



## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Timothy Lizura  
President and Chief Operating Officer

**DATE:** April 30, 2013

**RE:** Superstorm Sandy New Program Creation: Stronger NJ Business Grants

### Request:

The Members are requested to approve the creation of a new economic recovery program proposed under the New Jersey Department of Community Affairs, Community Development Block Grant Disaster Recover Action Plan (“Action Plan”) approved by the U.S. Department of Housing and Urban Development: Stronger NJ Business Grants and the associated delegated authority to staff to administer the program.

### Background:

Superstorm Sandy caused unprecedented damage to New Jersey, resulting in President Obama’s October 30, 2012 disaster declaration that designated all twenty-one New Jersey counties major disaster areas. Storm damage was particularly concentrated in communities bordering or near the Atlantic Ocean and the Hudson River, many of which were flooded by Sandy’s storm surge. Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties have been identified by the U.S. Department of Housing and Urban Development (HUD) as the areas in New Jersey most impacted by the storm.

Superstorm Sandy had a widespread and lasting impact on New Jersey’s business sector and particularly affected small businesses. The storm caused substantial damage to commercial property. Data suggest that businesses in 113 of New Jersey’s 565 municipalities incurred a combined \$382 million in commercial property losses and \$63 million in business interruption losses.

While most, if not all, New Jersey industries were impacted by the storm, the tourism industry has been particularly affected. Some tourism-driven businesses may require significant rebuilding, and certain others on the Jersey Shore that were comparatively less affected are expected to suffer under a general misperception that the entire coastline was decimated by Superstorm Sandy. All of these losses also affected the State's labor market, which in the month after the storm saw more than double the historically expected amount of unemployment claims filed.

The breadth of Sandy's impact across New Jersey, including to the business sector, emphasizes the need for a thoughtful and comprehensive long-term recovery process. As part of that process, the Authority participated in the drafting of the State's Community Development Block Grant Disaster Recovery Action Plan ("Action Plan"). The Action Plan uses available data to assess damages and unmet needs resulting in certain sectors from the storm, including the business sector, and it describes New Jersey's plan for allocating the approximately \$1.8 billion of Community Disaster Block Grant Disaster Recovery (CDBG-DR) funds it has received to date to begin to address those unmet needs.

The State's Action Plan allocated \$460 million of CDBG-DR funds to the Authority for the creation and implementation of economic recovery programs. Staff has proposed through the Action Plan a multi-pronged approach to ensure New Jersey businesses are provided the support they require, including:

- Direct financial support to small businesses and non-profits
- Financial support to impacted communities for economic revitalization efforts
- A comprehensive, national marketing campaign to prevent further economic loss to the State's tourism industry by informing the public that New Jersey's tourism assets are open and visitors are welcome

Notably, because HUD requires that 80% of the approximately \$1.8 billion in CDBG-DR funds received by New Jersey in the first tranche of CDBG-DR funding be allocated to benefit the nine most impacted counties as determined by HUD, priority will be given to impacted businesses in those counties.

This Board action is to request approval for a program to provide direct financial support to small businesses to satisfy unmet needs. As additional programs to support business recovery are developed that will be administered by the NJEDA, those programs will be brought to the NJEDA Board for approval. The proposed grant and forgivable loan program is described in more detail below.

**Program Description: Stronger NJ Business Grants (\$260 million)**

**Description:** With a focus on the nine most impacted counties in the State as determined by HUD, New Jersey will offer aid through grants to small businesses and non-profits, which sustained physical damage from Superstorm Sandy. The nine counties include Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean, and Union. Up to \$50,000 is available for entities with single impacted locations for working capital, and/or renovations and new construction of the place of business. For entities with multiple impacted locations, up to \$250,000 is available with a limit of \$50,000 per location for renovations and new construction. Grants to businesses located in Special Flood Hazard Areas may be structured as forgivable loans in order to assist the applicant's compliance with federal requirements for flood insurance. The following further defines what may be included as eligible expenses, organized according to use and purpose, and grouped by applicable requirements established by HUD as further defined in the **Terms/Conditions** section below.

Working Capital needs include but are not limited to the following:

- 1) Repaying or refinancing debt used to pay working capital (not physical damage) after the date of the Superstorm. Acceptable forms of debt include, but are not limited to: credit cards, loans (with the exception of loans through a governmental agency), lines of credit, and retirement account loans
- 2) Salary, wages and fringe benefits
- 3) Mortgage, rent or property lease payments
- 4) Inventory– both perishable and non-perishable
- 5) Supplies
- 6) Utility bills
- 7) Equipment and machinery leases, rental or purchases if purchase price is less than \$5,000 and does not require installation
- 8) Marketing
- 9) Insurance premiums related to the business such as, but not limited to commercial, hurricane, flood, and auto (on commercial vehicles only)
- 10) Federal, State, county, local or other taxes and assessments not in arrears

Renovation or New Construction of Place of Business includes but is not limited to the following:

- 1) Repair or replacement of the physical structure
- 2) Repair or replacement of building systems
- 3) Repair or replacement of electrical
- 4) Repair or replacement of plumbing
- 5) Carpentry associated with repair or replacement of the place of business
- 6) Other construction costs associated with repair or replacement of the place of business
- 7) Installation of fixtures

- 8) Mitigation - costs listed above related to new building codes or improvements that will allow entities to reduce the cost of or secure flood insurance
- 9) Expansion of the physical structure
- 10) Repair or replacement of equipment or machinery of any cost that also requires installation
- 11) Repair or replacement of furnishings
- 12) Repair or replacement of exterior structures such as decks
- 13) Landscaping
- 14) Paving
- 15) Architectural services
- 16) Engineering services
- 17) Other construction-related services, with the exclusion of accounting, legal and financing costs
- 18) Any of the above costs paid to satisfy insurance deductibles
- 19) Costs associated with business relocation are prohibited

**Eligibility:**

- Any form of legal business or non-profit, subject to the following restrictions many of which are based on federal regulations:
  - Home-based businesses are not eligible. A home-based business is considered any business that does not have a separate entrance for commercial customers, i.e., it requires commercial customers to enter the residential portion of the property in order to conduct business. Bed and Breakfast establishments are not considered Home-Based Businesses.
  - Casinos and gambling facilities are not eligible.
  - Privately-owned recreational facilities that serve a predominantly higher-income clientele, where the recreational benefit to users or members clearly outweighs employment or other benefits to low- and moderate-income persons, are not eligible. (Examples may include private golf courses, country clubs, and yacht clubs.)
  - Non-profit entities eligible for funding are those involved in commercial or industrial activities, or those that have facilities, which provide a public service that furthers economic development. These eligible non-profits may only apply for construction funds. (Religious-affiliated non-profits, such as churches, may utilize the funding only for renovation or new construction of portions of a physical structure with non-sectarian uses.)
  - Rental properties are not eligible as businesses, except where they are owned by a registered, structured company, that company has its own federal tax identification (EIN) number, and the company manages two or more rental units. The real property must have been owned by the applicant on the date of the storm, October 29, 2012.
  - Multiple businesses with separate EIN numbers that share ownership and that are co-located at the same physical location, may only submit one application collectively.

- Location Requirements:
  - Entity must have at least one impacted location in New Jersey.
  - Entities located in Coastal Barrier Resource Areas (CBRAs) are not eligible.
- The entity must have been in existence on October 29, 2012, the date of the Superstorm.
- The entity must have sustained a minimum of \$5,000 of physical damage to the entity's real property and/or loss or damage of non-perishable and non-consumable inventory. If the impacted entity has more than one impacted location, a minimum \$5,000 of physical damage applies to each location.
- The cause of damage to the entity must be Superstorm-related, and may include wind, water, mold, flood, mitigation and includes basements as well as first and upper floors, loss of physical items and inventory.
- The entity must be a Small Business as defined by the US Small Business Administration.
- The entity must have at least \$25,000 in annual revenue in its most recent federal tax filing or financial statements.
- The entity's revenue must not have exceeded \$5 million in its most recent annual federal tax filing or financial statements.
- The entity (or owners in the case of a sole proprietorship) must have less than \$1 million of liquid assets (cash and cash equivalents) in its accounts at the time it files an application.
- To avoid any duplication of benefits, the entity must show unmet needs eligible for funding after accounting for funding received from other sources, including but not limited to private insurance, SBA and FEMA. Monies received from private loans, private lines of credits or other similar sources do not implicate the duplication of benefits analysis.
- Cash flow needs will be determined by the projected difference between revenues and expenses supported by historical information with the goal that the business has sufficient capital with other sources to recover.
- The entity must be able to certify that it has a reasonable expectation that it will stay open or re-open in New Jersey following receipt of funds.
- In order to comply with federal requirements that prohibit an entity from receiving benefits for a duplicative purpose, filing an SBA application and receiving a final determination on that application (approval or denial) is a prerequisite to submitting an application for the Stronger NJ Business Grant program, until the SBA loan program applicable to purpose of funding sought by the applicant lapses. The current SBA deadlines are May 1, 2013 for Physical Damage loan applications and July 31, 2013 for Economic Injury loan applications. More specifically, if after the SBA Physical Damage loan application period closes, an entity seeks a grant for a purpose that SBA would include in its physical damage loan program, such as construction, the entity need not have filed an SBA Physical Damage loan application to be eligible for a Stronger NJ Business Grant for that purpose. However, if an entity seeks an NJEDA grant related to SBA's definition of economic injury, such as working capital to cover salaries and expenses, after the SBA Physical Damage loan application period closes but before the Economic Injury loan period closes, it must still apply for the SBA Economic Injury loan and receive a final determination before applying to NJEDA for that purpose.

- Businesses declined or approved by SBA may proceed with Grant application.
- Businesses with applications pending at SBA may prepare an application for the Grant, and may submit an application following a final SBA determination.
- If a business refuses an SBA-approved loan, the approved amount is considered an approved benefit for the purpose of the Duplication of Benefits calculation described above and is subtracted from the damage cost and working capital expenses.
- The entity must be registered to do business in New Jersey.
- The entity must be in good standing with the State of New Jersey, Division of Taxation.
- Rental properties are not eligible as businesses, except where they are owned by a registered, structured company, that company has its own federal tax identification (EIN) number, that company owned those properties on the date of the storm, and the company manages two or more rental units.
- The entity must be registered with Dun and Bradstreet, and have a DUNS number
- The application must be received on or before October 31, 2013.

**Terms/Conditions:**

Grants

- General Uses
  - Working Capital – up to one year, starting on one of the two dates: October 29, 2012 (date of Superstorm Sandy) or January 1, 2013
    - Reimbursement of working capital costs
    - Working capital going forward (prospectively)
  - Renovation and construction-related activities, including fixtures, and machinery and equipment over \$5,000 in value, requiring installation must comply with the following:
    - Federally Required Environmental Review  
(**Note:** If environmental review is required, all construction-related work must cease until review is completed.)
    - Davis Bacon and Prevailing Wage requirements for labor, as applicable
    - Affirmative Action requirements for labor, as applicable
    - Inspection of completed work prior to disbursement of funding
 Notably, reimbursement of expenses already paid is prohibited; only construction-related costs yet to be incurred are eligible
- Conditions
  - Any entity located in Special Flood Hazard Areas and utilizing funding for construction, renovation or equipment purchase greater than \$5,000 (including installation), will be required to have or purchase flood insurance. For any grant awarded with these referenced uses, flood insurance is mandatory for the life of the property. Working capital uses do not require flood insurance.

- Applicants have 12 months from approval to file with the NJEDA all documentation needed for disbursement of funding. Extensions may be granted for construction-related work and extenuating circumstances, but will not exceed 24 months from approval of the Action Plan.
- If the following conditions are not met, the entity may be required to repay the grant
  - If the funds are not used for approved purposes, the grant may need to be repaid
  - If any applicable reporting requirements are not met, the grant may need to be repaid
  - If the entity makes little or no attempt to re-open in New Jersey following receipt of funding or closes shortly after receipt of the funding when viable options for staying open were available, the grant may need to be repaid
  - If an entity that is located in a Special Flood Hazard Area and used the grant funds for construction, machinery and/or equipment purchases greater than \$5,000 (including installation) does not maintain flood insurance for the life of the asset, the grant may need to be repaid

Forgivable Loans – When an entity is located in Special Flood Hazard Area and desires funding for construction, renovation, or purchase of equipment, machinery, or furnishings greater than \$5,000 (including installation), grants may be structured as forgivable loans under the Terms below, which should benefit the entity by minimizing the burden of National Flood Insurance Policy (NFIP) coverage required by HUD by limiting the amount and longevity of the federally-required flood insurance.

- Terms
  - 0% interest for term of loan
  - Term of loan up to 1 year
  - Unsecured (i.e., no liens placed on physical structure of place of business, other entity assets, or entity owner’s assets)
  - Principal forgiven at end of term, if Conditions below are met
- Conditions
  - Any entity located in a Special Flood Hazard Areas and utilizing funding for construction, renovation or purchase of equipment, machinery, or fixtures greater than \$5,000 (including installation), will be required to have or purchase flood insurance. For any forgivable loan awarded, flood insurance is mandatory for the term of the loan (i.e., one year).
  - Applicants have 12 months from approval to file with the NJEDA all documents needed for disbursement of funding. Extensions may be granted for construction-related work and extenuating circumstances, but will not exceed 24 months from approval of the Action Plan.
  - If the following conditions are not met, the entity may be required to repay the loan principal.

- If the funds are not used for the approved purpose(s), the loan principal may need to be repaid.
- If reporting requirements are needed and not met, the loan principal may need to be repaid.
- If the entity makes little or no attempt to re-open in New Jersey following receipt of funding or closes shortly after receipt of the funding when viable options for staying open were available, the loan principal may need to be repaid.
- If the entity is located in a Special Flood Hazard Areas, used the forgivable loan funds for construction, renovation, or purchase of equipment, machinery, or fixtures greater than \$5,000 (including installation), and if the entity does not maintain flood insurance for the term of the loan, the loan principal may need to be repaid.

**NJEDA Fees:**

- There are no NJEDA fees for this program.

**Close of Program:**

- Applications must be received on or before October 31, 2013.
- Applicants have 12 months from approval to file all documents needed for disbursement with the NJEDA. Extensions may be granted for construction-related work and extenuating circumstances.

**Approval Process/Delegated Authority:**

- Delegated Authority – Director level with recommending Officer. New approval authority for grants and forgivable loans for up to \$250,000 and up to \$200,000 for modifications and supplemental approvals, consistent with other lending and grant programs.

**Appeal Process:**

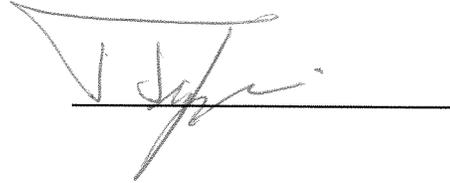
- An applicant may appeal the NJEDA's decision by submitting in writing to the NJEDA no later than 20 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. Such challenges are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The CEO of the NJEDA shall designate an employee of the NJEDA to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board according to the attached process.

