



MEMORANDUM

TO: Members of the Authority
FROM: Caren S. Franzini
Chief Executive Officer
DATE: November 9, 2011
SUBJECT: Agenda for Board Meeting of the Authority November 9, 2011

Notice of Public Meeting

Roll Call

Approval of Previous Month's Minutes

Chief Executive Officer's Monthly Report to the Board

Bond Projects

Loans/Grants/Guarantees

Edison Innovation Fund

Incentive Programs

Board Memorandums

Real Estate

Authority Matters

Public Comment

Adjournment

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
October 11, 2011

MINUTES OF THE MEETING

Members of the Authority present: Al Koepp, Chairman; Matt McDermott representing the Executive Branch; Jim Petrino representing the State Treasurer; Dr. Aaron Fichtner representing the Department of Labor and Workforce Development; Wayne Staub representing the Commissioner of the Department of Environment Protection; Public Members: Joseph McNamara, Vice Chairman; Laurence Downes, Marjorie Perry, Kate Whitman, Brian Nelson, Ray Burke, First Alternate Public Member; Elliot M. Kosoffsky, Second Alternate Public Member; Kevin Brown, Third Alternate Public Member; and Rodney Sadler, Non-Voting Member.

Members of the Authority present via conference call: Nancy Graves representing the Commissioner of the Department of Banking and Insurance, and Charles Sarlo, Public Member.

Absent from the meeting: Rich Tolson, Public Member.

Also present: Caren Franzini, Chief Executive Officer of the Authority; Bette Renaud, Deputy Attorney General; Nicole Crifo, Governor's Authorities' Unit and staff.

Also present via conference call: Wayne Martorelli, Deputy Attorney General.

Chairman Koepp called the meeting to order at 10 a.m.

Pursuant to the Internal Revenue Code of 1986, Ms. Franzini announced that this was a public hearing and comments are invited on any Private Activity bond projects presented today.

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

MINUTES OF AUTHORITY MEETING

The next item of business was the approval of the September 6, 2011 meeting minutes. A motion was made to approve the minutes by Mr. Brown, seconded by Mr. Burke, and was approved by the 12 voting members present.

Mr. Nelson, Mr. Sarlo, and Mr. Kosoffsky abstained because they were not present at the meeting.

The next item of business was the approval of the September 14, 2011 meeting minutes. A motion was made to approve the minutes by Ms. Perry, seconded by Mr. Brown, and was approved by the 13 voting members present.

Mr. Nelson and Mr. Petrino abstained because they were not present at the meeting.

The next item was the presentation of the Chief Executive Officer's Monthly Report to the Board. **(For Informational Purposes Only)**

Chairman Koeppe requested that staff draft a resolution to thank Tim Carden for his service to the State of New Jersey to be presented to the board at the next meeting.

AUTHORITY MATTERS

ITEM: Fund for Community Economic Development – Amendments to Loans and Lenders Component

REQUEST: Approve funding and feature adjustments to the Loans for Lenders component of the Fund for Community Economic Development in order to increase the utilization and deployment of program funding by financial intermediary organizations.

MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. McDermott **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 1

BOND RESOLUTIONS

PROJECT: Congregation Agudath Israel of West Essex, Inc. **APPL.#36721**

LOCATION: Caldwell/Essex Cty.

PROCEEDS FOR: Refinance existing debt

FINANCING: \$6,255,000 Tax-Exempt Bond

APPROVE: Mr. Kosoffsky **SECOND:** Mr. Brown **AYES: 15**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 2

PROJECT: Congregation Bnos Yaakov, Inc. **APPL.#36840**

LOCATION: Lakewood/Ocean Cty.

PROCEEDS FOR: Refinance existing debt

FINANCING: \$2,400,000 Tax-Exempt Bond

APPROVE: Mr. McNamara **SECOND:** Ms. Perry **AYES: 15**

RESOLUTION ATTACHED AND MARKED EXHIBIT: 3

AMENDED BOND RESOLUTIONS

ITEM: NJEDA/School Facilities Construction Bonds Program
Merrill Lynch Capital Services, Inc. 2003 Swap Agreement

REQUEST: Approve a transfer by novation from Merrill Lynch Capital Services, Inc. to Bank of American, N.A. of all of Merrill Lynch's rights, liabilities, duties and obligations under a swap agreement with the Authority and associated with the School Facilities Construction Bonds.

MOTION TO APPROVE: Mr. Staub **SECOND:** Ms. Perry **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 4

PRELIMINARY RESOLUTIONS

PROJECT: Assisted Living, Inc. **APPL.#36923**
LOCATION: Hopewell Township/Mercer Cty.
PROCEEDS FOR: Acquisition of existing building
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Nelson **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 5

MAIN STREET ASSISTANCE PROGRAM

PROJECT: Packaging and Distribution Resources LLC et al **APPL.#36906**
LOCATION: Sayreville/Middlesex Cty.
PROCEEDS FOR: Refinancing and working capital
FINANCING: \$500,000 term load with a 25%, \$125,000, Authority participation,
Main Street Business Assistance program
MOTION TO APPROVE: Mr. Downes **SECOND:** Mr. Brown **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 6

PROJECT: Packaging and Distribution Resources LLC et al **APPL.#36907**
LOCATION: Sayreville/Middlesex Cty.
PROCEEDS FOR: Working capital
FINANCING: \$1,300,000 line of credit with a one year, 50% guarantee of principal
outstanding not to exceed \$250,000, Main Street Business Assistance program
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Kosoffsky **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 7

PETROLEUM UNDERGROUND STORAGE TANK PROGRAM

FOR INFORMATION ONLY: The next item is a summary of all Petroleum Underground Storage Tank Program Delegated Authority Approvals for the month of September 2011

Wayne Martorelli, DAG joined the meeting via conference call at this time.

The following projects were presented under the Petroleum Underground Storage Tank Program.

PROJECT: Pennypot Garage **APPL.#36860**
LOCATION: Folsom/Atlantic Cty.
PROCEEDS FOR: Upgrade, closure, remediation
FINANCING: \$494,978, Petroleum UST remediation, upgrade and closure fund grant
MOTION TO APPROVE: Mr. McNamara **SECOND:** Ms. Perry **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 8

HAZARDOUS DISCHARGE SITE REMEDIATION FUND

PROJECT: Township of Haddon (BDA Wide Groundwater) **APPL.#32623**
LOCATION: Haddon Township/Camden Cty.
PROCEEDS FOR: Remedial investigation and remedial action
FINANCING: \$149,790, Hazardous discharge site remediation fund grant
MOTION TO APPROVE: Mr. Brown **SECOND:** Ms. Perry **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 9

BUSINESS EMPLOYMENT INCENTIVE PROGRAM AND BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT PROGRAM

PROJECT: Biotrial S.A. and Affiliates **APPL.#36937**
LOCATION: TBD **BUSINESS:** pharmaceuticals
GRANT AWARD: 45% Business Employment Incentive grant, 10 years
MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Brown **AYES: 15**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Ms. Whitman left the meeting at this time.

PROJECT: The Dun & Bradstreet Corporation **APPL.#36922**
LOCATION: TBD **BUSINESS:** finance **GRANT**
AWARD: 45% Business Employment Incentive grant, 10 years
MOTION TO APPROVE: Mr. Brown **SECOND:** Mr. Staub **AYES: 14**
RESOLUTION ATTACHED AND MARKED EXHIBIT: 10

Ms. Whitman returned to the meeting at this time.

PROJECT: The
Dun & Bradstreet
Corporation

LOCATION: TBD

BUSINESS: finance

GRANT AWARD: \$3,612,000 (estimate), 4 years **Business Retention and Relocation Assistance Grant**

MOTION TO APPROVE: Mr. Brown **SECOND:** Mr. Staub **AYES:** 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 11

TECHNOLOGY BUSINESS TAX CERTIFICATE TRANSFER PROGRAM

ITEM: Software Synergy, Inc.

REQUEST: Decline Software Synergy, Inc. for the 2011 cycle of the Technology Business Tax Certificate Transfer Program for failing to employ at least the minimum number of full-time employees working in New Jersey.

MOTION TO APPROVE: Mr. Brown **SECOND:** Mr. Kosoffsky **AYES:** 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 12

URBAN TRANSIT HUB TAX CREDIT PROGRAM

ITEM: Goya Foods, Inc.

REQUEST: Approve staff's finding that 369 jobs are at risk.

MOTION TO APPROVE: Mr. Staub **SECOND:** Ms. Perry **AYES:** 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 13

ITEM: Goya Foods, Inc.

REQUEST: Approve the Urban Transit Hub Tax Credit program application for Goya Foods, Inc. under P.L. 2007, c.346, P.L. 2008, as amended on July 26, 2011 for the amount up to \$81,901,205 over 10 years; or \$80,352,990 over 10 years if 200 new jobs are not created.

MOTION TO APPROVE: Ms. Perry **SECOND:** Mr. Nelson **AYES:** 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 14

BOARD MEMORANDUMS

ITEM: Register Lithographers, Inc. – P36787

REQUEST: Approve a \$287,500 increase, from \$500,000 to \$787,500, to the EDA's SLP participation in an equipment loan from JPMorgan Chase to Register Lithographers, Inc.

MOTION TO APPROVE: Mr. Kosoffsky **SECOND:** Mr. Brown **AYES:** 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 15

FOR INFORMATION ONLY: The next item is a summary post closing actions approved under Delegated Authority for 3rd Quarter 2011.

FOR INFORMATION ONLY: The next item is a summary of BEIP modifications that were approved in the 3rd Quarter ending September 30, 2011.

FOR INFORMATION ONLY: The next item is a summary of projects approved under Delegated Authority for 3rd Quarter 2011.

New Jersey Business Growth Fund: BK Concrete Pre, LLC

Preferred Lender Program – Modification: Bounderby, LLC

Chairman Koeppe requested a motion to enter into executive session to discuss a litigation matter regarding Greystone Psychiatric Hospital and the selection of a litigation consultant. Minutes from the Executive Session will be made available when confidentiality is no longer required.

MOTION TO APPROVE: Ms. Perry SECOND: Mr. McNamara AYES: 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 16

The Board returned to Public Session.

The next item was to approve a contract with JCMS, Inc. for litigation consulting services in an amount not to exceed \$300,000 with respect to the Greystone project litigation

MOTION TO APPROVE: Mr. Brown SECOND: Ms. Perry AYES: 15
RESOLUTION ATTACHED AND MARKED EXHIBIT: 17

Ms. Whitman asked for guidance on the Governor's veto of the Jersey Shore Film Tax credit. DAG Renaud noted that the Governor had the authority to align his administration's policy directions by vetoing the EDA's action, and that his veto was limited to the Jersey Short production and not the other film productions approved by the board.

PUBLIC COMMENT

There was no comment from the public.

There being no further business, on a motion by Mr. Brown, and seconded by Mr. Kosoffsky, the meeting was adjourned at 11:15 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.

A handwritten signature in cursive script that reads "Maureen Hassett". The signature is written in black ink and is positioned above a horizontal line.

Maureen Hassett, Assistant Secretary



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

RE: Chief Executive Officer's Report to the Board

NEW JERSEY PARTNERSHIP FOR ACTION HELPS SMALL BUSINESS REMAIN OPERATIONAL IN NEW JERSEY

Sequin City, a manufacturer of embroidered sequined fabrics supplied to the fashion district in New York City, Broadway costume designers, and major American theme parks such as Disneyland, closed last month on a \$225,000 loan under the Small Business Fund which enabled the company to expand into new space in North Bergen.

The owner of this business wrote Governor Chris Christie to ask for assistance after he was forced out of his leased space by the landlord who had sold the real estate. Lt. Governor Kim Guadagno personally called the business owner to discuss his issues and how the State could assist with his business expansion into a new facility. The business owner was then referred to EDA, who worked diligently to process the necessary paperwork under a very tight timeline. As a result of everyone's hard work, Sequin City was able to relocate into new space which, conveniently, was previously owned by an embroidering company and still contains equipment relevant to Sequin City's operations.

This is a great example of the Christie Administration's responsiveness to the needs of a small business owner, and the New Jersey Partnership for Action playing a supporting role to help this business overcome a difficult situation. Everyone involved in this project should be proud of their work to keep Sequin City operational and growing in New Jersey.

FORT MONMOUTH ECONOMIC REVITALIZATION AUTHORITY (FMERA) UPDATE

FMERA staff continues to have regular discussions with Army officials in an effort to finalize the Memorandum of Agreement (MOA). The MOA will be the document that contains the overarching deal points for the Fort's property disposition. The Army remains the owner of the Fort Monmouth property until such time that property is conveyed from the Army. Further,

FMERA continues to meet with, and provide tours to, prospective purchasers, tenants and employers in effort to revitalize the property and create jobs when land is ready to be transferred. In furtherance of that effort, FMERA issued the first Request for Offer to Purchase for a 55-acre parcel in mid-October and the deadline for responses is November 14, 2011.

The New Jersey State Police have a visible presence on and around the Fort property and are providing security and law enforcement services for the 1,126 acres of Fort Monmouth. To date there have been no significant incidents on the property.

EDA-ASSISTED CLEAN ENERGY COMPANY CELEBRATES RELOCATION FROM FLORIDA TO NEW JERSEY

Fluitec International, a Belgium-based clean-energy startup, recently relocated its U.S. operations to Jersey City from Tampa, Florida. The company develops and sells products that significantly increase turbine efficiency and reduce operations and maintenance costs. To encourage the company to consolidate its U.S. operations and all global corporate functions in New Jersey, the State approved a \$463,800 BEIP grant over ten years that proved to be a key factor in its decision-making process. The company is growing by an estimated 70 percent annually and expects to create 25 new, high-paying jobs in Jersey City by next year and 80 by 2017. Fluitec invested approximately \$5.6 million to support its move to New Jersey.

A few weeks ago, Fluitec also became the first wind project to be approved through the Clean Energy Manufacturing Fund (CEMF). The \$3.3 million award will help it establish the manufacturing of wind turbine lubricating systems right here in New Jersey. To that end, Fluitec will be searching for additional warehouse and light manufacturing space in Jersey City, which will result in additional jobs and investment.

FINANCING ACTIVITY

Through the month of October, EDA closed financing and incentives totaling over \$594 million for 169 projects that are expected to spur the creation of nearly 9,500 new, full-time jobs and leveraging over \$2.5 billion in total public/private investment.

- In lending activity, EDA closed financing totaling over \$264 million for 133 projects that are expected to spur the creation of just over 800 new, full-time jobs and leveraging over \$626 million in total public/private investment.
- Through our incentive programs, EDA closed on 36 projects totaling over \$330 million in estimated benefits that are expected to create just over 8,600 new, full-time jobs and leveraging over \$1.9 billion in total public/private investment.

In addition to the aforementioned Sequin City project, the following are among the businesses/projects assisted in October:

Church & Dwight Co., which closed on two BEIP grants for a combined \$3.4 million in assistance. Church & Dwight is a diversified global packaging goods company with many “power brands” including Arm & Hammer, Oxiclean, First Response, and Orajel. This assistance, combined with BRRAG and STX assistance the company was approved for earlier in the year, will enable the company to relocate its corporate headquarters to a 250,000 s.f. facility in Ewing Township, keeping its operations in New Jersey/Mercer County instead of relocating the facility to a competing location in Pennsylvania. This assistance is expected to result in the retention of 1,004 jobs in New Jersey (514 in Ewing, 240 in Princeton, 250 in Lakewood), the creation of 133 new jobs (105 in Ewing, 28 in Lakewood), and \$79.5 million in capital investment.

Packaging and Distribution Resources, LLC, which closed a \$125,000 Main Street participation in a Provident Bank loan and a \$250,000 Main Street guarantee of a \$1.3 million Provident Bank line of credit. The company, based out of Sayreville, is primarily engaged in the business of logistical services, contract warehousing and cosmetic product distribution. This assistance will support 84 existing jobs and the creation of an estimated 5 new jobs.

EVENTS/SPEAKING ENGAGEMENTS/PROACTIVE OUTREACH

EDA representatives participated as speakers, attendees or exhibitors at 44 events in October. These included the Chamber of Commerce Southern New Jersey Business Expo in Cherry Hill, Lt. Governor's Small Business Roundtable in Newark, and the Cleantech NJ 2011 Conference – New Jersey’s first business and investor focused clean technology conference.



BOND RESOLUTIONS

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM**

APPLICANT: RBH-TRB Newark Holdings, Limited Liability Company and P35260

PROJECT USER(S): TEAM Charter Schools (SPARK Academy) * - indicates relation to applicant
Discovery Charter School
Great Oaks Charter School
CHEN School Inc.
Booker's Diner, LLC
Other Commercial or Residential Users (TBD)

PROJECT LOCATION: William and Halsey Streets Newark City (T/UA) Essex County

GOVERNOR'S INITIATIVES:

Urban Edison Core Clean Energy

APPLICANT BACKGROUND:

The Authority will be issuing this "federally taxable" up to \$5.265 million non-recourse Redevelopment Area Bond ("RAB") upon request of the City of Newark. Likewise, with a resolution, the State Operated School District of the City of Newark authorized the issuance of \$13,000,000 "federally taxable" Qualified School Construction Bonds ("QSCB") through the Authority in June 2010. There is also a \$9,750,000 QSCB allocation for a portion of this project from the State volume limitation through the Authority.

RBH-TRB East Mezz URE, L.L.C. (Phase C), RBH-TRB West 1 Mezz URE, L.L.C. (Phase A1), RBH-TRB 905/909 Broad Mezz URE, L.L.C. (Phase A2), and Newark Teachers Village Urban Renewal, L.L.C (Phase B), affiliates of RBH-TRB Newark Holdings, Limited Liability Company (individually or collectively "Applicant" or "Developer"), will undertake this project, commonly referred to as The Halsey Street Teachers Village ("Teachers Village").

The Teachers Village project consists of approximately 425,000 sf of planned development for downtown Newark and will include workforce housing, schools, and a mix of retail amenities; all for lease or rent. The Teachers Village is located on both sides of Halsey Street, connecting the existing University Heights area with the Prudential Center and the rest of downtown Newark.

Once completed, this 8-building redevelopment project will have 7 newly constructed mid-rise buildings (4-6 stories each) and one gut-rehabilitated 9-story building. The total project cost is estimated to be approximately \$142 million. The Developer has been assembling a diverse source of funding comprised of a RAB, QSCBs, Urban Transit Hub Tax Credits ("UTHTC"), New Markets Tax Credits (NMTC), Casino Reinvestment Development Authority, Housing and Urban Development funding, and conventional financing, among others.

Of the total project cost, approximately \$5.265 million is proposed to be financed through the conduit issuance of a RAB. The key components of this RAB financing, including a pledge of PILOT payments by the City of Newark and the redevelopment plan, were approved by the State Local Finance Board in November 2010. The redevelopment cost for the educational facilities component is approximately \$55.4 million. Of this subcomponent cost, approximately \$22.75 million is proposed to be financed through the conduit issuance of QSCBs, and approximately \$1.8 million is proposed to be financed through the conduit issuance of a \$5.265 million RAB bond.

The proposed educational facilities component of this project, in 2 buildings above approximately 25,500 sf of first floor retail, will consist of approximately 91,000 sf (105,000 sf with a shared gymnasium and rooftop play areas as well as other common areas) for 3 charter schools. The remainder of the educational facilities component will consist of approximately 11,300 sf for a daycare center. Educational facility occupants (all as tenants) are: TEAM Charter School (SPARK Academy division - ~47,000 sf), the Discovery Charter School

(~11,000 sf), the Great Oaks Charter School (~19,000 sf), and the CHEN Daycare (CHEN School Inc. - ~11,300 sf).

The proposed 250,330 gross sf residential portion of this project (Phases A1, A2 and B), in 6 buildings will consist of approximately 205 workforce housing rental apartments over approximately 37,449 gross sf first floor retail.

QSCB Allocations: The State-run Newark School District allocated \$13,000,000 of its own 2010 QSCB Local Volume limitation to the Developer for the benefit of TEAM (SPARK Academy division) and the Discovery Charter School. In addition, the EDA has allocated \$9,750,000 of QSCB allocation from the State volume limitation to the Discovery Charter School.

Other EDA Assistance: In July 2010, the Authority approved a UTHTC (a 20% tax credit, 10% of which will be issued annually over 10 years in a total amount not to exceed \$17,384,620), and an Economic Recovery Growth Grant (ERG) (20% of actual costs, not to exceed \$20,548,344 over 20 years) for this project.

APPROVAL REQUEST:

Authority assistance will enable the Applicant to develop this 425,000 sf Teachers Village in an area in need of redevelopment in the City of Newark, including construction of space for lease to schools, retailers and residents, and equip same plus pay the costs of issuance.

Bond issuance approvals are requested for the conduit issuance of a Redevelopment Area Bond in an amount not to exceed \$5.265 million, and a Qualified School Construction Bond in an amount of up to \$22.75 million (\$13,000,000 from the Newark School District volume allocation and \$9,750,000 from the State of New Jersey volume allocation that was provided to the Authority).

This project is being presented at the November 9, 2011 Board meeting to extend the EDA's QSCB allocation until December 31, 2011, providing for additional time to close the bond issuance and finance the Project.

FINANCING SUMMARY:

BOND PURCHASER: - The Prudential Insurance Company of America (Direct Purchaser for RAB)
 - TD Bank, N.A. (Direct Purchaser for QSCB)

AMOUNT OF BOND: Up to \$5,265,000 "federally taxable" Redevelopment Area Bond	Up to \$22,750,000 "federally taxable" Qualified School Construction Bond, an ARRA/IRC §54A federal tax credit/direct interest subsidy bond
TERMS OF BOND: Up to 22 years of term (up to 2 years of which interest only); 5% coupon	Up to 17 years bond term with a mandatory tender at the end of Year 7. After 2-year initial interest only period, the bank's funding will be a 5-year term loan based on a 20-year amortization. Interest rate will be fixed at closing based on the bank's 7-year swap rate plus 3.50%. Current indicative fixed rate as of 08/19/2011 is 5.60%.

ENHANCEMENT: N/A

PROJECT COSTS:

Construction of new building or addition	\$80,495,839
Land	\$21,037,472
Finance fees	\$10,798,677
Renovation of existing building	\$7,258,564
Engineering & architectural fees	\$5,970,191
Interest during construction	\$5,852,260
Other/Contingency	\$2,933,361
Acquisition of existing building	\$2,855,504
Ins./Tax/Comm. etc.	\$2,258,934
Legal fees	\$2,060,000
Environmental Investigation and Remedit	\$400,000
Accounting fees	\$350,000
TOTAL COSTS	<u>\$142,270,802</u>

JOBS: At Application 62 Within 2 years 34 Maintained 0 Construction 764

PUBLIC HEARING: N/A

BOND COUNSEL: Wolff & Samson

DEVELOPMENT OFFICER: M. Piliere

APPROVAL OFFICER: D. Sucsuz

COMBINATION PRELIMINARY AND BOND RESOLUTIONS

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM**

APPLICANT: McAuley School, Inc.

P36947

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 107 Westervelt Avenue

North Plainfield Borough (N)

Somerset

GOVERNOR'S INITIATIVES: () Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

McAuley School, Inc. also known as the McAuley School for Exceptional Children, is a not-for-profit day program, founded in 1966 for students with multiple disabilities. McAuley School offers a comprehensive and multi-disciplinary approach to teaching students from ages 5 to 21 years old with a strong focus on the entire family.

This North Plainfield-based special education school serves students from 21 school districts within a six-county area. Students' ages range from 5-21 years. It also is home to a post-graduate transitional work experience program for students over 21 years old. The school assists the cognitively impaired person to become as independent and productive as possible; thereby gaining acceptance as an equal and contributing member of society. McAuley continually looks for better and more efficient ways to provide their students with the best education, social development, and physical care. Ms. Lee Ann Amico has been serving as the president of this non-profit organization.

McAuley is a New Jersey State Department of Education approved private school for students with disabilities. The school is in good standing with the New Jersey State Department of Education.

The applicant is a not-for-profit, 501(c)(3) entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the Internal Revenue Code of 1986, as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

APPROVAL REQUEST:

Authority assistance will enable the refinancing of McAuley School, Inc.'s conventional bank loan totaling \$2,752,705.

FINANCING SUMMARY:

BOND PURCHASER: TD Bank, N.A. (Direct Purchaser)

AMOUNT OF BOND: Up to \$2,752,705 tax-exempt bond

TERMS OF BOND: 20 years; floating rate at the tax-exempt equivalent of one-month LIBOR plus 285 bps; the Borrower has entered into a 7 year tax-exempt forward swap agreement at a fixed rate of 3.95%; call options at the end of the swaps.

ENHANCEMENT: N/A

PROJECT COSTS:

Refinancing	\$2,752,705
Legal fees	\$40,500
Finance fees	\$13,800
Title/Other	\$10,000
TOTAL COSTS	<hr/> \$2,817,005 <hr/>

JOBS: At Application 24 Within 2 years 4 Maintained 0 Construction 0

PUBLIC HEARING: 11/09/11 (Published 10/22/11) **BOND COUNSEL:** Wolff & Samson

DEVELOPMENT OFFICER: P. Ceppi **APPROVAL OFFICER:** D. Sucsuz

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM**

APPLICANT: Springpoint at the Atrium, Inc.

P36991

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 40 Riverside Avenue

Red Bank Borough (N)

Monmouth County

GOVERNOR'S INITIATIVES:

() Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND:

Springpoint at the Atrium, Inc. (the "Atrium") is a 501(c)(3) not-for-profit organization and an affiliate of Springpoint Senior Living, Inc. Springpoint and its affiliates have been providing quality housing and other health and personal care services to the elderly and disabled in NJ for over 50 years. The Atrium was formed in 2006 for the sole purpose of acquiring the project facility from the America Baptist Estates of Red Bank, Inc., known as the the Atrium at Navesink Harbor. The Atrium, a continuing care retirement community, is located on approximately 1.92 acres in Red Bank, Monmouth County and consists of 80 independent living units, 43 skilled nursing beds and 19 residential healthcare units. Gary T. Puma is the President and Chief Executive Officer.

Springpoint Senior Living, Inc. and its affiliates have financed or refinanced several of its facilities over the years with EDA tax-exempt bonds in the par amount of \$202,720,000 (Appls. P10254, P12666, P17386 and P33503). The bond projects are in compliance with Authority requirements.

The applicant is a not-for-profit, 501(c)(3) entity for which the Authority may issue tax-exempt bonds as permitted under Section 103 and Section 145 of the 1986 Internal Revenue Code as amended, and is not subject to the State Volume Cap limitation, pursuant to Section 146(g) of the Code.

APPROVAL REQUEST:

Authority assistance will enable the Applicant to (i) refinance taxable debt, (ii) purchase of approximately .96 acres of land to be used as a resident and employee parking lot and (iii) pay all or a portion of the costs of issuance. Any difference in the bond amount and the project costs will be paid by the Applicant.

FINANCING SUMMARY:

BOND PURCHASER: Capital One, N.A. (Direct Purchase)

AMOUNT OF BOND: up to \$10,000,000 Tax-exempt Series A Bond

up to \$10,000,000 Tax-exempt Series B Bond

TERMS OF BOND: 25 years; Variable interest rate based on the tax-exempt equivalent of 1 month LIBOR plus 400 basis points (the 400 basis points may decrease to 350 basis points upon satisfaction of certain financial covenants); interest only first 3 years; subject to call options every 5 years. On closing date, the borrower may enter into a fixed interest rate swap for 5 years estimated at 4.48% as of 11/1/11.

25 years; Variable interest rate based on the tax-exempt equivalent of 1 month LIBOR plus 150 basis points; interest only first 3 years; subject to deposit of a cash collateral account of \$8 million and call options every 5 years. On closing date the borrower may enter into a fixed interest rate swap for 5 years estimated at 2.42% as of 11/1/11.

ENHANCEMENT: N/A

PROJECT COSTS:

Refinancing	\$17,600,000
Land	\$2,200,000
Finance fees	\$200,000
Legal fees	\$150,000
TOTAL COSTS	\$20,150,000

JOBS: At Application 112 Within 2 years 4 Maintained 0 Construction 0

PUBLIC HEARING: 11/09/11 (Published 10/26/11) **BOND COUNSEL** McCarter & English

DEVELOPMENT OFFICER: R. Fischer

APPROVAL OFFICER: T. Wells



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

SUBJECT: Springpoint Senior Living, Inc. Obligated Group
Application P10254
Various, Various Counties

MODIFICATION REQUEST

Springpoint Senior Living, Inc. requests Board approval of a supplemental loan and trust agreement to reallocate the sale proceeds of a project facility financed with the proceeds of a tax exempt bond.

BACKGROUND

In 1998, the Authority issued its \$29,600,000 tax-exempt bond for the benefit of Springpoint Senior Living, Inc. (formerly Presbyterian Homes and Services, Inc). and several other affiliates, Springpoint at Crestwood, Inc., Springpoint at Meadow Lakes, Inc., Springpoint at Monroe, Inc., The Springpoint Foundation, Inc., Springpoint at Haddonfield, Inc. and Springpoint of Northern NJ, Inc. (collectively the "Obligated Group"). The bond proceeds were used to finance or refinance various facilities including continuing care retirement communities, long term nursing homes and other housing/health care related projects, operated by the Obligated Group. The Bank of America (originally Summit Bank) purchased the 1998 Series A Bonds for 20 years at a fixed rate of 5.31%. The projects are in compliance with Authority requirements.

In August 2011, the Board approved a modification to the 1998 Series A Bonds to modify the redemption fee calculation which includes a redemption payment amount based on a present value formula.

On October 31, 2011, the Obligated Group sold the Springpoint at Haddonfield facility to an unrelated for-profit entity. Instead of redeeming a portion of the 1998 Series A Bonds with the allocable sale proceeds (approximately \$330,000) as required, the Obligated Group requests the Authority approve a supplemental loan and trust agreement to permit the use of the sale proceeds by the Springpoint at Meadow Lakes, Inc., for further improvements/renovations to various amenities to the Meadow Lake facilities. Such additional improvements and/or renovations fall within the current Meadow Lakes Project definition in the 1998 Series A Bonds documents. The Bank of America, 1998 Series A bondholder has agreed to this reallocation.

Bond counsel, McCarter and English, has reviewed the transaction and advises that the supplemental loan and trust agreement will not affect the tax-exempt status of the Bonds nor constitute a reissuance under the IRS Code.

RECOMMENDATION

It is recommended that the Board approve the requested Modification Request.



Prepared By: Teresa Wells

BOND RESOLUTIONS WITH AUTHORITY EXPOSURE

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - STAND-ALONE BOND PROGRAM**

APPLICANT: 7777 Realty LLC

P36073

PROJECT USER(S): DermaRite Industries LLC *

* - indicates relation to applicant

PROJECT LOCATION: 7777 Westside Avenue North Bergen Township (T/UA) Hudson

GOVERNOR'S INITIATIVES: (X) Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND:

7777 Realty LLC is a real estate holding company recently formed to hold the title to the real estate for its related operating entity, DermaRite Industries Inc. DermaRite Industries LLC, established in 1995, is a manufacturer of personal care, skin care, and wound care products that are primarily marketed to nursing homes and hospitals.

In 1999, the company expanded its distribution selling nationwide and quickly outgrew its 14K sf facility. In 2000, they expanded by acquiring a larger facility along with additional machinery and equipment. In November 2000, the EDA issued two tax-exempt conduit bonds, one for the 40K sf facility acquisition, and the other for machinery and equipment purchase (the latter with a 50% EDA guarantee for 3 years); P12445 and P12443 respectively. These bonds have been paid-off.

DermaRite has outgrown its current space, and is planning another expansion. This project entails the purchase of a 126K sf manufacturing facility and additional machinery and equipment.

APPROVAL REQUEST:

Authority assistance will enable the acquisition and renovation of a larger manufacturing facility (a building of approximately 126,000 sf on a parcel of 3.93 acres) and furnishing and equipping of the same plus paying the costs of issuance. Any equipment purchased is expected to be owned by DermaRite Industries LLC.

This project summary is for the tax-exempt bond. Approximately \$1,600,000 in EDA LDFF loan funds (P36968), approximately \$960,000 in TD Bank equipment financing funds and Applicant's equity will complement this project's Sources of Funds.

FINANCING SUMMARY:

BOND PURCHASER: TD Bank, N.A. (Direct Purchaser)

AMOUNT OF BOND: Up to \$6,200,000 tax-exempt bond

TERMS OF BOND: Up to 20 years term with call options every 7 years; floating rate at the tax-exempt equivalent of "one-month LIBOR (as of October 19, 2011 0.24%) plus 250 bps"; on the closing date Borrower may enter into a swap agreement to a fixed rate (as of October 6, 2011, indicative 7-year fixed tax-exempt swap rate is 3.69%).

ENHANCEMENT: N/A

PROJECT COSTS:

Acquisition of existing building	\$7,747,000
Purchase of equipment & machinery	\$1,600,000
Renovation of existing building	\$700,000
Cost of Issuance/Other	\$120,000
TOTAL COSTS	<hr/> \$10,167,000

JOBS: At Application 80 Within 2 years 40 Maintained 0 Construction 6

PUBLIC HEARING: 11/09/11 (Published 10/22/11) **BOND COUNSEL:** Wolff & Samson

DEVELOPMENT OFFICER: D. Johnson **APPROVAL OFFICER:** D. Sucsuz

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - LOCAL DEVELOPMENT FINANCING FUND PROGRAM**

APPLICANT: 7777 Realty LLC

P36968

PROJECT USER(S): Dermarite Industries LLC *

* - indicates relation to applicant

PROJECT LOCATION: 7777 Westside Ave

North Bergen Township (T/UA)

Hudson

GOVERNOR'S INITIATIVES: (X) Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND:

7777 Realty LLC is a newly formed real estate holding company that is solely owned by Naftali Minzer. This entities primary asset will be the commercial property being purchased, which is located at 7777 Westside Avenue, North Bergen, NJ. The 126,000 square foot building will be 100% occupied by Dermarite Industries ("Dermarite" or "Company"), which Naftali Minzer has a 20% ownership stake. The operating cash flow of Dermarite will be the primary source of repayment.

Dermarite Industries, LLC was founded in May 1995. The Company manufactures skin care, personal care and wound care products for nursing homes and hospitals. The products manufactured are marketed to be cheaper alternatives to the same brand name products for items such as lotion soap, shampoo, body washes, infection control soaps and cleansers, lotions and ointments, deodorizers and wound-care ointments. The Company also sells dressings to customers that are purchased from a third party.

Israel Minzer was a co-founder of the Company and still has a 59% ownership position. Mark Friedman (Israel's son-in-law) and Naftali Minzer (Israel's son) each own 20% of the Company. Dov Minzer (Israel's son) owns the remaining 1% of the Company.

APPROVAL REQUEST:

Approve a \$1,600,000 direct term loan under the Local Development Financing Fund to supplement a \$6,200,000 Bond being purchased by TD Bank with the proceeds being used to purchase a commercial property.

FINANCING SUMMARY:

LENDER: NJEDA

AMOUNT OF LOAN: \$1,600,000

TERMS OF LOAN: 10-Year Term/20-Year Amortization
Fixed Rate of 5-Year UST + 150 bps, with a floor of 3%
Rate reset at the fifth year anniversary at the same index.
5-Year call option.

PROJECT COSTS:

TOTAL COSTS

_____ \$0 *

* - Indicates that there are project costs reported on a related application.

JOBS: At Application	<u>0</u>	Within 2 years	<u>0</u>	Maintained	<u>0</u>	Construction	<u>0</u>
Jobs on Related 36073	<u>80</u>		<u>40</u>		<u>0</u>		<u>6</u>

DEVELOPMENT OFFICER: D. Johnson

APPROVAL OFFICER: J. Wentzel

CAMDEN ECONOMIC RECOVERY BOARD



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

RE: Cooper's Ferry Development Association dba Cooper's Ferry Partnership (CFP)
P36969

Request

The Members of the Authority are asked to approve the funding authorization for a \$500,000 non-recoverable infrastructure grant to CFP under the Demolition and Redevelopment Financing Fund established through the "Municipal Rehabilitation and Economic Recovery Act" ("Act") to fund the design and engineering costs for infrastructure upgrades to Haddon Avenue and other connecting cross roads that will create an important and attractive gateway for people entering Camden from Collingswood and Rt. 130 as well as support the proposed Haddon Avenue Transit Village (HATV).

