



MEMORANDUM

TO: Members of the Authority

FROM: Timothy Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Agenda for Board Meeting of the Authority November 16, 2023

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

CEO's Report to the Board

Community Development

Incentives

Economic Transformation

Bond Projects

Authority Matters

Board Memoranda

Executive Session

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

October 12, 2023

MINUTES OF THE MEETING

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

Members of the Authority present in person: Chairman Terry O'Toole, Commissioner Robert Asaro-Angelo of the Department of Labor and Workforce Development; Acting Commissioner Justin Zimmerman of the Department of Banking and Insurance; and Public Members Philip Alagia, Virginia Bauer, Aisha Glover, Marcia Marley, and Jewell Antoine-Johnson, Second Alternate Public Member.

Members of the Authority present via conference call: Aaron Cruz, Executive Representative; State Treasurer Elizabeth Muoio of the Department of Treasury; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; and Public Members Charles Sarlo, Vice Chairman; Massiel Medina Ferrara, and Robert Shimko, First Alternate Public Member.

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

Members of the Authority absent: Public Member Fred Dumont.

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 September 12, 2023 meeting minutes. A motion was made to approve the minutes by Commissioner Angelo, and seconded by Ms. Bauer, and was approved by the thirteen (13) voting members present.

The next item of business was the approval of the September 12, 2023 Executive Session meeting minutes. A motion was made to approve the minutes by Ms. Bauer, and seconded by Ms. Marley, and was approved by the thirteen (13) voting members present.

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

Charles Sarlo joined the meeting at this time.

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

ECONOMIC TRANSFORMATION

Venture

ITEM: New Jersey Innovation Evergreen Fund: October 2023 Qualified Investment Approval

REQUEST: To approve a qualified investment under the New Jersey Innovation Evergreen Program.

MOTION TO APPROVE: Mr. Alagia **SECOND:** Ms. Marley **AYES: 12**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

Mr. O’Toole recused from voting because because his family foundation has an investment in NVP.

Ms. Glover recused from voting because Audible, her employer, has an investment in NVP.

REAL ESTATE

ITEM: Local Property Acquisition Grant Program

REQUEST: Approval of 1.) the Local Property Acquisition Grant Program as a pilot program to provide grant funding to municipalities, municipal entities, counties, county entities, and/or not-for-profit local economic and community development entities for the acquisition of property in order to facilitate and enable the future redevelopment of such properties; 2.A) utilization of funding from the FY23 Appropriations Act to capitalize the program, inclusive of administrative costs; and 3.) delegated authority to the CEO to adjust funding amounts for each project based on application volume of each project.

MOTION TO APPROVE: Ms. Glover **SECOND:** Ms. Antoine-Johnson **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

ITEM: Former Myer Center Site, Fort Monmouth: Fourth Amendment to Contract for Civil & Environmental Engineering Services with T&M Associates

REQUEST: To increase the Authority’s contract for civil and environmental engineering services with T&M Associates in connection with the former Myer Center site (a/k/a Parcel F-1) in the Tinton Falls section of Fort Monmouth with delegated authority to the CEO to 1.) increase by a further 10% to accommodate additional costs as needed and 2.) to amend the contract if further testing or work is required to obtain the Classification Exception Area for the groundwater plume.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Mr. Alagia **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

ITEM: Real Estate Development & Programs – Additional Delegations of Authority Necessary or Beneficial to Fort Monmouth Economic Revitalization Authority and the New Jersey Bioscience Center Step Out Lab and Incubator Tenants

REQUEST: Approval of delegations of authority related Real Estate Development and Programs.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Commissioner Angelo **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

ECONOMIC SECURITY

ITEM: Atlantic City Food Security Grants Pilot Program

REQUEST: To approve: (1) the creation of the Atlantic City Food Security Grants Pilot Program, funded from the Economic Recovery Fund, that will make grant payments for projects that will strengthen food access and food security in Atlantic City; 2.) Delegation of authority to the CEO to approve individual applications to the program in accordance with the program terms; 3.) Delegation of authority to the CEO to enter into an MOU with the NJ Department of Health to provide funding to expand the Healthy Corner Store program for applicants located in Atlantic City; 4.) Delegation of authority to the CEO to enter into an MOU with the NJ Department of Community Affairs to accept and use funding from the American Rescue Plan (ARP) Coronavirus State Fiscal Recovery Funds (CSFRF) appropriated for Atlantic City initiatives in the FY24 Appropriations Act to deposit into ERF for this program and comply with federal requirements for the use of the funds; 5.) Reallocation of funding from FY22 state funding appropriated to NJEDA for Food and Agriculture Innovation from the Food Retail Innovation in Delivery Grant (FRIDG) Program back to ERF to support this program and to support sponsorships of food security and food access initiatives to serve residents of the Atlantic City/Ventnor Food Desert Community; 6.) Delegation of authority to the CEO to accept additional funds to be deposited into ERF for the program from any available governmental funding and to impose additional requirements as may be required by law as a condition of accepting, provided the requirements are consistent with the parameters of the program; 7.) Delegation of authority to the CEO to accept unencumbered gifts or unrestricted governmental funds to be deposited into ERF for the program; and 8). Waiver of applicant fees due to the availability of funds to cover the Authority’s administrative costs, Atlantic City’s status as a Government-Restricted Municipality, and the financial hardship of most potential program applicants.

MOTION TO APPROVE: Commissioner Angelo **SECOND:** Ms. Antoine-Johnson **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

COMMUNITY DEVELOPMENT

ITEM: Recommendation for additional funding to support temporary staff – Main Street Recovery Fund Grants

REQUEST: To approve the utilization of additional funding from the Main Street Recovery Finance Program to cover costs to maintain the existing temporary staff provided by 22nd Century Technologies, Inc. so they can continue to process applications for another year if needed.

MOTION TO APPROVE: Ms. Marley **SECOND:** Mr. Alagia **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

INCENTIVES

Aspire

ITEM: Aspire Program - Product #310372 – Forest Hill House Preservation Urban Renewal LLC, (“Applicant”), and AHI Forest Hill House, NP, LLC (“Co-Applicant”)

REQUEST: To approve issuance of tax credits from the Aspire program for a residential project located in the City of Newark, in Essex County, New Jersey.

MOTION TO APPROVE: Ms. Bauer **SECOND:** Ms. Marley **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

LOANS, GRANTS, GUARANTEES

Hazardous Discharge Site Remediation Fund (HDSRF)

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

MOTION TO APPROVE: Ms. Antoine-Johnson **SECOND:** Ms. Glover **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

PROJECT: R B Johnson Park aka Judge Johnson Park **PROD. #00312581**

LOCATION: Camden City, Camden County **PROCEEDS FOR:** Remedial action **FINANCING:** \$1,967,943.75

PROJECT: Hamilton Sanitary Landfill **PROD. #00312379**

LOCATION: Hamilton Township, Atlantic County **PROCEEDS FOR:** Remedial action **FINANCING:** \$937,141.71

AUTHORITY MATTERS

ITEM: Continuing Disclosure Policies and Procedures

REQUEST: In conjunction with efforts to ensure compliance with applicable federal tax and securities laws and regulations, the Members are asked to: 1.) approve written policies and procedures to comply with the requirements of U.S. Securities Exchange Commission Rule 15c2-12, and any continuing disclosure agreements executed by the Authority pursuant to that rule; and 2.) delegate authority to the CEO to amend and supplement those written policies and procedures as necessary and appropriate.

MOTION TO APPROVE: Ms. Marley **SECOND:** Mr. Alagia **AYES: 13**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

BOARD MEMORANDA

FYI ONLY

- Credit Underwriting Projects Approved Under Delegated Authority, September 2023

PUBLIC COMMENT

There was no public comment.

There being no further business, on a motion by Ms. Marley, and seconded by Ms. Antoine-Johnson, the meeting was adjourned at 12:11pm.

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



Danielle Esser, Director
Governance & Strategic Initiatives
Assistant Secretary



MEMORANDUM

To: Members of the Authority

From: Tim Sullivan

Date: November 16, 2023

Re: November 2023 Board Meeting – CEO Report

Over the past several weeks, the New Jersey Economic Development Authority (NJEDA) has been represented not only across the state but internationally, as well! The day after our last Board meeting, I flew off to East Asia with Governor Phil Murphy, Choose New Jersey, and a host of other public and private sector representatives on an economic trade mission to pitch the Garden State.

During stops in Tokyo, Hiroshima, Seoul, and Taipei we met with dozens of government and business leaders to highlight what makes New Jersey the best state to do business with. Our prime location, premier education, and talented workforce helps make our case on why internationally based companies should choose New Jersey to expand and grow their businesses.

Additionally, the NJEDA signed a formal agreement with Taiwan to foster ongoing collaboration between New Jersey and Taiwan, which will be supported by the opening of a Choose New Jersey office. We also signed an agreement with a Maternal and Infant Health Center in a suburb of Seoul to help incorporate global best practices into the Center we are developing in Trenton.

It was a privilege and an honor to represent the NJEDA on this successful economic trade mission. I look forward to building upon the work we accomplished and turning conversations into impactful change.

Earlier this month, I attended Time for Turbines in Atlantic City where I underscored that the future of offshore wind remains strong, despite Orsted's outrageous decision to abandon its New Jersey projects. Although a setback, the state's commitment to becoming a national leader in offshore wind is unwavering and we continue to build the infrastructure and prepare the workforce needed for the growing industry. Offshore wind remains one of the state's greatest economic opportunities that stands to create thousands of good-paying jobs and a cleaner environment.

That same day, I was down in Fort Monmouth, along with the Governor and Netflix co-CEO Ted Sarandos to highlight the progress towards the creation of a major Netflix production studio at the former military base. As the film and television industry continues to grow in New Jersey, it will help revitalize communities across our state, support job growth, and bolster the small business community.

We hosted our bi-yearly Founders and Funders event, where I had the opportunity to meet with dozens of New Jersey entrepreneurs. The "speed-dating"-style event was able to make nearly 250 matches among entrepreneurs and investors and continues to be a successful model to connect

startups with investment opportunities. Of the 35 startups that attended, there were 12 women entrepreneurs and 16 diverse-led businesses.

Lastly, just yesterday, I was in Atlantic City with several NJEDA colleagues to participate on a panel at this year's League of Municipalities. During the panel, we were able to highlight some of the phenomenal work the NJEDA is doing to help transform and revitalize towns up and down the Garden State. Combined, our real estate and community development programs, along with our investments in strategic sectors, like manufacturing and film, makes New Jersey a state where the opportunities are endless and the potential for economic growth is limitless.

I thank the entire NJEDA staff for their hard work and commitment to ensuring New Jersey is the best state to live, work, and raise a family. And I hope everyone takes some time to enjoy their own families as we prepare for Thanksgiving and head into the holiday season.

A handwritten signature in black ink, appearing to read 'T. Sullivan', with a long horizontal flourish extending to the right.

Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

RE: Emerging Developers Grant Program

SUMMARY

The Members are asked to approve:

1. The creation of the Emerging Developers Program - a \$20 million pilot program funded by the FY23 Appropriations Act (P.L. 2022, c.49) which will be deposited into the Economic Recovery Fund (“ERF”) to award grants of up to \$250,000 to assist small-scale developers with up to 50% of their pre-development soft costs.
2. Delegation to the Authority’s Chief Executive Officer to approve individual applications for the Emerging Developers Program in accordance with the terms set forth in the attached product specifications.
3. Utilize 5% of the total funding (\$1 million) for the Authority’s administrative fees associated to operating this program, of which up to \$250,000 of the \$1 million will be used for the hiring of temporary staff if necessary.
4. Delegation to Authority staff (Chief Executive Officer) to accept up to \$50 million in any other governmental (Federal, State, County, Municipal, Independent Authority, Board or Commission) funding and/or unrestricted gifts or grants that would be used to fund the Emerging Developer Grant Program.

BACKGROUND

Governor Murphy’s Economic Plan has guided New Jersey Economic Development Authority (“Authority”, “EDA”) efforts since 2018, and has led to a renewed focus on assisting communities to create vibrant and inclusive cities and neighborhoods that both build a stronger and fairer New Jersey. The pilot program will align with the mission of creating a stronger and fairer economy by assisting small-scale developers to break through barriers associated to developing real estate in New Jersey. The FY2023 Budget appropriated a total of \$65 million to real estate project funding,

of which \$20 million was intended to bolster and grow small emerging developers and allows for the creation of Emerging Developers Grant Program. Access to capital for small-scale developers in the real estate development industry continues to be a challenge. These barriers are due to predatory lending, excessive carrying costs, and predevelopment expenses a developer may encounter; these predevelopment costs are necessary for the developer to incur before they can seek short term construction financing. These deterrents in the development industry have created financial setbacks and limited portfolios for emerging development entities that do not have the capital to cover soft costs. Soft costs typically account for 30% of a real estate development budget based on the required administrative and executional aspect of the early-stage development process.

Program Details:

The Emerging Developers Program will be created to support emerging developers for only soft costs during their pre-development phase of a project. This program will help emerging developers gain access to capital and build additional capacity to expand their existing portfolio that may otherwise cause a financial burden if it were not for the assistance of this grant.

Site control will be required at time of application, as it demonstrates an equity injection took place to acquire the asset. Following acquisition of the asset, administrative expenses classified as professional services and regulatory fees are necessary investments. Soft costs provide the blueprint to any real estate initiative and while intangible to the asset, they're critically important in pre-development.

This grant program will fund small-scale developers that have completed at least two, but no more than five commercial and/or mixed-use properties of similar scope. The creation of this program will help overcome various difficulties that continue to be a constant burden to emerging developers and therefore limit opportunities to expand their portfolios. The intent of this program aims to:

- Create a stronger and fairer economy
- Drive economic growth and equity
- Reduce the financial burden of predatory lending by providing additional capital to assist with soft costs
- Attract developers who may take advantage of greater opportunities
- Enhance the ability to seek favorable financing with less debt due to the assistance of the grant
- Collaborate with other State agencies within the state to synergize this initiative to provide additional resources
- Initiate and maintain relationships with banks that will work alongside the developer to increase their portfolio
- Decrease the need for hard-debt lending
- Create local jobs in communities throughout the State
- Expand the developer's capacity by introducing other State agencies that may assist with other initiatives that may or may not be related to the request of this grant

This program will utilize a \$20 million appropriation to assist small-scale developers which will be deposited into ERF. ERF (N.J.S.A § 34:1B-7.13(a)(5) and a(13)), grants NJEDA the authority to

provide “financial assistance to assist municipalities, municipal entities, counties, county entities, regional entities, State instrumentalities, and not-for-profit local economic and community development entities to execute programs and initiatives to stimulate community and economic development,” as well as to create “a fund to provide grants or competition prizes, either directly or through a not-for-profit entity, that is consistent with economic development priorities as defined by the authority’s board.”

This program will meet one of the major economic development priorities adopted by the Authority’s Board in December 2021 and laid out in the Governor Murphy’s Economic Plan: “Investing in Communities”. Providing funding to assist emerging development entities as they cultivate their real estate portfolios will foster the vision of providing equitable opportunities in an inclusive economy. This grant should also set the stage for government agencies to understand the importance of supporting emerging developers as they enter a more prominent stage of real estate development and develop a relationship with state entities. This will allow these awardees to grow and eventually become experienced enough to build their portfolio to tap into other state incentives and resources, which may improve the quality of lives while building stronger communities.

Development Entity Eligibility:

Non-profit and for-profit entities are eligible to apply for this grant. Development Entities, which are the entities responsible for overseeing a real estate development project and coordinating the activities related to the project, including, but not limited to, project design, project financing, and permitting and local approvals shall be eligible applicants. The Development Entity identified at the time of application is the sole recipient of grant funds and responsible for all terms of the grant agreement. The Development Entity will serve as the primary point of contact with the Authority and submit requests for reimbursement of only eligible soft costs.

The Development Entity at the time of application must identify a specific project and be at least 51% owner of the corresponding real estate or real estate special purpose entity. The largest equity owner of the Development Entity will be analyzed to the extent of their existing portfolio and prior work completed. Projects including the development of various residential properties inclusive of single family and multifamily units, mixed use properties, and commercial development will be considered as part of the Development Entity’s experience. Our analysis will include projects that have reached completion and are currently owner/tenant occupied. Development Entity’s with only a purchase and sales agreement or a lease are not eligible. The Development Entity will be responsible with adhering to the terms and conditions listed in the grant agreement.

The Development Entity cannot have more than five employees at time of application as per their last WR30 filed or any other payroll documentation to verify this information.

One award will be provided per Development Entity. Developer Entities that have common majority ownership are ineligible for more than one grant.

The program is created for profit and non-profit emerging developers that have demonstrated they have more than two and up to five completed residential/commercial projects. The Development Entity must provide an organizational chart at time of application of both the special purpose entity that owns the real estate of the identified project (if the Development Entity does not own the real estate directly) and the Developer Entity. Formation documents for both the Developer Entity and

special purpose entity (if applicable) are required at time of application. The Developer Entity will be required to submit documents at time of application that consist of (but are not limited to) a project portfolio of past projects, resume of each key employee or officer, preliminary budget of estimated soft costs, and all other documentation required by the application to demonstrate eligibility.

Eligible soft costs may include (but are not limited to):

- Architectural and design fees
- Construction drawings and specifications
- Engineering fees and surveys
- Municipal zoning and Inspection fees
- Insurance costs
- Professional fees
- Legal fees
- Accounting fees
- Project management fees
- Market/feasibility study
- Appraisal
- Phase I environmental review
- Property taxes (no delinquent property taxes, must be current)
- Loan interest (if applicable)
- Utilities
- Asbestos, mold, lead based evaluations (not including remediation)
- Application fees for zoning and planning approvals

*Costs associated with the *purchase* of the site/property are not eligible for reimbursement.

Construction costs are **not** eligible under this product. This includes remediations services, construction, equipment installation, or any other work done under a construction contract.

As construction cannot have commenced and construction is not a condition of this program, the grant for eligible pre-development soft costs is not made in connection with any potential future construction.

All applicants (that is, all Developer Entities) must be in good standing with the New Jersey Department of Labor and Workforce Development, New Jersey Department of Environmental Protection, and NJEDA prior to approval. A current tax clearance certificate is required prior to approval to demonstrate the applicant is in substantial good standing with the New Jersey Division of Taxation, unless the applicant is not required to register with the Division of Taxation.

Applications will be accepted on a rolling basis or until funds are exhausted. All applications will be reviewed for completeness in the order that they are received by the Authority. The Authority will perform a review of all submitted applications. Applicants will be given fifteen business days to submit additional due diligence and cure any deficiencies. If the application remains incomplete after the fifteen-day period, the application will be considered withdrawn and will be closed.

Construction cannot have commenced prior to the application to be eligible for this program.

Fees and Administrative Expense:

A fee of \$1,000 is required per application. Staff proposes utilizing \$19 million for awards and an amount of 5% (\$1.0 million) for administrative expenses, of which up to \$250,000 will be allocated for to hire temporary staff based on application demand.

Awards and Disbursements:

Awards will be eligible for up to \$200,000, except that projects in a designated Opportunity Zone or GRM will be eligible for the max award of \$250,000. Only one award per eligible Development Entity is allowed.

The Authority will disburse grants only to the Development Entity. The disbursements will be based on receipts/invoices that the Developer will submit. As the invoices and receipts are reviewed, 50% of each invoice/receipts for eligible work will be reimbursed. The Development Entity shall be responsible for assuring the compliance of all terms and conditions of this grant and assumes the sole and absolute responsibility for any payments due to anyone else, including municipal, county, or business partners.

Grants will reimburse up to 50% of the grantee's eligible pre-development soft costs once they have executed their grant agreement. Only soft costs that are incurred up to one year prior to the grant application and until one year following the date of execution of the grant agreement will be eligible for reimbursement. The grant agreement must be signed within 30 days of final approval.

Diversity and Inclusion:

The Emerging Developers Program will offer a bonus for projects that are in a designated Opportunity Zones census tract in New Jersey or in a Government Restricted Municipality which would increase the maximum amount of an award up to \$250,000.00 from a maximum award of \$200,000. There are 169 designated Opportunity Zones census tracts. The Economic Recovery Act of 2020 designated three cities as Government Restricted Municipalities; they consist of Trenton, Paterson, and Atlantic City. Additional funding towards supporting developers with projects located in these two designations will improve economic conditions in distressed communities to ensure opportunities for investments are equitable and inclusive.

Additional Funding

Staff is also requesting delegated authority for the Chief Executive Officer to accept up to \$50 million in any future governmental (Federal, State, county, municipal, independent authority, board or commission) funding and/or unrestricted gifts or grants that would be used to fund the Emerging Developers Grant Program. Should governmental requirements required by law restrict the ability for the Authority to utilize any of the parameters described in the memo, staff will revisit the program requirements with the Board for modification and alignment with governmental requirements. If governmental requirements are in addition to parameters described in the memo, staff is seeking delegated authority to add these requirements.

Recommendation:

The members are asked to approve:

1. The creation of the Emerging Developers Program - a \$20 million pilot program funded by the FY23 Appropriations Act (P.L 2022, c.49) which will be deposited into the Economic Recovery Fund (“ERF”) to award grants of up to \$250,000 to assist small-scale developers with up to 50% of their pre-development soft costs.
2. Delegation to the Authority’s Chief Executive Officer to approve individual applications for the Emerging Developers Program in accordance with the terms set forth in the attached product specifications.
3. Utilize 5% of the total funding (\$1 million) for the Authority’s administrative fees associated to operating this program, of which up to \$250,000 of the \$1 million will be used for the hiring of temporary staff if necessary.
4. Delegation to Authority staff (Chief Executive Officer) to accept up to \$50 million in any other governmental (Federal, State, County, Municipal, Independent Authority, Board or Commission) funding and/or unrestricted gifts or grants that would be used to fund the Emerging Developer Grant Program.



Tim Sullivan, CEO

Prepared by: Jenell Johnson

Attachment: Exhibit A – Developers Grant Program Specifications

Exhibit A – Developers Grant Program Specifications

NJ Emerging Developers Program Proposed Program Specifications November 2023	
Funding Source	<p>FY23 Appropriations Act (P.L. 2022, c49) which will be deposited into the Economic Recovery Fund (“ERF) to award grants of up to \$200,000, or \$250,000 if located in a designated Opportunity Zones census tract in New Jersey or in a Government Restricted Municipality to assist small- scale developers with up to 50% of their pre-development soft costs.</p>
Program Purpose and Objective	<p>The Emerging Developer’s Grant Program will be created to support initiatives to arising developers for only soft costs during their pre-development phase of a project. This program will help emerging developers gain access to capital and build additional capacity to expand their existing portfolio. This grant will provide assistance directly related to pre-development soft costs that may otherwise cause a financial burden if it wasn’t for the assistance of this grant.</p> <p>Site control will be required at time of application, as it demonstrates an equity injection took place to acquire the asset. Following acquisition of the asset leads to the administrative expenses classified as professional services and regulatory fees. Soft costs provide the blueprint to any real estate initiative and while intangible to the asset, they’re critically important in pre-development.</p> <p>This grant program will fund small-scale developers that have completed at least two, but no more than five commercial and/or mixed-use properties of similar scope. The creation of this program will support various barriers that are a constant burden to emerging developers and therefore limit opportunities to expand their portfolios. The largest equity owner of the Development Entity will be analyzed to the extent of their existing portfolio and prior work completed. Projects including the development of various residential properties inclusive of single family and</p>

**NJ Emerging Developers Program
Proposed Program Specifications
November 2023**

	<p>multifamily units, mixed use properties, and commercial development will be considered as part of the Development Entity’s experience. Our analysis will include projects that have reached completion and are currently owner/tenant occupied. Development Entity’s with only a purchase and sales agreement or a lease are not eligible. The Development Entity will be responsible with adhering to the terms and conditions listed in the grant agreement.</p>
<p>Development Entity</p>	<p>Non-profit and for-profit entities are eligible to apply for this grant. Development Entities, which are the entities responsible for overseeing a real estate development project and coordinating the activities related to the project, including, but not limited to, project design, project financing, and permitting and local approvals, shall be the applicant. The Development Entity identified at the time of application is the sole recipient of grant funds and responsible for all terms of the grant agreement. The Development Entity will serve as the primary point of contact with the Authority and submit requests for reimbursement of only eligible soft costs.</p> <p>The Development Entity at time of application must identify a specific project and be at least 51% owner of the corresponding real estate or real estate special purpose entity. Development Entities with only a purchase and sales agreement or a lease are not eligible. The Development Entity will be responsible with adhering to the terms and conditions listed in the grant agreement.</p> <p>One award will be provided per Development Entity. Developer Entities that have common majority ownership are ineligible for more than one grant. The development entity cannot have more than five employees at time of application as per their last WR30 filed or any other payroll documentation to verify this information.</p> <p>One award will be provided per development entity (based on the EIN). Developers that have common majority ownership are ineligible for more than one grant.</p> <p>The program is created for profit and non-profit emerging developers that have demonstrated they have more than two and up to five completed residential/commercial projects. The</p>

**NJ Emerging Developers Program
Proposed Program Specifications
November 2023**

	<p>Development entity must provide an organizational chart at time of application of both the special purpose entity that owns the real estate of the identified project and the development entity. Formation documents for both the development entity and special purpose entity (if applicable) are required at time of application. The Developer Entity will be required to submit documents at time of application that consist of (but are not limited to) a project portfolio of past projects, resume, preliminary budget of estimated soft costs, and any other necessary documentation to determine if an application is deemed complete and viable.</p>
<p>Application Process</p>	<p>Applications will be posted online and will be accepted on a rolling basis or until funds are exhausted. All applications will be reviewed for completeness in the order that they are received by the Authority.</p> <p>A fee of \$1,000 is required per application. The grant program will utilize \$19 million for awards and an administrative fee of 5% (\$1.0 million) of which up to \$250,000 will be allocated for to hire temporary staff based on application demand.</p>
<p>Approval</p>	<p>The Members are requested to approve delegation to the director and managing director with regards to approving requests to the Emerging Developers Grant Program in accordance with the terms set forth in the attached product specifications. As with other financial assistance programs, staff will perform legal reviews in accordance with Executive Order 34 (Byrne) and the Authority’s Disqualification/Debarment Regulations (N.J.A.C. 19:30-2.1, <i>et seq.</i>) to ensure compliance.</p>
<p>Program & Application Fee</p>	<p>Applications will be accepted on a rolling basis or until funds are exhausted. All applications will be reviewed for completeness in the order that they are received by the Authority.</p> <p>A fee of \$1,000 is required per application. The grant program will utilize \$19 million for awards and an administrative fee of 5% (\$1.0 million) of which up to \$250,000 will be allocated for to hire temporary staff based on application demand.</p>

**NJ Emerging Developers Program
Proposed Program Specifications
November 2023**

Disbursements

Awards will be eligible for up to \$200,000 or \$250,000 depending upon the project location of the project identified at time of application. Projects that are identified to be in a designated Opportunity Zone or GRM will be eligible for the max award of \$250,000. Only one award per eligible Development Entity is allowed.

The Authority will disburse grants only to the Development Entity. The disbursements will be based on receipts/invoices that the Developer will submit. As the invoices and receipts are reviewed, 50% of each invoice/receipts eligible costs will be reimbursed. The Development Entity shall be responsible for assuring the compliance of all terms and conditions of this grant and assumes the sole and absolute responsibility for any payments due to anyone else, including municipal, county, or business partners.

Grants will reimburse up to 50% of the grantee's eligible pre-development soft costs after they have executed their grant agreement. Only soft costs that are incurred up to one year prior to the grant application and until one year following the date of execution of the grant agreement will be eligible for reimbursement. The grant will not cover any labor or contract. The grant agreement must be signed within 30 days of final approval.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 16, 2023

SUBJECT: New Jersey Asset Activation Planning Grant: Declination and Delegation of Authority to Approve Future Awards

Summary

The Members are asked to approve:

- 1) Declination of award to the Borough of Pennington application to conduct redevelopment planning of the Pennington Landfill site.
- 2) Delegation to the Chief Executive Officer to approve award of grant funds to applications that meet all eligibility and scoring requirements.

Background

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

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

Applications for the program are reviewed, scored, and recommended for awards in the order in which they were submitted. As part of the review process, an application must meet the minimum scoring threshold of 65 out of 100 possible points to demonstrate the ability to successfully complete the proposed planning activities and gauge the potential improved utilization and benefits from development of the public asset. The program scoring committee, composed of various

subject matter experts among NJEDA staff, determines scores for each of the applications based on five components:

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

During the 2022 application window, eleven (11) applications were received for the program in total. After one (1) withdrawn application, EDA staff recommended ten (10) applications for grant approval to the board following their respective review and scoring. The board approved all ten awards. Nine (9) of the awards were accepted by those applicants, and all nine planning projects are currently underway, or completed.

On April 12, 2023, the Board approved a new round of the Program with \$500,000 in funds from the Fiscal Year 2023 Appropriations Act “Planning Grant” appropriation. The second-round application window opened on August 15, 2023 and has had three (3) applications submitted to date. Two (2) of those applications have completed the review process. The first application has been declined for failing to meet non-discretionary requirements of the program, and the second application is recommended for declination after failing to meet the minimum score requirement.

Project Description

The Borough of Pennington is requesting grant funding of \$41,500 to complete a redevelopment planning process for three lots owned by the Borough designated as the “Pennington Landfill” property. One lot is partially used for parking and public works operations and was previously a public water supply (until 1980s). The other lots were previously used for a solid waste landfill (1954-1980), and a fuel depot (1965-1990).

The redevelopment planning process would include a preliminary redevelopment needs investigation, concept plan preparation, and final redevelopment plan carried out by the Borough planning services consultant, Kyle McManus Associates. These phases are guided by New Jersey’s Local Redevelopment and Housing Law, and which require public hearings, recommendations, and resolutions with the Borough Planning Board. The final redevelopment plan would be informed by a market study and feasibility study carried out by professional services consultant Binder Dijker Otte (BDO), and an additional community forum for public engagement.

Given the site’s location, adjacent to transit and within walking distance to Main Street and the Route 31 commercial corridor, the applicant suggest that many uses of the site may be determined as appropriate, including mixed-use with residential with affordable units.

The scoring committee determined that the application from the Borough of Pennington received 60.2 out 100 points, (detailed in Appendix B), which does not meet the requisite overall score of 65. The Board are therefore requested to decline grant award.

Delegated Authority

As part of the program’s initial policy and specifications, the Board delegated authority to EDA staff “to 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.”

Those delegated authorities continued with the Board approval of the second round of the program in 2023. Staff is now proposing delegated authority for making awards because the maximum award amount for this program is relatively low (\$50,000) and considering the scheduling constraints of the rolling applications, reviews, and final approval decisions for applications.

Therefore, in addition to the existing authority delegated to the Chief Executive Officer for administration of the Asset Activation Planning Grant Program, the Board are requested to authorize delegation to the Chief Executive Officer to approve award of grant funds to applications that meet all eligibility and scoring requirements.

Recommendations

- 1) Declination of award to the Borough of Pennington application to conduct redevelopment planning of the Pennington Landfill site.
- 2) Delegation to the Chief Executive to approve award of grant funds to applications that meet all eligibility and scoring requirements.



Tim Sullivan, CEO

Attachment:

Appendix A – Scoring Summary

Appendix A

New Jersey Asset Activation Planning Grant
Scoring Summary

Borough of Pennington (PROD-00312700)

Criteria	Committee Average Score	max score
#1 Asset Impact	27.5	/40
#2 Project Purpose and Merits	12.7	/20
#3 Previous Experience	13.3	/20
#4 Community Engagement	6.7	/10
#5 MRI Index	0.0	/10
Final Score	60.2	/100



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

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

Request:

The Members are asked to approve:

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

Background:

On January 7, 2021, Governor Phil Murphy signed the New Jersey Economic Recovery Act of 2020 (ERA) into law. The ERA includes 15+ economic development programs, including:

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

On July 7, 2021, Governor Murphy signed P.L. 2021 c.160 amending P.L. 2020, c.156 and further improving the programs established under the ERA. On November 10, 2021, the members approved the creation of and the rules for the Aspire program.

On November 15, 2021, the NJEDA submitted specially adopted Aspire Program rules, pursuant to section 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-335, et seq.), and concurrently proposed rules to the OAL for publication in the New Jersey Register. The specially adopted rules became effective upon acceptance for filing by OAL and were published in the December 20, 2021 New Jersey Register. The initial expiration for the specially adopted rules was 180 days from the date of filing or May 14, 2022. The rules were concurrently proposed in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrent proposal extended the expiration of the rules by an additional 180 days to November 10, 2022.

Significant public comments were received. Pursuant to N.J.S.A. 52:14B-5.1(d)(1), Governor Phillip D. Murphy, on October 31, 2022, directed that the expiration date of the Aspire rules be extended for a period of 12 months, from November 10, 2022, to November 10, 2023.

In February of 2022, the members approved the first project under the current Aspire rules. To date, the members have approved 10 projects for over \$500 million in tax credits representing over half a million square feet of commercial space, 490 income-restricted units and 1,040 market-rate units.

A significant legislative update to Aspire was passed in June of 2023. On July 6th, 2023, Governor Murphy signed S4023 into law as P.L. 2023, c. 98. The legislation allows for current applicants to continue to move forward under the rules set to expire on November 10, 2023 or for residential projects to move forward under those rules with the addition of increased project award amounts and certain other provisions if they submitted a completed application and received relevant approvals under the Municipal Land Use Law, P.L.1975, c.291 by November 6, 2023 (the first business day after the Saturday deadline imposed in the law). If a project is seeking approval under the old rules or modified old rules that memo will make it clear. All complete applications received after November 6, 2023 will be subject to the new rules the Board is asked to approve today.

This memorandum requests the members to approve new special adoption rules reflecting legislative changes and changes to the program as staff has gained experience administering it. It provides a summary about the Aspire Program and the changes in the rules including program limits, eligibility criteria, specific program requirements, application process and the underwriting process, and general details about the program. The specific details – and what will be promulgated and will govern the program – are included in the attached rules proposed for Board approval.

Program Purpose and General Description

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

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

- Demonstrate through NJEDA analysis that without the incentive award, the redevelopment project is not economically feasible;
- Demonstrate that a project financing gap (including review of a reasonable and appropriate rate of return) exists and the redevelopment project will generate a below market rate of return;
- Be located in a designated incentive area (except a film production project);
- Include a developer equity participation of at least 20 percent of the total development cost (or 10 percent in a Government Restricted Municipality (GRM));
- For commercial projects (and with limited exceptions for certain uses), result in a net positive economic benefit to the State;
- Meet specific size and/or cost thresholds, depending on where the project is located and;
- Meet a minimum eligible score as outlined in the Aspire Program scoring criteria.

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

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

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

The new law provides that a redevelopment project may receive tax credits up to the following amounts, subject to certain other limitations:

- (1) 80 percent of total project costs for any project located in a GRM, up to \$120 million;

(2) 60 percent of total project costs for any residential project that also receives LIHTC or any redevelopment project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, up to \$90 million; and

(3) 50 percent of total project costs for any other project, up to \$60 million.

In addition to meeting the program eligibility, the developer and any co-applicant must be in substantial good standing with the NJ Department of Labor and Workforce Development, the NJ Department of Environmental Protection, and the Department of Treasury (as determined by each Department). The new rules include that a Lead Development Entity must also meet this requirement. A Lead Development Entity is a newly defined term that is the entity responsible for overseeing the redevelopment project and is relied upon by the Authority to demonstrate operational capability, expertise, and experience to complete the project. If a compliance issue exists, the developer, co-applicant, or Lead Development Entity may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. The Lead Development Entity, eligible developer, and any co-applicant must have no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective Department. Furthermore, as required by the tax clearance certificate law, the developer will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

The Aspire Program rules also require that the project will comply with environmental laws (including flood hazard requirements). All projects that receive Aspire support must also meet minimum environmental and sustainability standards (green building requirements), pay prevailing wages to construction workers and building service workers (with a new exclusion for building services in commercial spaces under 5,000 square feet), and for projects in which the State has a proprietary interest and that have certain retail, warehouse, and/or hospitality establishments, the relevant establishment must enter into a labor harmony agreement with a labor organization or cooperating labor organizations which represent relevant employees in the State i.e. retail, warehouse, and/or hospitality workers, unless the Authority determines the project would not be able to go forward if a labor harmony agreement was required.

Applicants with a project whose total project cost exceeds or equals \$10 million must also enter into a Community Benefits Agreement (CBA) with NJEDA and the county or municipality in which the project is located. The statute provides an exception if the municipality certifies the redevelopment agreement or the Aspire Program approval letter and the redevelopment agreement or approval letter satisfies the standards for a CBA; however, staff does not propose for the approval letter to contain CBA provisions. In addition to the above, the new legislation exempts fully affordable projects in government-restricted municipalities from this provision automatically. It also allows the local governing body to exempt a project from a CBA via resolution after a public meeting. Specifically, the resolution would be required to state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill certain purposes, which benefits render a separate CBA unnecessary, and explain the reasons supporting the governing body's determination.

In addition, the developer must execute an incentive award agreement that contains the Program terms and conditions, with which the developer must comply.

Some of the areas described above are outlined in greater detail further in this memorandum and in the attached rule proposal. The introduction of the rule proposal reiterates the differences between the new rules and the previous rules.

Eligibility Criteria

The following highlights key eligibility requirements for the Aspire Program. Full eligibility details are contained in the draft proposed rules in section N.J.A.C. 19:31-23A.3, based on N.J.S.A. 34:1B-325.. To be eligible, a project must meet various eligibility criteria at application, which the Board ascertains when the project is presented to the Board, and at project completion, when the developer must submit certifications evidencing satisfaction of Program requirements and conditions.

Eligible Incentive Area

As part of eligibility for the Aspire Program, a project must be located in an eligible incentive location, which may include: Planning Area 1, Aviation District, Port District, or Planning Area 2 or other Designated Center that is within a half mile of a rail, bus, or ferry transit station or a high frequency bus stop. Each of these geographic locations are statutorily defined, and the Authority maintains an interactive map to provide more clarity to potential applicants as to which of the aforementioned eligible incentive locations the proposed project falls within. The statute also provides clarification surrounding certain project types. Specifically, transformative projects may be considered eligible if they are located in a GRM, an enhanced area, or distressed municipality. Film production projects have no geographic restrictions under Aspire and may be located anywhere in the State. The new law expands the scope of eligible incentive areas under the Program by amending the definition of “incentive area” to include: any area designated as a brownfield site pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., in an amount not less than \$10 million, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

Project Size / Cost Thresholds

A project must meet minimum size and cost thresholds in order to be eligible under Aspire, with specific thresholds largely based on whether the project is considered commercial or residential. Some changes were enacted in the 2023 legislation.

Commercial projects must be a minimum of 50,000 square feet, or 25,000 square feet if in a GRM, of retail or commercial space, exclusive of parking, with the majority of space being non-residential (that is, the project must be predominantly commercial). This is down from 100,000 square feet. The new law also provides that any redevelopment project that is comprised solely of a health care or health services center, and which contains not less than 10,000 square feet devoted to health care or health services, would also qualify as a commercial project under the Aspire Program.

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

Affordability Controls

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

The new law revises the affordability controls that would apply to residential projects under the Aspire Program. Specifically, the new law requires the EDA, in consultation with the HMFA, to adopt rules concerning the establishment and administration of affordability controls for residential projects under the Program, including, but not limited to, residential projects that utilize federal LIHTC. At a minimum, these affordability controls are required to comply with the requirements of the Uniform Housing Affordability Control rules, N.J.A.C. 5:80-26.1 et seq., including requirements concerning the bedroom distributions, affordability averages, affirmative marketing, and the long-term deed restriction of residential units. However, the new law provides an exemption from the bedroom distribution requirements for any residential project that receives the federal historic rehabilitation tax credit pursuant to section 47 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.47, or a State tax credit under the “Historic Property Reinvestment Act,” N.J.S.A. 34:1B-270, et seq.

The bedroom distribution for affordable units that are not age-restricted are: no more than 20 percent for the sum of studios and one-bedroom units, at least 30 percent for two-bedroom units, and at least 20 percent for three-bedroom units. The remainder, if any, may be allocated at the discretion of the developer or subsequent owner of the affordable development.

At least 50 percent of affordable units within each of these bedroom distributions shall be low-income units and the remainder may be moderate-income units. Additionally, at least 10 percent of the affordable units shall be very low-income units.

Rent shall be calculated not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined by the rules. Affordability controls will remain in place via deed restriction for at least 45 years.

The rules allow for the NJ Housing and Mortgage Finance Agency to serve as the monitoring entity for these affordability controls. Staff expects to submit an MOU for board approval in 2024 before any residential projects will submit for project completion.

Project Financing Gap

Given that the Aspire Program is intended to catalyze redevelopment projects that would not be possible without the Aspire tax credits, the statute requires that a project must demonstrate the existence of a project financing gap in order to be eligible for tax credits under Aspire.

This means that the project must demonstrate that there is part of the total development cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for. Total development cost is used to evaluate the return and is based upon all costs incurred by the developer prior to completing the project, versus project (that is, eligible) costs as defined in the rules, which excludes certain costs such as soft costs in excess of 20 percent, land acquisition costs, and developer fees. The new law defines the term “reasonable and appropriate return on investment” in a manner consistent with pre-existing rules. However, for any residential project that utilizes federal LIHTCs and generates returns on equity other than federal or local grants or proceeds from the sale of federal or local tax credits, the new law provides that the calculation of “reasonable and appropriate return on investment” be based on both: (1) the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment; and (2) with respect only to the units financed with LIHTCs, the approval of deferred developer fees pursuant to the rules established by the HMFA.

The reasonable and appropriate return on investment is based on the amount of capital contributed by the developer (equity), which must not be less than 20 percent of the total development cost (or 10 percent in a GRM). The Authority will consider as equity other sources of capital such as deferred development fees, or proceeds from the sale of Federal tax credits the project may receive for the purposes of meeting the developer contributed capital threshold but not for calculating reasonable and appropriate return on investment. To determine the reasonable and appropriate return on investment, the Authority will typically utilize a third-party analysis that considers factors including but not limited to: project type, scale, and geography. An overview of this analysis and the methodology proposed by Staff is included in Appendix B – Reasonable and Appropriate Return on Investment in the Memorandum approved by the Board in November 2021.

Further information regarding the gap analysis can be found in N.J.A.C. 19:31-23A.6.

Net Positive Economic Benefit Test

Pursuant to the statute, and excepting situations described in this section, projects applying for assistance under the Aspire Program must demonstrate that the project will yield a net positive economic benefit to the State. Instead of prescribing specific net benefit thresholds, the statute instructs the Authority to establish thresholds that result in a positive economic benefit for the State over the eligibility period of a project. The statute further permits the Authority to establish a second threshold that is up to 35 percent lower for projects located in a government-restricted municipality. Under the new law, this reduction in the net benefit requirement will also apply to (1) any commercial project that contains 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost

of not less than \$50 million; (2) any redevelopment project that is predominantly commercial and that receives a federal historic rehabilitation tax credit or a State tax credit under the “Historic Property Reinvestment Act,” N.J.S.A. 34:1B-270, et seq; and (3) any commercial project that is located on land owned by the federal government on or before December 31, 2005. The new law also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. The rules also set this test at 35 percentage points lower than standard. Staff propose that projects must yield a 160% net positive economic benefit except in the cases indicated above where it would be 125%. This is a reduction of 25 percentage points from the current program and is expected to encourage and support more commercial projects which are currently experiencing more challenging financial conditions spurred by increased construction costs, supply chain issues and the interest rate environment. This change is limited to the Net Benefit Test for Aspire as real estate projects have an inherent permanency not relevant to jobs-based programs and the thresholds for Emerge are written into its statute.

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

In determining whether the redevelopment project yields the net positive economic benefit, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. The inclusion of “induced” benefits is a change in the rules and meant to better account for the various economic impacts of these commercial projects that was not being captured previously.

Project Scoring

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

Given the relatively large pool of available credits, staff does not anticipate that the Aspire Program will be oversubscribed. No changes from the previous rules and Board-approved policy are recommended for project scoring.

Green Building Standards

No changes to green building standards are recommended in this rules update. The ERA requires projects under Aspire to meet “minimum environmental and sustainability standards,” which are statutorily defined as “standards established by the authority in accordance with the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6), regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to

reduce environmental degradation and encourage long-term cost reduction.” The Green Building Manual is available online at <http://greenmanual.rutgers.edu/>.

The Authority had originally developed in 2013, and later updated in 2016, the “Green Building Standards” to evaluate Grow NJ and ERG projects. Staff has continued to update the “Green Building Standards” to ensure they continue reflecting the DCA NJ Green Building Manual. The Green Building Standards lists options that apply the best practice principles of the Green Building Manual to the applicant’s specific type of project.

Fiscal and Resident Protections

Letter of Support and Community Benefits Agreement

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

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

A developer shall not be required to enter into a community benefits agreement if the developer submits to the Authority a copy of either the developer’s approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the statutory standards required for a community benefits agreement in the ERA as amended by P.L. 2021, c.160 and as determined by the Chief Executive Officer. As noted earlier, the new legislation exempts fully affordable projects in government-restricted municipalities from this provision automatically. It also allows the local governing body to exempt a project from a CBA via a resolution after a public meeting. Specifically, the resolution would be required to state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill certain purposes, which benefits render a separate CBA unnecessary, and explain the reasons supporting the governing body’s determination.

The rules require that the CBA include a list of contributions by the developer and the monetary equivalent for any non-monetary contribution. The rules also requires that the CBA create a community advisory committee (CAC). The CAC is required to produce an annual report evaluating whether the developer and any Co-applicant is in compliance with the terms of the CBA.

The Aspire Program rules, at N.J.A.C. 19:31-23A.8 (e)(6)(ii), provide for a non-binding mediation process to be implemented if the CAC’s annual report indicates that the developer is not in compliance with the

CBA. The Authority will serve as or identify a mediator. The CAC, municipality or county, as applicable, and the developer will have 60 days from the Authority's notice of the mediator to resolve any differences. The results of the mediation will be reported to the Authority. If resolution is not achieved, then the Authority will assign a hearing officer to perform a review of the written record, with discretion to require an in-person hearing. The hearing officer shall issue an advisory written report to the Authority's Chief Executive Officer with finding(s) and recommendation(s). The developer, municipality or county, and the CAC will also have the opportunity to file written comments and exceptions regarding the report within five business days from receipt of the report. Based on the review of the written report and submitted comments and exceptions, the Chief Executive Officer will determine compliance or non-compliance.

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

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

No changes are proposed to the profit sharing provisions of the rules. The ERA directs the Authority to determine at project certification if the actual financing employed by the applicant is consistent with that submitted at the time of the award approval. In the event that the actual financing utilized makes the financing gap smaller than what was calculated at the time of approval, the award shall be reduced so that project would result in rate of return on investment that is equal to the reasonable and appropriate rate on investment at the time of approval or accept payment from the developer on a pro rata basis. Furthermore, if the actual financing results in the absence of a financing gap, i.e., the project return prior to the incentive meets or exceeds the reasonable and appropriate return on investment determined at board approval, then the award would be forfeited. This analysis would take place prior to the issuance of any tax credits.

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

Further discussion of this provision is included in Appendix B – Reasonable and Appropriate Return on Investment in the original Aspire memo approved November 2021.

Transformative Projects

The Aspire statute allows for projects that meet certain parameters to qualify for credit above and beyond the caps that are established for standard projects under Aspire. Some changes to this section were enacted into law with the new legislation.

To be considered a transformative project, a project must include at least \$150 million in total project cost, demonstrate a project financing gap (as with all Aspire projects), and be at least 500,000 square feet except it may be 300,000 square feet in an enhanced area, 200,000 square feet in a government-restricted municipality, or up to 250,000 square feet for film studio projects (square feet are exclusive of parking). Furthermore, transformative projects must leverage the competitive economic development advantages of the State’s mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.

Commercial transformative projects must also demonstrate special economic importance to New Jersey, for which the Authority has established differing criteria to make that determination based on the type of project. The recent legislation removed this requirement from residential transformative projects. To demonstrate this, as well as that the project creates modern facilities, the developer shall meet the following criteria:

- With the exception of a film studio project, it is (1) creating at least 500 new full-time jobs based on the regional averages for employment density for the type of use or uses at the redevelopment project, (2) involves the substantial renovation of a vacant commercial building, or is located entirely on land designated as a brownfield development area, and the project includes at least \$15 million in environmental remediation costs;
- It is providing opportunities to leverage leadership in a high-priority targeted industry, which may be done through a market analysis evidencing the role the proposed facilities will play in catalyzing said industry or industries and is likely to be evidenced by the existence of one or more proposed anchor tenants.

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

- At least 700 newly constructed residential units, down from 1,000 per the new legislation;
- For a mixed-use residential project of at least 50,000 square feet, down from 100,000 (exclusive of parking), of commercial space:
 - If the project is located in a government-restricted municipality, 200 or more newly constructed residential units down from 250;
 - If the project is located in an enhanced area, 300 or more newly constructed residential units down from 350; or
 - Non-government-restricted municipality or enhanced area projects, 400 or more newly constructed residential units down from 600.

Transformative projects under Aspire must be located in an incentive area, distressed municipality, government-restricted municipality, or enhanced area. However, film studio projects are not subject to these geographic restrictions and may be located anywhere in the State. No transformative project may comprise of 50 percent or more final point-of-sale retail including hotels. Under the previous rules, hospitals were included in this exclusion but will be allowed under the new rules. This change is meant to better align the rules with the statute's attempt to support health care services as evidenced in the changed definition of Commercial Project and reflect that health care is not traditionally considered a retail asset class.

