



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Timothy Sullivan  
Chief Executive Officer

**DATE:** October 13, 2021

**SUBJECT:** Agenda for Board Meeting of the Authority October 13, 2021

**Notice of Public Meeting**

**Roll Call**

**Approval of Previous Month's Minutes**

**CEO's Report to the Board**

**Innovation**

**Authority Matters**

**Economic Growth**

**Incentives**

**Loans/Grants/Guarantees**

**Bond Projects**

**Board Memoranda**

**Executive Session**

**Public Comment**

**Adjournment**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**September 22, 2021**

**MINUTES OF THE MEETING**

*The Meeting was held by teleconference call.*

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

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

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

Mr. Quinn called the meeting to order at 10:00 am.

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

**MINUTES OF AUTHORITY MEETING**

The next item of business was the approval of the August 11, 2021 meeting minutes. A motion was made to approve the minutes by Ms. Maloney, seconded by Ms. Bauer, and was approved by the 8 voting members present.

Ms. Giblin abstained because she was not present for the meeting.

The next item of business was the approval of the August 11, 2021 executive session meeting minutes. A motion was made to approve the minutes by Ms. Bauer, seconded by Ms. Marley, and was approved by the 7 voting members present.

Ms. Giblin abstained because she was not present for the meeting.

Ms. Dragon abstained because she was not present for the meeting.

The next item of business was the approval of the September 8, 2021 special meeting minutes. A motion was made to approve the minutes by Ms. Bauer, seconded by Mr. Sarlo, and was approved by the 7 voting members present.

Mr. Quinn abstained because he was not present for the meeting.  
Ms. Giblin abstained because she was not present for the meeting.

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

**FOR INFORMATION ONLY:** The next item was the presentation of the CEO’s remarks to the Board.

Aisha Glover and Rosemari Hicks joined the call at this time.

**AUTHORITY MATTERS**

**ITEM: Annual Organizational Meeting**

**REQUEST:** To approve the election of Officers and committee appointments to the Board, and adoption of the Calendar of Meetings through September 2022.

**MOTION TO APPROVE:** Ms. Maloney      **SECOND:** Ms. Dragon      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

**ITEM: Recommendation for Grant Awards - 21<sup>st</sup> Century Redevelopment Challenge**

**REQUEST:** To approve 21<sup>st</sup> Century Challenge Program grants to communities to develop or accelerate implementation of plans for repurposing or removing “stranded assets.”

**MOTION TO APPROVE:** Ms. Dragon      **SECOND:** Commissioner Angel      **AYES: 11**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 2**

Commissioner Caride and Mr. Alagia joined the call at this time.

**ECONOMIC GROWTH**

**ITEM: NJ Wind Turbine Tech Training Challenge Award**

**REQUEST:** To approve NJ Wind Turbine Tech Training Challenge grant funding to develop industry recognized wind turbine technician training that will support the development of the offshore wind industry and workforce in New Jersey.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Maloney      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 3**

**ITEM: Third Amendment to the Memorandum of Understanding (MOU) between the Authority and the NJ Commission on Science, Innovation and Technology (CSIT) and alignment of Research with NJ (RwNJ) with CSIT**

**REQUEST:** To approve a third amendment to the MOU between the Authority and the CSIT, and approval for the receipt of CSIT funds to support ResearchwithNJ (RwNJ).

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Commissioner Caride      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 4**

**ITEM: Funding Support and Delegated Authority for NJEDA engagement in membership organizations**

**REQUEST:** To approve funding from the Economic Recovery Fund to support memberships in innovation-oriented organizations that align with “targeted industries” as approved by the Board in July 2021; and delegated authority to the CEO to enter into membership agreements for memberships in organizations that support the development of targeted industries or increasing diversity and inclusion.

**MOTION TO APPROVE:** Commissioner Angelo   **SECOND:** Ms. Giblin   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 5**

**INCENTIVES**

**ITEM: Revisions to Net Benefit Test Policy for Emerge Program**

**REQUEST:** To approve changes detailing approaches for the Net Benefit Test to be employed by the Authority when evaluating projects for consideration with the Emerge Program.

**MOTION TO APPROVE:** Ms. Maloney   **SECOND:** Ms. Dragon   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 6**

**EMERGE**

**ITEM: Party City Holdings, Inc. - Emerge Tax Credit Application**

**REQUEST:** To adopt the recommended finding that existing jobs in the application are at-risk of being located outside of New Jersey; and an Emerge tax credit award to Party City to site the project in New Jersey, subject to conditions subsequently to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria.

**MOTION TO APPROVE:** Mr. Sarlo   **SECOND:** Ms. Bauer   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 7**

**ITEM: Fiserv Solutions, LLC - Emerge Tax Credit Application**

**REQUEST:** To adopt the recommended finding that existing jobs in the application are at-risk of being located outside of New Jersey; and to approve an Emerge tax credit award to induce Fiserv Solutions to site the project in New Jersey, subject to conditions subsequently to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria.

*THIS ITEM HAS BEEN WITHHELD FROM CONSIDERATION.*

**FILM TAX CREDIT**

**Big Indie Barn Burner**

PROD-00258484

**MAX AMOUNT OF TAX CREDITS:** \$4,111,832.20

**MOTION TO APPROVE:** Ms. Bauer   **SECOND:** Commissioner Caride   **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 8**

**Universal Television, LLC** PROD-00188192  
**MAX AMOUNT OF TAX CREDITS:** \$2,723,595  
**MOTION TO APPROVE:** Ms. Maloney **SECOND:** Commissioner Caride **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 9**

**LOANS, GRANTS, GUARANTEES**

**Premier Lender Program**

**ITEM: Century Savings Bank**  
**REQUEST:** Approval of the addition of Century Savings Bank as a Premier Lender.  
**MOTION TO APPROVE:** Ms. Giblin **SECOND:** Ms. Marley **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 10**

Commissioner Caride abstained from voting on this item as the Department of Banking and Insurance regulates financial institutions such as applicant.

**NJ COVEST Fund**

**APPLICANT: Inkbench, Inc.** PROD- 00258453  
**LOCATION:** Montclair Township, Essex County  
**PROCEEDS FOR:** Working capital  
**FINANCING:** up to \$250,000  
**MOTION TO APPROVE:** Ms. Marley **SECOND:** Mr. Alagia **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 11**

**Petroleum Underground Storage Tank (PUST)**

**ITEM:** Summary of NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program project approved by the Department of Environmental Protection.  
**MOTION TO APPROVE:** Ms. Dragon **SECOND:** Ms. Marley **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 12**

**Residential:**

**PROJECT:** Earl Hinton PROD. #00288659  
**LOCATION:** Waterford Township, Camden County  
**PROCEEDS FOR:** Remediation, Upgrade and Closure  
**FINANCING:** \$124,239.80

**PROJECT:** George Zahn PROD. #00288657  
**LOCATION:** Sparta Township, Sussex County  
**PROCEEDS FOR:** Remediation, Upgrade and Closure  
**FINANCING:** \$126,514.25

**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. Bauer      **SECOND:** Commissioner Caride      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 13**

**PROJECT:** Borough of Glassboro (Glassboro Landfill)      PROD. #00258358  
**LOCATION:** Glassboro Borough, Gloucester County  
**PROCEEDS FOR:** Remedial Action  
**FINANCING:** \$501,188.44

**PROJECT:** Somerville Borough      PROD. #00289000  
**LOCATION:** Somerville Borough, Somerset County  
**PROCEEDS FOR:** Remedial Action  
**FINANCING:** \$3,000,000.00

**BOND PROJECTS**

**Amended And Restated Bond Resolution**

**PROJECT:** Linden Renewable Energy, LLC      PROD-00228622  
**LOCATION:** Linden City, Union County  
**PROCEEDS FOR:** Construction, purchase equipment, fund debt service reserve fund, pay interest on the bonds during construction and cover the cost of issuance.  
**FINANCING:** \$214,000,000 Tax-Exempt Bond  
**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Maloney      **AYES: 13**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 14**

**REAL ESTATE**

**ITEM: Recommendation for Award for Environmental Consulting Services – As Needed Basis**

**REQUEST:** To approve entering five separate contracts with five individual firms to be used on an as needed basis for a three-year contract with two (2) one-year extension options for as needed environmental consulting services.

**MOTION TO APPROVE:** Ms. Bauer      **SECOND:** Ms. Marley      **AYES: 13**

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 15**

**Fort Monmouth Economic Redevelopment Authority**

**ITEM: Fourth Amendment to the Agreement to Assign RWJ Barnabas Health, Inc., the FMERA for Parcel F-1 (Myer Center) in Tinton Falls**

**REQUEST:** To authorize the execution of the Fourth Amendment to the Agreement to Assign among the NJEDA, FMERA, and RWJ Barnabas Health, Inc. providing RWJBH up to two additional extension options to obtain all necessary approvals to develop a health care campus at parcel F-1 in Fort Monmouth's Tinton Falls Reuse Area and to revise the Project Definition.

**MOTION TO APPROVE:** Ms. Maloney   **SECOND:** Ms. Giblin   **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 16**

Ms. Bauer recused as she is on the Board of an entity affiliated with RWJ Barnabas.

**ITEM: FMERA Redevelopment Agreement with RWJ Barnabas Health, Inc. for Parcel F-1 in Tinton Falls**

**REQUEST:** To consent to FMERA entering into a Redevelopment Agreement with RWJ Barnabas Health, Inc. for the redevelopment of Parcel F-1 (the Myer Center parcel) in the Fort's Tinton Falls Reuse Area.

**MOTION TO APPROVE:** Commissioner Caride   **SECOND:** Ms. Marley   **AYES: 12**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 17**

Ms. Bauer recused as she is on the Board of an entity affiliated with RWJ Barnabas.

Commissioner Angelo left the meeting at this time.

**ITEM: FMERA Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the Tinton Falls Commercial Parcel in Tinton Falls**

**REQUEST:** To consent to FMERA entering into the Redevelopment Agreement contained within the Purchase and Sale & Redevelopment Agreement with RWJ Barnabas Health, Inc. for the sale and redevelopment of the Tinton Falls Commercial Parcel in the Fort's Tinton Falls Reuse Area.

**MOTION TO APPROVE:** Mr. Shimko   **SECOND:** Commissioner Caride   **AYES: 11**  
**RESOLUTION ATTACHED AND MARKED EXHIBIT: 18**

Ms. Bauer recused as she is on the Board of an entity affiliated with RWJ Barnabas.

**BOARD MEMORANDA**

**FYI ONLY:**

**Credit Underwriting Projects Approved Under Delegated Authority – August 2021**

**PUBLIC COMMENT**

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

There being no further business, on a motion by Mr. Quinn, and seconded by Ms. Bauer, the meeting was adjourned at 11:35 am.

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

  
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Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**September 29, 2021**

**MINUTES OF THE SPECIAL MEETING**

*The Meeting was held by teleconference call.*

Members of the Authority present via conference call: Chairman Kevin Quinn; Commissioner Marlene Caride of the Department of Banking and Insurance; Noreen Giblin representing the Governor's Office; Jennifer Keyes-Maloney of the Department of Treasury; Roberto Soberanis of the Department of Labor and Workforce Development; Elizabeth Dragon representing Commissioner Shawn LaTourette of the Department of Environmental Protection; Public Members: Virginia Bauer, Fred Dumont, Aisha Glover, Marcia Marley, Robert Shimko, First Alternate Public Member; and Rosemari Hicks, Second Alternate Public Member.

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

Members of the Authority absent: Public Members Charles Sarlo, Vice Chairman; Philip Alagia, and Massiel Medina Ferrara.

Mr. Quinn called the meeting to order at 10:00 am.

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

**MINUTES OF AUTHORITY MEETING**

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

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

**INCENTIVES**

**Emerge**

**ITEM: Fiserv Solutions, LLC - EmERGE Tax Credit Application**

**REQUEST:** To adopt the recommended finding that existing jobs in the application are at-risk of being located outside of New Jersey; and to approve an EmERGE tax credit award to induce Fiserv Solutions to site the project in New Jersey, subject to conditions subsequently to receive and maintain the award, including submission of certifications and evidence that the company has met the eligibility criteria.

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

**RESOLUTION ATTACHED AND MARKED EXHIBIT: 1**

**PUBLIC COMMENT**

Mr. Bill O’Dea, Hudson County Commissioner, addressed the board regarding his concerns that projects approved under the EmERGE program should be developed in the State’s urban centers rather than suburban communities.

There being no further business, on a motion by Mr. Quinn, and seconded by Mr. Dumont, the meeting was adjourned at 10:38 am.

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

  
Danielle Esser, Director  
Governance & Strategic Initiatives  
Assistant Secretary



## MEMORANDUM

**To:** Members of the Authority

**From:** Tim Sullivan

**Date:** October 13, 2021

**Re:** October 2021 Board Meeting

The recovery and resilience of New Jersey businesses remained the New Jersey Economic Development Authority's (NJEDA's) top priority over the last month, as staff continued to focus on advancing approvals under programs designed to support the recovery of businesses from both the pandemic and the impact of severe weather events in late August and early September.

In early October, we announced the first approvals under the Community Stage Relief Grant Program, which offers grants of up to \$300,000 to businesses involved in the promotion and production of live events. To date, 34 businesses involved in promoting and producing live performances have been awarded a total of \$5.05 million in grants through the program, and additional approvals are being processed every day. A separate grant program administered by the New Jersey State Council on the Arts was created to provide COVID-19 relief to nonprofit arts venues.

We also announced the first approvals under the Ida/Henri Business Assistance Grant Program, a \$10.5 million program that provides mortgage or rent reimbursement grants of \$1,000 to \$5,000 to businesses and nonprofits that were damaged by the extreme weather that passed through New Jersey in late August and early September. To date, over 150 businesses have been approved for grants totaling more than \$500,000. The NJEDA anticipates approving relief awards for hundreds of additional entities in the coming weeks.

To ensure grants reach businesses in the hardest hit communities, including communities of color, one-third of the funding available through both of these programs is targeted to businesses with a primary business location within a census tract that was designated as eligible to be selected as an Opportunity Zone.

As an additional step in support of businesses that sustained damage from the remnants of Hurricane Ida, the NJEDA has selected the [African-American Chamber of Commerce of New Jersey \(AACCNJ\)](#) and the [Statewide Hispanic Chamber of Commerce of New Jersey \(SHCCNJ\)](#) to help guide businesses through the process of applying for federal financial assistance through the [Small Business Administration's \(SBA's\) Non-COVID Economic Injury Disaster Loan \(EIDL\) Program](#) and/or [Business Physical Disaster Loan Program](#).

Looking ahead, we are focused on helping small businesses prepare for the future and bringing new life to main streets and downtowns around the state. Applications will open on October 20 for the \$10 million [Small Business Lease Grant Program](#), which will help revitalize downtowns and main streets by offsetting a portion of the cost associated with businesses and nonprofits leasing street-level space. It is the first of several programs the NJEDA will launch in the coming months under the [Main Street Recovery Program](#).

In addition to supporting small businesses, the NJEDA also took steps to bring thousands of family-sustaining jobs to New Jersey. We approved two awards under the [Emerge Program](#) – Governor Phil Murphy's new job creation tax incentive – that will support a total of more than 3,600 jobs in New Jersey. These two projects – combined with the [New Jersey Wind Port](#) and the establishment of HAX's North American headquarters in Newark – will support nearly 7,500 good jobs in New Jersey.



We also moved closer to launching the [Aspire Program](#), a gap financing tool to support commercial, mixed use, and residential real estate development projects. Draft rules for the program were posted to the Economic Recovery Act website in September and the NJEDA is currently reviewing public feedback submitted online and live during public listening sessions.

To support Governor Murphy's clean energy agenda and grow New Jersey's green economy, we recently expanded the popular [New Jersey Zero Emission Incentive Program \(NJ ZIP\)](#) program. The program launched earlier this year to help businesses and institutions in the greater Camden and greater Newark areas offset the cost of purchasing new, zero-emission medium-duty vehicles (MDVs). The NJEDA has now broadened access to the program to include qualified businesses and institutions in the greater New Brunswick area. Applications are open now and will be accepted on a rolling basis until funding is exhausted.

Equity is a central theme to all of these initiatives, as well as many others created by the Murphy administration, and has been the focus of the NJEDA's celebration of Hispanic Heritage Month, which began on September 15 and ends this week. To celebrate New Jersey's Hispanic community, we recorded a special edition of our [ECONversations](#) podcast featuring guests from the Statewide Hispanic Chamber of Commerce, the Latin American Economic Development Association, a business owner from the state's vibrant Hispanic-owned business community, and Hispanic members of the NJEDA staff.

We appreciate Board's support as we continue our efforts to build a more equitable, prosperous New Jersey economy.

A handwritten signature in black ink, appearing to be "T. A.", is positioned above a solid black horizontal line.

## **INNOVATION**



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 13, 2021  
**Subject:** Investment in HAX LLC

**Summary:**

Members of the Board are requested to approve:

- an investment of \$25 million into a limited liability company (HAX LLC), newly formed by SOSV Investments LLC, to stand up a hard-technology accelerator in Newark, New Jersey. The \$25 million will utilize funds appropriated to the Economic Relief Fund (ERF) to undertake development of or invest in strategic innovation centers following the policy approved by the Board on July 15, 2021; and
- granting delegated authority to the CEO to sign all documents associated with the investment into HAX LLC.

**Background on SOSV and the HAX Program**

In May, 2021, NJEDA staff received an unsolicited request for proposals (RFP) from Princeton-based SOSV Investments, LLC (“SOSV”), a prominent global early stage venture capital firm (VC), regarding their intent to establish the U.S. headquarters of their hard-technology accelerator (“HAX”). The accelerator would focus on sectors such as decarbonization, digital manufacturing, automated supply chains, and industrial infrastructure.

As of September 2021, SOSV was the #1 most active VC globally at Angel and Seed stages and among the top 5 most active VC globally in Q2 2021.<sup>1</sup> SOSV operates five different early-stage startup development programs: HAX Program (Shenzhen and San Francisco) for hardware, IndieBio (San Francisco and NYC) for life sciences, Chinaccelerator (Shanghai) and MOX (Taipei) for cross-border internet, and dlab (NYC) for blockchain. The five programs work with an average of 135 new companies each year. As of April 2021, SOSV had more than 1,100 portfolio companies and over \$1 billion in assets under management. To date, the HAX Program has graduated over 250 companies since it was founded in 2011. Among the HAX Program’s best

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<sup>1</sup> Pitchbook. “Q2 2021 Interactive Global League Tables”. August 18 2021. <https://pitchbook.com/news/articles/q2-2021-interactive-global-league-tables>



known graduates are Formlabs, Opentrons, Particle, Simbe Robotics, and R-Zero. HAX Program companies originate from all over the world, with the majority from the US.

The HAX Program provides an average of \$250,000 investment to each of their approximately 30 cohort companies every year for their 6+ month accelerator program, which focuses on technical, product, and investment development to meet critical milestones of early-stage technology businesses. To facilitate their go-to-market strategy, their model emphasizes hands-on commercialization development with a full-time staff of HAX Program employees (engineers, designers and manufacturing experts) who directly collaborate with portfolio company founders. Startups are expected to finish the program with a scalable product, ready to transition to scaled manufacturing, and secure their first revenues. Following the program, the HAX Program typically supports fundraising for a larger “seed round” of financing ranging between \$1.5 million and \$5 million.

In June 2021, NJEDA, in partnership with Choose New Jersey, responded to the RFP with potential site locations in Kearny Point, Newark, Princeton, and Glassboro. New Jersey was one of many states across the East Coast and Mid-West that submitted a response. In July 2021, NJEDA and Choose New Jersey escorted SOSV leadership to several of the proposed locations, where in addition to typical real estate representatives being present, SOSV had an opportunity to meet with Governor Murphy and representatives from New Jersey’s innovation ecosystem such as Newark Venture Partners, Audible, Verizon, and Princeton University. In August 2021, NJEDA, SOSV leadership met to begin discussing the potential HAX project and the most appropriate form of a potential investment by NJEDA and possible new entity to be created by SOSV. During those discussions, SOSV indicated that they were most interested in the locations they visited in Newark. Leadership on both sides coalesced around a new LLC between NJEDA and SOSV as the most appropriate investment structure that would stand-up the hard-technology accelerator at a location in Newark, NJ.

On September 15, 2021, NJEDA signed a non-binding Letter of Intent (LOI) with SOSV to establish potential terms of an NJEDA investment of up to \$25 million with membership in a new LLC to be created by SOSV, named “HAX LLC.”

**Strategic Innovation Centers:**

At the July 15, 2021 NJEDA Board, Members approved a memorandum for:

1. policies for utilizing the ERF to undertake development of or invest in strategic innovation centers to accelerate economic recovery and drive the long-term growth of the State’s innovation economy; and
2. the use of \$55,000,000 appropriated to the NJEDA’s ERF for the purpose of developing Strategic Innovation Centers in accordance with the policies.



The memorandum defined Strategic Innovation Centers as facilities that either directly support research and development (R&D), innovation, or entrepreneurship or are aimed at solving specific problems in new and innovative ways through a combination of services such as mentorship, networking opportunities, hands-on training, business support services, education opportunities, and/or access to testing, fabrication, or manufacturing facilities and equipment.

The memorandum also established two policies for considering Strategic Innovation Center projects. First, it established a policy for how NJEDA Staff will approach opportunities for the Authority to take a lead role in developing Strategic Innovation Centers such as building and/or overseeing the operations of the Strategic Innovation Center or collaborating with another party through an early investment that serves as a catalyst for the project.

Second, it established a policy for how NJEDA Staff will consider unsolicited proposals or investment opportunities for Strategic Innovation Center projects in the State. In all cases, funding is limited to \$25,000,000 for any single project, and the project must align with the ERF targeted industries – as presented to and approved by the Board through a separate memorandum – or demonstrate that it will meaningfully support increasing diversity and inclusion within the State’s entrepreneurial economy. Additionally, all Strategic Innovation Center projects using ERF funds under these policies must be approved by the Board.

### **Framework for Reviewing Unsolicited Proposals or Investment Opportunities for Strategic Innovation Centers**

The policy directs Staff to review inbound unsolicited proposals on a rolling basis, including proposals that the Authority had already received at the time of the approval of the associated policy. Staff may also review other investment opportunities if the initial information Staff is presented appears to demonstrate that the project would qualify as an eligible Strategic Innovation Center and present a high-quality opportunity. In both instances, Staff may determine that additional information is necessary and request the information from the relevant party.

When considering these inbound unsolicited proposals, Staff will first verify that the project fits the definition of a Strategic Innovation Center and focuses on the targeted industries listed above or demonstrates that it meaningfully supports increasing diversity and inclusion within the State’s entrepreneurial economy. Staff will then use evaluation criteria as outlined in the approved policy to determine if an investment should be made based on an unsolicited opportunity. These evaluation criteria are also used to drive the type and sizing of an investment opportunity for a given potential project.

Should Staff determine that an unsolicited proposal satisfies the evaluation criteria and presents a high-quality opportunity, Staff will work directly with the submitter to further define the project as a potential investment opportunity for the Board’s consideration. This engagement may entail activities such as responding to a competitive RFP or direct negotiations with the proposer.





### **The HAX Opportunity for New Jersey**

As a hard-technology accelerator, situating the HAX Program in New Jersey will help position the State as a national leader in technology innovation and will generate exponential returns as startups that launch here grow, driving economic activity and creating new jobs. The SOSV/NJEDA entity will support disruptive founders building next-generation automation, advanced manufacturing, and decarbonization technology companies in New Jersey focused on industrial areas such as those that are essential for the re-industrialization of the United States. The resources the agreement between SOSV and the Authority will make available to innovative startup enterprises and the career opportunities those businesses create will be crucial for reaffirming New Jersey's place as a global innovation leader and ensuring equitable economic growth for the long term.

The HAX Program's focus areas of decarbonization, digital manufacturing, automated supply chain, and industrial efficiency are extremely well-aligned with the goals of the 2019 New Jersey Energy Master Plan and Global Warming Response Act. The HAX Program is already working with companies focusing on new battery storage technology, green hydrogen, and energy efficiency – all key technologies and areas that New Jersey must invest in to meet the State's ambitious clean energy targets. For example, Voltstorage GmbH, a HAX Program portfolio company, designs cutting-edge flow battery systems and recently secured an additional \$7M in investment funding in 2020.<sup>2</sup> To date, HAX Program companies have collectively raised a total of \$1.8 billion and are cumulatively valued at \$8 billion.<sup>3</sup>

The introduction of a world-class accelerator like HAX LLC in New Jersey is also directly in line with Governor Murphy's Economic Plan to make New Jersey a state of innovation. The HAX Program was the world's first hard-technology accelerator when it was introduced in 2011. There are currently no hard technology accelerators in the Northeast that provide the level of startup support inherent in the HAX Program model.

As part of the agreement, NJEDA will invest \$25 million to be a joint owner of HAX LLC along with SOSV. SOSV has committed to take 100 companies through the HAX Program in Newark over the next five years and invest \$25 million in these startups. With this support, these companies will have the potential to employ thousands of people and attract hundreds of millions in new investment. Along with the \$25 million investment, SOSV has also committed to mentoring at colleges and universities, local manufacturing sourcing, engagement in workforce development, and creating local advisory boards

<sup>2</sup> PV Magazine, 2020. "A residential vanadium flow battery" August 4, 2020. <https://pv-magazine-usa.com/2020/08/04/voltstorage-munich-based-vanadium-flow-battery-startup-wins-7-million-more-in-venture-capital/>

<sup>3</sup> Office of the Governor of New Jersey, 2021. "Governor Murphy Announces Agreement to Establish U.S. Headquarters in Newark for the HAX Startup Development Program Focused on Industrial Tech and Decarbonization" September 16, 2021. <https://www.nj.gov/governor/news/news/562021/20210916c.shtml>



The creation of HAX LLC and establishment of the HAX Program in Newark provides a one of a kind, best-in-class accelerator program focused on the re-industrialization of the US economy and renewing the US industrial base. Companies participating in the HAX Program are expected to create at least 2,500 new jobs over the next five years and more than 5,000 jobs in 10 years plus thousands more jobs throughout the surrounding ecosystem.

Additionally, SOSV has expressed an interest in leveraging the skilled labor force and manufacturing of the local community, further magnifying the impact the accelerator could have on its local economy. Their existing HAX Program model relies heavily on local manufacturing for both rapid prototyping as well as scaled manufacturing, a necessity that would bring enormous new business to New Jersey's advanced manufacturing sector.

### **The HAX Program Facility**

The HAX LLC site in Newark will be the flagship office for the HAX Program in the US and a center of operations for a new network of programs across the country. HAX LLC will lease up to 60,000 square feet of space that will include space for up to 200 founders and staff and will be specifically designed to support early stage technology R&D and commercialization. This facility will include a mixture of fabrication workshops, testing facilities, and space for offices, startup coworking desks, warehouse/storage, flexible manufacturing, and public events space. A majority of the HAX LLC space will be dedicated offices for companies relocating to and developing products in Newark. The HAX LLC facility will also have dedicated space for NJEDA staff to interface with participating startup companies and discuss the business tools and services available to them through NJEDA. HAX LLC aims to welcome its first companies at the Newark location in spring 2022.

### **The HAX Program in Newark**

HAX LLC will support at least 100 new startups with an average investment of \$250,000 as well as up to 100 additional US-based companies that have previously completed the HAX Program and are currently operating. These startups will benefit from access to SOSV's industry-leading technical assistance and facilities as well as their extensive network investor contacts at the Seed and Series A levels, which will facilitate follow-on investment. SOSV anticipates directly investing an additional \$50 million into the most promising startup companies over the first five years of the HAX Program.