Background

In July 2008, Greater Camden Partnership (GCP) along with Our Lady of Lourdes Medical Center (Lourdes), the Delaware River Port Authority (DRPA) and Grapevine Development Group (GVD), a private developer, collaborated on a feasibility study for a mixed use development that included workforce housing, retail stores, commercial office space and parking facilities in the eastern district of the City of Camden.

The result of all this feasibility study is the proposed HATV, a planned mixed-use transit-oriented development that will transform a 15 acre former industrial site situated between Lourdes and the Ferry Avenue PATCO commuter rail station in the Parkside neighborhood of Camden. The HATV project is being proposed in two phases. Phase I of the HATV will include a 40,000 sq. ft. office building, a 50,000 sq. ft. grocery store, an 850 car parking garage, and the roadway infrastructure upgrades. Phase II will likely include 400 units of workforce housing and additional office and retail space. The total project development is estimated at \$100 million.

Project Summary

ERB funding is needed for design and engineering of the roadway improvements. These improvements include upgrades to a portion of Haddon Avenue, a main artery into the City of Camden and two short segments of connecting cross streets. Specifically, the scope of work includes the widening of Haddon Avenue (CR 561) from Vesper Boulevard through White Horse Pike, resurfacing and widening of White Horse Pike (CR 606) and resurfacing Copewood Street. These improvements will transform Haddon Avenue into an urban boulevard with a landscaped median, sidewalks, bicycle lanes and street parking. The upgrades will improve the roadway and the ability to handle the increased demand.

The renovated roadways will contribute to the City's goal of higher accessibility and environmental sustainability through multi-modal complete streets. The improvements will add a significant segment to the Camden Green Way, a regional trail network that aims to connect over 128 miles of bicycle paths for both recreation and transportation. By installing a landscaped median and new stormwater management system, the improvements will both "green" the City and help prevent sewer overflow, a recurring problem in Camden.

The infrastructure improvements will help connect the campus of Lourdes to the Ferry Avenue PATCO station, increasing its accessibility to employees and patients. In addition, the renovated streets and proposed development will change perception of the area, creating a renewed sense of safety. By activating the underutilized area with a mix of uses and inhabitants, the neighborhood will likely see more pedestrian traffic and increased local commerce.

Development Team

CFP is the recently formed partnership between Cooper's Ferry Development Association and the Greater Camden Partnership. CFDA was created in 1984 by the City of Camden, RCA and Campbell's Soup to develop visionary, long range redevelopment plans throughout the City while strengthening the City's connections to its physical assets including its waterways and regional rail and road network. The GCP was created in 2001 to bring regional organizations and leaders together for sustainable revitalization project in the City, including the Special Services District, Broadway Main Street Program, Camden Employer Assisted Housing, the Vacant Lot Stabilization program and working with its partners on the development of the Salvation Army Kroc Community Center in Cramer Hill. The merger of these two non-profit associations in 2011 enables them to maximize their economic development and community based resources by combining the extensive and varied experience of both organizations while improving overall services to city residents.

Project Budget**Uses of Funds****Construction**

Earthwork	\$320,000
Pavement	553,495
Curbing	202,700
Sidewalk	444,600
Drainage	217,000
Pavement Markings	91,000
Landscaping	347,400
Lighting	400,000
Signals	660,000
Utilities	185,000
Miscellaneous	479,179

Construction Subtotal**3,900,374**

MPT	121,490
Mobilization	161,980
E&S Control	119,490
Construction Management	395,000
Inspection	430,000
Contingency	615,000

Construction Total**\$5,743,334****Professional Services**

Project Management	\$ 95,000
Design & Engineering	668,200

Total Professional Services**\$763,200****Total Uses of Funds****\$6,506,534**

Sources of Funds

DRPA	\$1,500,000
ERB	500,000
Federal Highway Commission	2,500,000
US DOT TIGER III	2,006,534

Total Sources of Funds**\$6,506,534**

CFP is working to leverage other funds for the roadway renovations and has several grant applications pending including a funding request to DRPA in the amount of \$1,500,000. The request was submitted in fall, 2010 and is anticipated to advance to the DRPA's Board for final approval in the near future. The City of Camden applied for \$2,500,000 in funding in June, 2011 from the Federal Highway Administration's Transportation, Community and System Preservation (TCSP). Award announcements are expected in second quarter 2012. The City also applied for \$100,000 in funding in September, 2011, from the Delaware Valley Regional Planning Commission's Transportation & Community Development Initiative (TCDI). The awards will be announced December 1, 2011. The City has also applied for \$4,000,000 from the third round of TIGER funding from the US Department of Transportation. The awards will be announced in early 2012. The City has received funding from the previous two rounds.

The sources of funds are independent of the HATV and can only be used to fund the construction of the roadway improvements. Should the HATV development not advance, these road improvements would still go forward, creating an important and attractive new gateway for people entering Camden from Collingswood and Route 130.

Although all the funding sources to implement the improvements are not committed, funding for design and engineering is needed in order to move this project forward. With ERB funding for design, it is anticipated that the project can move quickly into construction, as CFP is fully committed to finding additional funding to complete the project in a timely fashion.

Disbursements

The disbursement of funds will be subject to receipt and satisfactory review of invoices and contracts for service.

Security and Repayment

This ERB grant funding is non-recoverable and will be unsecured.

Project Eligibility and Benefits

The Project advances the goal of the Strategic Revitalization Plan (SRP) and the Capital Improvement and Infrastructure Master Plan (CIIMP) and meets the requirements of a revitalization project.

The project is consistent with the City's Master Plan, the Eastern Edge Redevelopment Plan and the New Jersey Long Range Transportation Plan. The City of Camden Master Plan offers comprehensive proposals for improving the environment and integrating Camden's transportation network, including goals to promote the "greening" of major transportation facilities; improving public transit linking residents to jobs, shopping, community facilities and recreational activities and promoting and maintaining pedestrian and bicycle networks.

The Eastern Edge Redevelopment Plan, comprised of the campus of Our Lady of Lourdes and what is now the HATV project site, determined that the area, contained “a significant concentration of contiguous, underutilized, publicly owned Land” that is highly suitable for redevelopment. Suggested steps for spurring this redevelopment included “improving vehicular circulation in the redevelopment area through roadway redesign, improve signal timing, signage and paving” and “improving the infrastructure and streetscape on adjacent streets as new residential development and renovations take place.”

Additionally, the New Jersey Long Range Transportation Plan includes a goal to “improve the interface between Camden and the regional road network and calls for the DRPA to “advance the on-going investigation into transit-oriented development at four PATCO stations including Ferry Avenue.”

The project is also well aligned with the Parkside Neighborhood Redevelopment Plan, which lists as one of its primary goals “Revitalizing the Haddon Avenue and Kaighn Avenue commercial corridors and promoting evolution of the eastern edge in conjunction with Our Lady of Lourdes Hospital”.

The project is located in a Transitional/Future Development Area and is eligible for funding under the ERB’s general criteria for project financing (#3 b, c i, ii, iii and iv) and priority objectives (#2 a, b, c, d and e). There are sufficient funds available for this \$500,000 financing request through the Demolition and Redevelopment Financing Fund.

Recommendation

Staff has reviewed the application for consistency with the Act, the Strategic Revitalization Plan, and the Camden Capital Improvement and Infrastructure Master Plan. The project meets all eligibility and statutory requirements and will substantially benefit the residents of Camden, resulting in greater access to many employment and service opportunities and encourage more travel to the City.

The Members of the ERB approved this request at its meeting on October 25, 2011. Accordingly, the Members of the Authority are asked to approve the funding authorization for a \$500,000 non-recoverable infrastructure grant to CFP under the Demolition and Redevelopment Financing Fund established through the Act to fund the design and engineering costs for infrastructure upgrades to Haddon Avenue and other connecting cross roads that will create an important and attractive gateway for people entering Camden from Collingswood and Rt. 130 as well as support the proposed HATV.



Caren S. Franzini



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

RE: ERB Business Incentive Grant Programs
Status Update

The Members of the Authority are asked to approve the funding authorization to extend the ERB Business Incentive Grant Programs an additional 12 months through September 30, 2012.

Background:

On August 23, 2005, the Members approved a \$16 million allocation from the Demolition and Redevelopment Financing Fund to support the pilot of the Business Improvement and Business Lease Incentive initiatives in an effort to stimulate commercial, industrial and retail business activities throughout the City of Camden. On October 23, 2007, the Members approved a modification to the program that reduced the level of funding from \$16 million to \$10.5 million, with maximum allocations of \$500,000 for the Business Improvement Incentive Program (“BII”) and \$10 million for the Business Lease Incentive (“BLI”) Program. On April 27, 2010, the Members approved another reduction in the level of funding for the BLI Program from \$10.5 million to \$7 million.

The incentives are designed to supplement other state and municipal resources that are available to attract businesses to Camden, to create a wide spectrum of job opportunities for the residents of the City, and to foster other economic development activities. As part of the approval, staff was asked to report on the program annually to evaluate the program criteria and to determine its viability to move forward.

Under the **Business Improvement Incentive** program, \$500,000 is allocated to reimburse financially viable business applicants for 50% of the cost of improvements made to facilities located on any of the city’s major commercial corridors with a maximum incentive of \$20,000.

The program is structured to allow for the full amount of the incentive award to be disbursed to the applicant upon completion and inspection of the improvements. For investment properties owners, there is a limit of three BII grants.

As a supplement to this incentive program, the Camden Redevelopment Agency (“CRA”) utilizes its UEZ funding to provide grants, loans or guarantees of loans made by financial institutions to businesses located within the City’s commercial corridors. In addition, the New Jersey Economic Development Authority (“EDA”) promotes its low-cost financing resources to support women, minority and small business enterprises. In February, 2008, the EDA and the Camden Empowerment Zone Corp. (“CEZ”) executed a Memorandum of Agreement that sets forth a financing product to bridge the amount of the ERB BII Incentive. Together, these resources are used to encourage the business community to participate in the revitalization efforts and invest in their business facilities.

Through the **Business Lease Incentive** program, \$7 million is allocated to attract businesses seeking to relocate to the City of Camden and plan to lease more than 500 s.f. of market rate building space. The program can also support existing City businesses seeking to expand and lease a minimum of 500 s.f. of additional space. The program is structured to reimburse financially viable businesses a portion of their annual lease payment according to the type of space leased by the business. The annual incentive payment cannot exceed 50% of the annual lease payment or when combined with any other governmental grants, cannot exceed 80% of the annual lease payment. The incentive payments are paid annually to the applicant upon receipt of a landlord’s confirmation of no monetary or other material lease agreement defaults, a tax clearance certificate, and the applicant’s certification of any other governmental grants received during the lease period. This incentive is used to encourage business owners to explore an alternative location for their business operation and create an opportunity to increase office, industrial, and retail uses throughout the City of Camden.

Both incentive programs set forth criteria requiring applicants to pursue UEZ certification if applicable, and to facilitate job recruitment through the Camden One Stop.

Program Update:

Over the last year, staff has collaborated with state and local agencies and real estate brokers to promote these incentives to stimulate business growth in the City of Camden.

Although outreach efforts continue to be aggressive only two new projects have been approved under the BII. To date, nine applications have been approved for a total of \$149,600 which has leveraged more than \$428,000 in private investment and resulted in the creation of 17 new jobs.

Staff has been working with PBCIP as part of their neighborhood revitalization program to assist owners of commercial properties along Haddon Avenue complete applications for funding to upgrade facades and make other interior and exterior renovations.

Under the BLI program, 23 applications have been received and approved for approximately \$2.4 million. Of the 23 approved projects, 2 are inactive. The remaining 21 projects have resulted in approximately 242,000 s.f of additional leased space and the creation of approximately 557 new jobs spurring approximately \$35 million in new rents over the next 10 years.

The BLI incentive is an effective financial tool to attract businesses to Camden. The EDA has successfully utilized the incentive to attract businesses to the Waterfront Technology Center and throughout the Innovation Zone. Steiner and Associates completed construction on the Ferry Terminal Building next to the Adventure Aquarium and promotes the BLI to attract tenants to the facility which is now approximately 90% leased. Carl Dranoff is also promoting this incentive program for the commercial tenants in the Victor Building and the soon to be redeveloped Radio Lofts building. In the near future, this incentive will be important to support the development of the North Camden waterfront, the gateway office park, and the Haddon Avenue transit village project.

Recommendation:

By offering these incentives, the ERB reaffirms its support of the Camden business community as an integral part of the City's revitalization efforts and economic health. The BII and BLI will continue to leverage private investment and stimulate other economic development activities throughout the City of Camden as intended by the Act.

The Members of the ERB approved this request at its meeting on October 25, 2011. Accordingly, the Members of the Authority are asked to extend the ERB Business Incentive Grant Programs an additional 12 months through September 30, 2012.



Caren S. Franzini

Prepared By: L. Wallick

**PETROLEUM UNDERGROUND STORAGE TANK
PROGRAM**

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

SUBJECT: NJDEP Petroleum UST Remediation, Upgrade & Closure Fund Program

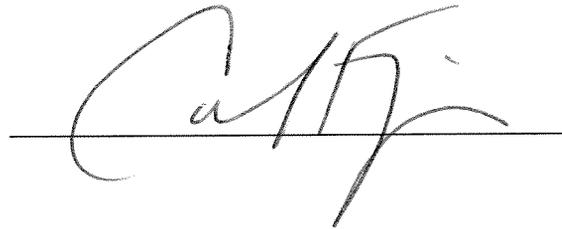
The following grant projects have been approved by the Department of Environmental Protection to perform upgrade, closure and site remediation activities. The scope of work is described on the attached project summaries:

Private Grants:

C. Torsiello & Sons, Inc.....	\$329,926
Crystal Jones.....	\$149,563

Total UST funding for November 2011..... \$479,489

Prepared by: Lisa Petrizzi



**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - UNDERGROUND STORAGE TANK GRANT**

APPLICANT: C. Torsiello & Sons, Inc.

P30577

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 27 Progress Street

Edison Township (N)

Middlesex

GOVERNOR'S INITIATIVES: () Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND:

C. Torsiello & Sons, Inc., received a grant in the amount of \$670,074 in September 2007 under P18214 to perform extensive groundwater remediation and sampling from former leaking underground storage tanks (UST's) at the project site. The tanks were decommissioned in accordance with NJDEP requirements. The NJDEP has determined that the supplemental project costs are technically eligible, to perform soil delineation, water sampling, monitor well installation and soil removal.

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

APPROVAL REQUEST:

The applicant is requesting supplemental grant funding in the amount of \$329,926 to perform the approved scope of work at the project site, for a total funding to date of \$1,000,000. This project site is in Planning Area 1 and is eligible for a grant up to \$1,000,000.

The NJDEP oversight fee of \$32,927 is the customary 10% of the grant amount. This assumes that the work will not require a high level of NJDEP involvement and that reports of an acceptable quality will be submitted to the NJDEP.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT \$329,926

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

PROJECT COSTS:

Upgrade, Closure, Remediation	\$329,926
NJDEP oversight cost	\$32,993
EDA administrative cost	\$500
TOTAL COSTS	\$363,419

APPROVAL OFFICER: L. Petrizzi

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - UNDERGROUND STORAGE TANK GRANT**

APPLICANT: Crystal Jones

P36808

PROJECT USER(S): Same as applicant

* - indicates relation to applicant

PROJECT LOCATION: 106 Carnegie Ave.

East Orange City (T/UA)

Essex

GOVERNOR'S INITIATIVES: () Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND:

Crystal Jones received a grant in December 2010 in the amount of \$21,088 under P31980 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 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.

APPROVAL REQUEST:

The applicant is requesting grant funding in the amount of \$149,563 to perform the approved scope of work at the project site, for a total funding to date of \$170,651.

The NJDEP oversight fee of \$14,956 is the customary 10% of the grant amount. This assumes that the work will not require a high level of NJDEP involvement and that reports of an acceptable quality will be submitted to the NJDEP.

FINANCING SUMMARY:

GRANTOR: Petroleum UST Remediation, Upgrade & Closure Fund

AMOUNT OF GRANT\$149,563

TERMS OF GRANT: No Interest; No Repayment

PROJECT COSTS:

Remediation	\$149,563
NJDEP oversight cost	\$14,956
EDA administrative cost	\$250
TOTAL COSTS	<hr/> \$164,769 <hr/>

APPROVAL OFFICER: L. Petrizzi



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 09, 2011

SUBJECT: Petroleum Underground Storage Tank Program - Delegated Authority Approvals
(For Informational Purposes Only)

Pursuant to the Boards approval on May 9, 2006, the Chief Executive Officer ("CEO") and Managing Director of Finance & Development have been given the authority to approve initial grants under the Hazardous Discharge Site Remediation Fund and Petroleum Storage Tank programs up to \$100,000 and supplemental grants up to an aggregate of \$100,000.

The Petroleum Underground Storage Tank Program legislation was amended to allow funding for the removal/closure and replacement of non-leaking residential underground storage tanks (UST's) and non-leaking non-residential UST's up to 2,000 gallons for eligible not for profit applicants. The limits allowed under the amended legislation is equivalent to the New Jersey Department of Environmental Protection cost guide.

Below is a summary of the Delegated Authority approvals processed by Finance & Development for the period October 01, 2011 to October 31, 2011

Summary:		# of Grants	\$ Amount
	Leaking tank grants awarded	18	\$491,522
	Non-leaking tank grants awarded	19	\$52,732

Applicant	Description	Grant Amount	Awarded to Date
Cobuzio, Teresa A. (P35193)	Initial grant for upgrade, closure and remediation	\$5,520	\$5,520
Dickerson, Gloria (P36505)	Initial grant for upgrade, closure and remediation	\$6,500	\$6,500
Galbraith, Lucille (P36743)	Initial grant for upgrade, closure and remediation	\$16,330	\$16,330
Giuliani, John P. and Monica B. Giuliani (P36123)	Supplemental grant for upgrade, closure and remediation	\$6,998	\$30,033
Higgins, John (P33396)	Initial grant for upgrade, closure and remediation	\$19,643	\$19,643
Krake, Wallace R. (P36856)	Supplemental grant for upgrade, closure and remediation	\$7,314	\$14,880
Martino, Jack (P35826)	Initial grant for upgrade, closure and remediation	\$25,261	\$25,261
Mulkeen, Jeanne (P36904)	Supplemental grant for upgrade, closure and remediation	\$11,999	\$31,371
Nicole Corporation (P36867)	Supplemental grant for upgrade, closure and remediation	\$27,371	\$39,598
Poyner, Jeffrey A. (P36851)	Supplemental grant for upgrade,	\$35,345	\$85,409

Applicant	Description	Grant Amount	Awarded to Date
	closure and remediation		
Promutico, Frank and Kathleen (P36262)	Initial grant for upgrade, closure and remediation	\$17,398	\$34,796
Rega, Leopold (P36871)	Supplemental grant for upgrade, closure and remediation	\$59,850	\$99,410
Scicutella, Helen (P36914)	Supplemental grant for upgrade, closure and remediation	\$3,817	\$26,451
Shine, William (P36876)	Supplemental grant for upgrade, closure and remediation	\$49,738	\$68,338
Solomon's Service Station (P36852)	Supplemental grant for upgrade, closure and remediation	\$74,000	\$249,894*
Stymeist, John (P36822)	Supplemental grant for upgrade, closure and remediation	\$30,275	\$44,768
Tomasello Auto Center (P36899)	Supplemental grant for upgrade, closure and remediation	\$89,229	\$185,472*
Van Doren, Barry (P36534)	Initial grant for upgrade, closure and remediation	\$4,934	\$4,934

18 Grants

**Total Delegated Authority
funding for Leaking
applications.**

\$491,522

Cangro, Ronald and Felicita (P36595)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,000	\$3,000
Cho, Sun O. and Jae Woong (P35254)	Grant to remove an underground storage tank	\$1,300	\$1,300
Delahanty, Ed (P34603)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,900	\$3,900
Fabbricatore, Joseph and Rosemarie (P36349)	Grant to install an above ground storage tank	\$3,500	\$3,500
Grose, Hugh J and Susan (P36424)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,119	\$3,119
Hamada, Samuel and Lorraine (P36755)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,500	\$3,500
Hickok, Clifford S. and Michelle E. (P35982)	Grant to remove an underground storage tank	\$1,500	\$1,500
Lakehurst Presbyterian Church (P35346)	Partial grant to remove an underground storage tank	\$2,100	\$2,100
Leenas, Daniel J. and Danta (P36045)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,363	\$3,363

Applicant	Description	Grant Amount	Awarded to Date
Levy, Carlos and Concepcion (P36399)	Grant to remove an underground storage tank	\$1,500	\$1,500
Madison, Mary Lou (P36234)	Grant to remove an underground storage tank and install an above ground storage tank	\$2,802	\$2,802
Moore, Michael and Kristin (P36165)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,500	\$3,500
Murray, Maureen (P36753)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,500	\$3,500
Rivkin, Theresa A. (P36583)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,500	\$3,500
Sisk, James and Lola Camacho (P36320)	Grant to remove an underground storage tank	\$1,500	\$1,500
Stentz, Michael C. and Anne A. (P35093)	Grant to remove an underground storage tank and install an above ground storage tank	\$4,086	\$4,086
Terracciano, Eugene and Angela Terracciano (P31702)	Grant to remove an underground storage tank	\$1,500	\$1,500
Wiss, Jan T. and Linda Berg (P32077)	Grant to remove an underground storage tank and install an above ground storage tank	\$2,362	\$2,362
Young, Kevin and Erinn (P31572)	Grant to remove an underground storage tank and install an above ground storage tank	\$3,200	\$3,200

19 Grants

**Total Delegated Authority
funding for Non-Leaking
applications.**

\$52,732

*This amount includes grants approved previously by the Board and this award does not exceed the supplemental aggregate limit.



Garen S. Franzini

Prepared by: Lisa Petrizzi, Sr. Finance Officer

INCENTIVES

BUSINESS EMPLOYMENT INCENTIVE PROGRAM
BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT
SALES AND USE TAX EXEMPTION



MEMORANDUM

To: Members of the Authority

From: Caren S. Franzini
Chief Executive Officer

Date: November 9, 2011

Subject: Allergan, Inc. application for BEIP grant assistance.

Purpose:

This memorandum addresses the legal matters of the applicant, Allergan, Inc. (Allergan), related to the company's application for a Business Employment Incentive Program grant.

Background:

Allergan is a global multi-specialty health care company formed over 60 years ago. Today, the applicant focuses on ophthalmology, neuroscience, medical aesthetics, dermatology, obesity intervention and urologics. The applicant has over 10,000 employees, with direct sales operations in 36 countries and through independent distributors in more than 100 countries.

Allergan is seeking a BEIP grant to support opening a 120,000 sf, Research & Development facility and create 387 new jobs. Under consideration are Bedminster, Somerset County, where a subsidiary, Allergan Sales, LLC., has a research and development facility and employs 20 people, or in King of Prussia, Pennsylvania. Project costs are estimated to be \$11.6 million. Management has indicated that a favorable decision by the Authority to award the BEIP grant is a material factor in the company's decision to expand in New Jersey.

The business activities of Allergan and its affiliates are regulated by a number of federal, state, and international laws; and also self regulatory organization rules. From time to time and as is the case with entities of the applicant's size and industry, Allergan has been involved in litigation and become the subject of examinations, inquiries and investigations.

Analysis of Litigation as Grounds for Possible Disqualification:

Pursuant to the Authority's regulations on disqualification (N.J.A.C. 19:30-2.1 et seq.), the Authority may decline to give financial assistance, or approval as a tenant in any Authority financed project, or contract with any persons for certain reasons which include: commission of an offense indicating a lack of business integrity; violation of any law governing the occupations or professions of regulated industries; and violation of any law which may bear upon a lack of responsibility or moral integrity.

Listed below are the facts of the actions relating to the applicant and the fines assessed and paid as reviewed by staff with guidance from the Attorney General's Office:

September 2010 Plea Agreement and Settlement

Allergan agreed to plead guilty to a single misdemeanor criminal charge and pay \$600 million to resolve its criminal and civil liability arising from the company's unlawful promotion of its biological product, Botox, for uses not approved as safe and effective by the Food and Drug Administration (FDA). The resolution of the matter includes a criminal fine and forfeiture totaling \$375 million and a civil settlement with the federal government and the states of \$225 million.

Under the Food, Drug and Cosmetic Act (FDCA), a company in its application to the FDA must specify each intended use of a product to receive FDA approval. Promotion by the manufacturer of the drug for other than approved uses, known as "off-label use", is a misbranding in violation of the FDCA.

A criminal information filed by the United State Department of Justice alleged that from 2000-2005 Allergan exploited certain of its on-label uses to grow off-label sales. Allergan also doubled the size of its reimbursement team to assist doctors in obtaining payment for off-label Botox injections, held workshops to teach doctors and their office staffs how to bill for off-label uses, conducted detailed audits of doctors' billing records to show how they could make money by injecting Botox, and operated the Botox Reimbursement Hotline, which provided an array of on-demand services to doctors for off-label uses.

In addition, according to the government, Allergan lobbied government health care programs to expand coverage for off-label uses, directed physician workshops and dinners focused on off-label uses, paid doctors to attend "advisory boards" promoting off-label uses, and created a purportedly independent online neurotoxin education organization to foster increased off-label indications.

With respect to the criminal matter, Allergan pled guilty to a single misdemeanor "misbranding" charge. Allergan agreed that between 2000 through 2005, its marketing of Botox resulted in intended uses for the therapeutic treatment of headache, pain, spasticity and juvenile cerebral palsy. These uses were "off-label" during the relevant timeframe and thus the labeling for Botox did not bear directions for these intended uses, resulting in the product being "misbranded." Allergan also executed a 5-year Corporate Integrity Agreement (CIA) with the Department of Health and Human Services, Office of Inspector General (HHS-OIG).

There are several ongoing requirements as part of the CIA. Some of these requirements are that the company must maintain its current compliance program, implement additional monitoring, maintain specific written standards, auditing, training, education, reporting and disclosure. The agreement also provides for an independent third-party review organization to examine and report on Allergan's compliance program. The failure of Allergan to materially abide by the CIA can subject it to exclusion from federal health care programs, including Medicare and Medicaid, and subject it to monetary penalties for less significant breaches.

As part of the civil settlement, which resolves several qui-tam (whistleblower) actions brought under the False Claims Act (FCA), Allergan agreed to pay \$225 million to the federal government and the states to resolve allegations that unlawful marketing practices from 2001 to 2008 caused false claims to be submitted to government health care programs such as: Medicare, Medicaid, TRICARE, and to the Federal Employees Health Benefit Program, the Department of Veterans' Affairs, and the Department of Labor's Office of Workers' Compensation Programs. The federal portion of the civil settlement amount

is \$210,250,000 (\$37.8 million of which going to the qui-tam relators) with \$14,750,000 going to states that opt to participate in the agreement.

It should be noted that the civil settlement is not an admission of facts or liability by Allergan. With the exception of such admissions made as part of the guilty plea by Allergan in connection with the misdemeanor charge, Allergan expressly denies the allegations of the United States and the relators (whistleblowers) as set forth in the qui-tam actions.

Mitigating Factors:

Several mitigating factors regarding the above-described investigation are worthy of consideration. "Misbranding", which is a strict liability offense, does not involve any false or deceptive conduct. Instead, a prescription drug is deemed misbranded when its labeling does not contain adequate directions for its "intended uses" and, , a use that the FDA has not approved (i.e., an "off-label" use) may be deemed "intended" based on written or oral statements made by the manufacturer.

Allergan actively cooperated with the government in a multi-year investigation beginning in 2008 and ending in 2010 regarding the use of its Botox product. Also worthy of consideration is the fact that since the investigation began, in March 2010 the FDA approved Botox for the treatment of increased muscle stiffness in the elbow, wrist and fingers in adults with upper limb spasticity, the most substantial use during the relevant time period, and thus its label now includes directions for that use. In addition, in October 2010, a little more than a month after the settlement agreement was announced, the FDA approved the use of Botox to prevent headaches in adult patients with chronic migraine.

Further, in August 2011, Allergan received FDA approval for the use of Botox to treat urinary incontinence in adults with neurological conditions. Although Botox has not been approved in the United States to treat symptoms associated with juvenile cerebral palsy, it is approved in 70 countries around the world for that indication, including the United Kingdom, Canada, Brazil, Hong Kong, and recently Japan. Allergan is currently in discussions with the FDA regarding additional clinical development for juvenile cerebral palsy in the United States.

Also important to note, according to Allergan, is the fact that over the course of the company's 60 year history, it has always been and remains committed to conducting its business consistent with the highest ethical standards and in compliance with all applicable federal, state and local laws. As such, Allergan has a robust, well established and regularly reviewed and updated compliance program. In order to further enhance its compliance program, Allergan has developed additional comprehensive policies and procedures, supported by significant investments in state of the art technology described below.

In addition, as part of the CIA, Allergan agreed to maintain its current compliance program and undertake a series of additional compliance related obligations. These compliance-related obligations include, among other things, the following: 1) Additional monitoring applicable to certain Allergan employees and the Allergan Board of Directors; 2) Maintenance of written standards that include a written Code of Conduct; 3) Training and education of employees that explains Allergan's responsibilities under the CIA as well as specific product and promotional-related training; 4) Implementing review procedures that include the engagement of an Independent Review Organization with expertise in applicable Federal healthcare program and FDA requirements to perform reviews required by the CIA; and 5) Maintenance of a disclosure program that includes a toll-free telephone number and/or on-line reporting system to enable employees to disclose to Allergan's Chief Compliance

Officer or someone not in the individual's reporting structure any compliance issues. Allergan also maintains a strict non-retaliation policy for employees who disclose such issues.

It should be noted that many of the compliance related obligations were implemented by Allergan prior to August 30, 2010 - the effective date of the CIA. Of particular note is Allergan's implementation of a comprehensive system for streamlining business and compliance processes. This system is referred to as the Business Execution Automated Compliance Navigator (BEACON). BEACON is used to manage consultant arrangements with health care providers, advisory boards, speaker programs, and provision of educational items, meals, and expenses.

In addition, BEACON interfaces with some of Allergan's other systems, including the system through which promotional materials are reviewed and approved and the system through which expenses are tracked.

Furthermore, via BEACON, consulting arrangements are managed through annual operating plans, entry of requests for individual events, including completion of a form addressing details and the business need for the event, and review and approval of those requests. BEACON includes controls that identifies when a proposed event or arrangement does not comply with Allergan's policies and procedures and notifies the Corporate Compliance Department of that issue for additional review and approval.

The applicant will be required to submit its periodic reports under the CIA to the EDA and to inform the EDA if the federal government finds applicant to be non-compliant. Non-compliance may constitute an event of default under the BEIP agreement.

Conclusion:

Staff has performed a review of this action with guidance from the Attorney General's Office. Staff has weighed the seriousness of the offenses in conjunction with the mitigating factors presented by Allergan and staff does not believe disqualification is warranted.

A handwritten signature in black ink, appearing to be 'C. S. S.', is written over a horizontal line.

Prepared by: Marcus Saldutti

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

APPLICANT: Allergan Inc. and Subsidiaries

P36963

PROJECT LOCATION: To Be Determined

Locations Unknown (N)

Unknown County

GOVERNOR'S INITIATIVES:

() Urban () Edison (X) Core () Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Allergan Inc. (Allergan) is a global multi-specialty health care company formed over 60 years ago as an eye care company. Today, the applicant focuses on ophthalmology, neuro science, medical aesthetics, dermatology, obesity intervention and urologics. Allergan has 24 products in various stages of review by the FDA and its global regulatory counter parts and in 2010 the company received approval for 12 products, including 6 from the FDA. Allergan's leading products include Botox, Restasis, Lumigan, and the Lap-band. The applicant has over 10,000 employees, with direct sales operations in 36 countries and through independent distributors in more than 100 countries. The applicant is economically viable.

MATERIAL FACTOR:

Allergan is seeking a BEIP grant to support opening a new Research & Development facility in excess of 100,000 s.f. and create 387 new jobs. Currently, the applicant has a subsidiary, Allergan Sales, LLC., located in Bedminster, Somerset County, that employs 20 people. Locations under consideration are in Northern NJ or King of Prussia, Pa. Project costs are estimated to be \$11.6 million. Based on smart growth criteria, the award could increase to as much as 80% with an estimated value of \$17,035,740 once the company finalizes its location decision. Management has indicated that a favorable decision by the Authority to award the BEIP grant is a material factor in the company's decision to expand in N.J.

APPROVAL REQUEST:

PERCENTAGE: 70%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Allergan Inc. and Subsidiaries to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 14,906,273
(not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 20

ELIGIBLE BEIP JOBS: Year 1 158 Year 2 229 Base Years Total = 387

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$38,517

ANTICIPATED AVERAGE WAGES: \$125,000

ESTIMATED PROJECT COSTS: \$11,600,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$21,294,675

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$17,035,740

PROJECT IS: (X) Expansion () Relocation _____

CONSTRUCTION: (X) Yes () No

PROJECT OWNERSHIP HEADQUARTERED IN: California

APPLICANT OWNERSHIP:(X) Domestic () Foreign

DEVELOPMENT OFFICER: D. Johnson

APPROVAL OFFICER: M. Krug

FORMULA EVALUATION

<u>Criteria</u>		<u>Score</u>
1. Location:	Locations Unknown	N/A
2. Job Creation	387	4
	Targeted : _____ Non-Targeted : <u> X </u>	
3. Job at Risk:	0	0
4. Industry:	Pharmaceuticals	2
	Designated : <u> X </u> Non-Designated : _____	
5. Leverage:	3 to 1 and up	2
6. Capital Investment:	\$11,600,000	2
7. Average Wage:	\$ 125,000	4

TOTAL: 14

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan or, existing building(s) that have been 100% vacant for 12 months.	20%	<u> 20% </u>
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs, or, existing building(s) that have been 100% vacant for 12 months.	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	_____
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	_____
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points:

20 %

Total Score :

Total Score per formula:	14 = 45 %
Construction/Renovation :	5 %
Bonus Increases :	20 %
Total Score (not to exceed 80 %):	70 %

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

APPLICANT: Cibao Meat Products, Inc.

P36952

PROJECT LOCATION: 44 Marshall St

Paterson City (T/UA)

Passaic County

GOVERNOR'S INITIATIVES:

(X) Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Cibao Meat Products, Inc., a family owned business, is the leading manufacturer of Hispanic style sausages and salamis in the United States. Starting as a small store front in the Washington Heights area of New York City 35 years ago, the company currently manufactures and distributes various meat products from a facility in the Bronx, NY with 55 full time employees. The applicant is economically viable.

MATERIAL FACTOR:

Cibao Meat Products, Inc. is requesting approval of a BEIP grant to support the relocation and expansion of its business from New York to New Jersey. Due to growing consumer demand, the company is considering purchasing a facility in Paterson, NJ or a facility close to its existing business in the Bronx. The company has indicated a BEIP grant is a material factor to relocate to New Jersey.

