement of the "Filmed in New Jersey" or "Produced in New Jersey" statement in films. However, with an Aspire Film Studio, the Authority does not know in advance that the economic activity supported in an Aspire Film Studio project will not also be incentivized in the future by the film tax credit program. Currently, Aspire does not have a mechanism to reduce an Aspire award during the eligibility period due to other incentivized activity at the project site, and the introduction of such a mechanism would add too much uncertainty to the lenders and investors supporting the capital stack for a project. The existing statutory mechanism within Aspire to ensure projects are not overly enriched is the check on the reasonable and appropriate return on investment (or internal rate of return) completed in year seven of the eligibility period and again in year ten, which may lead to profit-sharing for the State, does not address other incented activity at the project site.

The lack of a project-specific net positive economic benefit test for the film tax credit program and the uncertainty as to whether film production done at the Aspire project site will be submitted for tax credits under the film tax credit program requires a methodology that makes assumptions about the use of film tax credits in relation to the economic activity included in the NPEB for Aspire Film Studio projects at the time of an Aspire Board approval. To that end, staff suggests a reduction in the calculated NPEB for the ten-year Aspire eligibility period of forty percent in anticipation that the activity on the site will receive additional film tax credit incentives. This reduction mirrors the deduction the Authority makes when an Aspire project receives a State grant and would only occur for the economic activity related to film production that would be eligible for the film tax credit. Staff recommends forty percent to reflect a conservative approach, from the State's point of view, because forty percent is the maximum amount of the film production tax credit for qualified film production expenses for film-lease partners and studio partners.

For example, a mixed-use project that contains 1,000,000 square feet of commercial space including 300,000 square feet of film production uses, 500,000 square feet of office and 200,000 square feet of retail would realize a forty percent reduction on the NPEB on the 300,000 square feet of film production use space and not on the office or retail.

In addition, Film Studio projects' economic activity is inherently transient and production based. A television series or movie will film for several months at a time with unknown space requirements until the project is ready to start but not need to lease space on a multi-year basis. It is easier for a studio to project potential production spend at a Film Studio facility than directly estimate the number of jobs at the Film Studio. Staff is also proposing that we apply a similar methodology used for Transformative Commercial projects by allowing Film Studio applications to supply projected annual production spend estimates and estimate full-time equivalent employment at the project site (that is, project-specific density) based on those numbers. These estimates would then be verified by the Authority's third-party consultants for reasonableness both in terms of the amount of production spend at a facility as well as for the number of full-time equivalent jobs that spend is expected to produce.

In order to protect taxpayer resources, Staff proposes including in Film Studio Aspire approvals that the applicant would have to certify to the production expenses at the facility annually beginning with the third year of the eligibility period, similar to the current occupancy requirement in N.J.A.C. 19:31-23A.10(c). If production expenses fall below sixty percent of the amount at Board approval, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating restoration of production expenses is approved by staff. If the Authority determines there are extenuating circumstances beyond the developer and any co-applicant's control (for example, a strike), the Authority may waive the 60 percent production expense requirement for the tax year.

Additionally, staff proposes including in all commercial Aspire approvals, a condition that allows the Authority to reduce the NBEP for a project if any incented activity other than the film projects receiving film tax credits, which is the subject of this memorandum, occurs at the project site, such as a digital media project applying for digital media tax credits.

Finally, to acknowledge that some projects may pay significant incremental taxes or PILOT during the construction period, staff proposes including those incremental taxes and PILOT when calculating benefits from construction. As with construction, such incremental taxes and PILOT will be included as a one-time benefit to the State at the beginning of the NPEB period.

Recommendation

Staff is recommending the members approve a modification to the Net Positive Economic Benefit (NPEB) measurement methodology that is tailored to, and recognizes, the challenges in accounting for future benefits in film production projects.

The modification amends the net positive economic benefit test for space dedicated to film and digital production as follows:

1. The applicant may submit an economic analysis of the projected production spend and expected full-time equivalent job densities for the project-specific Film Studio component of the project.
2. EDA staff shall validate and diligence the project-related specific estimates provided by applicants by using in-house resources or resources of outside, retained experts (e.g., economics consultants such as those currently retained for validation of project economics).
3. The net present value of the benefits generated by the full-time equivalent jobs at the Film Studio component of the project would be reduced by forty percent and then an award calculated as usual. Or, an applicant may agree to forego any future film tax credit incentives for themselves or any subsidiary or tenant at the site during the Aspire eligibility period.

4. If the NPEB is based on the applicant's production spend, the applicant must certify beginning on the third year of the eligibility period to annual production expenses at the facility to a level no less than 60% of the production expenses approved by the Board.
5. Include incremental taxes and PILOT alongside construction benefits.

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Tim Sullivan, CEO

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Netflix, Inc. – Studio Partner Designation

Request:

1. The members are requested to designate Netflix, Inc. ("Netflix") as a studio partner under the Garden State Film and Digital Media Jobs Act, P.L.2021, c.367 ("Act") and the recently promulgated rules related to the studio partner. Netflix Inc. has entered into a Purchase & Sale & Redevelopment Agreement (PSARA) with the Fort Monmouth Economic Revitalization Authority (FMERA) for the purchase of 292 acres and development over 1 million square feet of studio production and support space.
2. The members are requested to approve an initial six-month extension to the 36-month deadline required for studio partners to provide Temporary Certificate(s) of Occupancy for at least 250,000 square feet for the project facility.

This designation request is only for Netflix to be designated as a studio partner and is not a request for tax credits. If approved, only one of the three studio partner designations would remain available.

Program Background:

As originally created under the Garden State Film and Digital Media Jobs Act, P.L.2018, c.56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the current Film Tax Credit Program, applicants that are not submitting on the basis of a studio partner or film-lease partner facility designation are eligible for a tax credit equal to up to 35% of qualified film production expenses with an available diversity bonus worth an additional 2% to 4% for eligible applicants.

As amended by P.L.2023, c.97, the Film Tax Credit Program annual allocation was expanded to $400 million and provided the Authority with the authority to designate eligible film production companies as studio partners. Studio partner production companies must commit to occupying large studio developments in New Jersey which have the potential to have a significantly larger economic impact on the State and on local economies than a stand-alone film project. If so designated, studio partners have access to a separate $150 million annual allocation, and have a separate project approval queue. After each State Fiscal Year, the Authority may certify any unused portions of each allocation and carry forward the excess to be used in the next State Fiscal Year.

At the February 7, 2024 Board Meeting, in accordance with legislative authority, the Members approved filing the special adoption of new rules and amendments to existing rules that include, among other things, rules specific to studio partners. The special adoption was effective immediately upon filing on February 26, 2024, at the close of the Governor's Veto Period, and published in the April 1, 2024, New Jersey Register. The rule amendments were also concurrently proposed for public comment. The public comment period is currently open until May 31, 2024. Staff will return to the Board before final adoption if substantive comments are received or substantive amendments are needed.

<u>Studio Partner:</u>

An eligible studio partner is a production company who commits to occupy a New Jersey production facility of at least 250,000 square feet for a period of at least ten years. A studio partner has no annual qualified production expenses commitment. The Authority is limited to only three studio partner designations, and each designation lasts for 10 years.

Projects submitted by a studio partner are eligible for a 40 percent base tax credit and can capture additional, excess above-the-line wage and salary expenses as qualified film production expenses. This would allow a studio partner to increase its potential award size on each subsequent Film Tax Credit application submitted under the designation. Above-the-line wages and salary are payments made to highly paid individuals like directors, producers, writers, and performers. Unlike the legacy film projects where only the first $500,000 in wage and salary expense to each of these highly paid individuals can be included as a qualified film production expense, a designated studio partner may include excess above-the-line wages and salary over the $500,000 limit up to $18 million in excess above-the-line expenses for projects with $50 million or less in expenses or as high as $72 million in excess above-the-line expenses for projects with over $50 million in qualified expenses. Studio partners can also include any amount of deferred compensation paid out up to two years after the end of production as a qualified film production expenses under the program.

Once approved, the studio partners must execute an approval letter detailing the conditions that the studio partner must satisfy to retain the designation, which include obtaining a temporary certificate(s) of occupancy within 36 months from approval of the designation (with two possible six-month extensions). Subsequently, the studio partner must execute an award agreement with the conditions and requirements of the designation, such as maintaining a production facility of the minimum size (with exceptions for limited licensing or subleasing). If a studio partner is in default of its studio partner agreement, the Authority can revoke the production company's studio partner designation making it available to future applicants and shall recapture the excess benefit the studio partner received under the additional above-the-line wage and salary expense cap for each Film Tax Credit Program application approved under the studio designation.

Each subsequent Film Tax Credit Program applications submitted by a studio partner would be added to a separate studio partner project queue and any tax credit awards would draw down a separate studio partner allocation. The separate project queue and allocation pool would allow a studio partner project to continue to receive tax credits when the legacy allocation has been oversubscribed.

<u>Applicant Background:</u>

Founded in 1997, Netflix is a leading entertainment services company including subscription video on-demand and over-the-top streaming service for movies and television shows. Originally started as a mail order service for DVD rentals, in 2007, Netflix began offering streaming video content. In 2012, Netflix began creating original content and has become a leader in the content creation industry with productions like Stranger Things, Black Mirror, and original movies like Trial of the Chicago 7 and the Irishmen.

Project Description:

Netflix will be developing a 292-acre parcel, known as the "Mega-Parcel" purchased from FMERA and plans to build out production facilities and soundstages with a total square footage of 1.1 million square feet across two main phases of construction.

Netflix has identified 281,766 square feet of production use space for its Studio Partner facility. This portion of the project is part of the Phase 1(a) of the development located in Eatontown and parts of Oceanport. The designated facility area includes one 69,023 square foot twin soundstage building, two 49,485 square foot single soundstages, over 61,000 square feet of mill space, and over 100,000 square feet of office and support space renovating existing buildings on the campus.

On January 13, 2023, Netflix entered into a Purchase & Sale & Redevelopment Agreement (PSARA) with the Fort Monmouth Economic Revitalization Authority (FMERA) to purchase the site. Most recently, on February 21, 2024, the FMERA Board approved a third amendment to the PSARA as well as a Proposed Fort Monmouth Reuse and Redevelopment Plan Amendment for the site.

The overall project will be a state of the art and world class production studio campus including 12 soundstages for a total of 309,000 square feet. Netflix is committing to making sure the unique history of the Fort will be maintained and incorporated into the design of the facility as much as possible including maintaining open public spaces (Greely Field and Cowan Park), and reusing some of the existing structures. In addition to the Studio Partner portion of the project, there will be additional soundstages, backlot areas and additional mill space, office building, cafeteria space, production swim tanks, set building/staging areas, theater, hotel and retail space as well as parking structures.