Working together with NJEDA and relevant consortia, the HAX LLC staff will concentrate on providing retention and support assistance to induce portfolio companies to permanently headquarter at HAX LLC or the surrounding area and scale their businesses locally. Post-program growth and location retention for portfolio companies was a key consideration in SOSV's RFP. NJEDA will work directly with SOSV to assure the HAX Program participants are aware of the innovation product suite they may be eligible for. Other SOSV accelerators have typically



observed over 30 percent--and in some cases as high as 60 percent--of portfolio companies staying in the vicinity of their associated accelerator after completing their program. As such, SOSV has set an internal target of at least 35 percent of portfolio companies permanently locating near HAX LLC.

The SOSV/NJEDA agreement will add to these benefits with special events and curricula for participating companies, including an SOSV/NJEDA-hosted “Demo Day”, typically occurring twice per year, where participants will have an opportunity to pitch their companies to a live audience of investors, strategic partners, and other media partners. Startups will also participate in a mentor program featuring advanced manufacturing executives, venture capital firms, serial entrepreneurs, and corporate executives possessing deep domain expertise.

### **Overview of the HAX LLC Structure**

NJEDA’s investment will be in a two-member LLC which includes NJEDA and SOSV named “HAX LLC”. NJEDA and SOSV will share 50:50 ownership of HAX LLC, with SOSV acting as the managing member. SOSV will commit to operating HAX LLC in New Jersey for 5.5 years followed by 2.5 years of reporting. SOSV as managing member will also commit to HAX LLC signing a minimum of an eight-year lease in Newark, NJ. As discussed above, during the initial 5.5 years, SOSV commits to investing an average of \$250,000 into at least 100 participating startup companies in the HAX Program, for a total of at least \$25 million. In return, and upon meeting certain performance metrics over a 5.5-year period, NJEDA will advance up to \$25 million to HAX LLC to invest in the accelerator startup costs including the lease, equipment, expenses and operating costs of the HAX Program. NJEDA will not be paying to support the startups themselves.

As part of the agreed upon terms, SOSV will apply for the Authority’s NJ Accelerate program. The HAX Program run by HAX LLC will then de-risk the investments which will enter the NJ Accelerate pipeline. If HAX LLC is approved into the NJ Accelerate program and then the individual participating companies are approved, NJEDA will have a 50 percent warrant coverage position, as part of the NJ Accelerate investment terms, for future equity ownership of companies who have participated in the HAX Program run by HAX LLC.

As an owner of HAX LLC, NJEDA will have a pro rata percentage ownership in all physical assets of HAX LLC. Assets included in the proforma budget for HAX LLC to include:

- One-time Capital Expenses (FFE, IT, Tools & Equipment, Facility Build)
- Annual Capital Equipment costs

After the initial 5.5 operating years if SOSV or its affiliated funds should invest or have invested at least \$75 million into the participant companies, while staying compliant with all other material conditions of the agreement, then SOSV will have the right (but not the obligation) to purchase



NJEDA’s ownership interest in HAX LLC for one dollar (\$1.00), plus the remaining depreciated value of all equipment and fixed assets. Otherwise, the parties will share all costs in the event of any liquidation and/or dissolution of HAX LLC in proportion to the party’s respective ownership.

Outside of the traditional startup accelerator commitments, SOSV will also be making numerous other community engagement commitments, to include:

- University internship programs and recurring interaction with NJ universities and community colleges
- Appointment of a community engagement manager to oversee community programming and liaise with New Jersey innovation and entrepreneurship ecosystem organizations
- Reserving spots in their “Phase 0” startup program, aimed at supporting earlier-stage startups, for NJ certified women or minority owned business - or businesses originated or within a location in a New Jersey Opportunity Zone Eligible Census Tracts.

The Limited Liability Company Agreement for HAX LLC between NJEDA and SOSV can be found in Exhibit 1 and is in substantially final form.

**Evaluation of HAX LLC as a Potential Investment Opportunity**

Through information presented in SOSV’s RFP, conversations with SOSV leadership, documents provided by SOSV during the RFP and negotiation process, and information collected through diligence checks, NJEDA staff have determined that HAX LLC would satisfy the evaluation criteria as outlined in the approved Strategic Innovation Center policy memorandum and proves to be an extremely high-quality opportunity for the State, in that HAX LLC:

1. meets the definition set forth for Strategic Innovation Centers as an accelerator directly supporting research and development (R&D), innovation, and entrepreneurship;
2. uniquely positions New Jersey to be a regional or national leader in several Economic Recovery Fund (ERF) targeted industries such as advanced transportation and logistics, advanced manufacturing, autonomous vehicle and zero-emission vehicle research and development, and clean energy;
3. advances several key Statewide and regional strategies and objectives such as those set forth in the 2019 Energy Master Plan, Global Warming Response Act, New Jersey’s Economic Plan, and Regional Greenhouse Gas Initiative;
4. is economically feasible, in that:
  - a. its business model is realistic and sustainable, with a sustainable model being one that will require minimal further State assistance;
  - b. it will be competitive, given the limited other accelerators with these focus areas and level of program support in the state and region; and
  - c. The quantity of financial support requested from the Authority is both reasonable for the scale of potential impact and adequate to achieve the projected outcomes;



5. leverages other sources of funds, with SOSV committing to at least \$25 million in direct investment to participant companies over a 5-year period.
6. promotes economic development, the creation or retention of jobs, and the stimulation of private sector investment and expansion;
7. supports the State's ambition to strengthen its position as the most diverse and inclusive innovation ecosystem in the country, for example by providing opportunities to woman-, minority-, or veteran-owned business;
8. engages with the local community and existing industries; and
9. supports development in historically underserved communities.

SOSV has successfully undergone a legal review, ethics review, and sister agency checks with the New Jersey Department of Labor and Workforce Development and Department of Environmental Protection. NJEDA staff conducted diligence checks with numerous past and current partners of SOSV and affiliates, all of which provided positive responses.

SOSV will indemnify NJEDA under a separate indemnification agreement with standard NJEDA indemnification provisions and insurance requirement as recommended by Safeguard.

### **Recommendation**

Members of the Board are requested to approve:

- an investment of \$25 million into a limited liability company (HAX LLC), newly formed by SOSV Investments, LLC, to stand up a hard-technology accelerator in Newark, New Jersey. The \$25 million will utilize funds appropriated to the Economic Relief Fund (ERF) to undertake development of or invest in strategic innovation centers following the policy approved by the Board on July 15, 2021; and
- granting delegated authority to the CEO to sign all documents associated with the investment into HAX LLC.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written over a solid black horizontal line.

Tim Sullivan  
Chief Executive Officer

Prepared by: Alex Hydrean

Exhibits:

- (1) Limited Liability Company Agreement between NJEDA and SOSV Investments LLC
- (2) (Confidential) Strategic Innovation Center and Evaluation Checklist – HAX LLC

DRAFT\_v4 10 October 2021

**LIMITED LIABILITY COMPANY AGREEMENT**

**OF**

**HAX LLC**

**As of October, \_\_\_\_, 2021**

**THE INTERESTS REPRESENTED BY COMMON UNITS ISSUED PURSUANT TO THIS LIMITED LIABILITY COMPANY AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "1933 ACT"), OR UNDER ANY OTHER APPLICABLE SECURITIES LAWS. SUCH COMMON UNITS MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PLEDGED OR OTHERWISE DISPOSED OF AT ANY TIME WITHOUT EFFECTIVE REGISTRATION UNDER THE 1933 ACT AND OTHER APPLICABLE SECURITIES LAWS OR EXEMPTION THEREFROM, AND COMPLIANCE WITH THE OTHER RESTRICTIONS ON TRANSFERABILITY SET FORTH HEREIN. THE COMPANY RESERVES THE RIGHT TO REFUSE THE TRANSFER OF A COMMON UNIT UNTIL THE CONDITIONS THEREIN HAVE BEEN FULFILLED WITH RESPECT TO SUCH TRANSFER.**

## HAX, LLC

### LIMITED LIABILITY COMPANY AGREEMENT

This Limited Liability Company Agreement of HAX, LLC (the “Company”) is made as of October \_\_\_, 2021 (this “Agreement”), by and among each of the Persons listed on Schedule A attached hereto and incorporated herein by this reference, as members of the Company (in such capacity, collectively, the “Members” and each, a “Member”).

#### RECITALS

- A. NJEDA received an unsolicited Request for Proposals (“RFP”) from SOSV regarding SOSV’s intent to create the U.S. headquarters for the HAX Program.
- B. The State of New Jersey, in conjunction with Choose New Jersey, responded to the RFP.
- C. As a result of the State’s response, NJEDA and SOSV executed a non-binding letter of intent on September 15, 2021, with proposed terms therein (the “Letter of Intent”).
- D. Based on an evaluation of the proposed SOSV commitments, including, but not limited to, the creation of the Company, the location of the Company and the U.S. headquarters for the HAX Program in Newark, New Jersey, the NJEDA Board approved on October 13, 2021 an investment of \$25 million in the Company, under the terms described in this Agreement.
- E. SOSV formed the Company as a New Jersey limited liability company on October 8, 2021, by the filing of a Certificate of Formation with the Secretary of State of the State of New Jersey.

#### AGREEMENTS

NOW, THEREFORE, in consideration of the agreements and obligations set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

#### ARTICLE I. DEFINED TERMS

##### Section 1.1. Definitions.

Unless the context otherwise requires, the terms defined in this Article I shall, for the purposes of this Agreement, have the meanings herein specified.

“Act” means the New Jersey Revised Uniform Limited Liability Company Act (N.J.S.A. 42:2C-1, et. seq.), as amended from time to time, and any successor to such Act.

“Adjusted Capital Account” means, with respect to any Member, the balance of such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments: (a) credit to such Capital Account any amounts that such Member is obligated to restore to the Company (pursuant to the terms of this Agreement or otherwise) or is deemed to be obligated to restore pursuant to (i) Treasury Regulations Section 1.704-1(b)(2)(ii)(c), (ii) the penultimate sentence of Treasury Regulations Section 1.704-2(g)(1), or (iii) the penultimate sentence of Treasury Regulations Section 1.704-2(i)(5); and (b) debit to such Capital Account the items described in paragraphs (4), (5) and (6) of Treasury Regulations Section 1.704-1(b)(2)(ii)(d). This definition is intended to comply with the provisions of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to a specified Person, any Person that directly or indirectly controls, is controlled by, or is under common control with, the specified Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise. For purposes of this Agreement, any Manager of the Company shall be considered to be an Affiliate of the Company.

“Agreement” means this Agreement, as amended, modified, supplemented or restated from time to time.

“Capital Account” shall have the meaning specified in Section 4.3.

“Capital Contribution” means, with respect to any Member, the aggregate amount of money and the initial Gross Asset Value of any other property contributed to the Company with respect to such Member’s Interest. The Members’ Capital Contributions shall be set out in Schedule A and shall be reflected in the books and records of the Company.

“Capital Transaction” means (a) the merger or consolidation of the Company into or with another corporation, partnership, joint venture, trust or other entity, or the merger or consolidation of any corporation, partnership, joint venture, trust or other entity into or with the Company (in which consolidation or merger the Members of the Company receive distributions of cash or securities as a result of such consolidation or merger in complete exchange for their interest in the Company), unless, upon consummation of such merger or consolidation, the Members immediately prior to such transaction continue to own directly or indirectly, and in equal proportion, not less than a majority of the voting power of the surviving corporation, partnership, joint venture, trust or other entity, (b) the sale or other disposition of all or substantially all the assets of the Company, or (c) the sale of all capital stock of the Company in a single transaction or series of related transactions.

“Cause” means any of the following: (a) in connection with the operation of the Company, the commission of actual fraud by the Manager; (b) the commission of gross negligence or willful misconduct in the management of the business and affairs of the Company by the Manager; (c) the commission of a felony by the Manager; (d) a court order or an effective resolution is passed



for the dissolution, liquidation, winding up or reorganization of the Manager; or (e) dissolution, liquidation, or termination of the existence of the Manager.

“Certificate” means the Certificate of Formation of the Company and any and all amendments thereto and restatements thereof filed on behalf of the Company with the office of the Secretary of State of the State of New Jersey pursuant to the Act.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

“Company” shall have the meaning specified in the preamble hereto.

“Covered Person” means any Member or its Affiliates, any Manager or its Affiliates, or any Officer, employee or agent of the Company or its Affiliates.

“Depreciation” means, for each Fiscal Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year; *provided, however*, that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year, Depreciation shall be an amount that bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization or other cost recovery deduction allowable with respect to such asset for such Fiscal Year bears to such beginning adjusted tax basis; and, *provided, further*, that if the federal income tax depreciation, amortization or other cost recovery deduction allowable for such Fiscal Year is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method selected by the Manager.

“Fiscal Year” means the period commencing on January 1 and ending on December 31, or any portion thereof for which the Company is required to allocate or otherwise allocates Profits, Losses and other items of Company income, gain, loss, expense, or deduction pursuant to this Agreement.

“GAAP” means generally accepted accounting principles.

“Gross Asset Value” means, with respect to any asset, such asset’s adjusted basis for federal income tax purposes, except as follows:

- (a) the initial Gross Asset Value of any asset other than cash contributed by a Member to the Company shall be the gross fair market value of such asset at the time of contribution, as determined in accordance with GAAP;

(b) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values, as determined in accordance with GAAP, as of the following times: (i) the contribution of more than a *de minimis* amount of assets to the Company by a new or an existing Member as consideration for an Interest in the Company; (ii) the distribution by the Company to a Member of more than a *de minimis* amount of Company assets as consideration for all or any part of such Member's Interest in the Company; (iii) the issuance of an Interest in the Company (other than a *de minimis* Interest) as consideration for the provision of services to or for the benefit of the Company; and (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g); *provided, however*, that adjustments pursuant to clauses (i), (ii) and (iii) of this sentence shall be made only if the Manager reasonably determines that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(c) the Gross Asset Value of any Company asset other than cash distributed to any Member shall be the gross fair market value of such asset on the date of distribution, as determined in accordance with GAAP;

(d) without duplicating any adjustment under paragraph (b) above, the Gross Asset Value of Company assets shall be adjusted to reflect any adjustments to the adjusted basis of those assets under Code Sections 734(b) or 743(b), but only to the extent that those adjustments are taken into account in determining Capital Accounts under Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and paragraph (e) of the definition of "Profits" and "Losses" or Section 9.2(e) hereof; and

(e) if the Gross Asset Value of an asset has been determined or adjusted pursuant to paragraphs (a), (b) or (d) above, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses (and not by the depreciation, amortization or other cost recovery deductions allowable with respect to that asset for federal income tax purposes).

"HAX Program" shall mean an advanced technology startup program in Newark, New Jersey managed by SOSV and consisting of appropriate business and advanced manufacturing training, engineering services, management guidance, and investment introductory services in order to transform research and innovation into commercially viable products and services.

"Initial Operations Period" means the 5.5-year period commencing on the date this Agreement is executed, which is anticipated to start on or about October 2021 and end April 2027.

"Interest" means, with respect to a Member, the entire legal and equitable ownership interest of such Member in the Company at any particular time, including, but not limited to, such Member's share of the Company's Profits, Losses and other items of income, gain, loss, expense and deduction and such Member's rights to vote and to receive distributions from the Company in accordance with the provisions of this Agreement and the Act.

“Manager” or “Managing Member” shall mean the Member selected to manage the affairs of the Company under Section 7.1(b).

“Member” has the meaning specified in the preamble.

“NJEDA” means the New Jersey Economic Development Authority, a body corporate and politic of the State of New Jersey.

“NJEDA Investment” means the NJEDA Capital Contribution to the Company as set forth in Schedule B-1.

“Offending Person” has the meaning set forth in Section 14.4(b).

“Officer” has the meaning set forth in Section 7.4(a).

“Participant Company” shall mean a new startup company (i) identified by SOSV; (b) sourced from all over the world; (c) receiving funds as part of the SOSV Investment (as defined in Schedule B-1); (d) physically relocated to Newark, New Jersey; and (e) participating in the HAX Program in Newark, New Jersey. At least one (1) member of the Participant Company founding team will be based in Newark, New Jersey during the program, with exceptions (e.g., COVID-19, family emergency, etc.) to be decided by SOSV as the Managing Member on a case by case basis.

“Participant Distributable Assets” has the meaning specified in Section 10.3(a).

“Parties” means SOSV and NJEDA.

“Percentage Interest” shall mean, with respect to a holder of Units, a fraction, expressed as a percentage, the numerator of which is the number of Units held by that holder of Units and the denominator of which is the total number of Units held by all holders of Units.

“Permitted Transferees” means, with respect to any Person that is a holder of an Interest in the Company, any Affiliate of such Person, except that for purposes hereof the term Affiliate shall exclude and shall not apply to any portfolio company of SOSV or its Affiliates or any other entity that is not managed directly by SOSV, and with respect to a State Entity that is a holder of an Interest in the Company, any Person if the assignment is required by law.

“Person” means any individual, corporation, association, partnership (general or limited), joint venture, trust, estate, limited liability company, or other legal entity or organization.

“Profits” and “Losses” mean, for each Fiscal Year, an amount equal to the Company’s taxable income or loss for such Fiscal Year, determined in accordance with Section 703(a) of the Code (but including in taxable income or loss, for this purpose, all items of income, gain, loss,

expense or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code), with the following adjustments:

(a) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be taken into account in computing Profits and Losses;

(b) any expenditures of the Company described in Section 705(a)(2)(B) of the Code (or treated as expenditures described in Section 705(a)(2)(B) of the Code pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be taken into account in computing Profits and Losses;

(c) in the event the Gross Asset Value of any Company asset is adjusted in accordance with paragraph (b) or paragraph (c) of the definition of "Gross Asset Value" above, the amount of such adjustment shall be taken into account as gain (if the adjustment increases the Gross Asset Value) or loss (if the adjustment decreases the Gross Asset Value) from the disposition of such asset for purposes of computing Profits and Losses;

(d) gain or loss resulting from any disposition of any asset of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the asset disposed of, notwithstanding that the adjusted tax basis of such asset differs from its Gross Asset Value;

(e) to the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of such asset) or loss (if the adjustment decreases such basis) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses;

(f) in lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year; and

(g) notwithstanding any other provision of this definition, any items of income, gain, loss, expense or deduction that are specially allocated pursuant to this Agreement shall not be taken into account in computing Profits and Losses.

The amounts of the items of Company income, gain, loss, expense or deduction available to be specially allocated pursuant to this Agreement shall be determined by applying rules analogous to those set forth in paragraphs (a) through (f) above.

“Regulatory Allocations” has the meaning set forth in Section 9.2(h).

“Reporting Period” means the 2.5-year period beginning on the day after the end of the Initial Operations Period, which is anticipated to begin on or about April 2027 and end on or about October 2029.

“Securities Act” means the Securities Act of 1933, as amended.

“Service Level Agreement” means the service level agreement entered into between SOSV and HAX dated October \_\_\_\_, 2021, to which NJEDA has given prior written consent.

“SOSV” means SOSV Investments, LLC.

“SOSV Investment” has the meaning specified in Schedule B-1.

“SOSV Option” has the meaning specified in Section 11.3.

“State Entity” means the State of New Jersey or any department, agency, authority, or other body of the State of New Jersey, including, but not limited to, NJEDA.

“Transfer” has the meaning set forth in Section 11.1.

“Treasury Regulations” means the permanent and temporary income tax regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

“Total Program Operations Period” means the 8-year period comprising the Initial Operations Period and the Reporting Period.

“Unit” means a unit of membership interest in the Company that entitles the holder thereof to the distributions and share of the Company’s Profits, Losses and other items of income, gain, loss, expense or deduction specified in this Agreement.

“Unreturned Capital Contributions” means, with respect to any Member, such Member’s Capital Contributions less all amounts distributed to such Member under Section 10.1.

## **Section 1.2. Headings.**

The headings and subheadings in this Agreement are included for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

## **ARTICLE II. FORMATION AND TERM**

**Section 2.1. Formation.**

(a) The Members hereby agree that the Company shall operate as a limited liability company under and pursuant to the provisions of the Act, and agree that the rights, duties and liabilities of the Members shall be as provided in the Act, except as otherwise provided herein.

(b) The name and mailing address of each Member shall be listed on Schedule A attached hereto. The Company shall be required to update said Schedule A from time to time as necessary to accurately reflect the information therein, including, without limitation, to reflect any Transfers of Interests and admissions of new Members in accordance with the terms of Section 2.1(d). Any reference in this Agreement to said Schedule A shall be deemed to be a reference to Schedule A as amended and in effect from time to time.

(c) Subject to Section 5.2 hereof, the Manager may issue Units in exchange for Capital Contributions (including commitments to make Capital Contributions) or such other consideration and on terms and conditions to which all Members have provided prior written consent. Promptly following the issuance of Units, the Manager shall cause the books and records of the Company and Schedule A to reflect the number of Units issued and the identity of the Members holding such Units and the Capital Contribution made, if any, with respect to such Units. Upon the execution of this Agreement or a counterpart of this Agreement, together with any other documents or instruments required by the Manager in connection therewith, and the making of the Capital Contribution (if any) specified to be made at such time, a Person shall be admitted to the Company as a Member of the Company.

(d) Any Manager, subject to approval of the Members pursuant to Section 5.2, as an authorized person within the meaning of the Act, shall have the authority to execute, deliver and file any and all amendments to and restatements of the Certificate.

**Section 2.2. Name.**

The name of the limited liability company is "HAX LLC." The business of the Company may be conducted upon compliance with all applicable laws under any other name designated by the Company.

**Section 2.3. Term.**

The term of the Company commenced on the date of the filing of the Certificate in the office of the Secretary of the State of New Jersey and shall continue until the Company is dissolved in accordance with the provisions of this Agreement and the Act.

**Section 2.4. Registered Agent and Office.**

The Company's registered office and the agent for service of process on the Company shall be 174 Nassau Street, Suite 3000, Princeton, NJ 08542. At any time, the Company may designate another registered agent and/or registered office in New Jersey.

**Section 2.5. Principal Place of Business.**

The principal office of the Company shall be at such place in New Jersey as the Manager may designate from time to time. The Company may have such other offices as the Manager may designate from time to time.

**Section 2.6. Qualification in Other Jurisdictions.**

The Managers shall cause the Company to be qualified, formed or registered under assumed or fictitious name statutes or similar laws in any jurisdiction in which the Company transacts business in which such qualification, formation or registration is required or desirable. Any Manager or Officer, as an authorized person within the meaning of the Act, shall execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in a jurisdiction in which the Company may wish to conduct business.

**Section 2.7. Units; Voting.**

There are hereby established one class of Units. Each Unit, when held by a Member, shall entitle such Member possessing such Unit to one vote per Unit on matters on which the Members may vote under the Certificate, this Agreement or the Act. Except as otherwise required by applicable state or federal law, any holder of any one or more Units that has not been admitted to the Company as a Member shall not be entitled to notice of meetings of the Members or written consent in lieu thereof and shall have no right to vote on any matters on which the Members may vote under the Certificate, this Agreement or the Act.

**ARTICLE III.  
PURPOSE AND POWERS OF THE COMPANY**

**Section 3.1. Purpose.**

The Company's purpose and the character of the Company's business shall be to (a) operate the HAX Program, and (b) engage in any lawful activity that is necessary, desirable or appropriate to carrying out the foregoing purpose and to do all things incidental to or in furtherance thereof for which limited liability companies may be organized under the Act.

**Section 3.2. Powers of the Company.**

(a) The Company shall have the power and authority to take any and all actions necessary, appropriate, proper, advisable, convenient or incidental to or for the furtherance of the purpose set forth in Section 3.1 hereof.

(b) Except as reserved to the Members, the Manager may authorize any Person to enter into and perform any document, instrument or agreement on behalf of, and in the name of, the Company.

**ARTICLE IV.  
CAPITAL CONTRIBUTIONS, INTERESTS, AND CAPITAL ACCOUNTS**

**Section 4.1. Capital Contributions.**

The Members agree to make the initial Capital Contributions in exchange for the Interests as set forth in Schedule A. The Members' Capital Contributions shall be reflected in the books and records of the Company. The NJEDA Investment is set forth on Schedule B-1 and is subject to (1) the appropriation and availability of funds, as determined by the New Jersey Office of Management and Budget; (2) milestones set forth on Schedule B-1; and (3) compliance by SOSV and the Company with Section 18.10. SOSV shall be responsible for all fees and costs related to the Company in excess of the NJEDA Investment, including all interim costs that occur prior to the NJEDA Investment amounts ("SOSV Capital Contribution"). Other than as set forth in Schedule A and Schedule B-1 and the SOSV Capital Contribution, no Member may advance funds to the Company without the prior written consent of all Members. For the avoidance of doubt, neither the Company nor NJEDA shall be responsible for any fees or costs associated with the SOSV Investment in the Participant Companies.

**Section 4.2. Status of Capital Contributions.**

(a) No Member shall receive any interest, salary or drawing with respect to such Member's Capital Contributions or such Member's Capital Account or for services rendered on behalf of the Company in its capacity as such other than as may be provided in the Service Level Agreement or any other written services agreement between the Company and such Member that has the prior written consent of all Members.

(b) Except as otherwise provided herein and by applicable state law, the Members shall be liable only to make their Capital Contributions pursuant to Section 4.1 hereof, and no Member shall be required to lend any funds to the Company, or, after all such Member's Capital Contributions have been fully paid pursuant to Section 4.1 hereof, to make any additional Capital Contributions to the Company. Except as provided in Section 18.10, no Member shall have any liability for the repayment of any Capital Contributions of any other Member.



**Section 4.3. Capital Accounts.**

The Company shall establish and maintain a separate capital account (“Capital Account”) for each member on the books and records of the Company, which Capital Account shall be determined and maintained in accordance with the rules of Code Section 704 and the Treasury Regulations thereunder.

**Section 4.4. Advances.**

If any Member shall advance any funds to the Company in excess of such Member’s Capital Contributions, the amount of such advance shall neither increase such Member’s Capital Account nor entitle such Member to any increase in such Member’s share of the distributions of the Company. The amount of any such advance shall be a debt obligation of the Company to such Member and shall be subject to such terms and conditions acceptable to the Company and each Member. Any such advance shall be payable and collectible only out of Company assets, and the other Members shall not be personally obligated to repay any part thereof. No Person who makes any loan to the Company shall have or acquire, as a result of making such loan, any direct or indirect interest in the profits, capital or property of the Company, other than as a creditor.

**Section 4.5. Indemnification by SOSV.**

Notwithstanding anything to the contrary contained in this Agreement, SOSV agrees, until the earlier of (i) the exercise of the SOSV Option, or (ii) the end of the Total Operations Period, to indemnify and hold the Company harmless from and with respect to any and all claims, liabilities, losses, damages, costs and expenses, including, without limitation, the reasonable fees and disbursements of counsel, arising, directly or indirectly, out of intentional and willful material failure or any intentional and willful material breach by SOSV of any representation made by SOSV in Article VI hereof or any other agreement, statement, certificate or other instrument delivered pursuant hereto or in connection therewith, up to an amount not to exceed in the cumulative maximum amount of \$25 Million.

**ARTICLE V.  
MEMBERS**

**Section 5.1. Powers of Members.**

The Members shall have the power to exercise any and all rights or powers granted to the Members pursuant to the express terms of this Agreement or as otherwise required by the Act.