APPROVAL REQUEST:

PERCENTAGE: 80%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Cibao Meat Products, Inc. to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 173,600
(not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 0

ELIGIBLE BEIP JOBS: Year 1 60 Year 2 10 Base Years Total = 70

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$2,480

ANTICIPATED AVERAGE WAGES: \$20,500

ESTIMATED PROJECT COSTS: \$11,322,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$217,000

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$151,900

PROJECT IS: () Expansion (X) Relocation New York

CONSTRUCTION: (X) Yes () No

PROJECT OWNERSHIP HEADQUARTERED IN: New York

APPLICANT OWNERSHIP: (X) Domestic () Foreign

DEVELOPMENT OFFICER: D. Johnson

APPROVAL OFFICER: T. Wells

FORMULA EVALUATION

<u>Criteria</u>		<u>Score</u>
1. Location:	Paterson City	N/A
2. Job Creation	70	1
	Targeted : _____ Non-Targeted : <u>X</u>	
3. Job at Risk:	0	0
4. Industry:	food products	0
	Designated : _____ Non-Designated : <u>X</u>	
5. Leverage:	3 to 1 and up	2
6. Capital Investment:	\$11,322,000	2
7. Average Wage:	\$ 20,500	1
TOTAL:		6

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan or, existing building(s) that have been 100% vacant for 12 months.	20%	<u>20%</u>
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs, or, existing building(s) that have been 100% vacant for 12 months.	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	<u>20%</u>
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	<u>15%</u>
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points: **55 %**

Total Score :

Total Score per formula:	6 = 25 %
Construction/Renovation :	5 %
Bonus Increases :	55 %
Total Score (not to exceed 80 %):	80 %

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM

APPLICANT: Durand Glass Manufacturing Company

P36962

PROJECT LOCATION: 901 S. Wade Blvd.

Millville City (T/UA)

Cumberland County

GOVERNOR'S INITIATIVES:

(X) Urban () Edison () Core () Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Durand Glass Manufacturing Company is a subsidiary of ARC International Inc. which is a privately-owned French company and a leading manufacturer of tabletop glassware with a global workforce of over 19,000. The company has a portfolio of well-known brands including Luminarc, Pyrex, Cristal d'Arques Paris, Arcoroc, and Chef & Sommelier. ARC International established a manufacturing presence in the United States by opening the Durand Glass Manufacturing Company in Millville, New Jersey in 1982 and is now one of Cumberland County's largest private employers. The applicant is economically viable.

MATERIAL FACTOR:

Durand Glass Manufacturing Company is at a point where it needs to make significant capital expenditures at its Millville facility to remain competitive. This has caused the company to explore options to relocate out of state in order to reduce costs. One alternative that management is considering is moving the company's manufacturing operations to Mexico. Also under consideration is relocating the jobs from the Millville plant to Ohio through a partnership with another company. Durand Glass Manufacturing Company has applied for a BRRAG to provide an incentive for the company to keep its 850 full-time jobs in Millville as well as a BEIP grant to entice the company to hire 35 additional employees in New Jersey. Management has indicated that the grants are a material factor in the company's decision to locate the project in New Jersey.

APPROVAL REQUEST:

PERCENTAGE: 80%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Durand Glass Manufacturing Company to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 179,564

(not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 850

ELIGIBLE BEIP JOBS: Year 1 35 Year 2 0 Base Years Total = 35

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$5,130

ANTICIPATED AVERAGE WAGES: \$36,400

ESTIMATED PROJECT COSTS: \$65,800,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$224,455

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$157,119

PROJECT IS: (X) Expansion () Relocation _____

CONSTRUCTION: (X) Yes () No

PROJECT OWNERSHIP HEADQUARTERED IN: New Jersey

APPLICANT OWNERSHIP: () Domestic (X) Foreign France

DEVELOPMENT OFFICER: D. Bennis

APPROVAL OFFICER: K. McCullough

FORMULA EVALUATION

<u>Criteria</u>		<u>Score</u>
1. Location:	Millville City	N/A
2. Job Creation	35	1
	Targeted : _____ Non-Targeted : <u> X </u>	
3. Job at Risk:	850	3
4. Industry:	glass manufacturing	0
	Designated : _____ Non-Designated : <u> X </u>	
5. Leverage:	3 to 1 and up	2
6. Capital Investment:	\$65,800,000	3
7. Average Wage:	\$ 36,400	2

TOTAL: 11

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan or, existing building(s) that have been 100% vacant for 12 months.	20%	<u> 20% </u>
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs, or, existing building(s) that have been 100% vacant for 12 months.	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	<u> 20% </u>
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	<u> 15% </u>
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points:

55 %

Total Score :

Total Score per formula: 11 = **35 %**

Construction/Renovation : **5 %**

Bonus Increases : **55 %**

Total Score (not to exceed 80 %): **80 %**

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – BUSINESS RETENTION AND RELOCATION ASSISTANCE GRANT

APPLICANT: Durand Glass Manufacturing Company

COMPANY ADDRESS: 901 S. Wade Blvd Millville City Cumberland County

PROJECT LOCATION: 901 S. Wade Blvd Millville City Cumberland County

GOVERNOR’S INITIATIVES:

(X) NJ Urban Fund () Edison Innovation Fund () Core

APPLICANT BACKGROUND:

Durand Glass Manufacturing Company is a subsidiary of ARC International Inc. which is a privately-owned French company and a leading manufacturer of tabletop glassware with a global workforce of over 19,000. The company has a portfolio of well-known brands including Luminarc, Pyrex, Cristal d'Arques Paris, Arcoroc, and Chef & Sommelier. ARC International Inc. established a manufacturing presence in the United States by opening the Durand Glass Manufacturing Company in Millville, New Jersey in 1982. The site in Millville operates non-stop, 365 days per year and is one of Cumberland County’s largest private employers.

MATERIAL FACTOR/NET BENEFIT:

Durand Glass Manufacturing Company is at a point where it needs to make significant capital expenditures at its Millville facility to remain competitive. This has caused the company to explore options to relocate out of state in order to reduce costs. One alternative that management is considering is moving the company’s manufacturing operations to Mexico. Also under consideration is relocating the jobs from the Millville plant to Ohio through a partnership with another company. Durand Glass Manufacturing Company has applied for a BRRAG to provide an incentive for the company to keep its 850 full-time jobs in Millville as well as a BEIP grant to entice the company to hire 35 additional employees in New Jersey. The applicant has demonstrated that the grant of these tax credits will result in a net benefit to the State of \$98 million.

APPROVAL REQUEST:

TAX CREDIT TERM: 5 year
COMMITMENT DURATION: 10 years

The Members of the Authority are asked to approve the proposed BRRAG benefit to Durand Glass Manufacturing Company to encourage the company to relocate within New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award amount and the term. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount and the term that corresponds to the actual criteria that have been met.

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in NJ unless the applicant had a pre-application meeting with the Authority during the grandfathering period.
2. If the applicant enters into a lease for the project site, the term of the lease will be no less than 10 years exclusive of any renewal options.
3. Expenditures totaling at least twice as much as the BRRAG award must meet the statutory definition of Capital Investment and must be made on or before 09/30/2016 in order to remain eligible for the bonus award.
4. No employees subject to a BEIP grant or another BRRAG are eligible for calculating the benefit amount of this BRRAG.
5. If the applicant remains in a location at which it currently operates, expenditures totaling at least as much as the BRRAG award must meet the statutory definition of Capital Investment and must be made on or before 09/30/2016.

END OF APPLICANT'S FISCAL YEAR:	DECEMBER 31
CAPITAL INVESTMENT MUST BE MADE BY:	SEPTEMBER 30, 2016
SUBMISSION DATE OF CPA CERTIFICATION:	DECEMBER 31, 2016
TOTAL ESTIMATED GRANT AWARD OVER TERM:	\$ 9,562,500
STATE FISCAL YEAR 1 APPROVAL (SFY 2018):	\$ 1,912,500
STATE FISCAL YEAR 2 APPROVAL (SFY 2019):	\$ 1,912,500
STATE FISCAL YEAR 3 APPROVAL (SFY 2020):	\$ 1,912,500
STATE FISCAL YEAR 4 APPROVAL (SFY 2021):	\$ 1,912,500
STATE FISCAL YEAR 5 APPROVAL (SFY 2022):	\$ 1,912,500
ELIGIBLE BRRAG JOBS:	850
YEARLY TAX CREDIT AMOUNT PER EMPLOYEE:	\$ 1,500
BONUS AWARD PER EMPLOYEE:	\$ 750
TOTAL YEARLY TAX CREDITS INCLUDING BONUS:	\$ 2,250
ANTICIPATED AVERAGE WAGES:	\$ 44,452
ESTIMATED TOTAL GROSS ANNUAL PAYROLL:	\$ 37,784,200
ESTIMATED TOTAL GROSS STATE WITHHOLDINGS 10 YRS:	\$ 7,886,351
ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$ 65,800,000
OPERATED IN NEW JERSEY SINCE:	1982
PROJECT IS: (X) Expansion () Relocation	
CONSTRUCTION/RENOVATION: (X) Yes () No	
DEVELOPMENT OFFICER: D. Benms	APPROVAL OFFICER: K. McCullough

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

APPLICANT: Raritan Americas, Inc.

P36946

PROJECT LOCATION: To Be Determined

Locations Unknown (N)

Unknown County

GOVERNOR'S INITIATIVES:

() Urban (X) Edison () Core () Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Raritan Americas, Inc. produces a full range of solutions to help data center operators monitor and manage their energy, servers, and other information technology devices. An industry pioneer, Raritan was established in 1985 and has its corporate headquarters in Somerset, New Jersey. After two decades of growth and technical innovation, Raritan products are used to control millions of servers at more than 50,000 data centers around the world. The company's long list of customers includes global names like IBM, Intel, JP Morgan Chase, Microsoft, the United States Post Office and NASA. The applicant is economically viable.

MATERIAL FACTOR:

The company is set to expand its workforce and is exploring its options on where to locate the new employees. One option would be to lease additional space near the company's headquarters in Somerset. Also under consideration is hiring the new employees at Raritan's leased facility in North Carolina. Raritan has requested a BEIP grant to provide an incentive to locate the project in New Jersey. Management has indicated that the BEIP is a material factor in the company's decision. Based on smart growth criteria, the award could increase to as much as 80% with an estimated value of \$576,500 once the company finalizes its location decision.

APPROVAL REQUEST:

PERCENTAGE: 30%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Raritan Americas, Inc. to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 216,188
(not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 168

ELIGIBLE BEIP JOBS: Year 1 12 Year 2 13 Base Years Total = 25

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$8,647

ANTICIPATED AVERAGE WAGES: \$85,000

ESTIMATED PROJECT COSTS: \$100,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$720,625

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$864,750

PROJECT IS: (X) Expansion () Relocation _____

CONSTRUCTION: () Yes (X) No

PROJECT OWNERSHIP HEADQUARTERED IN: New Jersey

APPLICANT OWNERSHIP:(X) Domestic () Foreign

DEVELOPMENT OFFICER: K. Hashmi

APPROVAL OFFICER: K. McCullough

FORMULA EVALUATION

<u>Criteria</u>		<u>Score</u>
1. Location:	Locations Unknown	N/A
2. Job Creation	25	1
	Targeted : <u> X </u> Non-Targeted : _____	
3. Job at Risk:	0	0
4. Industry:	Advanced computing	2
	Designated : <u> X </u> Non-Designated : _____	
5. Leverage:	3 to 1 and up	2
6. Capital Investment:	\$100,000	0
7. Average Wage:	\$ 85,000	4

TOTAL: **9**

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan or, existing building(s) that have been 100% vacant for 12 months.	20%	_____
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs, or, existing building(s) that have been 100% vacant for 12 months.	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	_____
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	_____
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points:

0 %

Total Score :

Total Score per formula: **9 = 30 %**

Construction/Renovation : **0 %**

Bonus Increases : **0 %**

Total Score (not to exceed 80 %): **30 %**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY - BUSINESS EMPLOYMENT INCENTIVE PROGRAM**

APPLICANT: Thales SA, Thales USA Inc., Thales Avionics Inc. & Affiliates P36970

PROJECT LOCATION:TBD Locations Unknown (N) Unknown County

GOVERNOR'S INITIATIVES:

Urban Edison Core Clean Energy

APPLICANT BACKGROUND/ECONOMIC VIABILITY:

Thales SA is a France-based technology and electronics company providing solutions, services and products for the military and civilian markets. The group focuses and operates mainly in the defense & security, and the aerospace & transportation markets. In 2010, the group generated revenues of \$17.9 billion with 68,000 employees in 50 countries. With its 22,500 engineers and researchers, Thales has a unique capability to design, develop, and deploy equipment, systems, and services that meet the most complex security requirements. Select examples of the group's work or contracts include: fighter jet and civilian plane avionic control systems, civilian and military satellites, air traffic control systems, rail traffic signaling and management, lottery and train ticketing systems, IT systems and software, and in-flight entertainment systems. While its key shareholders are the French Government and the Groupe Industriel Marcel Dassault S.A., the company's stock is traded on the NYSE Euronext Paris under the symbol HO. The Applicant is economically viable.

In New Jersey, Thales currently has 202 employees in two sites, 168 positions in Edison and 34 positions in Totowa. The company is considering a cost savings plan and/or a consolidation. With a BRRAG grant, the company will retain/relocate its current headcount at these two locations to a new business location in New Jersey and anticipates the creation of 37 new positions. This project summary is for the creation of 37 new jobs (BEIP). There is a related BRRAG project summary in this agenda.

MATERIAL FACTOR:

The Applicant is seeking a BEIP grant to support creating 37 permanent full-time positions in New Jersey within the first two years. The company has represented that a favorable decision by the Authority to award the BEIP grant is a material factor in the Applicant's decision to go forward with the project. According to the company, for hosting this additional facility, New Jersey is competing with Florida. The Authority staff recommends the award of the proposed BEIP grant.

APPROVAL REQUEST:

PERCENTAGE: 45%

TERM: 10 years

The Members of the Authority are asked to approve the proposed BEIP grant and award percentage to encourage Thales SA, Thales USA Inc., Thales Avionics Inc. to increase employment in New Jersey. The recommended award percentage is based on the company meeting the criteria as set forth on the attached Formula Evaluation and is contingent upon receipt by the Authority of evidence that the company has met said criteria to substantiate the recommended award percentage. If the criteria met by the company differs from that shown on the Formula Evaluation, the award percentage will be raised or lowered to reflect the award percentage that corresponds to the actual criteria that have been met.

TOTAL ESTIMATED GRANT AWARD OVER TERM OF GRANT: \$ 272,477
 (not to exceed an average of \$50,000 per new employee over the term of the grant)

NJ EMPLOYMENT AT APPLICATION: 202

ELIGIBLE BEIP JOBS: Year 1 33 Year 2 4 Base Years Total = 37

ESTIMATED COST PER ELIGIBLE BEIP JOB OVER TERM: \$7,364

ANTICIPATED AVERAGE WAGES: \$61,000

ESTIMATED PROJECT COSTS: \$3,900,000

ESTIMATED GROSS NEW STATE INCOME TAX - DURING 10 \$605,505

ESTIMATED NET NEW STATE INCOME TAX - DURING 15 \$635,780

PROJECT IS: (X) Expansion (X) Relocation Edison, NJ & Totowa, NJ

CONSTRUCTION: (X) Yes () No

PROJECT OWNERSHIP HEADQUARTERED IN: _____

APPLICANT OWNERSHIP: () Domestic (X) Foreign France

DEVELOPMENT OFFICER: P. Ceppi

APPROVAL OFFICER: D. Sucsuz

FORMULA EVALUATION

<u>Criteria</u>		<u>Score</u>
1. Location:	Locations Unknown	N/A
2. Job Creation	37	1
	Targeted : <u> X </u> Non-Targeted : _____	
3. Job at Risk:	202	2
4. Industry:	Electronic device technology	2
	Designated : <u> X </u> Non-Designated : _____	
5. Leverage:	3 to 1 and up	2
6. Capital Investment:	\$3,900,000	2
7. Average Wage:	\$ 61,000	3

TOTAL: **12**

Bonus Increases (up to 80%):

Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan or, existing building(s) that have been 100% vacant for 12 months.	20%	_____
Located in Planning Area 1 or 2 of the State's Development and Redevelopment Plan AND creation of 500 or more jobs, or, existing building(s) that have been 100% vacant for 12 months.	30%	_____
Located in a former Urban Coordinating Council or other distressed municipality as defined by Department of Community Affairs	20%	_____
Located in a brownfield site (defined as the first occupants of the site after issuance of a new no-further action letter)	20%	_____
Located in a center designated by the State Planning Commission, or in a municipality with an endorsed plan	15%	_____
10% or more of the employees of the business receive a qualified transportation fringe of \$ 30.00 or greater.	15%	_____
Located in an area designated by the locality as an "area in need of redevelopment"	10%	_____
Jobs-creating development is linked with housing production or renovation (market or affordable) utilizing at least 25% of total buildable area of the site	10%	_____
Company is within 5 miles of and working cooperatively with a public or non-profit university on research and development	10%	_____

Total Bonus Points: **0 %**

Total Score :

Total Score per formula: **12 = 40 %**

Construction/Renovation : **5 %**

Bonus Increases : **0 %**

Total Score (not to exceed 80 %): **45 %**

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
PROJECT SUMMARY – BUSINESS RETENTION AND RELOCATION ASSISTANCE
GRANT**

APPLICANT: Thales SA, Thales USA Inc., Thales Avionics Inc. & Affiliates

COMPANY ADDRESS(ES): 3290 Park Avenue Edison Township Middlesex County
40G Commerce Way Totowa Boro Passaic County

PROJECT LOCATION: TBD

GOVERNOR’S INITIATIVES: () Urban (X) Edison () Core () Clean Energy

APPLICANT BACKGROUND:

Thales SA is a France-based technology and electronics company providing solutions, services and products for the military and civilian markets. Fifty-five percent of its business is defense contracts while the remaining forty-five percent of its business relates to civilian purposes or markets. Select examples of the group’s work or contracts include: fighter jet and civilian plane avionic control systems, civilian and military satellites, air traffic control systems, radar systems, rail traffic signaling and management, lottery and train ticketing systems, IT systems and software, and in-flight entertainment systems.

In New Jersey, Thales currently has 202 employees in two sites, 168 positions in Edison and 34 positions in Totowa. The company is considering a cost savings plan and/or a consolidation. With a BRRAG grant, the company will retain/relocate its current headcount at these two locations to a new business location in New Jersey and anticipates the creation of 37 new positions. This project summary is for the retention of the existing 202 jobs (BRRAG). There is a related BEIP project summary (P36970) in this agenda.

MATERIAL FACTOR/NET BENEFIT:

The Applicant is seeking a BRRAG grant to support retaining 202 BRRAG eligible employees located in New Jersey. The company has represented that a favorable decision by the Authority to award the BRRAG grant is a material factor in the Applicant's decision to remain within New Jersey and hence not to relocate these jobs outside of the State. According to the Applicant, New Jersey is competing with Florida to house this operation. If they remain in New Jersey, the Applicant also expects to create approximately 37 new full-time positions within the first two years. The Authority staff recommends the award of the proposed Business Retention and Relocation Assistance Grant. The model that the EDA uses to determine the net benefit of a project to the State of New Jersey determined that the net benefit of the project to the State is \$31.8 million.

APPROVAL REQUEST:

TAX CREDIT TERM: 1 year
COMMITMENT DURATION: 6 years

The Members of the Authority are asked to approve the proposed BRRAG benefit to Thales SA, Thales USA Inc., Thales Avionics Inc. & Affiliates to encourage the company to relocate within New Jersey. The recommended grant is contingent upon receipt by the Authority of evidence that the company has met certain criteria to substantiate the recommended award amount and the term. If the criteria met by the company differs from that shown herein, the award amount and the term will be lowered to reflect the award amount and the term that corresponds to the actual criteria that have been met.

CONDITIONS OF APPROVAL:

1. Applicant has not entered into a lease, purchase contract, or otherwise committed to remain in NJ unless the applicant had a pre-application meeting with the Authority during the grandfathering period.
2. If the applicant enters into a lease for the project site, the term of the lease will be no less than 8 years exclusive of any renewal options.
3. Expenditures totaling at least twice as much as the BRRAG award must meet the statutory definition of Capital Investment and must be made on or before September 2, 2012 in order to remain eligible for the bonus award.
4. No employees subject to a BEIP grant or another BRRAG are eligible for calculating the benefit amount of this BRRAG.
5. If the applicant remains in a location at which it currently operates, expenditures totaling at least as much as the BRRAG award must meet the statutory definition of Capital Investment and must be made on or before September 2, 2012.

END OF APPLICANT'S FISCAL YEAR:	December 31
CAPITAL INVESTMENT MUST BE MADE BY:	September 2, 2012
SUBMISSION DATE OF CPA CERTIFICATION:	January 30, 2013
TOTAL ESTIMATED GRANT AWARD OVER TERM:	\$454,500
STATE FISCAL YEAR 1 APPROVAL (SFY 2014):	\$454,500
ELIGIBLE BRRAG JOBS:	202
YEARLY TAX CREDIT AMOUNT PER EMPLOYEE:	\$1,500
BONUS AWARD PER EMPLOYEE:	\$750
TOTAL YEARLY TAX CREDITS INCLUDING BONUS:	\$2,250
ANTICIPATED AVERAGE WAGES:	\$72,500
ESTIMATED TOTAL GROSS ANNUAL PAYROLL:	\$14,645,000
ESTIMATED TOTAL GROSS STATE WITHHOLDINGS (6 years):	\$2,614,890
ESTIMATED ELIGIBLE CAPITAL INVESTMENT:	\$3,900,000
OPERATED IN NEW JERSEY SINCE:	January 1987
PROJECT IS: (X) Expansion (X) Relocation	
CONSTRUCTION/RENOVATION: (X) Yes () No	
DEVELOPMENT OFFICER: P. Ceppi	APPROVAL OFFICER: D. Sucsuz



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini, Chief Executive Officer

DATE: November 9, 2011

SUBJECT: Business Employment Incentive Program (BEIP) Scoring Policy

Request:

The Members are requested to approve a change in the current scoring criteria utilized in determining the grant award under the Business Employment Incentive Program (BEIP) as relates to companies that are working cooperatively with public or non-profit universities on research and development.

Background:

On October 19, 2011, Governor Chris Christie released his State Strategic Job Growth Plan, which provides a framework for action by setting forth planning goals of statewide importance, guiding principles, achievable steps for coordination across government, and a realistic implementation agenda anchored in strong Executive Branch leadership from the Governor and Lt. Governor Kim Guadagno. The Plan also calls for a Steering Committee for the Strategic Job Growth Plan chaired by the Lt. Governor, providing direction to state departments on the implementation of the Strategic Plan and giving specific requirements for each Department and Agency of state government to develop strategies that integrate the policies of the strategic plan into their activities.

The State Strategic Job Growth Plan specifically calls out the importance of New Jersey's "world-class colleges and universities that not only educate but have the potential to invest in research and development with the private sector" with 57 universities, colleges and technical schools around the State, and 75,000+ degrees awarded annually.

As part of the Authority's scoring criteria for the BEIP program, a company is currently given a 10% bonus if they are "*within 5 miles of and working cooperatively with a public or non-profit university on research and development.*" In order to more effectively promote the collaboration between the private sector and New Jersey's institutions of higher education, it is proposed that the language requiring the BEIP facility be located within 5 miles of the public or non-profit

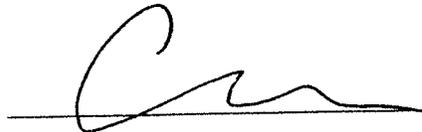
university be removed, allowing all companies seeking to collaborate with New Jersey higher educational facilities in this manner to benefit from the bonus scoring.

Going forward, staff anticipates bringing related State Strategic Job Growth Plan alignment suggestions to the Board as a result of guidance from the State Plan Steering Committee. As many of the Authority's programs utilize scoring criteria to achieve public policy, employment, and investment goals, this broad based review will likely be memorialized through a comprehensive rule proposal in 2012.

Staff is submitting this proposal, and will seek others in the future, to proactively encourage New Jersey's universities throughout the State to enter into research agreements with businesses. Both the public and private sector will benefit tremendously when the State and our universities strategically partner to provide services to New Jersey-based firms, availing them the opportunity to conduct their innovative research and development activity within our borders and eventually, bring these new technologies to market to benefit the people of New Jersey and the world.

Recommendation

The Members approve the proposed change to BEIP scoring criteria to allow BEIP applicants that are working collaboratively with New Jersey's public or non-profit universities on research and development regardless of location to receive the 10% scoring bonus.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by several loops and a horizontal line at the end.

Prepared by: Nicole Royle

**ECONOMIC REDEVELOPMENT AND GROWTH (ERG)
PROGRAM**



MEMORANDUM

To: Members of the Authority

From: Caren S. Franzini
Chief Executive Officer

Date: November 9, 2011

RE: **Eatontown Monmouth Mall LLC**
Economic Redevelopment and Growth Grant Program

Request

The Members are asked to approve the application of Eatontown Monmouth Mall LLC (“Monmouth” or “the Applicant”) for reimbursement of certain taxes for a project located in Eatontown, Monmouth County, under a "state incentive grant" by the EDA pursuant to the Economic Redevelopment and Growth Grant (ERG) program set forth in N.J.S.A. 52:27D-489c (Act).

The total project costs are estimated to be **\$24,855,075**. The total qualified costs under the ERG Act are **\$24,621,301**. The recommended reimbursement is **16.69%** of the eligible costs, not to exceed **\$4,109,172**.

Project Description

The Project consists of the acquisition of land and an existing building and new construction aggregating 50,000 square feet of space which will be leased by a national retailer (“NT”). The acquisition of land and building is adjacent to the NT site and is associated with a new lease signed in May of 2011 with Boscov. This cost is deemed eligible as it was acquired in January of 2011 and the Applicant’s intent was to renovate the 264,000 square feet of vacant space for Boscov as well as expand the tenant roster with a new pad site. These stores will be part of an existing mall located on 78 acres encompassing 1.5 million square feet of retail space along with 7,000 parking spaces. Employment at the mall is currently 1,752 and this figure is anticipated to grow by 57 as a result of the NT’s expansion (plus there is another 400 new jobs associated with the Boscov space).

The mall has approximately 120 existing tenants including main anchors Macy’s, Lord & Taylor, J. C. Penney and a 15-screen AMC/Lowes Theater. Monmouth Mall opened in 1960 as a 500,000 square foot open-air center, was enclosed in 1975 and renovated in 1987 and 1996 which included the addition of a food court. In 2002, a new joint venture between Vornado Realty Trust and

Kushner Companies purchased the existing land and buildings. In January of 2011, these owners acquired the land and building pertaining to the Boscov site for \$9.75 million. Boscov's closed its Monmouth Mall anchor store as part of the bankruptcy filing in August of 2008. Boscov's emerged from bankruptcy in September 2009 after Albert Boscov (son of the founder of the chain) led an ownership team that took over the retailer which now has thirty-nine stores (six in New Jersey).

Monmouth Mall is located at the intersection of State Highway 35 and 36 in Eatontown and within 2 miles of the Garden State Parkway exit 105. This address is part of a well-established commercial corridor along Route 35 which will complement the existing commercial and retail sector in the Borough. The project will also capitalize on the local and regional demographic which continues to attract national retail tenants to boost the regional draw of the mall coupled with enhanced property taxes to the town without incurring demand on schools or other public services. The project is consistent with state, regional and local development and planning strategies.

The redevelopment project includes both the acquisition of a vacant, existing structure as well as the construction of a new, free standing 50,000 square foot building for a nationally recognized sporting goods store to further enhance the retail draw of the Monmouth Mall. The renovations to the Boscov site (amounting to \$1,046,796 of which \$738,772 has been completed with the remainder pertaining to parking lot paving to be contracted for post approval) are not deemed eligible costs under the ERG program as they were under construction contract, completed, and self funded prior to the approval by the Members of the Authority.

The project is located in Monmouth County's Coastal Planning Region and among specific smart growth principles identified in the Coastal Monmouth Plan, adopted in 2010 as part of the Monmouth County Growth Management Guide, this region identified the need for planning solutions that maintain a strong local year-round economy that is not solely dependent on seasonal shore tourism. This plan strategizes to prepare communities for sustainable growth that supports a vibrant commercial base. This project advances these regional planning objectives by redeveloping one of the Borough's key commercial assets and will strengthen the economy of the region by the infusion of jobs and spending.

New full time jobs to be created as a result of the new 50,000 square feet of space for NT's are approximately 57 full time jobs, and 76 one time construction jobs. The average salary of the retail jobs is approximately \$25,000 which corresponds to the RIMS salary data.

Project Ownership

The project will be owned by a series of entities which ultimately are owned by Vornado Realty Trust and Kushner Companies.

Vornado is a fully integrated real estate investment trust whose shares are publicly traded on the New York Stock Exchange. Vornado is headquartered in New York with 4,780 employees and owns office (28 properties aggregating 17 million square feet in New York City, 82 properties aggregating 21 million square feet in Washington/ Northern Virginia and a 70% interest in a 1.8 million square foot complex in San Francisco), retail (161 properties aggregating 25 million square

feet in New York City, northeast US, California and Puerto Rico), 6 Merchandise Mart properties (aggregating 7 million square feet of showroom and office space in Chicago,), a 32.7% interest in Toys R Us, Inc. (owner operator of 1,589 stores worldwide), 32.4% of Alexander's Inc. (NYSE listed firm with seven properties aggregating 3.2 million square feet), the Hotel Pennsylvania (1.4 million square feet in New York City) and a 9.9% interest in J.C. Penney Company, Inc. (NYSE listed with 1,108 department stores). Total assets at 12/31/2010 were \$20.5 billion; equity was \$6.8 billion, revenues of \$2.8 billion and net income of \$708 million.

Project Uses and Sources

The Applicant proposes the following uses for the Project:

<i>Uses</i>	<i>Total Project Costs</i>	<i>ERG Eligible Amount*</i>
Acquisition of Land and Building	\$ 9,750,000	\$ 9,750,000
Construction of Building & Site Improvements	\$ 10,233,690	\$ 10,233,690
Professional Services	\$ 2,464,135	\$ 2,230,361
Financing & Other Costs	\$ 1,170,826	\$ 1,170,826
Contingency	\$ 1,236,424	\$ 1,236,424
Development Fee	\$ 0	\$ 0
TOTAL USES	\$ 24,855,075	\$ 24,621,301

* ERG eligible costs exclude \$233,774 associated with site management and project expenses which do not fit within the guidelines definition of eligible hard or soft costs.

<i>Sources</i>	<i>Total Project Costs</i>
Debt (80%)	\$ 19,884,060
Equity (20%)	\$ 4,971,015
Total	\$ 24,855,075

The sources and uses above reflect the project with the ERG subsidy excluded. The project gap is calculated based on the Equity Internal Rate of Return and Cash-on-Cash Yield identified in the gap analysis, which will be discussed below. These returns are calculated with and without the ERG cash flow to compare the returns.

Gap Analysis

EDA staff has reviewed the application to determine if there is a project financing gap. Staff analyzed the pro forma and projections of the project and compared the returns with and without the ERG: The returns assume that permanent financing is undertaken consisting of 80% debt at 6.5% for 30 years as the applicant indicated that funding will consist solely of equity (assumes internal borrowing cost of 6.5% interest only) until stabilization has been achieved (anticipated by year two after completion).

With ERG	Without ERG
Equity IRR 16.91% (Market Range = 15-20%)	Equity IRR 4.50% (Market Range = 15-20%)

Cash on Cash Yield 9.43% (Market Range = 8-10%)	Cash on Cash Yield 6.29% (Market Range = 8-10%)
----------------------------------------------------	----------------------------------------------------

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. With the benefit of the ERG, the Equity IRR is 16.91% and the Cash-on-Cash Yield is 9.43%, making the returns within the market ranges provided by the EDA’s contract consultant, Jones Lang LaSalle. The additional revenue from the prospective ERG enables this project to move forward.

Net Positive Benefit Analysis

The Authority has conducted the required Net Benefit Analysis and has found that the present value of the Net Positive Benefits to the State at a 6% discount rate over a 15 year period is \$4.52 million. The ERG regulations allow Monmouth’s tax credit award to be up to 20% eligible project costs. In this case, Monmouth’s award initially calculates to \$4.9 million (\$24.6 million Eligible Costs times 20%). However, the ERG regulations also require that project’s net benefit to the State be no less than 110% of the ERG award. As such, the adjusted and final ERG award to Monmouth is \$4.11 million calculated as the Net Positive Benefit to the State (\$4.52 million) divided by 110%.

The Net Positive Benefit calculation included:

- 66% of the incremental annual corporate business tax
- 66% of the incremental gross income tax
- 100% of the incremental one-time tax generated from the Project’s construction; and;
- 100% of the incremental indirect spillover tax revenues from earnings and expenditures.
- 57 new jobs to be created by NT’s 50,000 square feet of retail space

Sales taxes are excluded from the calculation as the project is not deemed a destination and therefore it is assumed that there will be no additional new sales tax benefits to the State.

Other Statutory Criteria

In order to be eligible for the program, staff shall consider the following:

The economic feasibility and the need of the redevelopment incentive agreement to the viability of the project. The likelihood that the project shall upon completion is capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the project costs as provided in the redevelopment agreement.

Based on the expected generation of \$11.9 million of incremental direct annual gross income, sales and other eligible taxes over 20 years, and a 75% rebate of eligible taxes, there are adequate funds to support the reimbursement of taxes to the Project as outlined in the analysis. As discussed previously, the project financial returns before the ERG grant demonstrate a need for the incentive grant agreement. Taking into account the experience of the Applicant, the 50,000 square feet of

space with an identified tenant, the market strategy to redevelop and expand the mall, as well as the ERG award serve to indicate that the project has a likelihood of success.

The degree to which the redevelopment project within a municipality which exhibits economic and social distress, will advance State, regional, local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.

The Project is located in Eatontown, and specifically within the Metropolitan Planning Area 1 which is a target area for the program. Eatontown has a population of 14,500 and an unemployment rate of 8.7% which is modestly below the 9.4% rate for the State of New Jersey. Nationwide unemployment is 9.2% as of June 2011. The official closure of Fort Monmouth on September 15, 2011 (encompassing some 1,100 acres and the largest employer in the County at 5,500) has been recognized as a severe economic loss for Monmouth County (the Fort is located in three towns including Eatontown, Tinton Falls and Oceanport). The fort's civilian employees accounted for about \$260 million in retail spending. The overall economic impact from this event is not yet fully reflected in reported data and is likely to take several years to be absorbed. Struggling urban and communities including Long Branch, Asbury Park and Neptune in Monmouth County all stand to enjoy direct economic and employment benefits from the redevelopment and expansion of Monmouth Mall through job creation and economic stimulus. The well established retail district on Route 35 has been acknowledged in the Monmouth County Profile as one of the four largest retail corridors in New Jersey and the redevelopment of this under performing commercial property will advance smart growth planning principles by redeveloping existing infrastructure in local and regional corridor and meet stable demand for concentrated mixed use centers. The project has received a letter of support from the municipality (Eatontown).

The proposed development will create approximately 57 full-time jobs with an average salary of approximately \$25,000 and add approximately 94 construction jobs. Additionally the improvements will increase the tax ratable on the property by an estimated \$100,000 annually.

The Monmouth Mall Redevelopment Project is also consistent with the goals and policies of the Monmouth County 2010 Profile plan prepared by Monmouth County Planning Board in September of 2010. In terms of Green Development and Operating Principles this project will have minimal impact on existing water and sewer infrastructure and will not require any additional transportation improvements.

Recommendation

Authority staff has reviewed the application and finds that it is consistent with eligibility requirements of the Act. Treasury, in reviewing the application, has notified the Authority of the adequacy of the project's estimated tax revenues and specified the percentage reimbursement of total project costs. Therefore, it is recommended that the Members approve the application and authorize the CEO of the Authority to execute an Incentive Grant Agreement with the Applicant and the State Treasurer, subject to final review and approval of the Office of the Attorney General. All disbursements under the ERG program are subject to annual appropriation by the New Jersey State Legislature.