Total project costs for the complex are estimated to be $947 million. Construction work is anticipated to commence on Phase 1(a) in June 2024, and the studio partner portion of the complex is expected to be completed by December 2027. The overall studio complex is expected to be completed in early 2028.

Program rules require a designated studio partner to provide temporary certificate(s) of occupancy for at least 250,000 square feet of the facility within 36 months of designation approval. The rules allow for two six-month extensions of this deadline. Due to the project's current construction timeline, Netflix is requesting the first of the two six-month extensions. Netflix could request one additional six-month extension at a future date.

Netflix has also submitted an application for the Aspire tax credit program on April 5, 2024. The application is to support its entire 292-acre studio development at Ft. Monmouth, which includes the Studio Partner Facility discussed in this memo. Netflix has been made aware of the proposed EDA policy for Aspire applications for development of studio production space, which is being presented to Board members at this same meeting, that would reduce the Net Positive Economic Benefit (NPEB) of the Aspire project based on the activity on site that would qualify for tax credits under the Film and Digital Media Tax Credit Program.

Recommendation:

1. Staff recommends that the Members designate Netflix as a Studio Partner. This approval is not an award of tax credits and is for the studio partner designation only.
2. Authority staff recommends the approval of the initial six-month extension to the 36-month requirement for studio partners to provide Temporary Certificate(s) if Occupancy for at least 250,000 square feet of space at the project facility.

The designation is contingent on the execution of an approval letter, Studio Partner Award Agreement and satisfaction of conditions of approval including the following:

1. Providing 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 within one year from Board approval of the designation;
2. Every six months following approval, the applicant will submit a progress report that will include, but not be limited to, updates on the construction of the facility, and estimated dates of project completion; and
3. Within 42 months of approval (36-month requirement, plus one, six-month extension), the applicant will submit the Temporary Certificate(s) of Occupancy for the project site, final floor plans indicating uses of each area, and evidence of final site control.

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Tim Sullivan, CEO

Prepared by: Matt Sestrich

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Togus Urban Renewal, LLC – Film-lease Partner Facility Designation

Request:

The members are requested to designate the studio development by Togus Urban Renewal, LLC (Togus URE) as a Film-lease Partner Facility under the Garden State Film and Digital Media Jobs Act, P.L.2023, c.97 ("Act") and the recently promulgated rules related to the film-lease partner facility designation. Togus URE has entered into a redevelopment agreement with the City of Bayonne to develop a 1.5 million square foot studio development on 74 acres in Bayonne.

This request is only for this development to be designated as a film-lease partner facility and is not a request for a tax credit. If approved, two of the three film-lease partner facility designations would remain.

Program Background:

As originally created under the Garden State Film and Digital Media Jobs Act, P.L.2018, c.56, the New Jersey Film and Digital Media Tax Credit Program provides a credit against the corporation business tax and the gross income tax for certain expenses incurred for the production of certain films and digital media content in New Jersey. Under the current Film Tax Credit Program, applications that are not submitting on the basis of a studio partner or film-lease partner facility designation are eligible for a tax credit equal to up to 35% of qualified film production expenses with an available diversity bonus worth an additional 2% to 4% for eligible applicants.

As amended by P.L.2023, c.97, the Film Tax Credit Program annual allocation was expanded to $400 million and provided the Authority with the authority to designate eligible film studio developments as film-lease partner facilities. The developers or operators of the designated facility must commit to occupying and operating the studio space for at least five years in New Jersey. These large developments have the potential for significantly larger economic impact on the State and on local economies than a stand-alone film or television project. Designated film-lease partner facility developers or operators would receive no direct benefits for the designation. However the future tenants of the facility could be eligible for increased film tax credit awards for using the space for their film projects.

At the February 7, 2024 Board Meeting, in accordance with legislative authority, the Members approved filing the special adoption of new rules and amendments to existing rules, that include, among other things, rules specific to film-lease partner facilities. The special adoption was effective immediately upon filing on February 26, 2024, at the close of the Governor's Veto Period, and published in the April 1, 2024, New Jersey Register. The rule amendments were also concurrently proposed for public comment. The public comment period is currently open until May 31, 2024. Staff will return to the Board before final adoption if substantive comments are received or substantive amendments are needed..

Film-lease Partner Facility:

An eligible film-lease partner facility applicant is the owner, developer or operator of film studio development that is at least 250,000 square feet and the applicant commits to occupying the facility for at least five years. The applicant must also accept the acquisition by the Authority, at the Authority's discretion, of an equity investment into the project 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 may require the applicant to redeem the investment if the applicant is not compliant with the Film Tax Credit Program. The equity agreement does not need to be in place prior to the approval of the designation, however, the equity agreement would need to be executed prior to the date on which production commences at the facility. The Authority is limited by statute to only three film-lease partner facility designations.

For a project to be eligible for this designation, the applicant must have site control for the location and have an adopted redevelopment plan, executed redevelopment agreement or preliminary site plan approval for the development. Additionally, the project would need to commit to being able to provide a temporary certificate of occupancy for the facility within 36 months from approval of the designation.

Once approved, the applicant must execute an approval letter detailing the conditions that must be satisfied to maintain the film-lease partner facility designation, which include providing a temporary certificate of occupancy within 36 months from approval of the designation (with two possible six-month extensions). Subsequently, the applicant must execute an award agreement with the conditions and requirements of the designation, such as maintaining a production facility of the minimum size and entering into an equity agreement with the Authority. If a film-lease partner facility is in default of its agreement, the Authority can revoke the designation making it available to future applicants and shall recapture the excess tax credit benefit that any production company received on behalf of the applicant's designation (as explained below).

The film-lease partner facility designation is not an award of tax credits and has no direct benefit to the applicant. Once designated, however, the future tenants of the facility, if eligible, would be able to receive increased tax credits for the projects they film at the designated facility. These projects would be submitted under the film-lease production company designation.

Film-lease Production Company:

A film-lease production company is a production company who has made the commitment to lease or otherwise occupy production space in a designated film-lease partner facility for the purposes of completing a film project. The project must shoot at least 50 percent of the total principal photography days of the film in New Jersey and shoot at least 50 percent of the New Jersey days at the designated film-lease partner facility.

Projects submitted by a film-lease production company are eligible for a 40 percent base tax credit and can capture additional above-the-line wage and salary expenses as qualified expenses. This would allow a film-lease production company to increase its potential award size. Above-the-line wages and salary are payments made to highly paid individuals like directors, producers, writers, and performers. Unlike the legacy film projects where only the first $500,000 in wage and salary expense to each of these highly paid individuals can be included as a qualified film production expense, a film-lease production company may include excess above-the-line wages and salary over the $500,000 limit up to $15 million for projects with $50 million or less in qualified expenses or as high as $60 million in excess above-the-line wages for projects with over $50 million in qualified expenses.

Applicant Background:

The applicant entity, Togus URE, owns fee title to the project property and will be the entity responsible for the construction and development costs of the project. Togus URE is the lead developer. Arpad Busson is the Chairman of Togus URE. Mr. Busson is a financier and philanthropist. Mr. Busson founded several asset-management companies as well as various software businesses. Mr. Busson is one of the lead investors in the project. The company has several employees that are responsible for the day-to-day operations of the project, including the VP of Business Development, Flynn Busson, and Jim White, the Sr. Vice President of Development.

Project Description:

On December 15, 2020 Togus URE purchased the 74-acre property in the City of Bayonne ("City"). The waterfront site is a former Texaco oil refinery located next to the Bayonne Bridge. On April 20, 2023, Togus URE entered into a Redevelopment Agreement with the City of Bayonne for the redevelopment of the site. The film studio complex will be branded 1888 Studios, after the year Thomas Edison invented the motion picture camera.

Turner Construction will be the construction manager for the project. The project will include 1.1 million square feet including 23 sound stages ranging from 18,500 square feet to 61,500 SF for a total of 504,840 square feet. Soundstages will range from 62- feet to 70-feet in overall heights. In addition to the soundstages there will be 352,000 square feet of production support spaces including offices and a cafeteria. The project also will have over 60,000 square feet of outdoor backlot space and over 147,000 square feet of mill, lighting and grip facilities.

The Bayonne Planning Board approved the preliminary and final site plans for the facility on March 30, 2022 and approved the memorializing resolution on May 10, 2022. Togus URE sought amended preliminary and final site plan approval, which was approved by the Bayonne Planning Board on January 10, 2023 and memorialized in the memorializing resolution on February 14, 2023.

Vertical construction is planned to commence in the fourth quarter of 2024. The site has already been raised more than 12 feet with clean fill. Togus URE plans for the studio complex to be operational by the end of 2026. Total estimated construction costs are currently $1.2 billion. There are currently no agreements in place for future studio tenants of the facility.

Togus URE has also submitted an application for the Aspire Program on November 9, 2023. Togus URE has been made aware of the proposed EDA policy for Aspire applications for development of studio production space, which is being presented to Board members at this same meeting, that would reduce the Net Positive Economic Benefit (NPEB) of the Aspire project based on the activity on site that would qualify for tax credits under the Film and Digital Media Tax Credit Program.

Recommendation:

Staff recommends that the Members designate the studio development by Togus URE as a film-lease partner facility. This approval is not an award of tax credits and is for the film-lease partner facility designation only.

The designation is contingent on the execution of an approval letter, Film-lease Partner Facility Award Agreement and satisfaction of conditions of approval including the following:

1. Providing executed financing commitments, if applicable;
2. Every six months following approval, the applicant will submit a progress report that will include, but not be limited to, updates on the construction of the facility, and estimated dates of project completion;
3. Within 36 months of approval, the applicant will submit the temporary Certificate of Occupancy for the project site, final floor plans indicating uses of each area, and evidence of final site control; and
4. At the Authority's discretion, enter into an equity agreement with the Authority prior to the designated facility being operational.

Tim Sullivan, CEO

Prepared by: Matt Sestrich

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Brownfields Redevelopment Incentive Program
Applicant: Ninety Nine Main Avenue, LLC
Name of Redevelopment Project: Ninety Nine Main Avenue Redevelopment
Address of the Project: 99 Main Avenue, Elmwood Park Borough, NJ 07407
PROD #: 00312778

Request

The members are requested to approve the issuance of tax credits from the Brownfields Redevelopment Incentive Program ("the Program") for the above referenced brownfield redevelopment project ("the Project") located in Elmwood Park, Bergen County. The tax credit award, which is subject to conditions to receive and maintain the award, is for a maximum amount of fifty percent of the actual total remediation cost, not to exceed $350,186.50.

Brownfields Redevelopment Incentive Program Background

The New Jersey Economic Recovery Act of 2020, N.J.S.A. 34:1B-279, et seq., provides that the Authority shall administer the Brownfields Redevelopment Incentive Program to encourage redevelopment projects located on brownfield sites through the provision of incentive awards to compensate developers for remediation costs.