**Section 5.2. Actions Requiring the Prior Written Consent of the Members.**

Notwithstanding any other provision of this Agreement, the Manager shall have no authority to do, or to cause or permit the Company to do, any of the following acts without obtaining the prior written consent of all Members:

(a) engage in any transaction outside the scope of the Company's purpose as set forth in Section 3.1, or outside the ordinary course of the Company's business;

(b) (i) commence a voluntary case under any applicable bankruptcy, insolvency, reorganization or similar law now or hereafter in effect, (ii) consent to the entry of any order for relief in an involuntary case under any such law, (iii) consent to the appointment or taking possession by a receiver, liquidator, assignee, custodian or trustee or sequestrator (or similar official) of the Company or of any substantial part of the property thereof, (iv) make a general assignment for the benefit of creditors, or (v) make any other arrangement or composition with creditors generally to modify the terms of payment or otherwise restructure their obligations;

(c) amend the Certificate in any manner;

(d) amend, modify or waive the application of any provision of this Agreement in any manner;

(e) admit additional Members or authorize, issue, sell or grant any Units or securities convertible into, exercisable for or any other rights to purchase Units or other equity interests in the Company;

(f) except for building or equipment leases, commit to any long-term agreement exceeding the Initial Operations Period;

(g) sell, transfer or otherwise convey any assets of the Company, other than in the normal course of operations;

(h) except as provided in Section 7.6(d), enter into or approve any transaction involving an actual or potential conflict of interest between the Company and the Manager; or

(i) agree to, or enter into a commitment obligating the Company to, do any of the foregoing.

### **Section 5.3. Action by Members.**

(a) Whenever this Agreement or the Act provides that the Members shall be permitted or required to take any action, such action shall be taken at a meeting of the Members or by written consent as provided in paragraph (b) below. Meetings of the Members may be called by a Manager or by any Member. Meetings of the Members may be held at such places, within the State of New Jersey, and at such times as the Manager or the Member calling the meeting shall determine. Unless otherwise determined in accordance with the preceding sentence, meetings

of the Members shall be held at the principal office of the Company. Written notice of any meeting of the Members shall be given to each Member by the Managers at least ten (10) days and not more than sixty (60) days prior to the date of such meeting. Any notice of a meeting of the Members shall specify the purposes of the meeting. In the event that notice of a meeting of the Members is not duly given to any Member, such notice shall be deemed to be waived if such Member participates in such meeting. At all meetings of the Members, Members holding at least a majority of the aggregate outstanding Units in the Company shall be necessary and sufficient to constitute a quorum for the transaction of business, and the act of the Members holding at least a majority of the Units in the Company present or represented by proxy at any meeting at which there is a quorum shall be the act of the Members, except as may be otherwise provided by the Act or this Agreement. If at any meeting there is less than a quorum present, Members holding at least a majority of Units present may adjourn the meeting from time to time until a quorum is obtained, and no further notice need be given other than by announcement at said meeting which shall be so adjourned.

(b) Any action which may be taken at any meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by Members holding at least a majority of the aggregate outstanding Units in the Company and the written consents are filed with the records of the meetings of the Members. Such consents shall be treated for all purposes as a vote at a meeting. Prompt notice of the taking of action without a meeting shall be given to those Members who have not consented in writing and would have been entitled to vote on the matter if such matter had been submitted to a vote at a meeting of the Members.

(c) Nothing contained herein shall excuse the Company from adhering to the procedural requirements under the Act.

#### **Section 5.4. Reimbursements.**

Except as otherwise provided in a service agreement pursuant to Section 4.2(A), the Company shall reimburse each Member for all ordinary and necessary documented out-of-pocket expenses incurred by that Member on behalf of the Company as requested by the Company. Any individual annual reimbursement in excess of \$500.00 per expense or any annual reimbursement that aggregated with all prior reimbursements under this Section and Section 7.5 exceeds \$5,000.00 shall require prior written consent of all Members. Such reimbursement shall be treated as an expense of the Company and shall not be deemed to constitute a distribution to any Member.

#### **Section 5.5. Partition.**

Each Member waives any and all rights that such Member may have to maintain an action for partition of the Company's property.

**ARTICLE VI.  
REPRESENTATIONS OF EACH MEMBER**

Each Member, as to such Member only, represents and warrants to the Company as follows:

**Section 6.1. Authority.**

The Member has full power and authority to enter into and to perform this Agreement in accordance with its terms.

**Section 6.2. Investment Purpose.**

The Member is acquiring the Interest for such Member's own account for the purpose of investment and not with a view to distribution or resale thereof.

**Section 6.3. No Registration.**

The Member understands and agrees that the Interests have not been registered under the Securities Act, and therefore, cannot be offered, sold or transferred unless they are registered under the Securities Act or an exemption from such registration is available.

**Section 6.4. Requisite Knowledge.**

The Member has such knowledge and experience in business and financial matters with respect to investments in securities of privately held companies so as to enable such Member to understand and evaluate the risks of such Member's Interest and to form an investment decision with respect thereto.

**ARTICLE VII.  
MANAGEMENT**

**Section 7.1. Management by the Manager.**

(a) Management. Subject to the limitations and restrictions contained in this Agreement, the Manager shall have the power and authority, on behalf of the Company, to manage and control the business, affairs and properties of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business. The Manager shall be elected or designated by the Members in accordance with Section 7.1(b). Except for situations in which the approval of the Members is expressly required by this Agreement or by non-waivable provisions of the Act, the Manager shall have full and complete authority, power and discretion to manage and control the business, affairs, and properties of the Company; to make all decisions regarding those

matters; and to perform any and all other acts or activities customary or incident to the management of the Company's business.

(b) Number, Tenure and Election. The Company shall initially have one Manager, which shall be SOSV. The number of Managers of the Company shall be fixed from time to time by the Members. The Manager shall hold office until such Manager's death, resignation or removal. The Manager shall not be entitled to any compensation for its services hereunder and may only be removed for Cause. Managers shall be appointed by the affirmative vote of all Members.

### **Section 7.2. No Management by Members.**

All management and other responsibilities not specifically reserved to the Members in this Agreement shall be vested in the Manager, and the Members shall have no voting or consent rights except as specifically provided in this Agreement. Except and only to the extent expressly provided for in the Certificate, this Agreement or as delegated by the Managers, no Member or other Person other than the Manager shall be an agent of the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

### **Section 7.3. Reliance by Third Parties.**

Any Person dealing with the Company or the Manager may rely upon a certificate signed by the Manager as to:

- (a) the identity of the Manager of the Company;
- (b) the identity of the Officers of the Company;
- (c) the identity of the Members of the Company;
- (d) the existence or non-existence of any fact or facts that constitutes a condition precedent to acts by a Manager or in any other manner germane to the affairs of the Company;
- (e) the Persons who are authorized to execute and deliver any agreement, instrument or document by or on behalf of the Company; or
- (f) any act or failure to act by the Company or as to any other matter whatsoever involving the Company, a Manager, or any Member.

### **Section 7.4. Delegation of Authority.**

(a) Pursuant to the Service Level Agreement, the Manager may appoint officers, including, without limitation, chief executive officer, president, vice president, assistant secretary,

chief financial officer, or assistant treasurer, and shall in all events appoint a treasurer and secretary (each, an “Officer”), which individuals are also employees of SOSV, and delegate certain authority and duties to such Persons and, if any Officer’s title is one commonly used for Officers of a business corporation formed under the New Jersey Business Corporations Company Act, the assignment of such title shall (unless the Manager specifies otherwise) constitute the authorities and duties that are normally associated with that office.

(b) Officers of the Company appointed by the Manager need not be Members of the Company. Any number of titles may be held by the same individual. Each Officer of the Company shall hold office until his or her successor is chosen and qualified, or until his or her earlier resignation or removal. Any delegation pursuant to this Section 7.4 may be revoked at any time by the Managers.

(c) The Manager will initially appoint as Treasurer and Secretary one or more individuals, which individuals are also employees of SOSV, to carry out the administrative maintenance of the Company, including all filings with the Secretary of State of the State of New Jersey and any other applicable governmental agencies. The Secretary shall also be responsible for maintaining and, where appropriate, creating (i) the organizational documents of the Company, and (ii) all records of action of the Company and/or the Manager, including meeting minutes or resolutions. For the avoidance of doubt, all out-of-pocket costs and expenses, including filing fees, shall be borne ratably by the Members in accordance with their relative Percentage Interests.

#### **Section 7.5. Reimbursements.**

Except as otherwise provided in a service agreement pursuant to Section 4.2(A), the Company shall reimburse each Manager and Officer for all ordinary and necessary documented out-of-pocket expenses incurred by such Manager or Officer on behalf of the Company as requested by the Company. Any individual annual reimbursement in excess of \$500.00 per expense or any annual reimbursement that aggregated with all prior reimbursements under this Section and Section 5.4 exceeds \$5,000.00 shall require prior written consent of all Members. Such reimbursement shall be treated as an expense of the Company and shall not be deemed to constitute a distribution to the applicable Manager or Officer.

#### **Section 7.6. Limitation of Liability.**

In addition to the indemnification and exculpation provided by Article XIV hereof:

(a) Except as provided in Section 18.10, no present or former Member, Manager or Officer or any of such Member’s, Manager’s or Officer’s Affiliates, employees, agents or representatives shall, to the maximum extent permitted by applicable law, be liable to the Company or to any Member for any act or omission performed or omitted by such Person in such Person’s capacity as a Member, Manager or Officer or otherwise taken in good faith and without gross negligence or willful misconduct. A Manager and each Officer shall be entitled to rely upon

the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by a Manager or an Officer in good faith reliance on such advice shall in no event subject such Manager or Officer to liability to the Company or any Member.

(b) Whenever in this Agreement or any other agreement contemplated herein, a Manager is permitted or required to take any action or to make a decision in such Manager's "sole discretion" or "discretion," with "complete discretion" or under a grant of similar authority or latitude, such Manager shall be entitled to consider such interests and factors as such Manager desires; *provided*, that such Manager shall in any event act in good faith and in a manner that it reasonably believes is in the best interest of the Company.

(c) Whenever in this Agreement or any other agreement contemplated herein, a Manager is permitted or required to take any action or to make a decision in its "good faith" or under another express standard, such Manager shall act under such express standard and shall not be subject to any other or different standards imposed by this Agreement or any other agreement contemplated herein, and so long as such Manager acts under such express standard, the resolution, action or terms so made, taken or provided by such Manager shall not constitute a breach of this Agreement or any other agreement contemplated herein, or impose liability upon such Manager.

(d) To the maximum extent permitted by applicable law, each Member hereby waives any claim or cause of action against a Manager and any Officer for any breach of fiduciary duty to the Company by such Person or Persons as a result of a conflict of interest between the Company and such Person or Persons where such Person or Persons have acted in accordance with the obligations of good faith and fair dealings under the terms, provisions, and obligations provided for in this Agreement, except to the extent such Person or Persons acted in bad faith as determined by a court of competent jurisdiction in a final and non-appealable decision. For the avoidance of doubt, each Member acknowledges and agrees that in the event of any such conflict of interest, each such Person may, in the absence of bad faith, act in the best interest of such Person as it relates to the following actions:

- Agreement
- (i) any actions taken by SOSV or the Company pursuant to the Service Level Agreement
  - (ii) identification, selection, and investment in the Participant Companies;
  - (iii) operating all aspects of the HAX Program, including Demo Day engagement, mentor engagement, etc.;
  - (iv) managing investments in Participant Companies, including evaluating investment, divestment and exit opportunities; and
  - (v) SOSV or any of its affiliates providing information to or otherwise engaging with Participant Companies.

## **ARTICLE VIII. AMENDMENTS**

### **Section 8.1. Amendments.**

Any amendments to this Agreement shall be adopted and be effective as an amendment hereto only if in writing and approved by an affirmative vote or approval of the Members holding at least a majority of the aggregate outstanding Units held by all Members; *provided, however*, that no amendment (i) to this Section 8.1 or (ii) that would cause the Company to be treated as anything other than a partnership for United States federal income tax purposes, shall be made without the affirmative vote or approval of all of the Members, and any purported amendment made without such unanimous approval shall be void and ineffective. Any amendment made in accordance with this Section 8.1 shall be binding upon all of the Members.

## **ARTICLE IX. ALLOCATIONS**

### **Section 9.1. General Allocations of Profits and Losses.**

Subject to and after giving effect to the special allocations set forth in Section 9.2, Profits and Losses of the Company for each Fiscal Year shall be allocated among the Members in a manner such that each Member's Capital Account balance, immediately after making all allocations required for that Fiscal Year, is, as nearly as possible, equal to (i) the distributions that would be made to such Member under Section 10.1 if the assets of the Company were sold for cash equal to their respective Gross Asset Values, all liabilities of the Company were satisfied (limited with respect to each nonrecourse liability to the Gross Asset Value of the assets securing such liability), and the net proceeds of such hypothetical sale of assets were distributed to the Members in accordance with Section 10.1 immediately after the hypothetical sale of assets, minus (ii) such Member's share of "partnership minimum gain" (as that term is defined in Treasury Regulations Section 1.704-2(b)(2)) and partner nonrecourse debt minimum gain (as that term is defined in Treasury Regulations Section 1.704-2(i)(2)) of the Company, computed immediately before the hypothetical sale of assets. For the avoidance of doubt, the Company will not hold any equity, nor benefit from any investment, in the Participant Companies.

### **Section 9.2. Special Allocations, Etc.**

The Company shall make the following allocations, in the following order of priority, prior to making any allocations under Section 9.1 for any Fiscal Year.

(a) Chargebacks of Nonrecourse Deductions. Notwithstanding any other provision of this Agreement to the contrary, in the event that there is a net decrease in partnership minimum gain (as that term is defined in Treasury Regulations Section 1.704-2(b)(2)) with respect to the



Company during a Company taxable year, the Members shall be allocated items of income and gain in accordance with Treasury Regulations Section 1.704-2(f). The preceding sentence is intended to comply with the minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

(b) Chargebacks of Partner Nonrecourse Deductions. Notwithstanding any other provision of this Agreement, if during a Company taxable year there is a net decrease in partner nonrecourse debt minimum gain, as that term is defined in Treasury Regulations Section 1.704-2(i)(2), that decrease shall be charged back among the Members in accordance with Treasury Regulations Section 1.704-2(i)(4). The preceding sentence is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement of Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted and applied in a manner consistent therewith.

(c) Qualified Income Offset. Any Member who unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes the Member's Adjusted Capital Account balance to become negative or that increases a negative balance in such Member's Adjusted Capital Account shall be allocated items of income and gain in an amount and manner sufficient to eliminate such negative Adjusted Capital Account balance as quickly as possible. The preceding sentence is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted and applied in a manner consistent therewith.

(d) Limitation on Loss Allocations. The Losses allocated to any Member pursuant to Section 9.1 with respect to any Fiscal Year shall not exceed the maximum amount of Losses that can be so allocated without causing such Member to have a negative Adjusted Capital Account balance at the end of such Fiscal Year and without increasing an existing negative Adjusted Capital Account balance for such Member at the end of such Fiscal Year. All Losses otherwise allocable to a Member in excess of the limitation set forth in this Section 9.2(d) shall be allocated (i) first, to those Members who are not subject to this limitation in accordance with Section 9.1, and (ii) second, any remaining amount to the Members in the manner required by the Code and the Treasury Regulations.

(e) Section 743(b) and Section 734(b) Adjustments. To the extent that an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 743(b) or Code Section 734(b) is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or, in the case of a distribution to a Member in complete liquidation of its interest in the Company, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event that Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(f) Nonrecourse Deductions. Nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(b)(1)) shall be allocated to the Members in proportion to their respective Percentage Interests.

(g) Partner Nonrecourse Deductions. Any partner nonrecourse deductions (as defined in Treasury Regulations Section 1.704-2(i)(1)) shall be allocated to the Member who (in its capacity, directly or indirectly, as lender, guarantor or otherwise) bears the economic risk of loss with respect to the loan to which such partner nonrecourse deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i).

(h) Regulatory Allocations. The allocations set forth in Sections 9.2(a) through 9.2(g) (the "Regulatory Allocations") are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the greatest extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, expense, or deduction pursuant to this Section 9.2(h). Therefore, notwithstanding any other provision of this Section 9.2, the Regulatory Allocations shall be taken into account in allocating items of income, gain, loss, expense, and deduction among the Members such that, to the greatest extent possible, the net amount of allocations of such items and the Regulatory Allocations to each Member shall be equal to the net amount that would have been allocated to each Member if the Regulatory Allocations had not occurred and all Company items were allocated pursuant to Section 9.1.

(i) Section 704(c) and Capital Account Revaluation Allocations. In accordance with Section 704(c) of the Code and Treasury Regulations Section 1.704-3(b) thereunder (or such other method under Treasury Regulations Section 1.704-3 selected by the Manager), income, gain, loss, expense, and deduction with respect to any property contributed to the capital of the Company shall, solely for income tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value. In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of "Gross Asset Value", subsequent allocations of income, gain, loss, expense, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Section 704(c) of the Code and Treasury Regulations Section 1.704-3(b) thereunder (or such other method under Treasury Regulations Section 1.704-3 selected by the Manager). Allocations pursuant to this Section 9.2(i) are solely for purposes of federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items or distributions pursuant to any provision of this Agreement.

(j) Tax Credits. Allocations of tax credits, tax credit recapture, and any items related thereto shall be allocated to the Members according to their interests in such items as reasonably determined by the Manager taking into account the principles of Treasury Regulations Section 1.704-1(b)(4)(ii).

(k) Additional Allocation Rules. For purposes of determining the Profits, Losses or any other items allocable to any period, Profits, Losses and any such other items shall be determined on a daily, monthly or other basis (but no less frequently than once annually), as reasonably determined in good faith by the Manager using any method that is permissible under the Code (including without limitation Section 706) and the Treasury Regulations thereunder. Except as otherwise provided in this Agreement, all items of Company income, gain, loss, expense and deduction and any other allocations not otherwise provided for shall be allocated among the Members in the same manner as is applicable to Profits and Losses for the Fiscal Year in question. The Members are aware of the income tax consequences of the allocations made by this Agreement and hereby agree to be bound by the provisions of this Agreement in reporting their shares of Company income, gain, loss, expense and deduction for income tax purposes.

## **ARTICLE X. DISTRIBUTIONS**

**Section 10.1. Distributions.** Subject to Sections 10.2, 10.3, 10.4 and 15.2, and the payment of the Clawback Amount under Section 18.10, distributions shall be made in accordance with this Section 10.1 in such amounts and at such times as determined by the Manager and based on each Member's Percentage Interest. Notwithstanding the foregoing, each Member agrees that, any operational revenues, net proceeds of a Capital Transaction and other available cash flow that the Manager determines to distribute under this Section 10.1 shall be reinvested into the HAX Program.

### **Section 10.2. Tax Distributions.**

Notwithstanding Section 10.1 but subject to Section 10.3, Section 10.4 and Section 15.2, prior to any distributions under Section 10.1, the Company may, but shall not be obligated to, distribute cash to one or more of the Members to fully or partially fund the federal, state and local tax liability (including estimated tax liability) of such Members or their direct or indirect owners on account of the allocation to them of net taxable income for that Fiscal Year in excess of net tax losses previously allocated to them (to the extent such losses have not offset a previous year's income) pursuant to this Agreement. For purposes of the foregoing, such federal, state and local tax liability of each Member or its direct or indirect owners shall be determined by the Manager in its sole discretion, utilizing such assumed tax rates and other tax assumptions as the Manager determines to be appropriate. Distributions made pursuant to this Section 10.2 shall reduce the applicable amount otherwise distributable to such Member under Section 10.1 and, as necessary, shall offset the next distribution(s) due such Member under Section 10.1 on a dollar-for-dollar basis and shall be deemed to have been made thereunder when so applied. For the avoidance of doubt, NJEDA is an instrumentality of the State of New Jersey generally exempted from income tax under Code Section 115.

### **Section 10.3. Limitations on Distributions.**

Notwithstanding any provision to the contrary contained in this Agreement, the Company shall not make a distribution to any Member with respect to such Member's Interest if such distribution would violate the Act or other applicable law.

**Section 10.4. Withholding.**

Notwithstanding any provision to the contrary in this Agreement, to the extent that the Company is required pursuant to applicable federal, state, local, or foreign law either (i) to pay tax (including estimated tax) on a Member's allocable share of Company Profits or items of income or gain, whether or not distributed, or (ii) to withhold and pay over to any tax authority any portion of a distribution otherwise distributable to a Member, the Company may pay over such tax or such withheld amount to the relevant tax authority. Any such tax or withheld amount so paid over shall reduce the applicable amount otherwise distributable to such Member under this Agreement, and, as necessary, shall offset the next distribution(s) to be made to that Member under this Agreement on a dollar-for-dollar basis and shall be deemed to have been distributed to that Member under the applicable provision of this Agreement when so applied, as reasonably determined by the Manager. In the event that the Company is required to pay tax (including pursuant to Code Section 1446) on a Member's allocable share of Company Profits or items of income or gain in an amount that exceeds the amount of cash otherwise available to be distributed to that Member, that Member shall, at the Manager's request, promptly contribute an amount of cash to the Company equal to such excess. For the avoidance of doubt, NJEDA is an instrumentality of the State of New Jersey generally exempted from income tax under Code Section 115.

**ARTICLE XI.  
RESTRICTIONS ON TRANSFER**

**Section 11.1. Transfers Generally.**

No Member may sell, assign, pledge or otherwise transfer (a "Transfer"), any Units, either voluntarily or involuntarily, except by operation of law, in compliance with the other provisions of this Article XI; *provided*, that (i) the restrictions contained in this Article XI will continue to be applicable to any Units after any Transfer thereof pursuant to Section 11.2 hereof, and (ii) the transferee of such Units pursuant to clause (i) above shall have executed and delivered to the Company an instrument evidencing the written agreement of such transferee to be bound by all of the terms and provisions of this Agreement. If such an instrument is not executed by the transferee, the Company need not recognize any such Transfer for any purpose.

**Section 11.2. Transfers to Permitted Transferees.**

In the event that a Member (the "Transferring Member") proposes to Transfer any Units to a Permitted Transferee, such Member shall notify the Company and each Member in writing at least ten (10) business days prior to the proposed date, or such other lesser time that may be authorized by law, of any such Transfer, which notice shall indicate the number and type of Units

proposed to be Transferred and provide sufficient detail on the identity of the proposed transferee to enable the Members to determine whether such proposed transferee is a Permitted Transferee of such Transferring Member. As a condition precedent to the Transfer of such Units to a Permitted Transferee (A) except if the Transfer is from a State Entity and is required by law, Members holding at least a majority of the aggregate outstanding Units shall have consented in writing to the transfer to the proposed transferee on the basis that it is a Permitted Transferee of the Transferring Member, and (B) the Permitted Transferee(s) shall have executed and delivered to the Company an instrument evidencing the written agreement of such transferee to be bound by all of the terms and provisions of this Agreement.

### **Section 11.3. SOSV Option.**

Notwithstanding Sections 11.1 and 11.2, after the Initial Operations Period, if (a) SOSV or its affiliated funds invest or have invested a total amount greater than three (3) times the total NJEDA Investment directly into Participant Companies (*i.e.*, at the point where SOSV has invested \$75 million in Participant Companies' equity vs. the \$25 Million NJEDA Investment); and (b) SOSV is in compliance with all other material conditions of the NJEDA Investment pursuant to Section 18.10(a), then SOSV shall have the right (but not the obligation) to purchase NJEDA's Interest in the Company for one dollar (\$1.00), plus the remaining cash balance on the Depreciation Schedule ("SOSV Option").

### **Section 11.4. Transfers Not in Compliance.**

A purported or attempted Transfer of Units by a Member that does not comply with this Agreement shall be void *ab initio* and the purported transferee or successor by operation of law shall not be deemed to be a holder of Units of the Company for any purpose and shall not be entitled to any of the rights of a Member or holder of Units, including, without limitation, the right to vote the Units or any distribution on or with respect to the Units.

## **ARTICLE XII. BOOKS AND RECORDS**

### **Section 12.1. Books, Records and Financial Statements.**

(a) At all times during the continuance of the Company, the Company shall maintain separate books of account for the Company that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operation of the Company business in accordance with GAAP consistently applied, and, to the extent inconsistent therewith, in accordance with this Agreement. Such books of account, together with a copy of this Agreement and of the Certificate, shall at all times be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by each Member and its duly authorized representative for any purpose reasonably related to such Member's interest as a Member of the Company.

(b) The Managers shall prepare and maintain, or cause to be prepared and maintained, the books of account of the Company. The Treasurer appointed pursuant to Section 7.4 will maintain physical possession of the books and records of the Company. The following financial information, which need not be examined and certified to by an independent certified public accountant, shall be transmitted by the Managers to each Member within three (3) months after the close of each Fiscal Year:

- (i) the balance sheet of the Company as of the beginning and close of such Fiscal Year;
- (ii) a statement of Company Profits and Losses for such Fiscal Year;
- (iii) a statement of such Member's Capital Account as of the close of such Fiscal Year, and changes therein during such Fiscal Year; and
- (iv) a statement indicating such Member's share of each item of Company income, gain, loss, expense, deduction or credit for such Fiscal Year for income tax purposes.

**Section 12.2. Accounting Method.**

For both financial and tax reporting purposes and for purposes of determining Profits and Losses, unless the Manager determines that the Company is required to use a different method, the books and records of the Company shall be kept on the cash method of accounting applied in a consistent manner and shall reflect all Company transactions and be appropriate for the Company's business.

**Section 12.3. Audit.**

During each year of the Initial Operations Period, and thereafter upon the written request of Members holding at least fifty percent (50%) of the then outstanding Units, SOSV shall cause the financial statements of the Company to be audited by an independent certified public accountant, selected by the Manager, with such audit to be accompanied by a report of such accountant containing its opinion. The cost of such audit will be an expense of the Company. A copy of any such audited financial statements and accountant's report will be made available for inspection by the Members.

**ARTICLE XIII.  
TAX MATTERS**

**Section 13.1. Partnership Representative.**

The Manager shall be the Company's "partnership representative" for purposes of Section 223 of the Code and all applicable state, local and foreign tax purposes. The partnership

representative may be replaced through a written consent of all Members or may resign by notifying the Members in writing, upon which the Members will appoint a replacement partnership representative. To the extent not otherwise provided in this Agreement, the partnership representative will have all the powers and responsibilities of such position as provided in the Code; provided, that the partnership representative shall provide reasonable notice to the Members prior to taking any action pursuant to this Section 13.1 and with respect to any such action that would be reasonably expected to adversely affect the Members or the Company, shall not take such action without the prior written consent of each Member, which consent shall not be unreasonably delayed, conditioned or withheld. The partnership representative is specifically directed and authorized to take whatever steps are necessary or desirable to perfect such designation, including filing any forms or documents with the Internal Revenue Service and taking such other action as may from time to time be required by the Regulations issued under the Code. At the Company's sole cost and expense, the partnership representative will cause to be prepared and will sign all tax returns of the Company, make, revoke, or change any tax elections for the Company allowed under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company, and control the conduct of and monitor any governmental tax authority in any audit or judicial, administrative or other proceeding concerning the Company's tax issues; provided, that the Manager shall promptly provide each Members notice of commencement of any such audit, judicial, administrative or other proceeding and copies of material correspondence related thereto, and each Member may comment on such correspondence and participate in the defense of such audit or judicial, administrative or other proceeding at its costs and expenses; and provided further, that the Manager shall not settle or otherwise compromise any audit or judicial, administrative or other proceeding relating to the Company's tax affairs without the prior written consent of all Members; provided, further, that the Manager or the partnership representative, as applicable shall not make, revoke or change any tax elections of the Company without providing notice to all of the Members and receiving prior written consent of the Members. The Members shall reasonably cooperate with and assist the partnership representative in its conduct of the Company's tax affairs pursuant to this Section 13.1. This Section 13.1 shall survive the liquidation and dissolution of the Company and the transfer, assignment or liquidation of such Member's interest in the Company.