**Reporting Requirements:**

- Approved projects will be subject to all reporting required by the CDBG-DR program, including, but not limited to: National Objectives, Labor Requirements, Procurement Requirements, and Environmental Requirements. To the extent other reporting requirements may apply, the entity will be made aware of those requirements and will have to provide information sufficient to satisfy those requirements.

**Recommendation:**

The Members are requested to approve the creation of a new economic recovery program proposed under the New Jersey Department of Community Affairs, Community Development Block Grant Disaster Recover Action Plan: Stronger NJ Business Grants program and the associated delegated authority to staff. Staff will report activity under delegated authority to the Board on a monthly basis.

A handwritten signature in black ink, appearing to be "V. Lopez", is written over a solid horizontal line.

Attachment: Appeal Process

Prepared by: Gina Behnfeldt and Kim Ehrlich

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (NJEDA)

STRONGER NJ BUSINESS GRANT PROGRAM

APPEAL PROCESS

An applicant may challenge the NJEDA's decision by submitting in writing to the NJEDA no later than 20 calendar days from the date of the denial, an explanation as to how the applicant has met the program criteria. Such challenges are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Challenges that are timely submitted shall be handled by the NJEDA as follows:

1. The CEO of the NJEDA shall designate an employee of the NJEDA to serve as a hearing officer for the challenge and to make a recommendation on the merits of the challenge to the Board. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer shall have sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the challenge. The NJEDA may consider new evidence or information that would demonstrate that the applicant meets all of the application requirements.
2. Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Board containing his or her finding(s) and recommendation(s) on the merits of the challenge. The hearing officer's report shall be advisory in nature and is not binding on the Board. The CEO, or equivalent officer, of the NJEDA may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer and shall have the opportunity to file written comments and exceptions to the hearing officer's report within a reasonable amount of time from receipt of such report.
3. The Board shall consider the hearing officer's report, the recommendation of the CEO, or equivalent officer, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, the Board shall issue a final decision on the challenge. Such decision shall become effective 10 working days after the Governor's receipt of the minutes of the public meeting at which such decision occurs, provided no veto has been issued. The applicant shall have the opportunity to attend the public meeting at which the Board considers its challenge.
4. Final decisions rendered by the Board shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing Courts of the State of New Jersey.



## MEMORANDUM

TO: Members of the Board

FROM: Timothy J. Lizura  
President/Chief Operating Officer

RE: Business Process Outsourcing Services – Stronger NJ Business Grant Program

DATE: April 30, 2013

### **Request:**

The Members are asked to approve the oversight of an expenditure of a maximum not-to-exceed \$12 million in Community Development Block Grant Disaster Relief (CDBG-DR) funds for the purpose of securing a firm to provide turn-key Business Process Outsourcing (BPO) Services to the Authority's recently created Office of Recovery to administer and operate the Stronger NJ Business Grant Program, under the supervision of the Office of Recovery's staff.

### **Background:**

Superstorm Sandy caused unprecedented damage to New Jersey, resulting in President Obama's October 30, 2012 disaster declaration that designated all twenty-one New Jersey counties major disaster areas. Storm damage was particularly concentrated in communities bordering or near the Atlantic Ocean and the Hudson River, many of which were flooded by Sandy's storm surge. Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties have been identified by the U.S. Department of Housing and Urban Development (HUD) as the areas in New Jersey most impacted by the storm.

The storm had a widespread and lasting impact on New Jersey's business sector and particularly affected small businesses. It caused substantial damage to commercial property. Data suggest that businesses in 113 of New Jersey's 565 municipalities incurred a combined \$382 million in commercial property losses and \$63 million in business interruption losses. The breadth of Sandy's impact across New Jersey, including to the business sector, emphasizes the need for a thoughtful and comprehensive long-term recovery process. As part of that process, the Authority participated in the drafting of the State's Community Development Block Grant Disaster Recovery Action Plan ("Action Plan"). The Action Plan uses available data to assess damages and unmet needs resulting in certain sectors from the storm, including the business sector, and it describes New Jersey's plan for allocating the approximately \$1.8 billion of CDBG-DR funds it has received to date from HUD to begin to address those unmet needs.

Governor Chris Christie has tasked the Authority to administer \$460 million of these CDBG-DR funds to support the recovery of storm-impacted businesses. Of this total, \$260 million will fund the Stronger NJ Business Grant program. Under this program, small businesses may apply for grants and forgivable loans of up to \$50,000 per business location. If a business has multiple locations in New Jersey incorporated under a single federal tax identification or employer identification (EIN) number, it may receive up to \$250,000 per EIN.

To maximize efficiencies and ensure the effective and timely disbursement of funds to qualifying businesses, these Business Process Outsourcing Services are needed to assist the Authority in reviewing, evaluating and processing applications for grant funding to businesses impacted by the Superstorm. These services shall include, but are not limited to, the development of technology systems and business processes, as well as the delivery of end-to-end administration services from initial application submittal to disbursement of funds, compliance monitoring and completion for the Stronger NJ Business Grant Program. All Business Process Outsourcing Services to be provided will be overseen by the Authority's Office of Recovery staff, to ensure that such services are performed in accordance with relevant HUD regulations, policies and guidance and therefore are eligible for HUD CDBG-DR reimbursement.

#### **RFQ/Evaluation of Business Process Outsourcing Firm Proposals:**

The Authority worked with the Department of Treasury - Division of Purchase and Property (DPP) to advance a Request for Quotation (RFQ) to solicit bids from financial and business systems firms contracted under the federal General Services Administration (GSA) Schedules to advance this procurement. The resulting RFQ was issued on March 22, 2013, in accordance with the procurement process authorized by DPP's regulations at N.J.S.A. 17:12. The RFQ specifications and overall process were also reviewed by the Office of the State Comptroller to ensure transparency and objectivity, as required by *Executive Order 125* (Christie).

A lengthy and detailed *Questions and Answers* response document was posted for this solicitation to provide further clarifying information to Interested Bidders. A total of four (4) proposals were received on April 11, 2013. All four (4) proposals were reviewed by DPP and deemed to be responsive. An Evaluation Committee comprised of Authority staff, a representative from the Division of Purchase and Property and the Department of Community Affairs reviewed, evaluated and scored the proposals. Proposals were evaluated based on price and other factors, including the qualifications and experience of the Bidder's management, supervisory and key personnel assigned to the contract, the bidder's experience in completing projects of similar size and scope, and the overall ability of the bidder to undertake and successfully complete the technical requirements of the contract, in a timely manner.

As provided for in the RFQ language, DPP conducted a "Best and Final Offer" opportunity with all four (4) firms to further ensure the most competitive utilization of these CDBG-DR funds. Following the final tabulation of scores, the Department of Treasury through its Division of Purchase and Property, and on behalf of the New Jersey Economic Development Authority, will execute a contract with the highest ranked firm, Public Financial Management, Inc. (PFM)

(Philadelphia, PA) to provide the requisite Business Process Outsourcing Services for the turnkey staffing and operation of the Stronger NJ Business Grant Program Call Center.

Public Financial Management, Inc. offers a variety of strengths and attributes which it will bring to the required Work, such as:

- federal grant administration experience;
- solid IT technical ability (GrantEase, Eligibility Administration Platform);
- demonstrated data compatibility with DRGR interface;
- clearly demonstrated online application design and implementation;
- call center implementation and operations experience;
- good training programs;
- financial capability and resources bench strength;
- custom Proprietary Grant Module that can be quickly modified is provided out of the box;
- a very detailed timeline for delivery in the first 30 days; and
- experience with paper work-around until automated systems in place.

The Committee determined that PFM offers an excellent understanding of the intent of the procurement and RFQ requirements. The proposal presented good planning in meeting the criteria set forth in the RFQ and thoroughly explained how they would perform each task. PFM's approach and plan as it relates to the Work to be accomplished, appears to be effective and efficient. PFM demonstrated a thorough understanding of the processes involved in managing the Stronger NJ Business Grant Recovery Program.

PFM and its partners have been involved in grant management projects in other states and jurisdictions of similar size, a list of which were provided in its quotation. The committee was satisfied that PFM had good experience in eligibility-based grants administration. The staffing and personnel as set forth in its proposal appeared to be extremely well-qualified and experienced. The listed personnel possessed the qualifications necessary to successfully complete the requirements of the RFQ. In addition, the firm is led by two (2) former government managers.

Regarding costs, PFM's proposal demonstrates a good understanding of the State's interests in minimizing operational costs while maximizing grant distribution monies to New Jersey small businesses.

#### **Management of the Contract:**

Pursuant to the Division of Purchase and Property's procurement processes, this contract is subject to review and final approval by the Director of Purchase and Property. As applies to all contracts executed by DPP on behalf of State agencies, DPP requires that the using agency, the Authority, must designate a State Contract Manager to oversee the implementation of the

contract, including invoicing, direct management of the Vendor, and quality controls. The Authority's Deputy Director of the Office of Recovery, Sara Maffey Duncan, will assume the responsibilities of State Contract Manager. To facilitate the disbursement of payments to the Vendor, the Authority's staff will work with the Department of Community Affairs and the Division of Purchase and Property to determine the appropriate workflows regarding issuing Purchase Orders and other documentation to draw down CDBG-DR funding to pay invoices from the selected firm as they implement and administer the program. The review of actual costs and expenditures against the approved contract amount will be performed by the Authority's staff in accordance with Board approved policies, procedures and administrative operating authorities.

**Recommendation:**

In order to effectively and efficiently staff the Office of Recovery – Stronger NJ Business Grant Program Call Center with industry-specific knowledgeable staffing to assist Superstorm Sandy-impacted businesses and communities, the Members are requested to approve the oversight of an of a Maximum Not-to-Exceed \$12 million in CDBG-DR funds consistent with these Business Process Outsourcing Services, as outlined herein and in the RFQ, and as accepted in the Vendor's proposal, subject to the conclusion of the DPP appeals process.



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Prepared by: Frederick J. Cole



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## MEMORANDUM

TO: Members of the Board

FROM: Timothy J. Lizura  
President/Chief Operating Officer

RE: Tourism Marketing of Superstorm Sandy-Impacted Areas

DATE: April 30, 2013

The Members are asked to ratify and approve the Authority's oversight of an expenditure of up to \$25 million in Community Development Block Grant Disaster Relief (CDBG-DR) funds in order to advance a comprehensive tourism marketing campaign to assist Superstorm Sandy-impacted communities and facilitate the economic recovery of the State's tourism assets.

### **Background**

As noted in the State of New Jersey's Superstorm Sandy Action Plan, New Jersey's tourism industry, the State's third largest industry, contributes more than \$38 billion to the State's Gross Domestic Product and, for 2011, represented 24.5% of private sector employment. Superstorm Sandy had, and continues to have, severe and far-reaching impacts on this vital sector. The substantial concentration of damage across many of New Jersey's shore communities — particularly those in Atlantic, Monmouth, and Ocean Counties — begins to show the breadth of the storm's impact on the tourism industry.

The Jersey Shore, where the majority of tourism dollars are spent, is an iconic and long-established tourist destination, with retail, hospitality, and entertainment venues that contribute significantly not only to local community vitality but also to the overall State employment and business tax revenue base. To support this vital industry, a request was made to the U.S. Department of Housing and Urban Development (HUD) to allow CDBG-DR funds to be used for a comprehensive marketing campaign to bring visitors back to the impacted areas by informing the nation that the Jersey Shore and other impacted areas are in recovery or open for business.

HUD approved a waiver for funds to be used in this manner, as they are not currently an allowable use of CDBG-DR funds, given the significant level of damage suffered by the New Jersey Shore and other impacted areas, which include our State's tourism assets.

With approval of the Action Plan, the New Jersey Department of Community Affairs (DCA) will be the grantee of all the funds available to New Jersey through CDBG-DR, and the New Jersey Economic Development will become a sub-recipient of funds to provide assistance to businesses and communities to spur economic recovery, including the \$25-million tourism marketing campaign.

### **RFQ/Evaluation of Marketing Firm Proposals**

As has been the case with all procurements related to Superstorm Sandy recovery, the Authority worked with the Department of Treasury's Division of Purchase and Property (DPP) to advance a Request for Quotation (RFQ) to solicit bids from marketing firms to advance the campaign, utilizing the procurement process authorized by DPP's rules at N.J.S.A. 17:12. The RFQ process was also reviewed by the Office of the State Comptroller as required by Executive Order 125.

The RFQ process opened on February 27, 2013, and four proposals were received by March 7, 2013. All proposals were deemed responsive by DPP and a selection committee comprised of EDA, Department of State, DPP and DCA representatives reviewed the proposals. The proposals were evaluated on price and other factors including the qualifications and experience of the bidder's management, supervisory, and key personnel assigned to the contract, the bidder's experience in completing projects of similar size and scope, and the overall ability of the bidder to undertake and successfully complete the technical requirements of the contract in a timely manner. On behalf of the Authority, DPP has executed a marketing contract with the highest ranked firms, MWW/Brushfire.

The lead agency, MWW of East Rutherford, was founded 26 years ago in New Jersey, and is a leading full-service public relations firm with nine offices across the United States. MWW represents a wide range of clients, from start-ups to Fortune 100 companies, and has experience in managing a variety of campaigns on behalf of New Jersey departments/agencies, including New Jersey Lottery, NJ Department of Human Services, NJ Board of Public Utilities/Office of Clean Energy, Port Authority of New York & New Jersey, and NJ Sports and Exhibition Authority, among others.

Partnering with MWW is the full-service marketing firm of Brushfire, with over 40 years of brand-building experience. Brushfire has extensive experience in working with the State of New Jersey on marketing its tourism assets through its past work with the New Jersey Division of Travel and Tourism.

The comprehensive campaign will include advertising in television, radio, out-of-home (i.e. billboards), and digital/online/social media. In addition, the campaign will focus on public relations/earned media tactics that will include public events aimed at drawing visitors to impacted areas. The proposal includes a summer-long campaign of events designed to reinforce the campaign theme up and down the coast.

The Authority and MWW/Brushfire will work closely with the Division of Travel and Tourism to ensure their current summer campaign and this initiative are closely coordinated. In addition, the campaign envisions the close partnering with local Destination Marketing Organizations (DMO) to leverage the work they have already undertaken to market the State's tourism assets and bring visitors to the Shore and impacted areas.

It is estimated that a majority (72%) of the \$25 million will be spent on television and radio commercial production and media buy in targeted markets for the launch of a campaign in the weeks preceding Memorial Day and the July Fourth holidays, with a sustaining campaign to follow from early July to September 1 to encourage visitors to plan for second season/Indian Summer in the early Fall.

The media plan budget breakdown is estimated as follows (and is subject to change following finalization of the planned media buy):

<u>Total:</u>	<u>\$17 Million</u>
Television:	62%
Radio:	18%
Out of home:	15%
Internet/Keywords:	5%

In addition to the media buy, approximately 13% of the campaign funding will be utilized for coordination of events and activities geared towards attracting visitors to impacted areas. Of the remaining budget, up to 14.9% relates to administrative costs associated with implementation of the campaign.