The Program's statutes and the Authority's rules, N.J.A.C. 19:31-27, et seq., establish the Program eligibility requirements. Applicant developers must demonstrate (1) that the redevelopment Project is located on a brownfield site, (2) that without the incentive award, the redevelopment project is not economically feasible, (3) that a project financing gap exists after the developer has contributed an equity participation of at least 20 percent of the total development cost, (4) that the developer has not commenced remediation activities other than assessment and investigation activities (with very limited exceptions), (5) that the developer has submitted a letter of support from the governing body, (6) that the remediation costs are reasonable and appropriate, (7) that the developer is not responsible or liable for the discharge of the hazardous substance and is not liable for cleanup and removal costs pursuant to the NJ Spill Compensation and Control Act (aka "the Spill Act"), (8) that the redevelopment project has not received a reimbursement pursuant to sections 34 through 39 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-26 through 31) (aka the Brownfield Contaminated Site Remediation Act - Reimbursement Program) (9) the developer will comply with the Authority's prevailing wage requirements, and (10) Applicants do not need to own the brownfield site, but do need to have a path to site access to perform the remediation activities.

The Program provides a one-time tax credit certificate which is issued in the year remediation is certified complete. Projects located in a government restricted municipality and/or a qualified incentive tract are eligible to receive a tax credit award of up to $8,000,000.00 for 60% of remediation costs. Projects located elsewhere in the State are eligible to receive a tax credit award of up to $4,000,000.00 for 50% of remediation costs.

Eligible remediation costs include but are not limited to: soil and groundwater investigation, site remediation, hazardous materials assessment and survey, hazardous materials or waste disposal, infrastructure remedial activities (fences, warning signs, site control, and drainage control), building and structural issues for demolition, and removal of asbestos, polychlorinated biphenyls (PCB), contaminated wood, or paint. Tax credits awarded through this program may not be used for the acquisition of the brownfield property, financing of the property, legal fees, Authority fees, and/or penalty or violation fees.

Application Review Process

The Program is competitive, with applications due during a preestablished application window. For the current round (Round 1), the program began accepting applications on June 21, 2023. The application deadline was September 21, 2023.

The total requested funding for Round 1 was less than the $150,000,000 available for the current round. Therefore, applications can be reviewed and proceed to approval separately.

A scoring committee of Authority staff, which included at least one staff member with expertise in brownfields and at least one staff member with project management experience, was established to review and evaluate complete applications. Applications have to meet the minimum score requirement of 25 points out of a total of 100 points possible. The following five criteria are evaluated for the score:

- Environmental history of the Project site and impact of the contamination on the surrounding community (up to 23 points)
- The degree to which the redevelopment project enhances and promotes job creation and economic development (up to 10 points)
- Positive impact of the redevelopment project on the surrounding community, including diversity of the applicant's board of directors (up to 27 points)

- Economic feasibility of the project and project viability, including the experience and qualifications of the applicant (29 up to points)
- The extent to which the Project reduces environmental or public health stressors in an overburdened community and climate resiliency concerns (up to 11 points)

All of the applications that were received in Round 1 were provided to the scoring committee for review. Once individual score sheets from all selection committee members were received, the scores were averaged. This application received a score of 26, therefore surpassing the required minimum score of 25.

Project Description

The proposed Project, known as Ninety Nine Main Avenue Redevelopment, is located on a brownfield site at 99 Main Avenue, Elmwood Park, New Jersey, Bergen County. The site was used for manufacturing from 1955 to 2011. In 1955 the site was developed by an electronics manufacturer. In 1965 Stor Dynamics began operating at the site. Atlas Conveyer Company, which appears to have been a partner company of Stor Dynamics operated at the site until 1989. In 1990, Stor Dynamics declared bankruptcy. The site had been owned by Cynthia Bloom (died in 2003) and Milton Bloom (died in 1976). The site is currently owned by the estate of Cynthia Bloom.

In 1998, the New Jersey Department of Environmental Protection (NJDEP) filed a first priority lien against Stor Dynamics. In 2018, NJDEP amended the lien against Stor Dynamics Corp, the Estate of Milton Bloom, and the Estate of Cynthia Bloom in the amount of $2,158,309. In 2019, the Borough of Elmwood Park held a tax sale and Pasquale Maisano purchased the tax sale certificate for $275,000. In 2023, Pasquale Maisano assigned all of his rights to Ninety Nine Main Avenue, LLC. In 2023, Ninety Nine Main Avenue, LLC entered into an agreement with NJDEP to remediate the site and DEP agreed to accept $150,000, as full restitution of the lien, and a warrant of satisfaction was issued in July 2023.

Several areas of concern (AOCs) have been identified which include historic operations, possible underground storage tanks, drums, historic fill, and groundwater contamination. The Project includes additional investigation and remediation to a restricted use (which will likely entail an engineering control such as capping, and an institutional control with a deed notice).

Project Ownership

The Applicant is a single-purpose entity formed to remediate and redevelop the site. The Applicant is owned by Pasquale Maisano (50%) and Rosemarie Maisano (50%), and they are the managing members. Pasquale and Rosemarie Maisano have pledged personal capital as needed to fund the Program's equity requirement.

The Project site is in foreclosure and the Applicant owns the tax sale certificate. Upon entry of the Court's final judgment, title will transfer to the Applicant, which provides the Applicant with the Program's required path to site access.

Project Team and LSRP

The Applicant has a core project team with collective experience encompassing site development, infrastructure enhancement, and the revitalization of underutilized properties. The team's qualifications extend to areas such as project management, civil engineering, construction management, and regulatory compliance. The project team also has a well-established history of collaborating with environmental consultants and contractors on various projects. Their experience includes working closely with environmental consultants to ensure projects align with environmental regulations and best practices. This collaboration ensures that environmental impact assessments are thorough and that mitigation measures are effectively implemented. Example projects include:

- **Gabion Stone Baskets on Route 208 in Wyckoff:** utilized environmentally friendly construction methods and demonstrating expertise in erosion control and sustainable construction practices.
- **Paving Summit Avenue in Hackensack:** enhanced urban infrastructure.
- **Emergency Embankment RipRap Slope Restoration Project for Morris County:** executed an emergency embankment riprap slope restoration project, demonstrating reliability in time-sensitive situations.

The New Jersey Licensed Site Remediation Professional (LSRP) for this development is Eric Schlauch. Mr. Schlauch is a Senior Managing Principal at Peak Environmental, a Nova Group, GBC Company. Peak Environmental is part of a General Benefit Corporation (GBC), often referred to as a B-Corp. Peak's professionals are experienced in conducting environmental assessments, site investigations, remedial investigations, remedial selection assessments, feasibility studies, remedial design, and remedial actions in accordance with federal and state environmental laws and regulations. Example projects include:

- **The former Congoleum facility in Kearny**: developed and oversaw implementation of plan to remediate soil and groundwater impacts on a brownfield site.
- **The former Harrison Delivery Company in Harrison**: oversaw site remediation activities which included soil vapor extraction and free phase product recovery.
- **The former JC Johnson Oil Terminal in Clinton:** oversaw site remediation and of a former oil terminal for redevelopment into a retail lumber yard.

Project Details

The Project is comprised of environmental investigation and remediation activities, including but not limited to:

- Soil contamination delineation activities
- Vapor intrusion investigation and mitigation
- Monitoring well installation and groundwater sampling
- Groundwater remediation (in-situ chemical reduction)
- Receptor evaluation
- Soil excavation and disposal
- Capping and deed notice with the requisite financial assurance for inspection and maintenance

- Public notification of environmental work

The Applicant indicated that they are committed to achieving the environmental and sustainability standards established for this Program through careful sourcing and management of fill material. The Applicant states that they will actively work to reduce off-site disposal of fill material, thereby decreasing the burden on landfills and promoting responsible waste management of excavated materials by recycling on-site whenever possible. Moreover, the applicant indicated that they intend to minimize environmental impact and promote sustainability by using native vegetation and re-vegetating disturbed areas. These activities comply with NJEDA's Green Remediation Standards.

Although not required by the Program, the Applicant estimates that the Project will create 8 remediation jobs and 20 permanent jobs.

As required by the Program, the Applicant submitted a letter evidencing support for the Project from the governing municipality; this was Resolution R-134-24 from the Borough of Elmwood Park.

<u>Project Uses and Sources</u>

The Applicant proposes the following uses for the Project:

	Total Project Costs	**Eligible Remediation Costs**
New Jersey Department of Environmental Protection (NJDEP) Lien (requirement of Pre Purchase Administrative Consent Order)	150,000	0
Tax Lien for Purchase of Property	275,000	0
Legal Fees	69,315	0
Environmental Investigation and Remediation	810,157	700,323
Total	**$1,304,472**	**$700,323**

The eligible remediation costs ($700,323), which are inclusive of a 15% contingency fee, are the costs that are used to size the credit.

The Applicant proposes the following Sources for the Project:

Sources of Financing	Amount
Moss Adams LLP: Tax Credit Proceeds	315,168
Sources of Equity	
Pasquale & Rosemarie Maisano: Purchase Tax Sale Certificate	275,000
Pasquale & Rosemarie Maisano: Payoff NJDEP Lien	150,000
Pasquale & Rosemarie Maisano: Attorney Fees	69,315
Pasquale & Rosemarie Maisano: Remediation Investigation Costs	109,784
Pasquale & Rosemarie Maisano: Remediation Costs	385,205
Total	**$1,304,472**

<u>Developer Contributed Equity</u>

Under the Program rules, applicants are required to contribute no less than 20% of total cost of remediation, as defined in the Program rules. Based on the information provided and verified in our analysis, the Applicant will be funding $385,205 of the remediation costs which equates to 29.5% of the project, thus meeting the program's requirement.

The Applicant also contributed $275,000 to purchase the tax sale certificate, $150,000 to pay off a NJDEP lien, $69,315 in legal fees and $109,784 for remedial investigation fees.

<u>Award Calculation and Statutory Program Award Cap</u>

This Project is not in a government restricted municipality nor is it in a qualified incentive tract. The Applicant is therefore eligible for a Brownfield Redevelopment Incentive Program tax credit equal to the lesser of 50 percent of its remediation costs, or $4 million. The remediation costs are estimated to be $700,373. As such, the Project is eligible for a Brownfield Redevelopment Incentive Program tax credit not to exceed $350,186.50.

<u>Financing Gap Analysis</u>

NJEDA staff has reviewed the application to determine if there is a shortfall in the Project development economics pertaining to the return on the investment for the Applicant and its ability to attract the required investment for this Project. Staff analyzed the pro forma of the Project compared the returns with and without the Brownfield Redevelopment Incentive Program incentive.