**ARTICLE XIV.**  
**LIABILITY, EXCULPATION AND INDEMNIFICATION**

**Section 14.1. Liability.**

(a) Except as otherwise provided by the Act or this Agreement, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and no Covered Person shall be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a Covered Person.

(b) Except as otherwise expressly required by the Act or this Agreement, a Member, individually in such Member's capacity as a Member, shall have no liability in excess of (i) the amount of such Member's Capital Contributions, (ii) such Member's share of any assets and undistributed profits of the Company, and (iii) the amount of any distributions wrongfully distributed to such Member.

**Section 14.2. Exculpation.**

(a) Except as provided in Section 18.10, no Covered Person shall be liable to the Company or any other Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that a Covered Person shall be liable to the Company or any other Covered Person for any such loss, damage or claim incurred by reason of such Covered Person's gross negligence or willful misconduct.

(b) A Covered Person shall be fully protected in relying in good faith upon the records of the Company and upon such information, opinions, reports or statements presented to the Company by any Person as to matters the Covered Person reasonably believes are within such other Person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Company, including information, opinions, reports or statements as to the value and amount of the assets, liabilities, profits, losses, or any other facts pertinent to the existence and amount of assets from which distributions to Members might properly be paid.

**Section 14.3. Duties and Liabilities of Covered Persons.**

(a) To the extent that, at law or in equity, a Covered Person has duties (including fiduciary duties) and liabilities relating thereto to the Company or to any other Covered Person, a Covered Person acting under this Agreement shall not be liable to the Company or to any other Covered Person for its good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties and liabilities of the Covered Person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such Covered Person.

(b) Unless otherwise expressly provided herein, (i) whenever a conflict of interest exists or arises between Covered Persons, or (ii) whenever this Agreement or any other agreement contemplated herein or therein provides that a Covered Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Company or any Member, the Covered Person shall resolve such conflict of interest, taking such action or providing such terms, considering in each case the relative interest of each party (including its own interest) to such conflict, agreement, transaction or situation and the benefits and burdens relating to such interests, any customary or accepted industry practices, and any applicable generally accepted accounting practices or principles. In the absence of bad faith or manifest unreasonableness by the Covered Person, the resolution, action or term so made, taken or provided by the Covered



Person shall not constitute a breach of this Agreement or any other agreement contemplated herein or of any duty or obligation of the Covered Person at law or in equity or otherwise.

(c) Whenever in this Agreement a Covered Person is permitted or required to make a decision (i) in its “discretion” or under a grant of similar authority or latitude, the Covered Person shall be entitled to consider only such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company or any other Person, or (ii) in its “good faith” or under another express standard, the Covered Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Agreement or other applicable law.

(d) Notwithstanding anything to the contrary in this Section 14.3 or elsewhere in this Agreement, the duties (including fiduciary duties) of NJEDA as a Member shall be subject to N.J.S.A. 34:1B-1 et seq.; the Conflict of Interest Law, N.J.S.A. 52:13D-12 et seq.; and other law applicable to a State Entity.

#### **Section 14.4. Indemnification.**

(a) From the Company.

(i) To the fullest extent permitted by applicable law, a Covered Person shall be entitled to indemnification from the Company for any loss, damage or claim incurred by such Covered Person by reason of any act or omission performed or omitted by such Covered Person in good faith on behalf of the Company and in a manner reasonably believed to be within the scope of authority conferred on such Covered Person by this Agreement, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person by reason of gross negligence or willful misconduct with respect to such acts or omissions; *provided, however*, that any indemnity under this Section 14.4(a) shall be provided out of and to the extent of Company assets only, and no Covered Person shall have any personal liability on account thereof.

(ii) To the fullest extent permitted by applicable law, expenses (including reasonable legal fees and expenses) incurred by a Covered Person in defending any claim, demand, action, suit or proceeding shall, from time to time, be advanced by the Company prior to the final disposition of such claim, demand, action, suit or proceeding upon receipt by the Company of an undertaking by or on behalf of the Covered Person to repay such amount if it shall be determined that the Covered Person is not entitled to be indemnified as authorized in Section 14.4(a) hereof.

(b) From the Members. Except as to a Member that is a State Entity, to the fullest extent permitted by applicable law and notwithstanding anything in this Agreement to the contrary, in the event that any Member, by reason of such Member’s gross negligence or willful misconduct (the “Offending Person”), causes any loss, damage or claim to be suffered or incurred by the

Company, such Offending Person (except a Member that is a State Entity) shall indemnify and hold harmless the Company and each other Covered Person from and against any such loss, damage or claim up to an amount not to exceed in the cumulative maximum amount of \$25 Million. SOSV shall further indemnify and hold harmless NJEDA pursuant to a separate Indemnification and Hold Harmless Agreement effective as of the same date as this Agreement (“Indemnification Agreement”).

**Section 14.5. Insurance; Indemnity Contracts.**

The Company may purchase and maintain insurance, to the extent and in such amounts as the Manager shall, deem reasonable, on behalf of Covered Persons and such other Persons as the Managers shall determine, against any liability that may be asserted against, or expenses that may be incurred by, any such Person in connection with the activities of the Company or such indemnities, regardless of whether the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement. The Company, as reasonably determined by the Manager, may enter into indemnity contracts with Covered Persons and adopt written procedures pursuant to which arrangements are made for the advancement of expenses and the funding of obligations under Section 14.5 hereof and containing such other procedures regarding indemnification as are appropriate.

**Section 14.6. Other Businesses.**

Each Member and its Affiliates may engage in or possess an interest in other business ventures of any nature or description, independently or with others, and the Company and the Members shall have no rights by virtue of this Agreement in and to such independent ventures or the income or profits derived therefrom.

**ARTICLE XV.  
DISSOLUTION, LIQUIDATION AND TERMINATION**

**Section 15.1. Dissolution.**

The Company shall be dissolved, and its affairs shall be wound up upon the occurrence of any of the following events:

- (a) the death, incapacity, retirement, resignation, expulsion, bankruptcy or dissolution of the last Member, or the occurrence of any other event under the Act which terminates the continued membership of the last Member;
- (b) the entry of a decree of judicial dissolution under N.J.S.A. 42:2C-48;
- (c) the disposition of all or substantially all of the assets of the Company in a single transaction or series of related transactions;

(d) the delivery by Members holding at least a majority of the then outstanding Units of a written notice requesting that the Company be dissolved; or

(e) the SOSV Option is not exercised within ten (10) years after the end of the Initial Operations Period.

The legal representatives, if any, of any Member shall succeed as assignee to such Member's Interest in the Company upon the death, incapacity, incompetence, bankruptcy, insolvency or dissolution of such Member, but shall be admitted as a substitute Member only upon the approval of the Managers.

### **Section 15.2. Liquidation.**

Upon dissolution of the Company, the Manager shall appoint a liquidating trustee (which may be a Manager), and such Person shall immediately commence to wind up the Company's affairs; *provided, however*, that a reasonable time shall be allowed for the orderly liquidation of the assets of the Company and the satisfaction of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation. The Company's property and assets or the proceeds from the liquidation thereof shall be distributed so as not to contravene the Act and shall be otherwise disbursed in compliance with this Agreement. Liquidating distributions shall be made as follows: first, to the creditors of the Company to the extent of the Company's obligations thereto, second, to the NJEDA if any Clawback Amount is owed and unpaid, and thereafter to the Members in accordance with Section 10.1. The liquidating trustee may distribute some or all of the assets of the Company to the Members in-kind in the event that the liquidating trustee determines, in its sole discretion, that such an in-kind distribution is appropriate. The liquidating trustee shall establish such reserves as it deems reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company. At the expiration of such period as the liquidating trustee deems advisable, such reserves shall be distributed to the Members as set forth in this Section 15.2.

### **Section 15.3. Termination.**

The Company shall terminate upon the earlier of (i) the expiration of the Total Program Operations Period or (ii) when all of the assets of the Company have been distributed in the manner provided for in this Article XV and the Certificate shall have been canceled in the manner required by the Act. Notwithstanding the foregoing, and regardless of such Termination, a Member's reporting obligations as required during the Reporting Period shall survive the termination of the Company and this Agreement until such time as such Reporting Period expires.

### **Section 15.4. Claims of the Members.**

Except as provided in Section 18.10, Members and former Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the

Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members and former Members shall have no recourse against the Company or any other Member.

## **ARTICLE XVI CONFIDENTIALITY**

### **Section 16.1. Confidential Information**

The Members have entered into that certain confidentiality agreement dated as of September 15, 2021 (the “Confidentiality Agreement”) and agree that the terms provided therein control with respect to each Member’s disclosure of confidential information. Notwithstanding the foregoing, each Member acknowledges that this Agreement is subject to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1 et seq., and any review and approval by the NJEDA Board shall be in a public meeting pursuant to the Open Public Meetings Act (OPMA), N.J.S.A. 10:4-6 et seq.

## **ARTICLE XVII OWNERSHIP**

### **Section 17.1 Ownership of Company Intellectual Property.**

Notwithstanding any other provision of this Agreement, all ownership rights with respect to the intellectual property of the Company, including, but not limited necessarily limited to, all patents, trademarks, copyrights, trade secrets, data definitions, databases, standards, guidelines, schemas, diagrams, software, programs, designs, codes, e-mail addresses, telephone numbers, facsimiles, and other technology and information developed in connection with the Purpose (“Intellectual Property”) shall be owned by SOSV and shall be considered assets of SOSV. For the avoidance of doubt, any Intellectual Property jointly created during the Total Program Operations Period shall become the property of SOSV if SOSV exercises the SOSV Option as described herein.

### **Section 17.2 Member Intellectual Property.**

Each Member warrants that any Intellectual Property produced or provided by that Member for the Company and incorporated in any form in the Company’s Purpose is not subject to any claim of ownership by the Company, the other Member or any other party. Each Member further warrants that any rights in Intellectual property developed in connection with the Company’s Purpose either now held or later acquired by that Member shall be licensed to the Company or its successors or assigns without any royalty, fee, or credit to the Member’s Capital Account until the expiration of the Total Program Operations Period. For the avoidance of doubt, each Member shall retain all right, title and interest in and to the Intellectual Property it provides to the Company and upon the expiration of the Total Program Operations Period neither the Company nor a Member may be entitled to use a Member’s Intellectual Property. For the

further avoidance of any doubt, SOSV agrees to license to the Company for the Total Program Operations Period and without any royalty, fee, or credit the SOSV Intellectual Property as further detailed at Schedule I hereto.

**ARTICLE XVIII.  
MISCELLANEOUS**

**Section 18.1. Notices.**

(a) All notices provided for in this Agreement shall be in writing, duly signed by the party giving such notice, and shall be delivered, or mailed by registered or certified mail, as follows:

(i) If given to the Company, at the Company's mailing address set forth below:

HAX LLC  
174 Nassau Street, Suite 3000  
Princeton, NJ, 08542  
Attention: Sean O'Sullivan  
Email: legal@sosv.com

with copies (which shall not constitute notice) sent contemporaneously to:

NJEDA  
36 West State Street  
Trenton, New Jersey 08625  
United States of America  
Attention: Kathleen Coviello and Chief Executive Officer, NJEDA  
Email: kcoviello@njeda.com and customercare@njeda.com

and

SOSV Investments, LLC  
174 Nassau Street, Suite 3000  
Princeton, New Jersey 08542  
Attention: Sean O'Sullivan  
Email: legal@sosv.com

(ii) If given to any Member, at the address set forth on Schedule A hereto, as such address may be updated by the Member by written notice to the Company and set forth in the books and records of the Company.

(b) Any notice or other communication pursuant to this Agreement shall be deemed to have been duly given or made and to have become effective (i) when delivered in hand to the party to which it was directed, (ii) if sent by commercial courier guaranteeing next business day delivery, on the business day following the date of delivery to such courier, or (iii) if sent by first-class mail, postage prepaid, and properly addressed in accordance with the foregoing provisions of this Section 18.1, (A) when received by the addressee, or (B) on the third business day following the day of dispatch thereof, whichever of (A) and (B) shall be the earlier.

**Section 18.2. Failure to Pursue Remedies.**

The failure of any party to seek redress for violation of, or to insist upon the strict performance of, any provision of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

**Section 18.3. Cumulative Remedies.**

The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

**Section 18.4. Binding Effect.**

This Agreement shall be binding upon and inure to the benefit of all of the parties and, to the extent permitted by this Agreement, their successors, heirs, legal representatives and assigns.

**Section 18.5. Interpretation.**

Throughout this Agreement, nouns, pronouns and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable. All references herein to "Articles," "Sections," subsections and paragraphs shall refer to corresponding provisions of this Agreement.

**Section 18.6. Severability.**

The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**Section 18.7. Counterparts.**

This Agreement may be executed in any number of counterparts with the same effect as if parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one instrument.

**Section 18.8. Integration.**

This Agreement, together with the Confidentiality Agreement executed by and between the Members dated 15 September 2021 and the Indemnification Agreement executed by and between the Members dated [XX] October 2021 constitutes the entire agreement and understanding among the parties hereto pertaining to the subject matter hereof, and supersedes all prior agreements and understandings pertaining thereto.

**Section 18.9. Third-Party Beneficiaries.**

This Agreement shall be binding upon and inure solely to the benefit of each party hereto, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement, including, without limitation, by way of subrogation.

**Section 18.10. NJEDA Investment Conditions.**

(a) SOSV and/or the Company shall comply with the conditions contained in Schedule B-2 during the Total Program Operations Period. The conditions in Schedule B-2 shall be incorporated in this Agreement as if listed herein.

(b) If, prior to the expiration of the Total Program Operations Period, NJEDA determines that either the Company or SOSV are not materially complying with the conditions in Schedule B-2 ("Material Non-Compliance"), the Parties agree to the following escalation process:

- (i) NJEDA will notify SOSV in writing of the Material Non-Compliance ("Notice");
- (ii) SOSV will have ninety (90) days from the date of receipt of any such Notice ("Cure Period") to cure the Material Non-Compliance, during which time the Parties may mutually agree to modify or waive the condition(s);

(c) If, after the Cure Period, the Material Non-Compliance is not cured and/or the Parties have not been able to reasonably agree on any modifications or waiver, then NJEDA may withhold any predetermined investment amounts specified in Schedule A not yet invested in the Company ("Withhold Amount") and either: (i) only in the event of gross negligence or intentional breach on the part of SOSV or the Company in respect of the Material Non-Compliance, reclaim from the Company and SOSV (only to the extent of any shortfall after sixty (60) days' time for the Company to make repayment) a portion of any previously-made investments proportional to the time remaining in the Total Program Operations Period ("Clawback Amount"). The Clawback Amount shall be determined as set out in Schedule H; or (ii) only in the event of fraud or if any representation made by SOSV or the Company in its submissions to NJEDA, in the Letter of Intent, or in this Agreement is false, misleading, or inaccurate in any material respect as of the date made, reclaim from the Company and SOSV (only to the extent of any shortfall after sixty (60) days' time for the Company to make

repayment) the entire NJEDA Investment amount. The Withhold Amount and Clawback Amount shall not include money for payments that the Company is legally obligated to make, e.g., building or equipment leases, etc. Any amount due to NJEDA under this Section 18.10 shall be paid within 180 days.

(d) SOSV acknowledges that, pursuant to New Jersey case law, NJEDA may not be unreasonable, capricious, and arbitrary in its determination of Material Non-Compliance,

(e) This Section 18.10 shall survive for ten (10) years following either (i) the liquidation and dissolution of the Company and/or (ii) any transfer, assignment, or liquidation of the NJEDA's Interest in the Company.

### **Section 18.11. New Jersey Compliance.**

(a) Conflict of Interest

(i) SOSV, by itself and on behalf of the Company, hereby agrees to abide by the prohibitions contained in this Section 18.11(a) on activities between SOSV, by itself and on behalf of the Company, and any State officer or employee or special State officer or employee as defined by N.J.S.A. 52:13D-13(b) and (e) ("State Employee"). Any violation of these prohibitions shall render SOSV liable to debarment in the public interest, pursuant to the procedures established by Executive Order No. 34 (1976), Executive Order No. 189 (1988), and NJEDA debarment rules at N.J.A.C. 19:30-2.1 et seq., as amended and supplemented.

(ii) SOSV, by itself and on behalf of the Company, hereby warrants that it has not paid and shall not pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State Employee with which SOSV, by itself or on behalf of the Company, transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13(i), of any such State Employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such State Employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

(iii) SOSV, by itself and on behalf of the Company, hereby warrants that the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State Employee from SOSV or the Company shall be reported in writing forthwith by SOSV to the Attorney General and the State Ethics Commission.

(iv) SOSV, by itself and on behalf of the Company, hereby warrants that it shall not undertake directly or indirectly any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, expressed or implied, or sell any interest in SOSV to any State Employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13(g). SOSV, by itself and on behalf of the Company, hereby warrants that any



relationships subject to this provision shall be reported in writing forthwith to the State Ethics Commission, which may grant a waiver of this restriction upon application of the State Employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

(v) SOSV, by itself and on behalf of the Company, hereby warrants that it shall not influence, or attempt to influence or cause to be influenced, any State Employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said State Employee.

(b) SOSV, by itself and on behalf of the Company, acknowledges that: (i) it may be required by N.J.S.A. 19:44A-20.27 (L. 2005, c. 271) and regulations promulgated thereunder to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission; (ii) it is the responsibility of SOSV and the Company to determine whether such filing is necessary; and (iii) failure to make such filing, if required, can result in the imposition of financial penalties by the New Jersey Election Law Enforcement Commission.

(c) SOSV, by itself and on behalf of the Company, agrees to comply, and to require its contractors and subcontractors to comply with the following: (i) laws and executive orders prohibiting discrimination, including, but not limited to, Title VII of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and their state law counterparts; (ii) the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a) (for construction contractors, 41 CFR §60-4.3(a)); (iii) non-discrimination of qualified individuals based on their status as protected veterans or individuals with disabilities and does not discriminate against individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin, or any other characteristic protected by law; (iv) affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status, or disability and (v) the provisions of 29 CFR Part 471, Appendix A to subpart a, as applicable. Such compliance with this paragraph shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(d) Prevailing Wages and Affirmative Action. In performing, requiring, or paying in whole or in part for, any work under a construction contract, as that term is defined N.J.A.C. 19:30-3.1 and -4.1, on the leased premises for the Company, SOSV, by itself and on behalf of the Company, shall comply, and cause its contractors and landlord to comply, with all applicable prevailing wage requirements (including, but not limited to, N.J.S.A. 34:11-56.25 et seq., N.J.S.A. 34:1B-5.1, N.J.A.C. 19:30-4.1 et seq., and N.J.S.A. 34:11-56.48) and affirmative action requirements (including, but not limited to, N.J.S.A. 34:1B-5.4 and N.J.A.C. 19:30-3.1 et seq.), which requires, among other things, including mandatory language from NJEDA in the construction contracts and subcontracts. Further, SOSV, by itself and on behalf of the Company, and its contractors and landlord, shall comply with the provisions of the Public Works Contractor Registration Act ("PWCRA"), N.J.S.A. 34:11-56.48 et seq., where applicable, including, but not limited to, the requirement that all contractors, subcontractors and lower tier subcontractors who

bid on or engage in any contract for "public work" as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development.

(e) State Record Keeping

(i) SOSV, by itself and on behalf of the Company, shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final disbursement by NJEDA. Such records shall be made available to the NJEDA and the New Jersey Office of the State Comptroller upon request. Furthermore, SOSV acknowledges that relevant records of persons entering into contracts with NJEDA are subject to audit or review by the Office of the State Comptroller pursuant to N.J.S.A. 52:15C-14(d).

(ii) NJEDA and the State reserve the right to audit the records of SOSV in connection with all matters related to this Agreement and of the Company. SOSV, by itself and on behalf of the Company, agrees to maintain records in accordance with GAAP, for period of not less than five (5) years after receipt of final disbursement by NJEDA.

(f) The Parties hereby agree that, in the event of a breach or violation of the warranties contained in this Section 18.11, NJEDA shall have the right to make a determination of Material Non-Compliance and proceed pursuant to Section 18.11(c).

**Section 18.12. Governing Law and Venue.**

This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the State of New Jersey. All tort claims against NJEDA shall be governed by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq., and all contract claims against NJEDA shall be governed by the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1. The courts of the State of New Jersey shall have exclusive jurisdiction and the exclusive venue shall be the Superior Court of Mercer County, New Jersey.

**Section 18.13. Trial By Jury.**

EACH MEMBER AND EACH PARTY HERETO WAIVES ITS RIGHT TO TRIAL OF ANY ISSUES BY A JURY. Notwithstanding the foregoing, the parties may apply to any court of competent jurisdiction (subject to Section 18.12) for preliminary or interim equitable relief without breach of this provision.

**Section 18.14. Assignment.**

Subject to the restrictions on transferability contained herein, this Agreement shall be binding upon, and shall inure to the benefit of the successors and assigns of the respective parties.

**Section 18.15. Financial Assistance Available to Participant Companies.**

NJEDA acknowledges that the existence of programs administered by NJEDA or the Commission on Science, Innovation, and Technology (CSIT) (the “New Jersey Programs”) is materially important to the Participant Companies’ success in New Jersey, and that changes to the New Jersey Programs that result in a substantial reduction or elimination of available assistance to the public may have a detrimental effect on a Participant Company’s ability to remain in New Jersey. During the Total Program Operations Period, NJEDA shall make good faith effort to keep the Company informed of the New Jersey Programs for which Participant Companies may apply. NJEDA may provide this information by directing the Company to the NJEDA website. The Company and SOSV acknowledge and agree that in no event shall any NJEDA staff be involved in any application, agreement, or compliance on behalf of SOSV, the Company, or any Participant Company for the New Jersey Programs.

Some current or future programs are or may be:

1. New Jersey Innovation Evergreen Fund
2. Technology Business Tax Benefit Transfer (NOL)
3. NJ Green Fund
4. Black/Latino Seed Fund
5. NJ Ignite
6. Edison Innovation Fund
7. NJ Founders and Funders
8. NJ Accelerate

Current or future programs administered by CSIT are or may be:

9. Clean Tech Research & Development Voucher Program
10. Clean Tech Seed Grant
11. SBIR/STTR Direct Financial Assistance Program

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal as of the date first above stated.

**MEMBERS:**

**New Jersey Economic Development Authority**

By: \_\_\_\_\_

Name: Tim Sullivan

Title: Chief Executive Officer

**SOSV Investments, LLC**

By: \_\_\_\_\_

Name: Sean O'Sullivan

Title: Managing General Partner

Email: legal@sosv.com

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**SCHEDULE A**

**LIST OF MEMBERS AND CAPITAL CONTRIBUTIONS**

<b>Member/Address</b>	<b>Capital Contributions</b>	<b>Units</b>	<b>Percentage Interest</b>
New Jersey Economic Development Authority 36 West State Street, Trenton, NJ 08625	\$1.00	1	50.00%
SOSV Investments LLC 174 Nassau Street, Suite 3000, Princeton, NJ 08542	\$1.00	1	50.00%
<b>Total</b>	<b>\$2.00</b>	<b>2</b>	<b>100.00%</b>

**SCHEDULE B-1**

**HAX LLC CAPITAL CONTRIBUTION SCHEDULE**

Anticipated Timeline	Milestones	NJEDA Investment	Comments/ Documentation
Q1	Formation of LLC	\$999,999	Official creation of the LLC with documents executed by both parties.
	Lease signing	\$2,500,000	Execution of a minimum 8 year lease
Q4	Recruit first 10 full-time dedicated employees (will need a full list and evidence of NJ withholding tax)	\$1,000,000	Minimum of 10 full-time staff members located in Newark as indicated in Staffing and Management Plan (Appendix E) as supported by SOSV Investments payroll records
	Acquire and/or install workshop equipment in the designated facility	\$3,500,000	Workshop equipment capex indicated in the plan; to be documented with POS for equipment costs and install costs with a minimum cost of \$3.5M. This can be broken up into three funding investments if needed with a minimum investment of \$1M. For the avoidance of doubt, all equipment installation shall use prevailing wage labor rates.  See Note 1
Q1 through Q18	As each new Participant Company is inducted into the program, up to a total of at least 100 Participant Companies	\$150,000 per Participant Company, not to exceed \$15 Million in Total	See Notes 1, 2 and 4

Q8	A minimum of 10 new Participant Companies complete the “Phase 0” program	\$1,000,000	See Notes 1, 3
On or before Q20	A total of at least 100 Participant Companies inducted into the program and receive cumulative funding of \$25,000,000 from SOSV	\$1,000,000	See Note 1,2
Total		\$24,999,999	In no instance should EDA funding exceed \$25,000,000 in total

Note 1: In no instance shall the EDA invest more than \$9,500,000 during a 12-month period.

Note 2: New and distinctive Participant Companies in the HAX Program, (as detailed in Appendix D), must receive an average funding commitment of \$250,000. NJEDA shall invest an additional \$1,000,000 once 100 Participant Companies are inducted into the HAX Program.

Note 3: New and distinctive Participant Companies in the HAX “Phase 0” program (as detailed in Schedule D).

Note 4: At the end of each quarter during the Initial Operations Period, SOSV shall notify NJEDA of the number of Participant Companies inducted into the program. NJEDA shall invest \$150,000 per Participant Company so inducted into the program for a total of fifteen million dollars (\$15,000,000), invested quarterly in arrears.

**SCHEDULE B-2**

**CONDITIONS GOVERNING THE NJEDA INVESTMENT**

NJEDA Investment: NJEDA's Capital Contribution (the NJEDA Investment) is made subject to the explicit conditions outlined below and in the following Schedules and subject to Section 18.10(b) of the Operating Agreement:

1. Program Description; Operations

Period: SOSV shall incorporate the Company, which shall operate the HAX Program for the Initial Operations Period. SOSV shall commence on-the-ground staffing and logistics within 90 days following incorporation of the Company.

2. NJEDA Investment:

The NJEDA Investment shall only be used to pay for any Company fees and costs such as: the lease, equipment and operating costs of the Company. A 5/8 year general expense forecast for the Company is outlined in Schedule C.

3. SOSV Investment:

SOSV or its affiliates shall invest in a minimum of 100 Participant Companies with an average of \$250 Thousand (\$250,000.00) per company for a minimum total investment of \$25 Million (\$25,000,000.00) over a five-year period (the "SOSV Investment"). For the avoidance of doubt, the SOSV Investment will be in the name of SOSV and/or its affiliated funds only, with all investment rights (information, pre-emption, etc.) and benefits accruing solely to SOSV. Subject to market conditions and SOSV's investment guidelines, Participant Companies may be eligible for up to \$50 Million (\$50,000,000.00) of follow-on funding capital. SOSV shall be responsible for all fees and costs related to the Company in excess of the NJEDA Investment, including all interim costs that occur prior to the transfers shown in Schedule B and all fees and costs associated with the SOSV investments.

4. Participant Companies:

After a six (6) month ramp-up during the Initial Operations Period, the Company shall support a minimum of 10 Participant Companies each year. The Company's overall goal is to support an average of 20 Participant Companies each year over the first 5 years but in no case shall the Company support less than a cumulative total of 100



Participant Companies during the Initial Operations Period. The Company also anticipates helping support approximately 100 regional companies that have previously completed a HAX program and are currently operating.

SOSV shall staff the Company with product engineering, market development, and venture capital fundraising experts, and the Company shall be SOSV's largest operation both in terms of staff and number of resident companies. Additionally, the Company shall be the U.S. headquarters location for SOSV's HAX program.