As mentioned above, the significance of being a transformative project for the purposes of tax credit award calculation, is that a transformative project is subject to higher project-specific caps than a standard Aspire project. For transformative projects, a project may receive a maximum tax credit amount of \$400 million, up from \$350 million. The award is based on the same percentages as standard Aspire awards: 80 percent if it is located in a government-restricted municipality, 60 percent of the total project cost for a residential transformative project that receives a four-percent allocation from the federal Low Income Housing Tax Credit Program administered by the Agency or a transformative project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, or 50 percent of the total project cost for any other transformative project.

Additionally, the developer may take up to five years, or ten years (up from eight) if completed in phases, to finish the transformative project. Each phase will constitute its own eligibility period, which allows the developer to earn the issuance of tax credits prior to the completion of the entire redevelopment project.

Post-Approval Process

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

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

- A project changing so that it would not have been eligible or would have been reviewed under different eligibility criteria:
 - From predominantly residential to predominantly commercial (or the reverse);
 - From a film production project located outside the incentive area to a project that is not a film production project;
 - Absent prior approval by the Authority, to the uses in a commercial transformative project that were used to determine the anticipated employee occupancy or the uses in a non-transformative project that were utilized to determine the net positive economic benefit to the State; or

- To characteristics used in initial project scoring so that the project no longer achieves the minimum requisite score under the Aspire Program Scoring Criteria;
- Non-compliance with affirmative action, prevailing wage, or any labor harmony agreement requirement;
- The occupancy of commercial space in a project is reduced to less than 60 percent, where commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period;
- Non-compliance with the Community Benefits Agreement as described in the Aspire rules; or
- A material misrepresentation on the developer’s application, project completion certification, annual report, or any related submissions. In this case, the rules also state that the Authority may recapture any and all tax credits.

Further information regarding reduction, forfeiture, and recapture of tax credits under Aspire can be found in N.J.A.C. 19:31-23A.10.

Rulemaking Process

The new legislation authorizes the Authority to promulgate special adoption rules for the Aspire Program, which will be effective immediately upon filing with the Office of Administrative Law and continue for 365 days. In addition, Staff proposes pursuing concurrently the proposal of long-term rules, which will include a 60-day public comment process pursuant to the Administrative Procedure Act’s rulemaking procedures.

Compliance with Executive Order 63

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

Additionally, the public were able to submit written feedback through the NJEDA’s Economic Recovery Act transparency website (www.njeda.com/economicrecoveryact) from September 29th through October 5th.

Chief Compliance Officer Certification of Draft Rule Proposal

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

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

Fees

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

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

Additionally, prior to the approval of a tax credit award by the Board, the developer will be responsible for a one-time approval fee, which may be refunded if the project is not approved for a tax credit award. These approval fees for residential projects are proposed to be increased to account for both increased costs to the Authority and to accommodate the anticipated MOU with the Agency for the monitoring of the affordable housing units.

The Members may review the full updated fee schedule in section 19.31-23A.5 of the proposed rules attached. In addition to application and approval fees, projects are required to pay a certification fee upon project or phase completion, an annual servicing fee, and potentially a transfer fee, modification fee, deadline extension fees, or termination fee.

Recommendation

The Members are asked to approve:

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



Tim Sullivan, CEO

Prepared by: Jorge Santos, Dan Jennings, and Kevin DeSmedt

Attachments:

Appendix A – Proposed New Rules – Aspire Program

CLEAN GRO REVIEW DRAFT

OTHER AGENCIES

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Authority Assistance Programs

Aspire

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

Filed: _____, 2023, as R.2023 d._____.

Authority: P.L. 2020, c. 156; P.L. 2021, c. 60; P.L. 2023, c. 98.

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

Concurrent Proposal Number: PRN _____.

Effective Date: _____, 2023.

Expiration Date: _____, 2024.

Submit written comments by _____, 2024, to:

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

In accordance with P.L. 2023, c. 98, the New Jersey Economic Development Authority ("NJEDA" or "Authority") has specially adopted the following new rules to implement the provisions of the New Jersey Economic Recovery Act of 2020, establishing the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2023, c. 98.

The new rules became effective on _____, 2023, upon acceptance for filing by the Office of Administrative Law ("OAL"). The specially adopted new rules shall be effective for a period not to exceed 365 days from the date of filing, that is, until _____, 2024.

Concurrently, the provisions of the new rules are being proposed for readoption in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. As the NJEDA has filed this notice of readoption before _____,

2024, the expiration date is extended 180 days to _____, 2024, pursuant to N.J.S.A. 52:14B-5.1.c. The concurrently proposed new rules will become effective and permanent upon acceptance for filing by the OAL (see N.J.A.C. 1:30-6.4(f)), if filed on or before _____, 2024.

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

The specially adopted and concurrently proposed new rules follow.

Summary

Summary of the Rulemaking and Legislative History:

The New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156, created a package of tax incentive, financing, and grant programs to address the ongoing economic impacts of the COVID-19 pandemic and build a stronger, fairer New Jersey economy, including the Aspire program. The Aspire Program is a gap financing tax incentive program to encourage the development of commercial, mixed use, and residential real estate projects in New Jersey by providing tax credits in an amount based on a percentage of the project's costs.

On November 15, 2021, the NJEDA submitted specially adopted Aspire Program rules, pursuant to section 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-335, et seq.), and concurrently proposed rules to the OAL for publication in the New Jersey Register. The specially adopted rules became effective upon acceptance for filing by OAL and were published in the December 20, 2021 New Jersey Register. See N.J.A.C. 19:31-23. The initial expiration for the specially adopted rules was 180 days from the date of filing or May 14, 2022. The rules were concurrently proposed in accordance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The concurrent proposal extended the expiration of the rules by an additional 180 days to November 10, 2022. See N.J.S.A. 52:14B-5.1(c).

Significant public comments were received. Pursuant to N.J.S.A. 52:14B-5.1.d(1), Governor Phillip D. Murphy, on October 31, 2022, directed that the expiration date of the Aspire rules be extended for a period of 12 months, from November 10, 2022, to November 10, 2023.

Legislative changes were enacted. On July 6th, 2023, Governor Murphy signed S4023 signed into law as P.L. 2023, c. 98. This new law modified the Aspire Program in various ways.

Limitations on Tax Credit Awards

P.L. 2023, c. 98 revised the maximum amounts of tax credits that may be awarded to redevelopment projects and transformative projects under the Aspire Program. Previously, the law provided that a developer of a redevelopment project could receive tax credits up to the following amounts, subject to certain other limitations: (1) 60 percent of the total project costs for any residential project also receiving federal four-percent low income housing tax credits (“LIHTC”), 26 U.S.C. s.42, up to \$60 million; (2) 50 percent of total project costs for any

commercial project located in a government-restricted municipality, up to \$60 million; and (3) 45 percent of total project costs for any other project, up to \$60 million if the project is located in a qualified incentive tract, government-restricted municipality, or municipality with a Municipal Revitalization Index distress score of at least 50, or up to \$42 million if located elsewhere.

The new law provides that a redevelopment project may receive tax credits up to the following amounts, subject to certain other limitations: (1) 80 percent of total project costs for any project located in a government-restricted municipality, up to \$120 million; (2) 60 percent of total project costs for any residential project that also receives LIHTC or any redevelopment project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, up to \$90 million; and (3) 50 percent of total project costs for any other project, up to \$60 million.

Similarly, the new law provides that transformative projects may receive tax credits equal to the lesser of \$400 million, the total value of the project financing gap, or the following amounts: (1) 80 percent of total project costs for any transformative project located in a government-restricted municipality; (2) 60 percent of the total project costs for any residential transformative project that also receives LIHTC or any transformative project located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50; or (3) 50 percent of total project costs for any other transformative project. Previously, all transformative projects are entitled to receive tax credits up to 40 percent of the total project costs, the total value of the project financing gap, or \$350 million, whichever was less.

Eligibility Requirements for Commercial Projects

P.L. 2023, c. 98 revised certain eligibility requirements for commercial projects as well. Previously, a commercial project was required to contain at least 100,000 square feet of commercial or industrial space to qualify for the program. The new law reduces these square footage requirements to at least 25,000 square feet for any commercial project located in a government-restricted municipality or 50,000 square feet for any other commercial project, except in the case of health care or health services centers.

The new law also amends the definition of “health care or health services center” to require these establishments to: (1) contain not less than 10,000 square feet devoted to health care or health services, where patients may be admitted for or seek medical examination and treatment; and (2) be located within a municipality with a Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract. Notwithstanding the default square footage requirements for commercial projects, the new law also provides that any redevelopment project that is comprised solely of a health care or health services center, and which contains not less than 10,000 square feet devoted to health care or health services, would also qualify as a commercial project under the Aspire Program. The new law also provides that if a commercial project is comprised solely of a health care or health services center, the health care or health services center is required to comply with certain requirements concerning total project cost.

Requirements for Residential Projects

P.L. 2023, c. 98 revises certain requirements of the Aspire program concerning the approval of residential projects, including the affordability controls that would be required within these projects. Previously, the developer of a new residential project was required to reserve certain residential units for low- and moderate-income housing. The law required these residential units to be subject to affordability controls in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq, under which affordability controls have been adopted by the New Jersey Housing and Mortgage Finance Agency (“HMFA” or the “Agency”) and are known as the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq. However, UHAC explicitly states that it does “not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code.” N.J.A.C. 5:80-26.1.

The new law revises the affordability controls that would apply to residential projects under the Aspire Program. Specifically, the new law requires the EDA, in consultation with the HMFA, to adopt rules concerning the establishment and administration of affordability controls for residential projects under the program, including, but not limited to, residential projects that utilize federal LIHTC. At a minimum, these affordability controls are required to comply with the requirements of the UHAC rules, including requirements concerning the bedroom distributions, affordability averages, affirmative marketing, and the long-term deed restriction of residential units. However, the new law provides an exemption from the bedroom distribution requirements for any residential project that receives the federal historic rehabilitation tax credit pursuant to section 47 of the federal Internal Revenue Code of 1986, 26 U.S.C. s.47, or a State tax credit under the “Historic Property Reinvestment Act,” N.J.S.A. 34:1B-270, et seq.

The new law also provides that when all residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the calculation of total project costs for the project would also include the developer fees paid before acquiring permanent financing, as well as the deferred developer fees pursuant to the rules established by the Agency.

Transformative Projects

P.L. 2023, c. 98 revises several requirements of the Aspire Program concerning the eligibility and approval of transformative projects. Previously, a redevelopment project was required to meet the following criteria in order to qualify as a transformative project: (1) have a project financing gap; (2) incur total project costs of at least \$100 million; (3) contain 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space, except for projects which may include 250,000 or more square feet of film studios, professional stages, television studios, recording studios, screening rooms, or other infrastructure for film production (“film-related space”); and (4) demonstrate a “special economic importance” to the State, as measured by certain State priorities determined by the EDA.

The new law established reduced square footage requirements for certain transformative projects, as follows: (1) 200,000 or more square feet of new or substantially renovated industrial,

commercial, or residential space for a project located in a government-restricted municipality; and (2) 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area. The new law maintains the existing square footage requirements for any transformative projects that do not meet these criteria.

Additionally, the new law increases the total project cost requirements for transformative projects from \$100 million to \$150 million. The new law also provides that only commercial projects would be required to demonstrate a “special economic importance” in order to qualify as transformative projects. However, when a redevelopment project is located entirely on land designated as a brownfield development area, and the project includes at least \$15 million in environmental remediation costs, the new law provides that the redevelopment project would be deemed to constitute a “special economic importance.”

Previously, a residential project or mixed-use project that qualified as a transformative project was required to contain a minimum number of residential units, which varied depending on the location of the project. The new law reduced the number of residential units that are required to be included in these projects. The new law also reduced the amount of commercial space, from 100,000 square feet to 50,000 square feet, that is required to be constructed within a residential project that includes fewer than 700 new residential units.

Under the new law, all transformative projects are required to be completed, and the developer must receive a certificate of occupancy for the project, within five years of executing the incentive award agreement, except that the EDA may, in its discretion, extend this period by up to one additional year. However, for a transformative project completed in phases, the developer is required to complete the project and receive a certificate of occupancy for all phases of the project within 10 years of executing either the incentive award agreement or the first transformative phase agreement. Previously, all redevelopment projects were required to be completed and receive certificates of occupancy within four years, except that transformative projects completed in phases were required to be completed within eight years.

The new law removes the limitation on the number of transformative projects that may be located within one municipality. Previously, the EDA could not award tax credits to more than two transformative projects located within the same municipality.

Additional Conditions of Incentive Award

P.L. 2023, c. 98 revised several requirements of the Aspire program, which the developer of a redevelopment project may be required to satisfy as a condition of receiving an incentive award. Notably, the new law revised the circumstances in which a developer would be exempt from the requirement to enter into a community benefits agreement (“CBA”). Previously, a developer that was otherwise required to enter into a CBA was exempt from this requirement when the developer provided the EDA with an approval letter or redevelopment agreement, as certified by the municipality in which the project was located and which included provisions that met or exceed the standards required for community benefits agreements. Under the new law, the developer would be considered to have met the requirements for a CBA if the developer submits a resolution to the EDA, which resolution was adopted by the governing body of the

municipality in which the redevelopment project is located after at least one public hearing. Specifically, the resolution would be required to state that the governing body has determined that the redevelopment project will provide economic and social benefits to the community that fulfill certain purposes, which benefits render a separate CBA unnecessary, and explain the reasons supporting the governing body's determination. The new law also exempts any residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, from the requirement to enter into a CBA.

Additionally, the new law expands the allowance for certain redevelopment projects to demonstrate a reduced net positive benefit to the State. Previously, the developer of a redevelopment project was required to demonstrate to the EDA that the award of tax credits would result in a net positive benefit to the State in an amount determined by the EDA, except not less than the amount of requested tax credits. However, this net benefit requirement was reduced by up to 35 percentage points for any project that was located in a government-restricted municipality. Under the new law, this reduction in the net benefit requirement will also apply to: (1) any commercial project that contains 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than \$50 million; (2) any redevelopment project that is predominantly commercial and that receives a federal historic rehabilitation tax credit or a State tax credit under the "Historic Property Reinvestment Act," N.J.S.A. 34:1B-270, et seq; and (3) any commercial project that is located on land owned by the federal government on or before December 31, 2005.

The new law also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. As defined in the new law, a "major cultural institution" includes any public or nonprofit institution, except for an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the EDA Board as a major cultural institution.

The new law also revised certain provisions of the Aspire Program concerning the prevailing wage requirement for persons employed to perform building services work at a project. Under the new law, this requirement does not apply to workers who are employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space. The new law also requires all leases, subleases, or other commercial occupancy agreements applicable to a redevelopment program to include a provision, in a form acceptable to the EDA, which sets forth the prevailing wage requirement.

Additionally, the new law provides that if a commercial tenant, commercial subtenant, or other commercial occupant violates the provision of the lease, sublease, or other commercial

occupancy agreement due to the underpayment of the prevailing wage rate, then the developer and any co-applicant of the redevelopment project may be required to forfeit all or part of the tax credit award, depending on the tax period in which the violation is cured and documentation of such correction has been reviewed and approved by Commissioner of Labor and Workforce Development (“LWD”) and verified by the EDA. Specifically, the new law provides that if a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, the developer and any co-applicant would be required to forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. Thereafter, if the violation is not cured on or before the conclusion of that tax period, the developer and any co-applicant would be required to forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the EDA, in each subsequent tax period until the violation has been cured, and documentation of such correction has been reviewed and approved by the Commissioner of LWD and verified by EDA.

Miscellaneous Program Changes

P.L. 2023, c. 98 amends several other provisions governing the Aspire Program. The new law expands the scope of eligible incentive areas under the program by amending the definition of “incentive area” to include: any area designated as a brownfield site pursuant to the Brownfield and Contaminated Site Remediation Act, N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs, in accordance with the Site Remediation Reform Act, N.J.S.A. 58:10C-1 et seq., in an amount not less than \$10 million, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

The new law also clarifies certain provisions governing the duration of eligibility periods under the Aspire Program. Previously, the law required the incentive award agreement between EDA and the developer to specify the amount of the tax credit award and the duration of the eligibility period, which period could not exceed 15 years for a commercial or mixed-use project or 10 years for a residential project. To reduce the total value of tax credits needed to reimburse a developer for all or part of the project financing gap of a redevelopment project, the new law permits the EDA, in its discretion, to approve a duration for the eligibility period that is shorter than the applicable maximum periods.

Additionally, the new law requires the incentive award agreement to include one or more provisions, as determined by the EDA, concerning the terms and conditions for default and the remedies for the developer of a redevelopment project in the event of default. However, the EDA is not permitted to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, defaults on any other assistance program administered by the EDA.

The new law also amends current law to define the term “reasonable and appropriate return on investment” under the Aspire Program, which concept is used to determine a developer’s project financing gap. In general, the new law defines this term in a manner consistent with pre-existing rules. However, for any residential project that utilizes federal

LIHTCs and generates returns on equity other than federal or local grants or proceeds from the sale of federal or local tax credits, the new law provides that the calculation of “reasonable and appropriate return on investment” be based on both: (1) the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment; and (2) with respect only to the units financed with LIHTCs, the approval of deferred developer fees pursuant to the rules established by the HMFA.

Additionally, the new law permits the holders of tax credit transfer certificates to transfer all or part of the tax credit amount for use by a transferee, which transferee may claim the transferred tax credits over a maximum of six years, subject to certain annual limitations.

The new law also directs the Chief Executive Officer of the EDA to adopt immediately effective rules to implement the Aspire Program, as modified by the new law. The new law also requires the EDA to submit a report to the Governor and Legislature, on or before December 31, 2023, concerning the effectiveness of the program in encouraging development in government-restricted municipalities.

Applicability to Prior and Future Applications

The new law provides that all Aspire Program applications completed after the date of enactment of P.L. 2023, c. 98 (July 6, 2023) would be subject to the provisions of the new law, including any rules and regulations adopted by the EDA thereunder. In contrast, all program applications completed on or before July 6, 2023 are subject to the pre-existing provisions of law and rules governing the Aspire Program.

If a completed application for a residential project is submitted within 121 days after the date of enactment (November 4, 2023), the applicant receives all applicable approvals for the project under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and submits written notice to the EDA before the EDA’s decision on the application, the new law provides that the application is subject to some, but not all, of the provisions of the new law. In this event, the new law requires the application to be reviewed, approved, and administered in accordance with the pre-existing provisions of law and rules governing the Aspire Program, except for: (1) the determination of “reasonable and appropriate return on investment,” as defined in the new law; and (2) the limitations on total tax credit awards, as increased by the new law.

Additionally, the new law permits certain applicants to withdraw pending applications for the Aspire Program. Specifically, an applicant may withdraw any completed application that was pending approval by the EDA on July 6, 2023, at any time before the EDA approves or denies the application. In this event, the EDA would be required to return all application fees paid by the applicant, and the withdrawal may not serve to prejudice the consideration of any program application submitted by the applicant thereafter.

Other Changes to New Jersey Economic Recovery Act of 2020

P.L. 2023, c. 98 also provides additional changes to the New Jersey Economic Recovery Act of 2020 (“ERA”), P.L. 2020, c. 156, as amended by P.L. 2021, c. 160. Previously, the total value of tax credits awarded under the economic development programs contained in the ERA

was \$11.5 billion over a seven-year period. P.L. 2023, c.98 amends the ERA to increase the duration of this period from seven years to nine years, thereby extending the period of operation of these programs.

Additionally, the new law permits the EDA to annually transfer certain tax credits otherwise allocated to the Aspire Program and Emerge Program. Previously, the total value of tax credits to be awarded under the Aspire Program and Emerge Program, not including transformative projects, could not exceed \$1.1 billion per year over a six-year period, subject to certain carry-forward authorizations. Further, the total value of tax credits to be awarded for transformative projects under the Aspire Program could not exceed an aggregate balance of \$2.5 billion. The new law provides that beginning in State Fiscal Year 2024, the EDA may transfer, from the annual allotment of tax credits for the Aspire Program and Emerge Program, an amount not to exceed \$500 million in tax credits for transformative projects under the Aspire Program, provided that: (1) the remaining allocation of tax credits otherwise available for transformative projects is less than \$1 billion; and (2) the Board of the EDA determines that the transfer of tax credits is warranted based on such criteria as the Authority deems appropriate. However, if the EDA elects to transfer these tax credits, the new law requires the EDA to award no greater than 65 percent of the transferred tax credits to transformative projects located in the northern counties of the State and no greater than 35 percent of the transferred tax credits to transformative projects located in the southern counties of the State.

Summary of the Public Comments and Agency Responses:

In response to the December 20, 2021 notice of proposal at 53 N.J.R. 2252(a), the Authority received comments from the following:

1. Senator Troy Singleton
2. Adam M. Gordon, Esq., Executive Director, Fair Share Housing Center
3. Frank Marshall, Associate General Counsel, New Jersey State League of Municipalities
4. Christiana Foglio, Founder & CEO, Community Investment Strategies, Inc.
5. Kevin Polston, Project Executive, Riverton, Sayreville Seaport Associates Urban Renewal, L.P.
6. Natalie DeFilippo, Vice President of Development, Ingerman

1. COMMENT: While expressing support for the program, the commenter shared concerns related to the definition of “incentive area” in the Aspire Program Proposed Rules. Specifically, the commenter expressed concern that requiring a “high frequency bus stop” could render many suburban projects ineligible for the Aspire Program, especially in southern New Jersey where population concentration may not meet the criteria for “high frequency bus stop.”

RESPONSE: The NJEDA shares the concerns expressed by the commenter. However, the definition “incentive area” in the Aspire Program Rules, which includes “a high frequency bus stop as certified by the New Jersey Transit Corporation,” is taken directly from the authorizing legislation (P.L. 2020, c. 156, section 55) and cannot be changed to address these concerns through the rulemaking process. See N.J.S.A. 34:1B-323. New Jersey Transit Corporation (NJT) criteria stipulates that a high frequency bus stop must serve: in North Jersey, at least 10

buses per hour during weekday peak periods or at least four buses per hour throughout the day from 6am to 7pm; in South Jersey, at least four buses per hour over the course of the day. Developers of projects that fall outside of an eligible incentive area that may be close to a high frequency bus stop may request review by NJT.

2. COMMENT: The commenter suggested that the Aspire Program Rules be amended to ensure that all projects funded through the program are in compliance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et. seq., and the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et. seq.

RESPONSE: As detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, this new law revises certain requirements of the Aspire Program concerning the approval of residential projects, including the affordability controls. Previously, the law required residential units to be subject to affordability controls in accordance with the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq, and the corresponding rules set forth in the Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.1 et seq. However, UHAC explicitly states that it does not apply to residential projects that receive federal Low-Income Housing Credit (“LIHTC”), 26 U.S.C. § 42. As a result, residential projects that receive funding through both the Aspire Program and the federal LIHTC program would generally not be required to comply with the UHAC rules. The new law revises the affordability controls and specifically requires the EDA, in consultation with the New Jersey Housing and Mortgage Finance Agency (“HMFA”), to adopt rules concerning the establishment and administration of affordability controls for Aspire program residential projects. These affordability controls are included in the new special adoption rules at N.J.A.C. 19:31-23A.15 through -23A.22.

3. COMMENT: The commenter requested clarification in the rules regarding the identity of the chief executive in N.J.A.C. 19:31-23.8 (Approval letter; incentive award agreement) and the ratification or approval process of a negotiated Community Benefits Agreement by the governing body. Further, the commenter requested clarification regarding the county’s role and priorities should the municipality choose to designate the county as the negotiator for a Community Benefits Agreement.

RESPONSE: The New Jersey Aspire Program statute specifically references “county or municipality” and “the governing body of the county or municipality in which the redevelopment project is located.” N.J.S.A. 34:1B-328(f)(1). The Aspire Program rules expand the language in the statute to include the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county in which the project is located. Under N.J.S.A. 34:1B-328(f)(1), the community benefits agreement “may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located.” Therefore, in instances in which the chief executive officer of a municipality has requested the chief executive of the county in which the project is located to enter into the community benefits agreement, the provisions relating to the final community benefits agreement will be commensurate with the size and scope of the redevelopment project.

Further, as detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, this new law amended N.J.S.A. 31:1B-328(f) to include a process whereby the governing body of the municipality in which the redevelopment project is located may adopt a resolution rendering a separate CBA unnecessary. N.J.A.C. 19:31-23A.8(e) incorporates these statutory changes.

4. COMMENT: Like the first commenter, this commenter noted that suburban communities may struggle to qualify due to the high frequency bus stop requirement included in the definition of “incentive area.” Further, the commenter requested that (1) projects that include affordable housing be exempt from the community benefit agreement, be charged a more modest fees, and be exempt from meeting any minimum score requirements; (2) projects using low-income housing tax credit program credits be exempt from evaluation for actual versus projected rate of return and liability if the rate of return exceeds 15 percent; (3) soft costs should be increased from 20 percent to 30 percent; (4) the rules clarify designation as an “area in need of redevelopment or a redevelopment plan” pursuant to the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et. seq.; (5) the requirement that the applicant-developer list all New Jersey Department of Labor and Workforce Development, Department of Environmental Protection, and Department of the Treasury permits and approvals or obligations and responsibilities be more limited; (6) a reference to the green manual be included in the rules; (7) the CPA procedures and deed restrictions used by HMFA be used in these rules; and (8) language in the rules for situations such as natural disasters and other events outside the control of the developer.

RESPONSE: As detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, amended the Aspire Program Act at N.J.S.A. 34:1B-328(f) to create an exemption to the community benefits agreement requirement for projects that are located in a government-restricted municipality and 100 percent of the residential units constructed in the are reserved for occupancy by low- and moderate-income households. In addition, the new law provides that a developer shall be considered to have met its CBA requirement by submitting an appropriate resolution adopted by the governing body of the municipality in which the redevelopment project is located to the Authority. These statutory changes have been incorporated into the new special adoption rules at N.J.A.C. 19:31-23A.8(e).

As with all projects, the Authority has developed a fee structure for the Aspire Program that is proportionate to the complexity of the product, aligns with the marketplace, aligns with the size of the customer base, and is consistent across customers and product types. Thus, the fees are based on the type of project and project cost.

The Authority is statutorily obligated to establish scoring criteria for the evaluation of proposed projects, which can be used to set a minimum acceptable score or to allocate tax credits in circumstances where there are more project requests than available credits. Given the relatively large pool of available credits under the Aspire program, NJEDA does not anticipate that the program will be oversubscribed. Accordingly, a minimum score approach is appropriately used to assess whether a proposed project is consistent with the objectives, policy goals, and principles of the program; rather than using scoring as a means to competitively rank or compare projects against each other.

The New Jersey Aspire Program Act statute does not provide the NJEDA authority to exempt projects using low-income housing tax credit (“LIHTC”) credits from the actual versus projected rate of return and associated liability proscribed by the statute. See N.J.S.A. 34:1B-328(c). In addition, the statutory definition “project cost” specifically states: “costs not directly related to construction, including capitalized interest paid to third parties, of an *amount not to exceed 20 percent* of the total costs and the cost of infrastructure improvements, including ancillary infrastructure projects. N.J.S.A. 34:1B-323 (emphasis added).

The definition of “redevelopment project” is established in N.J.S.A. 34:1B-323. The definition does not require designation of an “area in need of redevelopment or a redevelopment plan” pursuant to the Local Housing and Redevelopment Law, N.J.S.A. 40A:12A-1 et seq. A definition of “redevelopment agreement” is added to the rules at N.J.A.C. 19:31-23A.2 (Definitions).

The submission requirements in N.J.A.C. 19:31-23.4 (Application submission requirements) and N.J.A.C. 19:31-23.9 (Reporting requirements and annual report) are necessary to ensure compliance with the New Jersey Aspire Program Act statute. See N.J.S.A. 34:1B-325(e).

Further, both the New Jersey Aspire Program Act and the proposed rules define the term “minimum environmental and sustainability standards” to mean “standards established by the authority in accordance with the *green building manual* prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L.2007, c.132 (C.52:27D-130.6).” See N.J.S.A. 34:1B-323; N.J.A.C. 19:31-23.2 (emphasis added).

Finally, as suggested by the commenter, a force majeure provision is added at N.J.A.C. 19:31-23A.3 (Eligibility criteria) and N.J.A.C. 19:31-23A.10 (Reduction, forfeiture, and recapture of tax credits) in the new specially adopted concurrently proposed Aspire Program rules to allow the Authority to grant certain limited extensions when the Governor has declared an emergency.

5. COMMENT: Like commenter three, this commenter sought clarification of the process for redevelopment agreements in lieu of community benefit agreements; and like commenter four, this commenter also raised concerns regarding scoring criteria, soft costs. The commenter also raised the following issues: Brownfield Development Areas should be added to the rules as transformative project eligibility criteria; additional qualifying language should be added to the rules to ensure that the prevailing wage requirements only apply to work provided by or on behalf of the applicant; modification of the benefit accounting period; inclusion, rather than exclusion, of other public funding sources when determining the need for gap funding and equity; and limitation or reduction of awards due to project vacancy presents developers with a risk they cannot control.

RESPONSE: As detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, amended the Aspire Program Act at N.J.S.A. 34:1B-333 to explicitly provide that “if the redevelopment project is located entirely on land designated by the Department of

Environmental Protection as a brownfield development area pursuant to section 7 of P.L.2005, c.223 (C.58:10B-25.1), and the project cost of the redevelopment project includes at least \$15,000,000 in environmental remediation costs, the redevelopment project shall constitute a project of special economic importance.” These statutory changes have been incorporated into the new special adoption rules at N.J.A.C. 19:31-23A.2 (Definitions) and -23A.11 (Transformative projects).

As detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, also amended the Aspire Program Act at N.J.S.A. 34:1B-325 with regard to prevailing wage requirements. Under the new law, this requirement does not apply to workers who are employed to perform building services work by a commercial occupant that has a leasehold of less than 5,000 square feet of space. Additionally, the new law provides that if a commercial occupant violates the provision of the lease, sublease, or other commercial occupancy agreement due to the underpayment of the prevailing wage rate, then the developer and any co-applicant of the redevelopment project may be required to forfeit all or part of the tax credit award, subject to review and approval by Commissioner of Labor and Workforce Development (“LWD”). These statutory changes have been incorporated throughout the new special adoption rules.

In addition, as detailed in the above summary of P.L. 2023, c. 98 signed by Governor Murphy on July 6, 2023, the new law amended the Aspire Program Act at N.J.S.A. 34:1B-326 to expand the allowance for certain redevelopment projects to demonstrate a reduced net positive benefit to the State to include: commercial projects that contain 50,000 or more square feet of space devoted to research or technology focused incubator and conferencing facilities for one or more institutions of higher education or non-profit organizations, and which has a total project cost of not less than \$50 million; redevelopment projects that are predominantly commercial and receive a federal historic rehabilitation tax credit or a State tax credit under the “Historic Property Reinvestment Act,” N.J.S.A. 34:1B-270, et seq; commercial projects located on land owned by the federal government on or before December 31, 2005. The new law also provides that the EDA may set a reduced net benefit requirement for any redevelopment project that is undertaken by a major cultural institution to renovate existing space or expand services into additional space, and in which the major cultural institution realizes all returns from the redevelopment project. Statutory language at N.J.S.A. 34:1B-326(c) requiring that “the authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the “Five-Year Exemption and Abatement Law,” P.L.1991, c.441 (C.40A:21-1 et seq.), the “Long Term Tax Exemption Law,” P.L.1991, c.431 (C.40A:20-1 et al.), the “New Jersey Urban Enterprise Zones Act,” P.L.1983, c.303 (C.52:27H-60 et seq.), or any other law that has the effect of lowering or eliminating the developer’s State or local tax liability” remains unchanged. The statutory changes have been incorporated at N.J.A.C. 19:31-23A.6 (Financing gap and fiscal impact analysis).

Finally, the NJEDA has established the forfeiture requirement based on occupancy as an appropriate means by which to conform the Aspire projects to the required UHAC standards and safeguard taxpayer funded incentives awarded under the Aspire Program.

6. COMMENT: Like commenters four and five, this commenter expressed concerns regarding soft costs and equity. The commenter also expressed concern that the structural components of how low-income housing tax credit program deals are constructed indirectly hamper the Aspire Program from functioning as a gap filler for those projects.

RESPONSE: NJEDA appreciates the commenters concerns. The Aspire Program as enacted by sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 (N.J.S.A. 34:1B-324, et seq.) was established to support projects across a broad range of real estate project categories. The rules were developed to make the Aspire Program effective across the intended range of real estate project types and may not fill project financing gaps for every real estate project in every development category. In such cases, additional project-supporting resources may be necessary.

The low-income housing tax credit (“LIHTC”) program, which was created by the Tax Reform Act of 1986, is the federal government’s primary policy tool for the development of affordable rental housing. LIHTCs are awarded to developers to offset the cost of constructing rental housing in exchange for agreeing to reserve a fraction of rent-restricted units for lower-income households. Developers may claim the tax credits in equal amounts over 10 years once a property is completed and available to be rented. The New Jersey Housing and Mortgage Finance Agency (“HMFA”) is responsible for the administration and monitoring of the LIHTC program in New Jersey.

Summary of the New Specially Adopted Concurrently Proposed Aspire Program Rules:

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

N.J.A.C. 19:31-23A.1 Applicability and scope

This section of the specially adopted concurrently proposed rules provides that this subchapter is promulgated by the NJEDA to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

N.J.A.C. 19:31-23A.2 Definitions

This section defines certain terms used in this subchapter and incorporates terms defined at P.L. 2020, c. 156, pertaining to the program. Some defined terms of particular note include: “Affiliate” now incorporates provisions specifically related to phased projects; “Commercial project” now contains certain specific exclusions related to warehousing, distribution, and fulfillment centers; and a definition of “Parking component” is added to clarify parking requirements. “Lead Development Entity” is defined to improve project leadership transparency. The statutory definition of “Major cultural institution” is enhanced to ensure an approved institution has the ability and likelihood to remain operational. The statutory definition of “Health care or health services center” is also enhanced to clarify the health care services and supportive

services that can be provided. In addition, a variety of definitions related to the new affordability controls, see N.J.A.C. 19:31-23A.15 to -23A.22, are added, including “Median gross household income” utilizing U.S. Department of Housing and Urban Development data and “Newly-constructed residential unit” to improve clarity regarding construction and renovation.

N.J.A.C. 19:31-23A.3 Eligibility criteria

This section of the specially adopted concurrently proposed rules provides that a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project if the developer demonstrates that, without the incentive award, the redevelopment project is not economically feasible; with the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period; that a project financing gap exists; the redevelopment project, except a commercial project that is predominantly film production uses, is located in the incentive area; except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application; during the eligibility period, each worker employed to work at the redevelopment project, shall be paid not less than the prevailing wage rate, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities, except that the Authority may grant an extension for certain emergency situations. Only certain costs may be incurred prior to application.

Certain additional requirements apply based on project type. Additionally, a redevelopment project with a project cost in excess of \$ 50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that certain requirements are met.

In addition the developer must comply with all requirements for filing tax and paying required State taxes and fees; the developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application; except for certain exceptions, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and if the application includes a co-applicant, the developer and co-applicant demonstrate the following: the co-applicant has complied with all requirements for filing and for paying State taxes and fees; the co-applicant's organizational purpose encompasses the proposed participation; the co-applicant has the financial and operational capability to provide the proposed contribution or services; the co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and the co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

N.J.A.C. 19:31-23A.4 Application submission requirements

This section sets forth the information that each applicant and, if applicable, co-applicant must provide to the Authority including but not limited to: financial statements for the last three years of the lead development entity; a description of the project, including a breakdown of uses

and related square footage and costs, and the developer's experience with similar project(s); a copy of a market and/or feasibility study for the proposed use of the project site by an independent third party; financial information of the project, which shall include all phases; a certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury; except for a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, for a redevelopment project whose total project cost equals or exceeds \$ 10 million and for which a community benefits agreement, a redevelopment agreement, or a resolution is required pursuant to N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23A.8(e), a letter of support from the chief executive of the municipality or county, if applicable, acknowledging the requirement and that the requirement must be met within the time required at N.J.A.C. 19:31-23A.8(e)4.

N.J.A.C. 19:31-23A.5 Fees

This section of the specially adopted concurrently proposed rules establishes the fees required for the program. The fee amounts depend on the type of project. If the Authority deems review by a third party necessary, the developer is responsible for the payment.

N.J.A.C. 19:31-23A.6 Financing gap and fiscal impact analysis

This section provides that the Authority shall review the proposed total development cost and evaluate and validate the project financing gap estimated by each developer applying for an incentive award and conduct a fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State. The net positive economic benefit analysis shall not apply to a residential project, to a component that is a food delivery source, or to a component that is a health care or health services center.

In determining whether the redevelopment project yields the net positive economic benefit, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority.

N.J.A.C. 19:31-23A.7 Approval of completed application; tax credit amounts

This section of the specially adopted concurrently proposed rules provides that the Authority shall award incentive awards based on the order in which complete, qualifying applications are received. If interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process.

Before the Board may consider a developer's application for tax credits, the Authority shall confirm with specific agencies that, any co-applicant, and the lead development entity are

in compliance by being in substantial good standing or if a compliance issue exists, whoever is deemed responsible has entered into an agreement with the respective department and any co-applicant, which may include a practical corrective action plan.

If a developer intends to apply to both the Authority and the New Jersey Housing and Mortgage Finance Agency (Agency) for subsidies, the developer shall notify the Agency simultaneously with any application made to the Authority.

The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

N.J.A.C. 19:31-23A.8 Approval letter; incentive award agreement

This section provides that an award by the Authority's Board will be subject to conditions that must be met in order to retain the credits. An approval letter setting forth the conditions will be sent to the applicant and any co-applicant and shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement, which as outlined in this section may include, but are not limited to, a labor harmony agreement, a community benefits agreement or redevelopment agreement or a resolution of the governing body in which the redevelopment project is located.

A developer shall submit, prior to the issuance of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the program eligibility requirements.

N.J.A.C. 19:31-23A.9 Reporting requirements and annual report

This section of the specially adopted concurrently proposed rules requires that a developer approved that enters into an incentive award agreement shall submit an annual report with supporting documentation on the status and continued eligibility compliance of the approved project.

The report is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period.

Upon the Authority's approval of each annual certified report, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability for that eligibility period. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. Thereafter, the developer and any

co-applicant shall apply the credit awarded and the Director of the Division of Taxation shall prescribe the order of priority of the application of the credit and any other credits allowed.

N.J.A.C. 19:31-23A.10 Reduction, forfeiture, and recapture of tax credits

This section provides that the developer and any co-applicant may have their tax credit reduced, forfeited in whole or part, or recaptured for certain violations including, but not limited to, if: the developer changes a project that has been approved absent prior written approval of a modification by the Authority; any labor harmony agreement requirement is not satisfied during the relevant tax period; on or after the third year of the eligibility period, the occupancy of commercial space of a redevelopment project, or component of a redevelopment project, for which a net positive economic benefit analysis is required is reduced to less than 60 percent; any worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23A.3(a)8 during the relevant tax period, a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth in N.J.S.A. 34:1B-325(a)(7)(b) and N.J.A.C. 19:31-23A.3(a)9, the developer or co-applicant, if a party to the community benefits agreement or redevelopment, is not in compliance with the community benefits agreement or redevelopment agreement.

N.J.A.C. 19:31-23A.11 Transformative projects

This section of the specially adopted concurrently proposed rules sets forth the transformative project eligibility requirements, which include but are not limited to, the redevelopment project: has a project financing gap; has a total project cost of at least \$150,000,000; meets certain square footage requirements.

In addition, the section includes specific criteria and requirements for commercial projects of special economic importance and certain residential projects for the construction of 700 or more newly-constructed residential units; or a mixed-use residential project with construction of 50,000 square feet or more of commercial space.

For transformative projects completed in phases, the developer shall be issued temporary certificates of occupancy for all phases of the transformative project. Each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due to the certification demonstrating a lesser total project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the developer and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis.

A review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases.

N.J.A.C. 19:31-23A.12 Application for tax credit transfer certificate

This section details the documentation that must be submitted evidencing the value of the tax credits and provides that a developer or co-applicant may apply for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate may be sold or assigned, in full or in part, in an amount not less than \$25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate, to another person, who may apply the credit against a tax liability on or after the date of issuance of the tax credit transfer certificate.

The developer or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. The Authority shall publish, on its Internet website, information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section.

N.J.A.C. 19:31-23A.13 Assignment of rights of incentive award agreement

This section of the specially adopted concurrently proposed rules outlines the process for a developer or co-applicant to pledge, assign, transfer, or sell any or all of its rights, title, and interest in, and to, the incentive award agreement and in the incentive awards payable, along with the rights and remedies. Any assignment will be absolute for all purposes, including the Federal bankruptcy code.

Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind. The Authority shall publish certain information on its Internet website concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section.

N.J.A.C. 19:31-23A.14 Affirmative action and prevailing wage

This section provides that the Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3, as well as those within this subchapter shall apply to the redevelopment project, including, but not limited to, construction contracts for certain work performed before the application. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued. During the eligibility period, prevailing wage

shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23A.3(a)9.

N.J.A.C. 19:31-23A.15 Affordability controls: documentation and monitoring

This section of the specially adopted concurrently proposed rules provides that developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction and shall provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority. The Agency may serve as a monitoring entity acting to report to the Authority compliance with the affordability controls.

N.J.A.C. 19:31-23A.16 Affordability controls: affordability average; bedroom distribution

This section provides that in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units. Further, this section proscribes the bedroom distribution for restricted units, the affordability average in determining initial rents; and that restricted units shall utilize the same type of heating source as market units within the affordable development.

N.J.A.C. 19:31-23A.17 Affordability controls: occupancy standards

This section of the specially adopted concurrently proposed rules proscribes standards for how the initial rents for restricted units shall be determined.

N.J.A.C. 19:31-23A.18 Affordability controls: Control periods for rental units

This section provides that each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years. Deeds of all real property that include restricted rental units shall contain deed restriction language as prescribed by the Authority. The deed restriction shall have priority over all mortgages on the property. A restricted unit shall remain subject to the affordability controls despite the occurrence of any of the following events: A sale or other voluntary transfer of the ownership of the affordable development or the restricted unit; or the entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

N.J.A.C. 19:31-23A.19 Affordability controls: restrictions on rents

This section of the specially adopted concurrently proposed rules provides that rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 19:31-23A.18. A written lease is required for all restricted rental units. Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease.

N.J.A.C. 19:31-23A.20 Affordability controls: tenant income eligibility

This section provides that the initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined, however, this limit may be exceeded under certain circumstances exists. Developers and subsequent owners of affordable development shall establish at least one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

N.J.A.C. 19:31-23A.21 Affordability controls: affirmative marketing

This section of the specially adopted concurrently proposed rules proscribes the affirmative marketing plan and strategy designed to attract renters regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children the developer or subsequent owner of an affordable development shall utilize.

N.J.A.C. 19:31-23A.22 Affordability controls: household selection; related project information

This section provides that the developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate- income levels. When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect.

The developer or subsequent owner of the affordable development and shall maintain certain information and provide it to the Agency or the Authority upon request. The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

N.J.A.C. 19:31-23A.23 Appeals

This section of the specially adopted concurrently proposed rules provides that an applicant may appeal the Board's action by submitting in writing to the Authority, within 20 calendar days from the effective date of the Board's action, an explanation as to how the applicant has met the program criteria. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq.; and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 19:31-23A.24 Reports by the Authority to the Governor and Legislature on implementation of program

This section sets forth certain reporting requirements by the Authority to the Governor and the Legislature, which are statutorily required.

N.J.A.C. 19:31-23A.25 Severability

This section provides that if any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

Social Impact

The new specially adopted concurrently proposed Aspire Program rules encourage real estate development and private investment into communities across New Jersey, with a focus on low-income and under resourced communities, and are intended to have a positive social impact.

The Aspire Program is a key component of the State's broader economic development plan, which balances economic impact, for example, stimulating community development, with a focus on increasing equity and opportunity for all. This strategy is clearly demonstrated in the Economic Recovery Act of 2020's overall approach, which establishes or amends 15 different programs with varying development objectives. The Aspire Program is primarily focused on community development. Other programs are primarily focused on areas such as job creation and retention, small and micro business support, and other critical social issues, such as food security.

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

Economic Impact

The new specially adopted concurrently proposed rules are intended to bolster the State's economy by stimulating new high-quality economic development. The Aspire Program, the primary community development tool in the New Jersey Economic Recovery Act of 2020, P.L. 2020, c. 156 encourages smart, targeted investments in communities in the form of private capital investment that is, by definition, a durable and sustainable investment in the State's economic infrastructure. The resulting investments will support long-term economic benefits after tax credits have been fully utilized, in the form of job creation opportunities, transit-oriented development, and affordable and workforce housing, even if a given project does not meet its full potential. The fact that capital investment must be completed before tax credits are provided to approved projects, along with robust recapture and repayment provisions if the projects fail to meet their long-term obligations, ensures substantial economic protections within the program.

Federal Standards Statement

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

Jobs Impact

With the core focus of encouraging private investment in redevelopment projects, the Aspire Program also creates jobs needed to support approved projects.. This includes the creation of union jobs needed to perform construction services on the redevelopment project, as well as permanent full-time jobs tied to the completed project, particularly for commercial and mixed-use projects. Prior to full implementation of the program through these rules, it is not possible to accurately forecast the number of jobs that will be supported by the Aspire Program; however, the Act and the rules provide a series of transparency measures, including biannual program evaluation reports, to ensure regular reporting of the number of jobs created.

Agriculture Industry Impact

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

Regulatory Flexibility Analysis

The new specially adopted concurrently proposed rules are unlikely to impose reporting, recordkeeping, or other compliance requirements on small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any requirements are discussed in the Summary above; however, any costs will be minimal and fully offset by the amount of financial assistance received. The fees for the program are intended to ensure a source of necessary administrative fee revenue for NJEDA to more fully cover the costs of the program and are discussed in the Summary above.

Housing Affordability Impact Analysis

The new specially adopted concurrently proposed rules are likely to have a positive impact on the affordability of housing in the State by helping to catalyze the development of market-rate housing in distressed communities and, where appropriate, mixed-income and affordable housing; however, the new rules should not impact the average costs of housing in the State. Under Aspire, a project may qualify for a percent of the total project cost for the new construction of a residential project that receives an allocation from the Federal Low-Income Housing Tax Credit Program administered by the New Jersey Housing and Mortgage Finance Agency. These residential projects supported through the Aspire Program are expected to impact the amount or cost of housing units, primarily including multi-family rental housing in the State.

Smart Growth Development Impact Analysis

The new specially adopted concurrently proposed rules, which authorize tax credit awards for certain residential projects, may result in an indeterminate increase in the number of

housing units or result in an increase or decrease in the average cost of housing in Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

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

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

SUBCHAPTER 23A. ASPIRE

19:31-23A.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Economic Development Authority (NJEDA or Authority) to implement the provisions of the New Jersey Economic Recovery Act of 2020 establishing the New Jersey Aspire Program Act (Act), sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335) and shall apply to all program applications completed after the effective date of P.L. 2023, c. 98 (July 6, 2023); except that in accordance with Section 14(b) of P.L. 2023, c. 98, a developer that has submitted a completed application for a residential project and obtains all applicable approvals under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., for the project prior to November 4, 2023, and submits written notice to the Authority before the Authority's decision on the application, may proceed under the reasonable and appropriate return on investment definition as amended by Section 1 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-323), the tax credit award limits as amended by subsection b. of Section 7 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-329) and subsection g. of Section 9 of P.L. 2023, c. 98 (N.J.S.A. 34:1B-333), and the rules and statute in effect prior to July 6, 2023.

(b) Under the Act, the Authority shall administer the program, including the establishment and administration of affordability controls that apply to the residential units constructed for occupancy by low- and moderate-income households under the program, to encourage redevelopment projects through the provision of tax credit awards to reimburse developers for certain project financing gap costs. The requirement to reserve certain units for low- and moderate-income households and the affordability controls for all restricted units in redevelopment projects set forth in this subchapter apply solely as a requirement of this program and do not replace or supersede any obligation under other rule, regulation, law, or legal requirement. The Authority Board may approve the award of a tax credit award to a developer upon application to the Authority pursuant to N.J.S.A. 34:1B-326 and -327. The value of all tax credits approved by the Authority pursuant to the Act shall be subject to the limitations set forth at N.J.S.A. 34:1B-362.

19:31-23A.2 Definitions

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

"Act" means the New Jersey Aspire Program Act, sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Affiliate" means an entity that directly or indirectly controls, is under common control with, or is controlled by, the developer. Control exists in all cases in which the entity is a member of a controlled group of corporations, as defined pursuant to section 1563 of the Internal Revenue Code of 1986 (26 U.S.C. § 1563), or the entity is an organization in a group of organizations under common control, as defined pursuant to subsection (c) of section 414 of the Internal Revenue Code of 1986 (26 U.S.C. § 414). For a phased transformative project, a developer may establish, by clear and convincing evidence, as determined by the Authority, that control exists in situations involving lesser percentages of ownership if the developer shall have control, at a minimum, of all aspects of compliance with this program. An affiliate of a developer may contribute to the project cost and may satisfy the requirement for site control during construction and the eligibility period, but in no event shall the tax credit certificate be issued to any affiliate.