IRR without BRIP tax credit	-3.42%
IRR with BRIP tax credit	0.51%

With the benefit of the Brownfield Redevelopment Incentive Program tax credit, the Project IRR is 0.51%, which is below the Hurdle Rate Model (Version October 2023) provided by EDA's contracted consultant Jones Lang LaSalle ("JLL") which indicates a maximum IRR of 23.56% for an industrial project located in Elmwood Park.

Brownfield Redevelopment Incentive Program Tax Credit Sale Price:

By statute, the Program requires that the sale or assignment of the tax credits can be no less than 85 percent of the transferred credit with the exception of certain projects utilizing Low-Income Housing Tax Credit which is 75%. The Applicant has provided documentation to the Authority that the consideration contemplated in the current financing structure is 90 percent of the transferred credit amount. Until the tax credits are sold, interim funding will be provided by Pasquale and Rosemarie Maisano. They provided a Valley National Bank statement confirming their liquidity to provide interim funding.

Other Statutory Criteria

Prevailing Wage Obligations:

Pursuant to N.J.A.C. 19:31- 27.14(a) and (b), affirmative action and construction prevailing wage applies for work performed at the redevelopment project site, which continues through completion of the redevelopment project or until two years after the tax credit is issued. Pursuant to N.J.A.C. 19:31-27.14(c), prevailing wage also applies to building services at the redevelopment project, which continues through 10 years following the completion of the redevelopment project. The Applicant has acknowledged that if it does not comply with prevailing wage, affirmative action, or other post-remediation Program requirements, the Authority may recapture some or all of the tax credits awarded.

Substantial Good Standing/Subcontractor and Contractor Requirements:

For the duration of the Project 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 Brownfield Redevelopment Incentive Program tax credits and 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.

Additional Requirements

The NJDEP has confirmed that the redevelopment project is located on a brownfield site, the remediation costs are reasonable and appropriate, and that the developer is not responsible or liable for the discharge of the hazardous substance and is not liable for cleanup and removal costs pursuant to the NJ Spill Compensation and Control Act (aka “the Spill Act”).

Staff has confirmed that the redevelopment project has not received a reimbursement pursuant to sections 34 through 39 at P.L. 1997, c. 278 (N.J.S.A. 58:10B-26 through 31, aka the Brownfield Contaminated Site Reimbursement Program).

The developer has certified that without the incentive award, the "Redevelopment Project" is not economically feasible, and has also certified that they have not commenced any remediation activities, other than assessment and investigations activities, at the redevelopment project site.

Availability of Program Resources

The Program funding is capped at $50,000,000 per year with the option to roll-over unused funds into a subsequent year. The first round of funding for the program ($50,000,000) became available on July 1, 2021, as part of the State's 2022 Fiscal Year. Available program funding, including recommended award covered in this memorandum, is as follows:

BRIP Program Funding			
	Funding Added	Funding Committed (including this project)	Remaining Balance
Funding Fiscal Year 2022	$ 50,000,000.00	$ -	$ 50,000,000.00
Funding Fiscal Year 2023	$ 50,000,000.00	$ -	$ 100,000,000.00
Funding Fiscal Year 2024	$ 50,000,000.00	$ 350,187.00	$ 149,649,813.00

At the time of this recommendation, there is $150,000,000 in unallocated tax credit resources available to Brownfield Redevelopment Incentive Program projects. Upon approval of this Project, $149,649,813.00 would remain.

Conditions of Approval

Issuance of the Brownfield Redevelopment Incentive Program tax credit is contingent upon the Applicant satisfying certain conditions within one year after approval of the application. These requirements include but are not limited to:

1. Submitting evidence of financing commitments for all funding sources for the Project consistent with the information provided by the Applicant to the Authority for the Brownfield Redevelopment Incentive Program tax credit
2. Submitting evidence of site control or access and, if applicable site plan approval for the Project.
3. Submitting Project Status Report(s) every 6 months beginning at Board approval
4. Submitting a Progress Report every six months starting at six months from Board approval
5. Submitting an annual report beginning on the date of the approval by the Board
6. Compliance with Green Remediation Standards, which includes submitting a Green Remediation Plan, the sooner of six (6) months following application approval (when the first project status report is due) or upon the applicant's request for a redevelopment

agreement.

7. Complying with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1), and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4)
8. Not violating any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13
9. Not commencing remediation prior to the execution of the Redevelopment Agreement unless it meets an exception contained in NJAC 19:31-27.9(b)

The Program rules require that the Project be completed, and the evidence required to obtain a certification of completion of remediation be provided to the Authority and NJDEP within six years from the time of Board approval of the application. The applicant has indicated that they intend to complete the onsite remediation activities 26 months after they enter into the redevelopment agreement with the Authority and will submit the required documents to NJDEP within the six-year timeframe.

Recommendation

Authority staff has reviewed the application for Ninety Nine Main Avenue, LLC and finds that it satisfies the eligibility requirements of the Program. It is recommended that the Members approve a tax credit award for a maximum amount of up to fifty percent of the actual total remediation cost, not to exceed $350,186.50. The tax credit award, which is subject to conditions to receive and maintain the award. Staff is authorized to reduce the award amount to match the actual certified cost of remediation.

Tim Sullivan, CEO

Attachment:
Confidential Memorandum of Analysis

MEMORANDUM

To: Members of the Authority

From: Timothy Sullivan, CEO

Date: May 8, 2024

Subject: 2023 Technology Business Tax Credit Certificate Transfer Program – Appeal – Thinkster Learning, Inc

Pursuant to the Program's enabling legislation, the New Jersey Economic Development Authority ("Authority" or "EDA") administers the annual Technology Business Tax Credit Certificate Transfer Program ("Program"), which is commonly referred to as the "Net Operating Loss" or "NOL" Program. Upon a determination that an application for this Program meets all established criteria for the award of financial assistance, the Authority shall approve the Application.

N.J.S.A. 52:18-52, mandates that a "State public body shall not award an economic development subsidy to a recipient business that previously received an economic development subsidy that was a loan or loan guarantee if the recipient business is in default on that previously awarded loan or loan guarantee."

There exists a cross-default provision in the Edison loan agreement, which mandates that a default on the loan also defaults any existing or future assistance from the Authority, thus rendering a company in loan default immediately in default on the NOL it seeks.

Under the program's Threshold Eligibility Requirement #7 – "Applicant must provide all applicable documentation to the NJEDA and any additional supplemental information as required by the NJEDA to confirm program eligibility."

I reviewed the attached Hearing Officer's report, along with the appeal of Thinkster Learning, Inc. ("the Company"), and I concur with the recommendation that the declination of its application be upheld as the Company is prohibited from receiving assistance under N.J.S.A. 52:18-52, the company would immediately be cross-defaulted upon execution of the NOL agreement, and its failure to otherwise confirm program eligibility.

Tim Sullivan, CEO

MEMORANDUM

To: Tim Sullivan, CEO

From: Marcus J. Saldutti, Esq., Hearing Officer
Monica R. Kostrzewa, Esq., Managing Director, Legal Affairs

Date: May 8, 2024

Subject: Hearing Officer's Recommendation, Thinkster Learning, Inc. – 2023 Technology Business Tax Certificate Transfer Program (NOL) Declination

Request:

Consent of the members to the Hearing Officer's recommendation, upholding the New Jersey Economic Development Authority Board's determination denying Thinkster Learning, Inc.'s ("Thinkster" or "Applicant") 2023 Technology Business Tax Certificate Transfer Program application.

Background:

Pursuant to the enabling legislation, the New Jersey Economic Development Authority ("Authority" or "EDA") administers the Technology Business Tax Certificate Transfer Program. As requested by the CEO, I am fulfilling the role of Hearing Officer to independently review this appeal and have completed that review in consultation with the Attorney General's Office.

Previous Action:

On September 12, 2023 the Authority's Board declined the June 30, 2023 Technology Business Tax Certificate Transfer Program ("NOL") application from Thinkster for four reasons. The first is due to the prohibition in N.J.S.A. 52:18-52, which mandates that a "State public body shall not award an economic development subsidy to a recipient business that previously received an economic development subsidy that was a loan or loan guarantee if the recipient business is in default on that previously awarded loan or loan guarantee."

The second reason rests on a cross-default provision in the Edison Innovation VC Growth Fund Convertible Loan Agreement ("Edison Loan"), which indicates a default on the loan also defaults any existing or future assistance from the Authority; thus rendering the company immediately in default on the NOL it seeks.

The third reason is failure to provide all applicable documentation to the NJEDA and any additional supplemental information as required by the NJEDA to confirm program eligibility. The declination letter specifies this as "a lack of evidence to show the applicant meets NOL threshold eligibility requirements."

Lastly, according to the declination, the applicant's CEO certified that Thinkster was not in default with any loan or loan guarantee administered by the State of New Jersey. This being in contravention of the Applicant's own later admission to being in default on the debt in question.

The declination further cites the portion of the application's Certification of Legal Questionnaire and Authorization to Release Information, which reads, in part "Failure to disclose relevant matters may render the Applicant ineligible for the financial benefits sought…" The omission of a disclosure of the default in the application, according to the declination, is serious enough to warrant ineligibility.

On September 29, 2023, Thinkster submitted a written appeal of the declination arguing, principally, that it was unaware of the default and that no notice of default was communicated to the company.

Record Assembled:

For purposes of this appeal, a record was assembled consisting of the following items and submissions:

12/08/2009 – Edison Innovation Fund Loan Restructuring Board Memo

06/30/2016 – Edison Innovation VC Growth Fund Convertible Loan Agreement

04/18/2018 – First Amendment to Secured Promissory Note

05/18/2018 – Second Modification of Convertible Loan Agreement

06/18/2019 – Internal memorandum related to loan repayment structure modification request for 2019

11/05/2020 – Internal memorandum related to loan repayment structure modification request for 2020

06/08/2021 – Internal memorandum related to loan repayment structure modification request for 2021 09/02/2022 – NOL Program Application Review Guide

06/28/2023 – CEO Certification

06/30/2023 – Thinkster NOL Application

07/20/2023 – Letter of Default from NJEDA to Thinkster

09/12/2023 – NJEDA NOL Board Memo

09/26/2023 – email from Thinkster to Joe Franco of EDA confirming wire receipt of payoff

09/28/2023 – Declination Letter

09/29/2023 – Thinkster Appeal

10/18/2023 – Response from Thinkster to Hearing Officer

10/18/2023 – Staff Response to Thinkster Appeal

10/19/2023 – Note from Staff on Staff Response to Thinkster Appeal

12/14/2023 – Transcript of Board Meeting

01/05/2024 – Internal Loan Audit Statement

CRM CMPX-0000924 page for Thinkster's Edison Innovation VC Growth Fund Loan summarizing discussions with borrower (created on 05/15/2023)

Statutory Authorities:

N.J.S.A. 52:18-52 - Conditions for award of subsidy - reads as follows "A State public body shall not award an economic development subsidy to a recipient business that previously received an economic development subsidy that was a loan or loan guarantee if the recipient business is in default on that previously awarded loan or loan guarantee."