While Participant Companies are at the Company, SOSV will operate the HAX Program on a rolling basis designed for Participant Companies that will run for 6 months and will host a demonstration day ("Demo Day"), twice per year. SOSV shall operate the HAX Program at the Company end-to-end, including application launch, review process, day-to-day program management, logistics and operations, providing a mentor network and educational curriculum, and all Demo Day preparations in compliance with all applicable laws and regulations. In addition, SOSV will also be responsible for the post-HAX Program activities of monitoring and providing services to the portfolio of Participant Companies. A description of the current HAX program is attached hereto as Schedule D for information only, as the HAX Program for the Company will be modified to reflect goals and objectives specific to the HAX Program presence in the United States.

5. Location; Lease;  
Post-Program Site Occupancy:

The Company's primary location shall be Newark, New Jersey (the "Primary Location"). In the first year of the Total Operations Period, a temporary facility (Temporary Facility) may be made available while a permanent facility (Designated Facility) is purpose-built. Beginning as soon as reasonably practicable, SOSV will improve the Designated Facility to provide sufficient and appropriate space and business support for the Participant Companies (including up to four (4) founding team members per Participant Company and two (2) support staff), who can have (24/7) access to work at the Designated Facility while participating in the HAX Program. During the Initial Operations Period, SOSV, through the Company, will enter into a lease for the

Designated Facility for a term of eight (8) years. SOSV, through the Company, will make office space available to Participant Companies for a period of eight (8) years from the start of the Initial Operations Period in the Primary Location and use its best efforts to encourage Participant Companies to remain at the Primary Location. At the end of the Initial Operations Period, SOSV shall have the option to assume the building lease and all related obligations from the Company. If SOSV assumes the lease, SOSV agrees to release NJEDA from all obligations related to the building lease. If SOSV exercises the SOSV Option, NJEDA agrees to relinquish any entitlement to its share of the security deposit.

6. Company Staffing & Management:

As outlined in Schedule E.

7. Advisory Boards:

The Parties shall work together to establish two distinct Advisory Boards to provide help and advice to HAX Program leadership on growing the local corporate/technology/investment/manufacturing ecosystem, establishing relationships with New Jersey corporations and sourcing funding for small/medium manufacturers in New Jersey ("HAX Program Corporate Advisory Board"). The HAX Program Corporate Advisory Board shall initially consist of one representative from SOSV, one representative from NJEDA, and up to five (5) additional members to be mutually agreed upon by SOSV and NJEDA.

The parties shall also work together to establish an Advisory Board to provide help and advice to the Company leadership on growing the local community engagement ecosystem, establishing relationships with New Jersey locally elected officials, universities, community colleges, non-profit organizations, and community development institutions ("HAX Program Community Engagement Advisory Board"). The HAX Program Community Engagement Advisory Board shall initially consist of one representative from SOSV, one representative from NJEDA, and up to five (5) additional members to be mutually agreed upon by SOSV and NJEDA.

Decisions made by the Advisory Boards shall be for

guidance purposes only and shall not in any manner bind SOSV, NJEDA, the management of the Company, the selection of Participant Companies, the day-to-day operation of the HAX Program, or otherwise.

8. Contacts:

SOSV shall designate one individual who shall be responsible for coordinating all of the services to be provided by SOSV regarding this Agreement and who shall be NJEDA's normal point of contact with SOSV on matters relating to such services and obligations. SOSV may change this designation from time to time in writing to NJEDA ("SOSV Representative").

NJEDA shall designate one individual who shall serve as NJEDA's Representative and normal point of contact for SOSV regarding this Agreement and SOSV's services and obligations hereunder. NJEDA may change this designation from time to time in writing to SOSV ("NJEDA Representative").

9. Reporting:

After a six-month ramp-up, during the first three (3) years of the Initial Operations Period, SOSV shall provide quarterly reports to NJEDA in the format shown in Schedule F (or as otherwise mutually agreed) and shall meet with the NJEDA Representative to discuss progress. For the remainder of the Initial Operations Period and the Reporting Period, SOSV shall provide semi-annual reports to NJEDA in a mutually agreeable format.

10. Community Engagement:

Commitments and reporting requirements are outlined in Schedule G.

11. Insurance Coverage:

SOSV shall procure and maintain standard commercial general liability, commercial auto liability, workers compensation, umbrella/excess liability (if applicable), professional liability (if applicable) and other insurances as required.

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**SCHEDULE C**

**This Schedule is CONFIDENTIAL**

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**SCHEDULE D**

**This Schedule is CONFIDENTIAL**

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**SCHEDULE E**

**This Schedule is CONFIDENTIAL**

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**SCHEDULE F**

*(Indicative Only; Subject to Change/Mutual Agreement between the Parties)*

IndieBio NY Update July 29th, 2021

The following reflects the activities of IndieBio NY from July 16th to July 29th, on behalf of New York State's Life Science Initiative administered by Empire State Development.

ACTIVITY	PROGRESS TO DATE	NEXT STEPS
Program Updates (Fall 2021)	Integrating company feedback and optimizing programming for upcoming Fall 2021 class of companies	
Company Updates (Spring 2021)	<ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul>	
IndieBio NY Portfolio Fundraising Updates	<ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>[REDACTED] have also received offers from investors.</p> <p>Total raised by cohort 1 = \$XXM Total raised by cohort 2 = \$XXM</p>	<ul style="list-style-type: none"> <li>• Continue matching them with suitable investors.</li> </ul>
IndieBio NY Fall 2021 Recruitment	<p>Number of applications (since Feb 1st 2021): XXX (+15) *does not include scouted companies who have not applied through SOSV application portal</p> <p>Signed LOIs: X</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>Extended LOIs: X</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>Outreach</p> <ul style="list-style-type: none"> <li>• X Technology Transfer Offices</li> <li>• X I-Corps Programs</li> <li>• X one-on-one meetings</li> <li>• X start-ups sourced: Two signed [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• Drive conversion of LOI signatures to ACE/SPA signature</li> <li>• Continue active screening of new candidates</li> <li>• Continue outreach to TTOs for information</li> </ul>



		<p>sessions and sourcing for lists of potential candidates</p>
<p>Complete the \$XX million raise for IBNY Sidecar Fund</p>	<p>We are working on getting the remaining \$XM to hit the \$Xm target.</p> <p>LPs</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>Leads</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul> <p>Last close - Sept/Oct</p> <ul style="list-style-type: none"> <li>• [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• Regular fundraising calls with PFNYC</li> <li>• Find new prospects</li> <li>• Close current leads</li> <li>• Set final close date</li> </ul>
<p>Continuous engagement with General Community</p>	<p>Princeton BioLabs &amp; Princeton Entrepreneurship Council Information Session (Tues, July 20, 12:00-1:00pm)</p> <ul style="list-style-type: none"> <li>• 25 attendees, recorded webinar</li> </ul> <p>IndieBio and Yale: Blavatnik Fellows (Fri, July 23, 1:00-2:00pm)</p> <ul style="list-style-type: none"> <li>• Access to Blavatnik Fellows portal for technology review</li> </ul> <p>2 IndieBio SF startups moving to New York City!</p> <ul style="list-style-type: none"> <li>• We have volunteered to give 2 of these startups an initial home base either at Rockefeller or our new facility when it opens.</li> <li>• [REDACTED]</li> </ul>	<ul style="list-style-type: none"> <li>• For a full listing of upcoming events please visit <a href="https://indiebio.co/events/">https://indiebio.co/events/</a></li> </ul>
<p>IndieBio Facility in New York City</p>	<ul style="list-style-type: none"> <li>• [REDACTED]</li> <li>• Our goal is to finalize the design, apply for permits and select a general contractor over the next 45-60 days while the landlord demolishes and</li> </ul>	<ul style="list-style-type: none"> <li>• Aiming to select a space and sign a term</li> </ul>

	<p>white boxes our floor so we can begin construction right when our lease commences.</p>	<p>sheet by the end of July.</p>
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## **SCHEDULE G**

### **COMMUNITY ENGAGEMENT PLAN**

In all activities listed below, SOSV or the Company, as applicable, shall coordinate with NJEDA prior to the activity.

1. Universities
  1. SOSV/the Company shall offer 20 hours of mentorship per quarter to research teams at New Jersey colleges and universities, consisting of
    - i. one on one meetings with teams
    - ii. guest lectures
    - iii. guest-hosted events, such as startup battles or networking sessions
  2. SOSV/the Company shall run a student intern program that hosts at least 12 undergraduate and/or graduate-level interns per year from New Jersey colleges and universities.
  3. Partners of SOSV/the Company shall commit to delivering at least one lecture per year at each university that participates in ResearchwithNJ – a program managed by the NJEDA.
2. Manufacturing
  - a. SOSV/the Company shall host a local manufacturing meet and greet once per year where HAX and its cohorts interact directly with the local manufacturing community about product innovation, materials and components that might be needed.
3. Workforce Development
  1. SOSV/the Company commit to becoming a partner of New Jersey Community College Consortium's Pathways and Skills Collaborative which is an existing program with other corporate partners including HP, Campbell, Norwalt, Brimar Industries, Ostuka and Teknogrid.
  2. SOSV/the Company commit time to support the NJ Council on Green Economy, particularly in their effort to establishing public-private partnerships to support workforce development in the green economy.
4. Community engagement
  1. SOSV/the Company shall appoint a "senior director of community" or a "community engagement manager" to oversee the Company's community programming and liaise with the Newark and broader New Jersey innovation and entrepreneurship ecosystem organizations, in an effort to ensure the Company remains connected and engaged with the local community. The community engagement manager should foster close relationships with academic, manufacturing, business, and innovation organizations such as:
    - i. New Jersey Community Colleges
    - ii. New Jersey Public and Private Universities, in particular the state's R1 and R2 research universities and any others partnering with CSIT through ResearchwithNJ or the Clean Tech R&D Voucher Program

- iii. The New Jersey Community College Consortium
- iv. New Jersey Manufacturing Extension Program
- v. TechUnited
- vi. Minority-oriented Statewide Chambers of Commerce (such as African American, Hispanic, Veteran, Asian American)
- vii. Liberty Science Center
- viii. Wind Institute Development
- ix. Head of Office of Climate Action and Green Economy

2. SOSV/the Company leadership shall meet at least once every six months with the New Jersey and NJEDA Chief Diversity Officers as well as Diversity Officer at the New Jersey Division of Investments, to ensure that the Company is consistently supporting and advocating for underrepresented business owners.

Support NJ-led programs:

- 1) An opportunity for SOSV/HAX to support State agency-led programs:
  - a. SOSV/HAX shall offer mentorship to, quarterly one-on-one office hours and or guest lectures and discussions for clean energy companies that receive direct NJ support from any of the State agencies (NJBP, NJCSIT, or NJEDA)
  - b. SOSV/HAX shall provide a minimum number of hours ( 10 hours per quarter) to access to the Company facilities and equipment for companies in aligned industries which have been vetted and received funding from a NJ state entity including NJEDA, NJBP or NJCSIT
    - i. An opportunity (but not a requirement) for SOSV/HAX to become a “gold sponsor” of the ResearchwithNJ platform by contributing at least \$100K annually to support the program. In return, participant companies who stay in NJ after completing the HAX Program would have the option to be profiled on the platform.
- 2) NJEDA Programs to be involved in:
  - a. SOSV/HAX shall apply to become an approved accelerator as part of the NJ Accelerate Program
  - b. SOSV/HAX leadership shall participate in NJ Founders and Funders as both a deal sourcing opportunity and a mentor to participating companies
- 3) SOSV/the Company commit to speaking at or co-sponsoring with the State, a Cleantech/ decarbonization Summit
- 4) SOSV/the Company shall provide use of communal / auditorium spaces for NJEDA and affiliates programming related to clean technology at least 2x per year. SOSV/HAX disseminate information on events to all cohort participants.
- 5) SOSV/the Company shall provide space at the Temporary Facility or Designated Facility for NJEDA employees to meet collectively and one on one with participant companies

regarding NJ-specific programs available to companies that opt to relocate to or stay in New Jersey. SOSV/HAX will provide time for NJEDA employees to meet with each company participating in the traditional accelerator program as well as the “Phase 0” and “Startups-in-Residence” sub-programs for at least one hour every six months. This can take the form of group presentations and one on one office hours for NJ’s offerings

Diversity, Equity & Inclusion:

- 1) The Company shall collect and share with NJEDA applicant and participant demographic data on a quarterly basis based on request of a voluntary disclosure from participating cohort companies
- 2) The Company shall demonstrate to NJEDA that participating cohort teams are providing equal access and opportunities for all job applicants
- 3) SOSV shall coordinate with NJEDA’s marketing and outreach team to promote equal access and opportunities for the HAX Program applicants.
- 4) SOSV shall engage in good faith negotiations with NJEDA on how to implement the results of the disparity study into the make-up of participating cohort companies and employment and internship opportunities.
- 5) SOSV shall reserve a mutually agreed upon number of slots in the Phase 0 program for NJ certified women or minority owned businesses - or businesses originated or with a location in a New Jersey Opportunity Zone Eligible Census Tracts.

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[1] The commencement and end dates referred to herein are approximate dates, contingent upon the formation of the Company

[2] Companies that go through the Program once and count towards the Funding Milestones one time.

**SCHEDULE H**

**This Schedule is CONFIDENTIAL**

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**SCHEDULE I**

**LIST OF SOSV IP LICENSED TO THE COMPANY**

<b>Mark</b>	<b>Serial No.</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>App. Date</b>	<b>Current Status</b>
HAX	87755518	5932712	12/10/2019	04/10/2018	Registered
HAX	87106544	5146461	02/21/2017	07/17/2016	Registered
HAX	87106478	5146458	02/21/2017	07/17/2016	Registered

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**AUTHORITY MATTERS**





**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan  
Chief Executive Officer  
**DATE:** October 13, 2021  
**SUBJECT:** Matching Funds for Four Applicant Coalitions for Phase 1 of Build Back Better Regional Challenge

**Request**

The Members are requested to approve use of up to \$400,000 in matching funds as part of the Authority’s participation in four applicant coalitions to the United States Economic Development Administration (U.S. EDA) Build Back Better Regional Challenge (BBBRC). The Authority would utilize up to \$100,000 per coalition that is selected by the U.S. EDA as a Phase 1 finalist in the BBBRC. If a coalition is not selected to be a Phase 1 finalist, the Authority will not provide the \$100,000.

It may be necessary for NJEDA to enter into an MOU with a public entity that is part of a coalition that is selected as a Phase 1 finalist, if the CEO determines that is the most effective method to utilize the \$100,000 to support the development of the coalition’s Phase 2 BBBRC application. In that case, we will return to the board for approval of such an MOU.

**Background on the Build Back Better Regional Challenge**

The Build Back Better Regional Challenge is a grant program of the United States Economic Development Administration, funded through the American Rescue Plan Act. The program will fund projects that develop or grow a regional industry cluster. Applications must be centered around a long-term transformational vision and a plan for execution, focusing on creating high-quality jobs, increasing wages, and revitalizing communities that have been impacted by the COVID-19 pandemic. Equity is an important focus of the program and efforts to reach historically excluded populations are encouraged. Applicants must articulate plans for ensuring the benefits of the projects are shared across all affected communities and engaging community leadership.

Applicants for the Challenge act as a regional coalition with one lead entity per application. Eligible coalition members include government entities, nonprofits, and higher education institutions. For-profit entities can participate as “coalition partners” offering industry expertise, commit to investment or job creation related to the industry cluster, and formally express support for the coalition’s application.

The application process for BBBRC takes place in two phases. Applications for Phase 1 are due October 19, 2021. During this phase the U.S. EDA will select 50 to 60 Phase 1 finalists to receive technical assistance awards of up to \$500,000. Finalists will use these awards to support the preparation of the coalition's Phase 2 application, which is due March 15, 2022. During Phase 2, the U.S. EDA will choose 20 to 30 coalitions to receive implementation grants of \$25 to \$100 million.

### **NJEDA's participation in Build Back Better Regional Challenge coalitions**

After BBBRC was announced, NJEDA reached out to a wide variety of stakeholders throughout New Jersey to hear their ideas and plans for applying for the grant. NJEDA ultimately agreed to participate in the following four coalitions:

- The **aviation innovation coalition** is proposed by Atlantic County. While Atlantic County has officially designated the Atlantic County Economic Alliance (ACEA), a private 501(c)(3) organization, to lead their application team, the County is actively leading work around the workforce development aspects of the proposal.
- The **bio-manufacturing coalition** is led by Rutgers University.
- The **clean energy coalition** is led by Rowan University.
- The **smart ports coalition** is led by the City of Newark, working closely with the New Jersey Institute of Technology (NJIT).

Coalitions were selected due to the leadership of, or the participation by, another government entity (including state universities) and for their alignment with the Authority's existing targeted industries as identified in the Governor's economic plan, *The State of Innovation: Building a Stronger and Fairer Economy in New Jersey* and through recent Board approvals tied to Economic Recovery Act of 2020 programs.

The Governor's economic plan identifies eight strategic sectors, including life sciences, clean energy, advanced manufacturing, and advanced transportation and logistics (including aviation). Each of the four applicant coalitions aims to accelerate the growth of one or more of these strategic sectors.

NJEDA is participating in these applicant coalitions and may contribute funds or in-kind services to the lead or participating government entity with the goals of maximizing the amount of federal dollars received by New Jersey and furthering the Governor's vision of an inclusive innovation economy.

While matching funds are not required for Phase 1, they better position applicants to be competitive by demonstrating strong commitment by the State. They also increase the scale and depth of the planning activities that selected coalitions will be able to undertake with their Phase 1 technical assistance awards, assisting them in developing stronger applications for Phase 2 of BBBRC.

Each Phase 1 finalist is eligible to receive a technical assistance award of up to \$500,000 from US EDA. NJEDA's matching funding will be providing at a rate of 20% of the U.S. EDA award – the rate historically sought by USEDA for successful applications to prior federal programs.

**Utilizing the \$100,000 per BBBRC Coalition**

The source of funds for the BBBRC Coalition activities would be the Economic Recovery Fund (ERF). The use proposed in this memo aligns with the statutory intentions for ERF monies.

NJEDA funds will be available for the same uses for which U.S. EDA Phase 1 BBBRC funds are available. Phase 1 funds are intended to be used by finalists as they prepare more detailed applications for Phase 2, including strengthening collaborations with industry partners and/or community groups; undertaking feasibility studies, architectural plans, or engineering studies; and continued development of component projects to prepare for Phase 2 application or for other future funding opportunities.

NJEDA would only extend the Authority’s funding if a coalition is selected by the U.S. EDA to be a Phase 1 finalist.

**Recommendation**

The Members are requested to approve use of up to \$400,000 in matching funds as part of the Authority’s participation in four applicant coalitions to the United States Economic Development Administration (U.S. EDA) Build Back Better Regional Challenge (BBBRC). The Authority would utilize up to \$100,000 per coalition that is selected by the U.S. EDA as a Phase 1 finalist in the BBBRC. If a coalition is not selected to be a Phase 1 finalist, the Authority will not provide the \$100,000.

It may be necessary for NJEDA to enter into an MOU with a public entity that is part of a coalition that is selected as a Phase 1 finalist, if the CEO determines that is the most effective method to utilize the \$100,000 to support the development of the coalition’s Phase 2 BBBRC application. In that case, we will return to the board for approval of such an MOU.



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Tim Sullivan, CEO



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 13, 2021  
**RE:** Revisions to Traditional Lending Programs

**Request**

Approval is requested from the Members to incorporate the underwriting flexibility provided by the Access Pilot Lending Program (“Access”) into the Authority’s Premier Lender, Direct, and Small Business Fund loan programs (“Traditional Loan Programs”) and reduce the Authority’s interest rate floor from the greater of the applicable US Treasury index or 2% to the greater of the applicable US Treasury index or 1%.

**Background**

On October 11, 2018, the Members of the EDA Board approved a pilot lending program, “Access”, that made available an aggregate of \$15 million to support small business in New Jersey and delegated authority to staff to approve applications that met all the program criteria. The effective date of the program was October 29, 2018. The purpose of Access based on feedback from our Premier Lender partners and understanding the current lending gap in the marketplace, was to help small businesses by lending on a cash flow basis with less reliance on hard collateral. This allowed the EDA to be more flexible with borrowers and have a greater impact in the market. A copy of the board memo approving the Access program is attached for reference and background. The memo also illustrates the flexibilities to be incorporated into our existing loan programs.

Since the inception of the program, EDA staff approved a total of five loans under the program aggregating total EDA exposure of \$1.96 million. This dollar amount leveraged an additional \$3.51 million of lending from Premier Lending partners, M&T, Investors, The Provident, and Fulton Bank. The primary use of proceeds was the refinance of debt from another lender which improved the businesses’ cash flow by reducing debt payments on their existing loan obligations. In some cases, the business owner’s decision to refinance debt was a component of a larger strategy to maximize the operating cash flow generated by the company. All loan approvals have an acceptable level of credit risk and were processed according to the program criteria as approved by the Board.

On October 8, 2019, the Access program was renewed for an additional 12-month period ending October 28, 2020. EDA staff's recommendation on whether Access would become a permanent standalone program was predicated upon the volume of activity realized within the span of the pilot period. The volume of loans approved during the pilot period which includes the one-year extension does not warrant Access to become a standalone program. However, EDA staff feels there is merit to maintain the flexibility provided under the program as it did permit the approval of loans that but for Access would have been declined. As such, EDA staff finds that it is most appropriate to consolidate the flexibilities afforded under the Access program into our Core Loan Programs. If approved by the Members, Access as a standalone pilot program will be eliminated.

As previously referenced, staff is continuously reviewing the Authority's products and guidelines to ensure that the EDA is supportive of small to mid-sized businesses in New Jersey. Historically, the Authority has priced loans at up to 200 basis points below its banking partners, which has not only made the programs appealing, but enabled applicants to retain capital to reinvest into their businesses and create additional economic benefits for their respective communities.

The decrease in market rates over the past few years has started to negatively impact the Authority's relevance in the marketplace by reducing that interest rate spread, and in some instances, has resulted in the Authority having an interest rate greater than our banking partner.

In May 2014, the Board approved a reduction of the interest rate floor from 3% to 2%, which was impactful at the time, but given the current conditions, staff believes a further reduction at this time is in order. Staff is not seeking to adjust the risk model associated with the interest rate pricing, just the starting point of establishing the interest rate.

**Recommendation**

1. Approval to eliminate Access as a standalone pilot program and consolidate its functionality into the Authority's Traditional Loan Programs.
2. Approval to reduce the interest rate floor from the greater of the applicable US Treasury index or 2% to the greater of the applicable US Treasury index or 1% for the Authority's Traditional Loan Programs.



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Tim Sullivan, CEO

Exhibit: October 8, 2019 NJEDA Board Memo-  
Access Pilot Lending Program Renewal dated October 8, 2019

Prepared By: David A. Lawyer/Paul Ceppi



**MEMORANDUM**

**To:** Members of the Authority

**From:** Tim Sullivan  
Chief Executive Officer

**Date:** October 13, 2021

**Subject:** Brownfields Impact Fund (U.S. EPA Brownfields Revolving Loan Fund Grant)

**Summary**

The Members are requested to approve:

1. The creation of the Brownfields Impact Fund – a \$960,000 pilot program that will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the return of these vacant and underutilized properties to public benefit.
2. Utilization of \$160,000 of the Authority’s General Operating Budget and/or in-kind contributions to meet the cost share requirement of the U.S. EPA award to support the program.
3. Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above, Vice President or above) to approve individual applications to the Brownfields Impact Fund in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements.
4. In connection with appeals from declinations based solely on non-discretionary reasons, delegated authority to the Chief Executive Officer or any Senior/Executive Vice President to designate a one or more Hearing Officers to prepare a Final Administrative Decisions. The Final Administrative Decision must be approved by a Senior Vice President, Executive Vice President, Vice President, Managing Director, Director, or Senior Legislative Officer, upon recommendation of the Hearing Officer.

5. Delegation to Authority staff (Chief Executive Officer or any Senior Vice President) to accept additional funding up to \$5 million over a fifteen year period for this program from the U.S. EPA, and to impose additional requirements that may be required by law as a condition of accepting additional funding, provided that the requirements are consistent with the parameters of the program.
6. Delegation to Authority staff (Chief Executive Officer, any Senior Vice President, any Chief Officer, or any Director) to waive the application fee for subgrant applicants upon demonstration by the applicant that the imposition of the fee would impose undue financial hardship.

### **Background**

Through this comprehensive economic plan for building a stronger, fairer economy in New Jersey, Governor Murphy has identified the remediation and redevelopment of brownfield sites as an important component of smart planning that will allow New Jersey to meet its goals for economic growth. On November 14, 2019, the Members of the Authority approved the NJEDA's application to the U.S. EPA Brownfields Revolving Loan Fund grant opportunity. On May 6, 2020, the U.S. EPA selected the NJEDA to receive a Brownfields Revolving Loan Fund grant of \$800,000 with which the Brownfields and Sustainable Systems team will create a pilot program known as the Brownfields Impact Fund.

Brownfields are former commercial or industrial sites that are vacant or underutilized and are suspected or known to be contaminated. The properties have a negative impact on New Jersey's economy because they lower property values, decrease employment opportunities, and lead to a loss of tax revenue. They can also attract illegal activities due to their unsightly, blighted nature and can create an overall negative perception of the community. Brownfields are diverse in their shapes, sizes, contamination levels, and locations. A brownfield can be a large, former industrial property or a small, local site like an abandoned gas station in a downtown area. The remediation of brownfield properties can transform communities, providing benefits to the local and regional economies including fostering the development of medium, small, and microbusinesses. Brownfield remediation projects can also have an overall positive effect on the community such as increased safety, community pride, and health and wellness.

The brownfield path to redevelopment begins with the assessment phase looking at the history and current status of the site to determine if potential environmental issues exist. If environmental issues are identified, the process moves to into the investigation phase. The investigation determines if contamination is present on the site via sampling and laboratory testing. If there is contamination, the test results can inform a redevelopment plan. The next phase, the remediation phase, includes addressing the contamination making the site safe for reuse. This environmental cleanup is often the most challenging step in converting contaminated properties into healthy and productive use such as commercial and industrial development, housing, and other catalysts for economic activity. This is the step for which the Brownfield Impact Fund is designed.

The Brownfields Impact Fund is an important product that will facilitate the redevelopment of brownfields by addressing funding gaps to make the remediation phase of the project financially

viable, after which construction financing can be more readily obtained by the developer. The goal is to fund projects that will perform cleanup activities that will help promote the redevelopment of brownfield sites for productive reuse. This program can increase the economic impact of the State's investment, reactivating long-stalled sites and encouraging job creation through remediation, redevelopment, and productive reuse of the property. An additional outcome of the program is to minimize the negative environmental impacts of developing current green spaces for commercial and industrial use. The Brownfield Impact Fund will accomplish this by focusing on the reuse of distressed, abandoned brownfields properties, which are often located in sought after areas within the community. Revitalization of brownfield properties allows for economic development in key locations which often have existing access to a potential workforce, infrastructure, and redevelopment opportunities in our communities.

### **Program Design**

Under the Brownfields Impact Fund, the NJEDA will make low-interest loans available to for-profit organizations and will make low-interest loans and grant funding available to non-profit organizations and units of local governments. Private developers will not be eligible to apply for grant funding. Funds will be awarded on a first come, first serve basis upon receipt of a completed application.

These loans/subgrants will assist with the cleanup and other pre-construction activities of brownfield sites throughout the state, particularly those within the federally designated Opportunity Zones in the States' Community Collaborative Initiative (CCI) cities. Eligible uses of the loan and/or subgrant funding includes remediation activities necessary to clean up the release or mitigate the threatened release of hazardous materials and other activities approved by the U.S. EPA and outlined in the program specifications.