Closing of the Incentive Grant Agreement and the reimbursement of any taxes is contingent upon the Applicant meeting the following conditions regarding the Project:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant in its application to the Authority for the ERG; and
2. Evidence of site control and site plan approval for all parcels within the Project;

Reimbursement shall commence upon:

1. Completion of construction/renovation and issuance of a permanent certificate of occupancy;
2. Submission of a detailed list of all eligible costs, which costs shall be satisfactory to the NJEDA; and
3. New tax revenues have been paid to the NJ Treasury and appropriated

The NJ Treasury annually tracks taxes received from job sites and remits reimbursement equal to a percentage of funds collected during the year.

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction.

Total Eligible Project Costs: \$24,621,301

Eligible Taxes for Reimbursement: Sales and Other Eligible Taxes not to exceed \$4,109,172 over 20 years.

Recommended Grant: 16.69% of eligible costs, not to exceed \$4,109,172 over 20 years



Caren S. Franzini

Prepared by: Michael Conte

NJEDA Economic Impact Model DICKS ONLY

County Number	13
County	Monmouth
Ongoing Jobs(Direct)	57
One Time Jobs(Direct)	76

State & Local Direct Ongoing	Services	Select Industry Sector
Sales Tax	\$0.00	@7% at 0% no destination or market study
Corporate Income Tax (CBT)	\$0.01	@9% = 22K per co, then 66%=14k
Gross Income Tax	\$0.04	@4% reduced to 66% per policy
Misc. State Tax Revenue	\$0.00	
Property Tax (Default to Total Const Value*3%)	\$0.10	applicant incremental tax
Direct Ongoing Annual Taxes	\$0.15	a

State Indirect Ongoing		
Annual Corp Spending	\$6.02	Direct Output Composite
Final Demand Output Multiplier	1.67x	Direct Output Composite Multiplier
Indirect Annual Spending	\$4.05	Direct Output Composite*(Direct .Mult.-1)
At 3.5 % Tax Rate	\$0.14	b
Annual Payroll	\$1.42	Direct Earnings Composite
Indirect Effect Earnings Multiplier	1.59x	Direct Earnings Composite Multiplier
Indirect Earnings	\$0.84	Direct Earnings Composite*(Indirect .Mult.-1)
At 4% Tax Rate	\$0.03	c
Indirect Ongoing Annual Taxes	\$0.18	b + c

Total State Ongoing Net Benefits		
Annual Net Benefit	\$0.33	a+b+c
Cumulative Net Benefit (15yrs w/ 3% yearly inflation)	\$6.08	
Present Value @6%	\$3.82	d

One Time		
Construction Value	\$10.2	@300psf - reduced to actual costs per applicant
Direct One Time Taxes on Spending	\$0.4	Count to total only if project is NOT in a UEZ zone.
Direct Construction Multiplier	1.78x	
Indirect One Time Spending	\$7.99	
Spending Tax Rate	3.5%	
Ind One Time Taxes on Spending	\$0.3	w
Assumed Portion of Const. on Labor	50%	Input
Dir One Time Earnings	5.10	
Earnings Tax Rate	5%	Input
Dir One Time Taxes on Earning	\$0.3	x
Direct Effect Earnings Multiplier	1.67x	
Indirect One Time Earnings (50% of Construction)	3.40	
Earnings Tax Rate	5%	Input
Ind One Time Taxes on Earnings	\$0.2	y
Total One Time Tax Benefits	\$0.7	e (w+x+y)

Total State Benefits

Total One Time Tax Benefits	\$0.7	e
Total State Ongoing Benefits (PV @ 6%)	\$3.8	d
Total Benefits	\$4.52	d+e
Net Benefits at 110%	\$4.11	
Total ERG Qualifying Costs	\$24.6	
Maximum ERG Award	\$4.92	f



MEMORANDUM

To: Members of the Authority

From: Caren S. Franzini
Chief Executive Officer

Date: November 9, 2011

RE: **Harrison Hotel 1, L.L.C. or Affiliate**
Economic Redevelopment and Growth Grant Program

Request

The Members are asked to approve the application of Harrison Hotel 1 L.L.C. (“Harrison Hotel” or the “Applicant”) for reimbursement of certain taxes for a Harrison, Hudson County project under a “state incentive grant” by the EDA pursuant to the Economic Redevelopment and Growth Grant (“ERG”) program set forth in N.J.S.A. 52:27D-489c (“Act”).

The total project costs are estimated to be \$38,291,539. The total qualified costs under the ERG Act are **\$36,254,935**. The recommended reimbursement is **20%** of the eligible costs, not to exceed **\$7,250,987**.

Project Description

The proposed Harrison Station Hotel project involves the construction of a new, seven story, 136-room, 94,004 square foot limited-service hotel with 9,675 square feet of ground floor mixed use-retail space. The project is located in the Town of Harrison, Hudson County, New Jersey and is expected to have an Element by Westin brand. The site was historically used for surface parking and heavy industrial operations. The industrial history of the site was common for the primary land uses throughout Harrison, due to the location of the Town in proximity to New York City, existing and heavily utilized freight and passenger rail line, and the Passaic River. The Harrison Station Hotel project site is located at 333 Somerset Street in Harrison at the intersection of Frank E. Rodgers Boulevard and Somerset Street. The site is immediately adjacent to existing commuter rail lines serving Amtrak’s Northeast Corridor and the Harrison station of the New York/New Jersey Port Authority Trans-Hudson Corporation (“PATH”) rail system. Over the past several years, the Town of Harrison has been the beneficiary of multiple redevelopment projects. The hotel will be constructed adjacent to an existing five-story parking garage constructed by Harrison Common, L.L.C. in 2009. The parking garage was turned over to the Hudson County Improvement Authority in 2010. The Hotel Project will also complement a \$60 million residential and retail mixed-use development that will be located adjacent to the hotel site. It is also adjacent to the approximately

\$200 million Red Bull Arena, located in a designated Brownfields Development Area (BDA). The acquisition of the site included over \$2.15 million in environmental remediation costs undertaken by the developer. Encompassing just over one square mile in size, Harrison is located in western Hudson County, which is geographically the smallest and one of the most densely populated counties in New Jersey. The project site's location is within 15 miles of downtown Manhattan. The project is on a dedicated stop of the NY/NJ PATH rail system, within a 10-minute walk of the Red Bull Arena, and within the 250-acre area identified in the 2003 Harrison Waterfront Redevelopment Plan ("WRP").

The Applicant has received a letter of interest for \$22,974,923 in financing from PNC Financial Services for this project and anticipates a firm commitment within the next 90 days.

The project is expected to create 172 new, direct jobs and will infuse more than \$6.2 million annually into the local economy through employee wage compensation.

Project Ownership

Formed in 2001, Ironstate Development Company ("Ironstate" or the Company") owns 50% equity stake in the project. David Barry and Michael Barry each own 45% of Ironstate and Lisa Barry owns the remaining 10% of the Company. Ironstate is a fully diverse real estate firm having an extensive portfolio of luxury rental apartments, condominiums, hotels, retail, recreational and commercial ventures. Ironstate owns and manages the majority of its portfolio. In addition, Ironstate is currently engaged in the active development of over \$1 billion of residential and hospitality real estate projects.

Some of Ironstate's notable recent projects include: The Shipyard, a mixed-use development of 1,160 residences, 65,000 square feet of retail shops, a one-acre park, ferry stop and marina on the Hudson Riverfront in Hoboken; Port Liberte, a 1,650-unit waterfront condominium community facing the Statue of Liberty in Jersey City; 333 River Street, 526 premium rental residences and retail shops along Hudson River facing Manhattan in Hoboken; Pier Village, a Victorian-inspired village featuring 543 luxury rental residences, a boutique hotel and 100,000-plus square feet of entertainment and lifestyle retail shops, including a beach club, gourmet restaurants and boutique shops on the oceanfront in Long Branch, NJ; The Bungalow Hotel, a boutique hotel featuring 40 stylish guest rooms at the oceanfront in Long Branch; The W Hoboken Hotel & Residences, an iconic new 25-story hotel featuring 225 guest rooms and 40 condominium residences on the Hoboken waterfront; and 50 Columbus, a 400-unit super luxury rental building in the Grove Street section of Jersey City.

The remaining 50% of the Harrison Hotel project is owned by The Pegasus Group L.L.C., which is split in ownership between Michael Richman and Richard Miller. The Pegasus Group was formed in 1997 as an owner and developer of multi-tenant real estate properties and is headquartered in Hoboken, New Jersey.

Project Uses

<i>Uses</i>	<i>Total Project Costs</i>	<i>ERG Eligible Project Costs</i>
Acquisition & Land	\$ 5,150,000	\$ 5,150,000
Hard Costs	\$ 22,976,940	\$ 22,976,940

Soft Costs	\$ 3,547,854	\$ 3,547,854
Development Fee	\$ 1,736,604	\$ 0
Financing Costs	\$ 1,550,813	\$ 1,550,813
FFE & Constr. Add ons	\$ 2,686,320	\$ 2,686,320
Permits/Fees	\$ 343,008	\$ 343,008
Pre Opening Expenses	\$ 300,000	\$ 0
TOTAL USES	\$ 38,291,539	\$ 36,254,935

ERG eligible amount above excludes \$2.04 million in costs related to pre opening expenses (open ceremony and marketing costs) and developer fees.

Project Sources

The Applicant will be utilizing the following sources to complete the project:

<i>Sources</i>	<i>Amount</i>
Construction Loan	\$ 22,974,923
Developer Equity	\$ 15,316,615
TOTAL SOURCES	\$ 38,291,539

The Applicant continues to negotiate the terms and conditions of the loan listed above (including the pledge of the ERG to the lender as additional security) as these are subject to market conditions at the time of closing. However, the Applicant did provide a letter from their bank, PNC Financial Services Group, who has extended Ironstate, credit facilities in excess of \$145,000,000 and will consider providing an additional facility in the approximate amount of \$23,000,000 secured by the proposed hotel project.

The project sources and uses above reflect the project with the ERG subsidy not included. The project gap is calculated based on the Equity Internal Rate of Return and Cash-on-Cash Yield identified in the gap analysis which will be discussed below. These returns are calculated with and without the ERG cash flow.

Gap Analysis

EDA staff has reviewed the application to determine if there is a shortfall in the project development economics pertaining to the return on the investment for the developer and their ability to attract the required investment for this project. Staff analyzed the pro forma and projections of the project and compared the returns with and without the ERG over 10 years.

With ERG	Without ERG
Equity IRR 16.27% (Market Range = 15-20%)	Equity IRR 8.81% (Market Range = 15-20%)
Cash on Cash Yield 8.13% (Market Range = 8-10%)	Cash on Cash Yield 7.20% (Market Range = 8-10%)

As indicated in the chart above, the project would not otherwise be completed without the benefit of the ERG. **With the benefit of the ERG, the Equity IRR is 16.27% and the Cash on Cash Yield is 8.13%, making the returns within the market ranges provided by the EDA's contracted consultant Jones Lang Lasalle.** The additional revenue from the prospective ERG enables the project to move forward and is an enhancement to the cash flow utilized by the lender in underwriting their financing.

Net Positive Benefit Analysis

The Authority has conducted the required Net Benefit Analysis and has found that the present value of the Net Positive Benefits to the State at a 6% discount rate over a 20 year period is \$18.55 million. The Net Positive Benefit calculation included:

- 1) 100% of the incremental annual corporate business tax;
- 2) 100% of the incremental gross income tax;
- 3) 100% of the incremental one-time tax generated from the Project's construction;
- 4) 100% of the incremental indirect tax revenues from spending and earnings;
- 5) 0% of the sales tax generated by the retail portion of the Project

100% of all the above tax revenue with the exception of sales tax was considered in calculating the Net Benefits for the Harrison Hotel Project. Following the policies of the EDA, sales taxes were excluded from the calculation as the project is not deemed a destination. Therefore, it is assumed that there will be no additional new sales tax benefits to the State.

Other Statutory Criteria

In order to be eligible for the program, the project must exhibit the following:

The economic feasibility and the need of the redevelopment incentive agreement to the viability of the project. The likelihood that the project shall upon completion is capable of generating new tax revenue in an amount in excess of the amount necessary to reimburse the developer for the project costs as provided in the redevelopment agreement.

A review of the market study performed by Wave Hospitality Advisors L.L.C. (as of December 6, 2010) coincides with the various financial and operating projections provided by the Applicant and deems the figures as reasonable. The study cites the project's close proximity to Newark's Central Business District, the PATH, University Heights and various venues, including the Red Bull Arena and the Prudential Center as qualitative factors that will drive demand for hotel rooms in Harrison. Furthermore, the Wave Hospitality Advisors L.L.C. argues that there are no upscale chain hotels in the Harrison and the Element would fill this void in the marketplace. The report includes relevant hotel metrics for comparable hotels in the region, which is critical data to forecast the project's net operating income and financial viability. The financial analysis without the ERG indicates a rate of return that is considered below the acceptable market range. However once the ERG is considered in the analysis, the developer's returns are sufficient enough to undertake the Project. Based on the expected generation of \$18.55 million of incremental direct annual gross income, sales and other eligible taxes over 20 years, and a 75% rebate of eligible taxes, there are adequate funds to support the reimbursement of taxes to the Applicant as outlined in the analysis. The Project's financial

returns mentioned previously (before and after the ERG) demonstrate the need for the incentive grant agreement and represent an enhancement to obtain the funding necessary to complete the Project.

The degree to which the redevelopment project within a municipality which exhibits economic and social distress, will advance State, regional, local development and planning strategies, promote job creation and economic development and have a relationship to other major projects undertaken within the municipality.

The Project is located in the Town of Harrison, Hudson County, New Jersey. Hudson County is located in northeast New Jersey in the shadow of New York City and was historically a heavy industrial area that now finds itself burdened with many of the economic issues typical of historic urban core communities. The extent of the economic and social distress in Harrison is evident in population statistics related to the unemployment rate, population levels below the poverty line, per capita income levels, and general condition of the municipal tax base. With a population of 13,620 people in 2010, a decrease of more than 5% from the population one decade ago, the tax base is decreasing. Harrison ranks 632nd out of 702 incorporated or census-designated places in New Jersey in per capita income. In addition, the unemployment rate in Harrison is over 8% and 13.3% of city's population is below the poverty line. The Harrison Station Hotel Project is located at the intersection of Frank E. Rodgers Boulevard and Somerset Street, at the heart of a 250-acre area with minimal current tax and revenue generation due to the derelict, historical industrial use of the area. This area is designated in the Waterfront Redevelopment Plan for reinvestment and development to generate economic growth. The City of Newark, New Jersey's most populous city and located directly across the Passaic River from Harrison, suffers from a poverty rate of 24%, is 693rd out of 702 incorporated or census-designated places in New Jersey in per capita income, and has an unemployment rate of almost 15%. The proposed \$38.3 million investment to develop the Harrison Station Project's new hotel and mixed-use retail space is projected to create 172 new jobs. The Harrison Station Hotel Project is located on direct access routes for public transit and is accessible to an economically disadvantaged workforce.

Recommendation

Authority staff has reviewed the Harrison Hotel 1 L.L.C. application and finds that it is consistent with eligibility requirements of the Act. The Treasury has reviewed the application and notified the Authority of the adequacy of the project's estimated tax revenues and specified the percentage reimbursement of total project costs. Therefore, it is recommended that the Members approve the application and authorize the CEO of the Authority to execute an Incentive Grant Agreement with the Applicant and the State Treasurer, subject to final review and approval of the Office of the Attorney General. All disbursements under the ERG program are subject to annual appropriation by the New Jersey State Legislature.

Closing of the Incentive Grant Agreement and the reimbursement of any taxes is contingent upon Harrison Hotel 1 L.L.C. meeting the following conditions regarding the Project:

1. Financing commitments for all funding sources for the Project consistent with the information provided by the Applicant in its application to the Authority for the ERG; and
2. Evidence of site control and site plan approval for all properties within the Project;

Reimbursement shall commence upon:

1. Completion of construction and issuance of a permanent certificate of occupancy;
2. Submission of a detailed list of all eligible costs, which costs shall be satisfactory to the NJEDA; and
3. New tax revenues have been paid to the NJ Treasury and appropriated.

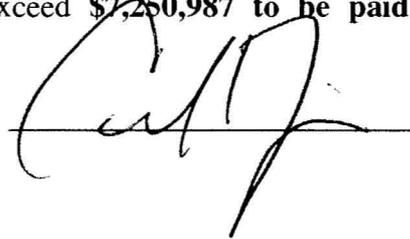
The NJ Treasury annually tracks taxes received from job sites and remits reimbursement equal to a percentage of funds collected during the year.

It is recommended that the members authorize the CEO of the EDA to execute any assignment agreements necessary to effectuate this transaction.

Total Eligible Project Costs: \$36,254,935

Eligible Taxes for Reimbursement: Sales and other eligible taxes not to exceed \$7,250,987 over 20 years.

Recommended Grant: 20% of actual costs, not to exceed **\$7,250,987 to be paid over a maximum period of 20 years.**

A handwritten signature in black ink, appearing to read 'Riley T. Corr', is written over a horizontal line.

Prepared by: Riley T. Corr

NIEDA Economic Impact Model

NIEDA Economic Impact Model	
County Number	9
Address	3 Somerset, Harrison, NJ
County	Hudson
Ongoing Jobs(Direct)	172
One Time Jobs(Direct)	232

State & Local Direct Ongoing	Services	Select Industry Sector
Sales Tax	\$0.00	@9%
Corporate Income Tax (CIT)	\$0.09	@9%
Gross Income Tax	\$0.25	@4%
Misc. State Tax Revenue	\$0.14	Input
Property Tax (Default to Total Const Value*3%)	\$0.17	
Direct Ongoing Annual Taxes	\$0.64	a

State Indirect Ongoing	
Annual Corp Spending	\$32.37 <small>Direct Output Composite</small>
Final Demand Output Multiplier	1.52x <small>Direct Output Composite Multiplier</small>
Indirect Annual Spending	\$16.94 <small>Direct Output Composite*Direct Multi-1</small>
At 3.5 % Tax Rate	\$0.59 <small>b</small>
Annual Payroll	\$6.20 <small>Direct Earnings Composite</small>
Indirect Effect Earnings Multiplier	1.24x <small>Direct Earnings Composite Multiplier</small>
Indirect Earnings	\$1.51 <small>Direct Earnings Composite*Indirect Multi-1</small>
At 4% Tax Rate	\$0.06 <small>c</small>
Indirect Ongoing Annual Taxes	\$0.55 <small>b</small>

Total State Ongoing Net Benefits	
Annual Net Benefit	\$1.29 <small>a+b+c</small>
Cumulative Net Benefit (20yrs w/ 3% yearly inflation)	\$34.76
Present Value @6%	\$18.84 <small>d</small>

One Time	
Construction Value	\$31.1 <small>Input</small>
Direct One Time Taxes on Spending	\$1.1 <small>Equals to total value of project is NOT in NIEDA model</small>
Direct Construction Multiplier	1.46x
Indirect One Time Spending	\$14.25
Spending Tax Rate	3.5%
Ind One Time Taxes on Spending	\$0.5
Assumed Portion of Const. on Labor	50% <small>Input</small>
Dir One Time Earnings	15.55
Earnings Tax Rate	5% <small>Input</small>
Dir One Time Taxes on Earning	\$0.8
Direct Effect Earnings Multiplier	1.37x
Indirect One Time Earnings (50% of Construction)	5.79
Earnings Tax Rate	5% <small>Input</small>
Ind One Time Taxes on Earnings	\$0.3
Total One Time Tax Benefits	\$1.6

Total State Benefits	
Total One Time Tax Benefits	\$1.6 <small>e</small>
Total State Ongoing Benefits (PV @ 6%)	\$18.8 <small>d</small>
Total Benefits	\$20.40 <small>d+e</small>
Implied Maximum Loan at 110% Coverage Ratio Before Adjustments	\$18.55

Adjustment Test 1	
Maximum HUB Award Test	
Total Qualifying Costs (NIEDA Cost Analysis sheet)	\$38.3
Max ERG Amount	\$18.5
Minimum of [Max ERG@110%&Total Qualifying Cost]	\$18.5

Adjustment Test 2	
Switch	
Freight or Urban Grocery Store Site? (Yes=1, No=0)	<input type="checkbox"/>

Adjustment Test 3	
Is the Capital investment => \$50M?	No
Are new or at risk jobs => 250	No
This transaction does not meet minimum thresholds	

URBAN TRANSIT HUB TAX CREDIT PROGRAM



TO: Members of the Authority

FROM: Caren S. Franzini, Chief Executive Officer

DATE: November 9, 2011

SUBJECT: Urban Transit Hub Tax Credit (UTHTC) Policy

Request

The Members are asked to consider: (1) adoption of a policy regarding the methodology used in determining the amount of a UTHTC award when fewer than 200 new full time jobs are created at a qualified business facility and when such project's award is limited by the Net Benefits Test. In these cases, the new practice would be to reduce the amount of tax credits an applicant can claim by 20% of the amount of the credits supported by the Net Benefits Test and not the full amount of eligible capital costs, and; (2) to affirm that when evaluating new jobs for purposes of determining eligibility for the 100% credit that the new jobs are net new to the applicant's statewide employment.

Background & Proposed Methodology

In the UTHTC program, an applicant can be awarded 100% of its eligible capital investment when it employs at least 250 full time employees at an eligible project site. If 200 of those full time jobs are not new to the State, then the award is reduced by 20%. However, if the project's Net Benefits is determined to be less than the eligible capital costs, then the award is reduced to an amount that satisfy's the net benefits test. Heretofore, since the reduced award was less than the eligible capital costs, the reduced award would satisfy both the 20% reduction (if the 200 new jobs were not created) and the net benefits test. It is conceivable that an applicant could have little or no reduction in credits approved if it did not create 200 new jobs using this practice.

For example, if a company has \$100 million in eligible capital costs with 250 new jobs at the site and a net benefit of \$200 million, it would be eligible for \$100 million in credits over ten years provided it maintained those jobs each year. In any year that there were not at least 200 new jobs at the project site, then the award would be reduced by 20% for that year.

Alternatively, if the net benefits for the project only provided for a \$50 million award, then currently the company would receive the \$50 million award whether or not it met the 200 new job requirement. Under this approach, the applicant's benefits were reduced by greater than the 20% required under the statute from its eligible \$100 million in capital investment and it still

satisfied the net benefit test. Under the proposed revised practice, if the company did not meet the 200 new job standard this \$50 million award would be reduced to \$40 million.

In addition, to clarify how an applicant will get credit for new jobs, the new jobs created must not only be at the project qualified business location, but must also result in an overall net increase in the Applicant's statewide employment.

This revised policy will allow the Authority to fairly and equitably provide appropriately sized tax credit awards to Applicants in accordance with their compliance to the job creation requirement regardless of the size of their capital investment.

Recommendation

It is recommended that the Members (1) approve this policy to set the 20% reduction in the amount of a UTHTC award based on the amount supported by the Net Benefits Test rather than 100% of the eligible capital costs when fewer than 200 new full time jobs are created at a qualified business facility in instances when such project's award is limited by the Net Benefits Test and (2) promulgate regulations to their effect if it is determined to be necessary.



Prepared by: D. Lawyer

MEMORANDUM

To: Members of the Authority

From: Caren S. Franzini
Chief Executive Officer

Date: November 9, 2011

Subject: Prudential Financial, Inc. application for an Urban Transit Hub Tax Credit.

Purpose:

This memorandum addresses the legal matters of the applicant, Prudential Financial, Inc., related to the company's application for an Urban Transit Hub Tax Credit.

Background:

Prudential Financial, Inc. ("Prudential") is publicly traded company on the New York Stock Exchange. This entity and its affiliates offer a wide array of products and services, including life insurance, mutual funds, annuities, pension and retirement-related services and administration, asset management, banking and trust services, real estate brokerage franchises and relocation services.

The Company has approximately 53,000 employees worldwide with offices and operations in the United States, Europe, Asia and Latin America. One of Prudential's principal indirect wholly owned subsidiaries is Prudential Insurance Company of America. Prudential Insurance, founded in 1875 in New Jersey, is one of the oldest life insurance companies in the United States and was converted from a mutual life insurance company to a stock insurance company in December 2001.

Prudential is seeking an Urban Transit Hub Tax Credit as the owner of a proposed new office facility on an eligible site, with at least 250 employees, in Newark, New Jersey for a tax credit in the amount up to \$250,785,077 or \$25,078,508 annually for 10 years.

The business activities of Prudential and its affiliates are regulated by a number of federal, state, and international laws; and also self regulatory organization rules. From time to time and as is the case with entities of the applicant's size and industry, Prudential has been involved in litigation and become the subject of examinations, inquiries and investigations.

Analysis of Litigation as Grounds for Possible Disqualification:

Pursuant to the Authority's regulations on disqualification (N.J.A.C. 19:30-2.1 et seq.), the Authority may decline to give financial assistance, or approval as a tenant in any Authority financed project, or contract with any persons for certain reasons which include: commission of an offense indicating a lack of business integrity; violation of any law governing the occupations or professions of regulated industries; and violation of any law which may bear upon a lack of responsibility or moral integrity.

Listed below are the facts of the actions that relate to the applicant and the fines assessed and paid as reviewed by staff with the guidance of the Attorney General's Office:

August 2006 Market Timing Trading in Mutual Fund Shares

On August 28, 2006 Prudential Equity Group, LLC (PEG), a broker-dealer subsidiary of Prudential Financial Inc., entered into a 5-year deferred prosecution agreement (DPA) with the U.S. Department of Justice (DOJ) in which PEG admitted to criminal wrongdoing in connection with deceptive market timing trading in mutual fund shares from 1999 - 2003. PEG agreed to payment of \$600 million in fines, restitution and penalties; continued cooperation with the DOJ and compliance between PEG and the Securities and Exchange Commission (SEC) and other governmental agencies as long as such agreements remained in effect.

The criminal information filed by the Department of Justice specifically charged PEG with the following:

From on or about January 1, 1999 through on or about June 30, 2003, in the District of Massachusetts and elsewhere, defendant herein, did knowingly and willfully, by the use of means and instrumentalities of interstate commerce and of the mails, directly and indirectly aided and abetted others in (a) employing a device, scheme and artifice to defraud, (b) making untrue statements of a material fact and omitting to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, and (c) engaging in acts, practices and courses of business which operated as a fraud and deceit upon persons, in connection with the purchase and sale of securities, all in violation of 15 U.S.C. §§ 78j(b) & 78ff(a) and 17 C.F.R. § 240.10b-5 and 18 U.S.C. § 2.

According to the government, numerous former brokers at Prudential Securities, Inc. (PSI), which is PEG's predecessor entity, engaged in a scheme to defraud mutual funds and their shareholders by using deceptive practices to place thousands of prohibited market timing trades on behalf of the brokers' clients – mainly hedge funds.

Furthermore, according to the government, on multiple occasions, the brokers' deceptive conduct came to the attention of senior management at PSI, who failed to stop the activity. These trades generated commissions for the brokers and illicit profits for their clients by manipulating trade information sent over the automated mutual fund trading system PSI used to send trades to mutual funds. Brokers were able to circumvent efforts by the mutual funds to block their market timing trading using this automated system by placing their trades in multiple accounts, with multiple identities, to make it appear that the trades were coming from many different, unrelated brokers representing different and unrelated clients.

Market timing involves the frequent buying and selling of fund shares and can be disruptive to a mutual fund because it must then retain more cash than would otherwise be necessary. The activity can also increase commissions, thereby lowering returns. Many mutual funds prohibit this type of trading of their funds and actively monitor trading activity to prevent it. In this case, PSI brokers engaged in fraudulent conduct to conceal their identities, their clients and the number and dollar value of trades to evade the funds' short term trading prohibitions.

The DOJ also entered into a separate letter agreement dated August 28, 2006 with Prudential, PEG's parent company. Under the terms of this letter agreement, Prudential was required to cooperate with the Justice Department in any ongoing investigation and maintain policies and procedures relating to the integrity of the compliance functions across its various affiliate entities.

More specifically, the letter agreement required Prudential's General Counsel to periodically report to the Prudential Board of Directors Audit Committee regarding the appropriateness and effectiveness of the compliance plan. The agreement also required the General Counsel to provide the reports to the U.S. Attorney in the District of Massachusetts and to certify that the reports include all material information regarding the effectiveness of the compliance plan.

As part of the \$600 million global resolution, \$270 million was paid into an SEC "Fair Fund" set up to compensate victims of the fraudulent activity. As of April 29, 2011 the Fair Fund distributions were completed. The \$300 million criminal penalty was paid directly to the U.S. Treasury and \$25 million was paid to the United States Postal Inspection Service (USPIS) Consumer Fraud Fund to assist in future fraud detection and deterrence efforts. There was also a \$5 million civil penalty that was paid to the Secretary of the Commonwealth of Massachusetts.

To date, several individuals, long since separated from the company, have pleaded guilty to wire and securities fraud charges. The case was investigated by the U.S. Attorney's Office in the District of Massachusetts, the USPIS, the SEC, the New Jersey Bureau of Securities and the Secretary of the Commonwealth of Massachusetts' Securities Division.

Mitigating Factors:

Several mitigating factors regarding the mutual fund market timing activities warrant consideration. Primarily, the business formerly known as PSI is no longer a wholly-owned subsidiary of Prudential Financial and has not been wholly-owned since July 1, 2003.

According to the company, PSI was contributed to a joint venture with Wachovia (now Wells Fargo) even before these activities were investigated. Prudential subsequently sold any remaining interest in PSI to Wachovia in 2009 and Prudential is no longer involved in the retail brokerage business.

Also, according to the company, in 2006 Prudential voluntarily undertook a series of enhancements to the Company's compliance program. Among other actions, Prudential implemented the following:

- Hired a new Chief Compliance Officer who formally reports to the Audit Committee of the parent Board of Directors on a semi-annual basis, reports to the Chairman of the Board on a quarterly basis, and is subject to day-to-day supervision by the Company's General Counsel.
- Produced and maintains a formal, written Compliance Plan that is reviewed the Audit Committee on a semi-annual basis.
- Increased the personnel in the Compliance and Ethics programs from approximately 325 to over 400.
- Instituted an enterprise wide, mandatory compliance training program.

- Appointed a new Business Ethics Officer and expanded the group to include Ethics Officers in each business unit across the entire Company. In addition, Prudential enhanced the Ethics Helpline to incorporate all languages to be available to all employees worldwide on a 24/7 basis.
- Completely revised the Company Code of Conduct.
- Revised and refreshed policies, procedures and training around a number of regulatory requirements, including, but not limited to those pertaining to the Foreign Corrupt Practices Act, anti-money laundering laws, the U.S. Treasury's Office of Foreign Assets Control and the prevention of the release of material non-public information and/or insider trading.
- Obtained periodic outside, third-party expert review of the Company's compliance program.

The company submitted for review copies of its comprehensive compliance plan, which was most recently updated in August of 2011 and also the corporate code of conduct. Furthermore, the five-year term of the settlement agreement expired recently without breach at any point. We also believe that this matter should also be viewed in the context of Prudential's many other activities as a good corporate citizen - one committed to Newark since the company's inception in 1875.

Conclusion:

Staff has performed a review of this action with guidance from the Attorney General's Office. Staff has weighed the seriousness of the offenses in conjunction with the mitigating factors presented by Prudential and staff does not believe disqualification is warranted.



Prepared by: Marcus Saldutti



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

DATE: November 9, 2011

SUBJECT: Urban Transit Hub Tax Credit Program
Prudential Financial, Inc. and / or Affiliates

Request

The Members are asked to approve the Urban Transit Hub Tax Credit (“UTHTC”) program application for Prudential Financial, Inc. and / or Affiliates (“Prudential” or “the Company” or “the Applicant”) under P.L. 2007, c.346, P.L. 2008, as amended on July 26, 2011, as the owner in the proposed new office facility on an eligible site, with at least 250 employees, in Newark, New Jersey for a tax credit in the amount up to \$250,785,077 or \$25,078,508 annually for 10 years (which equates to the net benefits nominal value). The Project’s total qualified cost is \$341,637,738. The net benefits to the State are calculated over 20 years reflecting 100% of all qualified tax revenue.

Project Description

Prudential Financial, Inc. currently has several owned and leased office buildings in Newark (namely 751 Broad Street, 213 Washington Street and Gateway Two, Three and Four all of which are within proximity to each other) which collectively employ 4,740 full time staff of which approximately 2,050 are at the Gateway buildings. Additionally, the Company has 2,695 staff in other municipalities in New Jersey as well as 315 employees located in the New York City region plus an estimated 20,000 employees in the US. Due to the operational inefficiencies, capacity constraints and leases expiring in 2014 mainly relating to the Gateway facilities, Prudential has performed a comprehensive evaluation of its Newark occupancy to identify the optimal location strategy. The Company is proposing to construct a new LEED certified office tower totaling 600,000 ± square feet along with a parking structure for 1,600 vehicles for executive, managerial and administrative staff at 3 Center Street, Newark (adjacent to the New Jersey Performing Arts Center). The Company will construct this new facility and locate 400 new jobs (from a combination of relocations from out-of-state estimated at 100 employees and business growth estimated at 300 employees) plus 2,050 existing jobs (mainly from the Gateway facilities). Further, Prudential’s occupancy strategy, including the proposed new facility construction, is designed to accommodate continued job growth of an additional 50 to 75 jobs per year, for an additional 500 to 750 new jobs over 10 years, following occupancy of the new building. This annual job growth is subject to economic, industry and market conditions and represents a conservative projection at approximately half the annual rate of employment growth achieved over the previous five years. As part of its overall realignment of occupancies in Newark and to make space available within

their Newark facilities to accommodate future headcount growth (both prior to and after construction of the new building) additional capital improvements will need to be made to the 751 Broad and 213 Washington Street facilities (and are included in the eligible project costs). Staff has concluded that while the three facilities (3 Center Street, 751 Broad Street and 213 Washington Street also referred to as "Project Sites") are not contiguous but are to be occupied by entities under common ownership of the Applicant (as well as have similar design team and are all part of the Applicant's overall strategic occupancy plan) they qualify as a complex of buildings. The Project Sites are deemed a complex of buildings within HUB rules (and all three of these sites are located within ½ mile of a transit station and HUB eligible). It is noted that there are no jobs considered at risk in this project.

Prudential has applied for the UTHTC to make their site realignment and consolidation a financially viable solution to their current occupancy needs in the Newark region. The Project Sites have been verified to be in an eligible municipality and located within one-half mile of an Urban Transit Hub (New Jersey Transit Broad Street Station and Light Rail stop at NJ Performing Arts Center).

Under the UTHTC law, the applicant must employ at least 250 full time employees at the Project Sites (or qualified business facility) by January 13, 2016. Prudential anticipates meeting this requirement in the third quarter of 2014 when construction on the new facility will be near completion with initial occupancy of 2,450 full time employees. The Applicant will be required to maintain full time employment in each of the ten years of the tax credit period of at least 80% of the total Statewide employment as of 12/31/2010. While Prudential has indicated three possible long term site solution options, 1] the new construction (and renovation of their two existing sites) being outlined as part of this project (as well as several other sites in Newark proximate to Penn Station), 2] the renewal and restacking within the Gateway complex (requiring substantial capital investment for modernization and environmental efficiency) and 3] the relocation to existing facilities in the NJ/NY region, the most expensive is new construction. The other two options both create substantial operational disruption and neither allow the Company to fully realize its sustainability and modernization goals. New construction presents the opportunity to maximize space planning, recruitment and sustainability goals with minimal operational disruption with the key drawback being that they are not financially viable under current market conditions and hence economic incentives like the UHTC are required.

Prudential focused on three compelling sites, each of which presents extremely attractive opportunities to undertake an exciting urban campus development to provide for the kind of modern, sustainable and productive workplace for their employees that will help them attract the best talent in the industry. Prudential is focusing on the 3 Center Street location and concluded that this development is best suited to fulfill their specific needs for a mixed-use urban campus environment while offering them the opportunity to maximize the catalytic impact of their investment and employment. The adjacency of the Performing Arts Center, Theater Square and related amenities, the residential development planned for the adjacent site, planned improvements to Military Park and waterfront, all constitute an established and well-planned community of coordinated elements that offer Prudential the opportunity to complete the master plan vision that the State and City have for this development since its inception 25 years ago. Prudential plans to acquire an adjacent site to provide for future growth and to assure the kind of total campus environment that the firm envisions for this location.