N.J.S.A. 52:18-51 – Definitions relative to certain economic development subsidies – defines "economic development subsidy" as follows, 'means the provision of an amount of funds to a recipient business by or from a State public body with a value of greater than $25,000 for the purpose of stimulating economic development in New Jersey, including, but not limited to, any bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure. "Economic development subsidy" shall not mean any contract under which a State public body purchases or otherwise procures goods, services, or construction on an unsubsidized basis, including any contract solely for the construction or renovation of a facility owned by a State public body.'

Contractual Authorities:

2016 Edison Innovation VC Growth Fund Convertible Loan Agreement:

6) Covenants.

a) *Affirmative Covenants.* Borrower covenants and agrees to the following:

(i) *Punctual Payment*. Borrower will duly and punctually pay or cause to be paid when due the principal and interest on the Note and Borrower will duly and punctually pay or cause to be paid when due all other amounts provided for in this Agreement and the other Transaction Documents to which Borrower is a party, all in accordance with the terms of this Agreement and the other Transaction Documents.

8) Events of Default**.** Any one or more of the following shall constitute an Event of Default under this Agreement ("Event of Default"):

a) *Failure to Pay.* Borrower shall fail to pay (i) when due any principal or interest payment on the due date hereunder or (ii) any other payment required under the terms of this Agreement or any other Transaction Document on the date due and such payment shall not have been made; or

b) *Breaches of Covenants.* Borrower shall fail to observe or perform any other covenant, obligation, condition or agreement contained in this Agreement or the other Transaction Documents (except the obligations referred to in (a) above and (i) such failure shall continue for fifteen (15) days, or (ii) if such failure is not curable within such fifteen (15) day period, but is reasonably capable of cure within thirty (30) days, either (A) such failure shall continue for thirty (30) days or (B) Borrower shall not have commenced a cure in a manner reasonably satisfactory to Lender within the initial fifteen (15) day period; or

OMITTED

k) *Cross-Default.* It is specifically understood and agreed that this Loan is *cross-defaulted* with any existing assistance and any future assistance provided by the Authority and/or the State of New Jersey to the Borrower and/or any of its subsidiaries, including but not limited to, entities that may not be related to Borrower, but have common principals.

9) Rights of Lender Upon Default.

OMITTED

e) Lender shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to Borrower if an Event of Default shall occur hereunder.

Second Modification of Convertible Loan Agreement:

5. Paragraph 3(a) "Interest" of the Loan Agreement is deleted in its entirety and the following new language is substituted in its place:

> "a) Borrower shall pay interest on the Note at a fixed rate equal to the rate specified on the cover page hereof. No payments on this Note for the first eighteen (18) months with interest to be capitalized ("Capitalized Interest"). Thereafter, interest-only payments commencing on January 1, 2018 and ending on Maturity Date. Commencing in 2018, the Outstanding Principal Amount of this Note shall be due and payable annually on July 1 as follows: in 2018, in an amount equal to 2% of 2017 revenues; in 2019, in an amount equal to 3% of 2018 revenues; in 2020, in an amount equal to 4% of 2019 revenues; in 2021, in an amount equal to 5% of 2020 revenues; and in 2022, in an amount equal to 6% of 2021 revenues. Lastly on the Maturity Date, in an amount equal to the outstanding principal balance and unpaid interest thereon shall be immediately due and payable. Revenue percentage calculation shall be supported by annual certified public accountant prepared financial statements or tax returns or management prepared Financial Statements certified by an officer of the Borrower if financial statements are not completed yearly by May 30. "

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

Thinkster, under its prior name Prazas Learning Inc., entered into a five-year term Edison Loan agreement (PROD 00150356) in June 2016. In accordance with a subsequent 2018 loan restructure with the NJEDA due to the company's inability to pay under the original terms, the applicant's payment amounts were adjusted and the applicant was required to make annual lump sum performance-based payments through 2022, with a final balloon payment on July 1, 2023 for the remaining loan balance of approximately $600,000. Various loan repayment structure modification requests were approved in June 2018, June 2019, June 2020 and June 2021 related to payment of the corresponding year's lump sum payment.

In March 2016, the EDA Board approved the $800,000 Edison Loan to Thinkster (f/k/a Prazas Learning Inc or "Prazas"). The loan closed on June 30, 2016. Prazas satisfactorily met all disbursement milestones and the loan was fully disbursed in March 2017. On September 14, 2017, Prazas was approved for a six-month (July 2017 – December 2017) payment moratorium due to financial issues. Due to continued financial distress, on March 22, 2018, Prazas was approved for a two-year extension to the loan maturity date from 2021 to 2023 in conformity with the December 2009 Board approved restructuring plan for Edison Loans generally. Under the restructuring plan, in addition to making monthly interest payments (beginning January 2018), Prazas was required to make lump sum principal payments annually on July 1 until the maturity date based on a graduated percentage of gross revenue to coincide with the year of loan.

In 2018, Prazas requested a modification to pay the lump sum annual principal payment of $22,475.24 (2% of 2017 revenue of $1,123,762) due July 1, 2018 over three months. Prazas completed the payment of 2018 principal obligation between July – October 2018.

Based on the restructuring plan, the 2019 lump sum principal obligation due July 1, 2019 was $37,561.18 – which was 3% of 2018 revenue of $1,252,039. The Applicant requested a modification and was approved to pay the principal over nine monthly installments (of $4,173.46) from July 2019 to March 2020.

Based on the restructure plan, the lump sum principal obligation due on July 1, 2020 was $74,416.02 – which is 4% of 2019 revenue of $1,860,400.47. Prazas requested and received a principal payment moratorium until November 30, 2020 due to the Covid19 pandemic. The Applicant subsequently requested a modification and was approved to pay the principal over seven monthly installments (of $10,630.86) from December 2020 – June 2021.

Based on the restructure plan, the lump sum principal obligation due on July 1, 2021 was $156,462 – which is 5% of 2020 revenue of $3,129,437.17. In June 2021, Prazas requested a modification and was approved to pay the lump sum principal obligation over twelve monthly installments of $13,039.32 from July 1, 2021 to June 30, 2022.

Prazas failed to submit the required financials for 2021 (which were required to determine the 2022 lump sum principal payment amount), itself an event of default under the Edison Loan agreement, from which the lump sum principal payment of 6% of revenue would be due in July 2022. As such, Prazas neither made the July 1, 2022 payment, which would have been $240,030.87, based on an internal P&L submitted to EDA on April 26, 2023 nor did it seek a modification for this principal payment as it had done in previous years. The final 2023 balloon payment obligation was approximately $600,000. In sum, Prazas failed to provide its 2021 financial information needed to determine the amount of the 2022 lump sum payment, failed to make that payment and failed to make the balloon payment by the due date of July 1, 2023.

In its appeal Thinkster argues that it was unaware it was in default because there was no communication with EDA indicating default status and that direct debit payments on the loan had been uninterrupted and no late fees were charged. Similarly, Thinkster argues that, due to the above, the CEO certification of no default was executed in good faith.

According to EDA staff, in April 2023 and prior to submitting the NOL application, Thinkster reached out to EDA seeking an additional modification, because in addition to not paying the 2022 lump sum principal payment, it was unable to pay the upcoming July 2023 balloon payment. On June 15, 2023, EDA staff reached out to Thinkster to get a better understanding of their issues. Thinkster stated it did not have the cash to run both marketing and the company. Thinkster further informed it was trying to raise financial equity, but it did not have an exact plan in place to do so. The Applicant stated it could not pay off the remaining balance of the loan. Notwithstanding its admission that it would not be able to pay off the loan, Thinkster submitted its application for the NOL program on June 30, 2023.

Subsequent to Thinkster receiving the Authority's July 20, 2023 default notice, there was substantial back and forth with EDA staff regarding the loan default and the NOL application. This continued up until Thinkster made a full and final payment on September 26, 2023, which was more than two weeks after the EDA Board meeting formally declining the application, and nearly three months after the June 30, 2023 NOL application deadline.

Thinkster's arguments that it did not know or was not informed it was in default are unpersuasive and statutorily irrelevant. The Edison Loan agreement clearly states failure to pay is an event of default. There are no exceptions. In fact, the Edison Loan agreement specifically states that "Lender shall not be required to do any act whatsoever or exercise any diligence whatsoever to mitigate the damages to Borrower if an Event of Default shall occur hereunder."

Whether or how EDA decides to pursue remedies is equally irrelevant. Thinkster knowingly entered into the Edison Loan agreement and subsequent modifications due to its inability to pay under the original loan terms. Furthermore, Thinkster paid the performance-tied sums due in the preceding years prior to 2022. It cannot now claim absolution based on a lack of knowledge.

Additionally, included among its appeal submissions is a direct debit statement. With this submission the company stated the following:

> *"In addition, even as late as the May 2023 invoice, is there any mention of any 'past due' payments from us to NJEDA as you can see below. You will also not see any late fees for any 'default' on our end as well."*

This is correct; however, the statement also indicates a *current balance of $600,722.93 with a maturity date of July 1, 2023.* Even if Thinkster's knowledge argument was relevant and credible it cannot claim it did not know about the upcoming balloon payment or the prior missed lump sum payment. Further, it would not have been possible to put a past due amount for the 2022 lump sum payment on invoicing, due to Thinkster's failure to submit 2021 financials (an event of default in itself, as noted above). Thinkster's direct-debit arrangement was set up to automatically deduct the interest only monthly payments. The lump sum principal payment at the end of each year could not be automatically debited because those payments were based on financials that were required to be submitted and reviewed before an amount was calculated. It is simply not credible to believe that the company was unaware of this arrangement.

In sum, the law is clear. EDA is statutorily prohibited by N.J.S.A. 52:18-52 from awarding an economic development subsidy to a business that is in default of a previously awarded loan. Furthermore, the terms of the loan agreement are also clear; failure to pay is an event of default. There is neither any affirmative obligation on the lender to notify the borrower of the event of default nor is there any exception that would negate the event of default for failure to pay. As noted above, Thinkster was aware it owed the 2022 lump sum payment and the 2023 balloon payment and advised EDA staff that it would not be able to pay off the balance of the loan.

Additionally, the Edison Loan agreement also contains a cross default that makes a default on the Edison Loan also a default on any NOL program agreements; thus, Applicant would become immediately in default of the NOL as a result of its failure to pay the Edison Loan– regardless of knowledge or notice.