CCI is a place-based partnership, between the New Jersey Department of Environmental Protection (NJDEP) and the NJEDA, that tackles quality of life issues in New Jersey's most distressed cities. CCI aligns its interests with those that support environmental and community revitalization, equitable economic development, and enhanced public health outcomes. The CCI cities are complex communities that are home to New Jersey's most underserved populations. These cities have been disproportionately burdened with the remnants of New Jersey's industrial legacy.

For the first three months (90 days) of the program from the date the Authority begins accepting applications, eligibility will be limited to the CCI cities. After the 90-day period, the Authority will begin accepting applications from projects located in areas outside of the defined CCI cities, subject to the availability of funding.

Under the Brownfield Impact Fund, the minimum loan amount will be \$50,000, with a maximum loan amount of up to \$350,000. The minimum subgrants amount will be \$25,000, with a maximum subgrant amount of up to \$350,000. The total amount of all grant funding will not exceed \$360,000 (45% of the total U.S. EPA award amount of \$800,000) pursuant to U.S. EPA program requirements. U.S. EPA has the right to recover funding from the NJEDA in the case of noncompliance with the U.S. EPA agreement or with federal law.



As part of eligibility for the Brownfields Impact Fund, entities applying for a loan must be able to demonstrate site control or a path to site control of a brownfield property at time of application. For non-profit organizations and units of local government applying for grant funding, the entity must own the brownfield property at the time of the application and retain ownership of the term of the grant.

Furthermore, all applicants for either the loan or subgrant must be accompanied by a letter of support from the mayor or, if the position of mayor does not exist, from the governing body of the municipality in which the brownfield site is located. The letter of support must indicate that the project aligns with the master land use plan, or the local redevelopment plan, or that no local redevelopment plan exists. In any event, all applicants must have a redevelopment plan for the contaminated property.

Applicants must be in good standing with the NJ Department of Labor and Workforce Development and the NJ Department of Environmental Protection (as determined by each Department). If a compliance issue exists, the eligible entity may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. Furthermore, the eligible entity will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

Loans or subgrants cannot be provided to entities who caused or contributed to the contamination of the property. Specifically, this program excludes: individuals or entities responsible for, or individuals or entities who have common ownership or control with entities responsible for, any existing environmental contamination at the site. Entity must not be considered liable or potentially liable for the environmental contamination under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 107.

### **Interest Rate and Terms**

The goal of the U.S. EPA is the remediation of brownfield sites, and these remediation activities are often complex and are frequently stalled due to funding gaps. As the loans are primarily funded by the U.S. EPA, there is a higher threshold for risk. The U.S. EPA does not provide strict underwriting criteria, but rather expects the NJEDA shall undertake reasonable efforts to enforce the terms of the loan agreement. As such, NJEDA will follow the guidelines of the Cooperative Agreement with the U.S. EPA, pertaining to prudent lending and sub-granting practices. Further underwriting requirements are detailed in an attachment to the program specifications (NJEDA Confidential).

In recognition of the higher threshold for risk, the NJEDA has structured these loans with an up to 20-year term and 2% interest rate (with an option for interest rate reductions to a floor of 1%). Principal and interest will be deferred until the end of Year 4. During this period, interest will accrue and capitalize.

The Davis-Bacon Act and New Jersey Prevailing Wage requirements, and associated U.S. Department of Labor (DOL) regulations, apply to all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this program.

### **Fund Utilization**

Staff is recommending the utilization of \$160,000 of the Authority's General Fund and/or in-kind contributions to meet the required cost share of the \$800,000 in U.S. EPA award to fully fund this program at \$960,000. The Authority's maximum cash contribution is \$160,000. This contribution may be reduced by in-kind labor contributions and cost-share match by the applicants, as described below.

Of this \$960,000, \$800,000 will be available to capitalize the Revolving Loan Fund in the form of loans and/or subgrants. U.S. EPA approved \$160,000 to be utilized by the Authority to support programmatic expenses, including staff time, contractors, marketing, outreach, training, travel, and other costs associated with operating the program. Some of these costs, such as staff time, may be provided as in-kind services. Additionally, there may be instances that the loan and/or subgrant provided through this program does not cover the entirety of the remediation cost.

*Example: If an applicant's total remediation project costs are \$400,000, and the NJEDA provides \$350,000 through this program, the remaining \$50,000 of the remediation project costs could be counted towards the NJEDA's cost share.*

NJEDA will coordinate with the applicant to capture and document available cost share.

### **Approval Process / Delegated Authority**

Potential applicants will be asked to complete a pre-application screening form prior to submitting an application. The Brownfields & Sustainable Systems team will review applications for eligibility and appropriateness based on the U.S. EPA guidelines as identified in the attached program specifications. The approval process also includes a technical review which will vet projects for readiness. The factors for the technical review include but are not limited to completion of the environmental assessment, existence of a draft remedial action workplan, engineer's cost estimate for remediation, and permits. A third-party contractor, BRS, Inc. is currently under contract to the Authority to provide this review.

In recognition of the anticipated loan/subgrant amounts and the non-discretionary program criteria, the Members are requested to approve Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above, Vice President or above For example - Director of Brownfields & Sustainable Systems, Director of Underwriting, and Senior Vice President of Finance & Development) to approve individual applications to the Brownfields Impact Fund, in accordance with the terms set forth in the attached program specifications. Financial underwriting is not required for subgrants; therefore, the approval process for loans and subgrants will require the following levels of approval:

- a. Loans

- i. Programmatic – Program Director or above
- ii. Underwriting – Director or above
- iii. Final Approval – Vice President or above

b. Subgrants

- i. Programmatic – Program Director or above
- ii. Final Approval – Vice President or above

The delegated authority requested for approval also includes the delegated authority to decline for any declinations based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Senior Vice President, Vice President, Managing Director, or the Director of Legal Affairs. With delegated authority, two signatures at director level or higher will be required for approvals and/or declinations.

For appeals, Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations.

**Fees**

For the Brownfield Impact Fund, there will be an application fee for loans of \$1,000. For the Brownfield Impact Fund, there will be an application fee for subgrants of \$1,000. For subgrant applications, the NJEDA will waive the application fee upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. Undue financial hardship is determined by delegated authority based on NJEDA established objective criteria provided in the Program application and in accordance with program policies and procedures. The program policies and procedures include a provision that the Department of Community Affairs (DCA) Municipal Revitalization Index (MRI), which demonstrates municipal distress, will be utilized to evaluate hardship for municipalities. The program policies and procedures also include a provision for non-profits that the hardship will be evaluated based on their annual operating budget.

For loans specifically, there will be a commitment fee of 0.875% of the loan amount, a closing fee of 0.875% of the loan amount. For any modifications needed on a loan, there will be a loan modification fee of \$1,000. These fees are consistent with other NJEDA programs.

**Recommendation**

The approval of the members is requested for: (1) The creation of the Brownfields Impact Fund – a \$960,000 pilot program that will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the return of these vacant and underutilized properties to public benefit; (2) Utilization of \$160,000 of Authority General Funds and/or in-kind contributions, the U.S. EPA award cost share requirement, to operate the Brownfields Impact Fund; (3) Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above (when applicable), and a Vice President) to approve individual applications to the Brownfields Impact Fund in accordance with

the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements; (4) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations; (5) Delegation to Authority staff (Chief Executive Officer or any Senior Vice President) to accept additional funding up to \$5 million over a 15 year period for this program from the U.S. EPA, and to impose additional requirements that may be required by law as a condition of accepting additional funding, provided that the requirements are consistent with the parameters of the program; and (6) Delegation to Authority staff (Chief Executive Officer, any Senior Vice President, any Chief Officer, or any Director) to waive the application fee for subgrant applicants upon demonstration by the applicant that the imposition of the fee would impose undue financial hardship.



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Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick, Melissa Dulinski, and Christina Gaetano

Attachment:

- Exhibit A – Program Specifications – Brownfield Impact Fund
- Exhibit B – (*Confidential*) – Underwriting Procedures – Brownfield Impact Fund

<b>Brownfield Impact Fund (USEPA Brownfield Revolving Loan Fund) Program Specifications</b>		
<b>Funding Source</b>	USEPA: \$800,000 NJEDA Cost Share: \$160,000 Total Program Budget (including operational costs): <u>\$960,000</u>	
	RLF Amount: Up to \$800,000 for loans and/or subgrants (Aggregate of subgrants are limited to 45% of the total RLF amount)	
	NJEDA Cost Share: \$160,000 of the Authority’s General Operating Budget and/or in-kind contributions will support programmatic expenses, including staff time, contractors, marketing, outreach, training, travel, and other costs associated with operating the program. Borrower/Subgrantee eligible remediation costs that exceed the amount provided by this program may also be captured as cost share contributions by NJEDA.	
	<b>Aggregate <u>Loan</u> Amount</b>	<b>Aggregate <u>Subgrant</u> Amount</b>
	Up to the total RLF amount less the amount of subgrants and less the amount of programmatic expenses	Up to 45% of the total RLF amount
<b>Program Purpose</b>	This pilot program will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the return of these vacant and underutilized properties to public benefit.	
<b>Eligible Applicants</b>	<b>Location:</b>	
	While funding can be used throughout the State, NJEDA’s Brownfields Impact Fund program will target Community Collaborative Initiative (CCI) cities which have high instances of brownfields, poverty, health disparities and need for revitalization. For the first three months of the program, eligibility will be limited to CCI cities.	
	<b>Loan Eligibility</b>	<b>Subgrant Eligibility</b>
	Entities include: <ul style="list-style-type: none"> <li>• for-profit organizations,</li> <li>• nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70 (including Institutes of Higher Education, but excluding 501(c)4) and</li> </ul>	Entities include: <ul style="list-style-type: none"> <li>• nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70 (including Institutes of Higher Education, but excluding 501(c)4)</li> </ul>

<ul style="list-style-type: none"> <li>units of local government (including County, Regional, and quasi-governmental entities)</li> </ul>	<ul style="list-style-type: none"> <li>units of local government (including County, Regional, and quasi-governmental entities)</li> </ul>		
<p><b>Site Control:</b></p> <p>Potential brownfield site purchasers and current brownfield site owners (including local government redevelopers) are eligible as follows:</p> <table border="1" data-bbox="456 548 1435 1108"> <tr> <td data-bbox="456 548 992 1108"> <p><b>Loan applicants:</b> must be able to demonstrate site control or a path to site control of a brownfield property.</p> </td> <td data-bbox="992 548 1435 1108"> <p><b>Subgrantees:</b> must own the brownfield property at the time of the application and award of subgrant.</p> <p>The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the NJEDA and USEPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless NJEDA and USEPA approves a different ownership arrangement.</p> </td> </tr> </table>		<p><b>Loan applicants:</b> must be able to demonstrate site control or a path to site control of a brownfield property.</p>	<p><b>Subgrantees:</b> must own the brownfield property at the time of the application and award of subgrant.</p> <p>The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the NJEDA and USEPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless NJEDA and USEPA approves a different ownership arrangement.</p>
<p><b>Loan applicants:</b> must be able to demonstrate site control or a path to site control of a brownfield property.</p>	<p><b>Subgrantees:</b> must own the brownfield property at the time of the application and award of subgrant.</p> <p>The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the NJEDA and USEPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless NJEDA and USEPA approves a different ownership arrangement.</p>		
<p><b>Other:</b></p> <p>The applicant will be required to complete a pre-application screening form, identifying site, borrower and /or subgrantee information to determine project eligibility.</p> <p>All applications must be accompanied by a letter of support from the mayor or, if the position of mayor does not exist, from the governing body of the municipality in which the brownfield site is located. The letter of support must indicate that the project aligns with the master land use plan, or the local redevelopment plan, or that no local redevelopment plan exists. Note: When required by laws that govern borrowing by municipalities, municipalities receiving a Brownfields loan may need Local Finance Board approval.</p> <p>Applicant must have a plan for the redevelopment of the property.</p> <p>Entities applying to the Brownfield Impact Fund will complete a legal questionnaire.</p> <p>All applicants will be required to provide with their application a valid Tax Clearance Certificate from the NJ Department of the Treasury, Division of Taxation.</p> <p>Entity must be in good standing with the Department of Labor, with all decisions of good standing at the discretion of the Commissioner of the Department of Labor.</p>			

	<p>Entity must be in good standing with DEP with all decisions of good standing at the discretion of the Commissioner of the Department of Environmental Protection.</p> <p>Entity and site must be eligible to receive funding under the cooperative agreement for this program between NJEDA and USEPA. Applicants can refer to the USEPA Brownfields Revolving Loan Fund webpage. Prior to closing, NJEDA will submit loans and subgrants to USEPA for applicant and site eligibility.</p> <p>Projects that have been approved for grants through other NJEDA programs, including, but not limited to the Hazardous Discharge Site Remediation Fund (HDSRF) program may eligible for the Brownfield Impact Fund, however the applicant must demonstrate to the Authority that the uses of the funds for the Brownfield Impact Fund are not duplicative of the uses from other NJEDA grants. Applicants may leverage funding from other federal, state, and/or local grant programs to the extent allowable under USEPA Brownfield RLF grant program rules.</p> <p><b><u>Exclusionary Criteria:</u></b></p> <p>Loans or subgrants cannot be provided to entities who caused or contributed to the contamination of the property. Specifically, this program excludes: individuals or entities responsible for, or individuals or entities who have common ownership or control with entities responsible for, any existing environmental contamination at the site. Entity must not be considered liable or potentially liable for the environmental contamination under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 107.</p> <p>Applicant does not meet inclusionary criteria.</p>
<p><b>Eligible Uses</b></p>	<p>The Brownfield Impact Fund provides low-interest loans and/or subgrants for eligible brownfield cleanups.</p> <p><u>Eligible Activities may include:</u></p> <ul style="list-style-type: none"> <li>• Preparation of Remedial Action Workplans;</li> <li>• Remediation of hazardous substances that are part of a structure (to include lead based paint and asbestos);</li> <li>• Construction of a site’s engineered remediation cap which could include foundations/roadways;</li> <li>• Demolition of structures to the extent that the demolition is integral to enabling access to contamination needing remediation (must be pre-approved by USEPA);</li> <li>• Actions necessary to clean up the release or mitigate the threatened release of hazardous materials such as:             <ul style="list-style-type: none"> <li>○ provide fences, warning signs or other site control precautions;</li> <li>○ drainage controls;</li> <li>○ capping of contaminated soils;</li> <li>○ excavation, consolidation, or removal of highly contaminated soils;</li> <li>○ removal of containers that may contain hazardous substances;</li> <li>○ use of chemicals to retard the spread of hazardous substances;</li> <li>○ containment, treatment, disposal, or incineration of hazardous materials.</li> </ul> </li> <li>• Purchase of environmental insurance;</li> </ul>

	<ul style="list-style-type: none"> <li>• Site monitoring, including sampling and analysis, required during the cleanup process;</li> <li>• Monitoring and data collection which are required as a component of the cleanup action (including payment of the annual NJDEP remediation permit fees, if approved by USEPA);</li> <li>• Installation of engineering and/or institutional controls to fulfill cleanup requirements.</li> <li>• Others uses will be considered upon request from borrower / subgrantee, and approval by USEPA.</li> </ul> <p><u>Ineligible Activities include, but are not limited to:</u></p> <ul style="list-style-type: none"> <li>• Pre-cleanup assessment, identification, and characterization;</li> <li>• Cleanup of a naturally occurring substances;</li> <li>• Payment of a penalty or fine;</li> <li>• Construction, demolition, and development activities that are not integral to cleanup actions;</li> <li>• Public or private drinking water supplies that have deteriorated through ordinary use;</li> <li>• Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;</li> <li>• Other activities unrelated to the cleanup;</li> <li>• Properties already listed as Superfund sites;</li> <li>• Any cost incurred prior to loan or subgrant approval;</li> <li>• Any use not approved by NJEDA or USEPA.</li> </ul>	
<p><b>Application Process</b></p>	<ul style="list-style-type: none"> <li>• Funding will be available on a rolling basis, first come, first served, based on the readiness of the application and the availability of funds.</li> <li>• NJEDA will vet eligibility of the project site and eligibility of the applicant based on a brief pre-application screening form.</li> <li>• Eligible applicants will be invited to complete a full application.</li> <li>• Applications will have a 45-business day remedy period (to remedy any open application items and/or supply missing documentation and/or correct any deficiencies).</li> <li>• For the initial 90 days after program launch, only applications for projects located in the target 12 Community Collaborative Initiative (CCI) communities will be considered. This will prioritize investment in these communities which have high instances of brownfields, poverty, health disparities and need for revitalization. After 90 days, the program will be open throughout the state.</li> <li>• Applications meeting at least minimum program standards will be forwarded to underwriting.</li> <li>• Prior to closing, NJEDA will submit loans and subgrants to USEPA for applicant and site eligibility.</li> </ul>	
<p><b>Loan and Subgrant Amounts</b></p>	<p style="text-align: center;"><b>Loan amount:</b></p> <ul style="list-style-type: none"> <li>• \$50K to \$350k</li> <li>• Funds to be disbursed upon receipt and review of approved invoices.</li> </ul>	<p style="text-align: center;"><b>Subgrant amount:</b></p> <ul style="list-style-type: none"> <li>• \$25K to \$350k</li> <li>• Funds to be disbursed upon receipt and review of invoices.</li> </ul> <p>(Aggregate of subgrants are limited</p>



		to 45% of the total RLF amount)
<b>Rates</b>	<p style="text-align: center;"><b>Loans:</b></p> <ul style="list-style-type: none"> <li>• Up to a 20-year term based on the remediation and project redevelopment timeframe. No prepayment penalty.</li> <li>• Principal and interest will be deferred through the end of Year 4, interest to accrue and capitalize during this period, then the outstanding balance plus capitalized interest to fully amortize for the remaining term (no balloon). Loan interest will be set at 2%, with option for interest rate reductions to a floor of 1%.</li> <li>• Bonus Option: Option to reduce interest rate to 1% to incentivize achievement of NJEDA state policy goals, as described below. Project site locations must meet at least two of the following criteria for interest rate reduction to 1%:             <ul style="list-style-type: none"> <li>○ CCI communities or government restricted municipality</li> <li>○ Project site located in a municipality ranked as one of the 50 most distressed municipalities per the NJDCA 2017 Municipal Revitalization Index</li> <li>○ Project site located within an existing Planning Area 1 (Metropolitan) and within a one-half mile radius, with existing bicycle and pedestrian connectivity, to the mid-point of an existing 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</li> <li>○ Project site located in an Opportunity Zone eligible census tract</li> </ul> </li> </ul>	<p style="text-align: center;"><b>Subgrants:</b></p> <p>Not Applicable</p>
<b>Terms</b>	<p style="text-align: center;"><b>Loans:</b></p> <ul style="list-style-type: none"> <li>• Loans will subject to project milestones including project initiation and completion, which will be no later than the term of NJEDA’s</li> </ul>	<p style="text-align: center;"><b>Subgrants:</b></p> <ul style="list-style-type: none"> <li>• Subgrants will subject to project milestones including project initiation and completion, which will be no later than the term of</li> </ul>

	<p>Cooperative Agreement with USEPA (term ending 9/30/2025). Should USEPA provide an extension to NJEDA's Cooperative Agreement, then staff may extend the term of the loan. Timeframes based on the remediation timeline will be established on a project by project basis, including, but not limited to the project start date, number of days for the borrower to submit the first invoice, and additional invoices.</p> <ul style="list-style-type: none"> <li>• Loans are disbursed based on a reimbursement structure for actual eligible costs incurred and provided on an invoice.</li> <li>• New Jersey Prevailing Wage/Davis Bacon Act applies to the work which is being funded by this program, including all contracts and subcontracts awarded from funds provided by this program.             <ul style="list-style-type: none"> <li>○ Each worker employed to perform the remediation funded by this program shall be paid not less than the prevailing wage rate for their craft or trade.</li> </ul> </li> <li>• All work funded by this loan must comply with federal cross-cutting requirements. These requirements include, but are not limited to, Disadvantaged Enterprise (DBE) Program which requires six good-faith efforts to procure Minority Business Enterprises/Women Business Enterprises, OSHA Worker Health &amp; Safety Standard, Uniform Relocation Act for the fair and equitable treatment of persons displaced as a result of this program, National Historic Preservation Act, Endangered Species Act, permits required by the Clean Water Act, Equal Employment Opportunity,</li> </ul>	<p>NJEDA's Cooperative Agreement with USEPA (term ending 9/30/2025). Should USEPA provide an extension to NJEDA's Cooperative Agreement, then staff may extend the term of the subgrant. Timeframes based on the remediation timeline will be established on a project by project basis, including, but not limited to the project start date, number of days for the subgrantee to submit the first invoice, and additional invoices.</p> <ul style="list-style-type: none"> <li>• Subgrants are disbursed based on a reimbursement structure for actual eligible costs incurred and provided on an invoice.</li> <li>• New Jersey Prevailing Wage/Davis Bacon Act applies to the work which is being funded by this program, including all contracts and subcontracts awarded from funds provided by this program.             <ul style="list-style-type: none"> <li>○ Each worker employed to perform the remediation funded by this program shall be paid not less than the prevailing wage rate for their craft or trade.</li> </ul> </li> <li>• All work funded by this loan must comply with federal cross-cutting requirements. These requirements include, but are not limited to, Disadvantaged Enterprise (DBE) Program which requires six good-faith efforts to procure Minority Business Enterprises/Women Business Enterprises, OSHA Worker Health &amp; Safety Standard, Uniform Relocation</li> </ul>
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	<p>Contract Work Hours and Safety Standards Act, Anti-Kickback Act, Section 504 of the Rehabilitation Act of 1973 which provides protections for people with disabilities.</p>	<p>Act for the fair and equitable treatment of persons displaced as a result of this program, National Historic Preservation Act, Endangered Species Act, permits required by the Clean Water Act, Equal Employment Opportunity, Contract Work Hours and Safety Standards Act, Anti-Kickback Act, Section 504 of the Rehabilitation Act of 1973 which provides protections for people with disabilities.</p>
<p><b>Underwriting/Review Criteria</b></p>	<p style="text-align: center;"><b>Loans:</b></p> <ul style="list-style-type: none"> <li>• There is a higher threshold for risk, as the funding source is a grant from USEPA. Per the Cooperative Agreement, USEPA does not prescribe strict underwriting criteria, but rather expects that NJEDA shall undertake “reasonable efforts to enforce the terms of the loan agreement.” The main goal of USEPA for this grant is to remediate brownfield sites.</li> <li>• NJEDA will follow the guidelines of the Cooperative Agreement with USEPA, pertaining to prudent lending and subgranting practices (Section VI.A.).</li> <li>• All loans will be given a default risk rating of Substandard. If the underwriting analysis determines a better risk rating is applicable, the default risk rating will be overridden. The final risk rating will not impact the interest rate, only the EDA’s reserve for future losses.</li> <li>• Underwriting Procedures are included as an Attachment (NJEDA Confidential).</li> </ul>	<p style="text-align: center;"><b>Subgrants:</b></p> <ul style="list-style-type: none"> <li>• Financial underwriting is not required for subgrants.</li> <li>• Subgrants utilize a formal process to determine applicant and site eligibility.</li> <li>• Subgrantees must provide a letter from the Mayor (or governing body) and meet at least one of the following criteria:             <ul style="list-style-type: none"> <li>○ The subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;</li> <li>○ The subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community; or</li> <li>○ The subgrant will facilitate the use or reuse of existing infrastructure.</li> </ul> </li> </ul>

<p><b>Lien/Collateral/Security</b></p>	<p style="text-align: center;"><b>Loans:</b></p> <p>Lien on property, subordinated to purchase mortgage, removed upon repayment.</p> <p>Upon the Borrower's request, NJEDA will subordinate its lien(s) securing the Loan to all senior lenders, which subordination will be in lien position only.</p>	<p style="text-align: center;"><b>Subgrants:</b></p> <p>Not applicable</p>
<p><b>Fees</b></p>	<p><b>Application Fee</b></p>	
	<p style="text-align: center;"><b>Loans:</b> <b>(for-profit, non-profits, and public sector)</b></p> <p>\$1,000</p>	<p style="text-align: center;"><b>Subgrants:</b> <b>(non-profits and public sector)</b></p> <p>\$1,000*</p> <p>*The NJEDA will waive a subgrant application fee upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship.</p>
	<p><b>Other Fees:</b></p>	
	<p style="text-align: center;"><b>Loans:</b> <b>(for-profit, non-profits, and public sector)</b></p> <p>Loan Modification Fee: \$1,000                  Loan Closing Fee: 0.875% of the loan                  Loan Commitment Fee: 0.875% of the loan</p>	<p style="text-align: center;"><b>Subgrants:</b> <b>(non-profits and public sector)</b></p> <p>Not Applicable</p>

## **ECONOMIC GROWTH**

**NEW JERSEY WIND PORT**



**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 13, 2021

**SUBJECT:** New Jersey Wind Port – Request for Moffatt & Nichol Contract Increase for Confined Disposal Facility (CDF) Improvement Design

**REQUEST**

The Members of the Board are asked to approve an \$131,813 increase to the Authority’s contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port (NJWP). Funding will be used for the design of confined disposal facility (CDF) improvements in anticipation of the Port’s future dredge placement needs.

Approval of this request will increase approved funding for M&N’s detailed engineering contract to \$10.46 million. Staff intends capitalizing costs incurred under M&N’s contract, alongside all other external project costs and staff time, into the development of the project. The Authority will draw on state funding to cover the costs of this Change Order (CO).

**BACKGROUND**

The scope of the NJWP includes dredging over 2 million cubic yards (CY) of material in order to create a channel between the main Delaware River shipping channel and the Port. The Project’s current design specifies two types of dredging, hydraulic dredging (which accounts for the bulk of the channel dredging) and mechanical dredging (for berth pockets and wharf construction closer to the shore). Hydraulic dredge material is presently planned to be pumped into a U.S. Army Corps of Engineers-owned CDF (known as Parcel B), with the mechanical dredge material to be deposited into PSEG Nuclear’s existing CDF (known as Parcel C).

While Parcel C is an existing CDF the volume of dredge that the Authority anticipates placing necessitates ground improvements. Specifically, M&N will be tasked with:

1. Evaluating and establishing a ditching and dewatering plan to facilitate water flow to a location where it can be collected and discharged from the site;
2. Preparing a grading plan to configure the CDF into a facility that has optimal capacity for the dredged material;

3. Preparing construction contract documents suitable for bidding. Bid package shall consist of construction drawings, technical specifications, and bid forms. Drawings will include soil erosion and sediment control (ESC) measures;
4. Preparation of documents for regulatory approval of ESC by the Cumberland Salem Conservation District;
5. Preparation of an estimate of probable construction cost;
6. Assisting NJEDA during the future bid period by answering contractor questions and issuing addenda as required; and
7. Preparing conformed Issued for Construction documents after bid period that incorporates all final comments and addenda.

As these costs stem from the need to accommodate dredge material resulting from the Port's construction, and at volumes beyond the CDF's current capacity, the Authority rather than PSEG Nuclear is obligated to bear them; in-line with the terms of the Ground Lease between the Authority and PSEG Nuclear. The Lease also sets out terms by which both parties will share the CDF until such time that PSEG Nuclear constructs an alternate CDF elsewhere on its property.

M&N's contract for detailed engineering services, which was assigned from PSEG to the Authority on December 17, 2020, allows for COs for related works either on a lump-sum or time and materials basis. Authority staff believe that a lump-sum pricing approach represents best value for this CO given the defined scope and known quantity of work.