### **Management of Campaign**

Pursuant to the DPP procurement process this contract will be approved by the Director of DPP. As applies to all contracts executed by DPP on behalf of State agencies, the DPP requires that the using agency, here Authority, must designate a State Contract Manager to oversee the implementation of the contract, including invoicing, direct management of the vendor, and quality controls. The Authority's Director of Marketing and Policy Nikki Ouellette will be the State Contract Manager. In order to disburse funds, EDA will work with DCA and DPP to advance the appropriate Purchase Orders and other documentation to draw down CDBG-DR funding to pay invoices from the selected firm as they implement the campaign. The review of costs against the approved campaign budget will be done by EDA staff in accordance with Board approved policies, procedures and administrative operating authorities.

**Recommendation:**

In order to advance a comprehensive tourism marketing campaign to assist Superstorm Sandy-impacted communities, the Members are requested to ratify and approve:

The appointment of Nikki Ouellette as State Contract Manager to oversee the expenditure of up to \$25 million in CDBG-DR funds consistent with the services detailed in the aforementioned projected uses of funding.



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Prepared by: Nikki Ouellette



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura  
President/Chief Operating Officer

**DATE:** April 30, 2013

**RE:** Stronger NJ Business Grants  
Memorandum of Understanding for Use and Occupancy  
Russel Hall - Fort Monmouth

### Summary

I am asking the Members approval to: (i) execute a Memorandum of Understanding for Use and Occupancy (MOU) with the Fort Monmouth Economic Revitalization Authority (FMERA) for approximately 3,200 square feet of office space in Russel Hall at Fort Monmouth in order to administer the proposed Stronger NJ Business Grants program; and (ii) delegate authority to staff to amend the MOU for additional space at Fort Monmouth for nominal consideration.

### Background

In order to administer the Stronger NJ Business Grants and better serve New Jersey businesses affected by Superstorm Sandy in eastern New Jersey, staff recommends that the Authority expand its resources in this geographic area. The Authority identified available space on Fort Monmouth that could be utilized for minimal cost to staff approximately fifteen (15) NJEDA Office of Recovery employees, as well as, temporary employees and New Jersey Division of Purchase and Property's business process outsourcing contract employees who will be processing grant and forgivable loan applications submitted by affected New Jersey businesses.

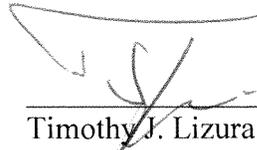
The space is located on the third floor of Russel Hall in the Oceanport section of Fort Monmouth with on-site parking. FMERA will lease the space from the U.S. Army and allow NJEDA to use and occupy the space for a one year term with a six month extension option, subject to approval from the U. S. Army. The rent is \$1.00 and NJEDA will pay for electricity and utility costs attributable to the space it occupies and for its proportionate share of all common area maintenance charges. NJEDA will also perform FMERA's obligations under the Army's lease for this space. This MOU is being presented for approval at FMERA's May Board meeting.

As the administration of the Stronger NJ Business Grants progresses, NJEDA may need to staff additional employees at Fort Monmouth. Delegated authority is requested for the CEO/COO to amend the MOU with FMERA for additional space for nominal consideration and generally consistent with the terms of the initial MOU.

A substantially final form of the MOU is attached. The final form of the MOU and any amendment to the MOU will be subject to the approval of the Chief Executive Officer, the President/Chief Operating Officer and the Attorney General's Office.

**Recommendation**

In summary, I request that the Members' consent to: (i) the execution of an MOU with the Fort Monmouth Economic Revitalization Authority for use and occupancy of approximately 3,200 square feet of office space on the third floor of Russel Hall at Fort Monmouth, on terms generally consistent with the attached term sheet; and (ii) delegate authority to the CEO/COO to amend the MOU for additional space at Fort Monmouth with FMERA, subject to the approval of the Chief Executive Officer, the President/Chief Operating Officer and the Attorney General's Office. Staff will report activity under delegated authority to the Board on a monthly basis.



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Timothy J. Lizura  
President/Chief Operating Officer

Prepared by: Donna T. Sullivan

**FMERA:** Fort Monmouth Economic Revitalization Authority

**NJEDA:** New Jersey Economic Development Authority

**PROPERTY:** Russel Hall, Fort Monmouth, 100 Barton Avenue, Oceanport, New Jersey.

**PREMISES:** 3,200± square feet of office space on the third floor of Russel Hall with on-site parking.

**TERM:** One Year.

**RENEWAL OPTION:** One six month renewal term, subject to the approval of the U.S. Army.

**RENT COMMENCEMENT:** Rent shall commence to accrue (the "Rent Commencement Date") on the effective date of the MOU.

**RENTAL RATES:** Year 1: \$1.00

**OPERATING EXPENSES (CAM):** NJEDA will reimburse FMERA for electricity and utility costs attributable to the space it occupies any pay to FMERA its proportionate share of all common area maintenance (water, sewer, utilities and maintenance, snow/landscape service, and property management, including office janitorial and security).

**BROKER:** None.

**SECURITY DEPOSIT:** None.

**INSURANCE:** NJEDA will provide liability insurance.

**MEMORANDUM OF UNDERSTANDING**

**USE AND OCCUPANCY OF SPACE**

THIS MEMORANDUM OF UNDERSTANDING for USE AND OCCUPANCY OF SPACE (the "MOU") is made as of \_\_\_\_\_, 2013, (the "Effective Date") between the **Fort Monmouth Economic Revitalization Authority** (hereinafter referred to as "FMERA"), an independent authority and instrumentality of the State of New Jersey and the **New Jersey Economic Development Authority** (hereinafter referred to as "NJEDA", an independent authority and instrumentality of the State of New Jersey).

WITNESSETH:

WHEREAS, on behalf of the United States Secretary of Defense, the Office of Economic Adjustment recognizes FMERA as the Local Redevelopment Authority for Fort Monmouth, located in the Boroughs of Oceanport, Eatontown and Tinton Falls, New Jersey;

WHEREAS, FMERA has acquired a leasehold interest in the Property (defined below) pursuant to that certain lease agreement between the Army and FMERA dated \_\_\_\_\_, 2013 (the "Lease");

WHEREAS, NJEDA desires to use and occupy the Property as more fully set forth herein;

WHEREAS, FMERA and NJEDA enter into this MOU as an inter-department governmental agreement pursuant to N.J.S.A. 52:14-1 et seq.

**DEFINITIONS**

For all purposes of this MOU, the following terms shall have the respective meanings set forth below:

"Army" means the United States Army and any division, department or agency thereof.

"Premises" (a/k/a the "Property") shall mean approximately 3,200 square feet of office space on the 3<sup>rd</sup> floor of Russel Hall, 100 Barton Avenue and on-site parking, lying and being in the Borough of Oceanport, County of Monmouth and State of New Jersey.

"MOU" means this Memorandum of Understanding, as the same may be amended, modified or supplemented from time to time by the parties hereto.

"NJDEP" shall mean the New Jersey Department of Environmental Protection.

NOW THEREFORE

FMERA, for the consideration hereinafter set forth, hereby grants to NJEDA the right to use and occupy the Premises. This MOU is granted subject to the following conditions:

**1. AUTHORIZED REPRESENTATIVES**

Any reference to FMERA or NJEDA shall include any permitted assignees, or successors and their duly authorized representatives.

**2. USE OF THE PREMISES**

a. The Premises may be used, in the absence of prior written approval of FMERA, for use as office space to administer NJEDA's Stronger NJ Business Grants program and serve New Jersey business affected by Superstorm Sandy in eastern New Jersey, which use of the Premises has been properly evaluated by the Army.

b. FMERA, in the FMERA's sole discretion, must approve any change in the use of the Premises that does not reflect uses set forth in sub condition a. above. Prior to approval of any such changes in use requested by NJEDA, NJEDA shall furnish, at NJEDA's expense, any additional environmental analyses and documentation deemed necessary by the Army or FMERA to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations, and other applicable environmental laws and regulations. In granting approval for the change in use, FMERA reserves the right to impose such additional environmental protection provisions and restrictions, as the Army deems appropriate.

**3. TERM**

This MOU is for a term of one (1) year, commencing on the Effective Date and ending one year hence from the commencement date with an option for one (1) additional six (6) month period upon the mutual agreement of FMERA, NJEDA and the Army or until terminated under the condition on TERMINATION, REVOCATION AND DEFAULT, whichever is sooner.

**4. TERMINATION, DEFAULT AND REVOCATION**

a. Termination.

(1) In the event of FMERA's decision to convey the Premises or a portion thereof to NJEDA or another party, this MOU shall terminate upon conveyance of the Premises or a portion thereof with respect to that portion so conveyed.

(2) In the event the Army decides to terminate the Lease, this MOU shall terminate immediately upon the effective date of the termination of the Lease by the Army upon giving FMERA written notice of termination.

b. Default.

The following events shall be deemed to be events of default by NJEDA under this MOU:

(1) NJEDA fails to comply with any condition, provision, covenant, or warranty made under this MOU by NJEDA and shall not cure such failure, or initiate a cure and diligently pursue actions required to perfect a cure, within ninety (90) days after written notice thereof to NJEDA, unless said noncompliance is the

subject of a shorter notice given by a federal or state agency, in which case the shorter notice shall apply.

(2) NJEDA does or permits to be done anything which creates a lien upon the Premises unless any such lien is discharged or otherwise satisfied by a bond or other appropriate mechanism, or properly contested in a court of law by NJEDA within sixty (60) days of its imposition.

c. Revocation.

NJEDA is charged at all times with full knowledge of all the conditions and requirements of this MOU, and the necessity for correction of defaults and non-compliance. Upon the occurrence of any of the aforesaid events of default, following applicable notice and cure periods and requirements, FMERA shall have the option to revoke this MOU, in which event NJEDA shall immediately surrender the Premises to FMERA, and if NJEDA fails to do so, FMERA may enter upon and take possession of the Premises and expel or remove NJEDA and any other person who may be occupying said Premises or any part thereof, without being liable for any claim of damages therefor; NJEDA hereby agreeing to pay to FMERA on demand the amount of all loss and damage which FMERA may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Premises or temporary suspension of activities under this MOU. Forbearance by FMERA to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. NJEDA agrees to pay to FMERA all costs and expenses incurred by FMERA in the enforcement of this MOU.

**5. CONSIDERATION**

The consideration for this MOU is the operation and maintenance of the Premises by NJEDA for the purposes stated in Paragraph 2(a) above and other good and valuable consideration including any and all costs to maintain and repair the Premises, and all operating expenses associated therewith. NJEDA shall also perform FMERA's obligations to the Army pursuant to the Lease.

**6. SUPERVISION OF THE PREMISES**

The use and occupancy of the Premises incident to the exercise of the privileges and purposes hereby granted shall be subject to the supervision and approval of FMERA and to such general rules and regulations as FMERA may from time to time prescribe, all consistent with and in furtherance of the terms of this MOU.

**7. APPLICABLE LAWS AND REGULATIONS**

a. NJEDA shall comply with all applicable Federal, state, and local laws, ordinances, regulations and standards that are or may become applicable to their activities on the Premises, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. Additional compliance conditions are included III the condition on ENVIRONMENTAL PROTECTION.

## **8. CONDITION OF THE PREMISES**

a. NJEDA acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the Property. NJEDA understands and agrees that the Property and any part thereof is offered "AS IS" and "WHERE IS" without any representation, warranty, or guarantee by FMERA as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by NJEDA, and no claim for allowance or deduction upon such grounds will be considered.

b. FMERA and NJEDA have jointly conducted an inventory and condition survey of the Premises, to include the environmental condition, prior to execution of this MOU by either party. The inventory and condition survey is documented in a Condition Survey report prepared by the Army. The Condition Survey will refer to and incorporate by reference the Environmental Condition of Property Report ("ECP") prepared by the Army, as well as any other environmental conditions that may not be specifically identified in the ECP. Preceding expiration, revocation or termination of this MOU, except in the case of conveyance of the Premises to NJEDA, FMERA and NJEDA will jointly conduct a close-out survey. FMERA will prepare a close-out report. NJEDA shall fully fund the FMERA's preparation of an updated ECP that will document the environmental condition of the Premises at that time as part of the close-out survey. The close-out survey and report will refer to and incorporate by reference, the updated ECP. All significant variances from the initial Condition Survey shall be clearly documented in the close-out report. This close-out report will constitute the basis for settlement by the parties for any property shown to be lost, damaged, contaminated, or destroyed during the term of this MOU, in determining any environmental restoration requirements to be completed by NJEDA and restoration of the Premises as required in the condition on RESTORATION.

c. No warranties either express or implied are given with regard to the condition of the Premises, including, without limitation, whether the Premises does or does not contain asbestos or lead-based paint. NJEDA shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Premises, including, without limitation, any asbestos, lead-based paint, or other conditions on the Premises. The failure of NJEDA to inspect, or to exercise due diligence to be fully informed as to the condition of all or any portion of the Premises offered, will not constitute grounds for any claim or demand against FMERA.

## **9. SUCCESSORS**

This MOU and the covenants and conditions herein contained shall be binding upon NJEDA and its successors; and shall inure to the benefit of only such successors of NJEDA to whom the transfer by NJEDA has been consented to by FMERA in writing. No transfers shall be valid unless the successor shall, by an instrument in a form sufficient for recording and acceptable to FMERA, enter into an assumption agreement and assume all of NJEDA's obligations under this MOU. A duplicate original of that assumption agreement will be delivered to FMERA, and the transfer shall not take effect until delivery is made.

## **10. COST OF UTILITIES, OPERATIONS AND MAINTENANCE**

- a. NJEDA shall pay the cost of producing and/or supplying any utilities and other services furnished by FMERA or through government-owned facilities for the use by NJEDA of the Premise, including the NJEDA's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied.
- b. NJEDA shall pay its proportionate share of the cost of operation and maintenance of the Premises.
- c. Neither FMERA nor the Army shall be under any obligation to furnish utilities or services. The current supplying of utilities or other services by FMERA is not a commitment to provide utilities in the future.

**11. PROTECTION OF PROPERTY**

NJEDA, at NJEDA's sole cost and expense, shall keep the Premises in good order and in a clean, safe condition. NJEDA shall be responsible for any damage that may be caused to property of the Army or FMERA including, but not limited to, the Premises by the activities of NJEDA and/or its guests and employees, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property the Army or of FMERA damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by NJEDA to a condition satisfactory to FMERA, or at the election of FMERA, reimbursement made therefor by FMERA in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to FMERA.