With regard to the third decline reason, there is nothing in the record or the Applicant's submissions indicating it is not in default and, therefore, program eligible. In fact, EDA did not receive full and final payment until September 26, 2023 – long after both the application deadline and EDA's Board action.

Finally, with regard to the last decline reason (ie. certification of no default), EDA's declination rested on language in the application that pertains to the answers to the disqualification and debarment questions therein. The declination letter reads as follows:

> *'The application states "Failure to disclose relevant matters may render the Applicant ineligible for the financial benefits sought."'*

This language is not of general applicability; it pertains exclusively to the legal questions. Thus, this cannot form the basis of a declination; however, there remains ample justification to sustain EDA's declination of the NOL credit for the reasons discussed above.

December 14, 2023 Board Meeting

The Hearing Officer's above recommendation to uphold Thinkser's declination was presented at the December 14, 2023 Board Meeting. Appellant Thinkster's founder and CEO, Rajesh Elayavalli addressed the Board and argued that Thinkster's repayments have been timely and consistent and that they have maintained a direct debit arrangement with NJEDA for years. He stated that the direct debit withdrawals were made by the NJEDA, and further asserted that the withdrawal amounts initiated by NJEDA were less than the amounts required in the agreement. Following a series of questions by Board members and a suggestion to investigate the matter further, the appeal decision was tabled. Since the December Board meeting, we have reviewed the loan servicing and all relevant modifications and approvals. We address appellant's comments generally in this recommendation and specifically below.

Following the 2018 restructure of Thinkster's Edison Loan, Thinkster's payment arrangement included scheduled interest only payments that they were direct debited and also an annual lump sum payment that was based on financial information Thinkster was to provide each year. Thinkster did not provide its 2021 financial information required to allow NJEDA to determine the 2022 lump sum payment amount (itself an event of default under the Edison Loan.) The lump sum payment is not paid via direct debit as it cannot be calculated without the financial information. In previous years, Thinkster applied for short term modifications to their Edison Loan agreement which allowed them to spread out the lump sum payment over the course of a number of months the following year. That adjustment was made for their 2018, 2019, 2020 and 2021 lump sum payments and therefore increased direct debit payment amounts accordingly to include the spread-out lump sum payment in addition to their regularly scheduled interest only payments. However, for the 2022 lump sum payment, they did not timely provide financial information to allow NJEDA to calculate the lump sum amount and did not request such a modification, and as such, the 2022 lump sum payment was due in July of 2022. For this reason, as they noted in their comments, the direct debited amount was lowered in July 2022 back to interest only payments, in accordance with their 2018 loan restructure since no modification agreement for the lump sum due was in effect at that time.

In April 2023 and prior to submitting their NOL application, Thinkster reached out to the NJEDA to seek an additional modification and extension, because the company stated it could not pay off the loan and could not pay the $240,030.87 due from 2022. Based on these representations of their financial situation, NJEDA could not provide that extension. Since they did not pay the 2022 lump sum payment, they were in default. Based on the history of the loan and modification agreements, it is simply not credible that the company was unaware of its default.

In sum, Thinkster should have made a lump sum principal payment equal to 6% of FY2021 revenues due July 1, 2022, which was not paid, and any remining principal balance on July 1, 2023, which was not paid. In addition, EDA never received the financials required to determine the amount of the 2022 lump sum payment and Thinkster never reached out to NJEDA to request a modification which would have allowed them to split the lump sum payment into installments. Thinkster did reach out in April of 2023, in advance of the final balloon maturity due July 1, 2023. From the outset of those conversations, Thinkster represented that they would not be able to pay the June 2022 lump sum payment or the balloon maturity, which prompted NJEDA to transfer the account to internal processing for default. Thinkster knew it was in default and had been in default since at least July 1, 2022.

Conclusion:

In considering the assembled record, applicable statutes and regulations, and based upon the above analysis, I have concluded that the New Jersey Economic Development Authority Board has demonstrated a sufficient basis for their decision to deny Thinkster, Inc's 2023 Technology Business Tax Certificate Transfer Program application.

Recommendation:

As a result of careful consideration of the above appeal, I am recommending that the Board uphold the New Jersey Economic Development Authority's decision denying the application of Thinkster, Inc. to participate in the 2023 Technology Business Tax Certificate Transfer Program.

Marcus J. Saldutti
Marcus J. Saldutti, Esq.
Hearing Officer

Monica R. Kostrzewa
Monica R. Kostrzewa, Esq.
Managing Director, Legal Affairs

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

Date: May 8, 2024

Subject: Health & Agriculture Buildings Demolition Project ("Demolition Project") - Amend the Demolition Project Budget and Reallocate a Portion of the Proceeds of the NJEDA State Lease Revenue Bonds (State Government Buildings – Health Department and Taxation Division Office Project), 2018 Series A (Tax-Exempt) ("2018 Series A Bonds ") to the Demolition Project
Product No. 00224572

Summary

The Members are asked to approve the increase in the Demolition Project budget and the reallocation of a portion of the 2018 Series A Bond Proceeds Account in the amount of up to $9,324,174 to pay for the for the completion of the demolition and temporary parking improvements on the former Health and Agriculture Building site as outlined in this memo.

Background

1. *Project Financing and Budget*
   a. *Financing*

In 2017 the Members approved the Health and Taxation Building and Demolition Project budgets and the issuance of the 2018 Series Bonds, consisting of three (3) series which were issued in the following amounts:

- 2018 Series A Bonds – tax-exempt ($196,280,000), to fund the construction of the Health and Taxation buildings.

- 2018 Series B Bonds – taxable ($19,075,000 in the aggregate), to fund, among other things, the demolition of the Health and Agriculture buildings and the development of a temporary parking lot on the former Health and Agriculture ($10.4 million) buildings site ("Demolition Project"), and two capital replacement reserves escrows ($6.3 million) for newly constructed Health and Taxation buildings. The remaining proceeds were used to fund a portion of the costs of the development of detention facilities to be constructed by DPMC on behalf of the Juvenile Justice Commission.

- 2018 Series C Bonds – tax-exempt ($160,325,000) for the development of detention facilities to be constructed by DPMC on behalf of the Juvenile Justice Commission.

Treasury, through the Department of Property Management and Construction, controls the 2018 Series C Bond funds.

The Authority issued the 2018 Series Bonds in January 2018. NJEDA is authorized to requisition the bond trustee to release a portion of the proceeds from the 2018 Series A Bond Proceeds Account for the construction of the Health and Taxation Buildings and a portion of the proceeds from the 2018 Series B Bond Proceeds Account for the Demolition Project. The Health and Taxation buildings are substantially complete (with a certificate of occupancy) and approximately $10.412 million was available in the 2018 Series A Bond Proceeds Account.

b. Project Budget

When issued, the 2018 Series B Bonds budget included approximately $10.412 million for the demolition of the former Health and Agriculture buildings and related site improvements ("Project"). In June 2023, due mainly to the disposal and replacement of the contaminated crushed recycled aggregate ("RCA"), the Members approved a reallocation of the $8.54 million of 2018 A Series Bonds funds to the 2018 B Series Bonds, and to increase the Project budget to approximately $18.953 million as follows: adding $4.03 million towards the Demolition Project and $4.51 million to pay for potential legal claims and costs related to the Project.

2. The Montrose Environmental Solutions, Inc. ("Montrose") Contract

Because the construction manager, Turner Construction ("CM"), did not have the required A901 license to transport and dispose of the contaminated RCA, Montrose, as the licensed site remediation professional ("LSRP"), was designated to administer the trucking and disposal subcontractors as permitted under NJDEP rules.

To date, staff has issued approximately $4.221 million in tasks order requests ("TOR's) to Montrose for the testing, remediation, trucking and disposal of the contaminated RCA.

3. Removal of the Placed Recycled Concrete Aggregate

On March 18, 2024, trucking and disposal operations of the RCA commenced. The material is being disposed of as "Solid Waste" at the Republic Services Conestoga Landfill ("Conestoga") in Morgantown, PA.

4. Requests for Additional Funding

In June 2023, the Board approved an increase in the amount of $4.03 million towards the completion of the Demolition Project. At that time, the following assumptions were made by the Real Estate Staff, Montrose and the CM:

- The RCA would be disposed of under the CM's contract at the Waste Management Fairless Hills Landfill ("WM")
- 6,500 tons would be disposed of as PCB contaminated concrete
- 11,500 tons of RCA would be disposed of as Alternate Daily Cover at a reduced rate

However, in December 2023, WM declined to accept the material because the United States Environmental Protection Agency ("EPA") Region 2 declined to approve the requested self-implementation clean-up plan.

On October 19, 2023, the EPA completed a review of NJEDA's self-implementation clean-up plan and determined that it could not process or approve the application because the number of concrete samples collected pre-demolition, to characterize building material for the assessment of PCB contamination, was inadequate. Because the building was demolished and the concrete crushed, further sampling of pre-demolition building material was no longer possible to meet the site characterization requirement under 40 CFR 761.61 (a)(2). Since the EPA was no longer able to process the self-implementation clean-up plan for approval, EPA deferred to guidance by our LSRP in accordance NJDEP applicable regulations for the RCA removal.

On February 14, 2024, Montrose identified a new facility, Conestoga, that was willing accept the contaminated RCA. However, Conestoga does not accept Alternate Daily Cover and re-classified all the material to solid waste. The solid waste rate is higher than the Alternate Daily Cover rate that would have been charged by WM ($135/ton versus $180/ton for the 11,500 tons).

In addition, using Conestoga as the RCA recipient increased transportation costs (68 miles versus 5 miles one way from the former Health and Agriculture site). Finally, additional testing and professional services were needed to manage the disposal operation under the supervision of Montrose as LSRP.

Attached as Exhibit A is the revised budget to complete the demolition, remediation, and installation of the temporary parking lot, increasing the Demolition Project budget to $28,276,774 from $18,952,600. The exhibit includes a comparison to the approved June 2023 budget. The following summarizes the need for the additional funds:

- Disposing the RCA at a facility which is further away with greater disposal fees because the materials were not accepted at local facilities
- Removing more RCA than previously estimated
- Creating an allowance to address the contingency of removing all the RCA if required, and any impacted soils on which the RCA rested
- Increasing costs to complete the temporary parking lot improvements because of the passage of time and the replacement or repair of utilities that were damaged during the RCA removal operations

The total estimated additional funds needed to complete the Demolition Project is $9,324,174. Any unspent funds will remain in the 2018 Series B Bond Proceeds Account for the Treasury to use in a manner consistent with the June 2023 board approval and this request.

For the reasons outlined above, Staff request that $9,324,174 be reallocated to complete the Project.

Recommendation
Staff recommends the Members approve:

- The reallocation of 2018 A Series Bonds funds in the amount up to $9,324,174 to the 2018 B Series Bond Proceeds to be designated to pay for the completion of the demolition and parking improvements on the former Health and Agriculture Building site.