"Affordability average" means the mean average of the percentage of median gross household income at which restricted units in an affordable development are affordable to households. For example, if the rents for the five restricted rental units in an affordable development are affordable at 46, 48, 50, 54, and 62 percent of median gross household income, respectively, the average affordability for those units would be 52 percent of median gross household income. The amount shall be rounded up to the nearest whole number (first decimal of five is rounded up).

"Affordability controls" means the controls established in N.J.A.C. 19:31-23A.15 through 22 on restricted units.

"Affordable" means, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 19:31-23A.19 and -23A.20.

"Affordable development" means a redevelopment project with restricted units.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established pursuant to N.J.S.A. 55:14K-1 et seq.

"Age-restricted unit" means "housing for older persons" as defined in 42 U.S.C. § 3607.

"Authority" means the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Aviation district" means all areas within the boundaries of the Atlantic City International Airport, established pursuant to N.J.S.A. 27:25A-24, and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the Atlantic City International Airport and the Federal Aviation Administration William J. Hughes Technical Center.

"Board" means the Board of the New Jersey Economic Development Authority established at N.J.S.A. 34:1B-4.

"Building services" means any cleaning or routine building maintenance work, including, but not limited to, sweeping, vacuuming, floor cleaning, cleaning of rest rooms, collecting refuse or trash, window cleaning, securing, patrolling, or other work in connection with the care or securing of an existing building, including services typically provided by a door-attendant or concierge. Building services shall not include any skilled maintenance work, professional services, or other public work for which a contractor is required to pay the prevailing wage as defined at N.J.S.A. 34:11-56.26.

"Cash flow" means the profit or loss that an investment property earns from rent, deposits, and other fees after financial obligations, such as debt, maintenance, government payments, and other expenses, have been paid. Cash flow shall include costs for benefits and services provided under the community benefits agreement during the eligibility period, subject to the limitations at N.J.A.C. 19:31-23A.8(e)8. For purposes of cash flow, government payments shall not include, among other things, payments that are the result of a violation or a settlement of a violation or any payment that is not reasonable and customary, as determined by the Authority.

"Co-applicant" means an entity that:

1. Is non-profit for taxation purposes under the provisions of Section 501(c)3 of the Internal Revenue Code;
2. Contributes capital, real property, or services related to the project that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and
3. Enters into a participation agreement with the developer that specifies the co-applicant's participation in the redevelopment project.

"Commercial project" means a redevelopment project that is predominantly commercial and, if located in a government-restricted municipality, contains 25,000 or more square feet, or if located in any other municipality, contains 50,000 or more square feet of office and retail space, industrial space, or film production uses. Office space shall include laboratory and research and development space. The term "commercial project" includes a redevelopment project comprised solely of a health care or health services center. A commercial project may include a parking component, provided that the square footage for the parking component shall not count toward the required minimum square feet and when determining if a project is a commercial or residential project, a parking component shall not constitute either a residential or commercial use. The term "commercial project" shall not include premises or space used predominately for warehousing, distribution, or fulfillment center.

"Community benefits agreement" means the agreement between the developer; a co-applicant, if applicable; the municipality or county; and the Authority, pursuant to N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23A.8(e).

"Developer" or "applicant" means a person who enters, or proposes to enter, into an incentive award agreement pursuant to the provisions of N.J.S.A. 34:1B-328, including, but not limited to, a lender that completes a redevelopment project, operates a redevelopment project, or completes and operates a redevelopment project.

"Developer contributed capital" means equity contributed by the developer.

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

"Distressed municipality" means a municipality that is qualified to receive assistance pursuant to N.J.S.A. 52:27D-178 et seq., a municipality under the supervision of the Local Finance Board pursuant to the provisions of the Local Government Supervision Act, N.J.S.A. 52:27BB-1 et seq., a municipality identified by the Director of the Division of Local Government Services in the Department of Community Affairs to be facing serious fiscal distress, an SDA municipality, or a municipality in which a major rail station is located.

"Economic development incentive" means a financial incentive, awarded by the Authority, or agreed to between the Authority and a business or person, for the purpose of stimulating economic development or redevelopment in New Jersey, including, but not limited to, a bond, grant, loan, loan guarantee, matching fund, tax credit, or other tax expenditure.

"Eligibility period" means the period of 10 years for an incentive award agreement or incentive phase agreement during which a developer or a co-applicant, if applicable, may claim a tax credit under the program.

"Enhanced area" means a municipality that contains an urban transit hub, as defined in N.J.S.A. 34:1B-208; the five municipalities with the highest poverty rates according to the 2017 Municipal Revitalization Index; and the three municipalities with the highest percentage of SNAP recipients according to the 2017 Municipal Revitalization Index.

"Equity" means developer-contributed capital that may consist of cash, costs for project feasibility incurred within the 12 months prior to application, property value less any mortgages when the developer owns the project site, and any other investment by the developer in the project deemed acceptable by the Authority. Property value shall be valued at the lesser of: the purchase price, provided the property was purchased pursuant to an arm's length transaction within 12 months of application; or the value as determined by a current appraisal acceptable to the Authority. Equity shall include Federal or local grants and proceeds from the sale of Federal or local tax credits, including, but not limited to, the Historic Rehabilitation Tax Credit, 26 U.S.C. § 47, Low-Income Housing Credit, 26 U.S.C. § 42, and New Market Tax Credit, 26 U.S.C. § 45.D. Equity shall not include State grants or tax credits or proceeds from redevelopment area bonds. For a residential project utilizing Low-Income Housing Tax Credits awarded by the New Jersey Housing and Mortgage Financing Agency, equity also includes the portion of the developer's fee that is deferred for a minimum of five years.

"Environmental remediation costs" means any costs incurred by a developer in the completion of any actions necessary to investigate, clean up, or respond to a known, suspected, or threatened discharge of contaminants, including, as necessary, the preliminary assessment, site investigation, remedial investigation, and remedial action, pursuant to N.J.S.A. 58:10B-1 et seq.

"Film production uses" means a film studio, professional stage, sound stage, television studio, recording studio, screening room, or other production support space or infrastructure used for film production, including, but not limited to, production offices, mill space, or backlots, provided that the predominant use shall not be administrative or back office use.

"Fiscal impact analysis" means the analysis to be undertaken by the Authority to determine if the project meets the requirement of providing a net positive economic benefit to the State.

"Food delivery source" means access to nutritious foods, such as fresh fruits and vegetables, through grocery operators, including, but not limited to, a full-service supermarket or grocery store, and other healthy food retailers of at least 16,000 square feet, including, but not limited to, a prepared food establishment selling primarily nutritious ready-to-serve meals.

"Full-time employee at the redevelopment project" means a full-time employee whose primary office is at the redevelopment project and who spends at least 60 percent of his or her time at the redevelopment project, or who spends any other period of time generally accepted by custom or practice as full-time employment at the redevelopment project, as determined by the Authority.

"Government-restricted municipality" means a municipality in this State with a municipal revitalization index distress score of at least 75, that met the criteria for designation as an urban aid municipality in the 2019 State fiscal year, and that, on the effective date of N.J.S.A. 34:1B-269 et seq. (January 7, 2021), is subject to financial restrictions imposed pursuant to the Municipal Stabilization and Recovery Act, N.J.S.A. 52:27BBBB-1 et seq., or is restricted in its ability to levy property taxes on property in that municipality as a result of the State of New Jersey owning or controlling property representing at least 25 percent of the total land area of the municipality or as a result of the Federal government of the United States owning or controlling at least 50 acres of the total land area of the municipality, which is dedicated as a national natural landmark.

"Health care or health services center" means an establishment that consists of not less than 10,000 square feet devoted to health care or health services where patients are admitted for or seek examination and treatment by one or more physicians, dentists, psychologists, licensed clinical social workers, physical therapist, occupational therapist, or other medical practitioners and which is located in a municipality with a Municipal Revitalization Index distress score of at least 50, a distressed municipality, or a qualified incentive tract. A health care or health services center may also include supportive services, including but not limited to pharmacy services for medications prescribed by the medical practitioners onsite.

"Hospitality establishment" means a hotel, motel, or any business, however organized, that sells food, beverages, or both, with seating for consumption by patrons on the premises.

"Incentive area" means an aviation district; a port district; area designated pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq., as Planning Area 1 (Metropolitan), Planning Area 2 (Suburban), or a Designated Center, provided an area designated as Planning Area 2 (Suburban) or a Designated Center shall be located within a one-half mile radius of the mid-point, with bicycle and pedestrian connectivity, of a New Jersey Transit Corporation, Port Authority Transit Corporation, or Port Authority Trans-Hudson Corporation rail, bus, or ferry station, including all light rail stations, or a high frequency bus stop, as certified by the New Jersey Transit Corporation; an area designated as a brownfield site pursuant to the "Brownfield and Contaminated Site Remediation Act," N.J.S.A. 58:10B-1 et seq.; and an area of not less than 100 acres for which a licensed site remediation professional has certified environmental remediation costs in accordance with the "Site Remediation Reform Act," N.J.S.A. 58:10C-1 et seq., in an amount not less than \$10,000,000, provided that any portion of such area is located in an area that otherwise qualifies as an incentive area.

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

"Incentive award agreement" means the contract executed between a developer, any co-applicant, if applicable, and the Authority pursuant to N.J.S.A. 34:1B-328, which sets forth the terms and conditions under which the developer and any co-applicant may receive the incentive awards authorized pursuant to the provisions of N.J.S.A. 34:1B-322 through 34:1B-335.

"Incentive phase agreement" means, for a phased project, the capital investment requirements and the time periods in which each phase of the project shall be commenced and completed. The incentive phase agreement may be incorporated in the incentive award agreement.

"Labor harmony agreement" means an agreement between a business that serves as the owner or operator of a retail establishment, hospitality establishment, or distribution center and one or more labor organizations, which requires, for the duration of the agreement: that any participating labor organization and its members agree to refrain from picketing, work stoppages, boycotts, or other economic interference against the business; and that the business agrees to maintain a neutral posture with respect to efforts of any participating labor organization to represent employees at an establishment or other unit in the retail establishment, hospitality establishment, or distribution center, agrees to permit the labor organization to have access to the employees, and agrees to guarantee to the labor organization the right to obtain recognition as the exclusive collective bargaining representatives of the employees in an establishment or unit at the retail establishment, hospitality establishment, or distribution center by demonstrating to the New Jersey State Board of Mediation, Division of Private Employment Dispute Settlement, or a mutually agreed-upon, neutral, third-party that a majority of workers in the unit have shown their preference for the labor organization to be their representative by signing authorization cards indicating that preference. The labor organization or organizations shall be from a list of labor organizations which have requested to be on the list and which the Commissioner of Labor and Workforce Development has determined represent substantial numbers of retail establishment, hospitality establishment, or distribution center employees in the State.

"Lead Development Entity" means the entity that is responsible for overseeing the redevelopment project and is relied upon by the Authority to demonstrate operational capability, expertise, and experience to complete the project. The Authority shall determine which entity is the lead development entity by considering the role an entity has in the coordination of activities related to the redevelopment project, including, but not limited to, project design, project financing, permitting and local approvals, construction oversight and contracting, and property management.

"Low-income household" means a household with a gross household income equal to 50 percent or less of the median gross household income.

"Low-income housing" or "low-income unit" means a housing unit affordable to and occupied or reserved for occupancy by low-income households.

"Major cultural institution" means a public or nonprofit institution, not including an institution of higher education, within this State that engages in the cultural, intellectual, scientific, environmental, educational, or artistic enrichment of the people of this State, and which institution is designated by the board as a major cultural institution. To be designated, a major cultural institution shall demonstrate at approval either an average of at least \$2,000,000 in gross revenue in the most recent three consecutive tax years or that it has raised at least \$5,000,000 in contributions and grants for a redevelopment project. Additionally, if the major cultural institution was established less than three years prior to the application, it shall provide an independent analysis that it has the ability and likelihood to remain operational for the duration of the eligibility period.

"Major rail station" means a railroad station that is located within a qualified incentive area and that provides to the public access to a minimum of six rail passenger service lines operated by the New Jersey Transit Corporation.

"Median gross household income" means the median income for households of the same size within the county in which the housing unit is located according to the Federal Department of Housing and Urban Development standard as utilized by the Agency for federal low-income housing tax credits.

"Minimum environmental and sustainability standards" means the standards established by the Authority, in accordance with the green building manual prepared by the Commissioner of the Department of Community Affairs pursuant to N.J.S.A. 52:27D-130.6, regarding the use of renewable energy, energy-efficient technology, and non-renewable resources to reduce environmental degradation and encourage long-term cost reduction. The Authority shall publish these standards on its website.

"Mixed-use residential project" means a residential project with less than 700 units that qualifies as a transformative project.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but equal to or less than 80 percent of the median gross household income.

"Moderate-income housing" or "moderate-income unit" means a housing unit affordable to and occupied or reserved for occupancy by moderate-income households.

"Municipal Revitalization Index" means the index created by the Department of Community Affairs ranking New Jersey's municipalities according to eight separate indicators that measure diverse aspects of social, economic, physical, and fiscal conditions in each locality.

"Newly-constructed residential unit" means a residential unit that was not previously occupied as a residential unit with the same room configuration, including, but not limited to, bedroom distribution, unit square footage, and floor plan. Any change that combines existing rooms that does not otherwise change the room configuration, such as combining separate kitchen and living rooms into a single kitchen and living room space, shall not be considered the construction of a newly-constructed residential unit.

"Parking component" means any part of a redevelopment project used for parking and ancillary uses. For a redevelopment project that is not a phased transformative project, the parking and

ancillary uses shall not be the sole use of any building or structure and any other use shall have at least 2,500 square feet. For a phased transformative project, the size of the parking component shall be based on the number of parking spaces required by the municipality or other applicable government entity that is applicable to the redevelopment project.

"Port district" means the portions of a qualified incentive area that are located within: the Port of New York District of the Port Authority of New York and New Jersey, as defined at Article II of the Compact Between the States of New York and New Jersey of 1921; or a 15-mile radius of the outermost boundary of each marine terminal facility established, acquired, constructed, rehabilitated, or improved in the South Jersey Port District established pursuant to the South Jersey Port Corporation Act, N.J.S.A. 12:11A-1 et seq..

"Program" means the New Jersey Aspire Program established by sections 54 through 67 of P.L. 2020, c. 156, as amended by P.L. 2021, c. 160 and P.L. 2023, c. 98 (N.J.S.A. 34:1B-322 through 34:1B-335).

"Project cost" or "total project cost" means the sum of the costs incurred in connection with a redevelopment project by a developer until the earlier of the issuance of a permanent certificate of occupancy and the certification of costs pursuant to N.J.S.A. 19:23-8(f), or until such other time specified by the Authority, based upon such other documentation evidencing project completion as set forth in the incentive award agreement, for a specific investment or improvement, including the costs relating to lands, buildings, improvements, real or personal property, or any interest therein, including leases discounted to present value, including lands under water, riparian rights, space rights, and air rights acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved, any environmental remediation costs, plus soft costs of an amount not to exceed 20 percent of the total project costs, and the cost of infrastructure improvements, including ancillary infrastructure projects. Project cost shall not include the cost of acquiring land. Project cost shall include otherwise qualifying costs incurred by an affiliate of the developer. The fees paid by the developer or any co-applicant to the Authority associated with the application or administration of an incentive award pursuant to N.J.S.A. 34:1B-322 through 34:1B-335 shall not constitute a project cost. When 100 percent of the residential units constructed in a residential project are reserved for occupancy by low- and moderate-income households, the term "project cost" shall also include the total amount of developer fees paid before acquiring permanent financing, as well as the deferred developer fees approved pursuant to the rules established by the Agency.

"Project financing gap" means the part of the total development cost, including reasonable and appropriate return on investment, that remains to be financed after all other sources of capital have been accounted for, including, but not limited to, developer-contributed capital, which shall not be less than 20 percent of the total development cost, and investor or financial entity capital or loans for which the developer, after making all good faith efforts to raise additional capital, certifies that additional capital cannot be raised from other sources on a non-recourse basis; provided, however, that for a redevelopment project located in a government-restricted municipality, the developer-contributed capital shall not be less than 10 percent of the total development cost.

"Qualified incentive tract" means a population census tract having a poverty rate of 20 percent or more; or a census tract in which the median family income for the census tract does not exceed

80 percent of the greater of the Statewide median family income or the median family income of the metropolitan statistical area in which the census tract is situated.

“Random selection process” means a process by which currently income-eligible households are selected for placement in restricted units such that no preference is given to one household over another except for purposes of matching household income and size with an appropriately priced and sized restricted unit (e.g., by lottery).

"Reasonable and appropriate return on investment" means the discount rate at which the present value of the future cash flows of an investment equals the cost of the investment. In determining the “reasonable and appropriate return on investment,” an investment shall not include any federal, State, or local tax credits. For a residential project that utilizes federal low-income housing tax credits awarded by the Agency, the “reasonable and appropriate return on investment” shall be based on the approval of deferred developer fees pursuant to the rules established by the Agency. In the event that a residential project, which utilizes federal low-income housing tax credits awarded by the Agency, generates returns on equity other than federal or local grants or proceeds from the sale of federal or local tax credits, the “reasonable and appropriate return on investment” shall be based on both the discount rate at which the present value of the future cash flows of an investment equal the cost of the investment for the entire project, and when evaluating only the units financed with federal low-income housing tax credits awarded by the Agency, the approval of deferred developer fees pursuant to the rules established by the Agency.

“Redevelopment agreement” means a properly executed agreement between a municipality and a developer that pertains to a property being redeveloped and includes the redevelopment project, pursuant to the Local Redevelopment and Housing law, N.J.S.A. 40A:12A-1, et. seq.

"Redevelopment project" means a specific construction project or improvement or phase of a project or improvement undertaken by a developer, owner, or tenant, or both, and any ancillary infrastructure project. A redevelopment project may involve construction or improvement upon lands, buildings, improvements, or real and personal property, or any interest therein, including lands under water, riparian rights, space rights, and air rights, acquired, owned, developed or redeveloped, constructed, reconstructed, rehabilitated, or improved.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances utilized by the Agency for federal low-income housing tax credits.

"Residential project" means a redevelopment project that is predominantly residential, intended for multi-family residency, and may include a parking component. When determining if a project is a residential or commercial project, a parking component shall not constitute either a residential or commercial use.

“Restricted unit” means a dwelling unit that is subject to the affordability controls.

"SDA district" means an SDA district as defined in N.J.S.A. 18A:7G-3.

"SDA municipality" means a municipality in which an SDA district is situated.

"Soft costs" means costs not directly related to construction, including capitalized interest paid to third parties, real estate taxes, utility connection fees, accounting, title/bond insurance, fixtures/equipment with a useful life of five years or less, affordable housing fees, and all costs associated with financing, design, engineering, legal, or real estate commissions, including, but not limited to, architect fees, permit fees, loan origination and closing costs, construction management, and freight and shipping delivery. The term does not include early lease termination costs, air fare, mileage, tolls, gas, meals, packing material, marketing and advertising, temporary signage, incentive consultant fees, Authority fees, loan interest payments on permanent financing, escrows, reserves, pre-opening costs, commissions and fees to the developer not included in the definition of project cost, project management, or other similar costs. Soft costs shall include costs for benefits and services provided under the community benefits agreement that are not directly related to construction of the project, subject to the limitations at N.J.A.C. 19:31-23A.8(e)8.

"Square feet" means the sum of all areas on all floors of a building included within the outside faces of its exterior walls, including all vertical penetration areas for circulation and shaft areas that connect one floor to another, but disregarding cornices, pilasters, buttresses, and similar structures that extend beyond the wall faces.

"Total development cost" or "total redevelopment cost" means any and all costs incurred for and in connection with the redevelopment project by the developer and any affiliate of the developer until the issuance of a permanent certificate of occupancy, or upon such other event evidencing project completion as set forth in the incentive grant agreement, which shall include, but is not limited, to project costs, soft costs, and cost of acquisition of land and buildings.

"Transit hub" means an urban transit hub, as defined in N.J.S.A. 34:1B-208, that is located within an eligible municipality, as defined in N.J.S.A. 34:1B-208 and also located within a qualified incentive area.

"Vacant commercial building" means any commercial building or complex of commercial buildings having over 400,000 square feet of office, laboratory, or industrial space that is more than 70 percent unleased and unoccupied for a period of over one year at the time of application to the Authority, except that the amount of square feet in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean, or Salem counties shall be 200,000.

"Very low-income household" means a household with a total gross annual household income equal to 35 percent or less of the median gross household income.

"Very low-income housing" or "very low-income unit" means a housing unit affordable and occupied or reserved for occupancy by very low-income households.

"Workforce housing" means housing that is affordable according to the Federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs, and occupied or reserved for occupancy by households with a gross household income of more than 80 percent, but less than 120 percent, of the median gross household income for households of the same size within the housing region in which the housing is located.

19:31-23A.3 Eligibility criteria

(a) Prior to March 1, 2029, a developer and co-applicant, if applicable, shall be eligible to receive an incentive award for a redevelopment project only if the developer demonstrates to the Authority at the time of application that:

1. Without the incentive award, the redevelopment project is not economically feasible;
2. With the incentive award, the redevelopment project will be economically and commercially viable for the duration of the eligibility period;
3. A project financing gap, which includes consideration of the project's reasonable and appropriate return on investment, exists, or the Authority determines that the redevelopment project's reasonable and appropriate return on investment is below the market rate of return and supports an incentive award of all or a portion of the project financing gap;
4. The redevelopment project, except a commercial project that is predominantly film production uses, is located in the incentive area;
5. Except for demolition and site remediation activities, the developer has not commenced any construction at the site of the redevelopment project prior to submitting an application. However, the Authority may determine that the redevelopment project would not be completed without the award or, in the event the redevelopment project is to be undertaken in phases, the requested incentive award is limited to only phases for which construction has not yet commenced;
6. The redevelopment project shall comply with minimum environmental and sustainability standards;
7. The redevelopment project shall comply with the Authority's affirmative action requirements, adopted pursuant to N.J.S.A. 34:1B-5.4, as provided at N.J.A.C. 19:31-23A.14(a);
8. During the eligibility period, each worker employed to perform construction work at the redevelopment project shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of the Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq. and N.J.S.A. 34:11-56.58 et seq. For construction work, prevailing wage shall apply to all work done by tenants at the redevelopment project;
9. During the eligibility period, each worker employed to perform building services work at the redevelopment project, whether pursuant to contract by the developer or a commercial tenant, commercial subtenant, or other commercial occupant, shall be paid not less than the prevailing wage rate for the worker's craft or trade, as determined by the Commissioner of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.25 et seq. and N.J.S.A. 34:11-56.58 et seq., except that this requirement shall not apply to workers employed to perform building services work by a commercial tenant, commercial subtenant, or other commercial occupant that has a leasehold interest or other

occupancy right in a redevelopment project, which leasehold interest or other occupancy right encompasses less than 5,000 square feet of space within the project. For purposes of this paragraph, square feet shall mean the rentable area of the building or structure in the lease but does not include the tenant's pro rata portion of common areas. In the event a portion of a redevelopment project is undertaken by a tenant and the tenant has a leasehold of more than 55 percent of space in the building owned or controlled by the developer, the requirement that each worker employed to perform building service work at the building be paid not less than the prevailing wage shall apply to the entire redevelopment project and all tenants therein. The requirement in this paragraph 9 shall not apply to residential tenants or residential subtenants;

10. The redevelopment project shall be completed, and the developer shall be issued a temporary certificate of occupancy for the redevelopment project facilities by the applicable enforcing agency within four years of executing the incentive award agreement corresponding to the redevelopment project. Except that if the Governor declares an emergency, the chief executive officer of the authority may grant an extension for the duration of the emergency and the board of the authority, upon recommendation of the chief executive officer, may grant two additional six-month extensions; provided that on an ongoing basis:

- i. The extensions are due to the economic disruption caused by the emergency;
- ii. The project is delayed due to unforeseeable acts related to the project beyond the developer's control and not due to the developer's fault or negligence;
- iii. The developer is using best efforts, with all due diligence, to proceed with the completion of the project and the issuance of the temporary certificate of occupancy; and
- iv. The developer has made and continues to make all reasonable efforts to prevent, avoid, mitigate, and overcome the delay;

11. A redevelopment project with a project cost in excess of \$ 50,000,000 may complete the redevelopment project in phases and have the temporary certificate of occupancy issued no more than six years from the date on which the incentive award agreement is executed, provided that:

- i. Each phase shall be \$ 50,000,000 or more, except for the last phase;
- ii. The developer shall obtain a temporary certificate of occupancy for each phase; and
- iii. The first temporary certificate of occupancy shall be obtained within four years of executing the incentive award agreement;

12. The developer has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in N.J.S.A. 54:50-39;

13. The developer, all principals of the developer, and any affiliate of the developer, is not more than 24 months in arrears of any financing obligation for the redevelopment project at the time of application, in accordance with N.J.S.A. 34:1B-325(a);
14. Except for a residential project, food delivery source, or a health care or health services center, the overall public assistance provided to the project will result in a net positive economic benefit to the State; and
15. If the application includes a co-applicant, the developer and co-applicant demonstrate the following:
 - i. The co-applicant has complied with all requirements for filing tax and information returns and for paying or remitting required State taxes and fees by submitting, as a part of the application, a tax clearance certificate, as described in section 1 at P.L. 2007, c. 101 (N.J.S.A. 54:50-39);
 - ii. The co-applicant's organizational purpose encompasses the proposed participation;
 - iii. The co-applicant has the financial and operational capability to provide the proposed contribution or services;
 - iv. The co-applicant's proposed capital, real property, or services will materially affect and serve the anticipated residents, tenants, or customers of the tenants of the redevelopment project; and
 - v. The co-applicant's receipt and sale of the tax credits is necessary to finance the redevelopment project.

(b) The following are the only costs incurred prior to application that may be included as project costs:

1. For applications submitted on or after January 1, 2024, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within two years prior to the date of the application; and
2. For applications submitted on or after January 1, 2023, and prior to January 1, 2024, demolition, site remediation, soft costs for project feasibility, and acquisition of buildings or other site improvements not including any land acquisition costs are project costs if incurred within three years prior to the date of the application.

(c) To determine that the project has a project financing gap, the developer shall demonstrate that the redevelopment project has developer-contributed capital of at least 20 percent of the total development cost, except that if a redevelopment project is located in a government-restricted municipality, the developer-contributed capital shall be at least 10 percent of the total development cost.

(d) For a residential project to qualify for an incentive award, the residential project shall:

1. Have a total project cost of at least \$17,500,000, if the project is located in a municipality with a population greater than 200,000 according to the latest Federal decennial census;
2. Have a total project cost of at least \$10,000,000, if the project is located in a municipality with a population less than 200,000 according to the latest Federal decennial census; or
3. Have a total project cost of at least \$5,000,000, if the project is in a qualified incentive tract or government-restricted municipality.

(e) For a residential project or a redevelopment project consisting of, or containing any, newly-constructed residential units to qualify for an incentive award, the developer shall reserve at least 20 percent of the residential units constructed for occupancy by low- and moderate-income households with affordability controls set forth in this subchapter, except that a residential project receiving 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, shall be exempt from the affordability controls related to bedroom distribution.

(f) For all redevelopment projects, in order to include the cost of acquiring a building or buildings in the project cost of a redevelopment project involving the rehabilitation or improvement of the building or buildings, all other components of the project cost must equal or exceed the cost of acquiring the building or buildings, provided the cost of acquiring a building or buildings may be 60 percent of the total project cost for a project utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consists solely of units reserved for occupancy by low- and moderate-income households.

19:31-23A.4 Application submission requirements

(a) Each application to the Authority made by a developer shall include the following information in an application format prescribed by the Authority:

1. The name of the developer and lead development entity;
2. The contact information of the person identified as the primary contact for the developer and lead development entity;
3. The type of the business of the developer and lead development entity;
4. The New Jersey tax identification number of the developer and lead development entity;
5. The Federal tax identification number of the developer and lead development entity;
6. Financial statements for the last three years of the lead development entity;

7. A description of the project, including a breakdown of uses and related square footage and costs, and the developer's experience with similar project(s);
8. A copy of a market and/or feasibility study for the proposed use of the project site by an independent third party, which must include the firm's position regarding the marketability and underwriting of the revenue and expense components of the proposed project for the duration of the eligibility period;
9. An anticipated construction schedule;
10. Financial information of the project, which shall include all phases, including, but not limited to, estimated project costs and total development costs, any State or local financial assistance for the project, proposed terms of financing, projected reasonable and appropriate return on investment on developer's contributed capital, net margin, and cash on cash yield, and a certification from the chief executive officer, or equivalent officer of the developer, that additional capital cannot be raised from other sources on a non-recourse basis after making all good faith efforts to raise additional capital, and any other documentation demonstrating economic and commercial viability pursuant to N.J.A.C. 19:31-23A.3(a)2;
11. As applicable, a certification that the project meets the requirements to reserve residential units as set forth at N.J.A.C. 19:31-23A.3(e) and/or N.J.A.C. 19:31-23A.11(e) and the affordability controls for such reserved units;
12. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the developer and the lead development entity is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The developer and the lead development entity shall also submit a written certification by the chief executive officer, or equivalent officer of the developer, stating that the developer applying for the program and the lead development entity satisfy the criteria at N.J.A.C. 19:31-23A.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury and the criteria at N.J.A.C. 19:31-23A.7(b)2 to be in substantial good standing with the Agency;
13. A certification that any contractors or subcontractors that will perform work at the redevelopment project are registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., have not been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury;

14. A certification by the chief executive officer, or equivalent officer of the developer, that the officer has reviewed the application information submitted and that the representations contained therein are accurate;
15. A completed legal questionnaire disclosing all relevant legal matters in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
16. Submission of a tax clearance certificate of the developer and the lead development entity;
17. A list of all the development subsidies, as defined in N.J.S.A. 52:39-1 et seq., that the developer is requesting or receiving, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
18. The status of control of the entire redevelopment project site, shown for each block and lot of the site as indicated on the local tax map;
19. A list and status of all required local, State, and Federal government permits and local planning and zoning board approvals that have been issued for the redevelopment project, or will be required to be issued, pending resolution of financing issues;
20. A description of how the minimum environmental and sustainability standards are to be incorporated into the proposed redevelopment project, including use of renewable energy, energy-efficient technology, and non-renewable resources in order to reduce environmental degradation and encourage long-term cost reduction;
21. Except for a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households, for a redevelopment project whose total project cost equals or exceeds \$ 10 million and for which a community benefits agreement, a redevelopment agreement, or a resolution is required pursuant to N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23A.8(e), a letter of support from the chief executive of the municipality or county, if applicable, acknowledging the requirement and that the requirement must be met within the time required at N.J.A.C. 19:31-23A.8(e)4.
22. Information required by the Authority to evaluate and determine the application's score pursuant to N.J.A.C. 19:31-23A.7(c);
23. If a developer is applying as a major cultural institution, or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest:

- i. Either:

(1) Form 990s or other forms filed with the Internal Revenue Service for the most recent three consecutive tax years showing the proposed major cultural institution's gross revenue;

(2) Executed agreements or letters of intent demonstrating current contribution or grant commitments to the proposed major cultural institution;

ii. An independent analysis demonstrating that the proposed major cultural institution has the ability and likelihood to remain operational for the duration of the eligibility period;

iii. If applicable, documentation evidencing the ownership interest by the proposed major cultural institution; and

24. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete project financial review and developer capacity.

(b) If the developer is applying with a co-applicant, the application shall also include the following information of the co-applicant:

1. The name of the business;

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

3. The type of the business;

4. The New Jersey tax identification number;

5. The Federal tax identification number;

6. A list of all of the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury permits and approvals or obligations and responsibilities, with which the co-applicant is associated with, or has an interest in. The list shall identify the entity that applied for or received such permits and approvals or have such obligations and responsibilities, such as by program interest numbers or licensing numbers. The co-applicant shall also submit a written certification by the chief executive officer, or equivalent officer of the eligible co-applicant, stating that the co-applicant applying for the program satisfies the criteria at N.J.A.C. 19:31-23A.7(b)1 to be in substantial good standing with the Department of Labor and Workforce Development, the Department of Environmental Protection, and the Department of the Treasury;

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

8. A completed legal questionnaire disclosing all relevant legal matters, in accordance with the Authority debarment and disqualification rules at N.J.A.C. 19:30-2;
9. Submission of a tax clearance certificate, pursuant to N.J.S.A. 54:50-39;
10. A list of all the development subsidies, as defined in N.J.S.A. 52:39-1 et seq , that the co-applicant is requesting or receiving for the redevelopment project, the name of the granting body, the value of each development subsidy, and the aggregate value of all development subsidies requested or received;
11. Organizing documents of the co-applicant and a narrative regarding the activity of the co-applicant generally, and in the State and municipality;
12. A description of the long-term participation agreement between the co-applicant and the developer, including a description of how the co-applicant will take an active role in the redevelopment project, including a description of the capital, real property or services related to the project that the co-applicant will provide that directly affect and serve the anticipated residents, tenants, or customers of the tenants of the project;
13. An explanation of the need for a co-applicant to receive and sell the tax credits to finance the redevelopment project and how the co-applicant satisfies the eligibility criteria set forth in N.J.A.C. 19:31-23A.3(a)15; and
14. Any other necessary and relevant information as determined by the Authority for a specific application, including, but not limited to, information needed to complete review of project financial review and developer capacity.

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

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

(e) If circumstances require a developer to amend its application to the Authority, then the developer, or chief executive officer or equivalent officer of the developer, shall certify to the Authority that the information provided in its amended application is true under the penalty of perjury.

19:31-23A.5 Fees

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

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 10,000;

2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects not subject to paragraph 1 above, the fee shall be \$ 50,000 without phases and \$ 75,000 with phases; and

3. For transformative projects, the fee shall be \$ 100,000 for each phase included in the proposed project.

(b) A developer shall pay to the Authority the full amount of direct costs of due diligence, including, but not limited to, debarment/disqualification reviews or other analyses by a third party retained by the Authority, if the Authority deems such retention to be necessary.

(c) The developer shall pay to the Authority a non-refundable fee prior to the approval of the tax credit by the Authority as follows, except that the fee shall be refunded if the Authority does not approve the tax credit:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 75,000;

2. For projects that do not have any residential units with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects that do not have residential units, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases;

3. For projects not subject to paragraphs 1 or 2 above with total project cost of \$ 50 million or less, the fee shall be \$ 75,000. For other projects not subject to paragraphs 1 or 2 above, the fee shall be \$ 85,000 without phases and \$ 275,000 with phases; and

4. For transformative projects, the fee shall be \$ 500,000 for each phase included in the proposed project.

(d) For all redevelopment projects, including transformative projects, a developer shall pay, to the Authority, a non-refundable fee prior to the receipt of the tax credit certificate. For a phased transformative redevelopment project, the developer shall pay an additional non-refundable fee prior to the approval of the project cost certification for the second phase and each subsequent phases. The fee shall be as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 75,000;

2. For projects that do not have any residential units with total project cost of \$ 50 million or less, the fee shall be \$ 50,000. For other projects that do not have residential units, the fee shall be \$ 60,000 without phases and \$ 250,000 with phases;

3. For projects not subject to paragraphs 1 or 2 above with total project cost of \$ 50 million or less, the fee shall be \$ 75,000. For other projects not subject to paragraphs 1 or 2 above, the fee shall be \$ 85,000 without phases and \$ 275,000 with phases; and
4. For transformative projects, the fee shall be \$ 500,000 for each phase included in the approved project.

(e) A developer shall pay, to the Authority, an annual servicing fee, beginning with the tax accounting or privilege period in which the Authority accepts the certification that the developer has met the eligibility requirements of the program for the respective redevelopment project, or the first phase for a phased transformative project, and for the duration of the eligibility period pursuant to N.J.A.C. 19:31-23A.2. The annual servicing fee shall be paid to the Authority by the developer at the time the developer submits its annual report, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 37,500;
2. For projects that do not have any residential units with total project cost of \$ 50 million or less, the fee shall be \$ 30,000. For other projects that do not have residential units, the fee shall be \$ 40,000 without phases and \$ 100,000 with phases;
3. For projects not subject to paragraphs 1 or 2 above with total project cost of \$ 50 million or less, the fee shall be \$ 42,500. For other projects not subject to paragraphs 1 or 2 above, the fee shall be \$ 52,500 without phases and \$ 112,500 with phases; and
4. For transformative projects, the fee shall be \$ 200,000 for each phase included in the approved project.

(f) A developer applying for a tax credit transfer certificate pursuant to N.J.A.C. 19:31-23A.12, including use of the tax credit transfer certificate as collateral, or to pledge, assign, transfer, or sell any or all of its right, title, and interest in and to an incentive award agreement and in the incentive awards payable thereunder, shall pay to the Authority a fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 10,000, and \$ 5,000 for each additional request made annually;
2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, the fee shall be \$ 10,000, and \$ 5,000 for each additional request made annually. For other projects not subject to paragraph 1 above, the fee shall be \$ 10,000 without phases and \$ 5,000 for each additional request made annually, and \$ 20,000 with phases, and \$ 10,000 for each additional request made annually; and
3. For transformative projects, the fee shall be \$ 20,000, and \$ 10,000 for each additional request made annually, for each phase included in the approved project.

(g) A developer shall pay to the Authority a non-refundable fee for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative change, addition, or modification to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major change, addition, or modification to the tax credit, such as those requiring extensive staff time and Board approval;
2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, a non-refundable fee of \$ 10,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval. For other projects not subject to paragraph 1 above, a non-refundable fee of \$ 20,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 30,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval without phases and \$ 150,000 with phases; and
3. For transformative projects, a non-refundable fee of \$ 30,000 shall be paid for each request for any administrative changes, additions, or modifications to the tax credit; and a non-refundable fee of \$ 300,000 shall be paid for any major changes, additions, or modifications to the tax credit, such as those requiring extensive staff time and Board approval.

(h) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall provide project financing and planning documentation required in the approval letter pursuant to N.J.A.C. 19:31-23A.8(a); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 7,500;
2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, the fee shall be \$ 7,500. For other projects not subject to paragraph 1 above, the fee shall be \$ 10,000 without phases and \$ 15,000 with phases; and
3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project.

(i) A non-refundable fee shall be paid for the first six-month extension to the date by which the developer shall submit the satisfactory evidence with respect to the eligibility requirements of the

program pursuant to N.J.A.C. 19:31-23A.8(f) for the respective redevelopment project, or the respective phase of a phased transformative project pursuant to N.J.A.C. 19:31-23A.11(d); and a non-refundable fee shall be paid for each subsequent extension, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 7,500 for each extension;
2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, the fee shall be \$ 7,500 for each extension. For other projects not subject to paragraph 1 above, the fee shall be \$ 10,000 without phases and for each subsequent extension shall be \$ 15,000 and \$ 15,000 with phases and for each subsequent extension shall be \$ 30,000; and
3. For transformative projects, the fee shall be \$ 20,000 for each phase included in the approved project and for each subsequent extension shall be \$ 40,000 for each phase included in the approved project.

(j) A developer seeking to terminate an existing incentive agreement in order to participate in an incentive award agreement authorized pursuant to the Aspire program shall pay to the Authority a non-refundable fee, as follows:

1. For projects utilizing tax credits under the Federal Low-Income Housing Tax Credit Program and that consist solely of units that are reserved for low- and moderate-income households, the fee shall be \$ 25,000;
2. For projects not subject to paragraph 1 above with total project cost of \$ 50 million or less, the fee shall be \$ 25,000. For other projects not subject to paragraph 1 above, the fee shall be \$ 50,000; and
3. For transformative projects, the fee shall be \$ 100,000 for each phase included in the approved project.

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

19:31-23A.6 Financing gap and fiscal impact analysis

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

1. The Authority shall evaluate the proposed total redevelopment costs to develop, and the components of, the redevelopment project against reasonable market costs and components of comparable projects;
2. The Authority shall determine if the developer's submitted financial information for the project and, if applicable, all phases, is satisfactory. If satisfactory, the Authority shall incorporate the financial information in the project financing gap, including the reasonable and appropriate return on investment; and

3. The project financing gap analysis shall include, but not be limited to, an evaluation of the total development cost, amount of capital sufficient to complete the project, proposed rental rates, vacancy rates, reasonable and appropriate return on investment, and, in the Authority's sole discretion, a comparison to alternative financing structures for a comparable project available to the developer or its tenants.

(b) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the redevelopment project will result in a net positive economic benefit to the State, provided that the net positive economic benefit analysis shall not apply to a residential project, to a component that is a food delivery source, or to a component that is a health care or health services center. In determining whether a project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained pursuant to the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based on the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed redevelopment project for which an award of tax credits is being sought.

(c) For a redevelopment project subject to the requirement at (b) above to be eligible for any tax credits under the program, a developer shall demonstrate to the Authority that the award of tax credits will yield a net positive economic benefit to the State not less than 160 percent of the award. The net positive economic benefit shall be evaluated for the duration of the eligibility period. The chief executive officer or equivalent officer of the developer shall certify, under the penalty of perjury, that all documents submitted and factual assertions made to the Authority to demonstrate that the award of tax credits will yield a net positive economic benefit to the State in accordance with this subsection are true and accurate at the time of submission. Notwithstanding this provision, the following redevelopment projects shall demonstrate to the Authority that the award of tax credit shall yield a net positive economic benefit to the State not less than 125 percent:

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, new construction.

(d) In determining whether the redevelopment project yields the net positive economic benefit pursuant to (b) above and as certified by the chief executive officer or equivalent officer of the developer pursuant to (c) above, the Authority's consideration shall include, but not be limited to, the direct, indirect, and induced benefits to the State, including local taxes that may benefit the State, and may include induced benefits derived from construction, provided that such determination shall be limited to the net positive economic benefit derived from the capital investment commenced after the submission of an application to the Authority. For the purposes of calculating employee wages at the redevelopment project site to be included in the evaluation of the net positive economic benefit, the Authority shall rely upon the average wages in the region in which the respective redevelopment project is located.

(e) If, during the administration of the program, the methodology used by the Authority in evaluating the net positive economic benefit of redevelopment projects is modified, the Authority shall apply such modification to the methodology prospectively. Prospective application means using the modified methodology to pending applications and to redevelopment projects that have been previously approved if the developer requests a modification, or this subchapter or the incentive award agreement requires, or authorizes, the Authority to conduct a reevaluation of the net positive economic benefit.

(f) In determining net positive economic benefits for any business or person considering locating in a redevelopment project and applying to receive from the Authority any other economic development incentive subsequent to the award of tax credits pursuant to the Act and this subchapter, the Authority shall not credit the business or person with any benefit that was previously credited to the redevelopment project.

19:31-23A.7 Approval of completed application; tax credit amounts

(a) Prior to March 1, 2029, for redevelopment projects eligible pursuant to N.J.S.A. 34:1B-325 and this subchapter, the Authority shall award incentive awards based on the order in which complete, qualifying applications are received by the Authority. If interest in the program so warrants, at the Authority's discretion, and upon notice, the Authority may institute a competitive application process whereby all completed applications submitted by a date certain will be evaluated as if submitted on that date. The review will determine whether the applicant:

1. Complies with the eligibility criteria;

2. Satisfies the submission requirements; and
3. Provides adequate information for the subject application.

(b) Before the Board may consider a developer's application for tax credits:

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

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

(1) As to the Department of Labor and Workforce Development and the Department of Environmental Protection:

(A) Is in substantial compliance with all material statutes, rules, and other enforceable standards of the respective department that apply to the developer and any co-applicant; and

(B) Has no material violations of those statutes, rules, or other enforceable standards that remain substantially unresolved through entry into a corrective action plan, or other agreement with the department, with respect thereto; and

(2) As to all other departments, has no unpaid liability in excess of any threshold dollar amount(s) that may be established by each respective department.

ii. If the Department of Labor and Workforce Development, the Department of Environmental Protection, or the Department of the Treasury promulgates or issues its own more stringent rule or standard defining the term "substantial good standing," the respective department shall use such rule or standard to determine whether an entity is in substantial good standing.

2. The Authority shall confirm with the Agency that the applicant and the lead development entity are in compliance by being in substantial good standing with regard to the Agency's low-income housing tax credit.
3. The Authority may contract with an independent third party to perform a background check on the developer, the lead development entity, and any co-applicant.
4. Any contractors or subcontractors that will perform work at the redevelopment project shall be registered as required by the Public Works Contractor Registration Act, N.J.S.A.

34:11-56.48 et seq., shall not have been debarred by the Department of Labor and Workforce Development from engaging in or bidding on Public Works Contracts in the State, and shall possess a tax clearance certificate issued by the Division of Taxation in the Department of the Treasury.

(c) Provided that the requirements at (b) above are satisfied, the Authority shall allocate incentive awards to redevelopment projects according to the redevelopment project's score and until either the available incentive awards are exhausted or all redevelopment projects obtaining the minimum score receive an incentive award, whichever occurs first. The scoring shall be based on factors including, but not limited to, consistency of proposed use with applicable land use requirements or redevelopment plans; whether the redevelopment project adheres to smart growth, equitable development, and transit-oriented development principles; whether the redevelopment project has environmental or public health stressors and is located in an overburdened community pursuant to N.J.S.A. 13:1D-157 et seq; whether the redevelopment project design anticipates long-term risks of climate change to the redevelopment project; and inclusion of workforce housing in a residential project not located in a distressed municipality. If insufficient funding exists to fully fund all eligible projects, a project may be offered partial funding.

(d) If a developer intends to apply to both the Authority and the Agency for tax credits, subsidies, or other financing, the developer shall notify the Agency simultaneously with any application made to the Authority. The Authority shall transmit its grant determination for such residential projects to the Agency, along with any information developed by the Authority and confirmation of the Authority's intent to provide an incentive award or award to the project. Approval of an application by the Agency, subject to the Agency's rules and guidelines for the applicable Agency program, shall be the final determination required for an incentive award for a residential project pursuant to this section.

(e) Up to the limits established at (f) below, and in accordance with an incentive award agreement, beginning upon completion of the capital investment and the receipt of the temporary certificate of occupancy for the redevelopment project or the first phase of an approved phased project, or upon any other event evidencing project completion as set forth in the incentive award agreement, a developer shall be allowed a total tax credit under this program that shall not exceed the percentages in this subsection. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

1. Eighty percent of the total project cost for a redevelopment project that is located in a government-restricted municipality, not to exceed \$120 million per redevelopment project or phase for a redevelopment project;

2. Sixty percent of the total project cost for a residential project that receives a four-percent allocation under the Federal Low-Income Housing Tax Credit Program or a redevelopment project that is located in a qualified incentive tract, enhanced area, or

a municipality with a Municipal Revitalization Index score of at least 50, not to exceed \$90 million per redevelopment project or phase of a redevelopment project; or

3. Fifty percent of the total project cost for any other redevelopment project, not to exceed \$ 60 million per redevelopment project or phase for a redevelopment project.

(f) Notwithstanding the provisions at (e) above, for projects with tax credits under the Federal Low-Income Housing Tax Credit Program in which not all the residential units are reserved for occupancy by low- and moderate-income households, in no event shall the sum of all tax credits awarded under any program administered by the Authority and the Federal Low-Income Housing Tax Credit Program exceed 90 percent of the project cost. For all other projects, in no event shall the sum of all tax credits awarded under any program administered by the Authority exceed 90 percent of the project cost.

(g) The maximum amount of tax credits available to a developer to apply annually shall be equal to the total credit amount divided by the duration of eligibility period in years, fractions of a dollar rounded down.

19:31-23A.8 Approval letter; incentive award agreement

(a) Upon receipt of a recommendation from the Authority staff on the redevelopment project, the Board shall determine whether or not to approve the application, the maximum amount of tax credits and the maximum percentage amount of allowed tax credits for its capital investment in a redevelopment project, and promptly notify the applicant, any co-applicant, and the Director of the Division of Taxation of the determination.

1. The Board's award of the credits will be subject to conditions subsequent that must be met in order to retain the credits. An approval letter setting forth the conditions subsequent will be sent to the applicant and any co-applicant. Such conditions shall include, but not be limited to, the requirement that the project complies with the Authority's prevailing wage requirements, P.L. 2007, c. 245 (N.J.S.A. 34:1B-5.1) and affirmative action requirements, P.L. 1979, c. 303 (N.J.S.A. 34:1B-5.4), that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13, and the requirement that the minimum environmental and sustainability standards are incorporated into the proposed project. The approval letter shall also provide the requirements necessary for the Authority to execute the incentive award agreement.

2. The approval letter shall require documentation evidencing project financing and planning approvals, including the submittal of executed financing commitments, documents that evidence site control by the developer or an affiliate of the developer, a copy of the site plan approval, and a copy of all required permits and planning and zoning approvals and permits. If a developer is applying as a major cultural institution or to undertake a redevelopment project in which the proposed major cultural institution has an ownership interest, and the developer applied on the basis of contributions and grants, the approval letter shall also require submittal of executed grant and contribution agreements. If the Authority approval included a co-applicant, the required documents shall also

include the executed participation agreement between the co-applicant and the developer with a term that extends for the duration of the eligibility period. Absent extenuating circumstances or the Authority's determination, in its sole discretion, the Authority's approval of the tax credits shall expire if the developer or co-applicant, as applicable, does not submit the documentation required in this paragraph within a year after approval of the application.