Approval of this request will increase approved funding for M&N's detailed engineering contract to \$10.46 million.<sup>1</sup> Costs incurred under the contract totaled \$6.5 million through August 31, 2021. Staff intends capitalizing costs incurred under M&N's contract, alongside all other external project costs and staff time, into the development of the NJWP project. The Authority will draw on state funding to cover the costs of this Change Order (CO).

## SUMMARY

The Members of the Board are asked to approve an \$131,813 increase to the Authority's contract with Moffatt & Nichol (M&N) for design and engineering services in relation to the New Jersey Wind Port (NJWP). Funding will be used for the design of CDF improvements in anticipation of the Port's future dredge placement needs.



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Tim Sullivan, CEO

Prepared by: Jonathan Kennedy, Aaron Roller

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<sup>1</sup> Of this amount \$1.75 million will be expended by PSEG and reimbursed by the Authority.





**TO:** Members of the Authority  
**FROM:** Tim Sullivan  
**DATE:** October 13, 2021  
**SUBJECT:** New Jersey Wind Port – Award of Port Operations Advisory Services Contract to Moffatt & Nichol (M&N)

**REQUEST**

Members of the Board are asked to approve the Authority entering into a contract with Moffatt & Nichol (M&N) to provide port operations advisory services in relation to the New Jersey Wind Port (NJWP) project. The scope of services covered by the contract includes both pre-procurement and procurement phase advisory support, with an initial three (3) year contract term with two (2), one (1) year extension options. Members are also asked to approve a budget for operations advisory services of \$1.148 million comprising:

- \$148,000 for the delivery of Phase One services. This will include delivery of a report identifying (and evidencing) the optimal operating model and procurement strategy. M&N’s fee for this scope, which is to be delivered within 12 weeks, is fixed price; and
- A budget of up to \$1 million for Phase Two services, which will involve provision of ongoing subject matter expertise and procurement phase support, with the Advisor working alongside the Authority’s financial, technical and legal advisors. Work will be actively managed through task orders. The Phase Two budget has been sized on the basis of an assumed spend profile and 24-month engagement following the completion of Phase One.

Vendor selection followed a publicly-advertised procurement process, with M&N scoring the highest on price and other factors. M&N are providing engineering and design services for the Port under a separate contract that was entered into by the Authority in September 2020.

## **BACKGROUND**

### **Port Operations**

The NJWP is being designed to accommodate multiple potential wind developers and Tier-1 component manufacturers, necessitating a sophisticated operating framework and specialist third-party operator to coordinate use of shared infrastructure such as berths and heavy-haul roads.

As a first step, the Authority will need to resolve the optimal operating model for the Port, drawing on U.S. and international best practice, with a particular emphasis on offshore wind ports given their unique requirements. Once a conceptual model is identified, the Authority will progress to developing a customized procurement strategy – with the aim of commencing the procurement of an operator by no later than the end of 2022.

The precise functions of an operator remain to be determined and will be highly dependent on the specific operating model, subtenant requirements and preferences, operator capabilities and risk appetite, as well as other factors. Potential responsibilities include:

- Management of berth access/coordination of berth use;
- Management of vessel arrivals and departures and coordination with relevant vessel pilot functions;
- Liaison with key actors (such as PSEG Nuclear’s security, the U.S. Coast Guard and T.S.A.) pertaining to the supervision of vessel movements and goods movement around the Port;
- Management of stevedoring and other activities at the wharf and quayside areas;
- Coordinating subtenant use of shared heavy-haul road corridors (e.g., movement of goods around the port site, transportation of goods to and from berth areas);
- Proactive asset management, such as scheduling and overseeing asset maintenance programs;
- Reactive maintenance and repair;
- Management of port security and worker access;
- Emergency and storm preparedness and recovery work;
- Procurement and management of shared equipment, such as mobile or fixed cranes; and
- Coordination of berth pocket and access channel maintenance dredging.

While the procurement of an operator is not expected to commence until mid-late 2022, the Authority needs to rapidly build its understanding of potential operating models, operator market capabilities and operator risk appetite in order to progress negotiations with prospective subtenants; both to inform any commitments the Authority may make to subtenants, and to reassure subtenants that there is a pathway to ensuring reliable and cost-efficient port operations.

In this context, the Authority is seeking a subject matter expert that can work alongside its financial, technical and legal advisors. More particularly, this port operations advisor will have two discrete but related deliverables:

- Phase One services – Delivery of a report identifying (and evidencing) the optimal operating model and procurement strategy; and
- Phase Two services – Provision of ongoing subject matter expertise and procurement phase support, with the Advisor working alongside the Authority’s financial, technical and legal advisors. This work is anticipated to occur over an approximately 24-month period.

### **Procurement Process**

Staff are procuring the aforementioned scope of services on the basis of a publicly advertised procurement process. This process involved issuance of a Request for Proposal (RFP) on August 18, 2021 followed by the scoring of proposals on the basis of price and non-price criteria.

Non-price criteria included:

- Ability to complete the Scope of Work based on the proposer’s Technical Proposal;
- The relevant qualifications and experience of the proposer’s management and supervisory staff, and key personnel assigned to the contract; and
- Experience of the proposer entity demonstrated through documented experience in successfully completing contracts of a similar size and scope to that required in the RFP Scope of Work.

In respect to price, bidders were asked to provide a fixed price for Phase One services and full-loaded hourly rates (by pre-defined positions) for Phase Two services.

Three (3) proposals were received in response to the RFP. One firm was deemed disqualified as their proposal was submitted after the September 13, 2021 submission date.

An Evaluation Committee of appropriately qualified Authority staff was convened and scored proposals on non-price criteria. The Evaluation Committee did not review or score the price component of proposals, with the Fee Schedule component evaluated independently in-line with Internal Process Management (IPM) Procurement guidelines. M&N was the highest-ranked of the two compliant proposals, both on price and non-price criteria. In respect to price, M&N scored highest on both a fixed price and fully-loaded hourly rate basis. Total scores were:

- M&N – 4.41 (out of 5)
- Worley Group dba Advisian – 2.87 (out of 5)
- Mars Contractors – N/A

The RFP required a bidder to receive a total score of three (3) or higher to be considered for Award, which one (1) of the two (2) responsive bidders achieved. The one bidder that did not score at least a three (3.0) was the Worley Group dba Advisian with a score of 2.87. As a result, Staff is recommending that the Authority proceed with an award of the contract to M&N.

Following the scoring of proposals, M&N was issued a request for a Best and Final Offer (BAFO). The BAFO fee submitted by was \$148,000 for the fixed price component of the scope of services (Phase One), representing a 4.5 percent reduction on the fee of \$155,000 included in its submitted proposal. M&N’s fully-loaded hourly rates were unchanged.

**RECOMMENDATION**

Members of the Board are asked to approve the Authority entering into a contract with M&N to provide port operations advisory services in relation to the NJWP project. The scope of services covered by the contract includes both pre-procurement and procurement phase advisory support, with an initial three (3) year contract term with two (2), one (1) year extension options. Members are also asked to approve a budget for operations advisory services of \$1.148 million comprising:

- \$148,000 for the delivery of Phase One services. This will include delivery of a report identifying (and evidencing) the optimal operating model and procurement strategy. M&N’s fee for this scope, which is to be delivered within 12 weeks, is fixed price; and
- A budget of up to \$1 million for Phase Two services, which will involve provision of ongoing subject matter expertise and procurement phase support, with the Advisor working alongside the Authority’s financial, technical and legal advisors. Work will be actively managed through task orders. The Phase Two budget has been sized on the basis of an assumed spend profile and 24-month engagement following the completion of Phase One.



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Tim Sullivan, CEO

Prepared by: Geoffrey Storr, Senior Project Officer

## **INCENTIVE PROGRAMS**

**TECHNOLOGY BUSINESS TAX CERTIFICATE  
TRANSFER PROGRAM**



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 13<sup>th</sup>, 2021

**SUBJECT:** Technology Business Tax Certificate Transfer Program:  
2021 Program Approvals

**BACKGROUND**

The Technology Business Tax Certificate Transfer (NOL) Program allows technology and biotechnology companies with fewer than 225 employees in the U.S. and with certain minimum number of full-time employees in the State to sell their net operating losses and/or research and development tax credits to profitable corporate entities. Proceeds from those sales are required to be re-invested in the seller’s business.

**2021 PROGRAM CYCLE**

This year marks the 22<sup>nd</sup> anniversary of the Technology Business Tax Certificate Transfer (NOL) Program. Over the last two decades, over 570 unique companies have been awarded a total benefit amount of more than \$1.126 billion. In January 2021, the Economic Recovery Act increased the lifetime pool from \$60 million to \$75 million, which is available to be distributed in State Fiscal Year 2021-2022. Of this \$75 million, \$10 million is reserved for the surrender of transferable tax benefits exclusively by eligible companies operating within the boundaries of the State’s three (3) Innovation Zones (technology clusters fostering business-university collaboration located in Camden, Newark and the Greater New Brunswick Area). Additionally, the cleanup bill to Economic Recovery Act expanded the lifetime cap for awardees from \$15 to \$20 million. This increase will be implemented in a future program rule update.

For the 2021 Program Year, the Authority received applications from 37 companies requesting a total benefit amount of \$83,141,678, which was adjusted down to \$63,770,708 to account for companies whose requested amounts were higher than the program’s lifetime award cap of \$20,000,000. Considering the pandemic has an on-going impact on employment, in April 2021, an extension of a program rule modification for the 2020 program year was accepted for the 2021 NOL Program year. A “full-time employee working in this State” which requires out of state

employees to “*spend at least 80 percent of his or her time in New Jersey*”, can for this Program year include evidence of such, or evidence that the employees (excluding Pennsylvania residents due to the tax agreement) live within reasonable proximity of New Jersey as defined by a 90-minute commutable distance to their assigned NJ office.

Program highlights for this year include:

- The number of received applications (37) is lower than last years (54) most likely due to circumstances surrounding the pandemic (i.e., lower employee counts, etc.)
- In this year’s program there are 15 applicants (41%) that have identified themselves as technology companies, while the remaining 22 applicant companies (59%) identified as biotechnology companies.
- Private companies comprised 20 (54%) of the applicant pool while the remaining 17 (46%) are publicly traded.
- Included in this year’s applicant pool, were 4 companies located in an Innovation Zone.
- There are 27 returning applicants from last year and an additional 6 applicants, who are returning after a gap of at least one year away from the program, and two companies that are new to the program.

Attachment A shows 32 applicants that are recommended for approval in October for the 2021 Program. These applicants are estimated to receive \$58,163,761, resulting in an approximate average award of \$1.82 million per applicant. The threshold eligibility items for an application are specified in Attachment B. Attachment C will lay out the 2 companies that staff is unable to recommend for approval due to a lack of evidence to meet the legislative requirements. During the due diligence process, 3 companies chose to withdraw their applications from the program. Due to the increase in the benefit pool from \$60M to \$75M as part of the NJ Economic Recovery Act, the findings for these two companies will not impact the benefit amount for any other applicant company.

**RECOMMENDATION:**

Based on evaluations by Authority staff, approval is recommended for the listed applicants on Attachment A, which have been evaluated according to the criteria established by the legislation. Disapproval is recommended for the applicant on Attachment C due to a lack of evidence to support the required eligibility criteria for approval.



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Tim Sullivan, CEO

Prepared by: Matthew Fields



<b>Attachment A:</b>			
<b>Recommended Approvals</b>		<b>Business Description</b>	<b>Applicant NJ HQ/Base of Operations</b>
1	Acuitive Technologies, Inc	Acuitive Technologies, Inc. is devoted to pursuing material technologies to improve medical device performance and patient outcomes.	Allendale
2	Agile Therapeutics	Agile Therapeutics is a women’s healthcare company that launched a once-weekly prescription combination hormonal contraceptive patch in early December 2020.	Princeton
3	AIM ImmunoTech, Inc	AIM ImmunoTech, Inc. fka Hemispherx Biopharma is an immuno-pharma focused on the research and development of therapeutics to treat multiple types of cancers, various viruses and immune-deficiency disorders.	New Brunswick
4	Angel Medical Systems Inc	Angel Medical has developed the first ever implantable, patient alerting system for the early detection and prevention of heart attacks.	Eatontown
5	Bellerophon Therapeutics, Inc	Bellerophon Therapeutics is a clinical-stage therapeutics company focused on developing innovative products that address significant unmet medical needs in the treatment of cardiopulmonary diseases.	Warren
6	BioAegis Therapeutics	BioAegis Therapeutics Inc. is a clinical stage entity commercializing discoveries in inflammation and infection, directed at addressing serious diseases. The company completed a 1b/2a study in severe community acquired pneumonia and has recently completed recruitment for a 2b trial in COVID-19	North Brunswick
7	Brilliant Light Power, Inc.	Brilliant Light Power, Inc. is creating a nonpolluting, new primary source of energy from the conversion of hydrogen into a prior undiscovered, more stable form of hydrogen called “Hydrino” that releases two hundred times more energy than burning hydrogen.	Eatonton
8	Caladius Biosciences, Inc.	Caladius is a clinical-stage biopharmaceutical company dedicated to the development and commercialization of cellular therapies designed to reverse disease and/or promote the regeneration of damaged tissue.	Basking Ridge
9	Celldex Therapeutics, Inc.	Celldex Therapeutics, Inc. is engaged in the research and development of developing products for the treatment of cancer and other difficult-to-treat diseases	Hampton

10	Celsion Corporation	Celsion is a fully integrated development stage oncology drug company focused on advancing a portfolio of innovative cancer treatments, including directed chemotherapies, DNA-mediated immunotherapy and RNA based therapies.	Lawrenceville
11	Cormedix Inc	CorMedix Inc. is a biopharmaceutical company focused on developing and commercializing therapeutic products for the prevention and treatment of infectious and inflammatory diseases.	Berkeley Heights
12	Cytosorbents Medical Inc	Cytosorbents Medical Inc. is a critical care focused immunotherapy company using blood purification to treat deadly inflammation in hospitalized patients around the world, with the goal of preventing or treating multiple organ failure in life-threatening illnesses and cardiac surgery.	Monmouth Junction
13	ElectroCore Inc	ElectroCore is a commercial stage bioelectronic medicine company with a proprietary non-invasive vagus nerve stimulation, or nVNS, therapy.	Basking Ridge
14	Gadget Software Inc.	Gadget Software, Inc. is a software platform that puts various text into easy to use pdf/mobile formats.	Newark
15	Hope Portal Services, Inc	Hope Portal Services, Inc dba as Hope Trust, is a health-tech/fin-tech startup that provides both concierge and fiduciary services to the high net worth special needs community. Hope's IP relates to a computing platform (code) for securing sensitive data and safely sharing it with third party resources.	Holmdel
16	IoTecha Corp	IoTecha is a developer of a hardware, software and cloud integrated platform designed for the Electric Vehicle smart charging infrastructure.	Piscataway
17	Malbec Solutions	Malbek is a technology company that provides its cloud-based software solution to its customers based on a subscription license model. The solution solves a critical business problem that exists in almost all organizations, small or large, that deal with legal contracts and agreements with their external parties.	Somerset
18	Matinas BioPharma Holdings Inc	Matinas BioPharma is a clinical-stage biopharmaceutical company focused on advancing a lipid nano-crystal (LNC) drug delivery platform to solve complex challenges relating to the delivery of small molecules, gene therapies, vaccines, proteins, and peptides.	Bedminster

19	Nanotech Industrial Solutions, Inc.	Nanotech Industrial Solutions is the primary manufacturer of Nano sized particles of Inorganic Fullerene-like Tungsten Disulfide under an exclusive global commercialization contract which supplies a variety of industries.	Avenel
20	Ocean Power Technologies, Inc	Ocean Power Tech focuses on ocean wave power conversion technology. Their PowerBuoy® harnesses the renewable energy of ocean waves and converts it into clean, environmentally beneficial electricity.	Monroe Township
21	OncoSec Medical Inc	OncoSec is a clinical-stage biotechnology company focused on developing cytokine-based intra-tumoral immunotherapies to stimulate the body's immune system to target and attack cancer.	Pennington
22	PDS Biotechnology Corporation	PDS Biotechnology Corporation fka Edge Therapeutics is a clinical-stage biopharmaceutical company developing a new generation of multi-functional cancer immunotherapies.	Florham Park
23	Provention Bio, Inc.	Provention Bio, Inc. is a clinical-stage developing novel therapeutics aimed at intercepting and preventing immune-mediated diseases.	Red Bank
24	Rafael Pharmaceuticals, Inc	Rafael Pharmaceuticals, Inc. fka Cornerstone Pharmaceuticals is a clinical-stage, metabolic oncology therapeutics company, focused on transforming the lives of patients with hard to treat cancers.	Newark
25	Scynexis, Inc	Scynexis is focused on innovative therapies for difficult-to-treat and often life-threatening infections. Their lead product, ibrexafungerp, has the potential to effectively treat multiple serious fungal infections.,	Jersey City
26	Solidia Technologies	Solidia is a cement and concrete technology company with patented processes that make it easy and profitable to use CO2 to create superior and sustainable building materials.	Piscataway
27	Soligenix, Inc	Soligenix Inc is a late-stage biopharmaceutical company focused on developing and commercializing products to treat rare diseases where there is an unmet medical need.	Princeton
28	Svelte Medical Systems	Svelte Medical Systems, Inc. is a privately held company engaged in the design and development of highly deliverable balloon expandable stents.	New Providence

29	Teligent Pharma, Inc. fka IGI Labs, Inc.	Teligent Pharma, Inc. is a generic pharmaceutical company centered around the development, manufacturing and marketing of a portfolio of generic pharmaceutical products under their own label and private labeled for other pharmaceutical companies in topical, injectable and other high-barrier dosage forms.	Buena
30	TLC Products, Inc.	TLC Products, Inc. built a machine to validate the process to make graphene composites from graphite, creating a cost-efficient technology for graphene composites.	Blackwood
31	United Silicon Carbide	UnitedSiC is commercializing silicon carbide power devices (SiC). SiC is a wide band-gap semiconductor that is much more energy efficient and extremely temperature resistant compared to silicon.	Monmouth Junction
32	VectraCor, Inc	VectraCor, Inc. is engaged in research, development, production and commercializes diagnostic cardiology ECG/monitoring devices and has proprietary and worldwide patented technology that improves electrocardiograph (ECG) systems.	Totowa

## **Attachment B -** **NOL Threshold Eligibility Requirements**

Each applicant must meet each of the legislative requirements below.

1. "Biotechnology business"
  - a. "headquarters or base of operations located in New Jersey".
  - b. "that owns, has filed for, or has a license to use protected, proprietary intellectual property and whose primary business is the research, development, production, or provision of biotechnology for the purpose of developing or providing products or processes for specific commercial or public purposes, including, but not limited to, medical, pharmaceutical, nutritional, and other health-related purposes, agricultural purposes, and environmental purposes."
  
2. "Emerging technology business"
  - a. "headquarters or base of operations located in New Jersey".
  - b. "that owns, has filed for, or has a license to use protected, proprietary intellectual property whose primary business is the provision of a scientific process, product, or service and that employs some combination of the following: highly educated and/or trained managers and workers employed in New Jersey who use sophisticated scientific research, service or production equipment, processes or knowledge to discover, develop, test, transfer or manufacture a product or service."
  
3. "New or expanding" - "On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate," a company must have
  - a. fewer than 225 employees in the United States of America; (In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.)
  - b. at least one full-time employee working in this State if the company has been incorporated for less than three years
  - c. at least five full-time employees working in this State if the company has been incorporated for more than three years but less than five years
  - d. at least 10 full-time employees working in this State if the company has been incorporated for more than five years

4. "Full-time employee" - means a person employed by a new or expanding emerging technology or biotechnology company
  - a. on a permanent or indefinite basis
  - b. for consideration for at least 35 hours a week
  - c. whose wages are subject to withholding as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq
  - d. "or who is a partner of a new or expanding emerging technology or biotechnology company who works for the partnership for at least 35 hours a week... and whose distributive share of income, gain, loss, or deduction, or whose guaranteed payments, or any combination thereof, is subject to the payment of estimated taxes, as provided in the New Jersey Gross Income Tax Act, N.J.S.A. 54A:1-1 et seq"
  - e. A "Full-time employee" must also be considered a "Full-time employee working in this State" which means a full-time employee whose primary office is in New Jersey and who spends at least 80 percent of his or her time in New Jersey. or for the case of this program year, provide evidence that the out of state employees (excluding Pennsylvania residents due to the tax agreement) live within reasonable proximity of New Jersey as defined by a 90 minute commutable distance to their assigned NJ office.
  - f. It shall not include any person who works as an independent contractor or on a consulting basis for the new or expanding emerging technology or biotechnology business; or any person who works as an intern, as a temporary employee, or in a temporary position.
  - g. To qualify as a "full-time employee," an employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits under a group health plan as defined under section 14 of P.L. 1997, c. 146 (N.J.S.A. 17B:27-54), a health benefits plan as defined under section 1 of P.L. 1992, c. 162 (N.J.S.A. 17B:27A-17), or a policy or contract of health insurance covering more than one person issued pursuant to Article 2 of chapter 27 of Title 17B of the New Jersey Statutes.
  
5. "Financial statements"
  - a. Application must include a Draft or Final prepared Financial Statement.
  - b. Applicant cannot be approved if it "Has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements".
  - c. Must meet the definition of a "Financial Statement" which is defined as "a statement prepared by an independent Certified Public Accountant (CPA), which shall include an opinion letter indicating the scope of the services performed (compilation, review, or audit) in accordance with Generally Accepted Accounting Principles (GAAP) as determined by the Financial Standards

Accounting Board (FASB) and shall include a balance sheet, statement of income and expenses, cash flow statement, other statements as determined by the independent CPA, and footnotes where applicable”.

- d. If an applicant submits a draft Financial Statement, the Final Financial Statement must be received no later than September 31<sup>st</sup> of the program year.
  - e. If an applicant submits a draft Financial Statement, the Final Financial Statement must include no material changes from the Draft submitted at application.
  - f. If an applicant “Is directly or indirectly at least 50 percent owned or controlled by another corporation” then the controller must also follow steps A-E.
6. “Protected Proprietary Intellectual Property” –means intellectual property that is
- a. the technology of the applicant's primary business as a technology or biotechnology business
  - b. protected via a patent pending,
  - c. protected via a patent awaiting approval,
  - d. protected via an approved patent,
  - e. or protected via a registered copyright
7. Applicant must provide all applicable documentation to the NJEDA and any additional supplemental information required by the NJEDA.

## **Attachment C Disapprovals:**

**Eos Energy Storage** Eos Energy Storage develops innovative, low-cost energy storage solutions for the electric utility industry, as well as commercial and industrial (“C&I”) end users.

**Recommendation** – Due to a lack of evidence to show the applicant meets NOL threshold eligibility requirements: #3 (a)

**Eligibility Requirement #3a** - fewer than 225 employees in the United States of America; (In calculating the number of employees under this definition, employees of all affiliates and subsidiaries as shown on its consolidated financial statements, employees of any company that owns or controls at least 50 percent of the applicant, as well as the employees of any consolidated group of affiliated corporations as filed for Federal income tax purposes shall be included.)

During the course of the past year, Eos completed a merger with another group. Per required employment documentation received from the PEO (Professional Employer Organization) ADP, showed Eos had 282 employees, thus being over the program limit.

The applicant has been informed of all developments and was informed about staff’s recommendation for disapproval. The applicant was given the option to withdraw their application and has decided that they will not withdraw and will most likely appeal the decision.



**RespireRx Pharmaceuticals** is working in the discovery and development of medicines for the treatment of psychiatric and neurological disorders.

**Recommendation** – Due to a lack of evidence to show the applicant meets NOL threshold eligibility requirements: #3d, 4b and #7.

Eligibility Requirement 3d – To be considered "New or expanding" - "On June 30 of the year in which the company files an application for surrender of unused but otherwise allowable tax benefits under P.L.1997, c.334 (C.34:1B-7.42a et al.) and on the date of the exchange of the corporation business tax benefit certificate," a company must have at least 10 full-time employees working in this State if the company has been incorporated for more than five years.

Eligibility Requirement 4e - "Full-time employee" - means a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week.

The applicant listed 12 F/T employees in their application/employee log. However, 8 of the 12 employees were hired on 6/1/2021. From due diligence, documentation, and email communications, some employees may have full-time jobs outside of the applicant company, and the applicant indicated certain individuals do not work 35 hours a week but instead are available 35 hours a week. This included 4 employees whose job title is listed as "physician panel". Staff requested additional documentation, including offer letters, job descriptions, resumes, confirmations, as is procedure for employees hired within 3 months of the annual deadline date to verify "new or expanding" and "full time employee" requirements including being employed by the applicant "for at least 35 hours a week". Acceptable evidence/documentation has not been provided to NJEDA Staff.

Eligibility Requirement #7 - Applicant must provide all applicable documentation to the NJEDA and any additional supplemental items that the NJEDA deems as necessary. As noted above

The applicant has been informed of all developments and was informed about staff's recommendation for disapproval. The applicant was given the option to withdraw their application and has not given a response about their intent to withdraw or potentially appeal the recommendation. Company was informed that these were the initial declination reasons, as there was incomplete information given. Additional reasons may become apparent during further due diligence.

## **BOND PROJECT**



**MEMORANDUM**

**To:** Members of the Authority

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

**Date:** October 13, 2021

**Subject:** NJEDA State Lease Revenue Bonds (State Government Buildings – Health Department, Taxation Division Office and Juvenile Justice Commission Facilities Projects), 2018 Series A and 2018 Series C - Amendment to Subleases PROD-00152563

**Summary:**

Approve amendments to the insurance clause sections of the subleases for the State Government Buildings and the Juvenile Justice Commission projects to align the sublease insurance requirements with the State’s insurance program.

**Background:**

On December 12, 2017, the Members approved two lease/sublease bond financing transactions on behalf of the Department of the Treasury (“Treasury”) for the following developments:

- Two State Government Buildings (“SGB Project”) to replace the existing Health and Taxation buildings in Trenton, Mercer County, and the demolition of the old Health and Agriculture buildings also located in Trenton; and
- Three Juvenile Justice Commission (“JJC”) facilities to be located within Woodbridge Township, Middlesex County, Ewing Township, Mercer County and Winslow Township, Camden County to replace the Training School (“JJC Project”).

Prior to issuing the bonds, Treasury decided not to pursue development of the JJC facility located within Woodbridge Township due to the inability to receive the requisite approvals for such facility.

The Authority issued three series of bonds to finance these projects:

- 2018 Series A (tax exempt) in the original principal amount of \$196,280,000, to finance costs of the construction of the SGB Project, other than the demolition of the old Health and Agriculture buildings; and
- 2018 Series B (taxable), in the original principal amount of \$19,075,000, to fund capital maintenance and replacement reserves for the SGB Project and the JJC Project and costs of the demolition of the old Health and Agriculture buildings; and
- 2018 Series C (tax exempt), in the original principal amount of \$160,325,000, to finance costs of the construction of the JJC Project.

The bond documents included a lease and sublease for each project to be developed within the SGB and JJC Projects as follows:

- Lease: The Division of Property Management and Construction (“DPMC”) within the Department of the Treasury leased the land and improvements (the “Leased Premises”) relating to each project to the Authority pursuant to a lease (each, a “Lease” and collectively, the “Leases”); and
- Sublease: The Authority subleased the Leased Premises relating to each project back to DPMC pursuant to a sublease (each, a “Sublease” and collectively, the “Subleases”).

Pursuant to Section 5.5(b) of each of the Subleases, DPMC retains the responsibility to provide property insurance for the Leased Premises, subject to a maximum limit of \$750 million per occurrence for each project facility with a \$500,000 deductible.