**12. INSURANCE**

- a. As to those structures and improvements on the Premises, for such periods as NJEDA is in possession of the Premises pursuant to the terms and conditions of this MOU, NJEDA shall procure and maintain at NJEDA's cost a standard fire and extended coverage insurance policy or policies on the Premises to the full insurable value thereof. NJEDA shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of FMERA, shall be payable to NJEDA to be used for the repair, restoration or replacement of the property damaged or destroyed or of the Premises, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to FMERA. If FMERA does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to NJEDA for the purposes herein above set forth, then such proceeds shall be paid to FMERA, provided however that the insurer, after payment of any proceeds to NJEDA in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by NJEDA. Nothing herein contained shall be construed as an obligation upon FMERA to repair, restore or replace the Premises or any part thereof should it be diminished in value, damaged, or destroyed.
- b. NJEDA shall obtain and maintain, from a reputable insurance company, or companies, comprehensive liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or an amount not less than a combined single limit of Five Million (\$5,000,000) dollars with respect to bodily injuries or death

resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons upon the Premises or arising from activities conducted under this MOU.

c. NJEDA shall require that the insurance company give FMERA thirty (30) days written notice of any cancellation or change in such insurance. FMERA may require closure of any or all of the Premises during any period for which NJEDA does not have the required insurance coverage. NJEDA shall require its insurance company to furnish to FMERA copy of the policy or policies, or if acceptable to FMERA, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by FMERA every year or upon renewal or modification of this MOU.

d. NJEDA may require any successors, as joint and several responsible parties with NJEDA for those portions of the Premises under their control, to maintain and carry at their expense portions of the insurance requirement.

### **13. RIGHT TO ENTER**

a. The right is reserved to FMERA, its officers, agents, and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with government purposes. FMERA will attempt to give a minimum of 24 hours notice prior to entry, but is not obligated to do so during emergencies when there is a potential threat to health, safety, loss of life, or property damage.

b. Additional rights to enter are reserved in the condition on ENVIRONMENTAL PROTECTION.

### **14. RELEASE OF CLAIMS**

a. NJEDA expressly waives all claims against FMERA and the Army for any such loss, damage, personal injury or death caused by or occurring as a consequence of such condition, possession and/or use of the Premises by NJEDA, or the conduct of activities or the performance of responsibilities under this MOU by NJEDA, except with regard to existing conditions related to munitions or explosives of concern ("MEC") or hazardous substances for which the Army is responsible for under applicable law.

### **15. RESTORATION**

a. In the event that the Premises are not conveyed to NJEDA, then on or before the earlier of expiration, revocation, or termination date of this MOU, FMERA and NJEDA shall prepare an inventory and condition report showing the improvements and related personal property located on the Premises. This report shall constitute the basis for settlement of RESTORATION obligations under this Condition.

b. FMERA and NJEDA will negotiate which property will be removed by NJEDA; which property will be surrendered to FMERA, with title reverting to FMERA without consideration; the restoration of the Premises required; and the time allowed for compliance with such actions. NJEDA will then remove the agreed upon property; restore the Premises; and vacate the Premises.

c. If NJEDA shall fail or neglect to remove said agreed property, then, at the option of FMERA, (a) title to said property shall revert to FMERA without compensation therefore, or (b) FMERA may cause the property to be removed as restoration of the Premises, set out in d. below.

d. If NJEDA shall fail or neglect to restore the Premises, as agreed, FMERA may cause restoration work to be performed. NJEDA shall pay FMERA on demand any sum which may be expended by FMERA after the expiration, revocation, or termination of this MOU in restoring the Premises.

e. No claim for damages against FMERA or its officers or agents shall be created by or made on account of such reversion, removal and restoration.

#### **16. NON-DISCRIMINATION**

NJEDA shall not discriminate against any person or persons or exclude them from participation in the NJEDA's operations, programs or activities conducted on the Premises, because of race, color, religion, sex, age, handicap, or national origin.

#### **17. SUBJECT TO EASEMENTS**

This MOU is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with NJEDA, and easements will not be granted which will, in the opinion of FMERA, interfere with the use of the Premises by NJEDA.

#### **18. SUBJECT TO MINERAL INTERESTS**

This MOU is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. FMERA will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Premises from activities that would interfere with NJEDA's operations or would be contrary to local law.

#### **19. PROHIBITED USES**

a. NJEDA shall not permit gambling or alcohol on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Premises any activity which would constitute a nuisance.

b. NJEDA shall not construct or place any structure, improvement, leasehold improvement or advertising sign or allow or permit such construction or placement without prior written approval of FMERA.

#### **20. NATURAL RESOURCES**

NJEDA shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Premises except as authorized in writing by FMERA.

## **21. ENVIRONMENTAL PROTECTION PROVISIONS**

a. NJEDA will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of NJEDA, NJEDA shall be liable to restore the damaged resources. NJEDA shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance. NJEDA must obtain approval in writing from FMERA before any pesticides or herbicides are applied to the Premises, unless a plan for such application has been approved by FMERA and all such applications are done pursuant to that plan.

b. NJEDA shall be solely responsible for obtaining at its own cost and expense any regulatory or environmental permits required for their operation under this MOU. NJEDA shall also be required to obtain its own EPA Identification Number if applicable.

c. The rights of FMERA under this MOU specifically include the right of FMERA to inspect, upon reasonable notice, the Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not FMERA is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. FMERA normally will give NJEDA twenty-four (24) hours prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. NJEDA shall have no claim on account of any entries against FMERA or any officer, agent, employee, or contractor thereof, except as may be authorized under the New Jersey Tort Claims Act or other applicable law.

d. NJEDA acknowledges that it has received a fully executed copy of the Lease between the Army and FMERA. By entering into this MOU, NJEDA represents that it accepts, assumes and agrees to comply with all of FMERA's environmental obligations under the Lease.

## **22. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT (LBP) AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSE**

a. NJEDA is hereby informed and does acknowledge that all buildings on the Premises, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

b. The Premises are not being used for residential purposes. NJEDA covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Premises as Residential Property,

as defined under 24 Code of Federal Regulations part 35, without complying with this section and all applicable Federal, State, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards.

c. NJEDA acknowledges that it has inspected or has had the opportunity to inspect the Premises as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. NJEDA shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Premises, including, without limitation, any lead-based paint hazards or concerns.

d. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of the lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Condition of Property Report, which has been provided to NJEDA. Additionally, NJEDA has been provided with a copy of the federally approved pamphlet on lead poisoning prevention. NJEDA hereby acknowledges receipt of all information described in this subparagraph.

### **23. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT**

a. NJEDA is hereby informed and does acknowledge that non-friable asbestos or asbestos containing material (ACM) may be found on the Premises. The Premises may also contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain friable and non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the U.S. Environmental Protection Agency (EPA) have determined that unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

b. NJEDA covenants and agrees that its use and occupancy of the Premises will be in compliance with all applicable laws relating to asbestos. NJEDA agrees to be responsible for any future remediation or abatement of friable asbestos found to be necessary in buildings and structures on the Premises as a result of activities of NJEDA during the MOU.

c. NJEDA acknowledges that it has inspected or has had the opportunity to inspect the Premises as to its asbestos and ACM content and condition, and any hazardous or environmental conditions relating thereto. NJEDA shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Premises, including, without limitation, any asbestos or ACM hazards or concerns.

### **24. OTHER ENVIRONMENTAL RESTRICTION**

a. ALTERATIONS, ADDITIONS AND IMPROVEMENTS TO THE PREMISES: NJEDA shall not construct, make or permit any alterations, additions, or improvements or otherwise modify the Premises in any way which may adversely affect the Army's investigations, restoration, or human health or the environment without prior written consent of the Army. Such consent may include a requirement to provide the Army with a performance and payment bond to it in all respects and other requirements deemed

necessary to protect the interests of the Army. Except as such written approval shall expressly provide otherwise, all such approved alterations/additions/modifications shall become government property when annexed to Premises.

b. INTERFERENCE WITH ON-GOING RESTORATION. NJEDA shall not disrupt, inflict damage, obstruct, or impede on-going environmental restoration work on the Premises or anywhere else on Fort Monmouth.

c. ARMY ACCESS CLAUSE. FMERA's rights under this MOU specifically include the right for Army officials to inspect, upon reasonable notice, the Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Army is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Army normally will give NJEDA twenty-four (24) hours prior notice of its intention to enter the Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. NJEDA shall have no claim against FMERA or the Army or any officer, agent, employee, or contractor thereof on account of any entries, except as may be authorized under the Federal Tort Claims Act, State Tort Claims Act or other applicable law.

d. CERCLA NOTICE

(1) Pursuant to sections 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of as defined in section 120(h), is provided in Enclosure 4 (FOSL Table 2). Additional information regarding the storage of hazardous substances on the Premises has been provided to NJEDA, receipt of which NJEDA hereby acknowledges.

(2) Pursuant to sections 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Premises is provided in Enclosure 4 (FOSL Table 2). Additional information regarding the remedial action taken, if any, has been provided to NJEDA, receipt of which NJEDA hereby acknowledges. Such additional information includes, but is not limited to, the following documents: U.S. Army BRAC 2005 Environmental Condition of Property Report Fort Monmouth, Monmouth County, New Jersey, Final, 29 January 2007; U.S. Army BRAC 2005 Site Investigation Report Fort Monmouth, Final, 21 July 2008.

e. RIGHT OF ACCESS

(1) Pursuant to section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9620(h)(3)(A)(iii)), the Army retains and reserves a perpetual and assignable right of access on, over, and through the Premises, to enter upon the Premises in any case in which an environmental response action or corrective action is found to be necessary on the part of the Army, without regard to whether such environmental response action or corrective action is on the Premises or on adjoining or nearby lands. Such right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring,

test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the Army to meet its responsibilities under applicable laws and as provided for in this instrument. Such right of access shall be binding on NJEDA and its successors and assigns and shall run with the land.

(2) In exercising such right of access, the Army shall provide NJEDA or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Premises and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The Army shall use reasonable means, but without significant additional costs to the Army, to avoid and to minimize interference with NJEDA's and NJEDA's successors' and assigns' quiet enjoyment of the Premises. At the completion of work, the work site shall be reasonably restored. Such right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Premises at a reasonable charge to the Army. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due NJEDA nor its successors and assigns, for the exercise of the right of access hereby retained and reserved by the Army.

(3) In exercising such right of access, neither NJEDA nor its successors and assigns, as the case may be, shall have any claim at law or equity against FMERA, the Army or any officer, employee, agent, contractor of any tier, or servant of the Army based on actions taken by the Army or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this covenant. Provided, however, that nothing in this paragraph shall be considered as a waiver by NJEDA and its successors and assigns of any remedy available to them under the New Jersey or Federal Tort Claims Act. In addition, NJEDA, its successors and assigns, shall not interfere with any response action or corrective action conducted by FMERA on the Premises.

f. NJEDA COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION. NJEDA will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by NJEDA or any sub-lessees.

g. ENVIRONMENTAL COMPLIANCE PLANS.

(1) Within thirty (30) days of the execution of this MOU, NJEDA shall submit to FMERA for transmittal to the Army, and maintain thereafter, an Environmental Compliance Plan which describes, in detail, the program for environmental management and method of compliance, by the user of any portion of the Premises, whether NJEDA, with all Army, Federal, State, and local laws and regulations for the use, management, generation, storage, treatment, and disposal of all hazardous waste, hazardous materials, and hazardous substances. Each Environmental Compliance Plan for a portion of the Premises, or request for waiver of the requirement for a plan due to the non-hazardous nature of the proposed use, must be submitted and approved in writing by the Army prior to occupancy of the intended portion of the Premises. NJEDA will be responsible for the overall compliance of its operations. NJEDA will be responsible for ensuring the preparation of all documents, records, and reports associated with the environmental compliance of its operation. No liability or responsibility shall attach to FMERA, Fort

Monmouth or the Army as a result of the Army's review and approval of the Environmental Compliance Plan under this paragraph.

(2) NJEDA further agrees that in the event of any assignment of the Premises, it shall provide to the NJDEP a copy of the agreement regarding the Premises, by certified mail, within 14 days after the effective date of such transaction. NJEDA shall delete the financial terms and any other proprietary information from the copy of any agreement of assignment furnished pursuant to this condition.

h. NJEDA RESPONSE PLAN. Within thirty (30) days of the execution of this MOU, NJEDA shall prepare and submit to FMERA for transmittal to the Army, and maintain thereafter, an Army-approved plan for responding to hazardous waste, fuel and other chemical spills prior to commencement of operations on the Premises. Such plan shall be independent of Fort Monmouth's Spill Contingency Plan and, shall not rely on use of Fort Monmouth installation personnel or equipment. Should the Army provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on request of NJEDA, or because NJEDA was not, in the opinion of the said officer, conducting timely cleanup actions, NJEDA agrees to reimburse the Army for its response costs.

i. LAND USE RESTRICTIONS. The Army has undertaken careful environmental study of the Premises and concluded that the land use restrictions set forth below are required to ensure protection of human health and the environment. NJEDA shall not undertake nor allow any activity on or use of the Premises that would violate the land use restrictions contained herein.

(1) Residential Use Restriction. NJEDA shall not use the Premises for residential purposes. For purposes of this provision, residential use includes, but is not limited to: single family or multi-family residences; child care facilities; nursing home or assisted living facilities; and any type of educational purpose for children/young adults in grades kindergarten through 12.

j. HAZARDOUS WASTE MANAGEMENT

NJEDA will not store or dispose of hazardous materials on the Premises unless authorized under 10 U.S.C. § 2692. NJEDA shall strictly comply with hazardous waste management requirements under RCRA and New Jersey hazardous waste management rules, including proper hazardous waste characterization, labeling, storage, disposal, and documentation requirements. Except as specifically authorized by FMERA and the Army in writing, NJEDA must provide, at its own expense, such hazardous waste management facilities, as needed to maintain compliance with all laws and regulations. Army hazardous waste management facilities will not be available to NJEDA. Any violation of the requirements in this condition shall be deemed a material breach of this MOU.

k. EXISTING HAZARDOUS WASTE

NJEDA will not use Fort Monmouth hazardous waste accumulation points. Neither will NJEDA permit its hazardous wastes to be commingled with Fort -Monmouth's hazardous waste.

l. NJEDA COMPLIANCE

NJEDA shall comply with all lawful statutes, regulations, permits, or orders affecting the activity hereby authorized when such are issued by the Environmental Protection Agency; the NJDEP; or any other Federal, State, interstate, or local government agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Premises by NJEDA or any sub-lessee is prohibited.

m. NJEDA COMPLIANCE DURING RESPONSE OR CORRECTIVE ACTION

NJEDA will agree to comply with the provisions of the appropriate health or safety plan in effect during the course of any of the above-described actions. Any inspection, survey, investigation, or other corrective or response action will, to the extent practicable, be coordinated with representatives designated by NJEDA or any sub-lessees.

n. PESTICIDE NOTIFICATION

NJEDA, its successors, and assigns, is hereby notified and acknowledges that registered pesticides have been applied to the Premises and may continue to be present thereon. FMERA, represents that where pesticides were applied by FMERA or at FMERA's direction, it was applied in accordance with the pesticide's intended purpose and consistent with the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA --7 U.S.C. Sec. 136, et seq.) and other applicable laws and regulations.