The estimated total capital investment in the project as it relates to the acquisition of the land and the development of the site is just below \$369 million. The eligible capital investment of the costs relative to the development of the applicant's space was determined to be \$341,637,738 which excludes land, moving costs and equipment with useful life of less than five years. The Authority recommends approval of this project for a tax credit in an amount up to \$250,785,077 based on the results of the net

benefit analysis and qualifying cost breakdown. Prudential expects to begin building construction in the third quarter of 2012 and be completed by the third quarter of 2014.

Project Ownership

Prudential Financial, Inc. is publicly traded company on the New York Stock Exchange. This entity and its affiliates offer a wide array of products and services, including life insurance, mutual funds, annuities, pension and retirement-related services and administration, asset management, banking and trust services, real estate brokerage franchises and relocation services. The Company has approximately 53,000 employees worldwide with offices and operations in the United States, Europe, Asia and Latin America. One of Prudential Financial Inc.’s principal indirect wholly owned subsidiaries is Prudential Insurance Company of America (“PRU”). PRU was founded in 1875 in New Jersey and is one of the oldest life insurance companies in the United States (and was converted from a mutual life insurance company to a stock insurance company on 12/18/2001).

Prudential is a publicly traded entity whose stock is listed on the NYSE (long term debt is rated A from Standard and Poors, Baa2 from Moody’s and financial strength rating of A+ from A.M. Best Company). Fiscal year end 2010 revenues were \$31 billion with consolidated net income of \$3.1 billion. Total assets under management were \$784 billion with \$3 trillion of life insurance in force worldwide and their shareholder equity was \$33 billion as of 12/31/2010.

Project Budget for the 600,000 Square Foot Development:

Item	Total Development Cost	Eligible Capital Investment
Land, Site Work, Building Shell, Contingency and Parking	\$208,760,000	\$186,760,000
Interior Construction Costs, Furniture and Equipment, Moving and Contingency	\$104,487,500	\$99,237,500
Architect & Engineering, Insurance, Project Administration, Testing and General Conditions	\$30,640,238	\$30,640,238
Finance Fees and Soft Costs	\$25,000,000	\$25,000,000
TOTAL	\$368,887,738	\$341,637,738

Net Positive Benefit Analysis

Pursuant to the UTHTC rules, the Authority calculates the Net Positive Benefit of the project based on the new jobs to the state (as there are no jobs deemed “at risk” from leaving the State). From a net benefit perspective, there are 400 new jobs with average salaries of \$72,000 (average salary is RIMS yet the Applicant indicated they anticipate average salaries of \$150,000 and also estimated that the jobs are comprised of 60% insurance carriers and related positions, 30% funds, trusts and other financial vehicles and 10% administrative). Additionally, the Net Benefit Analysis assumes that there will be no sales taxes collected on construction materials as all the sites are within the UEZ boundaries.

The Authority conducted the required Net Benefit Analysis for this project based on 400 new jobs at the Project Site and has found that the cumulative net present value of the Net Positive Benefits to the state of New Jersey over 20 years is approximately \$203 million using a 6% discount rate (which equates to a nominal value of \$250,785,077). This total Net Benefit to the State includes stimulus from one-time construction costs associated with the proposed Newark facility, direct tax revenue (Corporate Business Tax, Gross Income Tax, Real Estate Tax and Utility Tax) and the indirect tax revenue expected to be generated by the Company over 20 years. The value of the tax credit award must be at least 110% of the net benefits which equates to \$184.6 million on a present value basis.

The nominal value of the tax credits is \$250,785,077 representing the maximum cumulative value of the award over 10 years. Based solely on the amount of capital investment, the Applicant could have received a grant of \$341,637,738, however the Authority has determined that the maximum tax credit award shall be limited to the lesser of (a) the qualified capital investment or (b) the calculated net benefit amount (reflecting the 110% test). In this project, the net benefit establishes the maximum tax credit award. As such, should the Applicant not create 200 new jobs at the Project Sites, the maximum tax credit grant would be reduced by 20% to \$20,062,806 (from \$25,078,508) for any year in which the 200 new job requirement is not satisfied.

As of September 1, 2011, a total of \$445,699,565 Commercial UTHTC Credits and \$105,748,677 Residential UTHTC Credits have been approved for a total of \$551,448,242 for the UTHTC program.

Recommendation

Staff has reviewed the application for consistency with the Act and Rules, as amended, implementing the UTHTC Program and recommends approval of the following:

- 1] The Members of the Authority have reviewed staff's finding of fact analysis and concurs that the project qualifies as a complex of buildings (with all three sites eligible for HUB).
- 2] Application for a tax credit in a maximum amount estimated at \$250,785,077. The NJEDA will provide the Applicant with an approval letter for the total amount of the credit.

Pursuant to the rules governing the program, the project will need to meet certain milestones within 12 months of approval in order to maintain the project's credit approval.

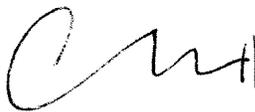
These milestones include:

- 1) Site control;
- 2) Site plan approval;
- 3) Other project specific items which may be added.

Upon project completion, the Authority shall issue a tax credit certificate based on the final qualified costs, not to exceed the approved amount. The tax credit certificate shall indicate that the Applicant may take one tenth of the total credit annually over ten years when accompanied by a letter issued by NJEDA indicating the project is compliant with program guidelines.

The Applicant will be required to maintain full time employment in each of the ten years of the tax credit period of at least 80% of the total Statewide employment (which was 7,868 as of 12/31/2010, the last tax accounting year end prior to application) or they shall forfeit tax credits in any year until such time as these thresholds have been re-instated. The Applicant has also consented to a proportional reduction in the tax credits in any year prior to their reaching the projected employment level of 400 new jobs (which the net benefit analysis was based on). As such, prior to reaching the 400 new job threshold, in any year where the new jobs are below 400 the tax credit award for such year shall be reduced by the percentage the actual new jobs created are below the projected 400 new jobs. For example, if in year one of the ten year tax credit term the Applicant has achieved 375 new jobs, or ninety-three percent of the projected 400 new jobs, the tax credit for that year would be reduced by seven percent. Upon achieving the 400 new jobs, the Applicant will no longer be subject to the proportional reductions, but will continue to be subject to the Statutory 20% reduction in the amount of their tax credits for any year in which there are not at least 200 new jobs (or greater) at the Project

Sites. In addition, new jobs are only credited when those new jobs are located at the Project Sites and there has been a net increase in the Applicant's statewide jobs of at least the same amount as the new jobs at the Project Sites (i.e. over and above the 7,868 full time employees at 12/31/2010 reported by the Applicant and their related entities as per their application with the Authority).



Caren S. Franzini
Chief Executive Officer

Prepared by: Michael Conte

NJEDA Economic Impact Model			Notes
NJEDA Economic Impact Model			
County Number		7	
Address			
County		Essex	
Ongoing Jobs(Direct)		400	
One Time Jobs(Direct)		1343	
State & Local Direct Ongoing			
	Services	Select Industry Sector	
Sales Tax	\$0.00	@7%	
Corporate Income Tax (CBT)	\$0.00	@9%	
Gross Income Tax	\$1.15	@4%	
Misc. State Tax Revenue	\$0.79	parking, unemployment and city payroll per applicant	
Property Tax (Default to Total Const Value*3%)	\$2.40	\$4 sf	2,400,000
Direct Ongoing Annual Taxes	\$4.35	a	
State Indirect Ongoing			
Annual Corp Spending	\$203.49	Direct Output Composite at 50%	
Final Demand Output Multiplier	2.00x	Direct Output Composite Multiplier	
Indirect Annual Spending	\$203.60	Direct Output Composite*(Direct .Mult.-1)	
At 3.5 % Tax Rate	\$7.13	b	
Annual Payroll	\$28.85	Direct Earnings Composite	
Indirect Effect Earnings Multiplier	2.55x	Direct Earnings Composite Multiplier	
Indirect Earnings	\$44.84	Direct Earnings Composite*(Indirect .Mult.-1)	
At 4% Tax Rate	\$1.79	c	
Indirect Ongoing Annual Taxes	\$8.92	b + c	
Total State Ongoing Net Benefits			
Annual Net Benefit	\$13.27	a+b+c	
Cumulative Net Benefit	\$356.51		
Present Value @6%	\$193.20	d	
One Time			
Construction Value	\$180.0	@300psf	
Direct One Time Taxes on Spending	\$0.0	Count to total only if project is NOT in a UEZ zone.	
Direct Construction Multiplier	1.53x		
Indirect One Time Spending	\$95.09		
Spending Tax Rate	3.5%		
Ind One Time Taxes on Spending	\$3.3		
Assumed Portion of Const. on Labor	50%	input	
Dir One Time Earnings	90.00		
Earnings Tax Rate	5%	input	
Dir One Time Taxes on Earning	\$4.5		
Direct Effect Earnings Multiplier	1.45x		
Indirect One Time Earnings (50% of Construction)	40.30		
Earnings Tax Rate	5%	input	
Ind One Time Taxes on Earnings	\$2.0		
Total One Time Tax Benefits	\$9.8	e	
Total State Benefits			
Total One Time Tax Benefits	\$9.8	e	
Total State Ongoing Benefits (PV @ 6%)	\$193.2	d	
Total Benefits	\$203.04	d+e	

Implied Maximum Loan at 110% Coverage Ratio Before Adjustments	\$184.58	
Adjustment Test 1		
Maximum HUB Award Test		
Total Qualifying Costs (NJEDA Cost Analysis sheet)	\$247.0	
Max Loan Amount	\$184.6	
Minimum of (Max loan@110%&Total Qualifying Cost)	\$184.6	
Estimated Nominal Value of Tax Credits	250.78	184.58 gross up value



TO: Members of the Authority

FROM: Caren S. Franzini, Chief Executive Officer

DATE: November 9, 2011

SUBJECT: **Transit Village Associates LLC (P34633)**
Urban Transit Hub Tax Credit Program (“UTHTC”)

Request

Modify the existing approval of the HUB tax credit to increase the nominal award amount over ten years from \$55.1 million to \$76.6 million. The present value of the HUB tax credit will also be increased from \$40.5 million to \$56.4 million. This modification is requested reflecting (1) reapplication to increase the award amount from 20% to 35% of eligible costs for a residential project as allowed by the 2011 amendment to the UTHTC program, and (2) the applicant’s inability to secure certain financing anticipated in the previous application.

Background

In January 2010, the Members approved the issuance of \$21.9 million of Urban Transit Hub Tax Credits for Somerset Street Urban Renewal LLC for the Gateway portion of a Transit Village project located in New Brunswick, New Jersey. The New Brunswick Development Corporation (“DEVCO”) later submitted a new application as Transit Village Associates LLC (“Transit Village” or the “Applicant”) requesting consideration for its Gateway, Ferren and Arts facilities to be considered as a single project under the complex rules of the UTHTC program. Transit Village Associates LLC is a holding company created by DEVCO for the three projects. This application was approved by the Members of the Authority on May 10, 2010 for an Urban Transit Hub Tax Credit in the amount of \$55.1 million, and simultaneously, the Somerset Street Urban Renewal LLC approval was withdrawn.

The Transit Village represents the cornerstone of the Downtown Transit Village Redevelopment Initiative led by DEVCO, in conjunction with the City of New Brunswick, and in the prior application included the following three complexes totaling \$326 million in investments:

- Gateway – This project included 192 housing units, 58,000 square feet of office space, 657 parking spaces and 58,000 square feet of retail. This project is a public-private partnership with Rutgers University and the New Brunswick Parking Authority and will provide important links with mass transit, including direct access to a train platform serving the Northeast Corridor line of New Jersey Transit.
- Ferren – This was a 730,000 square foot project to incorporate market rate housing with public parking, a grocery store and a hospital based fitness and wellness facility.
- Arts – This was a 128,000 square foot project to incorporate affordable housing and retail.

Since the previous application was approved on May 10, 2010, the applicant has modified the scope of the

project to reflect changed market and financing conditions. The current application reflects a total of \$313.6 million of investments and anticipates a decrease in total residential units from 375 to 296 and an increase in office space from 50,000 square feet to 58,000 square feet. In addition, since the previous application was approved, construction has commenced on the Gateway and Ferren projects, which are 75% and 25% complete, respectively, reflecting almost \$150 million of investment. Consistent with the prior application, the predominate use in this application is residential, and as such, it can still be considered under the residential portion of the UTHTC program, allowing for up to 35% of eligible costs to be issued as credits.

Since the prior application, the Applicant was not able to secure certain financing previously anticipated. Specifically, proceeds of New Markets Tax Credits for the Gateway and Ferren projects were approximately \$12 million less than originally projected. In addition, the first position mortgage on the Gateway project was \$2 million less than projected. The Applicant was not able to secure \$2 million in Low Income Housing Tax Credits that were anticipated for the Arts project. Also, NJHMFA's primary mortgage terms were too expensive and restrictive to the Arts project, and as a result of utilizing a conventional lender for the primary mortgage instead of NJHMFA, the applicant lost \$5 million in other HMFA funding and the size of the primary mortgage was \$1.3 million less than anticipated. Developer equity in the project was increased by \$2 million.

A revised pro-forma review of the Applicant's combined financials has been performed based on the revised project. The following chart displays the changes in the award:

Item	May 2010 Board Action	Revised Award
Eligible Costs	\$275,500,000	\$233,046,673
Maximum HUB Award (PV)	\$40,544,080	\$60,033,555
Maximum HUB Award (Nominal)	\$55,100,000	\$81,566,336
Recommended HUB Award (PV)	\$40,544,080	\$56,378,267
Recommended HUB Award (Nominal)	\$55,100,000	\$76,600,000

Based on the total eligible costs of the project, the maximum increase in the award is \$26.5 million based on the project changes and increase in the award from 20% to 35%. Including the prior HUB award, the Applicant has already secured financing commitments for all but \$21.5 million of total project costs. As such, staff is only recommending an additional award up to \$21.5 million, which represents the additional funding gap that has materialized as a result of the Applicant's inability to secure previously anticipated financing as detailed above.

Recommendation:

Staff has reviewed the revised pro-forma for the project and has concluded that the project meets the statutory criteria that the project is likely to be realized with the provision of the tax credits at the new level requested, but is not likely to be accomplished by private enterprise without the tax credits. As such, staff recommends a revised nominal tax credit award of \$76.6 million (present value of \$56.4 million).



Prepared by: C. Caruso

**TECHNOLOGY BUSINESS TAX CERTIFICATE
TRANSFER PROGRAM**



MEMORANDUM

TO: Caren S. Franzini, Chief Executive Officer
Members of the Authority

FROM: Heather M. O'Connell
Hearing Officer

DATE: November 9, 2011

SUBJECT: Technology Business Tax Certificate Transfer Program (the "Program") -
Appeals

Request:

Affirm the Hearing Officer's recommendation to reverse the declinations for BioLeap, Inc. and ADMA Biologics, Inc., and to confirm the declinations of Software Synergy, Inc., INTTRA, Inc., and Elusys, Inc.

Background:

Pursuant to the program's enabling legislation, NJEDA reviews each application to ensure the applicants' meet the statutory requirements of the Program. Staff's recommendation for approval or declination is then presented to the Members for approval. Applicants that are declined have 20 days to submit appeals which are reviewed by an independent Hearing Officer. I am fulfilling the role of Hearing Officer and have completed the review of appeals under the Program with legal guidance from the Attorney General's Office.

At EDA's September 14, 2011 Board Meeting, the Members considered 83 requests from companies to participate in the Technology Business Tax Certificate Transfer Program. Of the total applications, 73 requests were approved and 10 requests were disapproved.

Following the September Board meeting, the 10 companies that were disapproved were sent written notice of the Board's action along with the reasons for the disapproval and were given 20 days to appeal. Of the 10 disapproved, 5 filed appeals by the appeal deadline of October 4, 2011. Software Synergy, Inc. ("SSI") submitted an initial appeal of the disapproval based on lack of Protected Proprietary Intellectual Property ("PPIP"). As staff reviewed the appeal, a clerical oversight came to light that led to a second reason to disapprove, that is based on the company not having the required minimum number of employees, and which was omitted in the original memo. On October 11, 2011, the Board approved the second declination and SSI was given additional time to appeal the second reason for disapproval. Upon review of both of SSI's appeals, the Hearing Officer confirms declination on both matters.

Based on the review of the appeals submitted, I am recommending that the following two (2) companies be approved for participation in the Program:

BioLeap, Inc.

BioLeap, Inc. (“BioLeap”) was declined due to not employing the required minimum number of employees, which is determined by the number of years of incorporation. Based on clarifying information provided by the applicant, confirming that BioLeap incorporated in 2009 and had 6 full-time employees at June 30, 2011, the company does comply with the statutory requirements for an eligible new or expanding company in operation for less than five (5) years. BioLeap is therefore recommended for approval.

ADMA Biologics, Inc.

ADMA Biologics, Inc. was declined due to not employing the required minimum number of employees, which is determined by reviewing employment over the number of years of incorporation. Based on clarifying information provided by the applicant, ADMA Biologics, Inc. demonstrated that it was incorporated in 2007 and had 5 full-time employees on June 30, 2011, which fulfills the statutory requirements for an eligible new or expanding company in operation for less than five (5) years. ADMA Biologics, Inc. is therefore recommended for approval.

The other three (3) applicants’ appeals have not demonstrated that they meet the eligibility criteria of the Program and are being recommended for disapproval. Brief summaries of the reasons they do not meet the eligibility requirements of the Program are set forth below with a more detailed analysis attached.

Software Synergy, Inc.

Software Synergy, Inc. was declined because it did not provide documentation showing the company owns, has filed for, or has a valid license to use Protected Proprietary Intellectual Property (“PPIP”). Based on information provided by the applicant, Software Synergy, Inc. (“SSI”) does not have a registered copyright as required by N.J.A.C. 19:31-12.2. As part of its application, SSI also submitted a Master Software License that evidences that while SSI is the licensor of certain intellectual property, it does not meet the definition of PPIP. The definition of both a biotechnology business and technology business in N.J.A.C. 19:31-12.2 requires the company to own, file for or have a license to use PPIP. As a result, SSI does not meet the express requirements for this Program and it is recommended that SSI be denied.

The applicant was also declined as it did not employ the required minimum number of 10 employees, which is determined by the number of years of incorporation. Based on clarifying information provided by the applicant, this statutory requirement has not been satisfied. The information provided indicates that the applicant only had 9 full-time employees in New Jersey at June 30, 2011.

INTTRA, Inc.

The applicant was declined because the company did not provide financial statements of its parent company. In its appeal, INTTRA, Inc. (“INTTRA”) provided information to evidence that its general partner, ABS LLC, did not have a majority ownership interest in the applicant.

Upon review of the information, it was determined that ABS, LLC controls the limited partnerships that owns 50.7% of INTTRA and is therefore required to submit financial statements. As these financial statements were not submitted with the original application, the company has not satisfied the Program requirements and it is therefore recommended that INTTRA be denied.

Elusys, Inc.

The applicant was declined as Elusys, Inc. had only submitted a draft copy of its 2010 audited financial statement. In addition, the financial statements provided by the company showed net operating income in 2010.

With its appeal, Elusys, Inc. (“Elusys”) did provide the required final copy of its 2010 audited financial statements and thus satisfied this statutory requirement.

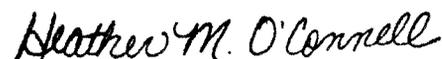
Elusys asserted that since the company’s only revenue for 2010 was a result of contract receipts from the U.S. government, these receipts should not be counted as revenue as it was a cost reimbursement only and was not generated by any service or product of the company. However, N.J.S.A. 34:1B-7.42(a)(b)(5) requires that financial statements be prepared according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board. These standards mandate that contract receipts be shown as revenue.

Elusys also contended that since the net operating loss in 2009 was greater than the net operating income in 2010 its application should be approved as the company suffered an aggregate net loss. This argument is also without merit; however, as N.J.S.A. 34:1B-7.42a (b) (5) (above cited) as well as N.J.A.C. 19:31-12.3 (b) (1) clearly states that no application can be approved where the applicant has recorded positive net operating income for either of the two previous full years of its business. Elusys has demonstrated positive net operating income for 2010. As a result, there is no support in the statute or regulations to permit a company to assert an aggregate net operating loss, and it is therefore recommended that Elusys be denied.

Recommendation:

As a result of careful consideration of the above appeals in consultation with the Attorney General's Office, the following appeals are recommended for approval: BioLeap, Inc. and ADMA Biologics, Inc. The following appeals are recommended for disapproval: Software Synergy, Inc., INTTRA, Inc. and Elusys, Inc.

Attachment



Prepared by: Heather M. O'Connell, Hearing Officer



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 1, 2011

Frank Ruffo
Chief Financial Officer
BioLeap, Inc.
238 West Delaware Avenue
Pennington, NJ 08534

Dear Mr. Ruffo:

I am in receipt of your appeal for reconsideration under the Technology Business Tax Certificate Transfer Program ("Program").

Previous Action:

By way of background, the Board of Directors of the New Jersey Economic Development Authority ("EDA") reviewed and declined your application for Program benefits on September 14, 2011. The information provided indicated that BioLeap, Inc. failed to meet the definition of being a new or expanding technology or biotechnology company as required by N.J.S.A. 34:1B-7.42(b) by not having a minimum of 10 employees as of June 30, 2011.

Legal Citation:

The relevant legal provision is the definition of "New or expanding" which appears at N.J.S.A. 34:1B-7.42(b). That states: "New or expanding" means a technology or biotechnology company that (1) 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, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has 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, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and (3) on the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in part (2) of this definition."

Discussion:

The attached memorandum by John Rosenfeld, whose team reviewed your application to the Program, indicates that your application revealed the presence of a total of 6 full-time employees in New Jersey. The issue is whether the statute cited above requires BioLeap, Inc. to employ at least 10 full time employees as of June 30, 2011 which is the requirement of the Program for companies that have been in operation for greater than five (5) years.

BioLeap, Inc. has stated that a company called BioLeap, LLC ("LLC") was created as a Pennsylvania limited liability company in 2004 and had no employees, limited operations, and minimal outside investment. BioLeap, Inc. ("BioLeap" or the "company") was formed in December 2009 and acquired via merger in January 2010 all of the assets and liabilities of the LLC.

BioLeap asserted that the above definition of a "new or expanding" company applies only to a company that has been incorporated. As a result, a limited liability company does not qualify as an incorporated entity and is not subject to this definition. More particularly, BioLeap stated that "[T]he recurring theme of the regulations is that a company must be incorporated to be considered as an applicant for the program".

The memorandum prepared by John Rosenfeld sets forth a reasoned position finding that this interpretation of this statutory definition is too narrow and does not recognize the essential stated purpose of this provision. The memorandum reasons that although the regulations do reference the incorporation date, the purpose of the Program contemplates that a company will experience a certain pattern of growth in the number of full-time employees during its

MAILING ADDRESS: | PO Box 990 | TRENTON, NJ 08625-0990

SHIPPING ADDRESS: | 36 WEST STATE STREET | TRENTON, NJ 08625 | 609.292.1800 | e-mail: njeda@njeda.com | www.njeda.com

initial years of business. The memorandum also points out that the Program had previously accepted applications from limited liability companies which elected to be taxed as corporations under federal income tax law. As a result, BioLeaps's interpretation that the Program applies only to corporations is incorrect. Therefore, in order, to be consistent with EDA past practice the prior operations of the predecessor LLC cannot be ignored in analyzing the operations of BioLeap.

In this regard, the memorandum asserts that the supporting documents to the application also reveal that several key employees had been working for the LLC prior to the BioLeap incorporation. These employees included Gerald Evan, VP of Operations and John Kulp, CTO as well as CEO David Pompliano. The application of registration for its software copyright indicated that the software was completed in 2004 and the LLC showed revenue of approximately \$200,000 per its 2008 cash flow statement which is the earliest statement provided with the application. Furthermore, the application for Registration of a copyright on BioLeap's software shows 2004 as the year of completion. This indicates that the software the company was using its required Protected, Proprietary Intellectual Property, at least in part, at some point during 2004

I have reviewed all of the documentation submitted with this matter. I am of the opinion that the critical factor to consider is not the activities that the LLC performed prior to the incorporation of the applicant, BioLeap. Instead the intent of the statute and regulations for the Program must be examined. The purpose of the legislation, in part, is to permit technology and biotechnology businesses under certain circumstances to sell their net operating losses to profitable corporate entities. N.J.S.A. 34:1B-7.42b defines a technology or biotechnology business in part as an "emerging corporation" and the Program, of course, deals with a corporation business tax benefit certificate transfer. In the definition of "New or expanding" in this same section the number of employees required are to be measured from the time that the company was "incorporated". Arguably, the reason the Legislature included the concept of incorporation in the above definitions was to match the tax status of the applicant to the benefit derived under the Program. Because NOL's and research and development tax credits cannot be generated by a company that is not taxed as a corporation, such a company would not be eligible to participate in the Program, regardless of the losses that it generated. It therefore seems to be a mismatch to require the LLC to have complied with the requirements of the Act when it was not in a position to take advantage of the Program.

The LLC was formed in Pennsylvania in 2004. On October 20, 2011, you responded to my e-mail for clarification and represented that the LLC was always taxed as a partnership during its existence. As such, the LLC itself did not and could not pay any corporate income taxes.

I conclude that the LLC did not have the ability to generate any net operating losses and, therefore, was ineligible to participate in this Program. Only upon the incorporation of Bio Leap in 2009 could this entity have the opportunity to demonstrate net operating losses as an incorporated entity.

As of June 30, 2011, BioLeap was incorporated for less than five (5) years and was obligated to have a total of 5 full-time employees pursuant to N.J.S.A 34:1B-7.42(b). BioLeap has demonstrated that it had 6 full-time employees in compliance with the statutory requirements for an eligible new or expanding company in operation for less than five (5) years.

Based on my review, I believe that BioLeap, Inc. has provided sufficient evidence that it has complied with the number of employee requirements pursuant to N.J.S.A 34:1B-7.42(b).

Conclusion:

For the above reasons, I will be recommending approval of your application to the EDA Board at its meeting on November 9, 2011 at 10:00 a.m.

Very truly yours,



Heather M. O'Connell
Hearing Officer

c: Caren S. Franzini, Chief Executive Officer
John J. Rosenfeld, Director

Memorandum

To: Heather O'Connell, Hearing Officer

From: John J. Rosenfeld, Director – Bonds & Incentives

Date: October 14, 2011

Re: Appeals – 2011 Technology Business Tax Certificate Transfer Program
Response to September 28, 2011 Appeal by BioLeap, Inc.

RECOMMENDATION:

We have received and reviewed the September 28, 2011 appeal by Bioleap, Inc. of the denial of its application for the 2011 Technology Business Tax Certificate Transfer Program. In response, we assert BioLeap's appeal should be **rejected** because it does not explain how BioLeap met the minimum employment requirement of the Technology Business Tax Certificate Transfer Program.

BACKGROUND:

We previously denied BioLeap's application because BioLeap did not employ at least the minimum number of full-time employees in New Jersey. When the Technology Business Tax Certificate Transfer Program Statute was modified in 2009, a new requirement was added mandating that each applicant have a minimum number of full-time employees working in New Jersey based on the time since the company was incorporated. The minimum number of full-time employees working in New Jersey starts at 1 for applicants incorporated between 0 and 3 years prior to the June 30 submission date, increases to 5 full-time employees working in New Jersey for applicants incorporated between 3 and 5 years prior to the June 30 submission date, and increases again to 10 full-time employees working in New Jersey for applicants incorporated for longer than 5 years prior to the June 30 submission date.

The Technology Business Tax Certificate Transfer Program, though specific to the biotechnology and technology sectors, is ultimately a job creation program. As such, the minimum employment requirement is structured to fit any applicant from a single individual working in his or her garage to much more mature companies as long as the full-time New Jersey employment level continues to meet or exceed the increasing minimum employment thresholds (but remains at or below the 224 U.S. employee maximum). This minimum

employment structure was designed to reflect the employment path of a company with a greater likelihood of attaining profitability versus a company that has low or no growth in its employment.

In order to identify the earliest operation of the applicant company, the Program application requests the company to provide its earliest date of incorporation along with its current date of incorporation. The application requires the applicant to submit the certificates of incorporation to substantiate the dates provided. Additionally, the application explains to the applicant to use the incorporation of the older company if the creation of the company was a function of a merger or acquisition.

BioLeap indicated in its application that it was incorporated on December 1, 2009 (thereby only needing 1 full-time employee working in New Jersey to meet the minimum). However, while reviewing the financial statements of BioLeap, it was noted that BioLeap L.L.C. was formed in March 2004 and was merged into BioLeap, Inc. on January 5, 2010.

Based on the fact that BioLeap traces its activities back to an original formation in 2004, the applicant needed to have a minimum of 10 full-time employees working in New Jersey on June 30, 2011 (it only had 6).

APPEAL SUMMARY:

In its appeal response, BioLeap indicated that it was founded in 2004 and operated as an LLC in Pennsylvania until 2009. During that time period, BioLeap never had any employees, had very limited operations, and very limited outside investment. Our applicant was formed in December 2009 and acquired all of the assets and liabilities of BioLeap, LLC via a merger in January 2010.

BioLeap argues that per the Regulations of the Technology Business Tax Certificate Transfer Program, the definition of a “new or expanding” technology or biotechnology company is defined as an “incorporated” company not a formed company. The Regulations never mention formation being a determining factor for a company to meet the requirements of the program. The recurring theme of the Regulations is that a company must be incorporated to be considered as an applicant of the program.

BioLeap states that on December 1, 2009, BioLeap, Inc. was incorporated in Delaware and obtained a new FEIN. After the merger, the LLC ceased to exist. The members of BioLeap, LLC received a minor ownership position of BioLeap, Inc. BioLeap was incorporated by necessity at the request of two new investors (Adams Capital and Quaker Bio) who each invested \$2.5M in January 2010. In connection with the incorporation and new investment, a new CEO was appointed. Upon financing in January 2010, the company hired its first 5 employees and changed its principal place of business from the founder’s home in Pennsylvania to Ewing, NJ.

ANALYSIS OF APPEAL SUMMARY:

In order to be successful in its appeal, BioLeap has to demonstrate that the conclusion that BioLeap's activities can be traced through a merger to an original formation in 2004 is erroneous. That is, BioLeap must show that it did not exist as an entity prior to the incorporation date stated in its application and that it did not have any operations of any sort prior to the incorporation date stated in its application. It is clear even from the facts stated in the appeal that neither of the above conditions could be met as our applicant can trace its operations back to 2004 through the LLC that it merged with that was formed in 2004.

However, BioLeap is appealing on the nuance that an LLC is "formed", not incorporated. In its appeal, BioLeap states that, "The recurring theme of the Regulations is that a company must be incorporated to be considered as an applicant for the Program". That interpretation is incorrect. Our consistent practice has been to accept applications from LLCs; we have had LLCs that were formed as 1065 corporations (whereby the profits/losses remain within the company and do not pass on to the members of the LLC) apply successfully to the Technology Business Tax Certificate Transfer Program.

Though the Regulations do, indeed, reference the incorporation date, the purpose of the Program is to assist technology and biotechnology companies that follow a growth pattern in full-time New Jersey employment as mentioned above. Excluding an otherwise eligible LLC applicant would undermine the Program's purpose. To be consistent, we cannot ignore the prior operations of an LLC.

Factually, the conclusion that BioLeap's activities must be traced through the merger with BioLeap LLC remains valid:

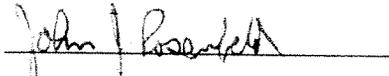
1. **Although the appeal states that BioLeap, LLC did not have any employees between 2004 and 2009, various key employees have been continuously employed since before 2009.** In the employee log included with the application, Gerald Evans, the VP of Operations, is shown as having been employed by BioLeap since January 1, 2004 (this also matches the start date shown on his healthcare opt out form). John Kulp, the CTO, is shown as having been employed by BioLeap since March 1, 2004 (this nearly matches the start date shown on his healthcare opt out form – 1/1/2004). Even the CEO, David Pompliano, is shown as having been employed by BioLeap since July 1, 2009. All of these tenures began well in advance of the date of incorporation (12/1/2009).
2. **Contrary to its assertion in the appeal, BioLeap, LLC had significant operations between 2004 and 2009.** The application for Registration of a copyright on BioLeap's software shows a year of completion of 2004. This seems to indicate that the software that BioLeap is utilizing as its require Protected, Proprietary Intellectual Property was completely written, or at least written in large part, at some point during 2004. BioLeap submitted a Cash Flow Statement from 2008 showing over \$200,000 in revenues from 3 different companies, NewLink, Onconova, and Syntonix. In a February 24, 2009 press release obtained from BioLeap's website, the software is described in the past tense, "BioLeap has created a sophisticated lead discovery and optimization platform based on fundamental thermodynamic principles which vastly improves the efficiency of drug discovery".

Therefore, based on the information described above, it does appear as though BioLeap started hiring employees in 2004 and had fairly significant operations at that time as its software was completed and some fairly large revenues were coming in by 2008 (on the earliest financial statement provided by BioLeap).

Lastly, the financial statements of BioLeap do appear to provide an inception date of March 16, 2004.

CONCLUSION:

In conclusion, BioLeap's appeal should be rejected because the facts provided by BioLeap show that its activities began with an entity formed in 2004, which merged into it. In its appeal, BioLeap does not provide any compelling reason to utilize the December 1, 2007 incorporation date of the current company. As being incorporated/formed in 2004 would require a minimum of 10 full-time employees working in New Jersey while the applicant only had 6, the application of BioLeap was correctly declined and the appeal should be rejected.



John J. Rosenfeld
Director – Bonds & Incentives



November 1, 2011

Jeffrey A. Baumel, Partner
SNR Denton US LLP
101 JFK Parkway
Short Hills, NJ 07078-2708

Dear Mr. Baumel:

I am in receipt of your appeal for reconsideration under the Technology Business Tax Certificate Transfer Program ("Program").

Previous Action:

By way of background, the Board of Directors of the New Jersey Economic Development Authority ("EDA") reviewed and declined your application for Program benefits on September 14, 2011. The information provided indicated that ADMA Biologics, Inc. failed to meet the definition of being a new or expanding technology or biotechnology company as required by N.J.S.A. 34:1B-7.42(b) by not having a minimum of 10 employees as of June 30, 2011.

Legal Citation:

The relevant legal provision is the definition of "New or expanding" which appears at N.J.S.A. 34:1B-7.42(b). That states: "New or expanding" means a technology or biotechnology company that (1) 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, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has 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, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and (3) on the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in part (2) of this definition.

Discussion:

As indicated in the attached memorandum by John Rosenfeld, whose team reviewed your application to the Program, the documentation provided revealed a total of 5 full-time employees in New Jersey. The issue is whether the statute cited above requires ADMA Biologics, Inc. to employ at least 10 full time employees as of June 30, 2011 which is a requirement of the Program for companies that have been in operation for greater than five (5) years.

The company has stated that ADMA Biologics Inc. was incorporated as a New Jersey S corporation ("NJ ADMA") in 2004. Thereafter, an entity was formed as a Delaware C corporation in July 2007 known as ADMA Temp, Inc. On July 16, 2007, NJ ADMA merged with and into ADMA Temp, Inc. and the latter changed its name to ADMA Biologics, Inc. ("Del ADMA" or the "company") and the existence of the NJ ADMA terminated on such date.