In January 2021, as part of renewing the annual insurance certificate filing with U.S. Bank, bond trustee, the Division of Risk Management (“DRM”) within the Department of the Treasury advised Authority staff that effective August 1, 2020, the State’s current property insurance coverage for the subleased properties was reduced to \$200 million per occurrence and is no longer per location (the “Amendments”). The following coverage limits and deductibles have also changed:

	Previous	Current
Deductible	\$500,000	\$1,000,000
Coverage Limit – Blanket Building and Personal Property	\$750,000,000	\$200,000,000
Earthquake	\$250,000,000	\$25,000,000
Flood	\$25,000,000	\$25,000,000
Newly Acquired property	\$0	\$10,000,000
Extra Expense	\$0	\$5,000,000

Note: Earthquake, Flood, Newly Acquired Property and Extra Expense all currently have a \$1,000,000 deductible.

The changes made to the State’s insurance coverage were due to an increase in insurance costs across the board because of the increase in catastrophic weather events on the East Coast.

The Members are being asked to approve the Amendments to Section 5.5(b) of the Subleases for the SGB and JJC Projects to align with the State’s insurance coverage. The Authority, in consultation with Chiesa Shahinian & Giantomasi (“Bond Counsel”) and the Office of the State

Attorney General, has prepared the Amendments to the Subleases being attached hereto, in substantially final form, as Exhibits A-1 through A-4, and made a part hereof. The Amendments will be subject to final review and approval in consultation with Bond Counsel and the Office of the State Attorney General. In connection with the Amendments, Bond Counsel will deliver its opinion to the effect that the Amendments will not cause interest on the respective series of tax-exempt bonds to be includible in the gross income of any holder thereof for federal income tax purposes and will not cause such interest to be treated as an item of tax preference for purposes of the alternative minimum tax imposed under the Code

**Recommendation:**

After careful consideration, the recommendation is to approve the Amendments to Section 5.5(b) of the Subleases for the SGB Project and JCC Project.



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Tim Sullivan, CEO

Prepared by:  
Juan Burgos and Lori Zagarella

**OFFICE OF RECOVERY**

**ENERGY RESILIENCE BANK (ERB) PROGRAM**



**MEMORANDUM**

**To:** Members of the Authority

**From:** Tim Sullivan  
Chief Executive Officer

**Date:** October 13, 2021

**Subject:** Energy Resilience Bank – Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. – Jersey City Medical Center CHP Project Funding Modification Recommendation – original action by the board under the name RWJBarnabas – Jersey City Medical Center

**Request:**

The Members are requested to modify the June 13, 2017 Board action for the RWJBarnabas – Jersey City Medical Center which has been renamed to Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. – Jersey City Medical Center CHP Project under the Energy Resilience Bank (ERB) program by increasing the reservation of ERB funding by \$1,300,000, from \$8,526,758 to \$9,826,758 for the project primarily due to the increase in material costs since the original project budget was developed several years ago and extend the Mandatory Project Completion Date to the new funding deadline established by HUD.

**Background:**

In June 2017, the Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. – Jersey City Medical Center CHP Project was presented to the EDA Board for review and funding consideration under the Energy Resilience Bank (ERB) program. Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. is a not-for-profit organization located in West Orange, NJ. It was formed in November 2015 upon the merging of Barnabas Health, Inc. and Robert Wood Johnson University Hospital. Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. is the most comprehensive health care delivery system in New Jersey, treating over 3 million patients a year. The system includes eleven acute care hospitals, three acute care children's hospitals and a pediatric rehabilitation hospital, a freestanding 100-bed behavioral health center, ambulatory care centers, geriatric centers, the state's largest behavioral health network, comprehensive home care and hospice programs, fitness and wellness centers, retail pharmacy services, a medical group, multi-site imaging centers and four accountable care organizations.



Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. owns Jersey City Medical Center (JCMC) in Jersey City, NJ (Hudson County) where the proposed cogeneration project is to be located. The Jersey City Medical Center is located on a 15-acre campus overlooking the New York Harbor and Liberty State Park. The Campus presently includes three facilities: the Wilzig Hospital, the Provident Bank Ambulatory Center and the medical office building. The hospital serves as a regional referral, teaching hospital and provides the highest level of care for women and infants, trauma, and cardiac patients. JCMC is Hudson County's largest provider of healthcare services with more than 18,000 admissions and over 80,000 emergency room visits each year and is also a provider of advanced life support for Hudson County, providing 911 medical call screening for Hudson County. Its primary service area includes much of Jersey City. JCMC is non-sectarian and has no religious affiliation.

The proposed ERB project will consist of a 1.5 MW natural gas reciprocating engine-based CHP system that will be interconnected within the facility with the necessary blackstart and islanding system controls to be able to operate independently from the grid in case of a power outage or other emergency.

Consistent with ERB program requirements, JCMC has undertaken additional preliminary design and feasibility analysis and has proceeded with a Request for Qualifications and subsequent Request for Proposals process for Design Build services. Due to the delay in starting this project, material costs have increased so when JCMC went back to the respondents for an updated project budget, the estimates were higher than original budget estimates. JCMC is now finalizing project negotiations with their preferred respondent, but this still results in a higher total project cost than the original June 2017 budget and EDA Board action. JCMC and ERB staff have also reviewed and updated the resilient costs breakdown.

The original estimated total project cost was \$9,026,758 and based on information provided by JCMC it is now estimated that the total project cost will be \$10,439,258. Additional project funding of approximately \$612,500 is to be provided from PSEG's Hospital Efficiency Program.

Consistent with the ERB's Financing and Program Guide, the JCMC project will be provided with the following, subject to cost reasonableness analysis and review of final project costs:

ERB Grant:	\$ 6,153,962	
ERB Loan Funding:	\$ 3,672,796	(2% interest rate, 20-year term)

Extension of Mandatory Project Completion Date: COVID-19 pandemic and other intervening factors have delayed the execution of the SRA Agreement. The ERB Program is currently subject to a March 31, 2023 funding deadline established by HUD. The SRA Agreement will establish a 'Mandatory Project Completion Date' of March 31, 2023.

**Recommendation:**

Approve a modification to the June 13, 2017 Board action for the Barnabas Health, Inc. d/b/a RWJBH Corporate Services, Inc. – Jersey City Medical Center CHP Project under the Energy Resilience Bank (ERB) program by changing the reservation of ERB funding from \$8,526,758 to \$9,826,758 with a Mandatory Project Completion Date of March 31, 2023. Both the funds and the time are available in the ERB Program.



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Tim Sullivan, CEO

**LOANS/GRANTS/GUARANTEES**

**PETROLEUM UNDERGROUND STORAGE TANK (PUST)**



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 13, 2021  
**SUBJECT:** NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

The following residential and commercial projects have been approved by the Department of Environmental Protection to perform tank removal and site remediation activities. The scope of work is described on the attached project summaries:

**PUST Grants:**

**Residential**

Product 288605	Jorge Medina	\$133,976.00
Product 258519	Jason Mohren and Justin Mohren	\$193,784.06
Product 288791	Michael Schimmel	\$116,070.75

**Commercial Grant:**

Product 258516	Steven Bogнар	\$ 31,488.39
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**Total UST Funding – October 2021** **\$475,319.20**

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Tim Sullivan, CEO

Prepared by: Kathy Junghans

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Underground Storage Tank - Residential**

**APPLICANT:** Jorge Medina

PROD-00288605

**PROJECT USER(S):** Same as applicant

**PROJECT LOCATION:** 324 Derosse Avenue      Pennsauken Township      Camden County

**APPLICANT BACKGROUND:**

Jorge Medina is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible.

Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

None

**APPROVAL REQUEST:**

The applicant is requesting grant funding in the amount of \$133,976 to perform the approved scope of work at the project site.

**FINANCING SUMMARY:**

**GRANTOR:**                      Petroleum UST Remediation, Upgrade & Closure Fund

**AMOUNT OF GRANT:**        \$133,976.00

**TERMS OF GRANT:**         No Interest; No Repayment

**PROJECT COSTS:**

UST Project:Upgrade,Closure,Remediation	\$133,976.00
EDA Administrative Cost	\$250.00

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**TOTAL COSTS:                      \$134,226.00**

**DATE:**            9/1/2021

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Underground Storage Tank - Residential**

**APPLICANT:** Jason Mohren and Justin Mohren

PROD-00258519

**PROJECT USER(S):** Same as applicant

**PROJECT LOCATION:** 68 Greenwood Ave. Montclair Township Essex County

**APPLICANT BACKGROUND:**

In February 2018, Jason Mohren and Justin Mohren received a grant in the amount of \$17,752 under P44407 to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank was decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible to perform additional remedial activities.

Financial statements provided by the applicants demonstrate that the applicants' financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

\$17,752, P44407

**APPROVAL REQUEST:**

The applicants are requesting supplemental grant funding in the amount of \$193,784.06 to perform the approved scope of work at the project site. Total grant funding including this approval is \$211,536.06.

**FINANCING SUMMARY:**

**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund

**AMOUNT OF GRANT:** \$193,784.06

**TERMS OF GRANT:** No Interest: 5 year repayment provision on a pro-rata basis in accordance with the PUST Act.

**PROJECT COSTS:**

UST Project: Remediation	\$193,784.06
EDA Administrative Cost	\$250.00

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**TOTAL COSTS: \$194,034.06**

**DATE:** 9/17/2021

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

**Underground Storage Tank - Residential**

**APPLICANT:** Michael Schimmel

PROD-00288791

**PROJECT USER(S):** Same as applicant

**PROJECT LOCATION:** 37 S Valley Avenue Vineland City Cumberland County

**APPLICANT BACKGROUND:**

Michael Schimmel is a homeowner seeking to remove a leaking 550-gallon residential #2 heating underground storage tank (UST) and perform the required remediation. The tank will be decommissioned and removed in accordance with NJDEP requirements. The NJDEP has determined that the project costs are technically eligible. Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

None

**APPROVAL REQUEST:**

The applicant is requesting grant funding in the amount of \$116,070.75 to perform the approved scope of work at the project site.

**FINANCING SUMMARY:**

**GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund

**AMOUNT OF GRANT:** \$116,070.75

**TERMS OF GRANT:** No Interest; No Repayment

**PROJECT COSTS:**

UST Project: Upgrade, Closure, Remediation	\$116,070.75
EDA Administrative Cost	\$250.00

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**TOTAL COSTS: \$116,320.75**

**DATE:** 9/3/2021



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY****Underground Storage Tank - Commercial****APPLICANT:** Steven Bognar

PROD-00258516

**PROJECT USER(S):** Same as applicant**PROJECT LOCATION:** 264 Belgrove Drive      Kearny Town      Hudson County**APPLICANT BACKGROUND:**

Between May 1999 and January 2019, Steven Bognar, owner and operator of M&F Auto Service, Inc., a gasoline service station, received an initial grant in the amount of \$25,000 under P10778 and supplemental grants in the amount of \$54,382 under P17252 and \$44,687 under P44961 to remove three underground storage tanks (USTs). The applicant is requesting supplemental grant funding to perform remediation activities as well as groundwater and site restoration. The NJDEP has determined that the project costs are technically eligible to perform additional remediation.

Financial statements provided by the applicant demonstrate that the applicant's financial condition conforms to the financial hardship test for a conditional hardship grant.

**OTHER NJEDA SERVICES:**

\$25,000, P10778; \$54,382, P17252; \$44,687, P44961

**APPROVAL REQUEST:**

The applicant is requesting aggregate supplemental grant funding in the amount of \$31,488.39 to perform the approved scope of work at the project site. Because the aggregate supplemental funding request including this request is \$130,557.39, it exceeds the maximum aggregate staff delegation approval of \$100,000 and therefore requires EDA's board approval. Total grant funding including this approval is \$155,557.39.

**FINANCING SUMMARY:****GRANTOR:** Petroleum UST Remediation, Upgrade & Closure Fund**AMOUNT OF GRANT:** \$31,488.39**TERMS OF GRANT:** No Interest; No Repayment**PROJECT COSTS:**

UST Project: Remediation	\$31,488.39
EDA Administrative Cost	\$500.00

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**TOTAL COSTS:                    \$31,988.39**

**DATE:** 9/21/2021



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 13, 2021  
**SUBJECT:** NJDEP Hazardous Discharge Site Remediation Fund Program

The following municipal project has been approved by the Department of Environmental Protection to perform remedial action activities. The scope of work is described on the attached product summary:

**HDSRF Municipal Grant:**

Product 288708	City of Perth Amboy (Second Street Park)	\$88,288.60
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<b>Total HDSRF Funding –October 2021</b>	<b>\$88,288.60</b>
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A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO

Prepared by: Kathy Junghans

## NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

### Hazardous Discharge Site Remediation - Government Facility

**APPLICANT:** City of Perth Amboy - Second Street Park

PROD-00288708

**PROJECT USER(S):** Same as applicant

**PROJECT LOCATION:** 1 Second Street      Perth Amboy City      Middlesex County

**APPLICANT BACKGROUND:**

Between May 2019 and June 2019, City of Perth Amboy, received an initial grant in the amount of \$1,799,986 under P43881 and \$718,869 under P44542 to perform preliminary assessment (PA) and site investigation (SI). The project site identified as Block 10, Lots 1.01, 1.02 and 1-12, Block 11, Lot 1.01 and Block 16, Lots 1.01, 1-14 and 15.01 is a former industrial facility which has potential environmental areas of concern (AOCs). The City of Peth Amboy owns the project site and has satisfied proof of site control. It is the City's intent upon completion of the environmental remediation activities to redevelop the project site for recreational use.

NJDEP has approved this request for Remedial Action (RA) grant funding on the above-referenced project site and finds the project technically eligible under the HDSRF program, Category 2, Series A.

According to the HDSRF legislation, a grant can be awarded to a municipality, county or redevelopment entity authorized to exercise redevelopment powers up to 75% of the costs of remedial action for projects involving the redevelopment of contaminated property for recreation and conservation purposes, provided that the use of the property for recreation and conservation purposes is included in the redevelopment plan and is conveyed by a development easement, deed restriction for development or conservation easement for recreation and conservation purposes.

**OTHER NJEDA SERVICES:**

\$1,799,986, P43881; \$718,868, P44542

**APPROVAL REQUEST:**

City of Perth Amboy is requesting grant funding to perform RA in the amount of \$88,288.60 at the Second Street Park project site. Because the aggregate supplemental funding including this request is \$807,157.60, it exceeds the maximum aggregate approval of \$500,000 and therefore requires EDA's board approval. Total grant funding including this approval is \$2,607,143.60.

**FINANCING SUMMARY:**

**GRANTOR:** Hazardous Discharge Site Remediation Fund

**AMOUNT OF GRANT:** \$88,288.60

**TERMS OF GRANT:** No Interest; No Repayment

**PROJECT COSTS:**

Remedial Action	\$117,718.13
EDA Administrative Cost	\$500.00

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**TOTAL COSTS:      \$118,218.13**

**DATE:** 9/24/2021

**BOARD MEMORANDA – FYI ONLY**



**MEMORANDUM**

**TO:** Members of the Authority  
**FROM:** Tim Sullivan, Chief Executive Officer  
**DATE:** October 13, 2021  
**SUBJECT:** Credit Underwriting Projects Approved Under Delegated Authority –  
**For Informational Purposes Only**

The following projects were approved under Delegated Authority in September 2021:

**Micro Business Loan Program:**

- 1) Kopp's Cycle LTD (PROD-00228200 & 00297208), located in Princeton Borough, Mercer County, was established in 1998 as a retail store that offers new bikes, accessories, and repairs. NJEDA approved a \$45,000 working capital loan and a \$5,000 forgivable loan. Proceeds will be used to cover payroll, rent and taxes. The Company currently has five employees.
- 2) Office Penny LLC (PROD-00224504 & 00297117), located in Piscataway, Middlesex County, was formed in 2014 to operate as a supplier of various office and school materials and services. Supplies and services include general office supplies, furniture, printer toner, marketing and promotional items, as well as school supplies, teacher resources, and arts and crafts. NJEDA approved a \$22,050 working capital loan and a \$2,450 forgivable loan. Proceeds will be used to supplement inventory and payroll costs. Currently, the Company has two employees.

A handwritten signature in blue ink, appearing to read "T. Sullivan", is written above a horizontal line.

Tim Sullivan, CEO

**Prepared by:** G. Robins



**MEMORANDUM**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 13, 2021

**SUBJECT:** Real Estate Division Delegated Authority for Leases and Right of Entry (ROE)/ Licenses for Third Quarter 2021 - *For Informational Purposes Only*

The following approvals were made pursuant to Delegated Authority for Leases and ROE/ Licenses in July, August and September 2021 :

**LEASES**

TENANT	LOCATION	TYPE	TERM	S.F.
API Pharma Tech	Bioscience Center Incubator	Month to Month	Month to Month	1,600sf
Genomic Prediction	Bioscience Center Incubator	Month to Month	Month to Month	3,200sf
Angex Pharmaceuticals	Bioscience Center Incubator	Month to Month	Month to Month	125sf
Innovative Molecules	Bioscience Center Incubator	Amendment	5.5 Months	1,300sf
JMS Pharma	Bioscience Center Incubator	Extension	One Year	1,800sf
Mito Biopharma LLC	Bioscience Center Incubator	Amendment	6 Months	125sf
Sonder Research X	Bioscience Center Incubator	Amendment	10 Months	3,895sf
Adlai Nortye USA	Bioscience Center Step Out Labs	Extension	3 Years	6,708sf
Skunkworx Labs	Bioscience Center	Amendment and Extension	13.5 Months	2,725sf

TENANT	LOCATION	TYPE	TERM	S.F.
	Incubator			
Chobani LLC	Bioscience Center Step Out Labs	Amendment	28 Months	3,271sf
Echo Biosolution	Bioscience Center Incubator	New Tenant	One Year	125sf
Euprotein	Bioscience Center Incubator	Amendment	4.5 Months	2,525sf
Smirta Innovation	Bioscience Center Incubator	Extension	One Year	125sf

**COVID19 LEASE DEFERRAL**

TENANT	LOCATION	TYPE	TERM	AMOUNT
None				

**RIGHT OF ENTRY/LICENSES/EXTENSIONS**

ENTITY	LOCATION	TYPE	CONSIDERATION
Cablevision Lightpath	NJBC – Suite 110 occupied by miR Scientific, LLC	Property Access agreement	\$0
NJ Department of Health	Barnes Street Parking Lot	MOU for use of Lot (July 1)	\$0
New Jersey Aquarium, LLC	EDA parking lots, Riverside Drive, Camden, NJ	Extension to ROE for environmental monitoring.	\$0

**MISCELLANEOUS**

ENTITY	LOCATION	TYPE	CONSIDERATION
None			



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Tim Sullivan, CEO

Prepared by: Cyndi Costello



**EXECUTIVE SESSION**

**TO:** Members of the Authority

**FROM:** Tim Sullivan  
Chief Executive Officer

**DATE:** October 13, 2021

**SUBJECT:** New Jersey Wind Port – Request to issue Notice to Proceed for Construction Services, and Request for up to \$123.6 million in Construction Funding

**REQUEST**

The Members of the Board are asked to approve the issuance of a Notice to Proceed (NTP) to Tishman Construction Company of New Jersey (dba, “AECOM Tishman”) for construction services for the New Jersey Wind Port (NJWP). Members are also asked to approve expenditures of up to \$123 million for the first construction package, comprising:

- \$112 million in direct costs;
- \$8 million in indirect costs; and
- \$3 million in construction contingency.<sup>1</sup>

In addition, Staff are seeking approval of up to \$615,000 in order to meet the Authority’s obligations under PL 2009, Chapters 313 and 335, which requires that state agencies pay one-half of one percent of the total cost of public works construction contracts that are equal to or greater than \$1 million to the Department of Labor and Workforce Development (NJDOL).

The requested construction expenditure amount is based on a given scope of work and an initial estimate provided by AECOM Tishman, subsequently reviewed by the Authority’s designer-of-record Moffatt & Nichol (M&N) and technical advisor WSP USA. Works will be undertaken on a cost of work plus fee (“Cost Plus”) basis without a Guaranteed Maximum Price (GMP). AECOM Tishman will be required to subcontract and competitively bid all construction, and to submit bids for the Authority’s review and approval prior to award. AECOM Tishman’s fee is set at 1.65 percent of the cost of work.

The Authority has secured \$213.2 million in project funding to-date, comprising state appropriations and a New Jersey Board of Public Utilities (NJBPU) funding contribution. In addition, the New Jersey Department of Transport (NJDOT) has committed \$44 million to

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<sup>1</sup> Amounts are rounded and are estimates only. Indirect costs and the CM’s fee are dependent on the direct cost.



cover Phase one dredging, which it will undertake directly. After accounting for \$123.6 million in initial construction expenditure (and NJDOL obligations) and approximately \$30 million in project costs that staff anticipate the Authority will incur through calendar 2021, approximately \$60 million in project funding remains unallocated. Staff are working to secure additional project funding and anticipate funding being in place prior to subsequent construction expenditure requests being submitted to the Board.

This Memorandum is being heard in Executive Session in order to protect the Authority's interests given AECOM Tishman's forthcoming subcontractor bid process.

## BACKGROUND

### Project phasing

The Port will be constructed in two main phases. Phase one will comprise parcels A, G, C, D and E as well as associated road and utility infrastructure. Phase one early site works have commenced with the first parcels (A and G) currently targeted for completion in early 2024. Phase two, which comprises parcels B1 and B2 and associated wharf and utility infrastructure, remains at a concept design stage with a target for construction commencement in late 2024. [Exhibit A](#) provides further information on the various parcels within each phase.

Within Phase one, individual parcels will commence and complete at different times, reflecting different site conditions and permitting needs, as summarized below. As such, construction across and within project phases will need to be broken into multiple packages.

Project Phase	Parcel	Proposed use	Approximate acreage	Target construction start	Target construction completion
1	A	Marshalling	31	Early site works underway	Q1 2024
1	G	Manufacturing	31.6	Q4 2022	Q1 2024
1	C	Manufacturing	24.5	Q2 2024	Q2 2025
1	D	Common facilities	4	Q1 2024	Q3 2024
1	E	Confined disposal facility	27.4	Q3 2024	Q2 2025
2	B1	Marshalling	30	Q4 2024	Q3 – Q4 2026
2	B2	Manufacturing	70-80	Q4 2024	Q3 – Q4 2026

### Contracting approach

As part of the Port's initial business case development the Authority evaluated several delivery methods. This assessment, which drew on the expertise of the Authority's financial and commercial advisor, Ernst & Young Infrastructure Advisors (EYIA), and technical advisor, WSP USA, identified the Construction Manager at Risk (CMAR) method as the optimal form of delivery given project specifics and Authority's procurement capabilities. Method selection considered:

- Schedule benefits, specifically the ability to commence and complete the first phase of the project sooner, which would best position New Jersey to attract offshore wind developers and supply chain partners to the State;
- The Authority's direct experience with (and track record of success in using) the CM and CMAR methods on large projects, including for the state office buildings;
- The ability for the Authority to retain greater control over project design, which is important in this case given the evolving nature of offshore wind industry needs; and
- The greater value for money that the CMAR method permits through an appropriate allocation of risk between the Authority and CMAR, including the opportunity to transfer price and schedule risk through a Guaranteed Maximum Price (GMP) where it is likely to provide better overall value relative to a cost-plus pricing approach.

Further to a public procurement process AECOM Tishman was awarded a contract for preconstruction and construction (at risk) services in September. The contract allows for construction to proceed with or without a GMP, to be determined at the Authority's discretion. This flexibility enables the Authority to maximize value by aligning the pricing approach – and degree of risk transfer to the CM and in-turn its subcontractors – with the specifics of a given project phase or portion of. Pricing flexibility also reflects schedule realities, with the ability to proceed without a GMP enabling work to commence sooner; recognizing that a GMP for Parcel A or portion of would take approximately 3-4 months to price and negotiate before works could commence, compared to 1-2 months under a cost plus pricing approach.

To this end, the first construction package will proceed on a cost plus basis, with the CM reimbursed for the total cost of work plus a fee without a GMP. In accordance with the contract, AECOM Tishman will be required to subcontract and competitively bid all construction works maximizing value for the Authority, with the CM fee capped at 1.65 percent of the total cost of work. This compares to a 2.15 percent fee under a GMP. Staff multipliers for general conditions are also capped, with eligible inclusions defined by the contract. This pricing approach will allow construction to commence sooner, which is needed to maintain the project as close to schedule as possible, while AECOM Tishman concurrently prepares a GMP for the balance of Parcel A's costs. Staff anticipate returning to the Board for a NTP for the balance of Parcel A's construction, which may be on a GMP or non-GMP basis, in Quarter 1 2022. The Authority also has the ability to roll-in the initial construction works package, or portion of, into a subsequent total GMP for Parcel A.

Preconstruction services for other Phase one parcels has commenced, with Parcel G detailed design due to start by the end of 2021. At 90 percent design completion for a given parcel or parcels the Authority will request a GMP or will proceed on a cost-plus basis, depending on which approach offers best value; and will seek Board approval prior to issuing an NTP.

### **Scope of initial Construction Works Package**

The first Construction Works Package is for Parcel A only and includes long-lead or critical path items that will need to start by early 2022 in order to preserve Q1 2024 completion. Specifically, it will comprise the following elements:

*Test Pile Program* – AECOM Tishman will go to market for the fabrication and installation of test piles, as well as implementation of a test pile program. This is necessary to validate the design’s pile solution prior to the purchase (and subsequently installation) of piles. This is a critical path item with pile testing needing to occur prior to the start of the in-water construction moratorium, which runs from early March through June each year. By advancing a significant portion of piling testing prior to the 2022 moratorium the project can preserve its broader schedule for wharf construction.

*Earthworks* – Earthworks will be undertaken in three main phases over an approximately 24-month construction period. The requirement to surcharge the property in order to attain the required weight-bearing capacity for offshore wind uses involves long lead times, making timely commencement critical. As part of the earthwork effort, the contractor will also prepare the existing Confined Disposal Facility Artificial Island Cell No. 3 (Parcel B) to accommodate dredged material, which is targeted to start immediately after the end of the 2022 (in-water) moratorium. This will involve excavating material from CDF3 (to provide more capacity to the disposal facility) and building of a spillway structure to facilitate material dewatering.

Precise packaging across and/or within the three earthworks phases will be determined by AECOM Tishman with the Authority’s approval.

A more detailed breakdown of trades is included in Exhibit B. In addition, funding may be used for the pre-purchase of construction materials, such as concrete piles, caps and planks, in order to insulate the project from future price escalation. AECOM Tishman, alongside M&N and WSP USA, are currently evaluating this potential.

Wharf infrastructure (with the exception of pile purchase and testing) and mechanical dredging are outside the scope of the first works package. As outlined, whilst the first package is moving through the bid phase and into implementation AECOM Tishman will be preparing a GMP for the balance of Parcel A’s construction for the Authority’s review. Staff anticipate receipt of the GMP in Quarter 1 2022 and will return to the Board once final terms are agreed.

### **Subcontractor selection – Meeting policy objectives**

AECOM Tishman has commenced initial contractor outreach to gauge market capabilities and build bidder interest. Recognizing the State’s objective to set a new standard for women and minority inclusion in the project’s construction, communicating to minority, women, and veteran owned firms (“MWVBES”) has been a key focus. CM initiatives to-date have included:

- Attending community and industry forums, alongside Authority staff, to outline the preliminary bid packaging and to highlight subcontracting opportunities;
- Contracting with the Southern New Jersey Development Council (SNJDC), which has been tasked with coordinating community engagement and workforce development services, with a focus on maximizing local participation;
- Proactive matchmaking of potential prime (Tier 1) contractors with small and medium-sized (Tier 2 and 3) contractors; and
- Building an online database for interested subcontractors to register capabilities.