**25. SITE SPECIFIC RESTRICTIONS**

Any pesticides, herbicides, fungicides, and insecticides must be applied by a legally certified applicator and must be applied in accordance with the product label and all federal, state, and local laws. Quantities used must not exceed the limits set forth by the Department of Defense to be used on military installations.

**26. HISTORIC PRESERVATION**

a. NJEDA shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the Premises, NJEDA shall immediately notify the State Historic Preservation officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

b. Programmatic Agreement State Historic Preservation Officer. NJEDA shall comply with the requirements of the Programmatic Agreement among the Army and the State Historic Preservation Officer for the Closure and Disposal of Fort Monmouth, New Jersey

**27. SOIL AND WATER CONSERVATION**

NJEDA shall maintain, in a manner satisfactory to the Army, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by NJEDA during the term of this MOU, and NJEDA shall take appropriate measures to prevent or control soil

erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of NJEDA shall be corrected by NJEDA as directed by the said officer.

## **28. TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of NJEDA in the Premises shall be paid promptly by NJEDA. If and to the extent that the property owned by the Army and covered by this MOU is later made taxable by State or local governments, Rent for this MOU shall be renegotiated.

## **29. OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this MOU or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this MOU is for the general benefit of such corporation or company.

## **30. TITLE TO IMPROVEMENTS**

The renovation, construction and installation of improvements by NJEDA are private undertakings, and during the term of this MOU title to all such improvements vest and remain in NJEDA. The improvements shall remain real property for the duration of this MOU. All structures and equipment furnished by NJEDA shall be and remain the property of NJEDA.

## **31. DISCLAIMER**

This MOU is effective only insofar as the rights of FMERA and the Army in the Premises are concerned; and NJEDA shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Premises. It is understood that the granting of this MOU does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), Section 404 of the Clean Waters Act (33 USC 1344) or Section 408 (33 U.S.C. § 408) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the Premises.

## **32. FAILURE OF FMERA TO INSIST UPON COMPLIANCE**

The failure of FMERA to insist, in anyone or more instances, upon performance of any of the terms, covenants or conditions of this MOU shall not be construed as a waiver of relinquishment of FMERA's right to the current or future performance of any such terms, covenants or conditions and NJEDA's obligations in respect to such performance shall continue in full force and effect.

## **33. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS AND FORMS**

Any reference in this MOU, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program or form.

#### **34. NO INDIVIDUAL LIABILITY OF GOVERNMENT OFFICIALS**

No covenant or agreement contained in this MOU shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the State or Federal Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this MOU, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

#### **35. SPECIAL CONDITIONS**

a. NJEDA may make improvements to the Premises, which improvements may include, without limitation, improvements to existing buildings, and the construction of new buildings and facilities, provided that:

(1) NJEDA receives prior written approval by FMERA of plans submitted to FMERA for review,

(2) FMERA receives prior written approval by the Army of plans submitted by NJEDA to FMERA and transmitted to the Army by FMERA for review by the Army,

(3) FMERA and NJEDA enter into an agreement regarding the removal of said improvements and the restoration of the Premises and the time allowed for compliance with such actions which agreement will become operative in the event that the Premises are not conveyed to NJEDA,

(4) said improvements are undertaken or constructed in a good and workmanlike manner and in accordance with all requirements of applicable federal, state and local ordinances and with the rules, regulations and requirements of all departments, boards, bureaus, officials and authorities having jurisdiction there over,

(5) said improvements will not preclude the use of the Premises for purposes anticipated by disposal-related documentation prepared to satisfy the requirements of the National Environmental Policy Act of 1969, which documentation may include, without limitation, a Record of Environmental Consideration or an Environmental Assessment, or by the Reuse Plan, and

(6) All necessary permits for such improvements shall be obtained by NJEDA.

b. If required by applicable law, FMERA agrees to cooperate with NJEDA and to execute any documents or permits reasonably required for the undertaking by NJEDA of any such improvements, provided that NJEDA shall discharge any expense or liability of FMERA in connection therewith.

c. NJEDA shall provide to FMERA, at NJEDA's expense, upon receipt thereof by NJEDA, copies of all permits, certificates of occupancy, and other approvals, including copies of all plans submitted in

connection therewith, obtained from governmental authorities in connection with the construction, use and occupancy of such building or improvement.

**36. ENTIRE UNDERSTANDING**

a. It is understood and agreed that all understandings between the parties regarding use and occupancy of the Property are merged in this MOU which alone fully and completely expresses their agreement. This MOU replaces and cancels any previous agreements between NJEDA and FMERA regarding the use and occupancy of the Property. This MOU can only be changed by a writing signed by both NJEDA and FMERA. FMERA states that FMERA has not made any other agreement to lease, sublease or sell the Property to anyone else.

b. This MOU is not an obligation of the State of New Jersey or any political subdivision thereof nor shall the State or any political subdivision thereof be liable for any of the obligations under this MOU. Nothing contained in this MOU shall be deemed to pledge the general credit or taxing power of the State or any political subdivision thereof.

**37. NO PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this MOU will make or will be construed to make the parties hereto joint venture partners with each other, it being understood and agreed that the only relationship between NJEDA and FMERA hereunder is that of landlord and tenant. Nor should anything in this MOU render or be construed to render either of the parties hereto liable to the other for any third party debts or obligations due the other party.

**38. NO THIRD-PARTY RIGHTS OR BENEFITS**

Nothing in this MOU shall be construed as creating any rights of enforcement against any person or entity that is not a party to this MOU, nor any rights, interest or third-party beneficiary status for any entity or person other than NJEDA and FMERA. This MOU is not an obligation of the State of New Jersey or any political subdivision thereof (other than FMERA) nor shall the State or any political subdivision thereof (other than FMERA) be liable for any of the obligations under this MOU. Nothing contained in this MOU shall be deemed to pledge the general credit or taxing power of the state or any political subdivision thereof (other than FMERA).

**39. TIME PERIODS**

All time periods contained in this MOU shall expire at 5 :00 p.m. Eastern Time on the date performance is due and any performance after such time and any Notice received after such time shall be deemed to have occurred on the next business day. In the event that any date falls on a weekend or any other day which commercial banks in the State of New Jersey are closed or permitted to be closed, the date shall be deemed to extend to the next weekday.

**40. NOTICES**

Any notices required to be given under this MOU must be in writing and shall be addressed as follows:

a. to Fort Monmouth Economic Revitalization Authority at 2-12 Corbett Way Eatontown, New Jersey 07724-4251, Attention: Bruce Steadman, Executive Director;

with a copy to:

b. to The New Jersey Economic Development Authority at 36 West State Street, Trenton, New Jersey 08625 Attention: Donna T. Sullivan, Director Real Estate Development Division;

With a copy to:

c. All notices which must be given under this MOU are to be given either by:

(1) personal service,

(2) certified mail, return receipt requested, addressed to the other party at their address specified above, or

(3) overnight delivery service, addressed to the other party at their address specified above (e.g. Federal Express, United Parcel Service, DHL, United State Postal Service Next Day Mail).

d. Either party may change the address to which notice must be provided pursuant to this MOU by providing notice, in accordance with this provision, to the other party at that party's last-identified address, provided that such change of address shall not take effect until five (5) days following the date of such notice.

e. Each party authorizes the other to rely in connection with their respective rights and obligations under this MOU upon approval by the parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

IN WITNESS WHEREOF

NJEDA and FMERA have signed this Memorandum of Understanding as of the date first written above.

ATTEST:

**FORT MONMOUTH ECONOMIC REVITALIZATION  
AUTHORITY**

\_\_\_\_\_

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

Bruce Steadman, Executive Director

ATTEST:

**NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY**

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



NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

## MEMORANDUM

**TO:** Members of the Authority

**FROM:** Timothy J. Lizura  
President/Chief Operating Officer

**DATE:** April 30, 2013

**SUBJECT:** Subrecipient Agreement with the Department of Community Affairs to Implement the Community Development Block Grant Disaster Recovery Program through the Economic Revitalization Program

### **Request:**

The Members are asked to approve the execution of a Subrecipient Agreement between the EDA and the Department of Community Affairs to implement the Community Development Block Grant Disaster Recovery Program through the Economic Revitalization Program. A copy of that agreement is attached hereto in substantially final form.

### **Background:**

Superstorm Sandy caused unprecedented damage to New Jersey, resulting in President Obama's October 30, 2012 disaster declaration that designated all twenty-one New Jersey counties major disaster areas. Storm damage was particularly concentrated in communities bordering or near the Atlantic Ocean and the Hudson River, many of which were flooded by Sandy's storm surge. Atlantic, Bergen, Cape May, Essex, Hudson, Middlesex, Monmouth, Ocean and Union Counties have been identified by the U.S. Department of Housing and Urban Development (HUD) as the areas in New Jersey most impacted by the storm.

The storm had a widespread and lasting impact on New Jersey's business sector and particularly affected small businesses. It caused substantial damage to commercial property. Data suggest that businesses in 113 of New Jersey's 565 municipalities incurred a combined \$382 million in commercial property losses and \$63 million in business interruption losses. The breadth of Sandy's impact across New Jersey, including to the business sector, emphasizes the need for a thoughtful and comprehensive long-term recovery process. As part of that process, the Authority participated in the drafting of the State's Community Development Block Grant Disaster Recovery Action Plan

("Action Plan"). The Action Plan uses available data to assess damages and unmet needs resulting in certain sectors from the storm, including the business sector, and it describes New Jersey's plan for allocating the approximately \$1.8 billion of CDBG-DR funds it has received to date from HUD to begin to address those unmet needs.

The Department of Community Affairs ("DCA") has been designated to administer the disaster recovery programs on behalf of the State, and the Action Plan designates the Authority as a planned subrecipient of CDBG-DR funding from DCA to administer economic recovery programs. Specifically, with the first tranche of CDBG-DR funding, EDA-administered programs were allocated a total of \$460 million ("Grant Funds") across the following programs: i) tourism marketing campaign - \$25 million; ii) grants/forgivable loans - \$260 million; iii) revolving loan fund - \$100 million; and iv) neighborhood and community revitalization - \$75 million. A detailed description of the material terms of the grant/forgivable loan program and the tourism marketing campaign are being presented to the Board today under separate cover. The specifics of the revolving loan fund program and the neighborhood and community revitalization program have not yet been finalized, and will be brought to the Board for consideration at a later date.

#### **Subrecipient Agreement:**

The Subrecipient Agreement formalizes this arrangement and lays the framework for EDA's working relationship with DCA. The material terms of that arrangement are as follows:

For the services to be performed under the Subrecipient Agreement, EDA shall be permitted to be paid five percent of the Grant Funds to reimburse it for administrative costs and carrying charges related to the planning and execution of the aforementioned economic revitalization programs. Additionally, EDA shall be permitted to receive up to fifteen percent of the Grant Funds to reimburse it for activity delivery costs, which are the actual implementation and delivery costs of the programs, e.g. staff and overhead costs.

Pursuant to federal requirements, EDA must expend all of the Grant Funds that it has drawn down from DCA's CDBG-DR account within two years of HUD and DCA entering into a grant agreement for the CDBG-DR award, unless otherwise stipulated in writing by HUD. Under the Subrecipient Agreement, EDA agrees to use best efforts to meet certain performance benchmarks related to expenditure of its drawn down funds. The details of the draw down process from HUD's CDBG-DR account have yet to be finalized.

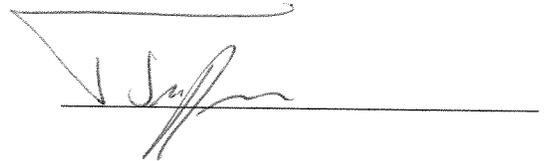
The Subrecipient Agreement can be terminated by either party with 30 days advance written notice; DCA may also terminate for cause. The agreement shall otherwise continue until such time as EDA no longer has the right to exercise any supervision or control over the Grant Funds.

Because CDBG-DR monies are federal funds, there are numerous federal requirements with which EDA, as well as its financial assistance recipients, must comply. A list of such requirements are set forth in the appendices to the Subrecipient Agreement and include, without limitation, the following: various reporting, compliance and audit requirements; Davis-Bacon and prevailing wage

requirements; National Environmental Policy Act (NEPA) requirements; and National Flood Insurance Program coverage requirements.

**Recommendation:**

The Members are asked to approve the execution of the Subrecipient Agreement between the EDA and the Department of Community Affairs to implement the Community Development Block Grant Disaster Recovery Program through the Economic Revitalization Program, attached hereto in substantially final form, subject to final review and approval by the Office of the Attorney General and to delegate authority to CEO Michele Brown to negotiate the indicated open issues.

A handwritten signature in black ink, appearing to read "M. Brown", is written over a horizontal line. The signature is stylized and cursive.

**Prepared by:** Kim Ehrlich

Attachment

**STATE OF NEW JERSEY**  
**DEPARTMENT OF COMMUNITY AFFAIRS**

**SUBRECIPIENT AGREEMENT**  
**IMPLEMENTING GRANTS UNDER THE COMMUNITY DEVELOPMENT BLOCK**  
**GRANT DISASTER RECOVERY PROGRAM THROUGH THE**  
**ECONOMIC REVITALIZATION PROGRAM**

This Subrecipient Agreement (“Agreement”), dated \_\_\_\_\_, 2013, is entered into by and between the NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY (“Subrecipient”), an instrumentality of the State of New Jersey, and the STATE OF NEW JERSEY, DEPARTMENT OF COMMUNITY AFFAIRS (“GRANTEE”). Subrecipient and the GRANTEE may sometimes hereinafter be collectively referred to as the “Parties” and individually as a “Party.”

**PREAMBLES**

WHEREAS, in the aftermath of Superstorm Sandy, the United States Congress, through Public Law 113-2, appropriated approximately \$16 billion to the U.S. Department of Housing and Urban Development (“HUD”) Community Development Block Grant (“CDBG”) Program, and of the \$5.4 billion of these funds allocated to date for disaster recovery, the State of New Jersey (the “State”) was allocated approximately \$1.8 billion; and

WHEREAS, the GRANTEE has been designated to administer the State’s CDBG disaster recovery program (the “CDBG-DR Program”), which is subject to the federal statutes and regulations governing CDBG grants, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD; and

WHEREAS, on \_\_\_\_\_, HUD approved New Jersey’s Initial Action Plan for the utilization of CDBG funds in Response to Superstorm Sandy which was submitted by GRANTEE on behalf of the State; and

WHEREAS, pursuant to NJSA 34:1B-1 et seq., the State Legislature created Subrecipient as the State’s primary entity charged with encouraging and promoting economic development and rehabilitation in the State; and

WHEREAS, as a result thereof, Subrecipient has developed expertise in designing and administering various financing initiatives in furtherance of this purpose; and

WHEREAS, because of such expertise, GRANTEE has designated the New Jersey Economic Development Authority to serve as subrecipient of the CDBG-DR Program,

pursuant to 24 CFR 570.501, for the purpose of administering the Economic Revitalization Program (the "Program") set forth in the Action Plan; and

WHEREAS, Subrecipient agrees to perform the duties and assume the responsibilities set forth in the Action Plan which are focused on Economic Revitalization Activities and programs in areas of the State adversely affected by Superstorm Sandy; and

WHEREAS, the public purpose to be derived from this Agreement is the expeditious and effective recovery of New Jersey as part of the CDBG Disaster Recovery Program through the programs in the Action Plan; and

WHEREAS, the Parties wish to set forth their mutual understanding regarding their respective roles and responsibilities in implementing the activities set forth in the Action Plan.