The applicant asserted that Del ADMA is a separate and distinct legal entity with ownership and a taxpayer identification number which were different from NJ ADMA. Furthermore, although NJ ADMA was formed in 2004, it never employed any persons, had any place of business or engaged in any business activities and was established as a placeholder for Del ADMA until its owners could identify funding and begin operations. In this regard, the owners investigated business opportunities, potential employees were interviewed, preparations and planning for the eventual

business launch were undertaken. The activities of the future owners of Del ADMA during the period while NJ ADMA was still in existence were typical of biotechnology companies prior to commencement of their respective businesses.

The memorandum prepared by John Rosenfeld sets forth a reasoned position finding that NJ ADMA had conducted numerous activities prior to the incorporation of Del ADMA in 2007. The memorandum reasons that, the purpose of the Program contemplates that a company will experience a certain pattern of growth in the number of full-time employees during its initial years of business. Therefore, the operations of NJ ADMA cannot be ignored.

In this regard, the memorandum asserts that the 2008 financial statements of Del ADMA, audited by J.H. Cohn, LLP, revealed an accumulated deficit starting in 2004 which deficit increased up to December 31, 2006. Further, the 2008 and 2009 financial statements audited by J.H. Cohn, and the 2010 financial statements compiled by Kenneth J. Gertie, CPA, set forth the inception date of the company as being June 24, 2004. Additionally, in a due diligence investigation regarding activities prior to 2007, Adam Grossman, the Del ADMA's CEO responded that NJ ADMA was formed in 2004 and was created to initiate R&D proprietary testing, drug manufacturing, and other scientific and clinical activities commensurate with drug development. Furthermore, ADMA began to hire full-time staff and employees whose job functions were directly related to the R&D for the company's lead drug product.

I have reviewed all of the documentation submitted with this matter. As Mr. Rosenfeld points out, N.J.S.A. 34:1B-7.42b defines a technology or biotechnology business in part as an "emerging corporation" (emphasis added) and in the definition of "New or expanding" in this same section the number of employees requires are to be measured from the time that the company was "incorporated". I am of the opinion, however, that the critical factor to consider is not the date when NJ ADMA was incorporated or the activities that this corporation performed prior to the incorporation of the applicant, Del ADMA. Instead the intent of the statute and regulations for the Program must be examined together with the corporate format of NJ ADMA and Del ADMA. The purpose of the legislation, in part, is to permit technology and biotechnology businesses under certain circumstances to sell their net operating losses to profitable corporate entities. Arguably, the reason the Legislature included the concept of incorporation in the above definitions was to match the tax status of the applicant to the benefit derived under the Program. Because NOL's and research and development tax credits cannot be generated by a company that is not taxed as a corporation, such as an S corporation, such a company would not be eligible to participate in the Program, regardless of the losses that it generated. It therefore seems to be a mismatch to require NJ ADMA to have complied with the requirements of the Act when it was not in a position to take advantage of the Program.

NJ ADMA was formed as an S corporation in New Jersey 2004. On October 20, 2011, you responded to my e-mail for clarification and represented that NJ ADMA was always taxed as an S corporation. I understand that an S corporation does not pay any corporate income taxes. The income or losses instead are passed through to its shareholders who then must report such income or loss on their respective individual income tax returns.

On October 20, 2011 you also responded to my other inquiry by separate e-mail and represented that Del ADMA has always been taxed as a C Corporation. I understand that the profit of a C corporation is both taxed to the corporation and then is taxed again to the shareholders on any dividends distributed.

I conclude that NJ ADMA as an S corporation did not have the ability to generate any net operating losses and, therefore was ineligible to participate in this Program. Only upon the incorporation of Del ADMA as a C corporation in 2007 could this entity have the opportunity to demonstrate net operating losses as an incorporated entity consistent with the purposes of the Program.

As of June 30, 2011, Del ADMA was incorporated for less than five (5) years and was obligated to have a total of 5 full-time employees pursuant to N.J.S.A. 34:1B-7.42(b). ADMA has demonstrated that it had 5 full-time employees in compliance with the statutory requirements for an eligible new or expanding company in operation for less than five (5) years.

Based on my review, I believe that ADMA Biologics, Inc. has provided sufficient evidence that it has complied with the number of employee requirements pursuant to N.J.S.A. 34:1B-7.42(b).

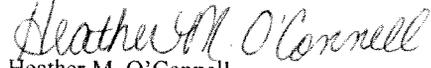
Conclusion:

For the above reasons, I will be recommending approval of your application to the EDA Board at its meeting on

November 9, 2011 at 10:00 a.m.

After the EDA Board concludes its review and renders its decision, which is subject to a ten (10) day veto period by the Governor, we will notice you of that final action.

Very truly yours,

A handwritten signature in cursive script that reads "Heather M. O'Connell".

Heather M. O'Connell
Hearing Officer

c: Caren S. Franzini, Chief Executive Officer
John J. Rosenfeld, Director

Memorandum

To: Heather O'Connell, Hearing Officer
From: John J. Rosenfeld, Director – Bonds & Incentives
Date: October 14, 2011
Re: Appeals – 2011 Technology Business Tax Certificate Transfer Program
Response to October 3, 2011 Appeal by ADMA Biologics, Inc.

RECOMMENDATION:

We have received and reviewed the October 3, 2011 appeal by ADMA Biologics, Inc. (ADMA) of the denial of its application for the 2011 Technology Business Tax Certificate Transfer Program. In response, we assert ADMA's appeal should be **rejected** because it does not explain how ADMA met the minimum employment requirement of the Technology Business Tax Certificate Transfer Program.

BACKGROUND:

We previously denied ADMA's application because ADMA did not employ at least the minimum number of full-time employees in New Jersey. When the Technology Business Tax Certificate Transfer Program Statute was modified in 2009, a new requirement was added mandating that each applicant have a minimum number of full-time employees working in New Jersey based on the time since the company was incorporated. The minimum number of full-time employees working in New Jersey starts at 1 for applicants incorporated between 0 and 3 years prior to the June 30 submission date, increases to 5 full-time employees working in New Jersey for applicants incorporated between 3 and 5 years prior to the June 30 submission date, and increases again to 10 full-time employees working in New Jersey for applicants incorporated for longer than 5 years prior to the June 30 submission date.

The Technology Business Tax Certificate Transfer Program, though specific to the biotechnology and technology sectors, is ultimately a job creation program. As such, the minimum employment requirement is structured to fit any applicant from a single individual working in his or her garage to much more mature companies as long as the full-time New Jersey employment level continues to meet or exceed the increasing minimum employment thresholds (but remains at or below the 224 U.S. employee maximum). This minimum

employment structure was designed to reflect the employment path of a company with a greater likelihood of attaining profitability versus a company that has low or no growth in its employment.

In order to identify the earliest operation of the applicant company, the Program application requests the company to provide its earliest date of incorporation along with its current date of incorporation. The application requires the applicant to submit the certificates of incorporation to substantiate the dates provided. Additionally, the application explains to the applicant to use the incorporation of the older company if the creation of the company was a function of a merger or acquisition.

ADMA indicated in its application that it was incorporated originally on July 9, 2007 and was re-incorporated in the following week on July 16, 2007 in its current form (thereby only needing 5 full-time employees working in New Jersey to meet the minimum). However, while reviewing the financial statements of ADMA, it was noted that ADMA Biologics, Inc. was originally incorporated in 2004 in New Jersey. On July 9, 2007, ADMA Temp, Inc. was incorporated in Delaware. On July 16, 2011, ADMA Biologics, Inc. merged into ADMA Temp, Inc. which subsequently changed its name to ADMA Biologics, Inc.

Based on the fact that ADMA traces its activities back to an original incorporation in 2004, the applicant needed to have a minimum of 10 full-time employees working in New Jersey on June 30, 2011 (it only had 5).

APPEAL SUMMARY:

In its appeal response, ADMA states that it began business activities in 2007 and, as such, only needs to have 5 full-time employees working in New Jersey. Although there was an ADMA Biologics, Inc. that was a New Jersey S corporation, it merged into a separate and distinct Delaware corporation that is our applicant. The newly formed Delaware C corporation is a separate and distinct corporate entity from the prior New Jersey corporation. The Program Statute refers to the incorporation date of the applicant as the relevant measure and the applicant is the Delaware corporation which was incorporated in 2007. The existence of the New Jersey corporation terminated on the date of the merger. The Delaware corporation is a separate and distinct legal entity, has different ownership, a different taxpayer ID number, and distinct governance.

The applicant also states that, though formed in 2004, it never employed any persons, it had no place of business, and it never engaged in any business activities (though it did do some development and planning prior to 2007). The New Jersey corporation was established as a placeholder until funding could be identified and operations started up (which happened in 2007).

ANALYSIS OF APPEAL SUMMARY:

In order to be successful in its appeal, ADMA has to demonstrate that the conclusion that ADMA's activities can be traced through a merger to an original incorporation in 2004 is erroneous. That is, ADMA must show that it did not exist as an incorporated entity prior to the incorporation date stated in its application and that it did not have any operations of any sort

prior to the incorporation date stated in its application. It is clear even from the facts stated in the appeal that neither of the above conditions could be met as our applicant can trace its activities back to 2004 through the company that it merged with, which was formed in 2004 and, per the appeal, did do development and planning activities prior to the 2007 merger.

Moreover, that ADMA Biologics, Inc. (NJ) may have been a separate legal identity from ADMA Biologics, Inc. (DE) does not alter the reason for ADMA's rejection. Generally, in a merger the surviving corporation succeeds to all the other entity's assets and liabilities, including liabilities that are unknown, undisclosed or unforeseen. Consistent with this fact and with the purpose of the Program as described above, the minimum amount of full-time employees in New Jersey is based on the earliest date of incorporation if the corporation was created as a result of a merger.

Factually, the conclusion that ADMA's activities must be traced through the merger with ADMA Biologics, Inc. (NJ) remains valid:

1. **Although the appeal states that ADMA Biologics, Inc. (NJ) did not incur expenses prior to the July 16, 2007, the financial statements show otherwise.** The 2008 Financial Statements of ADMA were audited by J.H. Cohn, LLP and show an accumulated deficit starting in 2004 that built to (\$852,134) by 12/31/2006 prior to the incorporation date of the Delaware corporation.
2. **Contrary to the assertion in the appeal that ADMA Biologics, Inc. (NJ) did not engage in any business activity, the COO of ADMA conceded that significant activities began in 2004.** In our due diligence investigation, we posed the question about what activities occurred starting in 2004 to Adam Grossman, ADMA's Chief Operating Officer. The response we received was, "ADMA Biologics was formed in 2004 and was created to initiate the R&D and development work [*sic*] for our proprietary testing assay, drug manufacturing and other scientific and clinical activities commensurate with drug development. Additionally, in 2004, ADMA began to hire full-time staff and employees whose job functions were directly related to the R&D for the companies [*sic*] lead drug product Respimmune". The referenced e-mail is attached hereto.
3. **The financial statements show June 24, 2004 as the inception date.** In the applicant's 2008 Financial Statements audited by J.H. Cohn LLP, the 2009 Financial Statements audited by J.H. Cohn LLP, and the 2010 Financial Statements compiled by Kenneth J. Gertie, CPA, the inception date of the applicant is specifically denoted as being June 24, 2004.
4. **The retained earnings of the applicant are not \$0 as of July 1, 2007.** As stated above (in #1), the Accumulated Deficit of the applicant on its audited Financial Statements was (\$852,134) at the end of 2006 and was, presumably larger, by July 16, 2007. The applicant did not start with a blank slate on July 16, 2007.
5. **Activities relating to the development of the Protected, Proprietary Intellectual Property occurred before the July 16, 2007 date of incorporation.** As stated above (in #2), employees were hired by ADMA starting in 2004 to complete the R&D work, drug manufacturing, clinical activities etc. on the lead drug product, Respimmune. Additionally, the applicant provided a letter from the FDA dated January 4, 2008 (less than 6 months from the July 16, 2007 incorporation date they would like us to utilize) notifying ADMA

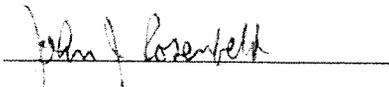
that they could move into Phase II clinical trials. This implies that the drug was already formulated and the Phase I trials were already completed prior to the date of the letter. It is hard to believe that in less than 6 months, the drug could be developed and the Phase I trials completed in order to go into Phase II trials so soon after incorporation.

6. **Employees may have been hired prior to the July 16 date of incorporation.** ADMA has 5 employees. The employee log submitted with its application shows that 4 of those employees were hired on the exact same day that ADMA was incorporated. Nonetheless, as stated above (in #2), employees were hired by ADMA starting in 2004 to complete the R&D work, drug manufacturing, clinical activities etc. on the lead drug product, Respimmune.

Based on the above, the relevant date of incorporation is not July 16, 2007 as every aspect of the fact pattern leads back to the 2004 incorporation as the appropriate date to utilize when calculating the required minimum employment number for ADMA.

CONCLUSION:

In conclusion, ADMA's appeal should be rejected because the facts provided by ADMA show that its activities began with a company incorporated in 2004, which merged into it. In its appeal, ADMA does not provide any compelling reason to utilize the most recent incorporation date (July 16, 2007). As being incorporated in 2004 would require a minimum of 10 full-time employees working in New Jersey while the applicant only had 5, the application of ADMA was correctly declined and the appeal should be rejected.



John J. Rosenfeld
Director – Bonds & Incentives



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 1, 2011

Rose M. Oxley
President and CEO
Software Synergy, Inc.
151 Highway 33 East
Manalapan, NJ 07726

Dear Ms. Oxley:

I am in receipt of your appeal for reconsideration under the Technology Business Tax Certificate Transfer Program. ("Program").

Previous Action:

By way of background, the Board of Directors of the New Jersey Economic Development Authority ("EDA") reviewed and declined your application for Program benefits on September 14, 2011. The information provided indicated that Software Synergy, Inc. failed to demonstrate that it owns or licenses protected proprietary intellectual property as required by N.J.S.A. 34:1B-7.42(b).

Thereafter, it was determined that there was a second reason in support of a decline of your application that inadvertently was not presented at the above September meeting. The Board of Directors of the EDA then reviewed and declined your application for the Program on October 11, 2011. This information provided indicated that Software Synergy, Inc. failed to meet the definition of being a new or expanding technology or biotechnology company as required by N.J.S.A. 34:1B-7.42 (b) by not having a minimum of 10 employees as of June 30, 2011.

Legal Citation:

The relevant legal provision is the definition of "protected proprietary intellectual property" which appears at N.J.A.C. 19:31-12.2 that states: "Protected proprietary intellectual property means intellectual property that is protected via a patent pending, patent awaiting approval, approved patent or registered copyright."

With respect to the number of employees, the relevant legal provision is the definition of "New or expanding" which appears at N.J.S.A. 34:1B-7.42(b) that states: "New or expanding" means a technology or biotechnology company that (1) 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, has fewer than 225 employees in the United States of America; (2) on June 30 of the year in which the company files such an application, has at least one full-time employee working in this State if the company has been incorporated for less than three years, has 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, and has at least 10 full-time employees working in this State if the company has been incorporated for more than five years; and (3) on the date of the exchange of the corporation business tax benefit certificate, the company has the requisite number of full-time employees in New Jersey that were required on June 30 as set forth in part (2) of this definition."

Further, a "Full-time employee" is also defined in N.J.S.A. 34:1B-7.42(b) in part as "a person employed by a new or expanding emerging technology or biotechnology company for consideration for at least 35 hours a week, or who renders any other standard of service generally accepted by custom or practice as a as full-time employment and whose wages are subject to withholding..." Under this statutory definition the "employee shall also receive from the new or expanding emerging technology or biotechnology company health benefits..." under one of the several plans described in the statute.

MAILING ADDRESS: | PO Box 990 | TRENTON, NJ 08625-0990

SHIPPING ADDRESS: | 36 WEST STATE STREET | TRENTON, NJ 08625 | 609.292.1800 | e-mail: njeda@njeda.com | www.njeda.com

Discussion:

As indicated in the attached memorandum by John Rosenfeld, whose team reviewed your application to the Program, the primary rationale for determining that Software Synergy, Inc. ("SSI" or the "company") did not meet the definition of having protected proprietary intellectual property ("PPIP") is the company's lack of a patent pending, patent awaiting approval, patent, or registered copyright on its software.

SSI advised that it made the decision not to register a copyright on its software as it was concerned in doing so their source code would be exposed to competitors and the cost of litigation to protect its copyright would be expensive. Additionally, the company's counsel advised that under US copyright laws, SSI had all the intellectual property protection necessary to defend the ownership and viability of its products. The company also submitted a letter from its attorney, Michael Vartabedian, Esq, dated September 19, 2011 stating that the company's software is lawfully protected by US copyright laws and that the software is a trade secret which provides protection, as well. As a result, the decision by the EDA Board of Directors was in error and the SSI application should be approved.

I appreciate that SSI determined to not register its copyright after weighing various factors. Although SSI may have concluded that the company is adequately protected for its PPIP I am not persuaded that such other copyright protections meet the express requirements of the regulations for this Program. N.J.A.C. 19:31-12.2 (cited above) clearly states in part that PPIP refers to a registered copyright but no such registered copyright has been provided by SSI with its application.

SSI also submitted, with its application, a Master Software License Agreement template to demonstrate that it has a valid license to use PPIP. However, this template reveals that SSI is the licensor of a PPIP rather than the licensee who will be utilizing the license to use, test and develop the software. The definition of both a biotechnology business and technology business in N.J.A.C. 19:31-12.2 requires the company to own, file for, or have a license to use PPIP.

In summation, since the company states in its appeal that it does not have a registered copyright for its software, and does not show that it is a licensee of PPIP, the requirement for PPIP has not been met, as defined by the Program.

As indicated in the attached supplemental memorandum by John Rosenfeld, the Program statute requires that the applicant have 10 full-time employees but the applicant was able to only demonstrate that it had 9 full-time employees. SSI submitted as its second appeal an explanation of the employment status of Faisal Alam with respect to his status as a full-time employee of SSI to support its contention that it had the required minimum number of employees.

The applicant submitted a copy of Mr. Alam's W-2 statement for 2010 as well 2009 and 2010 W-3 statements for SSI. The submission constitutes a clarification to the information previously provided and, therefore does not constitute a consideration of new evidence or information which is prohibited by N.J.A.C. 19:31-12.6 (d). SSI asserts that Mr. Alam was a United States citizen and a fulltime employee at its New Jersey office as shown by its withholding of taxes on the W-2 statement. The applicant concedes that this individual does visit his wife's family and otherwise vacations in Pakistan. Mr. Alam also works remotely for the applicant when required as do many other employees in this technological age. Finally, Mr. Alam declined the applicant's offer of health insurance as he is covered on his wife's plan.

Notwithstanding the foregoing, the applicant had submitted the health insurance waiver of coverage form signed by Mr. Alam dated May 11, 2010 which stated in a handwritten note as the reason for refusal of coverage that "I work remotely in another country where Aetna is not available". In addition, the W-2 for Mr. Alam showed a salary in an amount approximately 43% less than the other full-time software engineers for the applicants clearly working full-time in New Jersey. Mr. Rosenfeld reasoned that this lower salary is indicative of either a part-time status for this individual or payment at a rate standard for the country from which he was working remotely.

I am not persuaded that Mr. Alam was either at least a 35 hour per week full time employee as of June 30, 2011 or a full-time employee who was working within the State of New Jersey instead of another country in compliance the statutory requirements of the Program as cited above.

Based on my review, I do not believe that Software Synergy, Inc. has produced sufficient evidence to overturn the declinations previously issued.

Conclusion:

For the above reasons I will be recommending that the appeal be denied by the EDA Board at its meeting on November

9, 2011 at 10:00 a.m.

After the EDA Board concludes its review and renders its decision, which is subject to a ten (10) day veto period by the Governor, we will notice you of that final action.

Very truly yours,


Heather M. O'Connell
Hearing Officer

c: Caren S. Franzini, Chief Executive Officer
John J. Rosenfeld, Director

Memorandum

To: Heather O'Connell, Hearing Officer

From: John J. Rosenfeld, Director - Bonds & Incentives

Date: October 14, 2011

Re: Appeals - 2011 Technology Business Tax Certificate Transfer Program
Response to September 29, 2011 Appeal by Software Synergy, Inc.

RECOMMENDATION:

We have received and reviewed the September 29, 2011 appeal by Software Synergy, Inc. of the denial of its application for the 2011 Technology Business Tax Certificate Transfer Program. In response, we assert Software Synergy's appeal should be **rejected** because it does not explain how Software Synergy met the requirement of having Protected Proprietary Intellectual Property.

BACKGROUND:

We previously denied Software Synergy's application because Software Synergy did not send in the required documentation demonstrating that it owns, has filed for, or has a valid license to use Protected, Proprietary Intellectual Property¹. The Technology Business Tax Certificate Transfer Program Statute definition of Technology Company requires all technology applicants to own or license protected, proprietary intellectual property. Our published Regulations, in N.J.A.C. 19:31-12.2, contains the following definition of Protected Proprietary Intellectual Property: "Protected Proprietary Intellectual Property means intellectual property that is protected via a patent pending, patent awaiting approval, approved patent or **registered copyright**".

Software Synergy submitted a Master Software License Agreement (MSLA) template as evidence that it has a valid license to use protected, proprietary intellectual property. This MSLA template is between Software Synergy (as Licensor) and the Company Purchasing License (as Licensee). The issue here is twofold. First, while we allow applicants to obtain Protected, Proprietary Intellectual Property that they did not create via an exclusive license, our applicant would need to be the licensee of the Protected, Proprietary Intellectual Property (not the licensor). The MSLA submitted does not have Software Synergy as licensee. Second,

the software that is subject to the MSLA does not have a patent pending, patent awaiting approval, or approved patent nor has a copyright been registered for the software. For these reasons, Software Synergy was deemed not to own, have filed for, or have a valid license to use Protected, Proprietary Intellectual Property.

APPEAL SUMMARY:

In its appeal response, Software Synergy walks through a history of the company, talks about how it has attempted to remain competitive with larger vendors in the same space, and goes on to talk about why the decision was made not to register a copyright on its software. The reasons Software Synergy did not register a copyright was because they feared that in doing so, their source code would be exposed to competitors, it is expensive to sue for copyright infringement and the likelihood of recovering damages is small, and its corporate attorney advised that under the US copyright laws, Software Synergy has all the intellectual property protection necessary to defend the ownership and integrity of its products.

The applicant also submitted a letter from its attorney echoing the appeal letter stating that Software Synergy's software is lawfully protected by the copyright laws of the United States. The attorney also states that the software is a trade secret which provides protection as well. Additionally, the attorney states that Software Synergy's software does qualify as protected, proprietary intellectual property and that it should be so designated by the NJEDA.

ANALYSIS OF APPEAL SUMMARY:

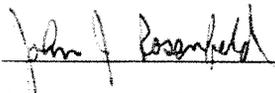
In order to be successful in its appeal, Software Synergy has to demonstrate that it owns, has filed for, or has a valid license to use Protected, Proprietary Intellectual Property as defined in the Technology Business Tax Certificate Transfer Program's Regulations. As stated above, to be considered Protected, Proprietary Intellectual Property under the Regulations the software would need to have a patent pending, patent awaiting approval, or approved patent or have a copyright registered for the software. Because the Program Regulations contain a specific definition, whether and to what extent federal law may provide other protection for software is irrelevant to the review of a Program application.

The applicant states in its appeal that it made a decision not to register a copyright and clearly fails this portion of the requirements. The applicant did not indicate that the software had gone through any portion of the patent process and clearly fails on this portion of the requirements. The MSLA that the applicant submitted is not an exclusive license of Protected, Proprietary Intellectual Property as the applicant is not the Licensee and the software does not meet the Regulatory definition of Protected, Proprietary Intellectual Property.

It should be noted, the definition of Protected, Proprietary Intellectual Property is included in the application in Exhibit A, where each company is asked to demonstrate how it meets the definition of Biotechnology/Technology Company and in Exhibit E, where we ask for a list of the Protected, Proprietary Intellectual Property of each applicant. The FAQs for the Technology Business Tax Certificate Transfer Program also specifically cover the requirement for copyrights to be Registered with the Library of Congress.

CONCLUSION:

In conclusion, Software Synergy's appeal should be rejected because it does not own, has not filed for, and does not have a valid license to use Protected, Proprietary Intellectual Property as defined in the Technology Business Tax Certificate Transfer Program's Regulations. As owning/filing for/licensing Protected, Proprietary Intellectual Property is an absolute requirement of the Technology Business Tax Certificate Transfer Program, the application of Software Synergy was correctly declined and the appeal should be rejected.



John J. Rosenfeld
Director – Bonds & Incentives

¹ Please note, Software Synergy was denied for a second reason, failing to meet the minimum number of full-time employees working in New Jersey, by the Authority's Board on October 11, 2011. This appeal analysis is based solely on the original appeal, regarding Protected Proprietary Intellectual Property, from Software Synergy. Software Synergy has until October 31, 2011 to submit an appeal on the minimum employment issue but has not done so as of today, October 14, 2011.

Memorandum

To: Heather O'Connell, Hearing Officer

From: John J. Rosenfeld, Director - Bonds & Incentives

Date: November 1, 2011

Re: Appeals - 2011 Technology Business Tax Certificate Transfer Program
Response to October 26, 2011 Appeal by Software Synergy, Inc.

RECOMMENDATION:

We have received and reviewed the October 26, 2011 appeal by Software Synergy, Inc. of the October 11, 2011 denial of its application for the 2011 Technology Business Tax Certificate Transfer Program¹. In response, we assert Software Synergy's appeal should be **rejected** because it does not explain how Software Synergy met the minimum employment requirement.

BACKGROUND:

We previously denied Software Synergy's application because we determined that Software Synergy did not have the minimum required number of Full-Time Employees (10) working in New Jersey. In the employee log submitted with its application, Software Synergy listed exactly 10 full-time employees working in New Jersey. However, one of the employees indicated on his healthcare opt out form, provided to us by Software Synergy, that he was declining employer offered health insurance because Aetna was not available in the country where he works remotely. (The opt out form is attached.) Therefore, this employee cannot physically be working in New Jersey full-time and therefore the applicant has not met the minimum full-time New Jersey employment requirement. Without this employee, the company only shows 9 employees in New Jersey, whereas the minimum requirement for a company incorporated or formed more than 5 years is 10 Full-Time Employees.

The Technology Business Tax Certificate Transfer Program, though specific to the biotechnology and technology sectors, is ultimately a job creation program. As such, the minimum employment requirement is structured to fit any applicant from a single individual working in his or her garage to much more mature companies as long as the full-time New Jersey employment level continues to meet or exceed the increasing minimum employment thresholds (but remains at or below the 224 U.S. employees maximum). This minimum

employment structure, 10 employees for a company incorporated more than 5 years, was designed to reflect the employment path of a company with a greater likelihood of attaining profitability versus a company that has low or no growth in its employment.

APPEAL SUMMARY:

In its appeal response, Software Synergy indicates that the employee in question, Faisal Alam, was born in the U.S, is a full citizen, and a full-time New Jersey employee as evidenced by the year end W2 reports. Software Synergy states that it pays withholding taxes for Mr. Alam. In addition, the appeal states that Mr. Alam was physically working in New Jersey on June 30, 2011, and that he is listed on the 941 filed for the 2nd quarter of 2011. Software Synergy expresses confidence that its year-end 941 will also list Mr. Alam. It also avers that Mr. Alam declined the company's health benefits because he is covered by his spouse's plan. Ms. Oxley, CEO of the applicant, indicated in the appeal that, from time to time, Mr. Alam may visit his wife's family or go on vacation to Pakistan. While away, if the company requires Mr. Alam to help with a project, he will work remotely. Submitted with the appeal were Mr. Alam's W2s for 2009 and 2010, and the applicant's W3 for 2009 and 2010.

ANALYSIS OF APPEAL SUMMARY:

In order to be successful in its appeal, Software Synergy has to demonstrate that Mr. Alam was physically working in New Jersey 35 hours a week every week, or renders any other standard of service generally accepted by custom or practice as full-time employment. When the Technology Business Tax Certificate Transfer Program Statute was modified in 2009, a new requirement was added mandating that each applicant have a minimum number of Full-Time Employees working in New Jersey based on the time since the company was incorporated. The minimum number of Full-Time Employees working in New Jersey starts at 1 for applicants incorporated between 0 and 3 years prior to the June 30 submission date, increases to 5 Full-Time Employees working in New Jersey for applicants incorporated between 3 and 5 years prior to the June 30 submission date, and increases again to 10 Full-Time Employees working in New Jersey for applicants incorporated for longer than 5 years prior to the June 30 submission date. Counting Mr. Alam, the company has 10 employees.

In Mr. Alam's health insurance opt out form, which he completed in the Spring of 2010, Mr. Alam declined health insurance for himself, spouse and children, stating the reason as "I work remotely in another country where Aetna is not available." To qualify as a Full-time Employee, the employee must physically work in New Jersey. Even if the custom or practice as a full-time employee is to work remotely, the employee must be physically located in New Jersey.

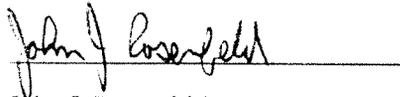
The submission of the W2s and the IRS form 941 filed quarterly with the IRS indicating payment of federal withholding tax does not provide evidence that Mr. Alam worked full-time while physically in New Jersey, they merely reflect the fact that wages were paid to Mr. Alam. The fact that the applicant notes Mr. Alam worked in the New Jersey office on June 30, 2011 also does not indicate that he was working full-time physically in New Jersey 35 hours or more each week, per the Statute.

Additional doubts about Mr. Alam's status as a full-time employee working in New Jersey are also raised by his earnings. Based on the Exhibit C(3), Full-Time Employment Log, submitted with the application, Mr. Alam has been working for Software Synergy since May 1, 2006. The W2s indicated Mr. Alam was paid \$29,833.35 for 2009 and \$27,999.95 for 2010. His job title is Software Engineer. Another Software Engineer, who has been employed by Software Synergy since June 1999, was listed on the Exhibit C(3) with annual wages of \$49,300. Two Senior Software Engineers annual salaries were listed as \$75,500 and \$86,252. This disparity in wages (Mr. Alam makes 43% less than the other Software Engineer employed by Software Synergy) seems to indicate that Mr. Alam only works part-time and/or is paid at a rate that is standard in another country where he works remotely as he stated on his healthcare opt-out form.

In conclusion, it does not appear that Mr. Alam was a Full-Time Employee working physically in New Jersey based on what appears to be part-time wages or below market compensation for his job title which further supports his election to decline healthcare because he works remotely from another country.

CONCLUSION:

In conclusion, Software Synergy's appeal should be rejected because it does not provide sufficient evidence that it met the minimum job requirement of employing physically in New Jersey at least 10 Full-Time Employees as of June 30, 2011.



John J. Rosenfeld
Director – Bonds & Incentives

¹ Please note, Software Synergy was denied for a second reason regarding Protected Proprietary Intellectual Property, which was appealed on September 29, 2011 and is being recommended by the Hearing Officer to be declined by the Board at its November 9th meeting.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 1, 2011

Valerie Rainey,
Chief Financial Officer
INTTRA, Inc.
Morris Corporate Center II
One Upper Pond Road
Building D
Parsippany, NJ 07054

Dear Ms. Rainey:

I am in receipt of your appeal for reconsideration under the Technology Business Tax Certificate Transfer Program ("Program")

Previous Action:

By way of background, the Board of Directors of the New Jersey Economic Development Authority ("EDA") reviewed and declined your application for Program benefits on September 14, 2011. The information provided indicated that INTTRA, Inc. failed to submit the required independent CPA prepared financial statements of its parent company for either of the last 2 years as required by N.J.S.A. 34:1B-7.42(a)(b)(5).

Legal Citation:

The legal provision is the definition of ownership or control which appears at N.J.S.A. 34:1B-7.42 (a) (b)(5) that states in relevant part that no application shall be approved for a new or expanding emerging technology or biotechnology company which: "(2) is directly or indirectly at least 50 percent owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board or is part of a consolidated group of affiliated corporations, as filed for federal income tax purposes, that in aggregate has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its combined financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board."

Discussion:

As indicated in the attached memorandum by John Rosenfeld, whose team reviewed your application to the Program, the primary rationale for denying the application of INTTRA, Inc. ("INTTRA" or the "company") was that the Authority could not determine if the company complied with the criteria cited above because the company failed to submit its parent company financial statements.

INTTRA asserted that no single entity directly or indirectly controlled at least 50% of the company. It explained that ABS Capital Partners VI, LLC ("ABS, LLC") is the general partner in three ABS Capital Partner funds and only holds a 4.7% interest in each of the entities and, therefore, does not directly or indirectly own at least 50 percent of INTTRA. Further, The company further explained that the ABS Capital Partners entities do not control the Board of Directors of INTTRA as they can appoint only two of the seven total directors.

The memorandum prepared by John Rosenfeld contends that ABS, LLC is the general partner in each of ABS Capital Partner's three funds which own an aggregate of 50.7% of the stock of INTTRA notwithstanding that ABS, LLC itself holds only a 4.7% interest in each of these funds. The memorandum also explains that based on information provided by INTTRA in its appeal, the three funds also control 51% of the voting shares of INTTRA. The memorandum points

MAILING ADDRESS: | PO BOX 990 | TRENTON, NJ 08625-0990

SHIPPING ADDRESS: | 36 WEST STATE STREET | TRENTON, NJ 08625 | 609.292.1800 | e-mail: njeda@njeda.com | www.njeda.com

out that the general structure of a limited partnership is that the general partner acts on behalf of the limited partners, and as a result, ABS, LLC effectively indirectly exercises control the three limited partnerships that own 50.7% of INTTRA. As such, the memorandum concludes that ABS, LLC indirectly owns the 50.7% of the interest in INTTRA. In addition, as ABS, LLC is the only general partner of these three funds, it is also asserted that ABS, LLC indirectly controls 51% of the voting shares of INTTRA.

I am not persuaded that the applicant has demonstrated that there is not any parent entity with either a direct or indirect ownership or control of the applicant. The purpose of the statutory provision cited above is to ensure fairness in the Program application process by making certain that no corporation tax benefit certificate is approved for an applicant that has a parent company demonstrating positive net operating income in any of the two previous full years of operations. Based on the ownership structure of the applicant, the financial statements of ABS Capital VI, LLC should have been submitted showing a net operating loss in order for INTTRA to be considered for the Program. As these financial statements were not submitted with the original application, the company has not satisfied the Program requirements.

Based on my review, I do not believe that INTTRA, Inc. has produced sufficient evidence to overturn the declination previously issued.

Conclusion:

For the above reasons, I will be recommending that the appeal be denied by the EDA Board at its meeting on November 9, 2011 at 10:00 a.m.

After the EDA Board concludes its review and renders its decision, which is subject to a ten (10) day veto period by the Governor, we will notice you of that final action.

Very truly yours,



Heather M. O'Connell
Hearing Officer

c: Caren S. Franzini, Chief Executive Officer
John J. Rosenfeld, Director

Memorandum

To: Heather O'Connell, Hearing Officer
From: John J. Rosenfeld, Director - Bonds & Incentives
Date: October 14, 2011
Re: Appeals - 2011 Technology Business Tax Certificate Transfer Program
Response to September 28, 2011 Appeal by Intra, Inc.

RECOMMENDATION:

We have received and reviewed the September 28, 2011 appeal by Intra, Inc. (Intra) of the denial of its application for the 2011 Technology Business Tax Certificate Transfer Program. In response, we assert Intra's appeal should be **rejected** because it does not explain how Intra met the requirements to provide the financial statements of its parent company.