3. If the terms of the financial commitment contained in the evidence required by the approval letter are materially different from the projected terms in the application, the Authority may re-evaluate the project financing gap and reduce the size of the incentive award, accordingly.

4. The approval letter shall provide an estimated date of completion and include a requirement for periodic progress reports. If the Authority does not receive a progress report when required, or if the progress report demonstrates unsatisfactory progress, then the Authority, upon consultation with the Agency, and if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the incentive award. If the Authority rescinds an incentive award in the same calendar year in which the Authority approved the incentive award, then the Authority may allocate the unused tax credits to another applicant.

(b) Following satisfaction of the requirements for the execution of an incentive award agreement, the Authority shall enter into an incentive award agreement with the developer and any co-applicant. The Chief Executive Officer of the Authority shall negotiate the terms and conditions of the incentive award agreement on behalf of the State. The awarding of tax credits shall be conditioned on the developer's and any co-applicant's compliance with the requirements of the agreement.

(c) The incentive award agreement shall specify and include:

1. A detailed description of the proposed redevelopment project. For a phased project, the incentive award agreement may include an incentive phase agreement for each phase, which shall contain a description of the phase, the expected project cost and total development cost, and the commencement and completion for the respective phase;

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

3. The duration of the eligibility period;

4. A description of the occupancy permit or other event evidencing project completion that begins the eligibility period;

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

6. A requirement that the developer shall not cease to operate the redevelopment project during the eligibility period;
7. A method for the developer to certify that it has met the project cost and other eligibility requirements of the program;
8. A requirement for the developer to provide annual financial statements, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance;
9. Representations that the developer will comply with the minimum environmental and sustainability standards;
10. Representations that the developer and any co-applicants are in substantial good standing and that the redevelopment project will comply with all applicable laws, including, but not limited to, prevailing wage requirements pursuant to N.J.A.C. 19:31-23A.14(b) and (c), affirmative action requirements pursuant to N.J.A.C. 19:31-23A.14(a), and environmental laws, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
11. A provision permitting an audit of evidence and documentation, of the developer and any co-applicant, supporting the certifications pursuant to (f) below, and the annual reports pursuant to N.J.A.C. 19:31-23A.9, as the Authority deems necessary;
12. Reporting requirements pursuant to N.J.A.C. 19:31-23A.9;
13. A provision permitting the Authority to amend the agreement;
14. A provision establishing the conditions under which the Authority, the developer and any co-applicant, or all parties, may terminate the agreement;
15. Milestones for the redevelopment project, which shall include the estimated date of commencement and completion of the project, and a provision that the Authority, upon consultation with the Agency, if the Agency has provided financial assistance or awarded tax credits to the redevelopment project, may rescind the award of tax credits if a project fails to advance in accordance with milestones in the incentive award agreement or fails to provide progress reports required under the approval letter;
16. A provision to verify the financing gap and the developer's updated projected cash flow at the time the developer submits the evidence of the completion of the project pursuant to (f) below, which shall include, but is not limited to, any executed permanent financing commitments. To ensure the protection of taxpayer money, if the Authority determines at project certification that the actual capital financing approach utilized by the project or the updated projected cash flow has resulted in a financing gap that is smaller than the financing gap determined at Board approval, the Authority shall reduce the amount of the tax credit or accept payment from the developer on a pro rata basis. If there is no project financing gap due to the actual capital financing approach utilized by

the project or the updated projected cash flow, then the developer shall forfeit the incentive award;

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

18. A provision acknowledging the Authority's right to confirm with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury, as set forth at N.J.A.C. 19:31-23A.7(b)1, that the developer, and any co-applicant, is in substantial good standing or has entered into an agreement with the respective department that includes a practical corrective action plan, as applicable;

19. A provision providing that if the developer, and any co-applicant, is not in substantial good standing with the Department of Environmental Protection, the Department of Labor and Workforce Development, and the Department of the Treasury and has not entered into an agreement with the respective department, as set forth at N.J.A.C. 19:31-23A.7(b)1, and after being given written notice thereof and an opportunity to be heard or to contest the determination by the respective department, then the developer and any co-applicant shall forfeit the tax credits in any year in which the developer and any co-applicant is neither in substantial good standing with each department nor has entered into a practical corrective action;

20. A requirement that the developer shall include in all commercial leases or other commercial occupancy agreements, and shall require that all subleases or other commercial occupancy agreements applicable to the redevelopment project include, a provision setting forth the requirements of N.J.A.C. 19:31-23A.3(a)9, which provision shall be in a form acceptable to the Authority. A provision that if a commercial tenant, commercial subtenant, or other commercial occupant fails to pay the required prevailing

wage rate as set forth in N.J.A.C. 19:31-23.3(a)9, then the issuance of tax credits to the developer and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority.

21. A requirement that the developer shall confirm that each contractor or subcontractor performing work at the redevelopment project: is registered as required by the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq.; 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;

22. A requirement for the developer to engage in on-site consultations prior to commencement of construction with the Division of Workplace Safety and Health in the Department of Health;

23. A requirement for the developer of a redevelopment project with newly-constructed residential units to comply with the affordability controls.

24. A provision allowing the Authority to extend, in individual cases, the deadline for any annual reporting or project completion certification requirement;

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

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

27. Default and remedies, including, but not limited to, a default if a developer or any co-applicant made a material misrepresentation on its application, provided that the incentive award agreement shall not allow the authority to declare a cross-default when the developer of a redevelopment project, including any business affiliate of the developer or any other entity with common principals as the developer, is in default with any other assistance program administered by the Authority.

(d) The Authority shall not enter into an incentive award agreement for a redevelopment project that includes at least one retail establishment which will have more than 10 full-time employees, at least one distribution center that will have more than 20 full-time employees, or at least one hospitality establishment which will have more than 10 full-time employees, unless the incentive award agreement includes a precondition that any business that serves as the owner or operator of the retail establishment, distribution center, or hospitality establishment enters into a labor harmony agreement with a labor organization or cooperating labor organizations that represent retail or distribution center employees in the State. A labor harmony agreement shall be required only if the State has a proprietary interest in the redevelopment project and shall remain in effect for as long as the State acts as a market participant in the redevelopment project. The Authority may enter into an incentive award agreement with a developer and any co-applicants without the labor harmony agreement required under this subsection, if the Authority determines that the

redevelopment project would not be able to go forward if a labor harmony agreement is required. The Authority shall support the determination by a written finding, which provides the specific basis for the determination.

(e) Except as set forth in (e)1 below, for a redevelopment project whose total project cost equals or exceeds \$ 10 million, in addition to the incentive award agreement, the developer and any co-applicant that is responsible or required to provide services under the community benefits agreement shall execute a community benefits agreement in accordance with N.J.S.A. 34:1B-328(f), as prescribed below.

1. A developer shall not be required to enter into a community benefits agreement pursuant to this subsection if:

i. the developer submits to the Authority a copy of either the developer's approval letter from the Authority or a redevelopment agreement applicable to the redevelopment project, provided that the approval letter or redevelopment agreement is certified by the municipality in which the redevelopment project is located, and includes provisions that meet or exceed the standards required for a community benefits agreement in this subsection, as determined by the Chief Executive Officer;

ii. the developer submits to the Authority:

(1) a resolution adopted by the governing body of the municipality in which the redevelopment project is located, which states and explains the governing body's reasons and determined that the redevelopment project will provide economic and social benefits to the community that fulfill the purposes of N.J.S.A. 34:1B-328(f) and this subsection and thus rendering a separate community benefit agreement unnecessary; and

(2) documentation that the resolution was adopted after at least one public hearing at which the governing body provided an opportunity for residents, community groups, and other stakeholders to testify; or

iii. the project is a residential project that is located in a government-restricted municipality, and in which 100 percent of the residential units constructed in the residential project are reserved for occupancy by low- and moderate-income households.

2. The developer shall enter into a community benefits agreement with the Authority and the chief executive of the municipality or, if requested by the chief executive of the municipality, the chief executive of the county, in which the redevelopment project is located. If the municipality requests the county to enter into the agreement, the chief executive of the municipality must submit to the Authority a signed letter notifying the Authority that the municipality has made the request. The Authority shall not participate in negotiations between the developer and the municipality or county; however, the Authority shall review the agreement prior to the execution of the agreement to determine

compliance with the requirements of this subsection including, but not limited to, a provision for mediation as required pursuant to (e)7ii below. The agreement may include, but shall not be limited to, requirements for training, employment, and youth development and free services to underserved communities in and around the community in which the redevelopment project is located, as well as any other program element, on the project site or in the host community, intended to improve community health, safety, access to opportunity, recreational opportunity, environmental resilience and environmental quality, quality of life, or other locally-prioritized community benefit.

3. The community benefits agreement or redevelopment agreement shall include a list of contributions by the developer; the monetary equivalent for any non-monetary contribution; an event of default, if the developer forfeits tax credits pursuant to (g) below in two successive years; and the date by which the community advisory committee must submit its annual report pursuant to (e)7 below.

4. The developer and the municipality or county shall have six months, with two three-month extensions, after Authority Board approval of the developer's application, to enter into a community benefits agreement, the redevelopment agreement, or approve the resolution and submit such agreement or resolution to the Authority. Submission of such community benefits agreement, redevelopment agreement, or resolution is a condition to entering into an incentive award agreement.

5. Prior to entering a community benefits agreement or a redevelopment agreement, the governing body of the municipality or, if the county is executing the agreement, the governing body of the county, in which the redevelopment project is located shall hold at least one public hearing subject to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6, et seq., at which the chief executive or designee from the chief executive's department or office, shall hear testimony from residents, community groups, and other stakeholders on the needs of the community that the agreement should address. The chief executive shall provide a record, including hearing minutes, satisfactory to the Authority, which shall be an exhibit to the community benefits agreement.

6. The community benefits agreement or redevelopment agreement shall provide for the creation of a community advisory committee to oversee the implementation of the agreement, monitor successes, and ensure compliance with the terms of the agreement, as follows:

- i. The community advisory committee created pursuant to this paragraph shall be comprised of representatives from diverse community groups and residents of the municipality or, if the county is executing the agreement, community groups and residents of the county in which the redevelopment project is located.
- ii. The chief executive of the municipality or, if the county is executing the agreement, the chief executive of the county shall appoint the members of the community advisory committee, which shall consist of not less than three members.

iii. For new construction or substantial rehabilitation projects, the community advisory committee shall have at least one representative from the business community in the zip code in which the redevelopment project is located, at least one representative from a community group, and at least one resident from the zip code in which the redevelopment project is located. There shall be no more than one municipal or county employee on the community advisory committee.

iv. For all other projects, the community advisory committee shall be determined by the chief executive of the municipality, or if the county is executing the agreement, the chief executive of the county, without regard to the criteria listed at (e)6iii above.

v. Community advisory committee members shall be required to sign a letter certifying that they have no financial or other interested relationship with the developer and any co-applicant. The certifications shall be submitted to the Authority by the developer or the municipality, or if the county is executing the agreement, the county.

vi. Any report or action shall be approved by a majority of the members of the community advisory committee.

7. The community advisory committee shall produce an annual report, including an evaluation of whether the developer is in compliance with the terms of the community benefits agreement or the redevelopment agreement:

i. If the report from the community advisory committee and the certification from the developer pursuant to N.J.A.C. 19:31-23A.9(b)1 both indicate that the developer is in compliance with the community benefits agreement, then the developer shall be in compliance with the community benefits agreement. Absent extenuating circumstances, and the written approval of the Authority, if the community advisory committee does not timely submit the annual report, then the determination of compliance of the developer shall be based on the certification from the developer pursuant to N.J.A.C. 19:31-23A.9(b)1.

ii. If the report from the community advisory committee indicates that the developer is not in compliance with the terms of the community benefits agreement, the Authority shall serve as, or identify, a mediator. The community advisory committee, municipality or county, as applicable, and the developer shall enter into non-binding mediation to seek resolution or mutually agreeable amendments to the community benefits agreement within 60 days of the notice from the Authority of the person who will serve as a mediator. Thereafter, the results of the mediation shall be reported to the Authority.

iii. If a resolution is not able to be achieved through mediation, a hearing officer will be assigned by the Authority. The hearing officer shall perform a review of

the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. Following completion of the record review and in-person hearing, as applicable, the hearing officer shall issue a written report to the Chief Executive Officer containing his or her finding(s) and recommendation(s). The hearing officer's report shall be advisory in nature. The developer, municipality or county, and the community advisory committee shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report. The Chief Executive Officer shall consider the hearing officer's report and any timely submitted written comments and exceptions. Based on that review, the Chief Executive Officer shall make a determination of compliance or non-compliance. The process described in this subsection is not a contested case subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

8. The sum of costs for benefits and services provided under the community benefits agreement or the redevelopment agreement included as soft costs or to determine cash flow shall not exceed five percent of project cost. For purposes of this paragraph, costs for benefits and services incurred during the eligibility period shall be discounted to present value.

(f) A developer shall submit, prior to the issuance of tax credits under the incentive award agreement, but no later than six months following project completion, satisfactory evidence of the completion of the redevelopment project and satisfaction of the program eligibility requirements, which shall include, but not be limited to, the documents in this subsection. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

1. Evidence of a temporary certificate of occupancy or other event evidencing project completion that begins the eligibility period indicated in the incentive award agreement;
2. A certification by a qualified independent certified public accountant of the actual project costs. The certification shall be made pursuant to an "agreed upon procedures" letter acceptable to the Authority. If the project cost is reduced below the relevant minimum project cost for eligibility, the redevelopment project shall no longer be eligible. If the project cost in the certification is less than the project cost in the approval of the application, the Authority may re-evaluate the net positive economic benefit and reduce the size of the tax credits accordingly. The Authority shall qualify certified public accountants and provide to the developer the list of qualified certified public accountants; provided, however, the developer may select a certified public accountant that is independent to the developer and any co-applicant and not on the Authority's list of qualified certified public accountants for purposes of the project cost certification if the developer demonstrates an extenuating circumstance prohibiting the developer from

retaining a qualified certified public accountant. Such circumstances include, but are not limited to, the unavailability of any of the qualified certified public accountants to timely complete the certification or none of the qualified certified public accountants are independent to the developer;

3. A floor plan identifying the actual and proposed uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth in N.J.A.C. 19:31-23A.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;

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

5. A letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls.

6. A certification from a licensed engineer that the redevelopment project has adhered in all material respects to the plan submitted by the developer describing how the developer would satisfy the minimum environmental and sustainability standards;

7. Any permanent financing commitments executed as of the date of the submission of the documents in this subsection (f) and an updated project pro forma;

8. A certification by the chief executive officer or equivalent officer of the developer that the information provided pursuant to this subsection is true under the penalty of perjury. Claims, records, or statements submitted by a developer to the Authority in order to receive tax credits shall not be considered claims, records, or statements made in connection with State tax laws; and

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

(g) A developer shall forfeit the credit amount for any tax period for which the developer's documentation remains uncertified by the Authority as of the date for certification indicated in the incentive award agreement, although credit amounts for the remainder of the years of the eligibility period shall remain available to the developer.

(h) Once the Authority accepts the documentation required at (f) above and the Authority determines that all eligibility requirements and other required conditions have been met, within

90 days of the Authority's acceptance of the documentation and evidence satisfactory to the Authority, the Authority shall notify the developer and notify the Director. The developer shall receive its tax credit certificate that will be based on the information submitted in the certification pursuant to (f) above, provided it shall not exceed the maximum amount determined by the Board pursuant to N.J.A.C. 19:31-23A.7(e), (f) and (g). The use of the tax credit certificate shall be subject to the receipt of an annual certificate of compliance issued by the Authority.

(i) At, or before, the date of certification, any modification to the redevelopment project as approved by the Board, including, but not limited to, a reduction in the amount of the project cost, or square feet, shall require review and approval by the Authority to determine that the redevelopment project as modified does not undermine the basis for the tax credit award approved.

19:31-23A.9 Reporting requirements and annual report

(a) A developer approved for an incentive award and that enters an incentive award agreement shall submit annually, commencing in the year in which the incentive award is issued and for the remainder of the eligibility period, a report indicating whether the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the incentive award agreement or the provisions of this subchapter and the Act and any additional reporting requirements contained in the incentive award agreement or tax credit certificate. The developer, or an authorized agent of the developer, shall certify that the information provided pursuant to this subsection is true under the penalty of perjury. The Authority may provide any information contained in the annual report to the Agency for any redevelopment project if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(b) The annual report shall consist of:

1. A certification indicating whether or not the developer is aware of any condition, event, or act that would cause the developer or any co-applicant not to be in compliance with the approval, the Act, the incentive award agreement, community benefits agreement pursuant to N.J.S.A 34:1B-328(f) and N.J.A.C. 19:31-23A.8(e), or this subchapter;
2. A certification indicating that the project does not violate any environmental law requirements, including, but not limited to, the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13;
3. For the two years after the first certificate of compliance is issued, evidence that the redevelopment project remains in compliance with the Authority's affirmative action requirements pursuant to N.J.A.C. 19:31-23A.14(a);
4. Evidence that the redevelopment project remains in compliance with the Authority's prevailing wage requirements pursuant to N.J.A.C. 19:31-23A.14(b) and (c);

5. A tax clearance certificate as described in N.J.S.A. 54:50-39 for the developer and any co-applicant;
6. A certification from the developer that the project is still operating and that the redevelopment project continues to meet the eligibility requirements on site control, size, and uses, including, but not limited to, predominance of commercial, residential, or film production uses, and a floor plan identifying the actual uses and square foot of gross leasable area for each such use and, if the redevelopment project comprises multiple buildings, a site plan. For a redevelopment project with eligibility requirements on size or uses, including, but not limited to, predominance of commercial, residential, or film production uses, evidence that the project satisfies all such requirements. For a redevelopment project in which any commercial tenant, commercial subtenant, or other commercial occupant is the party to the contract to perform building services work as set forth in N.J.A.C. 19:31-23A.3(a)9, the floor plan, or site plan, shall identify all such tenants, the premise occupied by each such tenant, and the size of the space occupied by such tenant;
7. For a commercial project, a list of all tenants, the gross leasable area leased by each tenant, and whether the tenant is operating its business at the premises leased by the tenant;
8. For a project with residential units, a letter from the Agency to the developer with copy to the Authority confirming compliance with the affordability controls;
9. A list of tenant information for all residential units;
10. Annual financial statement, as certified by a certified public accountant and accompanied by an unqualified opinion, reporting the project's financial performance, and, for the annual report for the seventh and last year, updated project pro forma and all other information required by the Authority to evaluate the actual reasonable and appropriate rate of return on investment;
11. If applicable, a certification indicating compliance with the community benefits agreement or redevelopment agreement provisions required pursuant to N.J.S.A. 34:1B-328(f) and N.J.A.C. 19:31-23A.8(e);
12. If applicable, satisfactory evidence that the developer complies with the labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23A.8(d);
13. For the first annual report, the permanent certificate of occupancy covering the entire redevelopment project;
14. If the Authority approval included a co-applicant, a certification that the participation agreement between the developer and the co-applicant remains in effect and is not in default and that the co-applicant is making the contribution(s) required under the participation agreement; and

15. In conducting its annual review, the Authority may require a developer to submit any information determined by the Authority to be necessary and relevant to its review.

(c) The report required at (a) above is due 120 days after the end of the developer's tax privilege period. Failure to timely submit the report, absent extenuating circumstances and the written approval of the Authority, shall result in a forfeiture of the tax credits for that privilege period. The Authority reserves the right to audit any of the representations made and documents submitted in the annual report.

(d) Upon receipt, review, and acceptance of each report submitted during the eligibility period, the Authority shall provide to the developer and the Director a certificate of compliance indicating the amount of tax credits that the developer may apply against the developer's tax liability. If the Authority approval included a co-applicant, the Authority shall provide the certificate of compliance to the co-applicant with a notice to the developer. The Authority shall not prorate the tax credit for the first year. No tax credit certificate will be valid without the certificate of compliance issued for the relevant tax privilege period.

(e) Upon receipt by the Director of the certificate of compliance, the Director shall allow the developer or co-applicant a credit against the tax imposed pursuant to N.J.S.A. 54:10A-5. A developer, or co-applicant, shall apply the credit awarded against the developer's liability under N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5 for the tax period during which the Director allows the developer or co-applicant a tax credit pursuant to this subsection. A developer or co-applicant may carry forward an unused credit for use in the seven privilege periods next following the privilege period for which the credits are awarded. Credits granted to a partnership shall be passed through to the corporate partners, corporate members, or corporate owners, respectively, pro rata, or pursuant to an executed agreement among the partners, members, or owners documenting an alternate distribution method provided to the Director accompanied by any additional information as the Director may prescribe consistent with any rule, guidance, or other publication issued by the Division of Taxation.

(f) The Director shall prescribe the order of priority of the application of the credit allowed pursuant to this section and any other credits allowed by law against the tax imposed pursuant to N.J.S.A. 54:10A-5. The amount of the credit applied pursuant to this section against the tax imposed pursuant to N.J.S.A. 54:10A-5 for a tax privilege period, together with any other credits allowed by law, shall not reduce the tax liability to an amount less than the statutory minimum provided at N.J.S.A. 54:10A-5.

19:31-23A.10 Reduction, forfeiture, and recapture of tax credits

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

1. The developer changes a project that has been approved based on certain eligibility requirements on size and uses, including, but not limited to, the predominance of

commercial, residential, or film productions uses, and the redevelopment project changes such that the eligibility requirements are no longer met;

2. Absent prior written approval of a modification by the Authority, the developer changes any characteristic of the redevelopment project, including, but not limited to, uses, that was utilized to determine the net positive economic benefit pursuant to N.J.A.C. 19:31-23A.6(b) and -23A.11(l) or of a transformative project that was utilized to determine the anticipated employee occupancy pursuant to N.J.A.C. 19:31-23A.11(a)4i (1);

3. The developer changes the project, so that the project would score less than the minimum score pursuant to N.J.A.C. 19:31-23A.7(c); or

4. If, upon review of the certification and documentation for any phase of a transformative project, the project has been modified such that it no longer qualifies as a transformative project.

(b) If any labor harmony agreement requirement pursuant to N.J.A.C. 19:31-23A.8(d) is not satisfied during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the labor harmony agreement requirements are not satisfied and each subsequent tax period until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

(c) If, on or after the third year of the eligibility period, the occupancy of commercial space of a redevelopment project, or component of a redevelopment project, for which a net positive economic benefit analysis is required pursuant to N.J.A.C. 19:31-23A.6(b) is reduced to less than 60 percent, the developer and any co-applicant shall forfeit all credit for the tax period in which the change occurs and each subsequent tax period until the first tax period for which documentation demonstrating the restoration of occupancy to the threshold level required by this subsection has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed. For the purposes of this subsection, commercial space shall be considered occupied if the space is leased and the tenant is operating its business in the leased space. Occupancy for the tax period shall be determined as the average of the monthly occupancy for the period. If the Authority determines there are extenuating circumstances beyond the developer and any co-applicant's control based on the Governor declaring an emergency, the Authority may waive the 60 percent occupancy requirement for the tax year.

(d) As of the date of the annual report pursuant to N.J.A.C. 19:31-23A.9:

1. If any worker employed to perform construction work at the redevelopment project is paid less than the prevailing wage rate for the worker's craft or trade pursuant to N.J.A.C. 19:31-23A.3(a)8 during the relevant tax period, then the developer and any co-applicant shall forfeit all credit for the tax period in which the prevailing wage is not paid and each subsequent tax period until the first tax period for which documentation demonstrating

compliance has been reviewed and approved by the Authority, for which tax period and each subsequent period the full amount of the credit shall be allowed.

2. Notwithstanding any provisions of law to the contrary, if a commercial tenant, commercial subtenant, or other commercial occupant violates the requirement to pay the prevailing wage rate for building services work set forth in N.J.S.A. 34:1B-325(a)(7)(b) and N.J.A.C. 19:31-23A.3(a)9, then the issuance of all certificates of compliance for the tax credits to the developer and any co-applicant shall be delayed until such time as documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority. If a violation is not cured, or is not capable of being cured, within one year of receipt of notice of the violation, then the developer and any co-applicant shall forfeit 50 percent of the tax credits otherwise authorized for the tax period in which the notice of violation was issued. If the violation is not cured on or before the conclusion of that tax period in which the one year to cure has expired, the developer and any co-applicant shall forfeit up to 100 percent of the tax credits otherwise authorized, as determined by the Authority, in each subsequent tax period until the first tax period for which documentation demonstrating compliance has been provided to the Commissioner of Labor and Workforce Development, subsequently reviewed and approved by the Commissioner of Labor and Workforce Development, and verified by the Authority. In this event, the developer and any co-applicant shall be allowed the full tax credit amount that was suspended, but not any amount forfeited, beginning in the tax period in which documentation of compliance was reviewed and approved by Commissioner of Labor and Workforce Development and verified by the Authority, and including each subsequent tax period in which the tax credits are otherwise authorized.

3. If the developer is not in compliance with the requirements set forth in N.J.A.C. 19:31-23A.4(a)13, the Authority may suspend the tax credits for the relevant tax period if the developer, and if the suspension continues for two years, then, at the Authority's sole option, the developer and any co-applicant may forfeit the tax credits for those years.

(e) Unless an exception applies, if the developer or co-applicant, if a party to the community benefits agreement or redevelopment agreement, is not in compliance with the community benefits agreement or redevelopment agreement pursuant to N.J.A.C. 19:31-23A.8(e), the following shall apply:

1. The amount of tax credits that the developer or any co-applicant may apply in the relevant tax period shall be reduced by 120 percent of the sum of the monetary values of the contributions for which the developer is not in compliance, if the Authority determines that:

i. Compliance with the specific contribution is delayed due to unforeseeable acts related to the project beyond the eligible developer's control and without its fault or negligence;

ii. The developer is using best efforts, with all due diligence, to proceed with the completion of the contribution; and

iii. The developer has made all reasonable efforts to prevent, avoid, mitigate, and overcome the noncompliance; and

2. For any other noncompliance, the developer and any co-applicant shall forfeit its credit amount for that tax period and each subsequent tax period, until the first tax period for which documentation demonstrating compliance has been reviewed and approved by the Authority. The full amount of the credit shall be allowed for the first tax period in which the Authority has approved compliance and each subsequent tax credit for which the Authority approves compliance.

(f) If the redevelopment project was eligible by demonstrating a lower net positive economic benefit pursuant to N.J.A.C. 19:31-23A.6(c), and the redevelopment project ceases to meet the respective eligibility, then the Authority shall re-evaluate the net positive economic benefit and either reduce the size of the tax credits accordingly or recapture any excess tax credits.

(g) If, based on new information, the Authority determines that a reduction, forfeiture, or recapture should have been applicable pursuant to any of the provisions in this section, the Authority shall recapture the tax credits for the relevant tax period(s).

(h) If, at any time, the Authority determines that the developer or co-applicant made a material misrepresentation on the developer's application, project completion certification, annual report, or any related submissions, the developer and any co-applicant shall forfeit, and the Authority may recapture any or all of, the incentive award and all tax credits awarded under the program, which shall be in addition to any other remedies in the incentive award agreement and any criminal or civil penalties to which the developer, co-applicant, and the respective officer may be subject.

(i) The developer shall provide an updated project pro forma and other relevant financial documentation to the Authority when the incentive award agreement is to be terminated. The Authority shall evaluate the reasonable and appropriate return on investment as of the date of termination in the same manner as at the end of the eligibility period pursuant to N.J.A.C. 19:31-23A.8(c)17.

(j) If the developer fails to provide the financial documentation required for the Authority to evaluate the reasonable and appropriate return on investment pursuant to (i) above or N.J.A.C. 19:31-23A.8(c)17, the Authority shall recapture all of the tax credits awarded.

(k) Any recapture amount pursuant to this section may include interest on the recapture amount, at a rate equal to the statutory rate for tax deficiencies, plus any statutory penalties, and all costs incurred by the Authority and the Division of Taxation in the Department of the Treasury in connection with the pursuit of the recapture, including, but not limited to, counsel fees, court costs, and other costs of collection. The Authority shall confer with the Division of Taxation to determine the recapture amount.

(l) The Authority shall notify the Agency of any reduction, forfeiture, or recapture of tax credit if the Agency has provided financial assistance or awarded tax credits to the redevelopment project.

(m) If all or part of a tax credit sold or assigned pursuant to N.J.S.A. 34:1B-331 and N.J.A.C. 19:31-23A.12(a) is subject to recapture, then the Authority shall pursue recapture from the developer and to the extent the co-applicant is involved with the basis for the recapture, any co-applicant, and not from the purchaser or assignee of the tax credit transfer certificate.

(n) If, during the eligibility period, the letter from the Agency pursuant to N.J.A.C. 19:31-23A.8(f)5 or N.J.A.C. 19:31-23A.9(b)8 indicates that the developer is not in compliance with the affordability controls, the Authority shall not issue the certificate of compliance for any tax credits until the developer obtains a letter from the Agency demonstrating compliance.

(o) If, after the eligibility period, the Agency determines that the developer is not in compliance with the deed restriction pursuant to N.J.A.C. 19:31-23A.18(c), the developer, the lead development entity, and the owner shall be ineligible for any Authority financial assistance for the construction or development of a real estate project. The Authority shall have the right to enforce specific performance of the affordability controls. The developer and lead development entity shall no longer be subject to this provision if the Authority provides written approval of the sale or transfer of the project.

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

19:31-23A.11 Transformative projects

(a) To be eligible as a transformative project, the redevelopment project must satisfy the following criteria:

1. Has a project financing gap;
2. Has a total project cost of at least \$ 150,000,000;
3. Includes:
 - i. 200,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in a government-restricted municipality, exclusive of any parking component;
 - ii. 250,000 or more square feet of film production uses, exclusive of any parking component;
 - iii. 300,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for a project located in an enhanced area, exclusive of any parking component; or

iv. 500,000 or more square feet of new or substantially renovated industrial, commercial, or residential space for any other project, exclusive of any parking component.

4. A commercial project is of special economic importance and creates modern facilities that enhance the State's competitiveness in attracting targeted industries by meeting the following criteria:

i. Except for a redevelopment project with 250,000 or more square feet of film production uses:

(1) Creates 500 new full-time jobs, which shall be demonstrated by determining the anticipated employee occupancy based on the regional averages for employment density for the type of use or uses at the redevelopment project;

(2) Involves the substantial renovation of a vacant commercial building; or

(3) The project is located entirely on land designated by the New Jersey Department of Environmental Protection as a Brownfield Development Area pursuant to N.J.S.A. 58:10B-25.1, and the project costs of the redevelopment project includes or will include at least \$15 million in environmental remediation costs; and

ii. Provides opportunities to leverage leadership in a high-priority targeted industry as demonstrated by factors including, but not limited to, being undertaken by a developer that is making an industry leading investment in a new technology or high-growth sub-industry or catalyzing a new sub-industry or industry-cluster within the State;

5. For residential projects includes one of the following:

i. The construction of 700 or more newly-constructed residential units; or

ii. Is a mixed-use residential project with construction of 50,000 square feet or more of commercial space, exclusive of any parking component, and includes one of the following:

(1) If the project is located in a government-restricted municipality, includes the construction of 200 or more newly-constructed residential units;

(2) If the project is located in an enhanced area, includes the construction of 300 or more newly-constructed residential units; or

(3) If the project is not located in a government-restricted municipality or enhanced area, and includes the construction of 400 or more newly-constructed residential units; and

6. Leverages the competitive economic development advantages of the State's mass transit assets, higher education assets, and other economic development assets, in attracting or retaining both employers and skilled workers generally or in targeted industries by providing employment or housing.

(b) A transformative project shall not include a redevelopment project at which more than 50 percent of the premises is occupied by one or more businesses engaged in final point of sale retail, including, but not limited to, hotels.

(c) A transformative project, other than a project that includes 250,000 or more square feet of film production uses, shall be located in an incentive area, a distressed municipality, a government-restricted municipality, or an enhanced area. A transformative project receiving an incentive award pursuant to this section that includes 250,000 or more square feet of film production uses may be located anywhere in the State. The Authority shall not consider an application for a transformative project unless the applicant submits with its application a letter evidencing support for the transformative project from the governing body of the municipality in which the transformative project is located.

(d) A transformative project may be completed in phases, which phases may be determined by the Authority based on factors, such as written architectural plans and specifications completed before or during the physical work, certificates of occupancy, or financial and operational plans.

(e) In accordance with N.J.A.C. 19:31-23A.3(e), all transformative projects that include any newly-constructed residential units shall reserve at least 20 percent of the newly-constructed residential units and all other residential units for occupancy by low- and moderate-income households with affordability controls.

(f) The Authority shall review and determine whether to approve an incentive award to a transformative project in accordance with the provisions applicable to any redevelopment project, unless otherwise provided in this section.

(g) For transformative projects completed in phases, the developer and any co-applicant shall enter into a transformative phase agreement with the Authority. As used in this subsection, "transformative phase agreement" shall mean a sub-agreement of the incentive award agreement that governs the timing, capital investment, and other applicable details of the respective phase of a phased project. The transformative phase agreement may be incorporated in the incentive award agreement.

(h) Notwithstanding the provisions of N.J.S.A. 34:1B-325 and 34:1B-269 et seq., or other sections in this subchapter to the contrary a transformative project shall be completed, and the developer shall be issued a certificate of occupancy for the transformative project facilities by the applicable enforcing agency, within five years of executing the incentive award agreement, except that the Authority may, in its discretion, extend this deadline by up to one additional year. For transformative projects completed in phases, the transformative project shall be completed, and the developer shall be issued temporary certificates of occupancy for all phases of the transformative project by the applicable enforcing agency within 10 years of executing either the

incentive award agreement or the first transformative phase agreement corresponding to the transformative project. For a project component to be allowed as a phase, a developer shall obtain a temporary certificate of occupancy for the entirety of the component and the component shall be \$ 50,000,000 or more except for the last component.

(i) Notwithstanding the provisions of N.J.S.A. 34:1B-323 and 34:1B-328, N.J.S.A. 34:1B-269 et seq., or other sections in this subchapter to the contrary, each phase of a transformative project completed shall have a separate eligibility period. After completing each phase, the developer shall submit a certification that the phase is completed with the documents required pursuant to N.J.A.C. 19:31-23A.8(f). In the certification for the project cost for that phase, any infrastructure work completed at the same time shall be included in the certification for that phase. The amount of soft costs for a phase may exceed 20 percent of the total project cost in the certification for the respective phase. If the aggregate amount of soft costs at the completion of the final phase exceeds 20 percent of the aggregate total project cost in all phase certifications, the Authority shall reduce the amount of allowable soft costs and shall resize the incremental tax credit for the final phase and recapture other excess tax credits. If the Authority approves the certification, the tax credit allowed to the developer or co-applicant shall be increased by the tax credit amount corresponding to that phase, which shall include only the infrastructure attributable to that phase. If upon review of the certification of completion of each phase, the Authority adjusts the incremental tax credit for that phase solely due to the certification demonstrating a lesser total project cost than projected at Board approval, the amount of tax credits not included in the incremental tax credit shall be available to the developer and any co-applicant in any subsequent phase, provided that the incremental tax credit has not been resized due to the project financing gap and the State fiscal impact analysis. Notwithstanding the different eligibility periods for each phase, all conditions and requirements applicable during an eligibility period pursuant to N.J.S.A. 34:1B-323 through 34:1B-335 and all other sections in this subchapter shall apply to the entire transformative project until the end of the eligibility period for the last phase.

(j) Notwithstanding the provisions of N.J.S.A. 34:1B-328 and 34:1B-269 et seq., or other sections in this subchapter to the contrary, for a transformative project completed in phases, a review of the project financing gap shall be performed at the certification of completion of each phase, and the Authority may resize the incremental tax credit for that phase or subsequent phases. The Authority shall re-evaluate the developer's reasonable and appropriate return on investment as set forth in N.J.A.C. 19:31-23A.8(c)17 in the seventh year and at the end of the eligibility period for the last phase, provided that the Authority may also re-evaluate the developer's reasonable and appropriate return on investment during the fifth year of any earlier phase.

(k) The Authority shall review the transformative project cost, and evaluate and validate the project financing gap estimated by the developer. The Authority shall perform a single project financing gap analysis for a transformative project.

(l) The Authority shall conduct a State fiscal impact analysis to ensure that the overall public assistance provided to the transformative project will result in a net positive economic benefit to

the State in accordance with the percentages pursuant to N.J.A.C. 19:31-23A.6(c). The Authority shall determine a single net positive economic benefit for a transformative project, including a phased transformative project, and the net positive economic benefit evaluation shall be conducted for the period beginning with the first eligibility period and ending with the last eligibility period. In determining whether a transformative project will result in a net positive economic benefit to the State, the Authority shall not consider the value of any taxes exempted, abated, rebated, or retained under the Five-Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq., the Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq., the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-1 et seq., or any other law that has the effect of lowering or eliminating the developer's State or local tax liability. The determination made pursuant to this subsection shall be based upon the potential tax liability of the developer without regard for potential tax losses if the developer were to locate in another state. The Authority shall evaluate the net positive economic benefits on a present value basis under which the requested tax credit allocation amount is discounted to present value at the same discount rate as the projected benefits from the implementation of the proposed transformative project for which an award of tax credits is being sought. Projects that are predominantly residential shall be excluded from the calculation of the net positive economic benefit test required pursuant to this subsection.

(m) In determining net positive economic benefits for any business or person considering locating in a transformative project and applying to receive from the Authority any other economic development incentive subsequent to the award of transformative project tax credits pursuant to N.J.S.A. 34:1B-333 and this section, the Authority shall not credit the business or person with any benefit that was previously credited to the transformative project pursuant to N.J.S.A. 34:1B-333 and this section.

(n) The Authority shall administer the credits awarded pursuant to this section, in accordance with the provisions of N.J.S.A. 34:1B-330 and 34:1B-331; and N.J.A.C. 19:31-23A.9, -23A.10, -23A.12, and -23A.13.

(o) Prior to allocating an incentive award to a developer, the Authority shall confirm that the developer, lead development entity, and any co-applicant for the transformative project satisfies the requirements at N.J.A.C. 19:31-23A.7(b)1 for substantial good standing or agreement with the New Jersey Department of Labor and Workforce Development, the Department of Environmental Protection, the Department of the Treasury, N.J.A.C. 19:31-23A.7(b)2 for substantial good standing with the Agency, and N.J.A.C. 19:31-23A.7(b)4 regarding contractors and subcontractors.

(p) Notwithstanding the limitation on incentive awards set forth at N.J.S.A. 34:1B-329 and 34:1B-362 and any other sections in this subchapter to the contrary, the Authority may allow a developer of a transformative project a tax credit in an amount not to exceed the lesser of the amounts below. For purposes of the calculation of tax credits, project cost shall be reduced by the amount of State and local grants and tax credits other than those awarded under this program.

1. i. 80 percent of the total project cost for a transformative project that is located in a government-restricted municipality, which percentage shall apply to the total project cost of each phase of a phased transformative project;

ii. 60 percent of the total project cost for a residential transformative project that receives a four-percent allocation from the federal Low Income Housing Tax Credit Program administered by the Agency or a transformative project that is located in a qualified incentive tract, enhanced area, or a municipality with a Municipal Revitalization Index score of at least 50, which percentage shall apply to the total project cost of each phase of a phased transformative project; or

iii. 50 percent of the total project cost for any other transformative project, which percentage shall apply to the total project cost of each phase of a phased transformative project;

2. The total value of the project financing gap; or

3. \$400,000,000, except that for a transformative project that is developed in phases, the \$400,000,000 limitation on incentive awards shall apply to the total aggregate award for all phases of the transformative project.

(q) For a transformative project, the approval letter shall contain conditions that must be satisfied and documents and certifications that must be submitted for each phase. Until the developer submits the certification for the last phase, the developer shall submit progress reports for each phase that has not yet been certified.

19:31-23A.12 Application for tax credit transfer certificate

(a) A developer or co-applicant may apply to the Director and the Chief Executive Officer of the Authority for a tax credit transfer certificate, covering one or more years, in lieu of the developer or co-applicant being allowed any amount of the credit against the tax liability of the developer. The tax credit transfer certificate, upon receipt thereof by the developer or co-applicant from the Director and the Chief Executive Officer of the Authority, may be sold or assigned, in full or in part, in an amount not less than \$ 25,000, in the privilege period during which the developer or co-applicant receives the tax credit transfer certificate from the Director, to another person, who may apply the credit against a tax liability pursuant to N.J.S.A. 54:10A-5, N.J.S.A. 54:18A-2 and 54:18A-3, N.J.S.A. 17:32-15, or N.J.S.A. 17B:23-5; provided, however, that the holder of a tax credit certificate may transfer all or part of the tax credit amount, on or after the date of issuance of the tax credit transfer certificate, for use by the transferee in the tax period for which it was issued, and the transferee may carry forward all or part of the tax credit amount in any of the next five successive tax periods. Notwithstanding any provision of this section to the contrary, the amount of tax credits that may be claimed by the transferee in any tax period shall not exceed the total tax credit amount divided by the duration of the eligibility period in years. The certificate provided to the developer or co-applicant shall include a statement waiving the developer's or co-applicant's right to claim the amount of the credit that the developer has elected to sell or assign against the developer's tax liability.

(b) The developer or co-applicant shall not sell, pledge, transfer, or assign, including a collateral assignment, a tax credit transfer certificate allowed pursuant to this section for consideration received by the developer or co-applicant of less than 85 percent of the transferred credit amount before considering any further discounting to present value which shall be permitted. The developer or co-applicant shall submit to the Authority documentation evidencing the value of the tax credits that may include, but not be limited to, the purchase agreement, except:

1. A developer or co-applicant of a residential project consisting of newly-constructed residential units may assign a tax credit transfer certificate for consideration of less than 85 percent subject to the submission of a plan to the Authority and the agency to use the proceeds derived from the assignment of tax credits to complete the residential project, which plan must demonstrate that the developer or co-applicant is receiving no less than 75 percent of the transfer credit amount before considering any discounting to present value; and

2. Notwithstanding the provisions at (b)1 above, a developer or co-applicant of a residential project consisting of newly-constructed residential units that has received tax credits under the Federal Low-Income Housing Tax Credit Program, 26 U.S.C. § 42(b)(1)(B)(i) may assign a tax credit transfer certificate for consideration of no less than 65 percent of the transfer credit amount before discounting to present value subject to the submission of a plan to the Authority and the New Jersey Housing and Mortgage Finance Agency to use the proceeds derived from the assignment of tax credits to complete the residential project.

(c) The tax credit transfer certificate issued to a developer or co-applicant by the Director shall be subject to any limitations and conditions imposed on the application of State tax credits pursuant to N.J.S.A. 34:1B-322 through 34:1B-335 and any other terms and conditions that the Director may prescribe including, but not limited to, any applicable statutes of limitations for claiming a refund or credit.

(d) A purchaser or assignee of a tax credit transfer certificate pursuant to this section shall not make any subsequent transfers, assignments, or sales of the tax credit transfer certificate. If a lender that holds a tax credit certificate as collateral on a redevelopment project forecloses on the project, the foreclosure and resulting transfer of the certificate shall not be considered a sale of the transfer certificate.

(e) The Authority shall publish, on its Internet website, the following information concerning each tax credit transfer certificate approved by the Authority and the Director pursuant to this section:

1. The name of the transferrer;
2. The name of the transferee;
3. The value of the tax credit transfer certificate;
4. The State tax against which the transferee may apply the tax credit; and

5. The consideration received by the transferrer.

19:31-23A.13 Assignment of rights of incentive award agreement

(a) A developer who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, pledge, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the developer under the incentive award agreement, provided that any sale, assignment, or transfer of the incentive award agreement shall be to the purchaser, assignee, or transferee of the redevelopment project. To decide whether to consent, the Authority and State Treasurer will consider the purchase price and terms of the pledge, assignment, transfer or sale, the allocation of the purchase price to the tax credit in relation to the minimum required by N.J.A.C. 19:31-23A.12(b), and the impact of the transaction to the reasonable and appropriate return on investment for the seller(s) and the purchaser. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. If the Authority approval included a co-applicant, prior to requesting the consent of the Authority and State Treasurer, the developer shall obtain, in writing, the co-applicant's consent, and the developer shall provide the co-applicant's written consent to the Authority and State Treasurer with the developer's notice.

(b) A co-applicant who has entered into an incentive award agreement pursuant to N.J.S.A. 34:1B-328 may, upon notice to and written consent of the Authority and State Treasurer, assign, transfer, or sell any or all of its right, title, and interest in, and to, the incentive award agreement and in the incentive awards payable under the incentive award agreement, and the right to receive the incentive awards, along with the rights and remedies provided to the co-applicant under the incentive award agreement, provided that the purchaser shall be a non-profit pursuant to Section 501(c)3 of the Internal Revenue Code. To decide whether to consent, the Authority and State Treasurer will consider the contributions of the co-applicant, the proposed contributions by the purchaser, the purchase price and terms of the assignment, transfer or sale, and the allocation of the purchase price to the tax credit. The new purchaser shall be the co-applicant and shall be required to receive an assignment of the co-applicant's participation agreement or to execute a new participation agreement with the developer. Any assignment shall be an absolute assignment for all purposes, including the Federal bankruptcy code. Prior to requesting the consent of the Authority and State Treasurer, the co-applicant shall obtain, in writing, the developer's consent, and the co-applicant shall provide the developer's written consent to the Authority and State Treasurer with the co-applicant's notice.

(c) Any pledge of an incentive award made by the developer shall be valid and binding from the time the pledge is made and filed in the records of the Authority. The incentive award pledged and thereafter received by the developer shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any pledge shall be valid and binding against all parties having claims of any kind, in tort, contract, or otherwise against the developer irrespective of whether the parties have notice thereof. As a condition of any incentive

grant, the grantee, assignee, pledgee, or subsequent holder of the incentive grant shall immediately file notice of the same with the clerk of the county in which the project is located.

(d) The Authority shall publish, on its Internet website, the following information concerning each pledge, assignment, transfer, or sale approved by the Authority pursuant to this section:

1. The name of the person or entity offering the pledge, assignment, transfer, or sale of a right, title, or interest in an incentive grant agreement or tax credit agreement;
2. The name of the person or entity receiving the pledge, assignment, transfer, or sale of a right, title, or interest in the incentive grant agreement or tax credit agreement;
3. The value of the right, title, or interest in the incentive grant agreement or tax credit agreement; and
4. The consideration received by the person or entity offering the pledge, assignment, transfer, or sale of the right, title, or interest in the incentive grant agreement or tax credit agreement.

19:31-23A.14 Affirmative action and prevailing wage

(a) The Authority's affirmative action requirements at N.J.S.A. 34:1B-5.4, N.J.A.C. 19:30-3, and N.J.A.C. 19:31-23A.3(a)7 shall apply to the redevelopment project, including, but not limited to, construction contracts for work performed before the application and after November 15, 2021 (the effective date of this subchapter) and included in the project cost. The affirmative action requirements shall apply for two years after the first certificate of compliance is issued.

(b) The Authority's prevailing wage requirements at N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-3, and N.J.A.C. 19:31-23A.3(a)8 shall apply to the redevelopment project, including, but not limited to, the following:

1. Construction contracts for work performed before the application and included in the project cost;
2. Construction contracts for work performed 24 months prior to the eligibility period pursuant to N.J.S.A. 34:1B-5.1(b); and
3. Construction contracts for work performed during the eligibility period.

(c) During the eligibility period, prevailing wage shall apply to building services at the site of the redevelopment project pursuant to N.J.A.C. 19:23A.3(a)9.

19:31-23A.15 Affordability controls: documentation and monitoring

(a) Developers and any subsequent owner of the affordable development shall retain all documentation and evidence necessary to demonstrate compliance with the affordability controls for the duration of the deed restriction set forth in N.J.A.C. 19:31-23A.18 and shall provide such documentation and evidence as set forth in this subchapter or at the request of the Agency or the Authority.

(c) As set forth in this subchapter, the Agency may serve as a monitoring entity acting to report to the Authority compliance with the affordability controls. Notwithstanding such monitoring by the Agency, enforcement of any and all requirements under this subchapter shall be the responsibility of the Authority.

19:31-23A.16 Affordability controls: affordability average; bedroom distribution

(a) In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units, provided that at least 10 percent of the restricted units shall be very low-income units.

(b) The bedroom distribution for restricted units that are not age-restricted shall be as follows:

1. The combined number of studios and one-bedroom units is no greater than 20 percent of all restricted units;
2. At least 30 percent of all restricted units are two-bedroom units;
3. At least 20 percent of all restricted units are three-bedroom units; and
4. The remainder, if any, may be allocated at the discretion of the developer or subsequent owner of the affordable development.

(c) In determining the initial rents, the affordability average shall be no more than 52 percent of median gross household income.

(d) Restricted units that are age-restricted units may utilize a modified bedroom distribution. At a minimum, the number of bedrooms shall equal the number of restricted units that are age-restricted units within the affordable development. The standard may be met by creating all one-bedroom units or by creating a two-bedroom unit for each studio.

(e) Restricted units shall utilize the same type of heating source as market units within the affordable development.

19:31-23A.17 Affordability controls: occupancy standards

(a) In determining the initial rents for compliance with the affordability average requirements for restricted units, the following standards shall be used:

1. A studio shall be affordable to a one-person household;
2. A one-bedroom unit shall be affordable to a one and one-half person household;
3. A two-bedroom unit shall be affordable to a three-person household;
4. A three-bedroom unit shall be affordable to a four and one-half person household; and
5. A four-bedroom unit shall be affordable to a six-person household.