- An increase to the Demolition Project budget in the amount up to $9,324,174 to pay for and costs as outlined in this memo, increasing the total Demolition Project budget to $28,276,774.

As previously noted in the June 2023 board memo, any unused 2018 Series A Bond proceeds following redesignation and completion of the Demolition Project will be available to be used consistent with preserving the 2018 Series A Bonds tax-exempt status.

Tim Sullivan, CEO

Prepared by: Diana Butcavage
Att.: Exhibit A

Exhibit A: Health and Agriculture Demolition Project

Uses of Funds	12/12/2017 Approved Budget to Date	6/14/2023 Budget Additions	5/8/2024 Budget Additions	5/8/2024 Total Revised Budget
Improvements (Demolition & Replacement Lot)				
Demo Engineering	$798,800	$0	$0	$798,800
Building Environmental Remediation and Demolition	$8,589,773	$0	$0	$8,589,773
Permits	$37,495	$0	$0	$37,495
RCA Remediation	$0	$3,107,000	$9,579,579	$12,686,579
Project Completion	$986,532	$467,000	$627,534	$2,081,066
Contingency (15%)	$0	$456,000	$1,531,067	$1,987,067
Retainage Due to GC	$0	$0	$595,994	$595,994
Subtotal Improvements (Demolition & Replacement Lot)	**$10,412,600**	**$4,030,000**	**$12,334,174**	**$26,776,774**
Potential Legal Claims				
Potentional Subcontractor Claims	$0	$3,100,000	($3,100,000)	$0
Legal and Related Fees	$0	$1,000,000	$500,000	$1,500,000
Contingency (10%)	$0	$410,000	($410,000)	$0
Subtotal Potential Legal Claims	**$0**	**$4,510,000**	**($3,010,000)**	**$1,500,000**

Summary of Uses of Funds	Approved Budget to Date	Budget Additions	Budget Additions	Total Revised Budget
Uses				
Improvements (Demolition & Replacement Lot)	$10,412,600	$4,030,000	$12,334,174	$26,776,774
Potential Legal Claims	$0	$4,510,000	($3,010,000)	$1,500,000
Total Summary of Uses of Funds	**$10,412,600**	**$8,540,000**	**$9,324,174**	**$28,276,774**

Summary of Sources	Approved Budget to Date	Budget Additions	Budget Additions	Total Revised Budget
Sources of Funds				
Bonds - 2018 Series A - Amount to Finish the Demolition Project	$0	$4,030,000	$12,334,174	$16,364,174
Bonds - 2018 Series A - Reserve for Legal Claims and Related Fees	$0	$4,510,000	($3,010,000)	$1,500,000
Bonds - 2018 Series B - Accrued to Date	$9,426,068	$0	$0	$9,426,068
Bonds - 2018 Series B - Remaining Balance of Tricon Unperformed Work	$986,532	$0	$0	$986,532
Total Sources of Funds	**$10,412,600**	**$8,540,000**	**$9,324,174**	**$28,276,774**

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Fund Increase to the Environmental Pooled Consulting Services As Needed Basis

Request

I request the Members of the Board increase the environmental pooled consulting services total funding amount permitted through the Task Order Request (TOR) process by $7,772,096 totaling $13,818,672 for the environmental pool. The additional requested funds shall only be used to increase the Montrose Environmental ("Montrose") contract to complete the Health and Agriculture Demolition Project ("Project"). The additional work that will be performed by Montrose will be paid through 2018 State Government Building bond funding for the development and construction of the completed Health and Taxation buildings.

Background

A. Prior Board Actions

1. Award

In September 2021, the Board approved an environmental services pool up to $400,000, which resulted in task order contract awards to 5 firms. Pursuant to the RFP issued by the Procurement Division, firms were sought to (1) perform environmental site assessments of properties for the presence of above ground storage tanks or underground storage tanks and soil and/or groundwater contamination in compliance with current American Society for Testing and Materials standards or as otherwise directed by EDA; (2) prepare a program for site remediation and oversee the remediation process, including, without limitation, interfacing with the New Jersey Department of Environmental Protection in all aspects of the remediation from submission of a remedial action work-plan, overseeing EDA's remediation contractor, and obtaining a letter of "no further action" or other appropriate closure of the matter; and (3) provide general consultation on environmental matters, as requested by EDA. The initial contract term is for three years, with two one-year extension options, at the Authority's sole option. Contracts for the firms were executed as of November 15, 2021, with the initial term expiring November 14, 2024.

2. Prior Increase to the Montrose Contract

At the December 2023 meeting, the Board approved increasing the amount available to the environmental pool to $6,046,576, which included adding up to $4.5 million to the Montrose contract, the licensed site remediation professional working on Project. These funds were added to the Montrose contract to remove, test and dispose contaminated excess recycled concrete aggregate ("RCA"). The remaining $1,146,576 may be allocated to environmental tasks within the EDA as they arise using the established TOR process.

B. Current Request to Increase the Montrose Contract

Staff anticipates that additional funds will be required to complete the removal of the placed RCA and finish the temporary parking lot. The additional costs include, but are not limited to the following:

- Disposing the RCA at a facility which is further away and has higher disposal fees because the materials were not accepted at local facilities
- Removing more RCA than previously estimated
- Creating an allowance to address the contingency of removing all the RCA if required, and any impacted soils that on which the RCA rested

Staff recommends increasing the Montrose contract, which is within the environmental pool, by $7,772,096. The total available in the pool will increase to $13,818,672, but only the Montrose contract may use the additional $7,772,096. The additional funds will be used to complete the Project as noted in Section B above.

The additional work that will be performed by Montrose will be paid from the additional 2018 State Government Building bond funding, Series A Bond Proceeds, which the Board approved in executive session for completion of the Project in June 2023, as well as the current funding request in May 2024.

Recommendation

I recommend the Board approve increasing the environmental consulting services contracts pool by $7,772,096 (new pool total $13,818,672), to be used for the work of the Montrose contract, for the remaining term of the contracts, with all extensions.

____

Tim Sullivan, CEO

Prepared by: Diana Butcavage and Juan Burgos

NJEDA

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Community Development Products
Delegated Authority Approvals, Declinations, and Other Actions Q1 2024
For Informational Purposes Only

Main Street Micro Business Loan

The Main Street Micro Business Loan provides financing of up to $50,000 to eligible micro businesses in New Jersey with ten or fewer full-time employees and no greater than $1.5 million in annual revenues. The Program is the successor to the Micro Business Loan Program established by the NJEDA in 2019. The Main Street Micro Business Loan is funded through the Main Street Recovery Fund—a $100 million suite of programs created or expanded under the Economic Recovery Act of 2020 (ERA). The Main Street Micro Business Loan covers future operating expenses such as inventory, equipment (that does not require installation or construction work totaling more than $1,999.99) and working capital to fund business operating expenses. The loan has a standard 10-year term and an interest rate of 2 percent, with no interest and no payments due for the first year. $8 million has been set aside to support eligible businesses and nonprofits with a primary business location within Opportunity Zone eligible census tracts.

Main Street Micro Business Loan – Q1 2024 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 first quarter, 1465 applications have been approved, for a total of $69.5 million These 1,465 micro businesses are located throughout all 21 counties, with 26% of loan recipients located in eligible Opportunity Zones. Through the end of the first quarter of 2024, 142 applications were declined, and 387 applications were withdrawn.

Declinations and appeals – 142 applicants were declined for non-discretionary reasons, and all had the right to appeal. 48 filled for an appeal and 8 appeals resulted in an overturned declination. 6 appeals remain to be reviewed.

See NJEDA's Public Information site for a detailed list of all Main Street Micro Business Loan applications that were approved under delegated authority through the first quarter of 2024.

Small Business Improvement Grant

The Small Business Improvement Grant is the second of several products under the Main Street Recovery Program, designed to help small businesses become more resilient and position themselves for growth. Funded with $15 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. Businesses and nonprofits that receive grants through these programs are required to agree to pay employees going forward for the four-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. Applicants must also commit to remaining in the facility and meeting wage requirements for up to four years following the execution of the grant agreement and depending upon award amount. Awards greater than $25,000 have a compliance period of four years and grant awards less than $25,000 have a compliance period of two years. The maximum grant award is $50,000 per business entity for the life of this program. Of the $15 million allocated for the program, 40 percent is reserved for businesses located in Opportunity Zone eligible census tracts.

Small Business Improvement Grant – Q1 2024 Rev

The online application opened in February 2022 and will continue to accept applications until funding is exhausted. Through the end of Q1, a total of 4,744 applications have been received requesting a total of $107.5 million.

Of those applications received 86% have been fully processed resulting in 1,862 approved applications totaling $45 million. 34% of grant recipients are located in eligible Opportunity Zones. Through the end of the first quarter, 336 applications were declined, and 1902 applications were withdrawn.

Declinations and appeals – 336 applicants were declined for non-discretionary reasons, and all had the right to appeal. 62 filled for an appeal and 8 appeals resulted in an overturned declination. As applications are still being accepted, the appeal process is ongoing.

See NJEDA's Public Information site for a detailed list of all Small Business Improvement Grant applications that were approved under delegated authority through the first quarter of 2024.

Small Business Lease Grant

The Small Business Lease Grant supports 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 – Q1 2024 Rev

The online application opened in October 2021 and will continue to accept applications until funding is exhausted. Through the end of Q1, a total of 2,453 applications have been received requesting a total of $54.4 million.

Of those applications received 93% have been fully processed resulting in 510 approved applications totaling $12.7 million   34% of grant recipients are located in eligible Opportunity Zones. Through the end of the fourth quarter, 1434 applications were declined, and 326 applications were withdrawn.

Declinations and appeals - 1434 applicants were declined for non-discretionary reasons, and all had the right to appeal. 326 filled for an appeal and appeal resulted in 30 overturned declinations. As applications are still being accepted, the appeal process is ongoing.

See NJEDA's Public Information site for a detailed list of all Small Business Lease Grant applications that were approved under delegated authority through the first quarter of 2024.

Small Business E-Commerce Support Program

The Small Business E-Commerce Support Program is a $1 million pilot program funded by the Main Street Recovery Finance Program. The program offers up to $11,400 in consulting services to eligible restaurants, retailers, and personal care businesses to assist with the development of websites, e-commerce platforms, and digital marketing plans. 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. Business type will be verified by NAICS Code, location will be verified via Google maps search results, business registration and good standing will be confirmed by required submission of a NJ Division of Taxation current tax clearance certificate and small business status will be verified using the SBA Table of Small Business Size Standards. 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 – Q1 2024 Review

The online application opened in March 2023 and will continue to accept applications until funding is exhausted. Through the end of Q1, 238 applications were approved for the E-Commerce Support Program, for a total of $1.9 million.