BACKGROUND:

We previously denied Intra's application because Intra did not send in the required financial statements of its "parent company". The Technology Business Tax Certificate Transfer Program Statute states that, "No application for a corporation business tax benefit transfer certificate shall be approved in which the new or expanding emerging technology or biotechnology company (1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board; or (2) **is directly or indirectly at least 50% owned or controlled by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board...**"

Although for ease of use we typically refer to any entity that meets the second part of the Statutory requirement above as a "parent company", the Statutory requirement is very broad and is not limited to what may be commonly understood as a "parent company." Thus, the requirement includes entities such as Venture Capital funds that

would generally not be considered by either themselves or the entities they invest in to be a parent company. As stated in the application, ABS Capital Partners VI, L.P. (44.9% ownership of Intra), ABS Capital Partners VI-A, L.P. (.8% ownership of Intra), and ABS Capital Partners VI Offshore, L.P. (5% ownership of Intra) together own roughly 50.7% of the outstanding shares of Intra (though none individually own 50% or more). Because these 3 related entities have indirect ownership/control of Intra, it was required to provide the most recent two full years of financial statements of those entities in an effort to ascertain whether they showed operating income in either of the two most recent full years.

APPEAL SUMMARY:

In its appeal response, Intra, went through 2 separate exercises to demonstrate that, first, no entity directly or indirectly owned 50% or more of Intra and, second, that no entity directly or indirectly controlled 50% or more of Intra. From the **ownership** perspective, Intra provided several tables showing the ownership percentages of the 3 funds in question and indicated that ABS Capital Partners VI, LLC is the general partner in each of the 3 funds and only has a 4.7% ownership interest in each of the 3 funds. The appeal then goes on to state that because the general partner only has a 4.7% interest in each of the 3 funds that it cannot directly or indirectly own 50% of Intra. Additionally, the appeal states that since no entity owns more than 11% of the fund with the largest ownership percentage of Intra (44.9%), no single entity has 50% or more ownership of Intra.

Regarding the **control** aspect, Intra states that the ABS funds can only appoint 2 of the 7 members of the Board of Intra and therefore, do not have control over the Board.

Thus, Intra argues that because no single entity either owns or controls Intra directly or indirectly, Intra is not required to submit any financial statements for the funds in question.

ANALYSIS OF APPEAL SUMMARY:

The Program statute bars an applicant if it “is **directly or indirectly at least 50% owned or controlled** by another corporation that has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board...”. The statute creates four scenarios in which the applicant must submit financial statements for another corporation: at least 50% direct ownership, at least 50% direct control, at least 50% indirect ownership, and at least 50% indirect control.

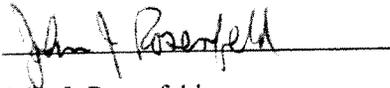
As explained above, Intra’s application showed that a single entity likely indirectly owned or controlled at least 50% of Intra. In order to be successful in its appeal, Intra has to demonstrate that such conclusion is erroneous. Although never in question, Intra nicely demonstrated that no entity directly controls or owns 50% or more of Intra.

1. **No entity indirectly owns 50% or more of Intra** – Indirect ownership of at least 50% can occur through either sufficient ownership of intermediate owners of the applicant (e.g., a 90% owner of two companies that each own 50% of the applicant) or control of companies that together own more than 50% of the applicant. While Intra asserts that the first type of indirect ownership does not exist, the facts show that the second type of indirect ownership does. The appeal states that ABS Capital Partners VI, LLC is the general partner in each of the 3 funds that together own 50.7% of the stock of Intra (and 51% of the voting shares). Though the general partner only owns 4.7% of each of the 3 funds in question, the nature of a general partnership is such that the limited partners cede control of the partnership to the general partner, who basically acts as agent for the limited partners, for a limit to their liability arising from the partnership. The general partner exercises control over 100% of the 3 limited partnerships that, in turn, own 50.7% of Intra. As such, there is no difference, from an ownership perspective, between having a single entity own 50.7% of the stock (direct ownership) and having the general partner control the decisions of the 3 limited partnerships owning 50.7% of the stock (an indirect ownership). Any and all decisions to increase or decrease the ownership percentage of Intra by the limited partnerships, to change any terms agreed to such as regarding warrants, to convert shares, to forgive debt etc. is controlled by the general partner just as it would be for any single entity with 50.7% direct ownership of Intra. Thus, ABS Capital Partners VI, LLC clearly indirectly owns 50.7% of the stock of Intra by virtue of being the general partner in each of the 3 funds that together own 50.7% of Intra.

2. **No entity indirectly controls 50% or more of Intra** - The appeal stated that ABS Capital Partners VI, LLC is the general partner in each of the 3 funds that together own 51% of the voting shares of Intra (and 50.7% of the outstanding (non-diluted) stock). Though the general partner only owns 4.7% of each of the 3 funds in question, the nature of a limited partnership is such that the limited partners cede control of the partnership to the general partner, who basically acts as the agent for the limited partners. In exchange for ceding control, the limited partners are not personally liable for the obligations of the partnership. As described in the appeal, ABS Capital Partners VI, LLC is **the** general partner, meaning the only general partner, of the three related funds. As such, ABS Capital Partners VI, LLC clearly indirectly controls 51% of the voting stock of Intra by virtue of being the general partner in each of the 3 funds that together own 51% of the voting shares of Intra. We assessed controlled based on the voting shares rather than on any other internal mechanism of control because control ultimately resides with the voting shareholders, although they may delegate some authority/control to the Board of Directors who may, in turn delegate some authority/control to the company employees. Attempting to assess who ultimately controls (shareholders, Board, employees) any aspect of the day to day operations of the company would require significant effort in disentangling each company's internal structure and would similarly complicate the otherwise straightforward test of direct control.

CONCLUSION:

In conclusion, Intrtra's appeal should be rejected because ABS Capital Partners VI, LLC, the general partner in each of the 3 funds that together control 51% of the voting shares has indirect ownership and control of 50% or more of the applicant and, as such, was required to submit its two previous full years of financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board. As these financial statements were not submitted, the application of Intrtra was correctly declined and the appeal should be rejected.

A handwritten signature in black ink, appearing to read "John J. Rosenfeld", is written over a solid horizontal line.

John J. Rosenfeld
Director - Bonds & Incentives



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

November 1, 2011

Robert D. Love, VP and CFO
Elusys Therapeutics, Inc.
25 Riverside Drive
Pine Brook, NJ 07058

Dear Mr. Love:

I am in receipt of your appeal for reconsideration under the Technology Business Tax Certificate Transfer Program ("Program").

Previous Action:

By way of background, the Board of Directors of the New Jersey Economic Development Authority ("EDA") reviewed and declined your application for Program benefits on September 14, 2011. The information provided indicated that Elusys Therapeutics, Inc. failed to submit the required independent CPA prepared financial statements for 2010 as required by N.J.S.A. 34:1B-7.42(a)(b)(5). The draft 2010 audit provided with the application also showed Net Operating Income in 2010 which is in violation of N.J.S.A. 34:1B-7.42(a)(b)(5).

Legal Citation:

The relevant legal provision is the definition of "Net operating loss" which appears at N.J.A.C. 19:31-12.2 that states: "Net operating loss" means the excess of deductions over the gross income used in computing entire net income in a specific year without regard to the net operating loss carryover to that year and the dividend exclusion as provided in N.J.S.A. 54:10A-5(k)(6)(c)." Further, the statute provides at N.J.S.A. 34:1B-7.42(a)(b)(5) that "[N]o application for a corporation business tax benefit transfer certificate shall be approved in which the new or expanding emerging technology or biotechnology company (1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board...".

Discussion:

Elusys Therapeutics, Inc. ("Elusys" or the "company") submitted with its appeal the final copy of its 2010 audited financial statements dated September 21, 2011 prepared by Mitchell & Titus, LLP. This submission constitutes a supplement to the draft audit previously provided and, therefore, does not constitute a consideration of new evidence or information which is prohibited by N.J.A.C. 19:31-12.6(d). The audited financial statements provided satisfies the requirement for such submission pursuant to N.J.S.A. 34:1B-7.42(a)(b)(5).

As indicated in the attached memorandum by John Rosenfeld, whose team reviewed your application to the Program, the primary rationale for determining that Elusys did not meet the definition of having a net operating loss was that the 2010 audited financial statements provided by the company show net operating income of \$265,519.

Elusys asserted that its only revenue for that year was a result of contract receipts from the U.S. government. These receipts should not be counted as revenue as it was a "reimbursement of costs" and was not generated by any service or product of the company.

I do not find this argument to be persuasive as the generally accepted accounting standards required to be followed by the statute for this Program mandates that contract receipts be shown as revenue.

It could be inferred from its appeal that Elusys also was contending since the net operating loss in 2009 is greater than the net operating income in 2010 its application should be approved as the company suffered an aggregate net loss.

MAILING ADDRESS: | PO Box 990 | TRENTON, NJ 08625-0990

SHIPPING ADDRESS: | 36 WEST STATE STREET | TRENTON, NJ 08625 | 609.292.1800 | e-mail: njeda@njeda.com | www.njeda.com

This argument would also be without merit, however; as N.J.S.A. 34:1B-7.42a (b) (5) (above cited) as well as N.J.A.C. 19:31-12.3 (b) (1) clearly state that no application can be approved where the applicant has recorded positive net operating income for either of the two previous full years of its business. Elusys has demonstrated positive net operating income for 2010. As a result, there is no support in the statute or regulations to permit a company to assert, an aggregate net operating loss.

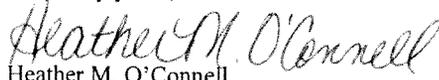
Based on my review, I do not believe that Elusys Therapeutics, Inc. has produced sufficient evidence to overturn the declination previously issued.

Conclusion:

For the above reasons, I will be recommending that the appeal be denied by the EDA Board at its meeting on November 9, 2011 at 10:00 a.m.

After the EDA Board concludes its review and renders its decision, which is subject to a ten (10) day veto period by the Governor, we will notice you of that final action.

Very truly yours,


Heather M. O'Connell
Hearing Officer

c: Caren S. Franzini, Chief Executive Officer
John J. Rosenfeld, Director

Memorandum

To: Heather O'Connell, Hearing Officer

From: John J. Rosenfeld, Director – Bonds & Incentives

Date: October 14, 2011

Re: Appeals - 2011 Technology Business Tax Certificate Transfer Program
Response to September 30, 2011 Appeal by Elusys Therapeutics, Inc.

RECOMMENDATION:

We have received and reviewed the September 30, 2011 appeal by Elusys Therapeutics, Inc. (Elusys) of the denial of its application for the 2011 Technology Business Tax Certificate Transfer Program. In response, we assert Elusys' appeal should be **rejected** because the final audited financial statements of Elusys show a positive Net Operating Income in 2010 while the Technology Business Tax Certificate Transfer Program Statute requires each applicant to show a Net Operating Loss on each of its two previous full years' financial statements as prepared by an independent CPA according to GAAP.

BACKGROUND:

We previously denied Elusys' application for 2 reasons. First, because Elusys had submitted its 2010 independent CPA audit in draft form and we only accept finalized versions of the financial statements be they compilations, reviews or audits. The second reason was that the draft audit showed Net Operating Income in 2010 (a positive \$580,859) while the Technology Business Tax Certificate Transfer Program Statute requires each applicant to show a Net Operating Loss on each of its two previous full years' financial statements as prepared by an independent CPA according to GAAP.

APPEAL SUMMARY:

In its appeal response, Elusys explained why the final version of the 2010 audit was delayed and provided a finalized copy of its 2010 financial statements audited by Mitchell & Titus, LLP and dated September 22, 2011. The appeal then goes on to indicate that while the GAAP financial statements do show a Net Operating Income of \$265,519 in 2010, Elusys only had

only 1 source of revenue - contract receipts from the U.S. Government. No product or service revenue has been generated by Elusys but GAAP requires the contract receipts to be recorded as revenue. This revenue alone produced the Net Operating Income. Additionally, because the Net Operating Loss in 2009 was greater than the Net Operating Income in 2010, Elusys did not have Net Operating Income in the 2 previous full years of ongoing operations.

ANALYSIS OF APPEAL SUMMARY:

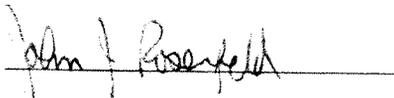
To overcome the first reason for rejection, Elusys has to provide a finalized version of its 2010 financial statements prepared by an independent CPA according to GAAP. Elusys did provide a finalized version of its 2010 financial statements prepared by an independent CPA according to GAAP which satisfies the first reason Elusys was declined.

The second reason Elusys was declined was due to the positive Net Operating Income on its 2010 financial statements which did not change with the finalized 2010 audited financial statements. The finalized 2010 audited financial statements show a positive Net Operating Income of \$265,519. As the Technology Business Tax Certificate Transfer Program Statute requires each applicant to show a Net Operating Loss on each of its two previous full years' financial statements as prepared by an independent CPA according to GAAP, any positive amount shown as Net Operating Income makes an applicant ineligible for the Technology Business Tax Certificate Transfer Program for 2 years. Additionally, the argument that contract receipts from the U.S. Government should not be counted as revenue is irrelevant because the Program Statute requires the financial statements to be prepared according to GAAP. Elusys' auditor did prepare the financial statements according to GAAP and GAAP requires contract receipts from the U.S. Government to be shown as revenue.

The appeal also implies that, because the 2009 Net Operating Loss is greater than the Net Operating Income in 2010, Elusys had a Net Operating Loss in the 2 previous full years of ongoing operations and should therefore be approved. However, the relevant section of the Statute reads as follows, "***No application for a corporation business tax benefit transfer certificate shall be approved in which the new or expanding emerging technology or biotechnology company (1) has demonstrated positive net operating income in any of the two previous full years of ongoing operations as determined on its financial statements issued according to generally accepted accounting standards endorsed by the Financial Accounting Standards Board...***". The portion of that passage stating, "in any of the two previous..." does not allow for Net Operating Income in **either** of the two most recent full years of operations. There is no way to interpret the Statute to add 2 years worth of Net Operating Income/Loss together to achieve an aggregate amount which must be negative. Clearly the Net Operating Income/Loss line item on the financial statements must be negative in both years.

CONCLUSION:

In conclusion, Elusys' appeal should be rejected because the 2010 audited financial statements show a positive Net Operating Income. As having Net Operating Losses in each of the two previous full years of ongoing operations is a Statutory requirement, the application of Elusys was correctly declined and the appeal should be rejected.

A handwritten signature in black ink, appearing to read "John J. Rosenfeld", is written over a horizontal line.

John J. Rosenfeld
Director – Bonds & Incentives

BOARD MEMORANDUMS



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini, Chief Executive Officer

DATE: November 9, 2011

SUBJECT: PNC Business Growth Fund

On September 14, 2004, the Board approved the “New Jersey Business Growth Fund” (BGF) which expanded the relationship between PNC Bank and the Authority. This program supports our small business strategy and enhances our ability to meet the needs of New Jersey small businesses. Through the Business Growth Fund, PNC agreed to make \$100 million in low interest loans available to fund New Jersey companies committed to job creation or retention (for manufacturers). Capital made available by PNC Bank is offered at below market interest rates, with a fixed or variable rate option. EDA provides either a 25% or 50% guarantee on loans of up to \$3 million for qualified projects under the program.

Since program inception, 290 projects have been closed, which represents approximately \$137 million in loans with approximately \$43 million in Authority guarantees. 2011 volume to date was 27 projects approved, which represents \$12.3 million in bank loans with \$4.2 million in Authority guarantees. Of that total, 25 projects have closed for \$11.7 million in bank loans with \$3.7 million in Authority guarantees. Average loan size is approximately \$450,000. There are 201 projects in the active portfolio, with approximately \$27.3 million in guarantee exposure against \$85.9 million in PNC loans. It should be noted that under the agreement with PNC, the maximum aggregate exposure to the Authority is \$10 million. The last review of the BGF portfolio was in March 2011, and was deemed satisfactory. Overall, loans were closed in conformity with approvals and documented properly.

At this time, there are five projects (approximately \$480M in Authority exposure) in the active portfolio that are delinquent. There are also six additional projects with aggregate EDA exposure of \$720M which have been transferred to Special Loan Management. Of the six, three guarantees with total exposure of \$210,590 have been called of which one has been paid out. It is anticipated that \$39,360, the amount paid out on one guarantee, will be written off.

The agreement with PNC will expire on December 31, 2011. PNC has requested that the Authority extend the program for an additional year, with a commitment of \$25 million in loan volume. The interest rate in effect for the program, which is either a fixed rate based on the five year Treasury + 250 bp (current indicative rate is 3.64%), or a variable rate based on WSJ Prime minus 50 bp (current indicative rate is 2.75%), will remain the same. These rates compare favorably to conventional commercial loan rates being offered, which are currently in the 5% - 6% range. It is requested that the CEO continue to have authority to negotiate alternative interest rate changes, not to exceed 50 bp, as may be requested by PNC.

It is recommended that the "New Jersey Business Growth Fund" program be extended for one year. This program supports our small business strategy and enhances our ability to meet the needs of New Jersey small businesses. To effectuate this, the Memorandum of Understanding with PNC Bank will be amended subject to DAG review.



Prepared by: S. Mania

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini, Chief Executive Officer

DATE: November 9, 2011

SUBJECT: Projects Approved Under Delegated Authority - **For Informational Purposes Only**

The following projects were approved under Delegated Authority in October 2011:

New Jersey Business Growth Fund:

- 1) 100 Syracuse Court LLC (P36981), located in Lakewood Township, Ocean County, is a real estate holding company formed to purchase and operate the project property. The operating companies, MDI Manufacturing, Inc. and MDI Precision Products, Inc., both share a common ownership and provide machining product assembly and drafting services. PNC Bank approved a \$1,485,000 bank loan with a 50% guarantee, not to exceed \$742,500. Proceeds will be used to purchase commercial real estate. Currently, the Company has twenty employees and has committed to creating 2 new jobs over the next two years.
- 2) D & D Hay Associates, LLC (P36967), located in Cherry Hill Township, Camden County, is a real estate holding company formed to acquire the project property. The operating company, The Dance Academy, Inc. was formed in 1997 as a professional dance instruction school to children ages three and up. PNC Bank approved a \$612,000 bank loan with a five-year, 25% guarantee of principal outstanding, not to exceed \$153,000. Loan proceeds will be used to purchase commercial real estate. The Company currently has eight employees and plans to create four new jobs within the next two years.
- 3) Philadelphia Investment Partners, LLC and MGZ Properties, LLC (P36953) are located in Voorhees Township, Camden County. Philadelphia Investment Partners, founded in 2010 by Peter Zeuli, operates as an investment broker. The Company previously operated as Philadelphia Investment Partners, LP since its formation in 1999. MGZ Properties, LLC is a real estate holding company jointly owned by Peter Zeuli and his wife. PNC Bank approved a \$330,000 term loan with a five-year, 25% guarantee of principal outstanding, not to exceed \$82,500. Proceeds will be used to refinance an existing mortgage on a commercial property. Currently the Company has two employees and plans to create two additional positions over the next two years.

Small Business Fund Program:

- 1) 201 Luiz Marin Realty LLC and Doggy Care of Jersey City LLC (P36893) are located in Jersey City, Hudson County. 201 Luiz Marin Realty LLC was formed to purchase the project property. MESA, LLC d/b/a Club Barks has been operating since 2005 as a provider of quality services for dogs, including daycare, boarding, grooming and training. Doggy Care of Jersey City LLC represents expansion as it will be a second location for the existing business. The Company was approved for a \$231,275 loan used to purchase and renovate the project property, purchase equipment and machinery and pay legal and finance fees. The Company plans to create seventeen new jobs within the next two years.

Preferred Lender Program:

- 1) Amerinox Processing, Inc. (P36945), located in Camden City, Camden County was founded in 1991 to process stainless, aluminum and galvanized steel on a toll basis for third party customers. The Company provides a wide variety of in-house processing options, including hot and cold rolled cut to length lines, coil to coil wet polishing, blanking, shearing and flat bar manufacturing. Cornerstone Bank approved a \$405,000 bank loan contingent upon a \$202,500 (50%) Authority participation. Proceeds will be used to purchase equipment and machinery. The Company currently has 44 employees and plans to create five new jobs over the next two years.
- 2) Bergen Shippers Corp. (P36909), located in North Bergen Township, Hudson County, was formed in 1996 as a provider of warehouse and logistics services for the apparel industry. Bank of America approved a \$1,125,000 bank loan contingent upon a \$350,000 (31.11%) Authority participation. Proceeds will be used to purchase equipment and machinery. Currently, the Company has 175 employees and plans to create 40 new jobs within the next two years.

New Jersey Business Growth Fund - Modification:

- 1) Lafferty Property Holdings, LLC (P36951), located in Berlin Township, Camden County, is a real estate holding company that owns the project property. The operating company, Lafferty Family Chiropractic LLC was formed in 1997 as a provider of chiropractic services to customers in the South Jersey area. PNC Bank has approved an extension of a \$209,000 loan with a five-year, 25% guarantee, not to exceed \$52,250. Original loan proceeds were used to purchase commercial real estate. All other terms and conditions of the original approval remain unchanged.



REAL ESTATE



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: Security Services
NJEDA Headquarters and Barnes Street Parking Lot, Trenton, NJ and
Waterfront Technology Center, Camden, NJ

DATE: November 9, 2011

Summary

I am requesting the Members' approval to enter into contracts for security services with Bowles Security Group, Inc. (Bowles) of Clifton, New Jersey for security related services for the following properties: (i) NJEDA Headquarters and Barnes Street Parking Lot, Trenton; and (ii) Waterfront Technology Center, Camden. Bowles is the current security service provider for both properties.

Background

The Real Estate Division publicly advertised a Request for Qualifications and Proposals (RFQ/P) for the referenced services on behalf of the Authority. The current security contracts for these properties expire on December 31, 2011.

Site tours were held and questions and answers were posted on the Authority's website. Proposals were received from the following six (6) firms:

- Bowles Security Group, Inc.
- Command Security Corporation
- Greenlee Security Services, LLC
- Security Guard Inc. T/A Tri-County Security, NJ
- US Security Associates
- Vets Securing America

A comprehensive evaluation and scoring analysis was performed (reference attached Evaluation Committee memo) resulting in the Evaluation Committee recommending the award to Bowles, the highest ranked bidder, based on the firm's qualifications, experience, price, and other factors, as outlined in the RFQ/P. The emphasis of the evaluative scoring was based on the firm's qualifications and experience; the firm's management, staff resources and experience; and the fee proposal. As outlined in their Proposal, in addition to the security services currently provided, Bowles will provide annual security surveys to monitor changes in the physical security program at the property and make professional recommendations based upon acceptable industry standards.

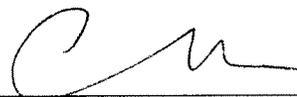
Final approval of Bowles will be subject to receipt and approval of its compliance documentation. In the alternative, if Bowles is found to be non-compliant, we are seeking approval to enter into a contract with the next highest scoring firm, and so on, subject to receipt and approval of its compliance documentation.

It is recommended that the Authority enter into contracts with Bowles to provide security services for a term of three (3) years with an additional two (2) year renewal term option, in the Authority's sole discretion.

Bowles' fully loaded hourly rate for providing security services for the NJEDA Headquarters and Barnes Street Parking Lot is \$29.99 and the fully loaded hourly rate providing security services for the Waterfront Technology Center is \$23.67 with a 1% annual escalation. Fully loaded hourly rates were also provided for overtime, holidays and emergencies. These services are subject to the State Building Services Contracts Act which establishes the prevailing wage to be paid by county where the services are being performed. The Authority has the ability to increase or decrease service hours at either site at the rates specified in Bowles' proposal. The fees associated with the Waterfront Technology Center contract are part of the project specific yearly operating budget and are included in Common Area Maintenance expenses allocated to the tenants of the facility.

Recommendation

In summary, I am requesting the Members' approval to execute contracts for security services with Bowles Security Group, Inc. for a term of three (3) years with an additional two (2) year renewal term option, on terms acceptable to the Chief Executive Officer and the Attorney General's Office for the NJEDA Headquarters and the Barnes Street Parking Lot, and the Waterfront Technology Center in Camden.



Caren S. Franzini
Chief Executive Officer

Attachment
Prepared by: Donna Sullivan

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Evaluation Committee

FROM: Donna T. Sullivan
Development Manager, Real Estate Division

DATE: October 28, 2011

SUBJECT: Security Services - 2011-RED-RFQ/P-SEC-015
NJEDA Headquarters and Barnes Street Parking Lot, Trenton and
Waterfront Technology Center, Camden

The Real Estate Division publicly advertised a Request for Qualifications and Proposals (RFQ/P) for the referenced services on behalf of the Authority. The current security contracts for these properties expire on December 31, 2011. Site tours were held and questions and answers were posted on the Authority's website.

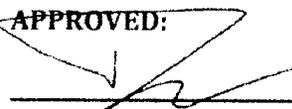
Six (6) firms submitted proposals in response to the solicitation which were publicly opened. The proposals were reviewed for compliance and evaluated based on the qualifications, experience, price, and other requirements as outlined in the RFQ/P. The following are the results of the ranking of the proposals (see attached score sheet for detailed information):

<u>Company</u>	<u>Ranking</u>
Bowles Security Group, Inc.	1
Vets Securing America	2
US Security Associates	3
Command Security Corporation	4
Greenlee Security Services, LLC	5
Security Guard Inc. T/A Tri-County Security, NJ	6

Bowles' fully loaded hourly rate for providing security services for the NJEDA Headquarters is \$29.99 and the fully loaded hourly rate providing security services for the Waterfront Technology Center is \$23.67 with a 1% annual escalation. Fully loaded hourly rates were also provided for overtime, holidays and emergencies. These services are subject to the State Building Services Contracts Act which establishes the prevailing wage to be paid by county where the services are being performed. The Authority has the ability to increase or decrease service hours at either site at the rates specified in Bowles' proposal. Bowles is the highest ranked firm and meets all the criteria outlined in the RFQ/P. It is recommended that Bowles be retained to provide these services for a three (3) year period with a two (2) year renewal option.

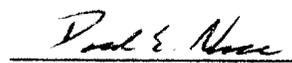
If this recommendation is acceptable, please sign below and Board approval will be sought at the November meeting. Final approval of Bowles will be subject to receipt and approval of its compliance documentation. In the alternative, if Bowles is found to be non-compliant, we are seeking approval to enter into a contract with the next highest scoring firm, and so on, subject to receipt and approval of its compliance documentation.

APPROVED:



Timothy J. Lizura, Senior Vice President

10-28-11
Date



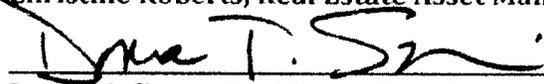
David E. Nuse, Managing Director, Finance & Development

10/28/11
Date



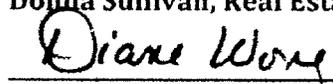
Christine Roberts, Real Estate Asset Manager

10-28-11
Date



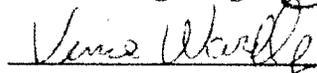
Donna Sullivan, Real Estate Development Manager

10.28.11
Date



Diane Wong, Program Manager

10-28-11
Date



Vince Wardle, Property Manager

10-28-11
Date

SECURITY SERVICES RFQ/P MATRIX

Name of Firm(s)	Firm's Qualifications & Experience	Firm's Management, Staff Resources & Experience	Security Strategies & Action Plans	Understanding of Scope	Staffing Plan	Fee Proposal	Exceptions to Contract (Y/N)	Complete Compliant Submission (Y/N)	Total Evaluation Score For Each Firm	Ranking
	25 POINTS	20 POINTS	10 POINTS	5 POINTS	10 POINTS	30 POINTS			100 POINTS	
Bowles Security Group, Inc.	24.75	19.5	6.25	4.5	6.75	18	N	Y	79.75	1
Vets Securing America	24	18.75	8.5	5	9.5	12	N	Y	77.75	2
US Security Associates	24	16	7.75	2.25	3	20	Y	Y	73	3
Command Security Corporation	23.75	15.5	8.5	3.75	3.5	13	N	Y	68	4
Greenlee Security Services, LLC	13.75	8.75	2.5	2.25	2.25	27	N	Y	56.5	5
Security Guard Inc. T/A Tri-County Security, NJ	10.75	13	2.75	2.25	2.25	22	N	Y	53	6



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: The Technology Centre of New Jersey
Lease Agreement with Watson Pharmaceuticals

DATE: November 9, 2011

Summary

I am requesting the Members' approval to enter into a five year Lease Agreement between the Technology Centre of New Jersey, LLC ("LLC") and Watson Pharmaceuticals, Inc. ("Watson") for approximately 32,341 square feet of office and lab space in the Tech II building.

Background

At the April, 1998 meeting, the Members and the Authority's joint venture partner, the AFL-CIO Building Investment Trust, approved the construction of a 60,000 square foot speculative R&D facility which was called Tech II. Construction was completed in 2000, and shortly thereafter, the facility was fully leased. The building has been vacant since May 1, 2011.

Watson, formed in 1984, is a global pharmaceutical company engaged in the development, manufacturing, marketing, sale and distribution of generic, brand and biologic pharmaceutical products. Watson is a publicly held company trading on the NYSE. As of December 31, 2010, the company marketed approximately 160 generic prescription pharmaceutical product families globally. Watson's total revenues were \$3.6 billion in 2010, an increase of 28% over 2009.

At the September, 2011 meeting, the Members approved Watson's application for a BEIP grant of up to \$1,899,700 to support the creation of 50 new research and development jobs. The BEIP grant was a material factor in Watson's decision to locate at the Technology Centre in North Brunswick, where it intends to invest \$11,890,000. Watson was also approved in October of 2009 for a BEIP grant of up to \$3,038,000 for its Parsippany location, where the company plans to create 175 new jobs in its corporate headquarters.

Watson's proposed 32,341 square foot premises is composed of 18,710 square feet previously leased by Meda Pharmaceuticals ("Phase I space"), and 13,631 square feet previously leased by Cambrex Corporation ("Phase II space"), which remains in raw condition. Therefore, the Tenant Improvement Allowance ("TIA") negotiated for the Watson fit-out is a blended rate of approximately \$39 per square foot, for a total of \$1,285,610. In addition, the LLC will provide certain base building improvements such as a new Building Management System and enhanced

electric service, for a maximum Landlord cost of \$140,000. After deduction of the leasing commission and the amortization of the TIA at 5% per annum, the net rent to the LLC will be approximately \$14.62 per square foot.

The tenant fit-out improvement project will be funded on a pari-passu basis utilizing the TIA and Watson's funds each month upon presentation of invoices by vendors until the TIA is expended, after which the monthly invoices will be funded exclusively by Watson.

Watson has not yet determined whether the construction will be performed by Watson or by the LLC. If the LLC performs the construction, existing contracts with the project construction manager, Torcon, and the project architect, HDR Architects (formerly CUH2A), will be change ordered.

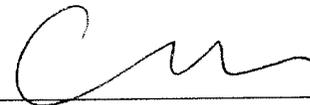
The TIA and base building improvements will be funded from the LLC's Reserve, Replacement and Investment ("RRI") account until it is depleted, leaving an estimated balance of \$624,000 to be funded by the LLC Members through a capital call. The Authority's portion of the capital call is estimated at \$228,000.

Watson has the option of accepting an additional TIA of up to \$1,850,000 for additional rent of \$3.00 per square for every \$10 per square foot in additional allowance. If Watson accepts the maximum TIA, the additional rent would be \$18.07 per square foot and would provide a return to the LLC of 17.25% per annum over the five year term. The Authority's share of the capital call necessary to fund the additional TIA would be up to approximately \$675,000.

In summary, the LLC will be required to invest approximately \$1,425,610 in tenant and base building improvements, which will be funded by the LLC's RRI Account and funds raised through a capital call. If Watson accepts the additional TIA of \$1,850,000, the Authority's share of the total maximum capital call will be approximately \$903,000.

Recommendation

In summary, I am requesting the Members' approval to 1) execute a Lease Agreement with Watson Pharmaceuticals, Inc. on final terms consistent with the attached, and 2) make an additional investment in the LLC of up to \$903,000 to fund Watson's Tenant Improvement Allowance, 3) amend existing contracts with Torcon and HDR Architects if Watson elects to have its tenant fit-out performed by the LLC, and 4) to execute any and all other documents to complete this transaction on final terms acceptable to the Authority's Chief Executive Officer and the Attorney General's Office.



Caren S. Franzini
Chief Executive Officer

Attachment

Prepared by: Christine Roberts

LANDLORD: Technology Centre of New Jersey, LLC (“Landlord”)

TENANT: Watson Pharmaceuticals, Inc. (“Tenant”)

BUILDING: 661 Route 1 South
Tech II building

LEASED PREMISES: Approximately 32,341 square feet.

TERM: Five years from the completion of Phase II space.

OCCUPANCY AND RENT COMMENCEMENT:

Phase I: Two months after the earlier of (i) issuance of a Certificate of Occupancy, (ii) tenant commencement of business operations within the space, or (iii) 10 months after the date of lease execution.

Phase II: Upon the earlier of (i) issuance of a Certificate of Occupancy, (ii) tenant commencement of business operations within the space, or (iii) 12 months after the date of lease execution.

SECURITY DEPOSIT: None.

BASE RENTAL RATE: \$23.50 per square foot, NNN, through the first anniversary of the Phase II Rent Commencement Date, with 3% increases on each anniversary thereafter.

TAXES AND OPERATING EXPENSES (CAM): Per standard Tech Centre NNN lease.

TENANT IMPROVEMENT ALLOWANCE: \$25 per square foot for the Phase I space (\$817,860) and \$60 per square foot for the Phase II space (\$467,750) for a total of \$1,285,610. An additional allowance may be taken for additional rent at the rate of \$3.00/sf NNN for every \$10/sf in additional allowance up to the lesser of \$750,000 or 75% of Landlord approved tenant improvement costs for Phase I, PLUS up to the lesser of \$1,100,000 or 75% of Landlord approved tenant improvement costs for Phase II.

Any unused allowance may be converted to free rent up to a limit of \$5 per square foot.

BROKERAGE COMMISSIONS: Under the Authority's contract with Jones, Lang, LaSalle, the Authority will pay a commission of approximately \$308,122.

RENEWAL OPTION: Two five (5) year renewal options at 95% of fair market rental, but not less than the then current base rent. The first renewal would include a decorating allowance of \$10 per square foot, or \$323,410, which would be funded from the LLC's RRI Account.



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: Waterfront Technology Center at Camden
Lease Agreement with Montgomery Investment Technology, Inc.

DATE: November 9, 2011

Summary

I am requesting the Members' approval 1) to enter into a lease agreement with Montgomery Investment Technology ("MIT") for approximately 1,735 square feet of second floor office space at the Waterfront Technology Center at Camden ("WTCC"), and 2) for a Business Lease Incentive ("BLI") Grant for MIT's additional leased space of approximately \$5,500 payable over two years.

Background

MIT, formed in 1988, currently occupies approximately 1,132 square feet in two separate non-contiguous offices in the Rutgers Camden Technology Campus ("RCTC"), a business incubator which originally leased 20,000 square feet on the second floor of the WTCC Tech One building. In December, 2010, the Members approved a partial termination of the RCTC lease, with the final amount of RCTC's reduced square footage contingent upon the decision of MIT to vacate the incubator space and lease directly from the Authority, or leave the building. MIT has chosen to lease space directly from the Authority.

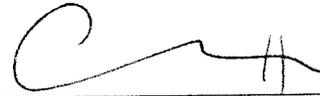
MIT develops software and provides consulting and training which assists investment and financial professionals in the valuation of options and derivative securities. The company moved a major portion of its operations from Pennsylvania to New Jersey in August 2007 and June 2009. Currently, MIT has five full time employees in Camden, and expects to add three employees within the next two years.

Approximately 350 square feet of MIT's proposed premises is the former waiting area of the RCTC incubator. MIT has agreed to perform the fit-out required to create an office in this currently un-leasable space, and the Authority will reimburse MIT for its costs, up to a maximum of \$12,000, via a rent credit. If the maximum reimbursement is credited and amortized over the lease term at 5%, the net rent to the Authority after commissions will be approximately \$22.0520.49 per square foot per year. Rent for the newly created office space will be \$8,304 per year.