(b) In offering specific restricted units to low- and moderate-income households, to the extent feasible, and without causing an undue delay in occupying the unit, the developer or subsequent owner of the affordable development shall strive to:

1. Provide an occupant for each bedroom;
2. Provide children of different sex with separate bedrooms; and
3. Prevent more than two persons from occupying a single bedroom.

19:31-23A.18 Affordability controls: Control periods for rental units

(a) Each restricted rental unit shall remain subject to the requirements of the affordability controls for a period of 45 years.

(b) The affordability control period for the restricted units shall commence on the first date that a low- or moderate-income household occupies a unit and shall terminate at the end of the period set forth in (a) except that the eviction or termination of tenancy (other than for good cause) of an existing tenant of any restricted unit or the increase in the gross rent with respect to any restricted unit not otherwise authorized under this subchapter shall be prohibited for an additional three years.

(c) Deeds of all real property that include restricted rental units shall contain deed restriction language as prescribed by the Authority. The deed restriction shall for the period set forth in (a) above, require compliance with the affordability controls, prohibit the sale or transfer of individual restricted units unless without the prior written consent of the Authority, and shall grant the Authority the rights set forth in N.J.A.C. 19:31-23A.10(n) and (o). The deed restriction shall have priority over all mortgages on the property.

(d) A restricted unit shall remain subject to the affordability controls despite the occurrence of any of the following events:

1. A sale or other voluntary transfer of the ownership of the affordable development or the restricted unit; or
2. The entry and enforcement of any judgment of foreclosure on the affordable development or the restricted unit.

19:31-23A.19 Affordability controls: restrictions on rents

(a) Rent shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 19:31-23A.17; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 19:31-23A.16.

(b) Mandatory fees or charges shall be included in the calculation of rent.

(c) Application fees (including the charge for any credit check) may not exceed five percent of the monthly rental of the applicable restricted unit.

(d) A written lease is required for all restricted rental units. Final lease agreements are the responsibility of the developer (or subsequent owner of the affordable development) and the prospective tenant. Tenants are responsible for security deposits and the full amount of the rent as stated on the lease. All lease provisions shall comply with applicable law.

(e) Those tenant-paid utilities that are included in the utility allowance shall be so stated in the lease. The allowance for utilities shall be consistent with the utility allowance as utilized by the Agency for federal low-income housing tax credits.

19:31-23A.20 Affordability controls: tenant income eligibility

(a) The initial rent proposed for a restricted unit shall not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 19:31-23A.22; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:

1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its eligible monthly income for rent and the proposed rent will reduce its housing costs;
2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
3. The household is currently in substandard or overcrowded living conditions;
4. The household documents the existence of assets, with which the household proposes to supplement the rent payments; or
5. The household documents proposed third-party assistance from an outside source such as a family member.

(b) Developers and subsequent owners of affordable development shall establish at least one rent for each type of unit based on the number of bedrooms for very low-income, low-income, and moderate-income units.

19:31-23A.21 Affordability controls: affirmative marketing

(a) The developer or subsequent owner of an affordable development shall have an affirmative marketing plan that is a regional marketing strategy designed to attract renters regardless of race, religious principles, color, national origin, ancestry, marital or familial status, liability for service in the Armed Forces of the United States, nationality, sex, gender identity or expression, disability, age (except age-restricted units), source of lawful income, or number of children to housing units which are being marketed by a developer or sponsor of affordable housing. The affirmative marketing plan shall also target those potentially eligible persons who are least likely to apply for restricted units in that region. The affirmative marketing plan shall be continuing and cover the period of deed restriction.

(b) The developer or subsequent owner of an affordable development shall comply with the affirmative marketing plan for restricted units.

(c) The affirmative marketing plan shall provide the following information:

1. The name and address of the project;
2. The number of units, including the number of rental units;
3. The rent for rental units;
4. The name of the rental manager;
5. A description of the random selection process that will be used to select occupants of restricted units; and
6. Disclosure of required application fees.

(d) The affirmative marketing plan shall describe the media to be used in advertising and publicizing the availability of units, including restricted units. In developing the plan, the developer or subsequent owner of the affordable development shall consider the use of language translations. The plan shall include the following:

1. The names of specific newspapers of general circulation within the region;
2. The names of specific radio and television stations broadcasting throughout the region;
3. The names of other publications circulated within the region, such as neighborhood oriented weekly newspapers, religious publications and organizational newsletters;
4. The names of employers throughout the region that will be contacted to post advertisements and distribute flyers regarding the available restricted units;
5. The names of specific community and regional organizations that will aid in soliciting low- and moderate-income household applicants. Such organizations may include non-profit, religious, governmental, fraternal, civic, and other organizations; and
6. Other advertising and outreach efforts to groups that are least likely to be reached by commercial media efforts.

(e) The affirmative marketing process for available restricted units shall begin at least four months prior to expected occupancy. In implementing the affirmative marketing program, the developer or subsequent owner of the affordable development shall undertake all of the following strategies:

1. Publication of one advertisement in a newspaper listed under (d)1 above;
2. Broadcast of one advertisement by a radio or television station listed above under (d)2 above;

3. At least one additional regional marketing strategy using one of the sources listed above under (d)3 through 6 above; and

4. Addition of the affordable development to the Agency's New Jersey Housing Resource Center website.

(f) Such advertising and outreach shall take place during the first week of the affirmative marketing program and each month thereafter until all the restricted units have been leased. The advertisement shall include at least the following:

1. The location of the restricted units;
2. Directions to the restricted units;
3. The range of rents for the restricted units;
4. The size, as measured in bedrooms, of the restricted units;
5. The maximum income permitted to qualify for the restricted units;
6. The location of applications for the restricted units;
7. The business hours when interested households may obtain an application for a restricted unit; and
8. Application fees, if any.

(g) Applications for restricted units shall be available in several locations, including, at a minimum, the county administrative building and/or the county library for each county within the housing region; the municipal administrative building(s) and the municipal library in the municipality in which the restricted units are located; and the rental office of the developer or the subsequent owner of the affordable development. Applications shall be mailed to prospective applicants upon request.

19:31-23A.22 Affordability controls: household selection; related project information

(a) The developer or subsequent owner of the affordable development shall obtain all information from applicant households necessary and appropriate to determine that restricted units are occupied by properly sized households with appropriate low- or moderate- income levels.

(b) When reviewing an applicant household's income to determine eligibility, the developer or subsequent owner of the affordable development shall compare the applicant household's total gross annual income to the household limits then in effect. For the purposes of this subchapter, income and assets, and verification of same, shall be defined and calculated as set forth by the Agency for federal low-income housing tax credits.

(c) Households shall also be required to produce documentation of household composition for determining the correct unit size and applicable median income guide.

(d) The following information shall be maintained by the developer or subsequent owner of the affordable development and shall be provided to the Agency or the Authority upon request:

1. The total number of units in the redevelopment project, and number of restricted units, broken down by bedroom size, identifying which are moderate-, low-, and very low-income units, and including street addresses of restricted units;
2. Floor plans of all restricted units, including complete and accurate identification of uses and dimensions of all rooms;
3. A project map identifying the locations of restricted units and market units;
4. Proposed rent for all units;
5. Any maintenance or other fees;
6. Sewer, trash disposal and any other utility assessments;
7. A description of all HVAC systems;
8. Location of any common areas and elevators;
9. Proposed form of lease; and
10. The name of the person who is responsible for compliance with the affordability controls.

(l) The developer or subsequent owner of the affordable development shall employ a random selection process when selecting prospective tenants for restricted units.

19:31-23A.23 Appeals

(a) The Board's action shall be effective 10 business days after the Governor's receipt of the minutes, provided neither an early approval nor veto has been issued.

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

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

1. The Chief Executive Officer shall designate an employee of the Authority to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The Authority may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.

2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. After reviewing the report, the Chief Executive Officer of the Authority may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Chief Executive Officer, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.

3. The Board shall consider the hearing officer's report, the recommendation of the Chief Executive Officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the appeal.

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

19:31-23A.24 Reports by the Authority to the Governor and Legislature on implementation of program

(a) Beginning in 2022 and every two years thereafter, a State college or university established pursuant to Chapter 64 of Title 18A of the New Jersey Statutes shall, pursuant to an agreement executed between the State college or university and the Authority, prepare a report on the implementation of the program, and submit the report to the Authority, the Governor, and, pursuant to N.J.S.A. 52:14-19.1, to the Legislature. Each biennial report required pursuant to this section shall include a description of each redevelopment project receiving a tax credit under the program, a detailed analysis of the consideration given in each project to the factors set forth in N.J.S.A. 34:1B-326 and 34:1B-327 and N.J.A.C. 19:31-23A.6 and -23A.7, in the case of a commercial project, the return on investment for incentive awards provided and the commercial project's impact on the State's economy, and any other metrics the State college or university determines are relevant based upon national best practices. The Authority shall prepare a written response to the report, which the Authority shall submit to the Governor and, pursuant N.J.S.A. 52:14-19.1, to the Legislature.

(b) On or before December 31, 2023, the authority shall submit a report to the Governor and, pursuant to N.J.S.A. 52:14-19.1, the Legislature on the effectiveness of the program in encouraging development in government-restricted municipalities, which report shall include, at a minimum, recommendations to incentivize additional development in government-restricted municipalities through financial assistance or other incentives that the authority determines are appropriate.

19:31-23A.25 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remaining portions of this subchapter shall not be affected thereby.

ADOPTED
NOV 16 2023

Attachments

Resolution of the New Jersey Economic Development
Authority Regarding Approval of the Special Adopted
New Rules and Concurrent Proposed New Rules for the
Aspire Program

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

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

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

1. The actions set forth in the Memorandum and attachment, attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.
2. The Memorandum and attachment, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.
3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: November 16, 2023

EXHIBIT



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Morgan Stanley Domestic Holdings, Inc., (“Morgan Stanley”) – Grow New Jersey Assistance Program (“Grow NJ”) Modification- P45002

Request:

Because of the reduction of the eligible jobs from 251 to 149 which is a 40.64% decrease, approval is requested from the Members to affirm that the project has not materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of jobs may still be reduced if additional deficiencies are found, staff requests delegated authority to approve a further 10% reduction in eligible jobs from the current number of 149.

As a result of this requested change, the approved award will decrease by 44.35% from \$20,080,000 to \$11,175,000 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.

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

Background:

In June 2018, the Authority approved E-Trade Financial Corp. (“original applicant”) for a ten (10) year, \$20,080,000 Grow NJ award to incent the creation of 251 new full-time jobs. Capital investment in the Qualified Business Facility (“QBF”), in Jersey City, Hudson County, was estimated to be \$20,975,434.

In October 2020, Morgan Stanley acquired the original applicant. The original applicant then filed a modification application to inform EDA that the original applicant anticipated that it would take a series of steps to fully integrate the original applicant into Morgan Stanley. The first of these steps was a merger of the original applicant into a new entity, E-Trade Financial LLC, followed by a subsequent merger into another newly formed entity, E-Trade Financial Holdings LLC (“ETFH”). In January 2021, the Board approved the re-designation of the Grow business from the original applicant to ETFH.

In January 2022, ETFH merged into Morgan Stanley Domestic Holdings Inc., with the latter surviving the merger. Morgan Stanley had requested approval of this reorganization as the surviving entity post-merger, based on its commitment to meet all the terms of the Grow approval. In May 2022, staff approved the re-designation of the Grow business from ETFH to Morgan Stanley under delegated authority with an adjustment to the Statewide workforce from 510 to 1,898.

Morgan Stanley was approved for two six-month extensions to certify project completion and in June 2022, Morgan Stanley submitted certification of its project completion. The independent CPA certified capital investment of \$15,956,541, which exceeded the minimum requirement of \$5,290,600. The company certified it created 149 of the 251 anticipated new full-time jobs, which exceeds the program minimum of 25 for the Grow NJ award. The company informed us that they were unable to meet their anticipated full-time jobs due to the impacts of COVID-19 pandemic.

Aside from the reduction in the number of jobs, the company has stated that the project remains the same, as the jobs at the QBF are essentially the same as those included in the Grow NJ application. The median salary increased significantly, and additional employees are based at the QBF although not verifiably present at the facility at 60% of those employee’s work time.

Based on the \$15,702,402 of eligible certified capital investment and the 149 new full-time jobs, the amount of Grow NJ award will be reduced to \$11,175,000, which also reflects the bonus loss of \$500 per employee for not meeting the large number of jobs threshold of 251 new employees. Since the jobs were reduced by more than 25% from what was approved, staff recalculated the Net Positive Economic Benefit (“NBT”) to the State over 20 years using the current net benefit model, which resulted in a \$77,297,080 NBT to the State, still satisfying the required 110% NBT to the State. The company expended \$15,702,402 in eligible capital investment and created 149 new jobs at the approved QBF and continues the operations as described to the Board at approval. Based on the above, staff has determined that aside from the reduction in new full-time jobs, the overall Grow NJ project has not materially changed since Board approval.

Summary of Project Changes

	<u>At Approval</u>	<u>At Certification</u>
Proposed/Actual Jobs:	251 (New)	149 (New)
Base Amount:	\$ 5,000	\$ 5,000
Bonus Increases:		
Large Number of New/Retained F/T Jobs	\$ 500	\$ 0
Targeted Industry	\$ 500	\$ 500
Transit Oriented Development	\$ 2,000	\$2,000

Total Amount per Incented Employee	\$ 8,000	\$ 7,500
Annual Award:		
New:	251 x \$8,000 = \$2,008,000	149 x \$7,500 = \$1,175,000
Total Award	\$20,080,000	\$11,175,000
Net Benefit to the State: Over 20 Years, Net of award	\$44,993,196	\$77,297,080
Square Footage	132,265	132,265
Eligibility Min. Cap-Ex	\$5,222,760	\$5,290,600
Proposed/Actual Cap-Ex	\$20,975,434	\$15,702,402

Recommendation:

Because of the reduction of eligible jobs from 251 to 149, which is a 40.64% decrease, approval is being requested from the Members to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of eligible jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction from the current number of 149.

As a result of this requested change, the approved award will decrease by 44.35% from \$20,080,000 to \$11,175,000 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.



Tim Sullivan, CEO

Prepared by: Parviz Ibragimov



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Maestro Technologies, Inc., (“Maestro”) – Grow New Jersey Assistance Program (“Grow NJ”) Modification- P44035

Request:

Because of the reduction of the eligible jobs from 178 to 81 which is a 54.49% decrease, approval is requested from the Members to affirm that the project has not materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of jobs may still be reduced if additional deficiencies are found, staff requests delegated authority to approve a further 10% reduction in eligible jobs from the current number of 81.

As a result of this requested change, the approved award will decrease by 56.83% from \$17,355,000 to \$7,492,500 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.

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

Background:

Maestro, founded in 2010, is a technology consulting and data management systems design firm. With key customers in the banking and pharmaceutical sectors, it provides a variety of technology solutions and services focused in cloud computing and big data with growth expected on the sale and implementation of proprietary products to be sold and modified for client use. Additionally, Maestro provides strategic staffing services to assist customers in running data management systems related to consulting engagements.

On March 24, 2017, Maestro was approved for a ten (10) year, \$17,355,000 Grow NJ award to incent the creation of 143 new full-time jobs and retention of 35 full time jobs. Capital investment in the Qualified Business Facility (“QBF”), in Trenton, Mercer County, was estimated to be \$1,655,160. Maestro was approved for two six-month extensions in addition to a COVID-19 extension to certify

project completion and in June 2022, Maestro submitted certification of its project completion. The independent CPA certified capital investment of \$1,670,312 which exceeded the minimum requirement of \$1,066,667. The company did not retain the proposed or required minimum jobs, but did create 111 new full time jobs (of which 77 were eligible to be incented), albeit some at lower salary, and according to program rules, the new jobs must backfill the required retained jobs, before counting as new jobs. Thus, the company certified to 35 retained full-time jobs and 46 new full-time jobs for a total of 81 jobs, which exceeds the program minimums of 27 retained jobs and 19 new jobs respectively. The company informed us that they were unable to meet their anticipated new jobs due to the struggle of hiring during the pandemic while simultaneously meeting the program eligibility requirements for full time jobs. Nevertheless, they currently have 81 full time jobs at the QBF and are in the process of hiring new employees to get closer to the total jobs anticipated at approval.

Aside from the reduction in the number of jobs, the company has stated that the project remains the same, as the company has relocated its headquarters to Trenton and the types of jobs at the QBF are essentially the same as those included in the Grow NJ application. Although the median salary decreased due to the lower salaries offered of some of the positions in the QBF, the average salary remained similar.

Based on the \$1,670,312 of certified capital investment and the 35 retained and 46 new full-time jobs, the amount of Grow NJ award will be reduced to \$7,492,500. Since the jobs were reduced by more than 25% from what was approved, staff recalculated the Net Positive Economic Benefit (“NBT”) to the State over 30 years using the current net benefit model which resulted in a \$22,644,550 NBT to the State, which satisfies the required 110% NBT to the State. The company expended \$1,670,312 in capital investment and retained 35 jobs and created 46 new jobs at the approved QBF and continues the operations as described to the Board at approval. Based on the above, staff has determined that, aside from the reduction in new full-time jobs, the overall Grow NJ project has not materially changed since Board approval.

Summary of Project Changes

	<u>At Approval</u>	<u>At Certification</u>
Proposed/Actual Jobs:	143 (New) 35 (Retained)	46 (New) 35 (Retained)
Base Amount:	\$ 5,000	\$ 5,000
Bonus Increases:		
Deep Poverty Pocket	\$ 1,500	\$ 1,500
Targeted Industry	\$ 500	\$ 500
Transit Oriented Development	\$ 2,000	\$2,000
GSGZ – Salary in Excess of GSGZ Average	\$750	\$250

Total Amount per Incented Employee	\$ 9,750	\$ 9,250
Annual Award:		
New:	143 x \$9,750 = \$1,394,250	46 x \$9,250 = \$425,500
Retained	35 x \$9,750 = \$341,250	35 x \$9,250 = \$323,750
Total Award	\$17,355,000	\$7,492,500
Net Benefit to the State: Over 30 Years, Net of award	\$48,511,539	\$22,644,550
Square Footage	40,000	40,000
Eligibility Min. Cap-Ex	\$1,066,667	\$1,066,667
Proposed/Actual Cap-Ex	\$1,655,160	\$1,670,312

Recommendation:

Because of the reduction of eligible jobs from 178 to 81, which is a 54.49% decrease, approval is being requested from the Members to affirm that the project has not otherwise materially changed to allow staff to complete its certification of project completion. Additionally, as staff is still reviewing the job certification and the number of eligible jobs may still be reduced, staff requests delegated authority to approve a further 10% reduction from the current number of 81.

As a result of this requested change, the approved award will decrease by 56.83% from \$17,355,000 to \$7,492,500 with the potential for further decrease. All other terms and conditions of the Grow NJ award will be consistent with the current approval.



Tim Sullivan, CEO

Prepared by: Parviz Ibragimov

ADOPTED
NOV 16 2023

Attachments

Resolution of the New Jersey Economic Development
Authority Regarding Approval of the Maestro Technologies,
Inc., (“Maestro”) – Grow New Jersey Assistance Program
(“Grow NJ”) Modification- P44035

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

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

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

1. The actions set forth in the Memorandum and attachment, attached hereto, are hereby approved, subject to any conditions set forth as such in said Memorandum.
2. The Memorandum and attachment, attached hereto, is hereby incorporated and made a part of this resolution as though set forth at length herein.
3. This resolution shall take effect immediately, but no action authorized herein shall have force and effect until 10 days, Saturdays, Sundays, and public holidays excepted, after a copy of the minutes of the Authority meeting at which this resolution was adopted has been delivered to the Governor for his approval, unless during such 10-day period the Governor shall approve the same, in which case such action shall become effective upon such approval, as provided by the Act.

DATED: November 16, 2023

EXHIBIT



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: NJ Cool Program

Request:

The Members are asked to approve:

1. The creation of the NJ Cool Program, a pilot program that will provide grants to retrofit projects in existing commercial buildings that result in a reduction of operating greenhouse gas emissions. The pilot will support projects located in the municipalities of the City of Newark (Newark), the Township of Edison (Edison), and the City of Atlantic City (Atlantic City).

2. The utilization of an initial \$15,000,000 from New Jersey Economic Development Authority's (NJEDA) allocation of the 2023 Regional Greenhouse Gas Initiative (RGGI) auction proceeds to capitalize the NJ Cool Program.

3. Delegation of authority to the Chief Executive Officer to:

a) Approve individual applications for the NJ Cool Program in accordance with the terms set forth in this memo and the attached program specifications.

b) Increase funding from \$15,000,000 to up to \$30,000,000 based on available RGGI funding if application demand exceeds the initial \$15,000,000 funding allocation.

Background:

The Regional Greenhouse Gas Initiative (RGGI)

On January 29, 2018, Governor Murphy signed Executive Order 7 (EO 7), instructing state government agencies to return New Jersey to full participation in the Regional Greenhouse Gas Initiative (RGGI) as quickly as possible. RGGI is a multi-state, market-based program that establishes a regional cap on carbon dioxide (CO₂) emissions from the electric power generation sector and therefore allowing for auctioning of emissions rights. Launched in 2005, RGGI was the first mandatory greenhouse gas "cap-and-invest" program in the United States. States use the proceeds from the CO₂ allowance auctions to invest in programs to help further reduce CO₂ and other greenhouse gas pollution, spur clean and renewable energy, and provide rate relief on energy bills.

Through its participation in RGGI auctions and fixed price allowance sales held between 2020 and 2022, New Jersey received funding that totaled approximately \$372 million. In 2023, the first three quarterly RGGI auctions have thus far resulted in over \$131 million in funding to the state.

Three agencies, New Jersey Department of Environmental Protection (NJDEP), New Jersey Board of Public Utilities (NJBPU), and New Jersey Economic Development Authority (NJEDA), collaborate on the creation of New Jersey's RGGI Strategic Funding Plan, which identifies how the RGGI auction proceeds will be utilized for over 3-year funding periods.

Per the 2023 Funding Plan, The State will deploy RGGI funds for 2023-2025 within four initiative categories:

1. Accelerate Healthy Homes and Building Decarbonization;
2. Catalyze Clean, Equitable Transportation;
3. Strengthen New Jersey's Forests and Urban Forests; and,
4. Promote Blue Carbon in Coastal Habitats.

New Jersey's RGGI funds allocation is governed by the Global Warming Solutions Fund Act (P.L. 2008,

c. 340). By statute, proceeds from auctions are deposited into the Global Warming Solutions Fund. After administration fees are deducted from the pool, NJEDA receives 60% of the remaining funding for programming (focus area: commercial, institutional, and industrial entities). NJBPU and NJDEP each receive 20% of the remaining funding for programming (focus areas, respectively: low income and moderate income residential; and local government, forests, and tidal marshes).

Building Decarbonization

Per the 2023 RGGI Funding Plan: According to the NJDEP's New Jersey Greenhouse Gas Inventory, buildings currently are the second highest source of greenhouse gas emissions in the state. These emissions are primarily associated with the combustion of fossil fuels in space and water heating. In addition, hydrofluorocarbon (HFC) emissions from refrigeration and air conditioning account for 6% of the State's greenhouse gas inventory. HFCs are considered a climate "super pollutant" because these greenhouse gases have hundreds to thousands of times the heat trapping power of carbon dioxide (CO₂) and are the fastest growing source of greenhouse gases both internationally and in New Jersey.

New Jersey aims to reduce statewide greenhouse gas emissions compared to 2006 levels by 50% and then 80%--by 2030 and 2050 respectively. Existing building stock will continue to be a significant source of greenhouse gas emissions without decisive action. It is estimated that 80% of buildings that will be around in 2050 already exist today. Governor Murphy's Executive Order 316 sets clear near-term targets for building electrification in that by December 31, 2030, 400,000 additional dwelling units and 20,000 additional commercial spaces and/or public facilities statewide will be electrified, and an additional 10 percent of residential units serving households earning less than 80 percent of area median income will be made ready for electrification through the completion of necessary electrical system repairs and upgrades. On the longer term, New Jersey's 2019 Energy Master Plan's least cost scenario calls for converting at least 90% of residential and commercial buildings from natural gas to electric appliances by 2050. This past September, Governor Murphy signed New Jersey on to a 25-state coalition that aims to collectively reach 20 million heat pump installations across the coalition by 2030.

Per the 2023 RGGI Funding Plan: Cost is a major barrier when upgrading homes and businesses to reduce carbon emissions and transition to low GWP commercial refrigeration systems or

chillers. Funding the incremental costs to switch heating fuels and shift to new, low global warming potential (GWP) refrigeration systems is necessary to accelerate the installation of these systems. Since many new refrigeration appliances sold today utilize HFCs and will have an average product lifetime of about 15-20 years, New Jersey has a window of opportunity to incentivize the replacement and retrofit of older systems with those that use low and ultra-low-GWP refrigerants. Additional energy reduction benefits will be realized through this initiative because new refrigeration systems that use low-GWP refrigerants are more energy efficient than existing systems.

Program Details:

In accordance with the Building Decarbonization initiative in the 2023 RGGI Funding Plan, the NJ Cool Program (“Program” or “Pilot”) will support building decarbonization projects in existing commercial buildings in the state. Grants will be provided to reduce the costs of retrofit construction projects in existing commercial building spaces. Grant awards will cover 50% of eligible project costs up to a maximum award of \$1,000,000 per project (with a minimum award amount of \$50,000 per project).

Projects must include switching 75% or more of building space heating loads from existing fossil fuel-based combustion systems to non-combustion heating systems with low to zero direct operating emissions and/or replacing 75% or more of existing high global warming potential (GWP) refrigerants used for cooling within the building with lower GWP alternatives. In addition, work that further reduces building operating emissions and/or improves energy efficiency of the building can also be considered eligible costs for partial reimbursement through the grant. However, this emissions reduction/energy efficiency work will not be eligible independently for a grant without fuel switching or refrigerant replacement also occurring as part of the overall project requesting a grant award. Additional eligible emissions reduction/energy efficiency work are hard costs that include but are not limited to:

- Installing on-site renewable energy generation and/or storage systems
- Replacing gas powered appliances (ex: hot water heaters, clothes dryers, kitchen equipment) with electric alternatives
- Installing building management systems or energy load controls
- Conducting weatherization or building envelope (ex: façade, doors, windows, insulation) upgrades
- Installing heat recovery equipment
- Replacing lighting with more efficient equipment and/or controls

Eligibility:

Applicants may own or lease the building space that will be improved using the grant funding. If the space is leased, the Applicant must provide a certification from the landlord (that is, the building owner) that they have reviewed and approved the proposed project details.

The pilot is open to existing commercial spaces within the three designated pilot communities of Newark, Edison, and Atlantic City (see below on the factors used to select these three municipalities). NJEDA will utilize municipal boundaries for these communities in determining that an Applicant’s property address fits the project location criteria.

For the purposes of the pilot, commercial spaces are defined per a select list of Occupancy classes as defined by Chapter 3 of the current version of New Jersey Building Code. This includes Mercantile Group M (i.e., retail stores), Assembly Group A-2 (i.e., restaurants, bars, nightclubs, etc.), and Business Group B (i.e., banks, barber/beauty shops, professional services offices, etc.). Uses listed in New Jersey Building Code under Business Group B that will be excluded from pilot

eligibility are airport traffic control towers, buildings used for civic administration, educational purposes above the 12th grade, and post offices. These three Occupancy classes were selected for the pilot to provide a variety of commercial building uses to inform program design and operation. In addition, they are highly public facing spaces that can help inform community members about building decarbonization efforts and benefits. Other Occupancy classes were excluded from the initial pilot eligibility given that buildings with these other spaces typically have more complicated energy demands, potentially larger retrofit project costs, and complex building ownership structures. These additional Occupancy classes may be considered for inclusion in future program iterations.

Using building occupancy class to designate project eligibility allows for mixed-use buildings to be included in the pilot as occupancy class can be applied by code to only a portion of a building rather than the entire structure. For example, improvements can be made under the program to eligible ground floor retail spaces in a mixed-use building while excluding upgrades specific to residential apartments that may be located on the higher floors of a building. Please note, improvements (such as façade replacement, rooftop solar panel installations, or central HVAC equipment replacement) that may also result in emissions/energy reduction benefits to other building occupancy uses within a building in addition to the primary targeted Group M, A-2, or B occupied spaces are eligible for grant reimbursement. If the Applicant is a tenant, the minimum 75% switching requirement explained above for space heating load or existing refrigerants will only apply to the portions of the building within the tenant’s lease or the building systems affecting the tenant’s space within the overall building.

In addition to the eligibility parameters already stated above, the Applicant must also be in substantial good standing with the New Jersey Department of Labor and Workforce Development (NJDL) and New Jersey Department of Environmental Protection (NJDEP) to be eligible for the NJ Cool Program pilot. A current tax clearance certificate will need to be provided prior to application approval to demonstrate the Applicant is properly registered to do business in New Jersey and in substantial good standing with the NJ Division of Taxation.

To prevent duplication of benefits, participants in the NJ Clean Energy New Construction Program (Gut Rehab) or Large Energy Users Program are not eligible to participate in the pilot. Similarly, the maximum potential grant award will be calculated from total eligible project costs net the amount of any expected incentive payments from state-run or utility energy efficiency programs.

Diversity, Equity, and Inclusion:

The pilot is focused on three communities in the state: Newark, Edison, and Atlantic City. These three communities were selected for the pilot based on the prevalence of Overburdened Communities (OBCs) as defined by the New Jersey Environmental Justice Law, State geographic representation, and commercial electric and gas usage. Per the law, OBCs are Census block groups with at least 35 percent low-income households; or at least 40 percent of the residents identifying as minority or as members of a State recognized tribal community; or at least 40 percent of the households having limited English proficiency. Census block groups with zero population and located immediately adjacent to an OBC are labeled as “adjacent.” OBCs significantly overlap these three municipalities.

These three communities (Newark, Edison, and Atlantic City) also cover the three different geographic regions of the state: North, Central, and South Jersey respectively.

Per an analysis conducted with the support of NJDEP, the pilot communities are 3 of the top 4 municipalities in the state by commercial electric usage and 3 of the top 15 municipalities by commercial natural gas usage. Edison and Newark are the top 2 municipalities in the state based

on reported HFC facilities. Overall, the three communities have a significant number of commercial properties that will be potential Applicants for the pilot.

Eligible Funding Uses:

Eligible Project Costs:

- Materials, labor, and/or equipment provided by Publics Work contractor that are directly related to emissions reductions/energy efficiency improvements or enabling work necessary for proposed emissions reducing/energy efficient building systems to be operational (i.e., upgrading electric panels, structural improvements for rooftop solar or HVAC systems)
- Equipment and/or materials procured directly by the Applicant that are directly related to emissions reductions/energy efficiency or enabling work necessary for proposed emissions reducing/energy efficient building systems to be operational

Ineligible Project Costs:

- Soft costs: including but not limited to energy audits, design professional services, 3rd party construction management costs, permitting fees, commissioning costs, inspection fees
- Interior finish improvements and upgrades not related to operating energy/emissions reductions (ex: flooring, artwork)
- Other building system upgrades that are not related to energy/emissions reductions (ex: fire sprinklers, security cameras), even if required for overall building code compliance
- Furniture: non-permanent items (ex: desks, chairs, cabinets)
- Prior energy efficiency/emissions reductions improvements begun or completed before time of application approval
- New construction, including enlargements or additions to existing buildings that increase overall building square footage
- Facility or site acquisition
- Fines incurred because of code or zoning violations during construction project(s) associated with this grant

All work must be conducted in accordance with NJ prevailing wage and affirmative action requirements.

Grant awards will be calculated based on the quoted costs of the eligible project scope. The Program will not provide reimbursement for costs already incurred prior to application approval.

Application Process:

Applications will be accepted on a rolling, first-come first-served basis after the application is opened to the public. The application will remain open until all available funding is reserved or until three (3) years after date of application launch, whichever is sooner.

Applications will be evaluated to make sure that buildings meet pilot location requirements, building spaces meet appropriate occupancy class designations, and that the proposed project includes the required threshold for fuel switching and/or refrigerant replacement as part of the scope of work.

Applicants will submit supporting documentation and calculations to demonstrate the projected reduction in operating greenhouse gas emissions that will be enabled by the retrofit project. These supporting calculations must be prepared by a qualified building design or energy professional. Qualified building design or energy professionals include but are not limited to:
-Licensed engineer (NJ state professional engineer or other state's equivalent)

- Licensed architect (NJ state registered architect or other state's equivalent)
- Certified Energy Auditor (CEA certification from the Association of Energy Engineers)
- Certified Energy Manager (CEM certification from the Association of Energy Engineers)
- Energy Management Professional (EMP certification from the Energy Management Association)
- Building Energy Assessment Professional (BEAP certification from ASHRAE)

The supporting calculations will be prepared per guidelines to be developed by NJEDA in consultation with NJDEP. These calculations will also serve as the basis for reporting program wide emissions reductions and energy savings enabled by RGGI funding. The preparer of the calculations will also attest that the project as designed will result in the switching of 75% or more of building space heating loads from existing fossil fuel-based combustion systems to non-combustion heating systems with low to zero direct operating emissions and/or the replacement of 75% or more of existing high global warming potential (GWP) refrigerants used for cooling within the building with low GWP alternatives.

Applicants will indicate a requested grant amount in their application. They will provide quotes/cost estimates from Public Works contractor(s) for the proposed scope of work and any additional supporting details for any other eligible project cost information that may be borne directly by the Applicant.

After reviewing the submitted application materials, NJEDA will provide an approval letter to the applicant with the maximum potential grant award available for the project. As a condition of accepting the award and before entering into a grant agreement with NJEDA, the Applicant must provide proof of funding for total estimated project costs plus an additional 15% of overall project costs as contingency to allow for potential cost overruns that may arise during construction.

Additional financing provided by NJEDA may be used to cover project costs not eligible under the program. Additional financing provided by NJEDA may also be used to cover project costs paid up front by the Applicant prior to submitting for NJ Cool grant reimbursement. NJ Cool grant awards will not be adjusted following notice of application approval and the Applicant will be responsible for any additional or unexpected project costs, even if cost increases are related to the eligible project scope.

If at any point following Applicant submission the original contractor who provided the quote used for grant award calculation is no longer able to complete work for the approved project, the Applicant may utilize a new contractor for the work, so long as the contractor is a New Jersey Public Works Registered Contractor. Grant awards will not be recalculated if the application is already approved. If during the course of construction, the original contractor is no longer able to complete work for the approved project, the Applicant may identify a new contractor for the work, so long as the contractor is a New Jersey Public Works Registered Contractor. Grant awards will not be recalculated if contractors are replaced.

Disbursement Process:

Maximum eligible grant award will be determined at time of application approval. NJEDA will disburse funds via payments to the Applicant for reimbursement of eligible project costs at a 50% rate in two payment tranches. Up to one half of the maximum eligible grant award will be available for reimbursement when the applicant has paid 50% or more of estimated eligible project costs. The balance of the grant award will be available for disbursement at project completion when all eligible project work is completed and accepted by the applicant. Reimbursement will be based on submitted proof of actual project expenses (receipts, contractor invoices, etc.), signed progress/completion documents, and project photos. NJEDA reserves the right to conduct site visits during and following completion of construction activities to confirm that work is being

completed in accordance with eligible uses for the Program and all prevailing wage and affirmative action requirements.

Applicants will be responsible for repayment of all disbursed grant funding if they do not at a minimum complete the work required for either switching 75% or more of building space heating loads from existing fossil fuel-based combustion systems to non-combustion heating systems with low to zero direct operating emissions or replacing 75% or more of existing high global warming potential (GWP) refrigerants used for cooling within the building with lower GWP alternatives.

Delegated Authority

The Members are requested to approve delegated authority to the Chief Executive Officer to approve individual applications to the NJ Cool Program Pilot in accordance with the terms set forth in the attached product specifications.

Entities whose applications are denied will have the right to appeal. Appeals must be filed within the timeframe set in the declination letter (which staff will establish prior to the first appeal and which must be at least 10 business days). The Director of Legal Affairs will designate Hearing Officers who will review the application, the appeal, and any other relevant documents or information. The Hearing Officer will recommend an administrative decision. Appeals that include a discretionary basis for declination shall be submitted to the Authority's Board for their adoption as a final agency decision.

Program Funding

The NJ Cool pilot program will be funded from 2023 RGGI project funding available to NJEDA under the 2023-2025 Funding Plan.

The total RGGI-funded pilot program budget will be \$15,000,000 for grant awards. Of which:

- \$5,000,000 will be initially set aside for projects within the municipality of Newark
- \$5,000,000 will be initially set aside for projects within the municipality of Edison
- \$5,000,000 will be initially set aside for projects within the municipality of Atlantic City.

One year after application is open to the public, initial set asides will expire and all remaining program funding will be open to eligible building projects within the three pilot communities on a first come first served basis.

Minimum award size per project will be \$50,000. Maximum award size per project will be \$1,000,000.

Delegated authority is requested to utilize up to an additional \$15,000,000 in RGGI funds available to NJEDA to expand the pilot if program demand surpasses the initial \$15,000,000 funding allocation.

Administrative costs for the program will be covered under RGGI administrative funding that is available to NJEDA independently from RGGI project funding.

Fees:

NJEDA will charge Applicants fees consistent with the NJEDA's rules regarding fees, which at the time of this memo are as follows:

- Application fee: non-refundable \$1,000 fee for applying to this program.

Recommendation:

The Members are asked to approve:

1. The creation of the NJ Cool Program, a pilot program that will provide grants to retrofit projects in existing commercial buildings that result in a reduction of operating greenhouse gas emissions. The pilot will support projects located in the municipalities of the City of Newark (Newark), the Township of Edison (Edison), and the City of Atlantic City (Atlantic City).
2. The utilization of an initial \$15,000,000 from New Jersey Economic Development Authority's (NJEDA) allocation of the 2023 Regional Greenhouse Gas Initiative (RGGI) auction proceeds to capitalize the NJ Cool Program.
3. Delegation of authority to the Chief Executive Officer to:
 - a) Approve individual applications for the NJ Cool Program in accordance with the terms set forth in this memo and the attached program specifications.
 - b) Increase funding from \$15,000,000 to up to \$30,000,000 based on available RGGI funding if application demand exceeds the initial \$15,000,000 funding allocation.



Tim Sullivan, CEO

Prepared by: Sean Sonnemann, Senior Project Officer, Clean Energy

Attachments:

Appendix A – Proposed Product Specifications: NJ Cool Program Pilot

Proposed Program Specifications: NJ Cool Program Pilot November 16, 2023	
Funding Source	2023 project funding available to NJEDA from the Regional Greenhouse Gas Initiative Funds (RGGI) under the 2023-2025 Funding Plan.
Program Budget	<p>\$15,000,000, of which:</p> <ul style="list-style-type: none"> • \$5,000,000 will initially be set aside for projects within Newark • \$5,000,000 will initially be set aside for projects within Edison • \$5,000,000 will initially be set aside for projects within Atlantic City <p>One year after application is open to the public, initial set asides will expire and all remaining program funding will be open to eligible building projects within the three pilot communities on a first come first served basis.</p>
Program Purpose	To reduce operating greenhouse gas emissions from the commercial building sector in the State by offsetting capital costs of related construction projects for existing buildings. To allow NJEDA to assess effectiveness of funding levels and program design. To accelerate the adoption of building decarbonization systems, technologies, and construction practices within New Jersey.
Eligible Applicants	<p>Building owners or tenants with owner approval seeking to complete retrofit construction projects in existing commercial building spaces within the pilot communities of Newark, Edison, and Atlantic City.</p> <p>For the purposes of the pilot, existing commercial building spaces are classified as building spaces per New Jersey Building Code within Occupancy Classes:</p> <ul style="list-style-type: none"> • Mercantile Group M • Assembly Group A-2 • Business Group B (excluding airport traffic control towers, civic administration, educational purposes above the 12th grade, and post offices) <p>Note, proposed building improvements are acceptable if they also result in emissions/energy reductions for other building occupancy classes in a mixed-use building that are not under M, A-2, or B designation.</p> <p>To prevent duplication of benefits, participants in the NJ Clean Energy New Construction Program (Gut Rehab) or Large Energy Users Program are not eligible to participate in the pilot. Similarly, the maximum potential grant award will be calculated from total eligible project costs net the amount of any expected incentive payments from state-run or utility energy efficiency programs.</p>
Eligible Projects	<p>Project scope must include:</p> <p>A. Switching 75% or more of building space heating loads from existing fossil fuel-based combustion systems to non-combustion-based heating systems with low to zero direct operating emissions.</p> <p>and/or</p> <p>B. Replacing 75% or more of existing high global warming potential (GWP) refrigerants with lower GWP alternatives.</p> <p>Plus, optionally</p> <p>C. Additional work that further reduces operating emissions and/or improves energy efficiency of the building, including but not limited to:</p> <ul style="list-style-type: none"> • Installing on-site renewable energy generation and/or storage systems • Replacing gas powered appliances (ex: hot water heaters, clothes dryers, kitchen equipment) with electric alternatives

<p>Proposed Program Specifications: NJ Cool Program Pilot November 16, 2023</p>	
	<ul style="list-style-type: none"> • Installing building management systems or energy load controls • Conducting weatherization or building envelope (ex: façade, doors, windows, insulation) upgrades • Installing heat recovery equipment • Replacing lighting with more efficient equipment and/or controls <p>If the Applicant is a tenant, the minimum 75% switching requirement for heating load or existing refrigerants will only apply to the portions of the building within the tenant’s lease or the building systems affecting the tenant’s space within the overall building.</p>
<p>Eligible Uses</p>	<p>Eligible Project Costs:</p> <ul style="list-style-type: none"> • Materials, labor, and/or equipment provided by Publics Work contractor that are directly related to emissions reductions/energy efficiency improvements or enabling work necessary for proposed emissions reducing/energy efficient building systems to be operational (i.e., upgrading electric panels, structural improvements for rooftop solar or HVAC systems) • Equipment and/or materials procured directly by the Applicant that are directly related to emissions reductions/energy efficiency or enabling work necessary for proposed emissions reducing/energy efficient building systems to be operational <p>Ineligible Project Costs:</p> <ul style="list-style-type: none"> • Soft costs: including but not limited to energy audits, design professional services, 3rd party construction management costs, permitting fees, commissioning costs, inspection fees • Interior finish improvements and upgrades not related to operating energy/emissions reductions (ex: flooring, artwork) • Other building system upgrades not related to operating energy/emissions reductions (ex: fire sprinklers, security cameras), even if required for overall building code compliance • Furniture: non-permanent items (ex: desks, chairs, cabinets) • Prior energy efficiency/emissions reductions improvements began or completed before time of application to the program • New construction, including enlargements or additions to existing buildings that increase overall building square footage • Facility or site acquisition • Fines incurred because of code or zoning violations during construction project associated with this grant <p>All work must be conducted in accordance with NJ prevailing wage and affirmative action requirements.</p>
<p>Application Process</p>	<p>Complete applications will be reviewed on a rolling basis.</p> <p>Step 1: Applicant submits application to NJEDA, which shall include, among other items:</p> <ul style="list-style-type: none"> • Building address and property information (size, type, occupancy, etc.) • Proof of compliance with eligible building occupancy classes (use) including but not limited to an existing building permit, certificate of occupancy, or similar documentation

**Proposed Program Specifications:
NJ Cool Program Pilot
November 16, 2023**

- Proof of ownership/proof of owner permission
 - If Applicant leases space, a copy of their lease and a certification from the landlord that they have reviewed and approved the proposed facility improvement(s).
 - If Applicant owns space, a deed, property tax statement, or current mortgage statement from the lender.
- A description of the proposed project
- Photos of the existing building space
- Valid New Jersey tax clearance certificate
- Cost estimate:
 - Quote(s) from contractor(s) that are registered with NJDOL as a Publics Works Registered Contractor with costs consistent with New Jersey State prevailing wage rates
 - Vendor quotes or similar retailer price information for any relevant items to be purchased directly by the Applicant
- Estimated project schedule
- Requested grant award amount
- Expected utility/state energy efficiency incentive payments (if applicable)
- Green building certification being pursued (if applicable)
- Projected operating greenhouse gas emissions savings as a result of the project (calculated by a qualified professional) with supporting information and additional documentation as required (historic energy bills, HVAC equipment information, etc.)
 - Qualified professionals include but are not limited to:
 - Licensed engineer (NJ state professional engineer or other state's equivalent)
 - Licensed architect (NJ state registered architect or other state's equivalent)
 - Certified Energy Auditor (CEA certification from the Association of Energy Engineers)
 - Certified Energy Manager (CEM certification from the Association of Energy Engineers)
 - Energy Management Professional (EMP certification from the Energy Management Association)
 - Building Energy Assessment Professional (BEAP certification from ASHRAE)

Step 2: After reviewing the submitted application materials, NJEDA will provide an approval letter to the applicant with the maximum potential grant award available for the project. As a condition of accepting the award and before entering into a grant agreement with NJEDA, the Applicant must provide proof of funding for total estimated project costs plus an additional 15% of overall project costs as contingency to allow for potential cost overruns that may arise during construction. NJEDA grant awards will not be adjusted following notice of application approval and the Applicant will be responsible for any additional or unexpected project costs, even if relevant to the eligible project scope. The Applicant will have two (2) months from notice of application approval with award amount by the Authority to submit proof of funding for the balance of project costs, with the possibility for additional two-month extension(s) at

**Proposed Program Specifications:
NJ Cool Program Pilot
November 16, 2023**

	<p>the discretion of the Authority. Proof of funding can include bank account statements, financing agreement, or similar indication of available working capital for the project costs. Additional financing provided by NJEDA may be used to cover project costs not eligible under the program. Additional financing provided by NJEDA may also be used to cover project costs paid up front by the Applicant prior to submitting for NJ Cool grant reimbursement.</p> <p>Step 3: Upon confirmation of acceptable proof of funding for the balance of project costs from the Applicant, NJEDA will execute a grant agreement with the Applicant for the project. Project construction activity must commence on site within six (6) months of grant agreement execution, or the applicant must demonstrate that permit applications (if required) are pending with relevant building authorities, with the possibility for six-month extension(s) at the discretion of the Authority.</p> <p>Step 4: Applicants will have two (2) years from project construction commencement to achieve project completion, with the possibility for six-month extension(s) at the discretion of the Authority.</p>
Grant Amounts	<p>Minimum grant award of \$50,000 per project Reimbursement of 50% of eligible project costs capped at \$1,000,000 per project</p>
Fees	<p>\$1,000 application fee per project application</p>
Disbursement	<p>Maximum eligible grant award will be determined at time of application approval. NJEDA will disburse funds via payments to the Applicant for reimbursement of eligible project costs at a 50% rate in two payment tranches. Up to one half of the maximum eligible grant award will be available for reimbursement when the applicant has paid 50% or more of estimated eligible project costs. The balance of the grant award will be available for disbursement at project completion when all eligible project work is completed and accepted by the Applicant. Reimbursement will be based on submitted proof of project expenses (receipts, contractor invoices, etc.), signed progress/completion documents, and project photos. NJEDA reserves the right to conduct site visits during and following completion of construction activities to confirm that work is being completed in accordance with eligible uses for the Program and all prevailing wage and affirmative action requirements. Applicants will be responsible for repayment of all disbursed grant funding if they do not at a minimum complete the work required for either switching 75% or more of building space heating loads from existing fossil fuel-based combustion systems to non-combustion heating systems with low to zero direct operating emissions or replacing 75% or more of existing high global warming potential (GWP) refrigerants used for cooling within the building with lower GWP alternatives.</p>



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 16th, 2023

RE: NJ ZIP Program Update - Prohibition on Vehicle Sales and Portion Voucher Recapture Policy

REQUEST:

The Members of the Board are asked to amend the NJ ZIP Pilot Program (Phase 1 and Phase 2) voucher recapture provisions and allow for proportional repayment of voucher awards based on the length of compliance period satisfied and percentage of vehicles in compliance.

BACKGROUND:

In January 2021, the NJ EDA Board approved a \$15,750,000 pilot program called NJ ZIP, the New Jersey Zero-emission Incentive Program, funded from New Jersey Economic Development Authority's (NJEDA) allocation of the Regional Greenhouse Gas Initiative (RGGI) auction proceeds. Launched in April 2021, the Phase 1 NJ ZIP pilot established a first-come, first-serve voucher style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the four pilot communities, greater Newark, New Brunswick, greater Camden, and the Greater Shore Area. NJ ZIP Phase 1 was later expanded twice making it, in total, a \$42M pilot program.

The NJ ZIP pilot aims to decrease harmful emissions, particularly in communities heavily affected by transportation emissions, while fostering economic growth in New Jersey. The pilot's objectives include expediting the adoption and utilization of medium and heavy-duty vehicles with zero emissions in the state, decreasing emissions statewide, and enabling NJEDA to gauge market readiness, funding effectiveness, program design, and economic impact measurement methodologies related to such adoption.

Presently, Phase 1 disbursed \$11.2M in vouchers supporting 129 vehicles to over 60 businesses in overburdened communities across the state.

In July 2022, the Board approved a second phase of the NJ ZIP pilot, with a voucher pool of \$45M. While the overarching structure of the pilot remained unchanged, the second phase pilot, launched in April 2023, included two major eligibility changes from the first phase – to expand eligibility to include heavy-duty vehicle classes and to Purchaser Applicants statewide – and provide updated support structures for pilot participants, including the development of a technical assistance mechanism.