See NJEDA's Public Information website for a detailed list of all Small Business E-Commerce Support applications that were approved under delegated authority through the first quarter of 2024.

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, offers eligible lenders grants of up to $1.5 million each, with up to $500,000 reserved for technical assistance needs. Entities approved for the grant will provide flexible and low-cost financing through working capital term loans to qualified micro businesses, as well as technical assistance to help micro businesses access capital. Grants are awarded to eligible Community Development Financial Institutions (CDFIs), Minority Depository Institutions (MDIs), and other entities that demonstrate at least 10 years of experience lending to small and micro businesses.

Main Street Lenders Grant – Q1 2024 Rev

The online application opened in July 2022 and will continue to accept applications until funding is exhausted. Through the end of the first quarter, no additional applications were approved. To date, the program has approved over $11 million to eight lenders.

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 – Q1 2024 Review

Five applications were approved during the first quarter of 2024 totaling $250,000.

ENTITY	GRANT AMOUNT
The Urban Educational Project, 501c3	$ 50,000.00
Borough of Bradley Beach	$ 50,000.00
Clinton Hill Community Action A New Jersey Non-Profit Corporation	$ 50,000.00
Greater Trenton, Inc.	$ 50,000.00
Atlantic Cape Community College	$ 50,000.00
TOTAL	**$ 250,000.00**

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 track, 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 – Q1 2024 Review

There were no approvals made pursuant to delegated authority for the Brownfields Impact Fund in the 1st quarter of 2024.

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 Cannabis Equity Grant Program is aimed at assisting start-ups by providing businesses with grant funding for early-stage start-up expenses and operational costs. There is up to $20 million in state funding available for applicants. $8 million of that state funding will be allocated to the Seed Equity Grant Program. The Seed Equity Grant provides eligible businesses with a grant of $150,000.

Seed Equity Grant Program – Q1 2024 Review

See Appendix A for a detailed list of all Seed Equity Grant applications that were approved under delegated authority during the first quarter of 2024.

<u>SSBCI- Recovery Loan Loss Reserve</u>

The Recovery Loan Loss Reserve Fund provides Community Development Financial Institutions(CDFIs) and Minority Depository Institutions (MDIs) the ability to provide working capital loans by leveraging their own non-federal resources using a one-to-one match. CDFIs/MDIs must register eligible loans with NJEDA within 90 days after the loan closing to receive the loan guarantee of up to 50%. The loan guarantee will remain throughout the term of the loan in case of a future default allowing the CDFI/MDI to take on more risk and exposure and do more lending. Each CDFI/MDI awardee is responsible for SSBCI reporting and compliance and only loans that meet the terms of the NJEDA Master Guarantee Agreement are eligible under this guarantee.

This product allows these entities to opt in for an allocation up to $2.5 million per entity at time of application. Eligible CDFIs and MDIs have a performance period to ensure the program is being utilized which may allow for an increase to their allocation.

Recovery Loan Loss Reserve – Q1 2024 Review
There were no approvals made pursuant to delegated authority for the SSBCI Recovery Loan Loss Reserve product in the 1st quarter of 2024.

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Tim Sullivan, CEO

Attachment:

APPENDIX A: SEED Equity Grantees Q1 2024

APPENDIX A: SEED Equity Grantees Q1 2024

ENTITY	GRANT AMOUNT
Salt Air Botanical LLC	$ 150,000.00
Twisted Hat Cannabis, LLC	$ 150,000.00
Stockbox LLC	$ 150,000.00
BELEAF NJ	$ 150,000.00
CannaLife LLC	$ 150,000.00
Deo's Garden LLC	$ 150,000.00
Herbarium Dispensary LLC	$ 150,000.00
Royal Roll L.L.C	$ 150,000.00
Nirvana Dispensaries LLC	$ 150,000.00
VICTORIOUS GARDENS LLC	$ 150,000.00
Jerzey Grown LLC	$ 150,000.00
Topless Pre Rolls LLC	$ 150,000.00
Glue Lagoon Farms	$ 150,000.00
Legacy Leaf	$ 150,000.00
The Number Spot Inc	$ 150,000.00
Shaman's Cure LLC	$ 150,000.00
Lifted jersey llc	$ 150,000.00
Natures Motivation, LLC	$ 150,000.00
Sweet Dreams Dispensary	$ 150,000.00
Hazey Gardens LLC	$ 150,000.00
Green Sky Cannabis Dispensary LLC	$ 150,000.00
High Key 201 LLC	$ 150,000.00
Tiaplanta LLC	$ 150,000.00
Suufi Cannabis Inc.	$ 150,000.00
Ele,Vat Atlantic City Ltd	$ 150,000.00
Prolific Growhouse LLC	$ 150,000.00
Cannabis PLus LLC	$ 150,000.00
Juniper Lane NJ Corp	$ 150,000.00
Sea Grass NJ LLC	$ 150,000.00
The Highed Out	$ 150,000.00
Herb Haus, LLC	$ 150,000.00
Sky High Buddha LLC	$ 150,000.00
Pigment Holdings	$ 150,000.00
Cannabis Outlet LLC	$ 150,000.00
Loud House LLC	$ 150,000.00
VicTree Gardens LLC	$ 150,000.00
The Library of New Jersey	$ 150,000.00
Nurturing Leaves LLC	$ 150,000.00
Max Extracts LLC	$ 150,000.00
CannaVibes LLC	$ 150,000.00
July's Harvest LLC	$ 150,000.00
Shnicks Shnacks LLC	$ 150,000.00
MariJaynes Touch LLC	$ 150,000.00
Simply Pure Trenton NJ Incorporated	$ 150,000.00
Essence Wellness LLC	$ 150,000.00
Kusala Care LLC	$ 150,000.00
Moja Life LLC	$ 150,000.00
Island VIBEZ LLC	$ 150,000.00
Green Gem Industries Inc	$ 150,000.00
TOTAL	**$ 7,350,000.00**

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Credit Underwriting Projects Approved Under Delegated Authority – **For Informational Purposes Only**

The following projects were approved under Delegated Authority in April 2024:

Small Business Fund Program:

1) ACE Screen Printing LLC (PROD-00315132), located in Glassboro Borough, Gloucester County, was established in 1986 as a screen printing and embroidery business. Services and products include shirts, outerwear, fleece, team uniforms, hats and accessories, and business uniforms. Clients include colleges and universities, high schools, sports leagues, municipalities, and restaurants. The NJEDA approved a $100,000 loan to be used to purchase three new embroidery machines and related accessories. The Company currently has ten employees and plans to create one new position within the next two years.

2) North Beach Mini Golf LLC (PROD-00314520) is located in Atlantic City, Atlantic County. The Company was established in 2020 as an 18-hole miniature golf course located on the newly constructed inlet boardwalk in Atlantic City, NJ. Open for business from May to September, customers are offered a range of activities, including bike rentals, surrey rentals, miniature golf, and refreshments. The NJEDA approved a $295,000 loan to be used to refinance an existing loan. Currently, the company has one employee.

Hazardous Discharge Site Remediation Fund Program:

1) Estate of Wilma T. Senduik (PROD-00305575), is located in Wallington Borough, Bergen County. The subject site was formerly known as Senduik Garage & Tire Center. Currently, this commercial property is being leased to a third-party tenant, Hero Car Care, Inc. The NJEDA approved a $71,005.75 loan to be used for site and remedial investigation of the contaminated commercial property.

2) FPD Inc. (PROD-00174679), located in Port Republic, Atlantic County, was formed in 2011 as a real estate holding company to purchase the project property. The subject property is a historic site originally constructed in 1938. Upon remediation, the property will be restored and provide convenience-store type services. The applicant also intends to reopen the U.S. Post Office previously located at the property. The NJEDA approved a $57,419.70 loan for property remediation.

Tim Sullivan, CEO

Prepared by: G. Robins

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Post Closing Credit Delegated Authority Approvals for 1Q Quarter 2024
For Informational Purposes Only

The following post-closing actions were approved under delegated authority during the first quarter of 2024:

Name	EDA Credit Exposure	Action
Bestwork Industries for the Blind, Inc.	$553,434 SLPPL	Approve a 6-month short-term maturity extension in conjunction with an extension by participating lender, TD Bank.
Link-Burns Mfg. Co., Inc. (Metal fabrication)	$192,034 SLPPL	Extend loan's maturity date by 5-years to align with corresponding extension from M&T Bank
Jersey Shore Ophthalmology Retina Consultants, LLC	$68,846 CVSBLO	Subordinate EDA's lien position on borrower's business assets to a new credit facility from PNC Bank

Tim Sullivan, CEO

Prepared by: Nicole Torres and Mansi Naik

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan**,** Chief Executive Officer

DATE: May 8, 2024

SUBJECT: Post Closing Incentives Delegated Authority Memo –1st Quarter 2024

(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 1st Quarter ending March 31, 2024.

Tim Sullivan, CEO

Prepared by: F. Saturne

ACTIONS APPROVED UNDER DELEGATED AUTHORITY

FIRST QUARTER ENDING March 31, 2024

GROW NEW JERSEY ASSISTANCE PROGRAM- COVID RELIEF

Applicant	Modification Action	Approved Award
Broadridge Financial Services Inc.	Approve termination of the Incentive Agreement effective 2022 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	$23,408,490
Brown Brothers Harriman & Co.	Approve termination of the Incentive Agreement effective 2022 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	$19,412,120
Insight Catastrophe Group, LLC	Change the name of Insight Catastrophe Group, LLC to SageSure LLC on the Grow NJ Incentive Agreement.	$2,480,000
JP Morgan Chase	Reduce the number of incented jobs from 2,150 to 1,001 for 2020 tax year and tax years through end of commitment duration.	$187,781,000
NRG Energy Inc	Reduce the number of incented jobs from 483 to 250 for 2020 tax year and tax years through end of commitment duration.	$37,520,000
Tryko Holdings LLC	Remove affiliates from the Incentive agreement, Reset the statewide workforce from 45 to 46 full time jobs for affiliate First property Accounting Services, and Reset statewide work force number from 83 to 67.	$4,101,250

BUSINESS EMPLOYMENT INCENTIVE GRANT PROGRAM

Grantee	Modification Action	Approved Award
Bracco Diagnostics, Inc.	Consent to reduce award percentage from 70% to 65% due to the decrease of NEC from 75 to 44 effective December 31, 2014.	$1,652,138
CLS Bank International	Consent to Amend the BEIP Agreement by adding CLS US Services Inc. effective January 1, 2021.	$2,550,000

SALEM/UEZ ENERGY SALES TAX EXEMPTION RENEWALS

Applicant	Extend to date	Location	#/% of employees	Benefit
Ardagh Glass Inc	March 12, 2025	Bridgeton, NJ	319/96.4%	$923,362