**NOW THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.**

#### **I. General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

"**Act**" means the Disaster Relief Appropriations Act of 2013 (PL 113-2).

"**Activity**" means any project, program or portion thereof which receives financial assistance under this agreement, that is CDBG-eligible or has received a waiver, meets a national objective, and addresses a direct or indirect impact from the disaster.

"**Activity Delivery Costs**" means the actual implementation and delivery costs, including staff and overhead cost, directly related to carrying out activities under 24 CFR Part 570.201 through Part 570.204; these costs are eligible as part of such activities and are specifically excluded from the definition of administrative costs set forth in 24 CFR Part 570.206.

"**Action Plan**" means the New Jersey Department of Community Affairs' Community Development Block Grant Disaster Recovery Action Plan under the Disaster Relief Appropriations Act of 2013, as submitted to HUD and approved on \_\_\_\_\_ (including amendments thereto).

"**Administrative Expenses**" means administrative costs that are not directly related to a specific activity.

"**Allowable Costs**" (also referred to as "Eligible Costs" or "Eligible Expenses") means costs that are acceptable under OMB Circular A-87 and are approved as part of an activity in this Agreement or sub-subrecipient agreements related thereto.

**“Beneficiaries”** means persons to whom assistance, services or benefits are ultimately provided.

**“Common Rule”** means the uniform administrative requirements for federal grants as prescribed by 24 CFR Part 85 (government entities) or Part 84 (nonprofit organizations)

**“Community-Based Development Organization (CBDO)”** means a non-governmental nonprofit or for-profit organization that undertakes specific CDBG-funded activities through subaward of funds allocated via this agreement.

**“CDBG”** means a grant guided by Title I of the Housing and Community Development Act of 1974, as amended and those regulations set forth in 24 CFR Part 570, Subpart I, as may be amended from time to time and all other applicable Federal and State regulations and laws and assurances signed by Recipient at the time the Recipient's Application was submitted.

**“Community Development Financial Institution (CDFI)”** means an organization that: has as its primary mission the promotion of community development; serves an investment area or targeted population; provides development services and equity investments or loans; maintains accountability to residents within its investment area; and is not a public agency or institution.

**“Contractor”** means a contractor paid with CDBG funds in return for a specific service (e.g., construction). A contractor is a third-party firm that the Grantee or Subrecipient acquires through a formal procurement process to perform specific functions; a Subrecipient is not a contractor.

**“Default”** means any use of grant funds for any purpose other than as authorized in this Agreement; or any breach of any covenant, agreement, provision, or warranty (i) the Subrecipient made in the Agreement; (ii) the Subrecipient made in any agreement entered into between the Subrecipient and Sub-subrecipient, CDBO, Contractor or other third party relating to the Project.

**“Draw Down”** means the process of requesting and receiving CDBG funds.

**“Economic Revitalization Activities”** includes any activity that demonstrably restores and improves the local or regional economy, such as addressing job losses.

**“Economic Revitalization Program”** means Section 4.3 of the Action Plan that sets forth the various Economic Revitalization Activities to be undertaken by Subrecipient with the use of Grant Funds.

**“Eligible Costs”** means costs for the activities specified in this Agreement for which grant funds are budgeted, provided that such costs (i) are incurred in connection with any activity which is eligible under Disaster Relief Appropriations Act of 2013 (PL 113-2) and Title I of the Housing and Community Development Act of 1974, and (ii) conform to the requirements of Attachment B of Office of Management and Budget Circular A-87 (Cost Principles Applicable to Grants and Contracts with State and Local Government), as may be amended from time to time.

**“Environmental Conditions”** means the condition imposed by law, particularly 24 CFR Part 58, and the provisions of the Agreement which prohibit or limit the commitment and use of grant funds until certain procedural requirements have been completed.

**“Environmental Requirements”** means the requirements described in 24 CFR Part 58.

**"Environmental Studies"** means all eligible activities necessary to produce an "environmental document", as that term is defined at Section 1508.10 of 40 CFR Part 1508, or to comply with the requirements of 24 CFR Part 58.

**"Family"** means all persons living in a household who are related by birth, marriage or adoption.

**"Grant Funds"** means those funds to be provided by the Grantee to Subrecipient pursuant to the terms of this Agreement.

**"Household"** means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any groups of related or unrelated persons who share living arrangements.

**"HUD"** means the U.S. Department of Housing and Urban Development

**"Income"** means the definition of income identified by Grantee for determining income eligibility or income range classification as a beneficiary of programs provided through this agreement.

**"Low and moderate income (also referred as LMI)"** means family or household annual income less than 80 percent of the area median income, as established by HUD.

**"Low-Income"** means a household or family having an income equal to or less 50% of the area median income as established by HUD.

**"Microenterprise"** means a business that has five or fewer employees, one or more of whom owns the enterprise.

**"Moderate-Income"** means a household/family having an income equal to or less 80% of area median income established by HUD, but greater than 50% of area median income established by HUD.

**"Participating Party"** means the for-profit or non-profit entity that is the beneficiary of the CDBG-DR funds awarded.

**"Program Income"** is defined as gross income generated from the use of CDBG-DR funds, or prorata portion thereof for activities only partially assisted with CDBG-DR funds, received by the GRANTEE, a unit of local government, tribe or subrecipient of the GRANTEE, including: (a) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with CDBG-DR funds; (b) Proceeds from the disposition of equipment purchased with CDBG-DR funds; (c) Gross income from the use or rental of real or personal property, less costs incidental to generation of the income (i.e., net income); (d) Net income from the use or rental of real property that was constructed or improved with CDBG-DR funds; (e) Payments of principal and interest on loans made using CDBG-DR funds; (f) Proceeds from the sale of loans made with CDBG-DR funds; (g) Proceeds from the sale of obligations secured by loans made with CDBG-DR funds; (h) Interest earned on Program Income pending disposition of the income, but excluding interest earned on funds held in a revolving fund account; (i) Funds collected through special assessments made against properties owned and occupied by households not of low- and moderate-income, where the special assessments are used to recover all or part of the CDBG-DR portion of a public improvement; and (j) Gross income paid to a State, UGLG, tribe, or paid to a subrecipient thereof from the ownership interest in a for-profit entity in which the income is in return for the provision of CDBG-DR assistance.

**"Project"** means the activities described this Agreement and attachments thereto, which are to be carried out to meet the objectives of the CDBG Program.

**"Small business"** means any business, including privately owned utilities, that meets the definition of a small business as defined by the Small Business Administration at 13 CFR parts 121.

**"State and Small Cities Program"** means the classification of funds awarded to Grantee by HUD as governed by 24 CFR Part 570, Subpart 1.

**"Sub-subrecipient"** means a local government, nonprofit corporation or for-profit corporation that may receive suballocations of funds from Subrecipient to undertake one or more activities on behalf of the Grantee (i.e., manage a job training program).

**"Subrecipient Activities"** means those activities of the Project to be carried out by the Subrecipient, its agent or agency.

## **II. SCOPE OF AGREEMENT**

### **A. Grant Award**

Subject to the terms and conditions of this Agreement, the GRANTEE, as administrator of the CDBG-DR Program, shall make available to Subrecipient disaster recovery funds in the amount of Four Hundred Sixty Million Dollars (\$460,000,000.00) (the "Grant Funds") for the purpose of funding Subrecipient's Activities under the Action Plan related to the Economic Revitalization Program (collectively the "Program"). The Grant Funds must be expended by Subrecipient within two years of the date that HUD executes a grant agreement with GRANTEE to fund the State's CDBG-DR Program, unless an extension is hereinafter granted in writing by HUD or as approved by GRANTEE. Subrecipient is required to ensure all contracts (with sub-subrecipients, recipients, and Contractors) clearly stipulate the period of performance or the date of completion.

### **B. Implementation of Agreement**

Subrecipient's rights and obligations under this Agreement are as a subrecipient as set forth in 24 CFR 570.501. Subrecipient is responsible for complying with said regulations and for implementing the Program in a manner satisfactory to the GRANTEE and HUD and consistent with any applicable guidelines and standards that may be required as a condition of the GRANTEE's providing the funds, including but not limited to all applicable CDBG Program Administration and Compliance requirements set forth by this Agreement and the Statement of

Assurances (attached hereto as Appendix A) executed by Subrecipient and made a part hereof. The GRANTEE's providing of Grant Funds under this Agreement is specifically conditioned on Subrecipient's compliance with this provision and all CDBG-DR Program and CDBG regulations, guidelines and standards.

### **C. Goals and Objectives**

The activities funded by this Agreement are expected to assist in the execution of the CDBG-DR Program, which involves post-disaster Economic Revitalization Activities in areas of the State adversely affected by Superstorm Sandy. Such Activities are described in more detail in Section D below and include, but may not be limited to, the development and implementation of a plan to market tourism, local shopping and other economic revenue activities, as well as the administering of grants/forgivable loans, revolving loans and other neighborhood and community initiatives to facilitate rebuilding and revitalization. All of the aforementioned Economic Revitalization Activities collectively constitute the Economic Revitalization Program.

### **D. The Program**

#### **1. Statement of Work**

Subrecipient shall use the Grant Funds for the Eligible Costs associated with implementing the Economic Revitalization Program in accordance with the Budget and provisions set forth in Section 2 below.

As identified in the Action Plan, the various components of the Program are as follows:

- a) **Tourism Marketing Campaign to Support Impacted Areas** ("Marketing Program") –The State Department of the Treasury, through its Division of Purchase and Property ("DPP"), issued a Request for Quotations for marketing on behalf of the State to competitively select a marketing firm. Subrecipient has been designated contract manager for the Marketing Program contract and, as such, will assume the responsibilities set forth in NJSA 52:34-10.7 regarding this position.
- b) **Grants and Forgivable Loans to Small Businesses** – Subrecipient will offer aid through grants and forgivable loans of up to \$50,000 to small businesses, as defined in 13 CFR 121, which have sustained physical damage from Superstorm Sandy. The material terms of this program are set forth in

Appendix {E}, which is attached hereto and made a part hereof.

- c) **Direct Loans for Impacted Small Businesses** (“Revolving Loan Fund Program” – Subrecipient will offer access to capital through no cost, or low cost direct loans to credit-worthy businesses in amounts up to \$5 million. The material terms of this program are set forth in Appendix {F}, which is attached hereto and made a part hereof.
- d) **Neighborhood and Community Revitalization** - Subrecipient will offer assistance to support various activities tied to long-term economic growth and revitalization priorities of the affected areas. .

The Program shall be conducted by Subrecipient in accordance with the regulations and limitations of the Economic Revitalization Program, as defined by all current, pending and future applicable Action Plan Amendment(s). Any changes to monetary value, beneficiary, location of new activities must be approved by the GRANTEE.

Subrecipient is prohibited from providing assistance to businesses, including privately owned utilities that do not meet the definition of a small business as defined by the federal Small Business Administration at 13 CFR Part 121.

## 2. The Budget

The “Budget” for the Agreement shall be as follows.

<b>Activity/Item</b>	<b>Maximum Amount</b>
Tourism/Marketing	\$25,000,000
Grants/Forgivable Loans	\$260,000,000
Direct Loans	\$100,000,000
Neighborhood and Community Revitalization	\$75,000,000
<b>TOTAL</b>	<b>\$460,000,000</b>

### Administrative Expenses

GRANTEE will, upon receipt of acceptable documentation from Subrecipient, reimburse actual reasonable administrative costs and related to the planning and execution of Economic Recovery Activities as set forth in the above-referenced Statement of Work in the amount of \$2,300,000 (Two Million Three-hundred Thousand Dollars), which represents (% of the Grant Funds for the following:

- (a) General management, oversight and coordination, including:

(1) General Management, oversight and coordination that crosses programs and is not assignable to a particular program, along with monitoring and compliance such as administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

Administrative Expenses will be re-evaluated as the programs are implemented with more money allocated should it become necessary.

### **Activity Delivery Costs**

GRANTEE will, upon receipt of acceptable documentation from Subrecipient, reimburse actual reasonable Activity Delivery Costs related to the economic development and recovery activities for businesses assisted through the above-referenced programs, up to a maximum of \$69,000,000 (Sixty Nine Million Dollars), which represents 15% of the Grant Funds.

The Parties may agree, in writing, to a revision of the Budget or a reallocation of funds between categories within the Budget without the need to amend this Agreement; provided however, that in no case shall any such revisions or reallocations exceed the total allocation of the Grant Funds under the Agreement without prior written consent of GRANTEE and any other necessary State and/or federal consent that may be required.

### **3. Performance Requirements**

Subrecipient intends to launch its Grants and Forgivable Loan Program on or about May 1, 2013, provided that HUD approves the Action Plan by said date. Subrecipient intends to complete all Activities of the Program, including 100% expenditure of allocated funds that have been drawn down no later than two years from the date that GRANTEE executes the Grant Agreement with HUD,, and it shall endeavor to assist as many individual qualifying small businesses as is practicable given the Grant Fund allocation. . Activity completion and expenditure requirements do not apply to Activities separately funded through the Subrecipient's or Grantee's receipt and expenditure of Program Income.

Subrecipient agrees to use best efforts to comply with intermediate benchmarks as follows:

- Twenty-five percent (25%) of Grant Funds that have been drawn down expended by 2013;(6 months from execution date of this Agreement)

- Fifty percent (50%) of Grant Funds that have been drawn down expended by 2014;(12 months of execution date of this Agreement)
- Seventy-five (75%) percent of Grant Funds that have been drawn down expended by, 2014; (18 months of execution date of this Agreement) and
- One Hundred percent (100%) of Grant Funds that have been drawn down must be expended by 2015.(24 months from execution date of the Grant Agreement between GRANTEE and HUD), unless such date is otherwise stipulated in writing by GRANTEE and HUD.

Funds not expended by the above deadlines or as extended by GRANTEE are subject to recapture and reallocation to other eligible program areas and/or subrecipients.

#### **4. Eligible Costs**

Subrecipient shall receive and use Grant Funds for Eligible Costs. Eligible Costs for Grant Funds under this Agreement include those applied to eligible activities, as defined in the current, pending and future applicable Action Plan and Action Plan Amendment(s), that are recovery-related, and are otherwise in furtherance of the intent of this Agreement and the goals and objectives as set forth herein, when approved by the GRANTEE in accordance with eligibility rules under CDBG guidelines and subject to limitations established by the GRANTEE.