Phase 2 closed in July 2023 with over \$13M on the waitlist. Presently, Phase 2 has approved \$24M in vouchers supporting 200 vehicles and 70 businesses.

Following disbursement of vouchers from Phase 1, several awardees have encountered unanticipated changes in their business resulting in the discontinued use of the ZEVs funded with NJ ZIP proceeds, which accounted for roughly 60% of the total vehicle cost. EDA staff has received requests to consent to the transfer and sale of vehicles funded through the program and waive the associated 3-year compliance obligations, such as the maintenance of vehicle registration and meeting the requirement of driving at least 75% in New Jersey and at least 50% in the approved pilot community.

PROGRAM CHANGES:

The program presently forbids the consent to sell vehicles funded by NJ ZIP vouchers. This restriction is in place to safeguard the program's efficacy and uphold its core goals of accelerating the adoption and usage of medium and heavy-duty zero-emission vehicles in the state while reducing statewide emissions. This policy is designed to preserve the program's integrity, prevent misuse, and uphold funding criteria aimed at reducing greenhouse gas emissions

Allowing for NJ ZIP funded vehicle sales and the transfer of compliance requirements poses significant risks and could open doors to fraudulent activities and misuse of the program funds. For instance, participants might obtain vouchers for vehicles they do not intend to use as zero-emission vehicles or transfer compliance obligations to entities lacking a genuine commitment to emissions reduction or use the vehicle entirely outside the state of New Jersey.

Maintaining fairness within the program is paramount to ensure it benefits a wide range of participants and encourages genuine adoption of zero-emission vehicles. Allowing the sale of vouchers or compliance transfers could lead to a concentration of benefits among a select few, potentially disadvantaging other program participants.

NJ ZIP's primary aim is to expedite the acceptance and utilization of medium and heavy-duty vehicles with zero emissions within the state. The pilot program serves as a catalyst for nurturing the New Jersey zero-emission vehicle ecosystem, where the rapid adoption of such vehicles serves as the initial step in attracting more employment opportunities and investments, as other zero-emission vehicle initiatives and regulations are implemented by various state agencies. Allowing the sale or transfer of vehicles could disrupt this growth trajectory of the ZEV market, diverting vouchers away from new vehicle acquisitions. These transfers may further disrupt the zero-emission vehicle market, potentially resulting in speculation, scalping, and price manipulation, consequently creating obstacles for genuine buyers in obtaining these vehicles at fair and stable prices because without adhering to a blue book standard, the risk of price floors and manipulation becomes more pronounced.

Furthermore, consenting to allow for vehicle sales or contract transfers would introduce administrative complexities. This would involve verifying ownership changes, evaluating new applicants with potentially differing eligibility criteria, amending award amounts, and documenting assignment and assumption of transfers, and vehicle transactions. Further, as the vouchers are initially paid to authorized dealers, the practicalities of introducing another applicant after the vehicle sale would add complexities, all of which would strain program resources and causing administrative inefficiencies. In lieu of permitting vehicles sales/grant transfers, and to permit applicants flexibility for unanticipated changes in their business, staff is recommending a proportional recapture policy for non-compliance recaptures.

To maintain program integrity, fairness, and equity, as well as to support market growth and ensure compliance with funding goals of emission reductions, prohibiting vehicle sales and compliance

transfers is essential. This approach guarantees that vouchers and compliance requirements are used solely for their intended purpose, preventing exploitation for profit, and ensuring transparency and accountability within the program.

RECAPTURE PROVISION:

The program’s compliance requirements include driving in designated areas across the state and registering and ensuring the vehicle(s) funded through the NJ ZIP vouchers, and not selling, assigning, or otherwise transferring rights and obligations under the NJ ZIP Voucher Agreement.

Violations of the above during the three-year Voucher Compliance Term constitutes an Event of Default if, upon the occurrence of any Event(s) of Default, the Authority may, in its sole and absolute discretion, do any of the following, alone or in combination, after having first given the defaulting party an opportunity to cure the default. This includes requiring the defaulting party to repay all or a portion of the Voucher Award paid to Vendor under this Agreement; bar the Purchaser from participation in the Program in the future; terminate this Agreement; and exercise any other right or remedy that may be available to it under applicable law or under the Voucher Agreement.

Acknowledging the need for consistent enforcement throughout the program, it's essential to recognize that the consequences of such enforcement may differ depending on the business entity and financial circumstances. Implementing a partial recapture mechanism ensures that responsibilities are maintained while also acknowledging and rewarding businesses for their years in compliance.

In line with other Authority programs, NJ ZIP pilot will require a repayment based on the portion of the compliance term satisfied, and the number of vehicles portion to the Voucher Award to be repaid will be defined as follows: if the awardee defaults in any year within the first three years of the executed grant agreement, the Authority will impose a recapture of the award on a scaled basis, as outlined below.

Year of Compliance event of default within:	Recapture percentage
1 year from date of executed grant agreement	100%
2 years from date of executed grant agreement	60%
3 years from date executed grant agreement	30%

The Portion of the voucher award will also encompass a prorated calculation per vehicle, per class, inclusive of any approved bonus. For example, if a purchaser defaults on 3 out of 5 vehicles in the same class, the amount of the voucher award to be repaid will be determined using the formula below:

$$Voucher\ per\ vehicle\ class = \left(\frac{Total\ voucher\ amount\ (inclusive\ of\ bonuses)}{Number\ of\ Vehicles} \right) * \% \text{ prorated per year of compliance}$$

Following an event of default, if the awardee does not take corrective action by timely repaying the recapture amount the Authority's SLM team will utilize their established policies and delegated authorities to engage in forbearance and settlement agreements for the NJ ZIP awardee.

RECOMMENDATION:

NJ ZIP is dedicated to promoting the adoption of zero-emission vehicles and reducing carbon emissions. The prohibition on vehicle sales and compliance requirement transfers is crucial for streamlining program operations, safeguarding minimum prices for zero-emission vehicles, preventing scalping, and ensuring equitable access to program benefits. Upholding this policy enables the program to efficiently achieve its goals while preserving the integrity of the zero-emission vehicle market and ensuring the program's long-term success. Therefore, implementing partial recapture provisions is essential to hold defaulting parties accountable and provide flexibility for unique circumstances. Thus, Members of the Board are asked to amend the NJ ZIP Pilot Program (Phase 1 and Phase 2) voucher recapture provisions and allow for proportional repayment of voucher awards based on the length of compliance period satisfied and percentage of vehicles in compliance.



Tim Sullivan, CEO

Prepared by: Oliva Barone, Sr. Project Officer

MEMORANDUM

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

REQUEST

The Members of the Board are requested to approve:

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

BACKGROUND

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

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

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

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

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

OVERVIEW

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

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

TRANSPORTATION INDUSTRY-SPECIFIC DEFINITIONS

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

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

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

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

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

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

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

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

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

Proposed Program Structure & Design:

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

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

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

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

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

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

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

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

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

Award Methodology:

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

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

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

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

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

Funding Disbursements:

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

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

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

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

Fees

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

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

Diversity, Equity, and Inclusion:

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

Appeals:

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

SUMMARY

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



Tim Sullivan, CEO

Prepared by: Oliva Barone, Sr. Project Officer

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

Exhibit A

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

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

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

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

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



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: New Jersey Innovation Fellows (NJIF) Fall 2023 Cohort Application Approvals

SUMMARY

The Members are asked to approve 10 teams of entrepreneurs (Appendix A) in the inaugural cohort of the New Jersey Innovation Fellows Program. The approvals represent an aggregate award amount of \$3.6 million in the form of income replacement grants that will enable would-be entrepreneurs to launch innovative businesses in the State of New Jersey. The application period opened March 14, 2023, through June 19th, 2023, saw 43 accepted applications submitted from 133 individual would-be entrepreneurs. Of the 43 accepted applications, completeness reviews by Authority staff generated a total of 13 team applications that were deemed to be complete, responsive, and were advanced to the multi-phase competitive process for further evaluation. Teams recommended to Board for approval were responsive and subject to the completeness reviews and competitive scoring process. Following board approval, the approved teams of entrepreneurs will have 30 days from notification of Board approval to fully form businesses and 60 days from notification of Board approval to execute grant agreements. Execution of the grant agreement will commence a two-year grant disbursement period and mentorship program participation operated by either the New Jersey Institute of Technology's New Jersey Innovation Institute (NJII) or Rowan University's Center for Innovation & Entrepreneurship (RCIE). Staff is seeking approval of the Members for two discretionary declinations.

BACKGROUND

The New Jersey Innovation Fellows program, approved by the Authority's Board in November 2022, was established following the legislature's finding that "[o]ne of the most difficult challenges for upstart entrepreneurs is forgoing employment to launch their business" and that "[f]or diverse entrepreneurs, this challenge is often exacerbated" and directed the EDA "to invest in diverse talent critical to New Jersey having a vibrant ecosystem" through the New Jersey Innovation Fellows Program (N.J.S.A. 34: 1B-371).

The program will support first-time entrepreneurs, with "income replacement" grants. This resource creates an opportunity to pursue a unique startup business venture with the security of initial income-replacement funding in the two-year ideation and formation period of their business. The NJIF program support is expected to attract innovative ideas and entrepreneurs who would otherwise remain unable to pursue the launch of new businesses due to socio-economic needs for income or, in the case of a recent graduate, who would choose to accept employment in lieu of entrepreneurship due to socio-economic constraints.

Per program policy and in accordance with the legislation, approved teams will be qualified to receive \$200,000 as a base award, and up to \$200,000 in bonuses. Teams may access an additional \$50,000 award on top of the \$200,000 base award if one Entrepreneur verifies residency in a designated Opportunity Zone in New Jersey. Teams may be awarded an additional \$50,000 in legislated bonus for each Entrepreneur leader who self-certifies as a “diverse entrepreneur” (as defined in section 2 of P.L.1997, c.349 (C.54:10A-5.29)) OR is a “graduate of a New Jersey college or university” (including 2yr, and 4yr schools) in the State, as evidenced by corresponding degree or certification documents. Qualifying teams may receive additional bonuses of up to \$150,000 in aggregate for certifying team members, resulting in a total \$400,000 award.

Following receipt of grant disbursements on a quarterly basis, in conjunction with award compliance, the award will be apportioned to entrepreneur leaders as income according to the Team’s own compensation plans submitted and will not be denied by NJEDA if the apportionment is reasonable. Award disbursements are subject to teams meeting and maintaining compliance milestones. With satisfactory compliance milestones, funding will be disbursed over eight quarters.

Program highlights for the inaugural application cohort include:

- Applications received from teams representing 133 individual entrepreneurs requesting total benefit amount of over \$17M
- Applications received from 86 first time entrepreneurs
- More than half the entrepreneurial teams scored are experienced with more than 7 years of professional work history
- Applications received from 23 eligible municipalities
- Professional Services accounted for 30% of all applications
- Information and High Technology accounted for 19% of all applications

ELIGIBILITY REQUIREMENTS

The New Jersey Innovation Fellows program will support teams of at least three entrepreneurs, of which, at least half must be first-time entrepreneurs, with mentorship, training, and income-replacement capital over a two-year period. A first-time entrepreneur is defined as an entrepreneur who has never been listed as a founder, co-founder, or owner of a business entity which operated in a targeted industry in the State of New Jersey, or has not received third-party, institutional funding for past entrepreneurial opportunities as early as the ideation phase. Entrepreneurs who have received State and/or federal funding for past entrepreneurial opportunities with entities which did not operate in a targeted industry in the State of New Jersey are eligible for the grant’s consideration. The entrepreneur leadership team must have majority equity interest (>50%) in the proposed business.

Legislation requires all grant recipients to pay gross income tax at the time of application or demonstrate gross income tax paid within 60 days prior to application. Income-replacement capital is purposed to replace a stream of income an entrepreneur might forego to launch an early-stage business.

In order to maintain eligibility for the entire two-year program and draw down the available funding, the entrepreneur leaders must commit to working at the venture on a full-time basis for two years following receipt of the fellowship grant. “Full-Time basis” is 35 hours/week; entrepreneur leadership must not engage in part-time or outside work for more than 20 hours per

week. All grant recipients must commit to continue to pay gross income tax to New Jersey during the program's two-year period.

The NJIF legislation also requires all members of the approved entrepreneur teams to participate in a mentorship program. The NJEDA has executed memorandums of understanding with NJIT and RCIE to administer specialized mentorship curriculums to align with the needs of the innovative entrepreneurs and program requirements. In addition to the capital needs of early-stage businesses and entrepreneurs, the mentorship programs will provide the ongoing support through access to networks and insight to help sustain the businesses. Statistics demonstrate that businesses with access to quality mentorship have a higher chance of longevity and success. Regular participation in either program is a programmatic requirement. Entrepreneurs may have the option to participate in either program based upon geographic proximity and industrial specialization.

If a fellows-team falls out of any eligibility or compliance requirements (i.e., defaults) during the grant period, the team's disbursement for the immediate quarter is paused. The non-compliant team will be given the calendar quarter (three months) to cure the default. If the team successfully cures the default, disbursements will resume the immediately following quarter with no opportunity to recoup "lost" disbursement. Should the team fail to cure the default, the team is removed from the program with no expectation for future distributions of the approved grant, and under specific circumstances, they may be subject to claw back of disbursed grant funds.

REVIEW & SCORING

Following receipt of applications, Authority staff conducted a review for eligibility and completeness (See Appendix C: Qualifying Questionnaire). Authority staff sought clarifying information on all applications needing further clarification of submitted items. In cases where required materials are missing, applications are rejected, or administratively withdrawn. Among the required materials, a complete application consisted of:

- A complete business plan for the venture available in presentation format similar to the sample template posted on the NJEDA website.
- Verification of payment of gross income tax at the time of application or within 60 days of application.
- For fully formed businesses, current tax clearance certificate of fully formed businesses less than a year old determined to be inoperable at time of application.

Scoring of complete applications consisted of two stages. An evaluation committee comprised of at least two members of Authority staff per application, followed by a second round of scoring by the Diversity Finance Advisory Board (DFAB) of the top twenty scored applications. The Diversity Finance Advisory Board (DFAB) is formed from volunteer industry professionals to provide knowledge, guidance, insight, critical thinking, and connections in collaboration with the Authority's management to increase private capital sources, access, and investments in New Jersey's diverse entrepreneurs. The memo authorizing the formation of the Diversity Finance Advisory Board is provided for the Members under separate cover as an FYI.

All Staff and DFAB scores were averaged on an unweighted basis to determine final scores. As the number of evaluated applications received was below twenty, all complete, eligible applications were subject to DFAB scoring. Following the process described above and approved in the formation of the NJ Innovation Fellows program by the Board of the Authority, the top 10 scores are recommended for approval (Appendix A). Applications that did not meet specific program requirements are recommended for discretionary declination in Appendix B along with

the reason for declination. A total of 22 applications were declined by staff for non-discretionary reasons under delegated authority. A total of 9 applications were rejected, or administratively withdrawn, for incompleteness, in alignment with program rules.

Approved applicants will have 30 days from notification of approval to fully form and register the business venture for which they are approved. The formation must demonstrate ownership of the identified entrepreneur leaders indicated in the approval. Tax clearance certificate for newly formed business must be provided as a condition to close. Businesses have 60 days from date of approval notification to execute grant agreements.

Declined applicants have the right to appeal. Applications recommended for discretionary declination of the Members appear according to application ID in Appendix B. Appeals must be filed within the timeframe set in the declination letter (which must be ten business days from the effective date of the Authority's action). For appeals based on discretionary and non-discretionary declinations, the Managing Director of Legal Affairs designates a Hearing Officer (HO) who reviews the application, the appeal, and any other relevant documents and information. Appeals based on non-discretionary reasons will be handled through delegated authority. Any declinations based on discretionary reasons will be brought to the Board for final decision following a presentation of the Hearing Officer's recommendation. Any declinations that are reversed on appeal and that result in approved applications will be included in the award distribution of the current cohort.

RECOMMENDATION

Based on evaluations by Authority staff, approval is recommended for the applications identified in Appendix A, which have been evaluated according to the Board approved rubric. Declination is recommended for those applications listed in Appendix B.



Tim Sullivan, CEO

Prepared by:

Emmanuel Esochaghi – Diversity Entrepreneurship & Finance Officer, Venture Programs

Michelle Martinez – Product Officer, Venture Programs

Tim Rollender – Director, Venture Programs

Attachment:

Appendix A – Recommended Applicant Business Venture Summaries

Appendix B – Recommended Discretionary Declinations

Appendix C – NJIF Qualifying Questionnaire and Competitive Review Scale

Appendix A: Recommended Applicant Business Venture Summaries

1. Thrivio Health (NJIF-00167) is a mission-driven, culturally competent digital health solution that offers an AI-driven virtual healthcare platform and digital therapeutics for primary care, urgent care, mental health, and pediatric care. The applicant aims to provide accessible and affordable healthcare solutions to individuals by leveraging artificial intelligence and data analytics.

ENTREPRENEUR LEADERSHIP TEAM: Vanessa Ezamadu
Joshua Ezemadu
Emmanuella Francois

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
North Bergen	Life Sciences	\$200,000	\$200,000	\$400,000	21.5/28

2. AnataMed (NJIF-00189) is a medical device company developing a one-of-a-kind medical device that is durable as a back brace while also enabling rehabilitative movements to innovatively treat patients with core and back pain. With remote patient monitoring in the device, the applicant’s goal is to aid healthcare professionals in preventing and alleviating back pain while increasing compliance and convenience for patients.

ENTREPRENEUR LEADERSHIP TEAM: Caroline Yu
Kaitlin Kumar
Kevin Kumar

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
East Orange	Life Sciences	\$200,000	\$150,000	\$350,000	21.5/28

3. HelloBoss (NJIF-00111) is on a mission to provide small businesses with high-quality professional services that are offered through their digital mobile marketing application. The applicants' range of services will include design, marketing, research, analytics, consulting, and engineering. The applicant aims to empower business owners by offering support through their application allowing customers to thrive in their competitive market.

ENTREPRENEUR LEADERSHIP TEAM: Juhee Ko
Hyunji Kim
Jihye Soriano

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Jersey City	Professional Services	\$200,000	\$150,000	\$350,000	19.7/28

4. AbilityHUB (NJIF-00300) is a cross-sector collaborative marketplace leveraging the power of communities to connect disabled people with required medical and social resources. The applicant will facilitate collaboration among service providers, caregivers, disabled community members & their families by connecting, collaborating, predicting, and ensuring the delivery of services that impact whole person health for the disabled community. The applicant target audience includes individuals with disabilities, their families, caregivers, and service providers in the disability care industry. The company's proposed technology infrastructure will be built upon a combination of powerful and scalable technologies that ensure a robust and reliable platform from front to back-end development and management.

ENTREPRENEUR LEADERSHIP TEAM: Rohit Mathur
Shirin Mathur
Roli Vaish

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
West Windsor	Life Sciences	\$200,000	\$150,000	\$350,000	18.1/28

5. Klick Studios (NJIF-0036) is a digital content creation studio that will provide high-quality visual media production content for marketing and advertising purposes to its clients. The company aims fuse innovative digital media technologies with traditional video, and content marketing tools to create interactive, immersive experiences, for its clients.

ENTREPRENEUR LEADERSHIP TEAM: Jennifer Craig
Jasmine Gardner
Tiana Hawkins

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Burlington City	Film and Digital Media	\$200,000	\$300,000	\$400,000	17.5/28

6. Planthopper Corp (NJIF-0064) is a bio-controls company built to defend and protect food security which is being threatened by the spotted lanternfly infestation in at least 14 states in the Eastern United States. The business is developing, modifying, and scaling production and dispersion methods for entomopathogenic fungus that are maximally pathogenic to and selective for the spotted lantern flies.

ENTREPRENEUR LEADERSHIP TEAM: Chelsea McAuliffe
Thomas Steen
Austin McAuliffe

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Keansburg	Life Sciences	\$200,000	\$150,000	\$350,000	15.0/28

7. Fire Start Productions (NJIF-00115) is a forward-thinking start-up film and digital media company that specializes in virtual production technologies. As a cutting-edge venture, the company will focus on delivering comprehensive digital production and creative services that will streamline the production process of traditional film and other video production models. The company aims to forge new pathways in storytelling, animation and content delivery leveraging technology.

ENTREPRENEUR LEADERSHIP TEAM: Juliani Bonilla
Salvatore Brenhuber
Devin Scheck

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Gloucester Township	Film and Digital Media	\$200,000	\$50,000	\$250,000	14.6/28

8. My FitPlate (NJIF-00212) is developing a health-conscious community one plate at a time by building a digital mobile fitness and nutritional wellness application. The company will focus on building a mobile and web application to integrate virtual reality technology into client wellness plans as well as the gamification of home workout programs, meditation, stress management strategies. The innovative application will embrace cutting edge technology to cultivate community and connect users across its platform.

ENTREPRENEUR LEADERSHIP TEAM: Loraina London Calderon
Rashmi Naik
Peter Andrews

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Jersey City	Information and High Technology	\$200,000	\$200,000	\$400,000	13.4/28

9. Quarks Advantage (NJIF-00169) is a data driven high-tech digital consulting firm that will focus on helping small businesses achieve their goals through the use of artificial intelligence tools. The company will focus on building their digital proprietary platform and easy to use digital application. Through data analysis and natural language processing, the company seeks to innovate the delivery of small business services through its innovative digital platform.

ENTREPRENEUR LEADERSHIP TEAM: Jose Gabriel Carrasco Ramirez
Noiralih Nohemi Guere Castellanos
Gabriel Alejandro Carrasco Bonilla

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Jersey City	Information and High Technology	\$200,000	\$300,000	\$400,000	13.1/28

10. Liv Again Wellness (NJIF-0063) is offering convenient mobile IV hydration services through IV Hydration therapy. The company will focus on immediate, personalized, nutritional support, beyond traditional medical settings. Its innovative services expand into wellness and other beauty industries to address a broad spectrum of innovative health therapies and wellness needs. The company will utilize integrative therapies to make clients feel restored, exhilarated, and energetic. The company will focus on helping clients achieve optimal health with preventative care.

ENTREPRENEUR LEADERSHIP TEAM: Christine Graves
 Jazmine Jones
 Jenae Padilla

Municipality	Industry	Base Award Amount	Bonus Award Amount	Max Award Amount	Competitive Score
Vineland	Professional Services	\$200,000	\$150,000	\$350,000	12.9/28

Appendix B – Recommended Discretionary Declinations

Applicant ID	Business Name	Declination Reason	Entrepreneur	Entrepreneur	Entrepreneur
1 NJIF-00124	Elite Professional Security	Application does not demonstrate the proposed venture operates within one of the targeted industries	Thomas Lee	Ivette Tangui-Lee	Richard Reynolds
2 NJIF-00209	Travel With Teeka, LLC	Application does not demonstrate the proposed venture operates within one of the targeted industries	Whateeka McCoy	Taniya Booth	Troy Booth

Appendix C – NJIF Qualifying Questionnaire and Competitive Review Scale

Qualifying Questions	
Does the applicant have at least three entrepreneurs that are willing to give FT commitment to its development over the next two years?	Y/N
Does the applicant have a written business plan?	Y/N
What is, or what will be, the registered address of the business? (Is/Will the business be in an eligible municipality?)	Company's Address (Must be in an eligible, NJ municipality)
What fraction of applicant's leadership team of entrepreneurs (x/n) are first-time entrepreneurs? Policy dictates no less than half of the members of the entrepreneurship leadership team be first-time entrepreneurs.	x = Qualified of Total, n = Total
What fraction of applicant's leadership team of entrepreneurs are coming directly from workforce?	x = Qualified of Total, n = Total
What total equity interest in the applicant do the entrepreneurs have?*	Total of entrepreneurs' percentage interest in applicant
Do the Innovation Fellows Leadership (minimum half the entrepreneurial team) commit to program mentorship requirements?	x = Qualified of Total, n = Total
Have the members of the team paid gross income tax to New Jersey within the last six (6) months prior to the application date?	Y/N
Do all members of the team commit to pay gross income tax to New Jersey for the two years following the initial disbursement of the fellowship grant?	Y/N

Competitive Review Scale

Business Plan Scoring: 0 – 5points // These five (5) questions, each worth one point, will evaluate the clarity of the applicant plan’s identified problem. This analysis will also include the plan’s clarity in identifying and analyzing its total addressable market (TAM), report on the competitive landscape, go-to-market plan, and a clearly articulated value proposition. A hypothetical score is filled-in below.

Criteria	Score
Does the applicant have a clearly identified problem?	0 or 1
Is the identified problem and TAM "significant?"	0 or 1

Does the applicant present a detailed report on the competitive landscape?	0 or 1
Does the applicant present a detailed "go-to-market" plan?	0 or 1
Does the applicant have a clearly articulated value proposition?	0 or 1

Operations Scoring: 0 -4points // These four (4) questions, each worth one point, evaluates clear articulation of finance & accounting management plans, subject matter competencies amongst the applicant’s managing entrepreneurs, Diversity, Equity and Inclusion considerations, and clearly delineated roles and responsibilities amongst the managing entrepreneurs; and clear articulation of needed resources

Criteria	Score
Does the applicant have a clearly articulated finance & accounting management plan?	0 or 1
Does the applicant have industry and subject-matter competencies amongst its managing entrepreneurs, and does it have clearly delineated roles and responsibilities amongst the managing entrepreneurs?	0 or 1
<p>Diversity & Inclusion: Please submit a thesis/plan/policy that will support the company's buildout and development with consideration for diversity, equity, & inclusion.</p>	<p>Scorer's Question: Did the applicant attach a diversity & inclusion thesis/plan that will support and guide the company's buildout and development plans? Y/N</p> <p>Question: If "Y" above, 1pt if “N”, 0pt</p>
Does the applicant clearly state other needed resources (e.g. financial, human capital, operating environment, etc) beyond award in order to effectuate their plan?	0 or 1

Management Scoring: 4 – 20points // These four (4) questions evaluate years of management’s general professional experience; years of relevant industry expertise; expertise and competency in sales, operations, product development and finance.

Criteria	Score
How many years of professional experience does the entrepreneurial team have on average?	Range 1pts - 5pts <3 yrs = 1pt 3yrs <= x >= 7yrs = 2.5pts >7yrs = 5pts
How many years of expertise does the entrepreneurial team have, on average, in the addressable industry?	Range 1pts - 5pts <3yr = 1pt 3yrs <= x >= 3yrs = 2.5pts >yrs = 5pts
Does the entrepreneurial leadership have expertise and competency in sales, operations, product development and finance?	Range 1pts - 5pts <3 yrs = 1pt 3yrs <= x >= 7yrs = 2.5pts >7yrs = 5pts
How long have the entrepreneurs been working together?	Y/N; Range 1 - 5 <1 yr = 1pt 1yr <= x >= 3yrs = 2.5pts >3yrs = 5pts



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: New Jersey Innovation Evergreen Fund: November 2023 Qualified Venture Firm Approvals

SUMMARY

The Members are asked to approve the venture firms presented today as Qualified Venture Firms under the New Jersey Innovation Evergreen Program. The designation will allow the Qualified Venture Firms to apply for program Qualified Investment co-investment capital to invest in eligible high-growth New Jersey-based companies. Any Qualified Investments, for which the application opened on May 23, 2023, will be presented to the Members for consideration under separate cover following eligibility review conducted by NJEDA staff. Applications are reviewed by Staff on a rolling basis and presented to the Board by the order in which completed applications are received. This month, Authority staff seeks Board approval to designate two applicant venture capital firms as Qualified Venture Firms.

BACKGROUND

The New Jersey Innovation Evergreen Act (“Act”) (N.J.S.A 34:1B-288 to 302) was signed into law by Governor Murphy as part of the Economic Recovery Act of 2020 (N.J.S.A. 34:1B-269 *et seq.*). In April 2022, the Board of the Authority approved specially adopted and concurrently proposed New Jersey Innovation Evergreen Fund regulations (N.J.A.C. 19:31-25 *et seq.*), which were approved for submission to the Office of Administrative Law for publication in the New Jersey Register as final adopted rules in March 2023. The Act established both the New Jersey Innovation Evergreen Fund (“NIEF”, or “Evergreen Fund”) and the New Jersey Innovation Evergreen Program (“Program”), which supports the private sector’s investment in high growth New Jersey-based companies. The Program will increase venture capital funding available to the State’s innovation ecosystem and create the conditions necessary for entrepreneurs to succeed.

The Act authorizes the NJEDA to sell up to \$300 million of Corporation Business Tax (CBT) credits through a series of competitive auctions, proceeds of which are to be deposited in the Evergreen Fund to be used for Program investments. The Board approved the sale of \$50 million in tax credits through the inaugural Program auction in December 2022. Based on the outcome of the inaugural auction, participants were approved to purchase the \$50 million of tax credits for an aggregate amount of \$41.1 million. The proceeds of the auction are added to the \$5 million of Program funds received through a FY2023 State budget appropriation to fund initial Evergreen Fund investments and expenses. As of October 25, 2023, \$46,105,986 of unallocated capital remains available for program investments and expenses.

To invest the Evergreen Fund monies, the Program establishes an application process through which venture firms first may apply for designation as a Qualified Venture Firm. Venture firms, which do not need to be located in the State, may apply for designations on a rolling basis, and applications are reviewed in order of submission. To access Program co-investment capital, Qualified Venture Firms may then apply for Qualified Investments on a rolling basis. The Program application for Qualified Investments opened on May 23, 2023.

Qualified Venture Firms may apply to the Authority to access capital in the Evergreen Fund to make up to two initial Qualified Investments per year into eligible New Jersey-based high-growth businesses. Each request for a Qualified Investment may be for up to the Program investment limit of \$5 million, or up to \$6.25 million for businesses that meet any of the following criteria: i) certified by the State as a “minority business” or “women’s business” pursuant to P.L. 1986, c. 195 (N.J.S.A. 52:27H-21.17 et seq.), ii) considered a NJ university spin-off business, or iii) utilizes intellectual property that is core to its business model and was developed at a NJ-based college or university. All Qualified Investments from the Fund must be a co-investment that is matched by the Qualified Venture Firm at least 1:1. The Authority will reserve Fund capital for follow-on investments in Qualified Businesses in an amount based on the same ratio used by the Qualified Venture Firm, up to the Program investment limits noted above in any twelve-month period. The terms of each eligible Qualified Investment will be presented to the Board of the Authority, along with the recommendation for approval of each Qualified Investment.

The application for designation as a Qualified Venture Firm opened on December 16, 2022. Applications are made on a rolling basis, and applications are reviewed in the order in which they are received. Since December 16, 2022, the NJEDA has received seventeen applications; ten Qualified Venture Firms have been approved by the Members to-date, five applications are in-process, and two completed applicant submissions are presented to the Members this month for approval.

QUALIFIED VENTURE FIRM CERTIFICATION REQUIREMENTS

Venture firm applicants can apply for designation either before identifying a potential Qualified Investment, or in conjunction with an application for a Qualified Investment. Venture firm applicants that meet all Program eligibility requirements (detailed in N.J.A.C. 19:31-25.7) and that have submitted all required documentation will be scored based on the Program’s weighted criteria evaluation model for venture firms. The primary eligibility requirements, which are detailed below, must be met both at the time of application for initial certification and at the time of application for investment.

- 1) Number of Investors Employed by the Firm: Qualified Venture Firms must have least two full-time persons employed to direct investment capital with at least five years of professional money management experience (each) at the time of application.
- 2) Minimum Assets Under Management: Qualified Venture Firms must demonstrate at least \$10,000,000 in assets under management at the time of application, which will be measured as the sum of a firm’s net assets of the funds managed by the qualified venture firm, equity capitalization of the funds managed by the qualified venture firm, and written commitments of cash or cash equivalents committed by investors.

Applications that meet all Program eligibility requirements must also meet or exceed the minimum acceptable score through an objective weighted criteria scoring model, which is made publicly available on the Program’s website. Only venture firm applicants that meet or exceed the minimum

acceptable score, which was approved by the Board in April 2022, may be considered for a Qualified Venture Firm designation.

The evaluation methodology places a material emphasis on venture firm applicants' diversity, equity, and inclusion policies and implementation thereof. Diversity, equity, and inclusion are foundational elements of building a stronger and fairer State economy. Based on the 2023 Program's weighted criteria scoring model, venture firm applicants must demonstrate robust diversity, equity, and inclusion policies to meet the Program minimum acceptable score. For firms with policies that have been in place for at least a year, the weighted criteria scoring model also places material emphasis on each firm's track record of progress against that firm's diversity, equity, and inclusion policy goals. Applicant responses to diversity, equity, and inclusion policy categories are evaluated independently by the Authority's Diversity, Equity, and Inclusion Department using an objective policy demonstration framework tool made publicly available on the Program website to test applicant policies' conformity with industry best practices.

Please refer to **Appendix A** for an overview of specific 2023 Program weighted criteria evaluation model and minimum acceptable score.

QUALIFIED VENTURE FIRM COMPLIANCE REQUIREMENTS

Qualified Venture Firms must submit an annual report to the Authority demonstrating they remain in compliance with program requirements. For example, firms must continue to maintain \$10,000,000 in assets under management and employ two full-time investors employed to direct investment capital with at least five years of professional money management experience. Firms that fall out of compliance with program requirements risk decertification. The annual reports will also include documentation demonstrating Qualified Venture Firm's efforts to identify New Jersey-based investment opportunities.

Additionally, Qualified Venture Firms that receive points through the Program's weighted criteria evaluation model for maintaining robust diversity, equity, and inclusion or New Jersey Incentive Area investment policies must demonstrate best efforts to comply with their policy goals. Firms that fail to do so will be rescored through the weighted criteria evaluation model and risk decertification should their score fall below the minimum acceptable score. For the purposes of the Program, New Jersey Incentive areas are defined as areas in the State designated pursuant to the "State Planning Act," P.L.1985, c.398 (C.52:18A-196 et seq.), as Planning Area 1 (Metropolitan), or that has been designated as a qualified Opportunity Zone pursuant to 26 U.S.C. s.1400Z-1



Tim Sullivan, CEO

Prepared by:
Curtis Lee – Senior Product Officer, Venture Programs
Grace Warner – Product Officer, Venture Programs

Attachment:
Appendix A - Qualified Venture Firm Weighted Criteria Evaluation Model

Appendix A – Qualified Venture Firm Weighted Criteria Evaluation Model

The New Jersey Innovation Evergreen Fund venture firm weighted criteria evaluation model and scoring methodology was approved by the Board of the Authority in April 2022 and is publicly available on the program website.

Qualified Venture Firms must meet all program eligibility requirements and meet or exceed the Program minimum acceptable score on the weighted criteria evaluation model. Section 28 of the NJIEF statute, P.L. 2020, c. 156 (amended by P.L. 2021, c. 160) outlines the required categories to be included (further clarified in N.J.A.C. 19:31-25.7 of the Program’s regulations). The scoring criteria and weights will be evaluated on a continual basis by Authority staff for potential annual adjustments, to be approved by the Members.

Dynamic Scoring

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

Minimum Acceptable Scores

Venture firm applicants with diversity, equity, and inclusion policies that have been in place for at least one year must receive a score of at least 24 out of a possible 37 points on the Program’s weighted criteria scoring model to be certified as a qualified venture firm. Firms with a newly created diversity, equity, and inclusion policy, including firms that may be creating a policy in conjunction with their Program application, must receive a score of at least 17 points out of a possible 30 points. In both cases, it will not be possible for firms to achieve the minimum acceptable score without robust diversity, equity, and inclusion policies.

Table 1: Venture Firm Weighted Criteria

Criteria Number	Scoring Criteria	Score Weight
1	Does the firm have a clearly articulated <u>internal</u> policy promoting diversity, equity, and inclusion within the venture firm/management company, specifying relevant evaluation metrics when applicable?	8.5
2	Does the firm have a clearly articulated <u>investment</u> policy promoting diversity, equity, and inclusion within their portfolios, specifying relevant evaluation metrics when applicable?	5.0
	<i>Have any of the firm's diversity, equity, and inclusion policies been in place for at least one year?</i>	
3a	Does the firm have a demonstrable track record of making <u>progress</u> against its diversity, equity, and inclusion policy goals?	7.0/0.0
3b	If not, does the firm have a demonstrable track record of making <u>best efforts</u> towards achieving its diversity, equity, and inclusion policy goals?	5.0/0.0
4	Has the NJEDA been an investor in a current or prior fund with the firm?	0.5
5	Has the firm worked with other NJEDA programs or participated in NJEDA organized functions to support targeted industries and the innovation ecosystem?	0.5
6	Does the firm have a New Jersey office?	0.5
7	Has the firm made at least two investments into NJ startups from funds raised in the past five years?	0.5
8	Does at least one member of the firm's senior management team have at least 2 years of relevant experience working for a business in a targeted industry?	1.0
9	Does at least one member of the firm's senior management team have at least 5 years of relevant experience working for a business in a targeted industry?	1.0
10	Does the senior management team have at least 2 years of experience working together?	1.0
11	Does the senior management team have at least 5 years of experience working together?	1.0
12	Does the firm control sufficient assets under management such that a \$5M investment would represent less than 15% of the firm's total assets under management?	1.0
13	Does the firm control sufficient assets under management such that a \$10M investment would represent less than 15% of the firm's total assets under management?	1.0
14	Has the firm formally raised capital for the fund that will co-invest alongside the NJIEF in the coming year?	1.0
15	Regarding the fund that would co-invest alongside the NJIEF in the coming year, does the fund have an annual management fee less than or equal to 2.5% of capital committed by investors?	1.0
16	Regarding the fund that would co-invest alongside the NJIEF in the coming year, is the fund's incentive compensation rate (commonly referred to as carried interest rate) at or below 20% of investment profits?	1.0
17	Has the firm previously raised and invested an institutional fund?	1.0
18	Does the firm have a regional investment policy, directing at least 25% of invested capital to New Jersey or surrounding geographic areas, not to encompass more than the Mid-Atlantic region?	0.5
19	Does the firm have at least one fund, raised within the past 10 years, that has performed better than the median relative to its peer group of investors with the same strategy for the same vintage year?	1.0

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

Applicant responses to diversity equity and inclusion policy categories will be evaluated by the Authority’s Diversity, Equity, and Inclusion Department using a policy demonstration framework tool made publicly available on the Program’s website, to test conformity with industry best practices. Only firms that demonstrate internal or investment diversity, equity, and inclusion policies sufficiently robust such that they meet the requirements of at least 4 out of the 10 categories included in the policy demonstration framework tool presented in Tables 3 and 4 will be rewarded the related criteria points for categories #1 and #2 outlined in Table 2. If needed, applicants may strengthen their diversity, equity, & inclusion policies and submit additional supporting documentation throughout the application process, which enables the Program to catalyze increased focus on diversity, equity, and inclusion in the innovation ecosystem.

Table 2: Venture Firm Internal DE&I Policy Demonstration Framework Tool

Criteria Number	Scoring Criteria	Score Weight
1	Does the firm track diversity metrics for the Firm/Management Company, including Ownership, Investment Committee and Professionals?	1.0
2	Does the firm have a diversity, equity, and inclusion policy that addresses recruitment and retention?	1.0
3	Does the firm have Code of Conduct/Code of Ethics, that covers harassment, discrimination, or workplace violence?	1.0
4	Does the firm have an equitable pay policy?	1.0
5	Does the firm track diversity metrics for carried interest distributions across the firm?	1.0
6	Does the firm have a formal employee engagement policy, to further the retention and advancement programs for diverse staff?	1.0
7	Does the firm have a performance appraisal policy that incorporates individuals' contributions to advancing DE&I?	1.0
8	Are the firms internal DE&I policies codified in a formal policy document available to be shared with the Limited Partners?	1.0
9	Is a member of the firm's senior management team responsible for the firm's internal DE&I policy?	1.0
10	Were the firm's internal DE&I policies in place prior to the events of June 2020?	1.0
	Total Possible Points	10.0
	Minimum Acceptable Score	4.0

Note: Applicants that demonstrate supporting documentation to satisfy 4 of the 10 categories in the internal DE&I policy demonstration framework tool will receive 8.5 points on the weighted criteria scoring awarded model through category #1 in Table 2.

Table 3: Venture Firm Investment DE&I Policy Demonstration Framework Tool

Criteria Number	Scoring Criteria	Score Weight
1	Does the firm track diversity metrics of portfolio company Senior Management?	1.0
2	Does the firm track diversity metrics of its investment pipeline?	1.0
3	Does the firm have an investment target to invest in underrepresented founders?	1.0
4	Does the firm track diversity metrics of portfolio company Board of Directors?	1.0
5	Does the firm have a DE&I target in place to improve the diversity of the Board of Directors of portfolio companies?	1.0
6	Does the firm have a policy in place to encourage portfolio companies to implement DE&I hiring and/or retention within portfolio companies?	1.0
7	Does the firm have a policy in place to encourage portfolio companies to implement DE&I policies, programs, or processes among suppliers?	1.0
8	Are the firm's investment DE&I policies codified in a formal policy document available to be shared with the Limited Partners?	1.0
9	Is a member of the firm's senior management team responsible for the firm's investment DE&I policy?	1.0
10	Were the firm's investment DE&I policies in place prior to the events of June 2020?	1.0
	Total Possible Points	10.0
	Minimum Acceptable Score	4.0

Note: Applicants that demonstrate supporting documentation to satisfy 4 of the 10 categories in the investment DE&I policy demonstration framework tool will receive 5 points on the weighted criteria scoring model awarded through category #2 in Table 2.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: New Jersey Innovation Evergreen Fund: November 2023 Qualified Venture Firm Approval – Activate Management, LLC

SUMMARY

The Members are asked to approve Activate Management LLC as a Qualified Venture Firm under the New Jersey Innovation Evergreen Program. Staff finds the applicant meets all program eligibility requirements, including achieving the minimum acceptable score outlined in the cover memorandum and detailed below. The designation will allow Activate Management LLC to apply for program Qualified Investment co-investment capital to invest in eligible high-growth New Jersey-based companies. Any Qualified Investments, for which the application opened on May 23, 2023, will be presented to the Members for consideration under separate cover following eligibility review conducted by NJEDA staff.

ACTIVATE MANAGEMENT, LLC

Overview

Activate Management LLC (“Activate”) is an early-stage venture capital firm headquartered in Bethlehem, PA, investing in digital healthcare and applied business technologies. As of June 30, 2023, the firm manages two investment funds, Activate Ventures II LP (final close Q2 2018) and Activate Ventures II Annex LP (final close Q2 2020), that total \$64.2M in assets under management. Activate Ventures II Annex solely co-invests with Activate Ventures II in a pre-established ratio based on fund capital (79%/21%). The firm’s funds have invested \$47M into 17 portfolio companies, including three companies headquartered in New Jersey. Activate is currently raising its third fund, Activate Ventures III LP, with a fund target size of \$150M. The initial close for this fund is scheduled for the end of October 2023 and has commitments of \$33.1M. Activate Ventures III LP will employ the same strategy as its two current funds.

The NJEDA has made a commitment to Activate Ventures II Annex LP in 2020 in the amount of \$800,000. Two of Activate’s team members, Todd Pietri and Edwin Goodwin, continue to manage a predecessor fund, Milestone Venture Partners IV LP, in addition to their responsibilities at

Activate. The NJEDA has made a commitment of \$1.3M to Milestone Venture Partners IV LP, in 2013 as part of the Federal SSBCI program.

Strategy

Activate invests in early-stage startups in digital healthcare and applied business technologies based within the Metro New York City, Mid-Atlantic and Northeastern U.S. regions. Activate primarily acts as a lead or co-lead investor, setting deal terms, and taking board seats at its portfolio companies. Activate makes seed and Series A investments in capital efficient businesses led by commercially focused entrepreneurs possessing domain expertise, sales skills and an ability to develop and commercialize high ROI products. Activate's typical investment sizes range from \$750,000 to \$3.0M.

Investment and Management Team

Activate Ventures II LP and Activate Ventures II Annex LP are managed by Glen Bressner, Todd Pietri and Edwin Goodman. This team collectively has over 90 years of experience in both general investment, operations and the firm's targeted areas of sourcing, structuring, monitoring and ultimately exiting transactions.

The investment team for Activate III LP will expand to include Don Yount, General Partner and Chief Financial Officer, and Dr. Jarred Bressner, Principal. Mr. Goodwin will continue to serve on the investment team for Activate Ventures II and Activate Ventures II Annex and act as a Venture Partner for Activate Ventures III alongside current Venture Partner Jeff Davison. The firm's daily operations and investor relations is managed by Avlyn Asterman-Reese, Administrative Director.

Mr. Glen Bressner, Managing Partner, has been a venture capitalist for over 35 years. He has participated in more than 100 equity financings and has served as a director or board Observer of over 35 companies. Mr. Bressner served as part of the co-founding team of the NEPA Venture Funds in 1985 and has been an active investor in the region since then. In 2008, he co-founded Originate Growth Fund I. He served on the Board of Directors of the Greater Philadelphia Venture Group (now called PACT) for several years and was selected to be its Chairman during 1996-1997. He is a member of the board of the Northeast Tier Ben Franklin Technology Partnership and was a member of the Investment Advisory Committee for the Southeast Ben Franklin Technology Partnership for over 25 years. He was an Advisory Board member of Progress Capital Corporation and has served as a guest lecturer over the past several years on Venture Capital and Entrepreneurship at the Wharton School. Mr. Bressner is Vice Chairman and Chairman of the Audit Committee of Innovative Solutions & Support, Inc. (NASDAQ: ISSC). He has been a member of the Board of Directors of Alum-a-Lift, Inc., a family-owned manufacturing company since 1989.

Mr. Todd Pietri, Managing Partner, has been a venture capitalist for over 20 years. He has participated in more than 50 equity financings and has served as a director or board observer of over 30 companies. Mr. Pietri co-founded Milestone Venture Partners with Ed Goodman in 1999. He has originated and/or led dozens of successful investments in software, data and tech-enabled services businesses, the majority of which operate in the digital health sector. As a result, he has developed significant expertise and valuable relationships among digital health founders, which provide an on-going flow of proprietary investment opportunities and valuable resources that enable him to assess new opportunities and assist portfolio companies. His earlier financial experience includes co-heading the Technology and Communications Investment Banking Group

at Legacy Securities, where he performed a broad range of capital raising, M&A and other financial advisory services. Mr. Pietri was also a member of Legacy's direct investment team, which provided mezzanine and growth equity through its affiliate, Legacy Capital Partners. Prior to his investment experience, Mr. Pietri ran IT consulting and direct sales for CompuSystems, an Atlanta-based ERP software and services firm focused on industrial distributors and manufacturers.

Mr. Edwin Goodman co-founded Milestone Venture Partners in 1999. He brings over 40 years of diversified venture investment experience, beginning with Patricof & Co. (now APAX) where he worked for seven years beginning in 1974 as its third employee. While at Patricof & Co., Mr. Goodman, headed a small business investment company which invested in the final private financing round raised by Apple Computer in the summer of 1979. After APAX, Mr. Goodman worked for 17 years at Hambros Bank Ltd., where his responsibilities expanded to include managing both the U.K. bank's U.S. venture and merchant banking operations. During his tenure with Hambros Bank Ltd., Mr. Goodman also was responsible for supervising the creation of new Hambros-sponsored fund products, including Cross Atlantic Partners I, II and III (a series of biomedical venture funds for which he served as the Chairman of the General Partner and a member of the Advisory Board) and Crescent Private Capital, L.P. (a private equity fund for which he served as a member of the investment committee). He also assisted in the launching of Hambros Venture Funds in Japan, Australia and Israel.

Mr. Donald Yount, General Partner and Chief Financial Officer, has been a part of the technology community in the Mid-Atlantic region for over 30 years in both operating and investing roles. Mr. Yount is responsible for the financial management and administrative functions of the firm and manages its finance, accounting, operations and administrative staff, including outsourced service providers. Formerly, he served as CEO of a venture-backed media intelligence company, Critical Mention, Inc., based in New York City. Critical Mention was acquired by Symphony Technology Group in May 2022. Mr. Yount previously served as COO/ CFO of Corente, Inc., a cloud networking technology company acquired by Oracle Corp. in November 2015. Prior to Corente, Mr. Yount was Executive Vice President and COO of TVI Corp. (NASD: TVIN), a publicly-traded supplier of personal health and safety technologies. He also served on TVI's Board. Before TVI, Mr. Yount was Principal with one of Activate's predecessor firms where he was responsible for deal generation and firm operations. Previously, he held executive positions in corporate development and finance with high-tech companies in the telecom/datacom, software development, and media industries. Don is a former board member of the Mid-Atlantic Capital Alliance (now called PACT) and former chair of the Early Stage East venture conference.

Dr. Jarred Bressner, Principal, has developed a track record for medical innovation and an interest in business development. He has been named lead inventor on multiple pending patents regarding orthopaedic surgery implants, been involved in numerous invention disclosures through the Johns Hopkins Technology Ventures and has also co-developed multiple surgical devices with established industry companies. He has received grant funding from such sources as the National Institutes of Health (NIH) and the Orthopaedic Research and Education Foundation (OREF) as a clinician scientist. He has authored over two dozen peer reviewed publications, conference presentations, book chapters, and abstracts. He received his undergraduate engineering education (B.S.) from the Johns Hopkins University, where he graduated #1 in class from his engineering department. He received his Doctor of Medicine (M.D.) from the Johns Hopkins School of Medicine and completed residency training and worked as an Orthopaedic Surgeon at the Johns

Hopkins Hospital, where he was involved in parallel with the Clinical Innovation Program and held a dual appointment in the School of Engineering

New Jersey Investment History

The firm’s funds have invested in three New Jersey-based businesses during the past five years: Princeton Identity (2020), Hamilton; High QA (2018), Hazlet; and WireSecure (2019), Red Bank.