Staff performed a financial analysis and determined that a security deposit equal to three months' rent, or \$10,000, will be required. In consideration of MIT's upfront cash needed for both the office construction and the security deposit, an \$8,000 deposit will be collected upon lease signing, with the remaining \$2,000 offset against the rent credit for the construction costs.

Recommendation

In summary, I am requesting the Members' approval for the following: 1) execution of the Authority's standard form of lease with MIT for approximately 1,735 square feet of office space at the Waterfront Technology Center on terms generally consistent with the attached sheet and; 2) a \$5,500 Business Lease Incentive Grant to MIT payable over two years per the approved schedule for office and high tech tenants, contingent on approval of the Camden Economic Recovery Board staff under Delegated Authority; and 3) any and all other documents required to effectuate this transaction, on final terms acceptable to the Attorney General's Office and the Chief Executive Officer.



Caren S. Franzini
Chief Executive Officer

Attachment
Prepared By: Christine Roberts

LANDLORD: NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

PROPERTY: THE WATERFRONT TECHNOLOGY CENTER AT CAMDEN

TENANT: Montgomery Investment Technology, Inc.

PREMISES: Approximately 1,735 rentable square feet on the second floor.

LEASE TERM: Five (5) years and one (1) month, beginning on December 1, 2011 and ending on December 31, 2016.

RENT COMMENCEMENT: Rent shall commence to accrue on January 1, 2012 (the "Rent Commencement Date"), with the exception of the approximately 350 square foot Waiting Area Space, which will begin to accrue rent on the earlier of 1) thirty days after receipt of a Certificate of Occupancy, 2) thirty days after Tenant commencing business operations in the space, or 3) July 1, 2012.

BASE RENTAL RATES: Years 1 - 5: \$24.00 psf modified gross

TAXES AND OPERATING EXPENSES (CAM): The lease is a modified gross lease and the base rent includes CAM (water, sewer, utilities and maintenance), tenant electric, real estate taxes (PILOT), insurance, snow/landscape service, and property management (including office janitorial and security).

BASE YEAR ESCALATIONS: After Year 1, Tenant will be responsible for any taxes, operating expense and CAM charges which exceeds Landlord's Base Year operating expenses. Increases will be capped at 5% per year.

TENANT IMPROVEMENTS: Landlord will clean the carpeting and paint the offices prior to Tenant occupancy. Tenant will construct an office area in the current Waiting Area Space. Approved construction costs will be reimbursed by Landlord in the form of a rent credit, based upon a mutually agreed upon budget, to a maximum of \$12,000.

TERMINATION PROVISION: Tenant has the option to terminate the lease at no cost to Tenant if Landlord replaces current surface parking with a parking structure which would result in an additional cost to Tenant.

RENEWAL OPTIONS:

Tenant will have the Option to Renew for one additional five year period at a rental rate of \$24.50.

BROKER:

Under the Authority's contract with Jones, Lang, LaSalle, the Authority will pay a commission of approximately \$10,500.

SECURITY DEPOSIT:

Approximately equal to three months' rent, or \$10,000.

BLI GRANT:

Year 1: \$5.00 psf
Year 2: \$4.00 psf

AUTHORITY MATTERS



MEMORANDUM

TO: Members of the Authority

FROM: Caren S. Franzini
Chief Executive Officer

RE: **Technical Assistance for Small Businesses**

DATE: **November 9, 2011**

Request:

The Members are requested to approve entering into a contract with Union County Economic Development Corporation (UCEDC) to provide technical assistance services to start-up and existing small businesses, minorities' and women's enterprises statewide. This allows EDA to continue delivering on its commitment to provide access to quality technical assistance services to small businesses growing and expanding in New Jersey.

The cost of the proposed contract with UCEDC is \$300,000 annually with two one-year extensions which are at the sole discretion of the EDA for a total expense of \$900,000. The EDA has funds available to absorb this expense and the first year expense of \$300,000 will be included in the proposed 2012 budget.

Background:

From 1992 through 2007, the Entrepreneurial Training Institute (ETI) offered a full menu of services to assist small businesses to start and grow in New Jersey. ETI was a program of the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises, managed by the EDA.

In 2008, the EDA made a strategic decision to deliver technical assistance services through a contract entity. This approach provides the marketplace with enhanced services and efficiencies in delivery and results in overall program savings for the EDA. The EDA issued a Request for Proposal and through the competitive process, UCEDC was selected as the contract entity. Over the three-year life of the contract, UCEDC achieved the metrics established and in many cases, exceeded established benchmarks. UCEDC trained or mentored over 3,000 entrepreneurs and provided over \$1 million in financing to small businesses, creating 200 jobs while retaining almost 250 jobs. They continue to align with both the EDA's Strategic Plan and the Governor's focus on small business as a source of economic growth in New Jersey.

RFQ/P for technical assistance services:

EDA issued an RFQ/P in July 2011 for the continued delivery of TA services statewide. The EDA's objective is to support a customer-focused approach through various, but integrated delivery methods to different business sectors and lifecycle stages, including but not limited to women and minority enterprises. There was a broad distribution of the RFQ/P including emails directly to in-State providers,

newspaper advertisements and a listing on EDA's website. In addition, EDA hosted a pre-bid conference with eight organizations attending.

The evaluation criteria included:

- qualifications and experience
- capability and capacity to provide TA services statewide
- approach of curriculum and training/resource materials
- allocation of contract dollars to maximize services
- length of mentoring and breadth of expertise available to clients

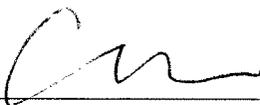
The deliverables will be reported quarterly based upon annual performance to measure effectiveness in key areas such as:

- assessing entrepreneurs' needs, opportunities and capabilities
- offering feedback-oriented training for business readiness analysis and follow-on business planning
- hosting review sessions for completed business plans for feedback by small business professionals
- mentoring for business growth and financing readiness
- servicing referrals from EDA and the State's Business Assistance Center

One proposal was received and that proposal was from the current provider, UCEDC. The proposal was deemed in compliance and, after a thorough review by an evaluation committee comprised of Authority staff, the committee recommends UCEDC be awarded the contract. The contract is attached in its substantially final form. The expected deliverables of this contract will be aligned with the previous results achieved. The terms of the contract may be subject to revision, although the basic terms and conditions will remain consistent with those in the attachment.

Recommendation:

The Members' approval is requested to enter into a contract with UCEDC for delivery of technical assistance to support the growth and expansion of small businesses throughout New Jersey. The contract is \$300,000 per year with two one-year extensions which are at the sole discretion of the EDA. The total expense for three years is \$900,000. As stated, the EDA has funds available to absorb the expense and the first year expense of \$300,000 will be included in the proposed 2012 budget. The final contract will be subject to approval of the Attorney General's Office and signed by the Chief Executive Officer.



Caren S. Franzini

Prepared by Marion Zajac

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY
CONTRACT FOR PROFESSIONAL SERVICES
TECHNICAL ASSISTANCE TO SMALL BUSINESSES
CONSULTING SERVICES - STATEWIDE**

AGREEMENT made this 2nd day of January, 2012, by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (the "Authority or NJEDA"), having its address at 36 West State Street, P.O. Box 990, Trenton, New Jersey 08625-0990, and UCEDC (the "Vendor"), having its address at 1085 Morris Avenue, Union, NJ 07083.

The Authority and the Vendor agree as follows:

1. **The Work.** The Vendor shall perform or shall provide the services as specifically detailed in the Vendor's Proposal, dated September 6, 2011 (and as further clarified on by the Vendor on September 13, 2011) and the Authority's Request for Proposal ("*RFQ/P*"), dated August 4, 2011, which are attached hereto and made a part of this Contract. The Vendor shall perform the Work in all twenty-one (21) counties in New Jersey, on a statewide basis.

2. **Time.** The Vendor shall render the services described in the Vendor's Proposal and *RFQ/P* as requested by the Authority and generally pursuant to the Fee Schedule included therein.

The term of this Contract is one (1) year with two (2), one (1) year extension options, to be exercised at the sole discretion of the Authority, at the same prices, terms and conditions.

Notwithstanding the expiration or termination of this agreement, the Authority reserves the right in its sole discretion to extend this agreement on a month-to-month basis beyond expiration or termination until a replacement contract for Technical Assistance to Small Businesses Consulting Services - Statewide is entered into by the Authority.

3. **Contract Price.** The Authority shall pay the Vendor for the performance of the Work as specified in the *RFQ/P* and the Vendor's Proposal. The total annual Contract Price shall not exceed Three Hundred Thousand (\$300,000.00) Dollars per year unless an increase is approved in writing by the Authority. The Authority may require services in addition to those

agreed to in the *RFQ/P* and the Proposal. Compensation to the Vendor for additional services shall be in accordance with the *Hourly Rates Fee Schedule (reference Exhibit R – Section 2A - M)* as set forth in Vendor's Proposal; or if not specified in Vendor's Proposal, then reasonable and customary amounts as negotiated by the Authority.

4. **Ownership and Use of Documents.** All data, technical information, materials gathered, originated, developed, prepared, used or obtained in the performance of the contract, including, but not limited to, all reports, surveys, plans, charts, literature, brochures, mailings, recordings (video and / or audio), pictures, drawings, analyses, graphic representations, software computer programs and accompanying documentation and print-outs, notes and memoranda, written procedures and documents, regardless of the state of completion, which are prepared for or are a result of the services required under this contract shall be and remain the property of the Authority and shall be delivered to the Authority upon thirty (30) days notice by the Authority. Regarding software computer programs and / or source codes developed for the Authority, the work shall be considered "work for hire," that is, the Authority, not the Vendor or subcontractor, shall have full and complete ownership of all software computer programs and / or source codes developed. To the extent that any of such materials may not, by operation of the law, be a work made for hire in accordance with the terms of this Agreement, the Vendor or subcontractor hereby assigns to the Authority all right, title and interest in and to any such material, and the Authority shall have the right to obtain and hold in its own name and copyrights, registrations and any other proprietary rights that may be available.

In the event the Vendor's proposal identifies bringing pre-existing intellectual property into a project, the background intellectual property ("Background Intellectual Property") owned by the Vendor on the date of the contract, as well as any modifications or adaptations thereto, remain the property of the Vendor. This contract, grants to the Authority, a non-exclusive, perpetual

royalty-free license to use any of the Vendor's Background IP delivered to the Authority for the purposes contemplated by the contract and any extensions thereto.

5. **Manner of Payment.** The Vendor will submit one invoice package per quarter no later than fifteen (15) calendar days following the end each quarter, for all charges for the preceding quarter. The invoice package will consist of a an Invoice Package cover page and substantiating documentation to include an original invoice, weekly timesheet for Vendor's employees and subcontractors, a completed "Monthly Status Report", original invoices for any approved direct expenses (i.e. marketing materials) and any documentation as may be required by the Authority to process payment. No project multipliers shall be used in billings submitted under this Contract, as set forth in the proposal. The Vendor must submit a "Monthly Status Report" to the Authority. Invoices will not be processed unless accompanied by the "Monthly Status Report". The Authority will make prompt payment to the Vendor, following receipt of and approval of the documentation.

6. **Indemnification.** The Vendor shall defend, indemnify, protect and hold harmless the Authority, and its officers, agents, servants and employees from and against any and all suits, claims, demands, losses or damages of any kind arising out of or claimed to arise out of any act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors in the performance of services under this Contract. The Vendor shall, at its own expense, appear, defend and pay all charges for attorneys and all costs and other expenses arising from such suit or claim or incurred in connection therewith. If any judgment shall be rendered against the Authority or its officers, agents, servants, and employees for which indemnification is provided under this Section 6, the Vendor shall, at its own expense, satisfy and discharge the same.

The Vendor shall be liable to the Authority for any reasonable costs incurred by the Authority to correct, modify, or redesign any technical information, reports, findings, analyses,

surveys or drawings generated or produced by Vendor or any Work performed by the Vendor or its subcontractor that is found to be defective or not in accordance with the provisions of the Contract as a result of any negligent act, error, or omission on the part of the Vendor, its officers, agents, servants, employees and subcontractors. The Vendor shall be given a reasonable opportunity to correct any deficiency.

The indemnification obligation set forth in Section 6 is not limited in any way by the insurance coverage required pursuant to Section 7 of this Contract and shall survive the terms of this contract.

7. **Insurance.** The Vendor shall procure and maintain, at its own expense, liability insurance for damages of the kinds and in the amounts hereinafter provided, from insurance companies licensed, admitted and approved to do business in the State of New Jersey. The Vendor shall obtain this coverage from A VII or better - rated companies as determined by A.M. Best Company. All liability insurance policies shall afford coverage on an occurrence rather than claims made basis with the exception of the professional liability coverage. The types and minimum amounts of insurance required are as follows:

(a) **Commercial General Liability Insurance.**

The Consultant shall maintain Commercial General Liability Insurance, and, if necessary, Commercial Umbrella Insurance, with a limit of not less than \$1,000,000 for each occurrence, and \$2,000,000 general aggregate limit. Commercial General Liability insurance shall be written on an ISO occurrence form CG 00 01 (or a substitute form providing equivalent coverage) and shall not be circumscribed by any endorsements limiting the breadth of coverage. The policy shall include liability arising out of, occasioned by or resulting from premises, operations, independent contractors, products, completed operations, personal injury and advertising injury, and liability assumed under an insured contract in connection with Services performed under this Contract. The New Jersey Economic Development Authority, the State of New Jersey and their respective

directors, officers, members, employees and agents shall be included as an additional insured under the Commercial General Liability, using ISO additional insured endorsement CG 20 10 (or a substitute form providing equivalent coverage), and under the Commercial Umbrella, if any. In addition, the Consultant Firm may also be required to name other parties as additional insureds prior to the initiation of Services. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to the New Jersey Economic Development Authority.

(b) Workers' Compensation and Employers' Liability.

The Consultant shall, at its own cost and expense, maintain Workers' Compensation and Employers' Liability insurance prescribed by the laws of the State of New Jersey and any other jurisdiction required to protect employees of the Consultant while engaged in the performance of the Services under this Contract. Employers' Liability Insurance shall also be provided in an amount acceptable to the Authority.

(c) Professional Liability Insurance.

The Vendor shall carry Errors and Omissions and / or Professional Liability Insurance sufficient to protect the Vendor from any liability arising out of professional obligations performed pursuant to this Contract. The insurance shall be in the amount of \$500,000 each claim and in such policy form as shall be approved by the Authority. Such Professional Liability Insurance shall include coverage for Contingent Bodily Injury and Property Damage

(d) Commercial Automobile Liability Insurance.

The Consultant Firm shall carry Commercial Automobile Liability insurance, at all times. The policy shall cover any owned, hired or non-owned automobile / vehicle used by the insured with minimum limits for liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.

ACORD Certificates of Insurance acceptable to the Authority in respect to each of the aforementioned policies shall be filed with the Authority prior to commencement of Work. These Certificates shall contain a provision that coverages afforded under the policies shall not be reduced or canceled unless at least thirty (30) days prior written notice has been given to the Authority. The Consultant Firm shall notify the Authority within forty-eight (48) hours of any changes or cancellations to policies affecting the Authority.

8. **Conflict of Interest.** Vendor, its officers, employees or principal shareholders (“Interested Parties”) shall not hold any ownership interest in client business that receives assistance or training under this Contract or any project that receives assistance under this Contract. The Authority reserves the right to limit or restrict the Scope of the Work to be performed by Vendor in the event that the Authority determines in its discretion that the specific Scope of Services would create a potential conflict of interest. Any limitation or restriction on the scope of Work by the Authority because of a potential conflict of interest shall not reduce or interfere with payment of compensation to the Vendor for Work that does not create a potential conflict of interest.

Subcontractor(s) hired by Vendor to perform Work under this Contract, including the officers, employees or principal shareholders of such Vendor’s subcontractor(s) (“Subcontractor Interested Parties”) shall not hold any ownership interest in any client business that it provides assistance or training to under this Contract or any project that it provides assistance under this Contract. The Authority reserves the right to limit or restrict the Scope of the Work to be performed by Vendor in the event that the Authority determines in its sole discretion that an Interested Party or Subcontractor Interested Party would create a potential conflict of interest or an appearance of a conflict of interest. Any limitation or restriction on the scope of Work by the Authority because of a potential conflict of interest by an Interested Party or Subcontractor Interested Party shall not reduce or interfere with payment of compensation to the Vendor for Work that does not create a

potential conflict of interest or the appearance of a conflict of interest. Vendor shall have an on-going obligation to notify the Authority, in writing, if Vendor becomes aware of any violation of the restrictions set forth in this Section 8.

9. **Termination.** The Authority shall have the right without cause and in its complete discretion to terminate the Contract at any time upon seven (7) days advanced written notice to the Vendor. In such event, absent a default on the part of the Vendor, the Vendor shall be entitled to compensation for all services properly provided to the Authority pursuant to the Contract prior to such termination.

In addition to other remedies available under law to the non-defaulting party, this Contract may be terminated by either party upon seven (7) days advanced written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

10. **Confidential Information of the Authority.** In connection with performing the Work, the Vendor, its employees, joint venture partners and subcontractors, if any, may receive, review and utilize the Authority's Entrepreneurial Training Institute curriculum ("ETI Curriculum"). The Vendor hereby acknowledges and confirms that the ETI Curriculum is proprietary information of the Authority and that Vendor agrees the use and dissemination of the ETI Curriculum by the Vendor, its employees, joint venture partners and subcontractors, if any, shall be done in a responsible manner and solely in the fulfillment of the Work under this Contract. The Vendor, its employees, joint venture partners and subcontractors, if any, shall not reference, photocopy or use the ETI Curriculum, in part or in its entirety, in any manner or for any purpose other than the performance of the Work. The Vendor shall be responsible to assure that its employees, joint venture partners and subcontractors, if any, do not use or disseminate the ETI Curriculum other than as permitted by this Contract. The Vendor shall inform each of its employees, joint venture partners and subcontractors, if any, that receives the ETI Curriculum of the requirements of this

Section 10 of the Contract and shall require each such employee, joint venture partners or subcontractor to comply with such requirements.

In connection with performing the Work, the Vendor, its employees, joint venture partners and subconsultant firms may receive, review and become aware of proprietary, personnel, commercial, marketing and financial information of the Authority, its employees, members, borrowers or business associates that is confidential and / or proprietary in nature (“Confidential Information”). **All information gathered, obtained and viewed during the performance of The Work shall be deemed Confidential Information.** The Vendor agrees that the use and handling of Confidential Information by the Vendor, its employees, joint venture partners and subconsultant firms, shall be done in a responsible manner and solely for furtherance of the Work. Other than to its employees, joint venture partners and subconsultant firms who have a need to know Confidential Information in connection with performance of the Work, the Vendor agrees not to disclose any Confidential Information, without the prior written consent of the Authority. The Vendor shall be responsible to assure that its employees, joint venture partners and subconsultant firms do not disclose any Confidential Information without the prior written consent of the Authority. The Vendor shall inform each of its employees, joint venture partners and subconsultant firms that receives any Confidential Information of the requirements of this Section 10 of the Contract and shall require each such employees and subconsultant firms to comply with such requirements.

Notwithstanding the foregoing, the term Confidential Information shall not include information which: (I) is already known to the Vendor, its employees, joint venture partners and subconsultant firms from sources other than the Authority; (ii) is or becomes generally available to the public other than as a result of a disclosure by the Vendor, its employees, joint venture partners or subcontractors, if any; or (iii) is required to be disclosed by law or by regulatory or judicial process.

Pursuant to *Section 6 Indemnification* of the Contract, the Vendor shall indemnify and hold the Authority, its employees and members harmless for any breach of *Section 10* “Confidential Information of the Authority”, by the Vendor, its employees, joint venture partners or subcontractors, if any.

11. **Debarment Liability.** The Vendor acknowledges that it shall be rendered liable to debarment in the public interest, pursuant to procedures established by Executive Order No. 34 (1976), and updated by Executive Order No. 189 (1988), and pursuant to N.J.A.C. 19:30-2, for violating any of the following provisions:

a. No Vendor shall 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 Authority officer or employee or special Authority officer or employee, as defined by N.J.S.A. 52:13D-13(b) and (e), with which such Vendor 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 officer or employee, or any partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13(g).

b. The solicitation of any fee, commission, compensation, gift, gratuity, or other thing of value by any Authority officer or employee or special Authority officer or employee from any Authority Vendor shall be reported in writing forthwith by the Vendor to the Attorney General of New Jersey and the Executive Commission on Ethical Standards.

c. No Vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Vendor to, any Authority officer or employee or special Authority officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to the Authority, 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). Any relationships subject to this subsection shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the Authority officer or employee or special Authority officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

d. No Vendor shall influence, or attempt to influence or cause to be influenced, any Authority officer or employee or special Authority officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.

e. No Vendor shall cause or influence, or attempt to cause or influence, any Authority officer or employee or special Authority officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the Vendor or any other person.

12. **Time for Completion and Damages.** The time for beginning and the time for completion of the Work are essential conditions of the Contract, and the Work embraced shall be commenced on the date of the "Notice to Proceed".

The Vendor shall proceed with the Work at such rate of progress to insure full completion as set forth in the RFQ/P and the Vendor's Proposal. To the extent that the Authority's written approval of the cost estimate for a project-specific Scope of Services includes a time for completing the Work for the particular project; the Vendor shall render the services for the particular project in accordance with the Authority's written approval of the cost estimate.

For reasons within the Vendor's control, if the Vendor shall fail to complete the Work, or shall be responsible for a delay which results in the failure to complete the Work within the time specified, or extension of time granted by the Authority, then the Vendor will pay the Authority an amount sufficient to compensate the Authority for its damages incurred as a result of such failure to complete.

13. **Contractual Liability Act.** Notwithstanding any provision in this Contract or in the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., to the contrary, the parties hereto agree that any and all claims made by the Vendor against the State of New Jersey and / or the Authority for damages, including, but not limited to costs and expenses, shall be governed by and subject to the provisions of the New Jersey Contractual Liability Act.

14. **Political Campaign Contributions.**

14.1 For the purpose of this Section 14, the following shall be defined as follows:

a) "Contribution" means a contribution reportable as a recipient under "The New Jersey Campaign Contributions and Expenditures Reporting Act" (P.L. 1973, c. 83 (C.10:44A-1 et seq.)), and implementing regulations set forth at N.J.A.C. 19:25-7 and N.J.A.C. 19:25-10.1 et seq., a contribution made to a legislative leadership committee, a contribution made to a municipal political party committee or a contribution made to a candidate committee or election fund of any candidate for or holder of the office of Lieutenant Governor. Currently, contributions in excess of \$300 during a reporting period are deemed "reportable" under these laws.

b) "Business Entity" - means:

i. a for-profit entity as follows:

- A. in the case of a corporation: the corporation, any officer of the corporation, and any person or business entity that owns or controls 10% or more of the stock of corporation;
- B. in the case of a general partnership: the partnership and any partner;
- C. in the case of a limited partnership: the limited partnership and any partner;
- D. in the case of a professional corporation: the professional corporation any shareholder or officer;
- E. in the case of a limited liability company: the limited liability company and any member;
- F. in the case of a limited liability partnership: the limited liability partnership and any partner;
- G. in the case of a sole proprietorship: the proprietor; and

- H. in the case of any other form of entity organized under the laws of this State or other state or foreign jurisdiction: the entity and any principal, officer, or partner thereof;
- ii. any subsidiary directly or indirectly controlled by the business entity;
- iii. any political organization organized under section 527 of the Internal Revenue Code is directly or indirectly controlled by the business entity, other than a candidate committee, election fund, or political party committee; and
- iv. with respect to an individual who is included within the definition of business entity the individual's spouse or civil union partner, and any child residing with the individual, provided, however, that, this Order shall not apply to a contribution made by such spouse, civil union partner, or child to a candidate for whom the contributor is entitled to vote or to a political party committee within whose jurisdiction the contributor resides unless such contribution is in violation of section 9 of P.L. 2005, c. 51 (C.19:44A-20.1 et seq.) ("Chapter 51").

c) "PL 2005, c.51" – means Public Law 2005, chapter 51 (C. 19:44A-20.13 through C. 19:44A-20.25, inclusive) as expanded by Executive Order 117 (Gov. Corzine, September 14, 2008).

14.2 The terms, restrictions, requirements and prohibitions set forth in P.L. 2005, c. 51 are incorporated into this Agreement by reference as material terms of this Agreement with the same force and effect as if P.L. 2005, c. 51 were stated herein its entirety. Compliance with P.L. 2005, c. 51 by Vendor shall be a material term of this Agreement.

14.3 Vendor hereby certifies to the Authority that commencing on and after October 15, 2004, Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) has not solicited or made any Contribution of money, pledge of Contribution, including in-kind Contributions, that would bar a contract agreement between Vendor and the Authority pursuant to P.L. 2005, c. 51. Vendor hereby further certifies to the Authority that any and all certifications and disclosures delivered to the Authority by Vendor (and each of its principals, subsidiaries and political organizations included within the

definition of Business Entity) are accurate, complete and reliable. The certifications made herein are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14.4 Vendor hereby covenants that Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) shall not knowingly solicit or make any contributions of money, or pledge of a contribution, including in-kind contributions, to a candidate committee or election fund of any candidate or holder of the public office of Governor of New Jersey or to any New Jersey state or county political party committee prior to the expiration or earlier termination of this Agreement. The provisions of this Paragraph 13.4 are intended to and shall be a material term of this Agreement and if the Treasurer of the State of New Jersey determines that any Contribution has been made by Vendor (and each of its principals, subsidiaries and political organizations included within the definition of Business Entity) in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

14.5 In addition to any other Event of Default specified in the Contract Documents, the Authority shall have the right to declare an event of default under this Agreement if: (i) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits a Contribution in violation of P.L. 2005, c. 51, (ii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) knowingly conceals or misrepresents a Contribution given or received; (iii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits Contributions through intermediaries for the purpose of concealing or misrepresenting the source of the Contribution; (iv) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) makes or solicits any Contribution on the condition or with the agreement that it will be contributed to a campaign

committee or any candidate or holder of the public office of Governor, or to any State or county party committee; (v) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages or employs a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any Contribution, which if made or solicited by Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly would violate the restrictions of P.L. 2005, c. 51; (vi) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) funds Contributions made by third parties, including consultants, attorneys, family members, and employees; (vii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) engages in any exchange of Contributions to circumvent the intent of P.L. 2005, c. 51; (viii) Vendor (or any of its principals, subsidiaries and political organizations included within the definition of Business Entity) directly or indirectly through or by any other person or means, does any act which would violate the restrictions of P.L. 2005, c. 51; or (ix) any material misrepresentation exists in any Political Campaign Contribution Certification and Disclosure which was delivered by Vendor to the Authority in connection with this Agreement.

14.6 Vendor hereby acknowledges and agrees that pursuant to P.L. 2005, c. 51, Vendor shall have a continuing obligation to report to the Office of the State Treasurer, Political Campaign Contribution Review Unit of any Contributions it makes during the term of this Agreement. If after the effective date of this Agreement and before the entire Contract Price is paid by the Authority, any Contribution is made by Vendor and the Treasurer of the State of New Jersey determines such Contribution to be a conflict of interest in violation of P.L. 2005, c. 51, the Authority shall have the right to declare this Agreement to be in default.

15. General Conditions.

- A. The Work shall be performed in a professional manner, in accordance with the standards generally expected or required within the profession and the Work shall also be performed in accordance with all applicable state, federal and local laws, rules, regulations and ordinances.
- B. The Vendor shall provide such reports, certificates, and documents as the Authority may reasonably require.
- C. The Vendor shall provide to the Authority, at Vendor's expense, copies of all drawings, plans, cost estimates, design analyses, reports, and / or other documents required for the Project.
- D. If the Authority or Vendor observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with any of the Contract Documents, prompt written notice thereof shall be given by the party discovering the defect to the other.
- E. The Authority shall furnish all information available to the Authority, and reasonably required for the performance of the Work and shall render approvals and decisions as expeditiously as possible for the orderly progress of the Vendor's services and of the Work.
- F. The Vendor shall comply with the affirmative action requirements set forth in the Law Against Discrimination, N.J.S.A. 10:5-31 et seq., and the regulations promulgated thereunder by the State Department of Treasury.
- G. The Vendor is required to comply with the requirements of N.J.S.A. 10:5-31 et seq. and N.J.A.C. 17:27 et seq., which are expressly included within the terms of this Contract, reference "Exhibit A" annexed hereto and made a part hereof.
- H. In accordance with Public Law 2004, Chapter 57, a subcontractor shall provide a copy of its business registration to any Vendor who shall forward it to the NJEDA. No contract with a subconsultant shall be entered into by any Vendor unless the subconsultant first provides proof of valid business registrations. The Vendor shall provide written notice to all subconsultants that

they are required to submit a copy of their business registration to the Vendor. The Vendor shall maintain a list of the names of any subconsultants and their current addresses, updated as necessary during the course of the contract performance. The Vendor shall submit to the NJEDA a copy of the list of subconsultants, updated as necessary during the course of performance of the contract. The Vendor shall submit a complete and accurate list of the subconsultants to the NJEDA before a request for final payment is made to the NJEDA. The Vendor and any subconsultant providing goods or performing services under this contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act", P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State, refer to "*Exhibit B*".

I. In accordance with the requirements of N.J.S.A. 52:32-17 et seq., N.J.A.C. 12A:10-1.2 et seq., N.J.A.C. 12A:10A-1.2 et seq., N.J.A.C. 17:13-1.2 et seq., and N.J.A.C. 17:14-1.2 et seq., as amended, the Authority is required to develop a set-aside plan for Small Businesses. The Vendor agrees that, if awarded a contract based on this plan, it shall comply with all requirements of these provisions. If the Vendor fails to comply with the requirements of these provisions, the Authority may declare this Contract void.

J. Pursuant to N.J.S.A. 52:34-13.2, all Work and all subcontractor services performed in connection with or as part of the Work shall be performed within the United States.

K. The Vendor shall not disclose to any third party the contents of the information, reports, findings, analysis, surveys, drawings and creative elements generated or produced in performance of this Contract, or provide copies of same, without the prior written consent of the Authority, except where such information, reports, etc. are legally required by order of court or administrative agency, state or federal.

L. The Authority and the Vendor, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party of this Contract and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract. Neither the Authority nor the Vendor shall assign, sublet, or transfer any interest in this Contract without the prior written consent of the other party.

M. Any notices required to be given under this Contract shall be mailed to:

New Jersey Economic Development Authority
P.O. Box 990
Trenton, New Jersey 08625-0990
Attn: Lori Matheus – Managing Director – Business Development

and

UCEDC
1085 Morris Avenue
Union, NJ 07083
Attn: Maureen Tinen - President

N. To the extent that there is any conflict between the terms and conditions of the Vendor's Proposal and the terms and conditions of the Contract and the Authority's *RFQ/P*, the Contract and *RFQ/P* shall control.

O. This Contract shall be construed under the laws of the State of New Jersey.

P. The headings of the various paragraphs of this Contract are inserted for the convenience of reference only, and in no way define, describe or limit the scope or intent of this Contract or any of the provisions hereof, and shall not affect the interpretation of this Contract or any of the provisions hereof.

Q. This Contract shall be construed without any presumptions against the drafter and shall be considered as though it were drafted cooperatively by both parties.

R. In the event that any portion of this Contract is found to be contrary to law and unenforceable; the validity of remaining covenants, agreements, terms and provisions contained in this Contract, shall be in no way affected, prejudiced or disturbed thereby.

S. This Contract constitutes the entire agreement between the parties. Any changes or amendments to the Contract must be in writing and signed by the Vendor and an authorized representative of the Authority.

T. The parties hereto represent that they have the proper authority to sign on behalf of the entities entering this Contract and they fully intend for the Authority and Vendor to be legally bound.

This Contract for Professional Services – Technical Assistance to Small Businesses Consulting Services is entered into as of the day and year first written above.

ATTEST:

NEW JERSEY ECONOMIC
DEVELOPMENT AUTHORITY

Lori Matheus
Managing Director - Business Development

By: _____
Caren S. Franzini
Chief Executive Officer

ATTEST:

Adam Farrah
Vice President

By: _____
Maureen Tinen
President

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27 et seq.

GOODS, PROFESSIONAL SERVICES AND GENERAL SERVICE CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not 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. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor, where applicable, will send to each labor union or representative or workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to **N.J.S.A. 10:5-31 et seq.** as amended and supplemented from time to time and the *Americans with Disabilities Act*.

The contractor or subcontractor agrees to make good faith efforts to afford equal employment opportunities to minority and women workers consistent with Good faith efforts to meet targeted county employment goals established in accordance with **N.J.A.C. 17:27-5.2**, or good faith efforts to meet targeted county employment goals determined by the Division, pursuant to **N.J.A.C. 17:27-5.2**.

EXHIBIT A (Continued)

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq., N.J.A.C. 17:27

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, labor unions, that it does not discriminate on the basis of age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personal testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval
Certificate of Employee Information Report
Employee Information Report Form AA302

The contractor and its subcontractor shall furnish such reports or other documents to the Division of Public Contracts Equal Employment Opportunity Compliance as may be requested by the Division from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Public Contracts Equal Employment Opportunity Compliance for conducting a compliance investigation pursuant to **Subchapter 10 of the Administrative Code at N.J.A.C.17:27.**

EXHIBIT B

Business Registration Notice:

All New Jersey and out-of-State business organizations must obtain a “*Business Registration Certificate*” (“*BRC*”) from the Department of the Treasury - Division of Revenue, prior to conducting business with the New Jersey Economic Development Authority (“*Authority*”). Proof of valid “*Business Registration*” of the successful bidder, joint venture partners and named subcontractors must be obtained by the Authority before a contract can be awarded. Failure to submit such “*Business Registration Certificate(s)*” may render the proposal materially non-responsive. The “*Business Registration*” form (*Form NJ-REG*) can be found online at:

<http://www.state.nj.us/treasury/revenue/gettingregistered.htm#busentity>.

Definitions:

“*Affiliate*” means any entity that (1) directly, indirectly, or constructively controls another entity, (2) is directly, indirectly, or constructively controlled by another entity, or (3) is subject to the control of a common entity. An entity controls another entity if it owns, directly or individually, more than fifty (50%) percent of the ownership in that entity.

“*Business organization*” means an individual, partnership, association, joint stock company, trust, corporation, or other legal business entity or successor thereof.

“*Business Registration*” means a “*Business Registration Certificate*” issued by the Department of the Treasury or such other form or verification that a contractor or subcontractor is registered with the Department of Treasury.

“*Contracting agency*” means the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, or any independent State authority, commission, instrumentality or agency, or any State college or university, any county college, or any local unit.

“*Contractor*” means a business organization that seeks to enter, or has entered into, a contract to provide goods or services with the New Jersey Economic Development Authority.

“*Subcontractor*” means any business organization that is not a contractor that knowingly provides goods or performs services for a contractor or another subcontractor in the fulfillment of a contract.

EXHIBIT B (Continued)

Requirements Regarding Business Registration Form:

A contractor must have a valid “*Business Registration Certificate*” in order to be awarded a contract by the New Jersey Economic Development Authority.

All subcontractors shall provide a copy of its “*Business Registration*” to any contractor who shall forward it to the Authority. No contract with a subcontractor shall be entered into by any contractor unless the subcontractor first provides proof of valid “*Business Registration*”.

The contractor shall provide written notice to all subcontractors that they are required to submit a copy of their business registration to the contractor. The contractor shall maintain a list of the names of any subcontractors and their current addresses, updated as necessary during the course of the contract performance. The contractor shall submit to the Authority, a copy of the list of subcontractors, updated as necessary during the course of performance of the contract. The contractor shall submit a complete and accurate list of the subcontractors to the New Jersey Economic Development Authority before a request for final payment is made to the Authority.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the “*Sales and Use Tax Act*”, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.