Subrecipient will also, as part of the project feasibility analysis, establish and implement processes and procedures to prevent any duplication of benefits as defined by Section 312 of the Stafford Act. Guidance to assist in preventing a duplication of benefits is provided in a notice published in the Federal Register at 76 FR 71060 (November 16, 2011). Subrecipient processes must verify all sources of disaster assistance for each activity, determine an applicant's unmet need(s) before awarding assistance, and ensure Participating Parties agree to repay the assistance if they later receive other disaster assistance for the same purpose.

In accordance with 24 CFR 58.6(b), Subrecipient agrees that it will not provide any Grant Funds to a small business that had previously received federal flood disaster assistance conditioned on obtaining and maintaining flood insurance and the small business failed to obtain and maintain such insurance.

#### **5. Job Relocation Clause**

HUD has waived provisions of 42 U.S.C. 5305(h), 24 CFR 570.210, and 24 CFR 570.482(h); Subrecipient may provide assistance to any business that was operating in the disaster-declared labor market area before date of the disaster and

has since moved, in whole or in part, from the affected area to another state or to a labor market area within New Jersey to continue business.

## **6. Building Code Standards**

For all projects that include construction or rehabilitation, Subrecipient shall meet or shall cause recipients of Grant Funds to meet all State and local building code requirements, in addition to those cited in Appendix C attached hereto. Further, Subrecipient must undertake and promote, and cause recipients of Grant Funds to consider, hazard mitigation techniques and programs and seek to utilize green technologies and practices where doing so is feasible and cost-effective.

## **7. Mitigation**

Subrecipient agrees to encourage those receiving any Grant Funds to incorporate preparedness and mitigation measures into all rebuilding activities to minimize damage in the event of future floods and/or hurricanes.

## **8. Assurances**

Subrecipient shall be responsible for implementing the recovery activities in compliance with all applicable State and federal laws and regulations. It shall be Subrecipient's responsibility to require that all of its Sub-subrecipients, grantees, borrowers, Contractors, and all tiers of their subcontractors, adhere to all applicable State and federal laws and regulations, and to conduct all necessary monitoring for such compliance. As to laws and regulations which apply to the use of CDBG funds, Subrecipient is concurrently executing the Statement of Assurances, attached hereto as Appendix A, which shall be deemed to be requirements of this Agreement to the extent that they are applicable. As to any other laws and regulations which may apply to construction projects, Subrecipient is responsible for determining the applicable laws and regulations and ensuring compliance therewith.

Notwithstanding the foregoing, GRANTEE is responsible for environmental review, decision making and other action that would otherwise apply to HUD under the National Environmental Policy Act of 1969 and other related provisions of law, since under CDBG regulations, Subrecipient is expressly prohibited from assuming such responsibility. Subrecipient agrees, however, that it will not commit any Grant Funds to a project until it has approval from the New Jersey Department of Environmental Protection to do so, and HUD approves a certification of compliance with environmental laws and request for release of funds.

Subrecipient agrees to comply with all applicable federal CDBG, Disaster Recovery, and cross-cutting statutes and regulations as more fully detailed in Appendix A, subject to waivers cited in the Federal Register / Vol. 78, No. 43 / Tuesday, March 5, 2013, Department of Housing and Urban Development, [Docket No. FR-5696-N-01] Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant (CDBG) Disaster Recovery Funds in Response to Hurricane Sandy.

## **9. Cooperation with HUD and the GRANTEE**

Subrecipient hereby binds itself, certifies, and assures that it will comply with all federal, State, and local regulations, policies, guidelines and requirements, as they relate to the application, acceptance and use of State and federal funds. The Parties expressly acknowledge that the matters which are the subject of this Agreement are under the CDBG Disaster Recovery Program administered by HUD, which by its emergency nature is subject to ongoing modification and clarifications. The GRANTEE's obligations under this Agreement are subject to compliance with applicable statutes and regulations of the CDBG program, as modified by exceptions and waivers previously granted and which may hereinafter be granted by HUD. Subrecipient agrees that in connection with its rights and obligations under the Agreement, it shall cooperate with HUD and the GRANTEE regarding the administration and audit of the Program, including compliance with various operating and reporting procedures which may hereinafter be promulgated by the GRANTEE and/or HUD.

In the event costs are disallowed by any monitoring, audit or oversight of either the State or Federal Government, including the U.S. Department of Housing & Urban Development, the Inspector General of the United States, the New Jersey Comptroller, or any other duly authorized party, the Subrecipient shall be responsible for remitting these funds to the GRANTEE. Failure to complete the Program described in the Statement of Work may constitute a basis for disallowance of costs. In the event that Subrecipient shall be required to remit any Grant Funds hereunder, GRANTEE shall reimburse Subrecipient for any such Grant Funds so remitted.

## **10. LMI Benefit**

Pursuant to the regulations promulgated by HUD for the CDBG-DR Program, the aggregate use of CDBG-DR funds shall principally benefit Low-and Moderate-Income Families in a manner that ensures that at least 50% of the funds are expended for activities that benefit such persons. In furtherance of this Statewide goal, GRANTEE is requiring that Subrecipient shall ensure that at least 15% of the Grant Funds are expended for activities that benefit low-and moderate-income families.

**E. Contract Monitor/Performance Measures**

The contract monitor for the GRANTEE on this Agreement is the Commissioner of the GRANTEE, or his designee. The performance measures for this Agreement shall include the successful performance and completion of Subrecipient's obligations as provided in this Agreement and any attachments, as well as all Guidelines for the Program. Subrecipient shall submit to the GRANTEE, on a schedule and dates to be provided by the GRANTEE, a report of project progress and beneficiary data in a format to be provided by the GRANTEE. Reporting requirements may require Subrecipient to obtain data from third parties (i.e. persons that receive Grant Funds or other beneficiaries of the program(s), including Sub-subrecipients, grantees, and/or borrowers funded under this Agreement, tenants/operators/users of facilities or equipment acquired or improved with Grant Funds provided under this Agreement). It shall be the Subrecipient's obligation to implement any contractual arrangements it may need for use of, and access to, such data.

Subrecipient must, in advance of signing subcontracts related to this Agreement, ensure that Sub-subrecipients, developers, Contractors and/or other third party entities have in place adequate financial controls and procurement processes and have established procedures to prevent any duplication of benefits as defined by section 312 of the Stafford Act.

Pursuant to HUD's waiver of 24 CFR 570.492, GRANTEE shall make reviews and audits, including onsite reviews of any Sub-subrecipients, designated public agencies, and units of local government as may be needed to meet the requirements of 42 U.S.C. 5304(e)(2), as amended. In the event of noncompliance, GRANTEE shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences, and prevent a recurrence.

**F. Conflict of interest**

Except for approved eligible administrative and personnel costs, none of the Subrecipient's designees, agents, members, officers, employees, consultants or members of its governing body, or anyone who is in a position to participate in a decision-making process or gain inside information with regard to the Project, has or shall have any interest, direct or indirect, in any contract or subcontract or the proceeds thereof for work performed in connection with the Project or in any Activity, or benefit there from, which is part of this Agreement at any time during or after such person's tenure unless all procedures for an exception have been documented and submitted in writing to the GRANTEE and the GRANTEE has approved such exception.

The procedures for requesting, documenting, and submitting a request for an exception from the Conflict of Interest provisions shall include the applicable procedures delineated in 24 CFR 570.489(h)(4) and in the New Jersey Conflicts of Interest Law, NJSA 52:13D-12 et seq. and Executive Order No. 189;. This Conflict of Interest provision shall be in addition to the requirements in the "Common Rule," 24 CFR Part 84, 24 CFR Part 85, 24 CFR 570.611, 24 CFR 570.489(h).

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611, which include (but are not limited to) the following:

- a. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.
- b. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.
- c. No covered persons who exercise or have exercised any functions or responsibilities with respect to assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the assisted activity, or with respect to the proceeds from the assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.
- d. It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

### **III. PAYMENT PROCESS; COMPENSATION**

- A. Subrecipient shall submit Draw Down requests for payment of Eligible Expenses payable under this Agreement to the Commissioner of the GRANTEE, or his designee, for approval. Such requests shall be made on a schedule formatted and provided by GRANTEE. Following review and approval of the draw requests by the Commissioner of the GRANTEE, or his designee, approved Draw Down requests shall be submitted to the GRANTEE Finance Director, or his or her designee, for approval of payment. Draw requests not approved by the Commissioner of the GRANTEE or the GRANTEE Financial Director, or their

respective designees, shall not be paid, but returned to Subrecipient for further processing.

- B. Upon approval of payment by the GRANTEE as provided for above, payment of Eligible Expenses shall be provided to Subrecipient via electronic funds transfer.
- C. Indirect costs are not reimbursable under this Agreement. Eligible travel expenses incurred under this Agreement shall be paid in accordance with the Grant Agreement.
- D. In the event of non-compliance with this Agreement, the GRANTEE may withhold payment to the Subrecipient until the GRANTEE deems the Subrecipient has brought the Program within compliance. Noncompliance on any aspect funded under this Agreement may serve as a basis to withhold payment on other funds payable under this Agreement.
- E. Pursuant to the federal regulations promulgated by HUD applicable to the CDBG-DR Program, GRANTEE is permitted to spend up to a maximum of 15% of the State's total grant award on a combination of planning and general administration costs, as well as a maximum of 5% of the State's total grant award for general administrative and technical assistance expenditures. Consistent with the foregoing, GRANTEE agrees to allow Subrecipient to spend a maximum of 15% of the Grant Funds on its Activity Delivery Costs, as set forth in Section 2 herein, as well as a maximum of 5% of the Grant Funds for its administrative costs and carrying charges related to the planning and execution of Economic Revitalization Activities

#### **IV. TERM OF AGREEMENT; TERMINATION OR SUSPENSION OF AGREEMENT**

##### **A. Term of Agreement**

This Agreement shall be deemed effective as of the date hereinabove written and shall continue until such time as Subrecipient no longer is exercising any supervision or control over any of the Grant Funds, including Program Income, unless terminated prior to such time in accordance with the terms and conditions of this Agreement.

##### **B. Termination/Suspension for Cause**

The GRANTEE may, after giving reasonable written notice specifying the effective date, suspend or terminate this Agreement in whole or in part if the Subrecipient materially fails to comply with any term of this Agreement, which shall include, but not be limited, to the following:

1. Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and HUD guidelines, policies or directives as may be applicable at any time;
2. Failure, for any reason, of Subrecipient to fulfill in a timely and proper manner the material obligations under this Agreement;
3. Submission by Subrecipient of reports to the GRANTEE, HUD, or either of their auditors, that are incorrect or incomplete in any material respect, or
4. Ineffective or improper use of Grant Funds as provided for under this Agreement.

Notwithstanding anything hereinabove to the contrary, GRANTEE agrees that it shall not exercise its right to suspend or terminate this Agreement until it shall have given written notice to Subrecipient of the alleged non-compliance and has given Subrecipient a reasonable amount of time to correct and/or cure the alleged non-compliance.

**C. Termination for Convenience**

The GRANTEE may terminate the Agreement in whole or in part at any time by giving at least thirty (30) days prior written notice to Subrecipient. Upon receipt of notice, Subrecipient shall, unless the notice directs otherwise, immediately discontinue all Activities set forth in the Statement of Work hereunder, except as may otherwise be legally required pursuant to a binding commitment to perform.

Subrecipient may terminate the Agreement in whole or in part at any time by giving at least thirty (30) days prior written notice to GRANTEE, with such written notification setting forth the reasons for termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if, in the case of partial termination, the GRANTEE determines that the remaining portion of the award will not accomplish the purposes for which the award was made, the GRANTEE may terminate the award in its entirety under this paragraph or the Termination/Suspension for Cause provision of this Agreement.

**D. Termination Due to Unavailable Funding**

The continuation of this Agreement is contingent upon the appropriation and release of sufficient funds to the GRANTEE to fulfill the requirements of this Agreement. Failure of the appropriate authorities to approve and provide an

adequate budget to the GRANTEE for fulfillment of this Agreement shall constitute reason for termination of the Agreement by either Party. Subrecipient shall be paid for all authorized services properly performed prior to termination, as well as be permitted to draw Grant Funds in an amount required to fund all commitments made by Subrecipient to third parties for grants, loans and/or procurement contracts prior to termination.

**E. Obligations Governing Use of CDBG Funds Survive Termination**

Termination of this Agreement under any of the foregoing provisions shall not alter or diminish Subrecipient's obligations governing the use of CDBG funds under applicable statutes and regulations or under this Agreement and/or terminate any of Subrecipient's obligations that survive the termination of this Agreement. Such obligations and/or duties may include but are not limited to the following: (1) duty to maintain and provide access to records; (2) duty to monitor and report on the use of any Grant Funds expended or awarded to Subrecipient in compliance with all terms, conditions and regulations herein; (3 ) the duty to enforce compliance with terms of grants or loans issued by Subrecipient under this Agreement; and (4) the duty to monitor, collect and manage Program Income, if applicable, and (5) the obligation to return Grant Funds expended in contravention of applicable statutes, regulations and the terms of this Agreement. This provision shall not limit or diminish any other obligation that by its nature survives termination of the Agreement.

**F. Payment Upon Termination**

Except as in the event of termination or suspension for cause, Subrecipient shall be entitled to payment on invoices submitted to the GRANTEE no later than ninety (90) days from the date of termination contained within the notice, to the extent that requests represent eligible activities satisfactorily completed during the term of the Agreement and otherwise reimbursable under the terms of this Agreement.

**V. ADMINISTRATIVE REQUIREMENTS**

**A. Documentation and Record-Keeping**

**1. Records to be Maintained**

Subrecipient shall maintain all Project records required by 24 CFR 570.506 and as more fully detailed in Appendix B.

## **2. Access to Records**

With respect to those records referenced in subsection 1 above, Subrecipient shall comply with the retention and access requirements set forth in 24 CFR 570.506. The GRANTEE, the State Comptroller, HUD, the Comptroller General of the United States, and any of their duly authorized representatives or agents, shall have access to any books, documents, papers and records of Subrecipient which are directly pertinent to this Agreement for the purpose of audits, examinations, and making excerpts and transcriptions.

Subrecipient shall provide citizens with reasonable access to records regarding the past use of CDBG funds, consistent with applicable State and local laws regarding privacy and obligations of confidentiality.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by Subrecipient, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the services contracted for herein shall become the property of the GRANTEE, unless otherwise mutually agreed,

## **3. Close-outs**

Subrecipient's obligation under this Agreement shall not end until all close-out requirements as set forth in 24 CFR 570.509 are completed. The terms of this Agreement shall remain in effect during any period that Subrecipient is exercising any supervision or control over CDBG DR funds, including Program Income.