RECOMMENDATION:

Based on the evaluation conducted by Authority staff, according to the criteria established by the legislation, and clarified through Program regulations and the April 2022 Program Board memorandum, designation as a Qualified Venture Firm is recommended for Activate Management LLC, conditioned on execution of Qualified Venture Firm Agreement.

Table 1: Activate Management, LLC

Firm Name	Assets Under Management	HQ Location	Score	Minimum Acceptable Score*
Activate Management, LLC	\$64.2M	PA	26.0	24.0

*The minimum acceptable score and total possible points increases by 7 points for applicants with a DE&I policy in place for at least one year. This approach helps ensure applicants with longstanding policies made demonstrable progress towards their policy goals.



Tim Sullivan, CEO

Prepared by:
Curtis Lee– Senior Product Officer, Venture Programs
Grace Warner – Product Officer, Venture Programs

Attachments:

Appendix A – Confidential Detailed Scoring



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: New Jersey Innovation Evergreen Fund: November 2023 Qualified Venture Firm Approval – Cornucopian Capital Management LLC

SUMMARY

The Members are asked to approve Cornucopian Capital Management LLC as a Qualified Venture Firm under the New Jersey Innovation Evergreen Program. Staff finds the applicant meets all program eligibility requirements, including achieving the minimum acceptable score outlined in the cover memorandum and detailed below. The designation will allow Cornucopian Capital Management LLC to apply for program Qualified Investment co-investment capital to invest in eligible high-growth New Jersey-based companies. Any Qualified Investments, for which the application opened on May 23, 2023, will be presented to the Members for consideration under separate cover following eligibility review conducted by NJEDA staff.

Cornucopian Capital Management LLC

Overview

Cornucopian Capital Management LLC (“Cornucopian Capital”) is an early-stage venture capital firm based in Montclair, New Jersey. The firm focuses on investing in innovative food and health technology companies defining Medicine 3.0, including bio-measurement technologies, digital health, bioactive compounds, and innovative brands. Cornucopian Capital uses long-term capital to build and support results-focused, high integrity companies that use scientific knowledge and accessible technologies to help humans attain improved health span, enhanced performance and extend longevity. The firm’s first fund, Cornucopian Capital, L.P. (the “Fund”), has \$25.7M of assets under management, consisting of capital from a family trust and a limited liability company each of which is controlled by Mr. Aryeh Ganz, Founder and Managing Partner of Cornucopian Capital. The Fund began investing in late 2021 and has made investments into 11 companies and one partnership (focused on innovative food, agriculture and industrial companies), deploying approximately 37% of its capital. The firm seeks to invest in innovative food and health technology companies from Pre-Seed, Seed, to Series A and B rounds.

Strategy

Cornucopian Capital uses long-term proprietary capital to build and support results-focused, high integrity companies that use scientific knowledge and accessible technologies to help humans attain improved health span, enhanced performance and extend longevity. The firm utilizes its own capabilities, strategic partnerships, institutional networks and collaborators to add meaningful value to early-stage companies seeking to deliver best-in-class health products and services to consumers, patients and healthcare providers. Initial check sizes range from \$250,000 to \$2.5M from incubation (Pre-Seed) through Series B.

Investment and Management Team

Cornucopian Capital is led by its Founder and Managing Partner, Mr. Aryeh Ganz. The investment team also includes Mr. Wesley Wilson and Mr. Chris Corcione. The team is supported by Rachelle Peluso, Operating Partner, who has responsibility for legal affairs and operations.

Mr. Aryeh Ganz, Founder and Managing Partner, founded Cornucopian Capital with the vision to make impact-driven investments in innovative food and health technology companies defining Medicine 3.0, including bio-measurement technologies, digital health, bioactive compounds, and innovative brands. He's also a co-founder and managing partner of Barnstorm Foundry, a Bay Area-based venture studio for Medicine 3.0 startups. Through Barnstorm Foundry, Mr. Ganz forged a groundbreaking relationship with UC Davis, a global leader in biological sciences and engineering. Mr. Ganz is also the founder and principal of SAGEN Trust Company, Inc. ("SAGEN"), a private family office operating since 2001 after his family's sale of Slim Fast Foods. SAGEN has made numerous successful investments in private equity and venture capital in the US, China, India, and Western Europe.

Mr. Wesley Wilson, General Partner, focuses on advancing Cornucopian's strategy to seed Medicine 3.0 by making investments in areas like bio-measurement, digital health, bioactive compounds, and innovative brands. Mr. Wilson brings extensive career experience in retail, health, risk management, and food manufacturing and marketing at organizations like the World Economic Forum, Walmart, Mars, USAID, and NASA. In addition to his role at Cornucopian, he serves as the Chairman of the Innovation Institute for Food and Health at the University of California, Davis, and plays an active role in other boards and advisory boards.

Mr. Chris Corcione, Operating Partner, is responsible for managing its financial affairs. He also serves as Investment Officer of SAGEN Trust Company, Inc. ("SAGEN"), a private family office for Cornucopian's founder, and serves as a member of SAGEN's Investment and Audit Committees. Prior to joining SAGEN, Mr. Corcione held roles at Bessemer Trust Company and Deloitte.

Ms. Rachelle Peluso, Operating Partner, leads the firm's operations and legal affairs. She also serves as President of SAGEN Trust Company, Inc., a private family office for Cornucopian's founder, holding additional roles as a Director of its Board and member of its Investment and Trust Committees. She also serves on various committees for other private trust companies. Ms. Peluso was formerly a partner in the Private Clients Group at Cassin, Cassin & Joseph LLP and practiced with Torys LLP, Proskauer Rose, LLP and Hannoch Weisman, P.C.

New Jersey Investment History

The firm has not yet invested in a New Jersey-based business.

RECOMMENDATION:

Based on the evaluation conducted by Authority staff, according to the criteria established by the legislation, and clarified through Program regulations and the April 2022 Program Board memorandum, designation as a Qualified Venture Firm is recommended for Cornucopian Capital Management LLC, conditioned on execution of Qualified Venture Firm Agreement.

Table 1: Cornucopian Capital Management LLC

Firm Name	Assets Under Management	HQ Location	Score	Minimum Acceptable Score
Cornucopian Capital Management LLC	\$25.7M	NJ	22.5	17.0



Tim Sullivan, CEO

Prepared by:
Curtis Lee– Senior Product Officer, Venture Programs
Grace Warner – Product Officer, Venture Programs

Attachments:

Appendix A – Confidential Detailed Scoring

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: **Adoption of Written Post-Issuance Compliance Procedures with Respect to the Authority’s State Lease Revenue Refunding Bonds (Liberty State Park Project), 2015 Series A
PROD-00182905**

APPROVAL REQUEST

The Members of the Authority are asked to (i) adopt written post-issuance compliance procedures (the “Written Procedures”) with respect to the Authority’s State Lease Revenue Refunding Bonds (Liberty State Park Project), 2015 Series A (the “Bonds”), (ii) appoint one or more Tax Compliance Officers to carry out the Written Procedures, (iii) authorize amendments to the Written Procedures to comply with any amendments made to the Internal Revenue Code of 1986, as amended, and (iv) approve the use of professionals and authorize Authority staff to take all necessary actions incidental to the foregoing.

BACKGROUND

The Bonds were issued under and pursuant to the Constitution and laws of the State including, particularly the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Laws of 1974 of the State, as amended and supplemented (the “Act”); a resolution of the Authority entitled “2003 State Lease Revenue Bond Resolution” (the “Bond Resolution”) adopted on November 12, 2003, as supplemented, including by a Fourth Supplemental State Lease Revenue Bond Resolution (the “Fourth Supplemental Resolution”), adopted October 15, 2015, and a Series Certificate dated the date of issuance and delivery of the Bonds (the “Series Certificate;” the Bond Resolution, as amended and supplemented, including by the Fourth Supplemental Resolution and the Series Certificate, is referred to herein as the “Resolution”). Capitalized terms used but not defined herein shall have the meanings given to them in the Resolution.

In accordance with the provisions of the Tax Certificate of the Authority executed and delivered in connection with the issuance of the Bonds, and as is required pursuant to the Internal Revenue Code of 1986, as amended, and the related regulations promulgated thereunder, since the issuance of the Bonds, the Authority has been undertaking arbitrage compliance with respect to

the Bonds. The Authority now desires to memorialize those on-going tax compliance procedures in writing pursuant to and as described in the Written Procedures.

Currently, the Members of the Authority are asked to adopt a Resolution authorizing the Written Procedures and the appointment of one or more Tax Compliance Officers (as such term is defined in the Written Procedures). The Members of the Authority also are asked to authorize the Tax Compliance Officers to amend, revise or modify the Written Procedures in order to maintain compliance with the Internal Revenue Code of 1986, as amended and any related regulations promulgated thereunder, and an Authorized Officer of the Authority to take any and all actions necessary in connection with the foregoing.

Through a competitive RFQ/RFP process performed by the Attorney General's Office on behalf of Treasury for State appropriation-backed bonds, and in compliance with Executive Order No. 26 (Whitman 1994), M. Jeremy Ostow, Esq. ("Jerry Ostow") was selected as Bond Counsel ("Bond Counsel") in connection with the Written Procedures. The Members are asked to approve the use of Jerry Ostow as Bond Counsel and authorize Authority staff to take all necessary actions incidental to the adoption of the Written Procedures, subject to review by the Attorney General's Office and Bond Counsel.

RECOMMENDATION

Based upon the above description, the Members are requested to approve the adoption of the resolution entitled "RESOLUTION AUTHORIZING ADOPTION OF WRITTEN POST-ISSUANCE COMPLIANCE PROCEDURES AND OTHER MATTERS WITH RESPECT TO THE AUTHORITY'S STATE LEASE REVENUE REFUNDING BONDS (LIBERTY STATE PARK PROJECT), 2015 SERIES A" authorizing, among other things, the adoption of the Written Procedures and the appointment of Tax Compliance Officers. The Members are also asked to authorize the use of Jerry Ostow as Bond Counsel, to authorize the Tax Compliance Officers to amend, revise or modify the Written Procedures in order to maintain compliance with the Internal Revenue Code of 1986, as amended and any related regulations promulgated thereunder, and to authorize the Authorized Officers of the Authority to take any and all necessary actions incidental to the adoption and implementation of the Written Procedures, subject to final review and approval of all terms and documentation by Bond Counsel and the Attorney General's Office.



Tim Sullivan, CEO

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
POST ISSUANCE TAX COMPLIANCE PROCEDURES
FOR
USE OF TAX-EXEMPT BOND FINANCED PROPERTY AND PROCEEDS
Relating to:
STATE LEASE REVENUE REFUNDING BONDS (LIBERTY STATE PARK PROJECT),
2015 SERIES A**

BACKGROUND

On November 24, 2015, the New Jersey Economic Development Authority (the "Authority") issued, on a tax-exempt basis, \$79,670,000 State Lease Revenue Refunding Bonds (Liberty State Park Project), 2015 Series A (the "Bonds"). The Bonds were issued under and pursuant to the Constitution and laws of the State including, particularly the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Laws of 1974 of the State, as amended and supplemented (the "Act"); a resolution of the Authority entitled "2003 State Lease Revenue Bond Resolution" (the "Bond Resolution") adopted on November 12, 2003, as supplemented, including by a Fourth Supplemental State Lease Revenue Bond Resolution (the "Fourth Supplemental Resolution"), adopted October 15, 2015, and a Series Certificate dated the date of issuance and delivery of the Bonds (the "Series Certificate;" the Bond Resolution, as amended and supplemented, including by the Fourth Supplemental Resolution and the Series Certificate, is referred to herein as the "Resolution"). Capitalized terms used but not defined herein shall have the meanings given to them in the Resolution or in the Tax Certificate (as hereinafter defined). These procedures apply to the Bonds only and not to any future Series of Additional Bonds or Refunding Bonds that may be issued under the Resolution.

The Bonds were issued to: (i) current refund the following Bonds issued under the Resolution (the "Refunded Bonds"), and (ii) pay costs associated with the issuance of the Bonds. The Refunded Bonds consisted of:

(i) \$9,390,000 outstanding principal amount of the Authority's 1996 Liberty State Park Lease Rental Refunding Bonds (the "Refunded 1996 Bonds");

(ii) \$8,320,000 outstanding principal amount of the Authority's State Lease Revenue Bonds (Liberty State Park Project), 2003 Series A (the "Refunded 2003 Bonds");

(iii) \$32,110,000 outstanding principal amount of the Authority's State Lease Revenue Bonds (Liberty State Park Project), 2005 Series B (the "Refunded 2005B Bonds"); and

(iv) \$31,820,000 outstanding principal amount of the Authority's State Lease Revenue Bonds (Liberty State Park Project), 2005 Series C (the "Refunded 2005C Bonds" and, together with the Refunded 1996 Bonds, the Refunded 2003 Bonds and the Refunded 2005B Bonds, the "Refunded Bonds").

Liberty State Park (the "Park") consists of 1,177 contiguous acres of land and water in Hudson County, New Jersey. The Park is owned by the State of New Jersey, acting through its Department of Environmental Protection (the "DEP").

The Liberty Science Center (the "Center") located in Liberty State Park, Jersey City, New Jersey (the "Park"), is owned and operated by Liberty Science Center, Inc. ("LSC"), a New Jersey non-profit corporation, determined by the Internal Revenue Service to be a publicly supported organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"). The Center is located on approximately 7.11 acres of land within the Park (the "LSC Land") owned by the DEP and leased to the Authority, along with certain adjacent ground, pursuant to a certain Ground Lease dated as of December 17, 2003 (the "Ground Lease"). The Authority in turn subleased the LSC Land plus such adjacent ground (the "Leased Premises") back to the DEP pursuant to a certain Agreement and Sublease (Liberty Science Center Project) dated as of December 17, 2003 (the "Sublease"). Both the Ground Lease and the Sublease are subject to an existing lease between the DEP and LSC dated November 6, 1989, as amended by an Assignment and Assumption Agreement dated as of May 15, 2003, as amended (collectively the "LSC Lease"), pursuant to which LSC has a leasehold interest in the LSC Land.

The Refunded 1996 Bonds were issued to advance refund the Authority's Lease Rental Bonds, Series 1992 (Liberty State Park Project) maturing on March 15 in the years 1997 through and including 2002 and 2022 (the "1992 Bonds"). The 1992 Bonds were issued to finance the acquisition and construction of two parking lots and associated visitor shuttle vehicles, various infrastructure, landscaping, active recreation and open space elements in the Park.

The Refunded 2003 Bonds were issued to pay (1) costs of a project (the "2003 Project") consisting of (a) certain renovations to the Central Railroad of New Jersey Terminal Building located in the Park (the "Terminal Project"), (b) the planning and design of, creation of plans and specifications for and preparation of contracts for the renovation and expansion of the Center and the Parking Lot (defined below) (the "Center and Parking Lot Design Project") and (c) initial implementation of the renovation and expansion of the Liberty Science Center and the Parking Lot (the "Center and Parking Lot Project"), and (2) costs of issuance of the Refunded 2003 Bonds.

The Refunded 2005B Bonds were a new money issue, the proceeds of which were applied as follows: (i) the renovation, improvement, restoration and expansion of the Center and the renovation and acquisition of exhibits to be displayed at the Center and the reconstruction, expansion and improvement of the Center parking lot (collectively, the "Center Expansion

Project"); (ii) the payment of capitalized interest on the Refunded 2005B Bonds; and (iii) the payment of certain costs incurred in connection with the issuance and delivery of the Refunded 2005B Bonds.

(i) The Refunded 2005C Bonds were a new money issue, the proceeds of which were applied to the renovation, improvement, restoration and expansion of the Center and the renovation and acquisition of exhibits to be displayed at the Center and the acquisition and installation of certain signage, furniture, IT equipment and gift-shop fit-out for the Center; (ii) the payment of capitalized interest on the Refunded 2005C Bonds; and (iii) the payment of certain costs incurred in connection with the issuance and delivery of the Refunded 2005C Bonds

In the Authority's Arbitrage and Tax Certificate delivered in connection with the issuance of the Bonds (the "Tax Certificate"), the Authority represents that it expects and intends to be able to comply with and will, to the extent permitted by law, comply with the provisions and procedures set forth in the Tax Certificate and do and perform all acts and things necessary or desirable to ensure that interest paid on the Bonds shall be excluded from gross income for federal income tax purposes under Section 103 of the Code.

Based on the representations of the Authority in the Tax Certificate, bond counsel delivered his tax opinion in connection with the issuance of the Bonds, which provides, in part, that under existing law, interest on the Bonds (i) is not included in gross income for purposes of federal income taxation under Section 103 of the Code and (ii) is not an item of tax preference to be included in calculating alternative minimum taxable income under the Code for purposes of the alternative minimum tax.

PURPOSE OF POST ISSUANCE TAX COMPLIANCE PROCEDURES

Section 141 of the Code contains limitations on the extent to which proceeds of the Bonds can benefit persons other than a state or local governmental unit.¹ In addition, Section 148 of the Code imposes limitations on the investment of proceeds of the Bonds and requires that excess earnings be rebated to the United States. The procedures set forth herein are intended to enable the Authority to comply with the applicable requirements of the Code and thereby preserve the tax-exempt status of the Bonds. These procedures, together with the Tax Certificate, establish procedures for ensuring compliance with (1) the arbitrage requirements of the Code, and (2) ensuring compliance with the record retention requirements of the Code.

These procedures may be amended at any time or from time to time as necessary or appropriate in order to conform to the requirements of the Code as may be in effect at that time.

¹ Bond Counsel has advised that it is not necessary to monitor private use or changes in use with respect to the Bonds.

RESPONSIBILITY

In order to facilitate continuing compliance with the federal income tax requirements relating to the tax-exempt status of the Bonds (the “Tax Requirements”), the Chief Executive Officer of the Authority or his or designee, shall be responsible for monitoring post-issuance of the Authority and will act as the Tax Compliance Officer (the “Tax Compliance Officer”) with respect to the Bonds. The Tax Requirements include arbitrage limitations on the investment of the proceeds of the Bonds. The Tax Compliance Officers will have the primary responsibility to monitor the Authority’s compliance with the Tax Requirements for the Bonds set forth below under the headings “Arbitrage Compliance” (the “Arbitrage Requirements”) and “Miscellaneous” (the “Miscellaneous Requirements”). The Tax Compliance Officer will be responsible for ensuring an adequate succession plan for transferring post-issuance compliance responsibility when changes in Authority staff occur.

The responsibilities of the Tax Compliance Officer with respect to the Arbitrage Requirements and the Miscellaneous Requirements shall be as set forth below. The procedures set forth below are intended to supplement the Tax Certificate. The Authority, in consultation with Bond Counsel, will supplement and update these procedures as appropriate to provide a continuing source of guidance on these requirements.

Bond-Financed Facilities

As described above under “Background,” the facilities financed or refinanced with the proceeds of the Bonds include (i) the LSC Land and the Center, and (ii) land and improvements at the Park that are not leased to LSC. The Tax Compliance Officer has established and maintained books and records reflecting the actual expenditure of proceeds of Bonds as described below under “Monitoring Procedures.” Copies of such books and records will be furnished to the Authority within a reasonable time following such request.

RECORDKEEPING

The Internal Revenue Service (the “IRS”) has advised issuers of tax-exempt obligations that they have post-issuance recordkeeping responsibilities that are necessary to satisfy the IRS in the event of an audit. Accordingly, all files must be maintained for the life of the Bonds plus three years. See IRS FAQs on Record Retention, current as of January 14, 2021, attached as Appendix A. The FAQs, as from time to time updated by the IRS, can be found at the following link: <https://www.irs.gov/tax-exempt-bonds/tax-exempt-bond-faqs-regarding-record-retention-requirements#1>.

ARBITRAGE COMPLIANCE

The arbitrage restrictions imposed under the Code include restrictions on the investment of proceeds of tax-exempt obligations at an unrestricted yield and the rebate of excess investment earnings to the federal government, as more fully described in the Tax Certificate maintained with the record of proceedings for the Bonds.

Arbitrage Review

The Tax Compliance Officer will establish a timeline for review of arbitrage-related issues as more fully described below, and will maintain the records and documents described below under "Recordkeeping." The Bonds are Refunding Bonds, and records of the allocation of the proceeds of the Bonds have been prepared by or furnished to the Authority. The Tax Compliance Officer is responsible for maintaining or causing to be maintained records documenting the investment of proceeds of the Bonds and, causing the rebate analysis for the Bonds to be prepared at the times required by the Tax Certificate and/or the Code, and determining the amount of any required rebate due to the United States and the applicable due date thereof.

Temporary Period

The available temporary periods with respect to the Bonds are as set forth in the Tax Certificate. If any proceeds of the Bonds remain unexpended beyond the applicable temporary period, the Tax Compliance Officer must assure that such proceeds are yield restricted. Yield restriction will be accomplished through either an actual investment below the relevant yield or the making of yield reduction payments. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely yield reduction payments.

Rebate

The Tax Compliance Officer will be responsible for ensuring that a rebate analysis with respect to the Bonds is performed at the times provided in the Tax Certificate. The Tax Compliance Officer will work with the Authority's auditor or arbitrage consultant to make timely filings and payments with respect to any rebate amount due.

Arbitrage Consultant

The Authority will maintain a contract with a third-party nationally recognized arbitrage consultant (the "Arbitrage Consultant") for the purpose of providing arbitrage consulting services, including but not limited to:

1. Annual analysis of the Bonds;

2. Arbitrage rebate calculations;
3. Yield restriction calculations; and
4. Technical support on an ad-hoc basis.

The Arbitrage Consultant will provide, on an annual basis, an analysis of the Bonds to review and identify potential arbitrage or rebate liability, issues regarding yield restriction compliance, and/or other arbitrage related issues. The Tax Compliance Officer will review the arbitrage analysis and coordinate with the Arbitrage Consultant to prepare any necessary filings and payments on a timely basis. The Tax Compliance Officer will file with the IRS the appropriate IRS arbitrage rebate and yield restriction reports, Form 8038-T, along with any payments due with respect to the Bonds. The Arbitrage Consultant previously retained by the Authority has determined that as of November 24, 2022, there was no rebate liability with respect to the Bonds.

Recordkeeping

In order to satisfy the arbitrage recordkeeping requirements, the Tax Compliance Officer shall create and maintain, or cause to be created and maintained, records (which records may include spreadsheets, bank statements, investment purchase confirmations, agreements, certificates, etc.) of the following:

1. Purchases or sales of investments made with the proceeds of the Bonds (including amounts treated as “gross proceeds” as a result of being part of a sinking fund or pledged fund or otherwise under section 148 of the Code, other than amounts that meet the exception for bona fide debt service funds) and receipts of earnings on those investments;
2. The allocations, by date and amount, of the proceeds of the Bonds to the purchase of Defeasance Securities and the payment of costs of issuance of the bonds, together subscription documents, invoices, and cancelled checks;
3. Information and records showing that investments made with unspent proceeds of the Bonds after the expiration of the applicable temporary period were not invested in higher-yielding investments;
4. Information and records, including bank and earnings statements, that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the Authority has complied with one or more available spending exceptions to the arbitrage rebate requirement with respect to the Bonds;

5. In the event that an exception to the arbitrage rebate requirement was not applicable, information and calculations that will be sufficient to demonstrate to the IRS, upon an audit of the Bonds, that the rebate amount, if any, that was payable to the United States with respect to investments made with gross proceeds of the Bonds was calculated and timely paid with Form 8038-T being timely filed with the IRS;

6. Information and records demonstrating that all rebate calculations and reports prepared in connection with the Bonds were prepared in accordance with the requirements of the Tax Certificate and the Code;

7. Information and records showing that investments held in yield-restricted advance refunding or defeasance escrows funded with the proceeds of the Bonds were not invested in higher-yielding investments; and

8. The Tax Certificate delivered by the Authority.

MISCELLANEOUS

Training Requirements

The Authority will provide or arrange for training for the Tax Compliance Officer and any successor(s) thereto regarding the requirements of these procedures and will periodically provide or arrange for training for each of such individuals concerning their respective duties under these procedures.

Appendix A

Tax Exempt Bond FAQs Regarding Record Retention Requirements

- During the course of an examination, IRS Tax Exempt Bonds (TEB) agents will request all material records and information necessary to support a municipal bond issue's compliance with section 103 of the Internal Revenue Code. The following information is intended solely to answer frequently asked questions concerning how the broad record retention requirements under section 6001 of the Code apply to tax-exempt bond transactions. Although this document provides information with respect to many of the concerns raised by members of the municipal finance industry about record retention, it is not to be cited as an authoritative source on these requirements. TEB recommends that issuers and other parties to tax-exempt bond transactions review section 6001 of the Code and the corresponding Income Tax Regulations in consultation with their counsel.
- These frequently asked questions and answers are provided for general information only and should not be cited as any type of legal authority. They are designed to provide the user with information required to respond to general inquiries. Due to the uniqueness and complexities of Federal tax law, it is imperative to ensure a full understanding of the specific question presented, and to perform the requisite research to ensure a correct response is provided.

Why keep records with respect to tax-exempt bond transactions?

- Section 6001 of the Internal Revenue Code provides the general rule for the proper retention of records for federal tax purposes. Under this provision, every person liable for any tax imposed by the Code, or for the collection thereof, must keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary may from time to time prescribe. Section 1.6001-1(a) of the Income Tax Regulations amplifies this general rule by providing that any person subject to income tax, or any person required to file a return of information with respect to income, must keep such books and records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by that person in any return of such tax or information.
- The IRS regularly advises *taxpayers* to maintain sufficient records to support their tax deductions, credits and exclusions. In the case of a tax-exempt bond transaction, the primary taxpayers are the beneficial holders of the bonds. However, in most cases, the beneficial holders of tax-exempt bonds will not have any records to support their exclusion of the interest paid on those bonds. Instead, these records will generally be found in the bond transcript and the books and records of the issuer, the conduit borrower, and other participants to the transaction. Therefore, in order to ensure the continued exclusion of interest by the beneficial holders, it is important that the issuer, the conduit borrower and other participants retain sufficient records to support the continued exclusion being taken by the beneficial holders of the bonds. Pursuant to this statutory regime, IRS agents conducting examinations of tax-exempt bond

transactions will look to these parties to provide books, records, and other information documents supporting the bonds continued compliance with federal tax requirements.

- Additionally, in the case of many private activity bonds, the conduit borrowers are also primary taxpayers. For instance, the conduit borrower will generally deduct the interest indirectly paid on the bond issue through the loan documents. Conduit borrowers are also often entitled to claim depreciation deductions for bond-financed property. Consequently, conduit borrowers should maintain sufficient records to support their interest deductions, depreciation deductions or other tax deductions, exclusions or credits related to the tax-exempt bond issue.
- Moreover, issuers and conduit borrowers should retain sufficient records to show that all tax-exempt bond related returns submitted to the IRS are correct. Such returns include, for example, IRS Forms 8038, 8038-G, 8038-GC, 8038-T, and 8038-R.
- In addition to the general rules under section 6001, issuers and conduit borrowers are subject to specific recordkeeping requirements imposed by various other Code sections and regulations. For example, section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations requires that an issuer retain certain records necessary to qualify for the safe harbor for establishing fair market value for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow.

Who may maintain records?

- Read together, section 6001 of the Code and section 1.6001-1(a) of the Regulations apply to taxpayers and persons filing tax returns, including returns related to tax-exempt bond transactions (i.e., Forms 8038, 8038-G, 8038-GC, 8038-T, 8038-R, 8328, 8703). This encompasses several parties to the bond transaction including:
 1. issuers as the party responsible for satisfying the filing requirements under section 149(e) of the Code;
 2. conduit borrowers for deductions taken for payment of interest on outstanding bonds or depreciation of bond-financed facilities; and
 3. bondholders, lenders, and lessors as recipients of exempt income from the interest paid on the bonds.
- Since many of the same records may be examined to verify, for example, both the tax-exempt status of the bonds and the interest deductions of the conduit borrower, it is advisable for the bond documents to specify which party will bear the responsibility for maintaining the basic records relating to a bond transaction. Additional parties may also be responsible for maintaining records under contract with any of the parties named above. For example, a trustee may agree to maintain certain records pursuant to the trust indenture.

What are the basic records that should be retained?

- Although the required records to be retained depend on the transaction and the requirements imposed by the Code and the regulations, records common to most tax-exempt bond transactions include:
 - Basic records relating to the bond transaction (including the trust indenture, loan agreements, and bond counsel opinion);
 - Documentation evidencing expenditure of bond proceeds;
 - Documentation evidencing use of bond-financed property by public and private sources (i.e., copies of management contracts and research agreements);
 - Documentation evidencing all sources of payment or security for the bonds; and
 - Documentation pertaining to any investment of bond proceeds (including the purchase and sale of securities, SLGs subscriptions, yield calculations for each class of investments, actual investment income received the investment of proceeds, guaranteed investment contracts, and rebate calculations).

Are these the only records that need to be maintained?

- No, the list above is very general and only highlights the basic records that are typically material to many types of tax-exempt bond financings. Each transaction is unique and may, accordingly, have other records that are material to the requirements applicable to that financing. The decision as to whether any particular record is material must be made on a case-by-case basis and could take into account a number of factors, including, for instance, the various expenditure exceptions. Moreover, certain records may be necessary to support information related to certain requirements applicable to specific types of qualified private activity bonds. With respect to single and multifamily housing bonds as well as small issue industrial development bonds, examples of such additional material records include:

Single Family Housing Bonds	Documents evidencing that at least 20% of proceeds were available for owner financing of targeted area residences. Documentation evidencing proper notification of each mortgagor of potential liability of the mortgage subsidy recapture tax.
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<p>Multi-Family Housing Bonds</p>	<p>Documentation evidencing that the facility is not used on a transient basis.</p> <p>Documentation evidencing compliance with the income set-aside requirements.</p> <p>Documentation evidencing timely correction, if any, of noncompliance with the income set-aside requirements.</p>
<p>Small Issue Industrial Development Bonds</p>	<p>Documentation evidencing compliance with the \$10,000,000 limitation on the aggregate face amount of the issue.</p> <p>Documentation evidencing that no test-period beneficiary has been allocated more than \$40,000,000 in bond proceeds.</p>

In what format must the records be kept?

- All records should be kept in a manner that ensures their complete access to the IRS for so long as they are material. While this is typically accomplished through the maintenance of hard copies, taxpayers may keep their records in an electronic format if certain requirements are satisfied.
- Rev. Proc. 97-22, 1997-1 C.B. 652 provides guidance to taxpayers that maintain books and records by using an electronic storage system that either images their hardcopy (paper) books and records, or transfers their computerized books and records, to an electronic storage media. Such a system may also include reasonable data compression or formatting technologies so long as the requirements of the revenue procedure are satisfied. The general requirements for an electronic storage system of taxpayer records are provided in section 4.01 of Rev. Proc. 97-22. A summary of these requirements is as follows:
 1. The system must ensure an accurate and complete transfer of the hardcopy books and records to the electronic storage system and contain a retrieval system that indexes, stores, preserves, retrieves, and reproduces all transferred information.
 2. The system must include reasonable controls and quality assurance programs that (a) ensure the integrity, accuracy, and reliability of the system; (b) prevent and detect the unauthorized creation of, addition to, alteration of, deletion of, or

deterioration of electronically stored books and records; (c) institute regular inspections and evaluations; and (d) reproduce hardcopies of electronically stored books and records that exhibit a high degree of legibility and readability.

3. The information maintained in the system must be cross-referenced with the taxpayer's books and records in a manner that provides an audit trail to the source document(s).
4. The taxpayer must maintain, and provide to the Service upon request, a complete description of the electronic storage system including all procedures relating to its use and the indexing system.
5. During an examination, the taxpayer must retrieve and reproduce hardcopies of all electronically stored books and records requested by the Service and provide the Service with the resources necessary to locate, retrieve, read and reproduce any electronically stored books and records.
6. The system must not be subject, in whole or in part, to any agreement that would limit the Service's access to and use of the system.
7. The taxpayer must retain electronically stored books and records so long as their contents may become material in the administration of federal tax law.

How long should records be kept?

- Section 1.6001-1(e) of the Regulations provides that records should be retained for so long as the contents thereof are material in the administration of any internal revenue law. With respect to a tax-exempt bond transaction, the information contained in certain records support the exclusion from gross income taken at the bondholder level for both past and future tax years. Therefore, as long as the bondholders are excluding from gross income the interest received on account of their ownership of the tax-exempt bonds, certain bond records will be material. Similarly, in a conduit financing, the information contained in the bond records is necessary to support the interest deduction taken by the conduit borrower for both past and future tax years for its payment of interest on the bonds.
- To support these tax positions, material records should *generally* be kept for as long as the bonds are outstanding, plus 3 years after the final redemption date of the bonds. This rule is consistent with the specific record retention requirements under section 1.148-5(d)(6)(iii)(E) of the arbitrage regulations.
- Certain federal, state, or local record retention requirements may also apply.

How does this general rule apply to refundings?

- For certain federal tax purposes, a refunding bond issue is treated as replacing the original new money issue. To this end, the tax-exempt status of a refunding issue is dependent upon the tax-exempt status of the refunded bonds. Thus, certain material records relating to the original new money issue and all material records relating to the refunding issue should be maintained until 3 years after the final redemption of both bond issues.
-

What happens if records aren't maintained?

- During the course of an examination, TEB agents will request material records and information in order to determine whether a tax-exempt bond transaction meets the requirements of the Code and regulations. If these records have not been maintained, then the issuer, conduit borrower or other party may have difficulty demonstrating compliance with all federal tax law requirements applicable to that transaction. A determination of noncompliance by the IRS with respect to a bond issue can have various outcomes, including a determination that the interest paid on the bonds should be treated as taxable, that additional arbitrage rebate may be owed, or that the conduit borrower is not entitled to certain deductions.
 - Additionally, a conduit borrower who fails to keep adequate records may also be subject to an accuracy-related penalty under section 6662 of the Code on the underpayment of tax attributable to any denied deductions. Section 6662 of the Code imposes a penalty on any portion of an underpayment of tax required to be shown on a return that is attributable to one of several factors, including negligence or disregard of rules or regulations. Section 1.6662-3(b)(1) of the Regulations provides that negligence includes any failure by the taxpayer to keep adequate books and records or to substantiate items properly. Under section 6662(a) of the Code, the penalty is equal to 20 percent of the portion of the underpayment of tax attributable to the negligence. Section 6664(c)(1) provides an exception to the imposition of accuracy-related penalties if the taxpayer shows that there was reasonable cause for the underpayment and that the taxpayer acted in good faith.
-

Can a failure to properly maintain records be corrected?

- Yes, a failure to properly maintain records can be corrected through the Tax Exempt Bonds Voluntary Closing Agreement Program (TEB VCAP). This program provides an opportunity for state and local government issuers, conduit borrowers, and other parties to a tax-exempt bond transaction to voluntarily come forward to resolve specific matters through closing agreements with the IRS. For example, TEB Compliance and Program Management has resolved arbitrage rebate concerns in cases where issuers have approached the IRS and reported a failure to retain sufficient records to determine, precisely, the correct amount of arbitrage rebate due on a bond issue. More information on VCAP is available.
-

Are there exceptions to the general rule regarding record retention for certain types of records?

No, but TEB encourages members of the municipal finance industry to submit comments and suggestions for developing record retention limitation programs for specific types of bond records, for specific classes of tax-exempt bond issues, or for specific segments of the bond industry. Comments can be submitted in writing to TEB and sent by e-mail to TEGE@TEB.com or TEB@TEB.com.



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 25, 2023

RE: Additional Funds necessary to complete the compliance interface for Incentive Data Management System leveraging Microsoft Consulting Services available on State Contract T3121 (20-TELE-01510).

Summary

The Members previously approved \$2,000,000.00 in May 2023 for professional services including delivering a secure, modern portal to the Authority. This was procured by the Authority under State Contract T3121 (20-TELE-01510) as reviewed by the EDA's Procurement Department. The Members are now respectfully requested to approve additional funding not to exceed \$390,000.00 to configure the newly available Azure B2C portal technology.

Background

We have approached this project with Microsoft using the agile delivery model that is driven by objects and key results that included adoption of the new Azure B2C portal technology newly available to the GCC (Government Community Cloud). Inclusion of this technology will allow the Authority to leverage the most modern methods of vetting our customer identity, paying particular attention to multifactor authentication. The modernization of our Incentive Data Management System is imperative to maintaining control over PII and exposure to bad actors.

Other items of key consideration that drive the request and need for additional funds reside in the complex issues around data migration when dealing with yearly reporting, cultivating data from outside agencies, and increased involvement from Microsoft in development of training materials and content delivery. The target go live is January 2, 2024, and access to these additional funds are required for Microsoft to increase the agile sprint velocity to deliver this in an expedited manner and on time in an effective and efficient process.

Procurement

In furtherance of the above and the needs of the Authority, the Authority had utilized State Contract T3121. As background, on May 25, 2021, the Division of Purchase and Property (DPP) within the New Jersey Department of the Treasury had procured and issued bid solicitation #20DPP00553 for Software Reseller Services. This resulted in the award and blanket purchase order (or T3121) with Dell Marketing LP as an awardee. The purpose of T3121 is to provide Using Agencies, such as the New Jersey Economic Development Authority, with a mechanism to purchase the following products and services.

- Commercial Off the Shelf Software ("COTS");

- Software as a Service (“SaaS”);
- Software Related Services;
- Maintenance and technical support services; and
- Appliances.

Pursuant to **Section 1.4 Microsoft Options** of the Method of Operation, Microsoft requires enrollments under an Enterprise Agreement to identify a single reseller to service that agreement. All existing enrollments under the State’s Enterprise Agreement are currently only serviced by Dell.

In order to utilize same, the Authority was required to follow the requirements and process as set forth in the Method of Operation (MOO). In accordance with the MOO, the Authority submitted the request and scope of work to Dell and requested its proposal/submission. The Authority received Dell’s response and reviewed its proposal and concluded that what Dell proposed would be sufficient and adequate. This was previously authorized by the Members at the May 10, 2023, Authority Board meeting. In furtherance of the above and the prior approval, the Members have been requested to approve the additional funding of \$390,000.00. This funding is for time and materials and is required to configure the Azure B2C portal technology for the Authority’s use. The Authority had requested the suite of services in furtherance of the above and were provided the submission with the anticipated cost of the additional \$390,000.

Recommendation

In summary, approval is respectfully requested for additional funds of \$390,000.00 for a new maximum not to exceed of \$2,390,000.00 of total contract funding.



Tim Sullivan, CEO

Prepared by: Thomas Murphy/Ted Fanikos

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 16, 2023

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

The following projects were approved under Delegated Authority in October 2023:

Direct Loan Program:

- 1) Prestige Plus Property Management LLC (PROD-00312694), located in Irvington Township, Essex County, was established in 2017 as a real estate holding company formed to purchase the project property. The operating company, El Batal Corporation DBA Grip Tight Tools, was incorporated in 2001 as a leading wholesale tool supplier with a catalog of over 3,000 items including door and building hardware, painting tools, locksmith products, outdoor stone, granite, power tools, plumbing and cleaning supplies, and fans and heaters. The Company sells products through six different lines of business and specialize in brand creation for distributors and major chain stores. The NJEDA approved a \$2,000,000 Direct loan. Proceeds will be used to purchase the project property for business expansion. Currently, the Company has 35 employees and plans to create 12 new positions within the next two years.

Small Business Fund Participation Program:

- 1) Muller Realty Holdings LLC & Muller Customs Limited Liability Company (PROD-00312974) are located in Ewing Township, Mercer County. Muller Realty Holdings LLC was established in 2019 as a real estate holding entity that owns the project property and building. Muller Customs Limited Liability Company was established in 2014 as a full service automotive and trailer repair shop focusing on high performance vehicles. The operation includes 10 service bays with car lifts. Provident Bank approved a \$775,000 bank loan contingent upon a 47.9% (\$371,250) Authority participation. Proceeds will be used to refinance an existing mortgage with Lakeland Bank, partial reimbursement of equity contributed toward closing costs of the original loan, and funds spent for commercial property improvements. Currently, the Company has 14 employees.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Economic Transformation Products
Delegated Authority Approvals, Declinations, & Other Actions Q3 2023
For Informational Purposes Only

Angel Investor Tax Credit Program

On January 31, 2013, the New Jersey Angel Investor Tax Credit Act was signed into law with Regulations approved by the Members of the Board in June 2013. The New Jersey Angel Investor Tax Credit Program (ATC) establishes credits against corporate business tax or New Jersey gross income tax. When the program was originally approved, the amount of the tax credit was 10%. In 2019, Governor Murphy approved an increase to the amount of the tax credit from 10% to 20%, with a 5% bonus for investors in either NJ certified women- or minority-owned businesses, or businesses located in a state-designated Opportunity Zone or New Markets Tax Credit census tract. Starting with the 2021 program year, the Angel Tax Credit program cap was increased from \$25 million to \$35 million.

Angel Investor Tax Credit Program – Q3 2023 Review

In the third quarter of 2023, the Authority approved 87 ATC investor applications with twenty-one (21) emerging technology businesses benefiting from the ATC program. Of the 21 different companies receiving investments, three (3) of these were new companies to the program (noted below). Additionally, investors in seven (7) companies qualified for an additional 5% bonus, which represents approximately 33% of companies for this quarter.

Three (3) were state-certified Women and/or Minority Business Enterprises, and four (4) businesses based their operations in an Opportunity Zone or New Market Tax Credit census tract.

In total, \$3,644,464 in Angel Investor Tax Credits were awarded which incentivized \$19,350,486 in private sector investments into NJ emerging technology businesses.

Sector	Investment Amount	Tax Credit Amount	Applications	# of Companies	% of Total Invested	% of Total Applications
Life Sciences	\$2,997,000	\$599,400	28	6	15.5%	32.2%
Technology	\$13,021,628	\$2,431,878	48	13	67.3%	55.2%
Clean Technology	\$3,331,858	\$633,186	11	2	17.2%	12.6%
Total	\$19,350,486	\$3,664,464	87	21		

The following twenty-one (21) companies were awarded tax credits in the third quarter of 2023:

Beable Education, Inc., based in Lakewood, publishes educational software that identifies and closes the literacy and opportunity gap through the proprietary Beable IQEngine, using machine learning, automation, and data science to customize an individualized learning path for each child (qualifies for a bonus as a certified Women Business Enterprise).

BioAegis Therapeutics Inc., based in North Brunswick, is a private company commercializing groundbreaking discoveries in inflammation and infection.

Calamu Technologies Corporation, based in Franklin Township, is an information technology company that has produced a scalable, automated data protection platform to protect companies from security breaches. The multi-patented data engine, responsible for fragmenting data for security purposes, uses auto-healing data technology to provide a combination of breach-proof and compliant data processing and storage using public clouds, private data centers.

Elucida Oncology, Inc., based in Monmouth Junction, is a biotechnology company focused on clinical research, development and subsequent commercialization of life-changing products based on the Target or Clear™ technology of the novel, ultra-small nanoparticle delivery platform. Elucida's work is centered around the detection and treatment of primary solid tumor and metastatic cancers in order to extend and enhance patients' lives.

Enalare Therapeutics Inc., based in Princeton, is a life sciences company developing novel treatments for patients suffering from life-threatening respiratory and critical care conditions. Enalare's first major pharmaceutical compound, ENA-001, is patented and currently performing well in the clinical trial phase. It is a respiratory stimulant that utilizes a unique mechanism of action – the body's own ventilation control pathways – to improve breathing and is intended for use in patients suffering from a variety of medical conditions including post-operative respiratory distress, COPD, drug overdose, and apnea in premature infants.

Eos Energy Storage, LLC, based in Edison, is a clean energy company that develops novel, low-cost energy storage solutions for the electric utility and transportation industries. Eos' mission is to produce cost effective energy storage solutions that are projected to be not only less expensive than other battery technologies, but less expensive than the most economical alternatives used today to provide the same services.

EV Edison Inc., based in Kearny, is developing and commercializing software solutions for its proprietary control systems in which it is building mobile IoT solutions and platforms using RFID, sensors & actuators, and wireless technologies. This technology will be implemented for the Energy Management System which controls EV chargers, battery systems and any other clean energy resource all integrated in one platform. EV Edison plans to install high-capacity electric vehicle charging infrastructure known as fleet development, by combining its charging and battery technology. These mobile charging hubs are intended to service critical infrastructure for large-scale fleets awaiting permanent EV charging infrastructure (**qualifies for a bonus for operations based in an Opportunity Zone or New Markets Tax Credit Census Tract**).

Futurestay Inc., based in Somerset, is an emerging SaaS technology company that provides vacation rental business owners with a cloud-based system to market, manage and accept online payments for their property. Futurestay automates booking, calendar synching and distribution with leading online portals (Airbnb, Homeaway, etc.), making it a time-saving alternative to the 8hrs/week on average spent manually managing a property.

Genomic Prediction Inc., based in North Brunswick, provides advanced genetic testing for in-vitro fertilization. The company has developed a novel, genome-wide molecular genotyping methodology for pre-implantation genetic testing for embryos. Their Preimplantation Genetic Testing (PGT) is a clinical treatment for infertility and used to reduce disease risk.

Halcyon Still Water, LLC, based in Red Bank, has developed a platform that leverages unique technology to aggregate a taxpayer's complete financial landscape to prepare tax returns and provide tax expertise by crowdsourcing CPA services.

Hope Portal Services, Inc., based in Holmdel Township, is a HealthTech/FinTech startup that provides planning, concierge and fiduciary services to the special needs community. The Hope Portal includes a first-of-its-kind, digital medical, behavioral and psychological profiling system that gathers key data and utilizes it to create a customized care plan and trust agreement.

ImageProVision, Inc., based in Franklin Township, focuses on the automation of microscope image data analysis for the pharmaceutical industry (**qualifies for a bonus as a certified Minority Business Enterprise**).

Ionic H2O Inc., based in Hamilton, is developing and commercializing a proprietary method of water purification and desalination which uses electrical voltage to capture and wash away ionic contaminants, as well as a method for reusing carbon in the cleaning process (**qualifies for a bonus for operations based in an Opportunity Zone or New Markets Tax Credit Census Tract**).

Logie Inc., based in Union, is a B2B technology company pioneering the use of AI and machine learning for sales and marketing. Logie specializes in software publishing, data analysis, custom programming services, and system design. Using AI to reverse-engineer the effectiveness of product campaigns, Logie's proprietary systems can analyze and tailor them to improve customer response as well as scale for larger markets. The Logie toolkit uses integrated AI robots and graphics generators to create product art, tracks and evaluates success via the Logie dashboard, and automates ecommerce payment systems (**qualifies for a bonus for operations**

based in an Opportunity Zone or New Markets Tax Credit Census Tract).

MetasTx, LLC, based in Basking Ridge, is a life sciences company committed to creating novel therapeutics to treat and prevent the growth and spread of cancer without the devastating effects of today's current therapies. MetasTX's therapies are focused on the treatments of solid cancer tumors found in prostate, breast, and skin cancers.

Molecular Surface Technologies, LLC, based in New Brunswick, is a science and technology company dedicated to developing and licensing/selling its technologies to companies who manufacturer/distribute end products. MST's patented technologies relate to new methods of preparing modified metal surfaces used in health care (**new company in Q3 2023 and qualifies for a bonus for operations based in an Opportunity Zone or New Markets Tax Credit Census Tract**).

Onconox, Inc., based in Monmouth Junction, focuses on the development and commercialization of pharmaceutical and biotech products for novel treatment of lung cancers. Lung cancer is the deadliest cancer worldwide, and for patients who are not candidates for surgery, the outlook is dire. Onconox is working to substantially increase the cure rate of lung cancer and improve the quality of life for lung cancer patients undergoing treatment. Onconox currently has two proprietary products, OCN001 and OCN002. OCN001 is a proprietary drug-device combination product which is used in tandem with current therapies to improve outcomes. OCN002 is a proprietary biologic molecule, the first of its kind, that inhibits tumor growth (**new company in Q3 2023**).

Ricovr Healthcare, Inc., based in Princeton, is transforming oral diagnostics with a patented technology. Its first product is a highly sensitive, faster, non-invasive portable device to measure THC (psychoactive component of Cannabis) using saliva.

SunRay Scientific Inc., based in Eatontown, is a global technology company providing novel adhesive conductive solutions for advanced electronic packaging, including semiconductors packaging (**qualifies for a bonus as a certified Women and Minority Business Enterprise**).

Transcend Street Solutions, Inc., based in Piscataway, is a financial services technology provider that has developed a cloud-based, liquidity management platform as an enterprise-wide solution for collateral, funding, and liquidity optimization in real-time. Transcend's platform streamlines global inventory optimization, digitized eligibility management, and a variety of other technological solutions for the regulatory and capital challenges facing the financial industry. Transcend Street Solutions is currently conducting research on industry expansion and commercializing within the Environmental, Social, and Governance space (**new company in Q3 2023**).

Vytalize Health, Inc., based in Hoboken, provides a telemedicine platform that enables communication with patients remotely via smartphones (iOS and Android) or Vytalize-provided tablets, as well as Electronic Medical Records software needed for the proper documentation and billing of services.

Please find a detailed list of all ATC applications that were approved under delegated authority during the third quarter of 2023 in Exhibit A.

Angel Investor Tax Credit Program Summary

From program inception in 2013 through Q3 of 2023, the Authority has approved just over 3000 applications for approximately \$103 million in tax credits representing nearly \$941 million invested in 157 New Jersey-based businesses. Of note, date of application approval does not necessarily align to program year. Approvals in each quarter may be reflected in the awarded tax credit amounts for prior or current program years.

A summary of prior year tax credits and unallocated balances is provided in Exhibit B.

NJ Ignite Program

NJ Ignite offers grants to support the rent of early-stage technology and life science companies located in an NJ Ignite approved collaborative workspace. Grants vary in amount. The start-up must commit to work for a specified time at the collaborative space under established agreements in which the workspace will partner to forego an element of the rent to support the business.

As of January 7, 2021, the Governor signed into law the Economic Recovery Act of 2020 (ERA) which resulted in the creation of the NJ Ignite Statutory Program. To ensure continuous NJ Ignite program operations, specific changes were approved by the Board on May 12, 2021, so that the NJ Ignite Pilot Program conforms to the NJ Ignite Legislative Program as outlined in the ERA. These updates included moving the annual reporting deadline to the calendar year end from one year anniversary date, increasing the maximum benefit from \$15,000 to \$25,000, expanding the eligible industries to align with current NJEDA targeted industries, extending the earliest formation date from application date to seven years, and adding two more stackable bonuses for M/WBEs and foreign companies. Updated Regulations for the NJ Ignite Legislative Program created by the ERA are anticipated but their generation is subject to the availability of the NJEDA Legal Affairs department resources.

NJ Ignite Program – Q3 2023 Review

In the first quarter of 2023, staff initiated the required annual review of all approved workspaces. The review includes verification each workspace held at least eight ecosystem building events throughout the year. Each workspace will also be required to submit a current certificate of liability insurance and tax clearance. As of the end of Q3 2023, eighteen (18) approved workspaces remain active. Upon request for year-end reports, of the eighteen (18) workspaces, none withdrew from the program, six (6) completed and submitted all documents, and twelve (12) have been unresponsive. Due to changes in staff, existing workspaces are being contacted, and outreach will continue into the fourth quarter of 2023 to complete the annual review.

There was one (1) new Tenant company approval for NJ Ignite in Q3 2023, however no benefit

disbursements were made. Additionally, there were no new Workspace approvals in the third quarter of 2023.

Tenant Name	Workspace Name	EDA Grant	Number of Employees	Approval Date
Zena Therapeutics, Inc.	NJ Bioscience Center Incubator	\$8,052	2	08/15/2023

NJ Accelerate Program

On February 11, 2020, the NJEDA Board approved the NJ Accelerate pilot program, with a total program budget of \$2.5 million. Through NJ Accelerate, the NJEDA seeks to provide early-stage businesses access to best-in-class Accelerator programs, enabling the tools and support to grow their businesses in the Garden State. The program provides up to \$250,000 of direct loan funding and up to six months of free rent to Approved Accelerator Graduates located in New Jersey. Graduates certified as women- or minority-owned, can receive an additional 5% bonus to the direct loan amount, as well as one additional month of rent. Approved Accelerators may also receive sponsorship of up to \$100,000 to hold events in NJ to encourage their on-the-ground engagement in the State. Also, a sponsorship bonus of 5% is available for Approved Accelerators demonstrating meaningful written policies and practices for attracting and promoting companies owned by women and minority persons.

The Authority began accepting applications to become an approved accelerator during the fourth quarter of 2020. On November 12, 2020, Morgan Stanley Inclusive Ventures Lab (fka Multicultural Innovation Lab), became the first approved accelerator. The Authority approved Cleantech Open Northeast on April 13, 2021, becoming the second approved accelerator, followed by VentureWell’s Aspire program which was approved on May 14, 2021. In the third quarter of 2021, University City Science Center’s Launch Lane Accelerator was approved to participate in the Program on September 1. In the second quarter of 2022, HAX LLC was approved for participation in NJ Accelerate on April 4. More recently, in the second quarter of 2023, XRC Ventures was approved on June 12.

NJ Accelerate Program – Q3 2023 Review

Reviews and discussions with accelerator programs and their company participants continued during the third quarter of 2023, as well as outreach to new accelerators. In Q3 2023, the following accelerators were approved: Merck Digital Sciences Studio, Lair East Labs, LearnLaunch Fund + Accelerator, and Entrepreneurs Roundtable Accelerator. Below is a breakdown of the accelerators reflecting approval dates and an overview of the program:

- **Merck Digital Sciences Studio (MDSS)** was approved on August 16, 2023, and is based in Newark, NJ and Cambridge, MA. It is an evolution of the program run by NJ Innovation Institute (NJII) formerly called NJ BioFoundry. MDSS resulted from a collaboration

between NJII and Merck Sharp and Dohme together with the three investing entities, Merck Global Health Innovation Fund, Northpond Capital and McKesson Ventures, with program support provided by Microsoft for Startups. MDSS accelerates the digital enablement of drug and biomarker discovery, clinical trial tools, and related underlying IT capabilities, and invests in and pilots with eClinical/RWE, biomedical AI and analytics startup companies. Each company receives \$150,000 via SAFE notes.

- **Lair East Labs (LEL)** was approved on September 12, 2023, and is a multi-sector accelerator traditionally focused on the FinTech, medical devices/HealthTech, SaaS, AI, EdTech, enterprise software, and advanced manufacturing sectors, among others. LEL is a 14-week cohort-based program in New York City and is operating since 2017. The Accelerator invests \$150,000 in each company via its partnership with Sunstone Management. To date, more than 80% of the portfolio companies that graduated are still operating and 38% of companies raised over \$1M in funding ranging from pre-seed to Series A.
- **LearnLaunch Fund + Accelerator (LearnLaunch)** was approved on September 20, 2023, is based in Boston, MA, and is considered the longest running and leading EdTech accelerator in the US. In nine years, since 2013, LearnLaunch has invested approx. \$3M in 76 early-stage companies and graduated 12 cohorts. The Accelerator’s program – Breakthrough to Scale - is focused on nurturing innovators that are addressing the gap between formal education and workplace, transforming access, equity and outcomes in K-12, higher-ed, workforce development and life-long upskilling. LearnLaunch invests up to \$200,000 per cohort company.
- **Entrepreneurs Roundtable Accelerator (ERA)** was approved on September 21, 2023, and is based in New York City. Established in 2011, ERA is one of New York City’s largest accelerator programs. The program provides seed capital, hands-on support and a great co-working location with an expert team to positively impact the trajectory of early-stage startups. ERA runs two four-month programs per year and counts on a mentor network with 500+ expert investors and industry specialists. ERA’s portfolio companies have collectively raised over \$1.7B to date, with a market valuation of \$10B+. The accelerator invests \$150,000 via SAFE notes in its cohort companies.

The Program has approved 10 accelerators as of Q3 2023 and continues to generate interest from best-in-class accelerators.

NJ Accelerate Program List of Approved Accelerators

Accelerator Name	Accelerator Location
Morgan Stanley Inclusive Ventures Lab	New York City, NY
Cleantech Open Northeast	Boston, MA
VentureWell - Aspire Program	Hadley, MA
University City Science Center - Launch Lane Accelerator	Philadelphia, PA
HAX LLC	Newark, NJ
XRC Ventures	Brooklyn, NY
Merck Digital Sciences Studio	Newark, NJ and Cambridge, MA
Lair East Labs	New York City, NY
LearnLaunch Fund + Accelerator	Boston, MA
Entrepreneurs Roundtable Accelerator	New York City, NY

Angel Match Program

The Angel Match Program was designed to disburse funding from the Small State Business Intuitive (SSBCI), a federal program administered by the US Department of Treasury. New Jersey's share of the \$10 billion federal program is \$255,197,631. SSBCI is designed to cause and result in lending and investment of private capital into small businesses. On September 14, 2022, the NJEDA Board approved the Angel Match Program, the first of six programs in NJ under SSBCI. The total Angel Match Program allocation is \$20,197,631. The Authority launched the Program's application on March 13, 2023.

The Angel Match Program provides funding to approved companies in the form of a convertible promissory note. Each note will be from \$100,000 up to \$500,000. The funding amount is determined by matching the NJEDA's funds with investments provided to the company by outside investors on a 1 to 1 basis. The investments must be in the form of preferred equity with a defined share price per share. The NJEDA's note will be unsecured and have no payments for the first seven years. The note will have a 3% fixed interest rate and a 10-year maturity

Angel Match Program – Q3 2023 Review

Since the Program's launch, discussions were initiated with various groups as well as the wider NJ startup and investor community. The Program has also been featured in many public presentations and has received significant interest from companies with the potential to leverage the program.

In the third quarter of 2023 the Authority approved three (3) Angel Match Program applications for a total of \$1,462,500, and a description of the companies can be found below:

Company	External Investments	EDA Approved Funding	Approval Date	Commitment Date	Closing Date
TLA Innovation, Inc.	\$537,000	\$500,000	06/06/2023	07/03/2023	09/28/2023
VipHomeLink Holdings, Inc.	\$462,500	\$462,500	08/18/2023	08/21/2023	10/12/2023
AlphaROC, Inc.	\$585,000	\$500,000	09/15/2023	09/20/2023	In process
Total	\$1,584,500	\$1,462,500			

TLA Innovation, Inc., develops solutions for individuals and enterprises in the cybersecurity, privacy, and regulatory industries. The Company's SaaS cybersecurity platform protects against identity-driven attacks and uses advanced biometrics and AI to assure identities and facilitate cleaner, more efficient business processes. TLA Innovation was founded in 2020 and is headquartered in Paramus, New Jersey.

vipHomeLink, Inc., is a Digital Home Management (DHM) solution providing tailored home maintenance reminders, engaging digital content, and expert home recommendations. The

Company partners with insurance carriers to provide a white-label, SaaS platform, and proprietary data, to improve customer engagement (retention) and reduce home insurance losses. vipHomeLink was founded in 2018 and is headquartered in Morristown, New Jersey.

AlphaROC, Inc., is the developer of a data science and analytics platform designed to leverage unique data sets to provide insights to investors. The Company's platform focuses on providing analytics on a wide variety of unique datasets and constructing a 360- degree view on economic activity. AlphaROC was founded in 2021 and is headquartered in Newark, New Jersey.

New Jersey Zero-emission Incentive Program (NJ ZIP)

Launched in April 2021, the Phase 1 NJ ZIP pilot established a first-come, first-serve voucher-style program to reduce the upfront cost to purchase zero-emission vehicles for eligible applicants, with a focus on the adoption and use of zero-emission medium-duty vehicles in the four pilot communities, greater Newark, New Brunswick, greater Camden, and the Greater Shore Area.

New Jersey Zero-emission Incentive Program Phase 1 – Q3 2023

As of May 16, 2023, all remaining Phase 1 applications have been approved.

New Jersey Zero-emission Incentive Program Phase 2 – Q3 2023

In July 2022, the Board approved a second phase of the NJ ZIP pilot, with a voucher pool of \$45 million. While the overarching structure of the pilot remained unchanged, the second phase of this pilot included two major eligibility changes from the first phase – to expand eligibility to include heavy-duty vehicle classes and to Purchaser Applicants statewide – and provide updated support structures for pilot participants, including the development of a technical assistance mechanism.

NJ ZIP Phase 2 implemented a phased launch approach for Vendor and Purchaser applications. First, a zero-emission vehicle vendor must apply to become an approved vendor. Vendors applied for Phase 2, October 18, 2022, thru November 22, 2022, the program received 32 vendor applications that were reviewed and approved on a rolling basis. In Q3 2023, no new vendor applications were reviewed or approved. In Q3 2023, the program approved 69 applications for a total of \$26,484,050 in vouchers. These vouchers will support adoption of 203 new, zero emission vehicles operating in the state of New Jersey.

Applications for purchasers opened April 18, 2023 and closed on July 13, 2023 with \$13,500,000 in applications on a waitlist.

New Jersey Zero-emission Incentive Program Phase 2- Q3 2023

Please find a detailed list of all purchaser applications that were approved for NJ ZIP Phase 2 under delegated authority during the third quarter of 2023, in Exhibit C.

New Jersey Film and Digital Media Tax Credit Program

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 Film Tax Credit Program, applicants are eligible for a tax credit equal to 35% of qualified film production expenses, or 30% of qualified film production expenses incurred for services performed and tangible personal property purchased for at a sound stage or other 30-mile radius of the intersection of Eighth Avenue/Central Park West, Broadway, and West 59th Street/Central Park South, New York, New, York. Under the Digital Media Tax Credit Program, applicants are eligible for 30% of qualified digital media production expenses and 35% for qualified digital media production expenses purchased through vendors whose primary place of business is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, or Salem County.

On April 13, 2022, the Board approved the delegations of authority for the New Jersey Film and Digital Media Tax Credit Program. Film Tax Credit applications seeking \$10 million or less, and Digital Media Tax Credit applications seeking \$3 million or less in tax credits can be approved under the updated delegations of authority.

New Jersey Film and Digital Media Tax Credit Program - Q3 2023 Results

In the third quarter of 2023, there were 13 film applications approved under delegated authority for a total of \$31,778,824.

FILM TAX CREDITS				
	Applicant Name	PROD #	Award Amount	Approval Date
1	Universal Television LLC	PROD-00310675	\$2,941,342	7/5/2023
2	BEVERLY CREST PRODUCTIONS LLC	PROD-00309641	\$2,281,992	7/21/2023
3	Honor Films LLC	PROD-00310841	\$179,336	7/21/2023
4	DAY OF THE FIGHT, Inc.	PROD-00309648	\$2,638,018	7/25/2023
5	Nonnas Productions, Inc.	PROD-00311388	\$7,060,561	7/27/2023
6	Good Grief Film LLC	PROD-00311190	\$794,163	7/28/2023
7	Guns Up The Film Inc	PROD-00311389	\$2,819,948	8/4/2023
8	Apopenia, LLC	PROD-00305764	\$421,524	8/23/2023
9	Paradise Films, LLC	PROD-00311198	\$1,578,561	8/25/2023
10	SILVER STAR FILM LLC	PROD-00310526	\$386,778	8/31/2023
11	FALLOUT THE MOVIE LLC	PROD-00308559	\$603,014	9/6/2023
12	Alright Productions Inc.	PROD-00311360	\$5,225,942	9/7/2023
13	Ocarina Incident LLC	PROD-00310811	\$4,847,645	9/7/2023
		FILM TOTAL	\$ 31,778,824	

New Jersey Manufacturing Voucher Program (NJ MVP)

On October 12, 2022, the NJEDA Board approved the New Jersey Manufacturing Voucher Program (NJ MVP). The New Jersey Manufacturing Voucher Program will provide equipment grants sized at 30% – 50% of the cost of the eligible equipment (including installation) up to a maximum award amount of \$250,000. The program will target the State’s manufacturers within targeted industries that will purchase equipment that integrate advanced or innovative technologies, processes, and materials to improve the manufacturing of products. The program will offer bonuses focused on certified woman, minority, veteran owned businesses (WMVB), opportunity zones, purchasing manufacturing equipment in New Jersey as well as bonuses for companies that have a collective bargaining agreement in place. NJ MVP is also committed to supporting small businesses by awarding manufacturers with under 100 Full Time Equivalent employees (FTE), higher award percentages. In addition, applications will be accepted on a rolling basis and remain open until all funds are committed.

On March 8, 2023, the Board approved to increase the available funding from \$20,000,000 to \$33,750,00 less \$1 million for administrative expenses available to support New Jersey manufacturers’ access to manufacturing equipment needed to become more efficient, productive, and profitable.

New Jersey Manufacturing Voucher Program (NJ MVP) - Q3 2023 Results

The NJMVP application launched on March 8, 2023, and the Authority has received 267 applications as of May 1, 2023, totaling \$37,625,049.28. Applications received beyond the available funding that were placed on a waitlist, are being processed with the utilization of up to \$4,000,000 of the \$20,000,000 from funds from the Fiscal Year 2024 (FY2024) budget to capitalize the NJ MVP, New Jersey Manufacturing Voucher Program Phase 2.

Below is a detailed list of all NJ MVP applications that were approved under delegated authority during the third quarter of 2023:

Applicant Name	PROD#	Approved Amount	Approval Date
Precision Electronic Glass	PROD-00309459	\$250,000.00	7/3/2023
SW electronics & Manufacturing corp.	PROD-00309445	\$250,000.00	7/5/2023
Hubbell Power Systems, Inc.	PROD-00309851	\$162,188.70	7/5/2023
Kristy's Kuts, INC.	PROD-00309755	\$127,784.70	7/5/2023
Paragon Flavors, Inc.	PROD-00309772	\$169,125.60	7/6/2023
Jerseypac LLC	PROD-00309454	\$145,880.00	7/7/2023
Yespac Inc.	PROD-00309880	\$250,000.00	7/7/2023
SOUTH JERSEY BREWING COMPANY LLC	PROD-00309611	\$10,692.50	7/7/2023
Subculture Beer, LLC	PROD-00309552	\$17,100.00	7/7/2023
Rex Lumber Co.	PROD-00309447	\$245,813.70	7/13/2023
Gourmet Nut	PROD-00309822	\$185,500.00	7/18/2023

Tropical Cheese Industries, Inc. and affiliates	PROD-00309652	\$250,000.00	7/18/2023
Darush LLC.	PROD-00309486	\$197,072.05	7/18/2023
Natali Vineyards LLC	PROD-00309690	\$21,000.00	7/21/2023
Whibco of New Jersey. Inc.	PROD-00309492	\$250,000.00	7/25/2023
Novacel Americas, Inc.	PROD-00309574	\$122,305.00	7/27/2023
NWL, Inc.	PROD-00309539	\$211,737.38	7/27/2023
Ducklin Art LLC	PROD-00309875	\$46,400.00	7/28/2023
Devonheir, Inc	PROD-00309815	\$108,701.25	7/31/2023
Primo Pharmatech LLC	PROD-00309685	\$76,064.00	8/4/2023
J & J SNACK FOODS CORP	PROD-00309620	\$250,000.00	8/4/2023
Angel's Bakery USA LLC	PROD-00309538	\$250,000.00	8/17/2023
CORNING PHARMACEUTICAL GLASS, LLC	PROD-00309668	\$250,000.00	9/8/2023
Robert T. Winzinger, Inc.	PROD-00309501	\$200,000.00	9/8/2023
Maple Holistics LLC	PROD-00309681	\$85,931.00	9/12/2023
New Jersey Precision Technologies, Inc.	PROD-00309725	\$56,100.00	9/20/2023
Total		\$4,189,395.88	

Prior to the third quarter of 2023, 170 applications were approved under delegated authority for combined voucher amount of \$21.70 million. 7 of these applications were withdrawn post approval. Their combined voucher amount was \$308,924.

NJ Entrepreneur Support Program (NJESP) Program

On March 26, 2020, the NJEDA Board approved the NJ Startup Entrepreneur Support Program (NJESP) to help New Jersey entrepreneurial businesses with limited funding navigate COVID-19 related cashflow constraints, by providing financial support to their existing investors. Through NJESP, investors in NJ entrepreneurial businesses (operating in Innovation Economy sectors) could receive a guarantee (up to 80%, not to exceed \$200,000 per company) for new, qualified bridge loans/convertible notes. The guarantee matures in one year having an expiration date one year from the underlying note's issue date. If certain financial conditions are met by the company within this one-year term, the note investor could submit a claim to the NJEDA for payment of the guarantee. The total program budget was \$5 million.

The Program was open from April 22, 2020, until February 12, 2021. A total 97 applications were submitted, from which 47 applications were approved by the Authority staff under delegated authority. The guarantee amount in total was \$2.036 million for \$2.545 million of note investments. This represents investments in 13 unique businesses with a total of 85 full-time NJ employees. Additionally, 28 applications were withdrawn, and 22 applications were declined. There was 1 guarantee payment made to 1 investor in 1 company for \$60,000. The guaranteed loan was assigned to the NJEDA and is currently with SLM for collection.

Entering into 2023, the effects stemming from the pandemic continue to impact the financial system presenting challenges to the startup-focused banking system, similar to the issues identified by NJEDA at the start of the COVID-19 pandemic. In particular, on March 8, 2023, this financial crisis made headlines after a run at Silicon Valley Bank. As a result of these conditions, the investor market became reluctant to extend financial support to startup businesses. In response, the NJEDA decided to provide additional support by reopening the NJESP in March of 2023. Then, in April of 2023, the NJEDA Board approved program updates to better suit NJESP to the current market. These updates include allowing new company investors to participate, increasing the total guarantee amount per company to \$400,000 (\$500,000 in total loans), raising the company's maximum number of total employees to fewer than 225 total employees, removing the trailing twelve-month revenue requirement, and updating the eligible company industries to the NJEDA's list of established "targeted industries".

NJ Entrepreneur Support Program - Q3 2023 Review

Following the Program's launch in Q1 2023, announcements were made through various communications channels including all media platforms utilized by the Authority and external outlets such as NJBIZ, Insider NJ, New Jersey Business Magazine, shared by elected officials and more. Staff continued to receive significant inbound interest from companies in Q3 2023. Multiple companies have the potential to leverage the Program and will be monitored for possible application submissions.



Tim Sullivan, CEO

Angel Investor Tax Credit Prepared by: Christopher Shyers

NJ Ignite Prepared by: Sara Caddedu

NJ Accelerate Prepared by: Sara Caddedu

New Jersey Zero-emission Incentive Program Prepared by: Olivia Barone

New Jersey Film and Digital Media Tax Credit Program Prepared by: Matthew Sestrich

New Jersey Manufacturing Voucher Program Prepared by: Ivan Mendez

Angel Match Program Prepared by: Monika Athwal

NJ Entrepreneur Support Program Prepared by: Monika Athwal

Memo Prepared by: Fariha Sheikh, and Clark Smith

Attachments: Exhibits A, B, C

EXHIBIT A

Q3 2023 Delegated Approvals - Angel Investor Tax Credit

Applicant	Employees in NJ	Company	Investment	Tax Credit
Alan Wayne Tamarelli		Beable Education, Inc.	\$750,000	\$187,500
Thomas Catanese		Beable Education, Inc.	\$1,000,000	\$250,000
	NJ: 39 Total: 44	Beable Education, Inc.	\$1,750,000	\$437,500
Lynne D Schneider		BioAegis Therapeutics, Inc.	\$30,000	\$6,000
	NJ: 10 Total: 11	BioAegis Therapeutics, Inc.	\$30,000	\$6,000
Chase Angel LLC		Calamu Technologies Corporation	\$50,000	\$10,000
	NJ: 6 Total: 7	Calamu Technologies Corporation	\$50,000	\$10,000
Wasabi Investors LLC		Elucida Oncology	\$200,000	\$40,000
	NJ: 10 Total: 13	Elucida Oncology	\$200,000	\$40,000
Robert A Friedman and Karen Freeman Friedman		Enalare Therapeutics Inc.	\$50,000	\$10,000
DAVID H. WOLLMUTH		Enalare Therapeutics Inc.	\$25,000	\$5,000
Laurence Lytton		Enalare Therapeutics Inc.	\$200,000	\$40,000
William Peters and Stephanie Peters		Enalare Therapeutics Inc.	\$50,000	\$10,000
Warwick Capital Partners LLC.		Enalare Therapeutics Inc.	\$500,000	\$100,000
Martin Lutz		Enalare Therapeutics Inc.	\$117,000	\$23,400
Robert A. Yedid, Roth IRA		Enalare Therapeutics Inc.	\$250,000	\$50,000
Joseph F. Petko		Enalare Therapeutics Inc.	\$150,000	\$30,000
Gino Santini		Enalare Therapeutics Inc.	\$150,000	\$30,000
Herman Cukier		Enalare Therapeutics Inc.	\$125,000	\$25,000
Daniel Seth Wichman		Enalare Therapeutics Inc.	\$200,000	\$40,000
	NJ: 5 Total: 6	Enalare Therapeutics Inc.	\$1,817,000	\$363,400
TJC3 LLC		EOS Energy Storage LLC	\$650,000	\$65,000

AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$100,000	\$10,000
AltEnergy Storage Bridge Phase II llc		EOS Energy Storage LLC	\$150,000	\$15,000
AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$81,858	\$8,186
AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$100,000	\$10,000
AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$250,000	\$50,000
AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$250,000	\$50,000
AltEnergy Storage Bridge, LLC		EOS Energy Storage LLC	\$100,000	\$20,000
AltEnergy Storage Bridge Phase II llc		EOS Energy Storage LLC	\$150,000	\$30,000
	NJ: 57 Total: 62	EOS Energy Storage LLC	\$1,831,858	\$258,186
Marco Alexander Krohn		EV Edison, INC.	\$1,000,000	\$250,000
Glen Henry Scheinberg		EV Edison, INC.	\$500,000	\$125,000
	NJ: 4 Total: 4	EV Edison, INC.	\$1,500,000	\$375,000
Brian Kline		Futurestay, Inc.	\$35,000	\$7,000
Barbara Moore		Futurestay, Inc.	\$35,000	\$7,000
Barbara Moore		Futurestay, Inc.	\$35,000	\$7,000
Capital Artists LLC		Futurestay, Inc.	\$1,900,000	\$380,000
	NJ: 8 Total: 9	Futurestay, Inc.	\$2,005,000	\$401,000
The Michael M. Alper Revocable Trust of 2005		Genomic Prediction Inc	\$100,000	\$20,000
Sonia Elguero		Genomic Prediction Inc	\$100,000	\$20,000
David Ryley		Genomic Prediction Inc	\$100,000	\$20,000
David L Stern		Genomic Prediction Inc	\$100,000	\$20,000
Mark Mueller 2008 Revocable Trust		Genomic Prediction Inc	\$100,000	\$20,000
VCVC V LLC		Genomic Prediction Inc	\$4,000,000	\$500,000
Tom Luke		Genomic Prediction Inc	\$100,000	\$20,000
Samuel Pauli		Genomic Prediction Inc	\$99,999	\$20,000
	NJ: 23 Total: 29	Genomic Prediction Inc	\$4,699,999	\$640,000

Michael Gerard Maguire		Halcyon Still Water, LLC	\$30,048	\$6,010
James Maguire		Halcyon Still Water, LLC	\$30,048	\$6,010
William K Luby Revocable Trust		Halcyon Still Water, LLC	\$175,000	\$35,000
	NJ: 8 Total: 9	Halcyon Still Water, LLC	\$235,096	\$47,020
Jonathan Halperin		Hope Portal Services, Inc	\$37,500	\$7,500
	NJ: 6 Total: 7	Hope Portal Services, Inc	\$37,500	\$7,500
Jignesh Patel		ImageProVision, Inc.	\$30,000	\$7,500
	NJ: 1 Total: 1	ImageProVision, Inc.	\$30,000	\$7,500
Jerry H. Labowitz		Ionic H2O Inc	\$400,000	\$100,000
Alon Davidov		Ionic H2O Inc	\$50,000	\$12,500
	NJ: 3 Total: 4	Ionic H2O Inc	\$450,000	\$112,500
Abraham Brach		Logie Inc.	\$25,000	\$6,250
	NJ: 3 Total: 3	Logie Inc.	\$25,000	\$6,250
Edward and Nina Stelmakh JTWR0S		MetasTX LLC	\$25,000	\$5,000
	NJ: 1 Total: 1	MetasTX LLC	\$25,000	\$5,000
Gordon D Donald MD		Molecular Surface Technologies	\$435,231	\$108,808
	NJ: 2 Total: 2	Molecular Surface Technologies	\$435,231	\$108,808
Narmada Suryadevara		Onconox, Inc.	\$200,000	\$40,000
Satish Kudaravalli		Onconox, Inc.	\$50,000	\$10,000
Shailendra Lakhanpal		Onconox, Inc.	\$100,000	\$20,000
Vinita Yalamanchili		Onconox, Inc.	\$50,000	\$10,000
Lakshmi Swathi Kadiyala		Onconox, Inc.	\$25,000	\$5,000
Rajiv Nekkanti		Onconox, Inc.	\$100,000	\$20,000
Rudraraju Trust		Onconox, Inc.	\$50,000	\$10,000
Ajay Kambhampati		Onconox, Inc.	\$100,000	\$20,000
Peddi Raju Ayanampudi		Onconox, Inc.	\$50,000	\$10,000
Srinivas Velaga		Onconox, Inc.	\$25,000	\$5,000
Srinivasa Katragadda		Onconox, Inc.	\$50,000	\$10,000
Rajanikanth Batchu		Onconox, Inc.	\$50,000	\$10,000
Kranthi Paladugu		Onconox, Inc.	\$25,000	\$5,000

	NJ: 3 Total: 3	Onconox, Inc.	\$875,000	\$175,000
Panda Capital LLC		Ricovr Healthcare Inc	\$50,000	\$10,000
	NJ: 2 Total: 2	Ricovr Healthcare Inc	\$50,000	\$10,000
Deborah Doyle		SunRay Scientific Inc	\$12,500	\$3,125
Edward Beardsworth		SunRay Scientific Inc	\$25,000	\$6,250
Ted Chan		SunRay Scientific Inc	\$50,000	\$12,500
Fabrizio Franco		SunRay Scientific Inc	\$25,000	\$6,250
Shivam Advisors LLC		SunRay Scientific Inc	\$50,000	\$12,500
Jayaraman Veezhinathan		SunRay Scientific Inc	\$10,000	\$2,500
Patrick Henry Stoltzfus		SunRay Scientific Inc	\$10,001	\$2,500
Eric Rugart		SunRay Scientific Inc	\$25,000	\$6,250
Henry Reed Nolte III		SunRay Scientific Inc	\$25,000	\$6,250
Novem Select Holdings LLC		SunRay Scientific Inc	\$20,000	\$5,000
Frances Elizabeth BrandonFarrow		SunRay Scientific Inc	\$20,002	\$5,001
Megan McKenzie Toman Elliott		SunRay Scientific Inc	\$10,900	\$2,725
Alexander Pavliv		SunRay Scientific Inc	\$20,000	\$5,000
Renata Meyer-Tarazi		SunRay Scientific Inc	\$12,844	\$3,211
RoseAnn B. Rosenthal		SunRay Scientific Inc	\$10,000	\$2,500
Christian Michael Noyes		SunRay Scientific Inc	\$25,070	\$6,268
Jeffrey Dvoretz		SunRay Scientific Inc	\$25,000	\$6,250
Kenneth Howard Kristal		SunRay Scientific Inc	\$10,000	\$2,500
Irma Magadan		SunRay Scientific Inc	\$8,915	\$2,229
Gwen Edwards		SunRay Scientific Inc	\$12,500	\$3,125
Janet Hallahan		SunRay Scientific Inc	\$12,500	\$3,125
Crucial Concepts, LLC		SunRay Scientific, Inc.	\$75,001	\$18,750
	NJ: 12 Total: 13	SunRay Scientific, Inc.	\$495,233	\$123,809
SSB Investments, Inc.		Transcend Street Solutions, Inc.	\$2,658,613	\$500,000
	NJ: 34 Total: 34	Transcend Street Solutions, Inc.	\$2,658,613	\$500,000
Basel Mustafa Abu Alrub		Vytalize Health Inc.	\$149,956	\$29,991
	NJ: 6 Total: 7	Vytalize Health Inc.	\$149,956	\$29,991
Grand Total		87	\$19,350,486.00	\$3,664,464.00

EXHIBIT B

2023 Q3 Program Summary - Angel Investor Tax Credit

Program Year	# of Declined Applications	# of Approved Applications	# of Approved Companies
2013	0	28	5
2014	7 withdrawn/5 declined	174	20
2015	3 withdrawn/32 declined	212	27
2016	12 declined	247	31
2017	3 declined	256	39
2018	14 withdrawn	244	45
2019	7 withdrawn/4 declined	161	32
2020	17 withdrawn/1 declined	666	52
2021	24 withdrawn/3 declined	611	61
2022	16 withdrawn	401	24
2023	2 withdrawn	3	2

Program Year	Annual Tax Credit Allocation	Approved Tax Credits	Allocated Amount Remaining	Program Open/Closed
2013	\$25,000,000.00	\$1,407,315	\$23,592,684.80	Closed
2014	\$25,000,000.00	\$5,363,927	\$19,636,073.00	Closed
2015	\$25,000,000.00	\$5,008,169	\$19,991,830.75	Closed
2016	\$25,000,000.00	\$8,357,418	\$16,642,582.00	Closed
2017	\$25,000,000.00	\$11,177,610	\$13,822,390.00	Closed
2018	\$25,000,000.00	\$10,650,387	\$14,349,613.00	Closed
2019	\$25,000,000.00	\$3,310,934	\$21,689,066.00	Closed
2020	\$25,000,000.00	\$22,254,094	\$2,745,906.00	Open
2021	\$35,000,000.00	\$21,270,124	\$13,729,876.00	Open
2022	\$35,000,000.00	\$14,815,831	\$20,184,169.00	Open
2023	\$35,000,000.00	\$82,500	\$34,917,500.00	Open

EXHIBIT C

Q3 2023 Purchaser Approvals- New Jersey Zero-emission Incentive Program Phase 2

Name of Applicant	Vendor	Purchaser Location	SBE	MBE	WBE	VBE	Driving in an EJ community	# of vehicles	Total Voucher \$
Emily Painting LLC	Envirotech Vehicles, Inc	Newark	Yes	Yes	No	No	Yes	2	\$180,700.00
Enat Deliveries Limited Liability Company	Lightning Systems Inc	Bergen county	Yes	Yes	Yes	No	Yes	3	\$214,500.00
Ride Man LLC	Lightning Systems Inc	Lakewood Township	Yes	No	No	No	Yes	4	\$270,000.00
CENTRAL ART & ENGINEERING, INC.	Envirotech Vehicles, Inc	Burlington County	Yes	No	No	Yes	Yes	1	\$90,350.00
FFH Logistics Inc	Xos Services, Inc.	Monroe Township	Yes	No	No	No	Yes	1	\$121,500.00
JUSTLOVE L.L.C.	Endera Motors, LLC	Camden county	Yes	Yes	Yes	No	Yes	1	\$92,950.00
19 Floyd LLC	H.K. Truck Services	Jersey City	Yes	Yes	No	No	Yes	1	\$180,700.00
Honey Bunnys Baskets	H.K. Truck Services	Newark	Yes	Yes	Yes	No	Yes	1	\$92,950.00
VIGNAGA FOODS LLC	H.K. Truck Services	Jersey City	Yes	Yes	No	No	Yes	2	\$215,450.00
19 Floyd LLC	Rivian LLC	Jersey City	Yes	Yes	No	No	Yes	1	\$27,800.00
Gabriela Perez	Envirotech Vehicles, Inc	Passaic County	Yes	Yes	Yes	No	Yes	1	\$92,950.00
Ride Man LLC	Envirotech Vehicles, Inc	Lakewood Township	Yes	No	No	No	Yes	6	\$526,500.00
Texind Inc.	Rivian LLC	East Hanover	Yes	Yes	No	No	Yes	1	\$27,000.00
Traveling Deals LLC	Rivian LLC	Lakewood Township	Yes	No	No	No	Yes	2	\$54,000.00
ADVANCE GLASS PROS LLC	Lightning Systems Inc	River Edge	Yes	No	No	No	No	1	\$62,500.00
Calima Inc.	GreenPower Motor Company, Inc.	Edison	Yes	No	No	No	Yes	1	\$87,750.00
Samra Private Wealth Management, LLC	Rivian LLC	Princeton	Yes	Yes	No	No	No	1	\$25,800.00
VIGNAGA	Rivian LLC	Jersey City	Yes	Yes	No	No	Yes	1	\$27,800.00

FOODS LLC									
Z Transportation Inc.	Hudson County Motors	Lincoln Park	No	No	No	No	No	2	\$350,000.00
BAM Sunshine Group LLC	GreenPower Motor Company, Inc.	Middlesex and Somerset Counties	Yes	Yes	Yes	No	Yes	1	\$92,950.00
DELGADO BROTHERS PLUMBING & HEATING LLC	Lightning Systems Inc	Passaic	Yes	Yes	No	No	Yes	3	\$202,500.00
Nicomex, Inc	Envirotech Vehicles, Inc	Passaic County	Yes	Yes	No	No	Yes	1	\$90,350.00
Performance Team Logistics LLC	TEC Equipment	Kearny	No	No	No	No	No	6	\$1,050,000.00
BETTAWAY Beverage Distributions Inc	Campbell Freightliner, LLC	South Plainfield	No	No	No	No	No	3	\$525,000.00
QUALITYZON E CORP	Rivian LLC	Deptford Township	Yes	Yes	Yes	No	Yes	1	\$28,600.00
Sweet Tee's Catering	Envirotech Vehicles, Inc	Roselle	Yes	Yes	Yes	No	Yes	2	\$185,900.00
Klive International Corp	Rivian LLC	Wyckoff	Yes	No	No	No	No	1	\$25,000.00
Infinite I.P Corporation	Rivian LLC	Mercer County	Yes	No	No	No	No	1	\$26,600.00
Traveling Treats Limited Liability Company	Xos Services, Inc.	Lakewood Township	Yes	No	No	No	Yes	2	\$243,000.00
Robinson Aerial Surveys, Inc.	H.K. Truck Services	Hacketstow n	Yes	Yes	No	No	Yes	1	\$90,350.00
Selfmade93, LLC	GreenPower Motor Company, Inc.	Newark	Yes	Yes	No	No	Yes	2	\$180,700.00
Selfmade93, LLC	GreenPower Motor Company, Inc.	Newark	Yes	Yes	No	No	Yes	2	\$180,700.00
Creatiba Inc	H.K. Truck Services	Newark	Yes	No	No	No	Yes	1	\$87,750.00
Sarcona Management Inc	H.K. Truck Services	Newark	No	No	No	No	No	2	\$180,000.00
Sarcona	Alta Electric	Newark	No	No	No	No	No	1	\$175,000.00

Management Inc	Vehicles North East, LLC								
BETTAWAY Beverage Distributions Inc	Orange EV LLC	South Plainfield	No	No	No	No	No	1	\$175,000.00
Current Trucking Connect LLC	Hunter Keystone Peterbilt LP	Morristown	No	No	No	No	No	4	\$700,000.00
Infotech Global Inc	Rivian LLC	Edison	Yes	No	No	No	No	1	\$27,000.00
LZT Services LLC	Rivian LLC	Tinton Falls	Yes	No	Yes	No	No	2	\$55,600.00
edRNA Inc.	Rivian LLC	Princeton	Yes	No	No	No	No	1	\$25,000.00
Hermann Forwarding Company	Campbell Freightliner, LLC	Middlesex County	No	No	No	No	Yes	1	\$175,000.00
IPPsolar Transport LLC	HK Trucking Center	Moonachie	Yes	No	No	No	Yes	7	\$1,653,750.00
Lineage Logistics Services, LLC	Orange EV LLC	Elizabeth	No	No	No	No	No	8	\$1,400,000.00
The Kids Palace II LLC	H.K. Truck Services	West Orange	Yes	Yes	Yes	No	Yes	2	\$185,900.00
Z Transportation Inc.	Cleveland Brothers Equipment Co	Lincoln Park	No	No	No	No	No	4	\$700,000.00
CURRENT TRUCKING LLC	Lightning Systems Inc	Morristown	No	No	No	No	No	20	\$1,000,000.00
CURRENT TRUCKING LLC	Campbell Freightliner, LLC	Morristown	No	No	No	No	No	1	\$175,000.00
Duo Sales LLC	Envirotech Vehicles, Inc	Passaic County	Yes	Yes	No	No	Yes	3	\$271,050.00
IPPsolar Transport LLC	American Commercial Equipment Leasing LLC	Moonachie	Yes	No	No	No	Yes	6	\$1,312,500.00
CK and G Trucking Inc.	Xos Services, Inc.	Jersey City	Yes	Yes	Yes	No	Yes	2	\$257,400.00
Ristorante Nani, Fine Italian Cuisine, Inc.	Envirotech Vehicles, Inc	Rochelle Park	Yes	No	No	No	Yes	1	\$87,750.00
Sand Bar Joes LLC	Rivian LLC	Wildwood	Yes	No	No	No	Yes	1	\$27,000.00
Advanced Eyecare of Carteret Inc	Rivian LLC	North Bergen	Yes	Yes	Yes	No	Yes	2	\$57,200.00

All Chemical Transport Corp.	H.K. Truck Services	Lakewood Township	No	No	No	No	No	10	\$1,750,000.00
All Chemical Transport Corp.	American Commercial Equipment Leasing, LLC	Lakewood Township	No	No	No	No	No	6	\$1,050,000.00
City Girl Fund Co	Phoenix Motorcars	Camden	Yes	No	Yes	No	Yes	1	\$90,350.00
Current Trucking Connect LLC	Campbell Freightliner, LLC	Morristown	No	No	No	No	No	2	\$350,000.00
Tri-County Termite & Pest Control, Inc.	Envirotech Vehicles, Inc	Penns Grove	Yes	No	No	No	Yes	3	\$263,250.00
Specialty Services LLC	GreenPower Motor Company, Inc.	Dover	Yes	No	No	No	Yes	1	\$87,750.00
TS Delivery Service, Inc	Xos Services, Inc.	Cherry Hill	No	No	No	No	No	6	\$675,000.00
AllZone Express Inc.	Xos Services, Inc.	Barrington	Yes	Yes	No	No	Yes	7	\$875,000.00
GSE Services Inc	Xos Services, Inc.	Barrington	Yes	No	No	No	Yes	4	\$486,000.00
Arriazo LLC	GreenPower Motor Company, Inc.	Elizabeth	Yes	Yes	Yes	No	Yes	1	\$92,950.00
Wysocki Electric Inc	Phoenix Motorcars LLC	Pedricktown	Yes	No	No	No	Yes	2	\$175,500.00
Zeem Solutions LLC	Alta Electric Vehicles North East	Elizabeth	Yes	No	No	No	Yes	8	\$1,890,000.00
Zeem Solutions, LLC	Hunter Keystone Peterbilt LP	Elizabeth	Yes	No	No	No	Yes	2	\$472,500.00
APM Terminals Elizabeth LLC	Phoenix Motorcars	Union County	No	No	No	No	No	2	\$195,000.00
Current Trucking LLC	Gabrielli Kenworth of New Jersey	Morristown	No	No	No	No	No	10	\$1,750,000.00
Dape Consulting, Inc.	Alta Electric Vehicles North East	Elizabeth	Yes	No	No	No	Yes	8	\$1,890,000.00

MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan, Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Post Closing Credit Delegated Authority Approvals for 3Q Quarter 2023
For Informational Purposes Only

The following post-closing actions were approved under delegated authority during the third quarter of 2023:

Name	EDA Credit Exposure	Action
44 Washington Street 2018 LLC (Family First Funding, LLC)	\$323,795.40 SLPPL	Approve a 90-day short-term maturity extension to match a similar extension from participating lender, Ocean First Bank, to allow time for repayment through sale of property.
Velocity Maintenance Solutions LLC	\$96,880.00 CVSB2LO	Subordinate EDA’s lien position on borrower’s business assets to a new Revolving Credit Facility from PNC Bank
Menapace Holdings LLC (The Farmhouse Store Princeton, LLC)	\$90,881.72 SBFPL	Extend the loan maturity five years to May 1, 2028, with a 15-year amortization to align with corresponding extension from lender, M&T Bank.



Tim Sullivan, CEO

Prepared by: Sandra Foresta and Mansi Naik



MEMORANDUM

TO: Members of the Authority
FROM: Tim Sullivan, Chief Executive Officer
DATE: November 16, 2023
SUBJECT: Post Closing Incentives Delegated Authority Memo – 3rd Quarter 2023

(For Informational Purposes Only)

Since 2001, and most recently in April 2023, the Members have approved delegations to staff for post-closing incentive modifications that are administrative and do not materially change the original approvals of these grants.

Attached is a list of the Incentives Delegated Authority Modifications that were approved in the 3rd Quarter ending September 30, 2023.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is positioned above a horizontal line.

Tim Sullivan, CEO

Prepared by: F. Saturne

ACTIONS APPROVED UNDER DELEGATED AUTHORITY

THIRD QUARTER ENDING September 30, 2023

GROW NEW JERSEY ASSISTANCE PROGRAM-COVID RELIEF

Applicant	Modification Action	Approved Award
Charles Komar & Sons Inc.	Reduce the number of incented new jobs from 448 to 311 for the 2020 tax year and all subsequent tax periods remaining in the commitment period.	\$37,200,000
FXDirectDealer, LLC	Approve termination of the Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$9,075,000
Jacmel Jewelry, Inc	Reduce the number of incented new jobs from 75 to 45 for 2020 tax year and all subsequent tax periods remaining in the commitment duration and exclude March-July 2020 from the 12-month 2020 monthly average.	\$3,000,000
Nestle Healthcare Nutrition, Inc.	Suspend the reporting obligation for 2020 tax year and extend the eligibility period through the 2029 tax year and the commitment duration through the 2034 tax year.	\$14,455,000
Rubbercycle, LLC	Suspend the reporting obligation for the 2021 tax year and extend the eligibility period through the 2028 tax year and the commitment period through the 2033 tax year.	\$2,385,000
Taiho Oncology Inc.	Approve termination of the Incentive Agreement effective 2020 pursuant to the COVID-Related Relief provision of the New Jersey Economic Recovery Act of 2020.	\$3,500,000
Tory Burch, LLC	Reduce the number of new incented jobs from 139 to 115 for the 2020 tax year and all subsequent tax periods remaining in the commitment period.	\$10,772,500

BUSINESS EMPLOYMENT INCENTIVE GRANT PROGRAM

Grantee	Modification Action	Approved Award
American Home Assurance Company	Consent to Re-designate the grantee AIG Property Casualty Insurance Agency, Inc. to Risks Specialists Companies Insurance Agency as a result of a merger and remove various affiliates from the BEIP agreement.	\$4,638,000
American Home Assurance Company	Consent to the removal of various affiliates listed in the BEIP Agreement and name change from AIG Global Services, Inc to AIG Technologies, Inc.	\$8,563,500
American Home Assurance Company	Consent to remove AIG Global Claims Services, Inc. effective January 1, 2015.	\$4,669,200
Bayer Healthcare LC, Bayer US, LLC and Bayer Corporation	Consent to the reduction in award percentage from 80% to 75% due to the decrease of NEC from 500 to 342 effective December 31, 2019. Bonus decreased from 30% to 20% based on decrease in NEC.	\$25,000,000
CVS Pharmacy, Inc. And Caremark, LLC	Consent to the reduction in award percentage from 65% to 60% due to the decrease of NEC from 250 to 140 effective December 31, 2015.	\$5,961,313
Pfizer Inc.	Consent to the removal of various affiliates listed in the BEIP Agreement and name change from Pharmacia & Upjohn Company to Pharmacia & Upjohn Company LLC, and Wyeth Holdings Corporation to Wyeth Holdings LLC.	\$9,182,250
TI, Inc. And TI Distribution Services, Inc.	Consent to Re-designate the grantee from TI Distribution Services Inc to TI Distribution Services, LLC and Change the name of TI Inc. Retail to TI Retail, LLC.	\$3,288,372

SALEM/UEZ ENERGY SALES TAX EXEMPTION RENEWALS

Applicant	Extend to date	Location	#/% of employees	Benefit
B & B Poultry Co., Inc.	August 31, 2024	Norma, NJ (Salem City)	56/87%	\$70,526
Mexichem Specialty Resins Inc.	August 7, 2024	Pedricktown, NJ (UEZ)	79/83%	\$682,914
Union beverage Packers, LLC.	August 29, 2024	Hillside, NJ (UEZ)	285/95%	\$398,792



MEMORANDUM

TO: Members of the Authority

FROM: Tim Sullivan
Chief Executive Officer

DATE: November 16, 2023

SUBJECT: Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses for Third Quarter 2023 *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/ Licenses in July 2023, August 2023, and September 2023:

LEASES

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>
Skunkworx	Bioscience Center Incubator	Renewal Letter	12 months	2725
Smirta	Bioscience Center Incubator	Lease Agreement	12 months	125
JMS Pharma LLC	Bioscience Center Incubator	Lease Extension	Amendment 10mths	2762
Couragene	Bioscience Center Incubator	Renewal Letter	12 months	1862
Zena Therapeutics	Bioscience Center Incubator	New Lease	12 months	931
Chrom-Matrix	Bioscience Center Incubator	Renewal Letter	12 months	931
TheWell Bioscience	Bioscience Center Incubator	Month to Month	Month to month	2200
Fidelis Pharmaceuticals	Bioscience Center Incubator	Month to month	Month to Month	125
Histobridge	Bioscience Center Incubator	Month to month	Month to month	800

<u>TENANT</u>	<u>LOCATION</u>	<u>TYPE</u>	<u>TERM</u>	<u>S.F.</u>
Linus Biotechnology	Step Out Labs	New Lease	36 months	854
BioAegis	Step Out Labs	Renewal Letter	36 months	1810

The following approvals were made pursuant to Delegated Authority for Procurement, including the issuance of Task Orders, in July 2023, August 2023 and September 2023:

<u>DATE EXECUTED</u>	<u>ENTITY</u>	<u>PROJECT</u>	<u>TYPE</u>	<u>TERM</u>	<u>CONSIDERATION</u>
8/23/2023	CME Associates	Maternal & Infant Health	Procurement (Including Task Orders)		12,492.00

The following approvals were made pursuant to Delegated Authority for Rights-of-Entry/License Agreements, in July 2023, August 2023 and September 2023:

None to report for third quarter, 2023.



Tim Sullivan, CEO

Prepared by Cyndi Costello