## **4. Audits & Inspections**

In addition to any other audit requirements set forth in this Agreement, Subrecipient agrees to comply with the OMB Circular 128, "Audits of State and Local Governments", which mandates that a comprehensive single audit (A-33) be performed by the independent auditor of all federally funded awards administered by Subrecipient, including the award covered by this Agreement. It is hereby agreed that the GRANTEE, the State Comptroller, HUD, Office of Inspector General, HUD monitors, and auditors contracted by any of them, shall have the option of auditing all records and accounts of Subrecipient and/or its Contractors and Sub-subrecipients that relate to this Agreement at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data upon providing Subrecipient, Contractor or Sub-subrecipient, as appropriate, with reasonable advance notice. Subrecipient and its Contractors and subcontractors shall comply with all relevant provisions of State law pertaining to audit requirements, including NJ OMB Circular Letter 98-07 and NJ State Grant Compliance Supplement (available on

the internet at <http://www.state.nj.us/treasury/omb/grant.htm>). Any deficiencies noted in audit reports must be fully cleared within thirty (30) days after receipt by Subrecipient, Contractor and/or Sub-subrecipient, as appropriate.

Failure of Subrecipient and/or its Contractors and subcontractors to comply with the above audit requirements will constitute a violation of this Agreement and may, at the GRANTEE's option, result in the withholding of future payments and/or return of Grant Funds paid under this Agreement. Subrecipient and its Contractors hereby agree to have an annual audit conducted in accordance with current State policy concerning Subrecipient and its Contractor's audits, OMB Circulars A-133 and A-128, and 24 CFR 85.26.

Client Data: The Subrecipient shall maintain client data demonstrating client eligibility for services provided. Such data shall include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of service provided. Such information shall be made available to GRANTEE monitors or their designees for review upon request.

Disclosure: The Subrecipient understands that client information collected under this contract is private and the use or disclosure of such information, when not directly connected with the administration of the GRANTEE's or Subrecipient's responsibilities with respect to services provided under this contract, is prohibited by the Subrecipient unless written consent is obtained from such person receiving service and, in the case of a minor, that of a responsible parent/guardian. Notwithstanding the foregoing, Subrecipient, as an instrumentality of the State, shall be required to provide such access to client information as may be required by the New Jersey Open Public Records Act, NJSA 47:1A-A et seq and as may otherwise be required by law, upon notification to GRANTEE.

#### **D. Procurement**

Subrecipient shall comply with the current GRANTEE policy and the requirements of 24 CFR 85.36 (except paragraph a) and State regulations and requirements regarding procurement, including but not limited to Executive Order 125 (Christie 2013). This requirement is in addition to whatever State laws may apply to procurement by the Subrecipient. Notwithstanding the above, the Parties acknowledge that, unless otherwise agreed to, the State Department of the Treasury, Division of Purchase and Property, shall be responsible for all procurement activities associated with the Program, including but not limited to procurement of a marketing firm to create and implement a marketing campaign and procurement of one or more consulting entities to assist Subrecipient in business process services for administering the Program.

## **VI. COMPLIANCE PROVISIONS**

### **A. Program Income**

#### **1. Recording Program Income**

GRANTEE agrees to permit Subrecipient to retain Program Income. Subrecipient shall collect and record Program Income generated by activities assisted under this Agreement.

Program Income, which is defined in 24 CFR 570.500(a) and further clarified in the Federal Register notice, (HUD Allocations, Common Application, Waivers, and Alternative Requirements for Grantees Receiving Community Development Block Grant Disaster Recovery Funds in Response to Hurricane Sandy, March 5, 2013) means any gross income received by Subrecipient that was directly generated from the use of the Grant Funds. This includes, but is not limited to payments of principal and interest on any loans made by Subrecipient, as well as interest earned on Program Income pending disposition of the income, but excluding interest earned on Grant Funds held in a revolving loan account, which must be returned to GRANTEE for remittance to HUD.

Program Income received before or after closeout of the Activity that generated the Program Income, must be used for additional disaster recovery activities and must be treated as additional disaster recovery CDBG funds subject to the requirements this Agreement and must be used in accordance with the Grantee's Action Plan for Disaster Recovery.

GRANTEE shall establish a Program Income account specifically for Subrecipient in the GRANTEE's DRGR and shall record as part of the financial transaction the receipt and expenditure of Program Income by Subrecipient. Subrecipient agrees to submit a quarterly report to the GRANTEE detailing receipt and uses of Program Income.

#### **2. Use of Program Income**

Subrecipient agrees to create, operate and maintain one or more revolving loan funds compliant with all CDBG requirements and to deposit all Program Income receipts into these funds. Subrecipient shall create processes for the administration of the revolving loan funds, eligibility requirements, application processes, underwriting criteria, and related policies and procedures. All Program Income receipts generated by activities funded under this Agreement must be deposited into the revolving loan funds and may only be used for additional disaster recovery activities. A maximum of 5% (five percent) of Program Income

receipts may be used by Subrecipient for eligible administrative expenses related to operation of the revolving loan fund. GRANTEE may, at its discretion, require the return of Program Income.

### **3. Change of Use**

The requirements of 24 CFR Section 570.489(j) regarding change of use of real property applies to real property within Subrecipient's control (including activities undertaken by Sub-subrecipients) which was acquired or improved in whole or in part using CDBG-DR funds in excess of the threshold for small purchase procurement (24 CFR 85.36). These standards apply from the date CDBG-DR funds are first spent for the property until five years after closeout of the Grant Funds.

## **B. Use and Reversion of Assets**

The use and disposition of immovable property, equipment and remaining Grant Funds under this Agreement shall be in compliance with all CDBG regulations, which include but are not limited to the following:

1. Subrecipient shall transfer to the GRANTEE any Grant Funds on hand and any accounts receivable attributable to the use of funds under this Agreement at the time of expiration, cancellation, or termination.
2. Immovable property under Subrecipient's control that was acquired or improved, in whole or in part, with funds under this Agreement in excess of \$25,000 shall be used to meet one of the CDBG National Objectives set forth in 24 CFR 570.208 until five (5) years after expiration of this Agreement (or such longer period as the GRANTEE deems appropriate). If Subrecipient fails to use such immovable property in a manner that meets a CDBG National Objective for the prescribed period of time, Subrecipient shall pay to the GRANTEE an amount equal to the current fair market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property. Such payment shall constitute Program Income to the GRANTEE. Subrecipient may retain real property acquired or improved under this Agreement after the expiration of the five-year period, or such longer period as the GRANTEE deems appropriate.
3. In all cases in which equipment acquired, in whole or in part, with Grant Funds is sold, the proceeds shall be Program Income (prorated to reflect the extent to which Grant Funds received under this Agreement were used to acquire the equipment). Equipment not needed by Subrecipient for activities under this Agreement shall be (a) transferred to the GRANTEE for the CDBG program or (b) retained by Subrecipient after compensating the GRANTEE an amount equal to the current fair market value of the

equipment less the percentage of non-CDBG funds used to acquire the equipment.

## **VII. GENERAL CONDITIONS**

### **A. “Independent Contractor”**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the Parties. In the event that Subrecipient contracts with third parties to perform any of the services to be performed hereunder, such third parties shall at all times remain an “independent contractor” with respect to the provision of such services. The GRANTEE shall be exempt from payment of all Unemployment Compensation, FICA, retirement, life and/or medical insurance and Workers’ Compensation Insurance, with respect to such third party contracts.

### **B. Hold Harmless/Indemnity Contractors/Subcontractors**

To the extent that Subrecipient is permitted to and utilizes the services of any third parties in performance of Subrecipient’s duties and obligations under this Agreement, any contract entered into shall contain a provision that the Contractor and/or subcontractor shall hold Subrecipient and the GRANTEE harmless and defend and indemnify Subrecipient and the GRANTEE from any and all claims, actions, suits, charges and judgments whatsoever that arise out of the Contractor and/or subcontractor’s performance or nonperformance of the services.

### **C. Workers’ Compensation**

Subrecipient shall provide Workers’ Compensation Insurance coverage for all of its employees involved in the performance of this Agreement.

### **D. Insurance & Bonding**

Unless expressly waived in writing by GRANTEE, Subrecipient shall carry sufficient insurance coverage to protect contract assets from loss due to theft, fraud and/or undue physical damage, and as a minimum shall purchase a blanket fidelity bond, or equivalent insurance acceptable to the GRANTEE.

### **E. GRANTEE Recognition**

Subrecipient shall ensure recognition of the role of the GRANTEE and the U.S. Department of Housing and Urban Development in providing services through this Agreement. All activities, facilities and items used pursuant to this Agreement shall be prominently labeled as to funding source. In addition, Subrecipient will include a reference to the support provided herein in all publications made possible with funds made available under this Agreement.

## **F. Amendments**

The GRANTEE or Subrecipient may amend this Agreement at any time provided that such amendments make specific reference to this Agreement and are executed in writing and signed by a duly authorized representative of each Party. Such amendments shall not invalidate this Agreement, nor relieve or release the GRANTEE or Subrecipient from its obligations under this Agreement, except as may otherwise be provided. Amendments will generally be required when any of the following are anticipated: i) revision to the scope or objectives of the Program, including purpose or beneficiaries; ii) need to extend the availability of Grant Funds; iii);) revision that would result in the need for additional funding; and iv) expenditures on items for which applicable cost principles (OMB Circulars A-87 and A-122) require prior approval (see 24 CFR 570.200h for pre-award/pre-agreement costs)

The GRANTEE may, in its discretion, require that this Agreement be amended to conform with federal, State or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, the scope of services, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the GRANTEE and Subrecipient.

## **G. No Assignment**

No Party may transfer or assign this Agreement or transfer or assign any of its rights or assign any of its duties hereunder without the express prior written consent of the other Party. However, if the Parties do mutually agree to an assignment, all rights and obligation set forth herein shall inure to the benefit of the Parties and to their respective successors and assigns.

## **H. Severability**

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

## **I. Entire Agreement**

This Agreement constitutes the entire understanding and reflects the entirety of the undertakings between the Parties with respect to the subject matter hereof, superseding all negotiations, prior discussions and preliminary agreements. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

**J. No Authorship Presumptions**

Each of the Parties has had an opportunity to negotiate the language of this Agreement in consultation with legal counsel prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship. Each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party who (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this Agreement and any successor to a signatory Party.

**K. Applicable Law and Venue**

This Agreement shall be governed by and construed in accordance with the laws of New Jersey.

**L. No Personal Liability of Individual Representatives**

No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any official, trustee, officer, agent or employee of any corporate Party in his or her individual capacity, and neither the officers of any Party nor any official executing this Agreement shall be personally liable with respect to this Agreement or be subject to any personal liability or accountability under this Agreement by reason of the execution and delivery of this Agreement.

**M. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to a Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**N. Prohibited Activity**

Subrecipient is prohibited from using, and shall require that its Contractors and sub-contractors are prohibited from using, the Grant Funds provided herein or personnel employed in the administration of the Program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. Subrecipient will comply with the provision of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits the political activity of employees.

**O. Safety**

Subrecipient shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of his or her performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1926, shall be observed and Subrecipient shall take or cause to be taken such additional safety and health measures as Subrecipient may determine to be reasonably necessary.

**P. Fund Use**

Subrecipient agrees not to use proceeds from this Agreement to urge any elector to vote for or against any candidate or proposition on an election ballot, nor shall such Grant Funds be used to lobby for or against any proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the New Jersey Legislature or any local governing authority.

Subrecipient shall certify, and shall require that its Contractors and any sub-contractors certify, that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that they will not and have not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee or a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. 1352. Subrecipient shall disclose, and shall require that each of its Contractors and sub-contractors also disclose, any lobbying with non-federal funds that takes place in connection with obtaining any federal award.

**Q. Subcontractors**

Subrecipient may enter into subcontracts with third parties for the performance of any part of Subrecipient's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Subrecipient to the GRANTEE for any breach in the performance of Subrecipient's or any subcontractor's duties.

**R. Copyright**

No materials, including but not limited to reports, maps, or documents produced as a result of this Agreement, in whole or in part, shall be available to Subrecipient for copyright purposes. Any such material produced as a result of this Agreement that might be subject to copyright is the property of and all rights shall belong to the GRANTEE.

Software and other materials owned by Subrecipient prior to the date of this Agreement and not related to this Agreement shall be and remain the property of Subrecipient.

The GRANTEE will, where necessary, provide specific Project information to Subrecipient necessary to complete the services described herein. All records, reports, documents and other material delivered or transmitted to Subrecipient by the GRANTEE shall remain the property of the GRANTEE and shall be returned by Subrecipient to the GRANTEE, upon request, at termination, expiration or suspension of this Agreement.

**S. Drug Free Workplace Compliance**

Subrecipient hereby certifies that it shall provide a drug-free workplace in compliance with the Drug-Free Workplace Act of 1988, as amended and with 24 CFR part 21. Further, there shall be a provision mandating compliance with the Drug-Free Workplace Act of 1988, as amended, in any contracts executed by and between Subrecipient and any third parties funded using Grant Funds under this Agreement in accordance with 48 FAR part 23.500, et seq, and 48 CFR part 52.223-6.

**T. Notices**

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or delivered by private, commercial carrier, express mail, such as Federal Express, or sent by, telecopy or other similar form of rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail,

registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by a Party in written notice to the other Party compliant with this Section.

**To the GRANTEE:**

**Attn:**

Department of Community Affairs  
Office of Legal & Regulatory Affairs  
101 South Broad Street  
Trenton, New Jersey 08625  
Facsimile – 609-984-6696

**To Subrecipient:**

New Jersey Economic Development Authority  
36 West State Street  
Trenton, New Jersey 08625  
Facsimile: \_\_\_\_\_

**U. Applicability of Provisions Included/Excluded from Agreement**

Failure to expressly reference any applicable federal or State regulation, statute, public law, Executive Order, agency directive or OMB Circular will not exempt either Party from compliance with such applicable law or regulation, and all applicable provisions not included will be deemed as inserted herein.

Likewise, execution of this Agreement will not obligate either Party to comply with any regulation, statute, public law, Executive Order, agency directive or OMB Circular, if not otherwise applicable to the use of the CDBG funds provided herein or to the particular projects performed under this Agreement, even though it may be referenced in this Agreement or in the Appendices.

**V. No Third Party Beneficiary**

Nothing herein is intended and nothing herein may be deemed to create or confer any right, action, or benefit in, to, or on the part of any person not a party to this Agreement. This provision shall not limit any obligation which either Party has to HUD in connection with the use of CDBG funds, including the obligations to provide access to records and cooperate with audits as provided in this Agreement.

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The Parties have executed and delivered this Agreement on the date set forth next to their respective signatures below, but effective as of the date set forth above.

**STATE OF NEW JERSEY, DEPARTMENT OF  
COMMUNITY AFFAIRS**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**NEW JERSEY ECONOMIC DEVELOPMENT  
AUTHORITY**

\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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