

BY - L A W S

of the

NEW JERSEY

HEALTH CARE FACILITIES

FINANCING AUTHORITY

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**NEW JERSEY HEALTH CARE FACILITIES
FINANCING AUTHORITY**

BY-LAWS

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**NEW JERSEY HEALTH CARE FACILITIES
FINANCING AUTHORITY**

BY-LAWS

**ARTICLE I
SCOPE AND GENERAL PROVISIONS**

Section 1.1 ***Name of the Authority***

The name and title of this Authority shall be the "NEW JERSEY HEALTH CARE FACILITIES FINANCING AUTHORITY."

Section 1.2 ***Principal Office***

The principal office of the Authority shall be Station Plaza, Building #4, 22 South Clinton Avenue, Trenton, New Jersey, 08609-1212. All communications mailed to the Authority shall be addressed to P. O. Box 366, Trenton, New Jersey, 08625, except as may otherwise be specified by rule or regulation.

Section 1.3 ***Public Inspection***

All Authority procedures shall be available for public inspection at the principal office of the Authority.

Section 1.4 ***Seal***

The Authority's seal shall be in the form attached hereto.

**ARTICLE II
BOARD ORGANIZATION**

Section 2.1 ***Members of the Authority***

The Authority shall consist of seven (7) members, composed of the following:

- (a) The Commissioner of Health and Senior Services, who shall be the Chairman;
- (b) The Commissioner of Banking and Insurance;
- (c) The Commissioner of Human Services;
- (d) Four (4) members of the public, who are citizens of New Jersey and appointed by the Governor with the advice and consent of the Senate, except that no trustee, director, officer, or employee of a health care organization may serve as a member of the Authority.

Section 2.2 ***Terms of Members and Designated Members***

The Commissioners of Health and Senior Services, Banking and Insurance, and Human Services shall serve during their respective terms of office, but the Commissioners may designate deputies or other representatives to serve at their pleasure in their stead. Such deputies or other representatives so designated by ex-officio members shall have the same status and shall be entitled to all the same privileges under these By-Laws as the ex-officio member designating such person; and, any such person, with the permission of the ex-officio member, may be elected to and may hold, in his or her own name, any office of the Authority other than the office of Chairman. The terms of the public members of the Authority shall be for four (4) years, except for the initial members whose terms shall be as provided by law and as set forth in the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c. 29 (N.J.S.A. 26:2I-1 et seq.).

Section 2.3 ***Vacancies***

Whenever a vacancy on the Authority has occurred or is about to occur by reason of the expiration of the term of any member, or has occurred by reason of death, resignation, or otherwise, the Chairman of the Authority shall so advise the Governor of the State of New Jersey. Members whose terms have expired shall hold office until their successors have been appointed and qualified. Members may be appointed to succeed themselves.

Section 2.4 ***Resignations***

A member of the Authority may resign at any time by tendering written notification of his/her desire to do so to the Chairman of the Authority. The resignation shall be effective as so specified therein.

Section 2.5 ***Place of Meetings***

All meetings of the Authority shall be held at the Authority's principal office, unless a majority of the Authority agrees that such meetings be held at another location within the State of New Jersey.

Section 2.6 ***Annual Organizational Meeting***

The Authority shall meet to organize on or after April 30 of each year for the purpose of electing officers until April 30 next ensuing. At such meeting, the Authority shall elect from its members a Vice-Chairman, who shall hold office until April 30 next ensuing and shall continue to serve during the term of his/her successor until his/her successor shall have been appointed and qualified. The Authority shall also elect from its members, including persons designated pursuant to Section 2.2 or from the Authority staff, a Secretary, an Assistant Secretary, a Treasurer, and an Assistant Treasurer, each of whom shall hold office until April 30 next ensuing and shall continue to serve until his/her successor shall have been appointed and qualified.

Section 2.7 ***Regular and Special Meetings***

The Authority shall, at its Annual Meeting, establish a schedule of regular meetings for the then current calendar year, and no further notice of such regularly scheduled meetings need be given to any member of the Authority, except that any member not in attendance at the meeting at which the schedule was adopted shall be notified in writing of such schedule within seven (7) days after the meeting at which the schedule was adopted. Special meetings of the Authority may be called by the Chairman or the Secretary and shall be called at the written request of two (2) or more members of the Authority, and shall be held at the Authority's principal office unless other such time and place shall be designated in the call of the meeting. Written notice of each such special meeting shall be given at least forty-eight (48) hours prior to the time named for the meeting to each member of the Authority who does not waive such notice in writing.

Section 2.8 ***Open Public Meetings Act; Public Notice of Meetings of the Authority***

All meetings of the Authority, whether annual, regular or special, in person or telephonic, shall be scheduled and conducted in accordance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., as amended. Public notice of the annual and all regular and special meetings shall be given in accordance with the provisions of the Open Public Meetings Act.

Section 2.9 ***Executive Sessions***

At any annual, regular or special meeting of the Authority, the Authority may, in accordance with the Open Public Meetings Act, close its session to the public.

Section 2.10 Minutes

Minutes of all meetings, including Executive Sessions as provided in Section 2.9 hereof, shall be kept showing the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law, and shall be promptly made available to the public, to the extent that making such matters public shall not be inconsistent with Section 2.9 hereof in the case of Executive Sessions.

When and if a majority of members who were present at a particular meeting are recorded as in favor of the adoption of the minutes without amendment or change, the minutes shall be deemed adopted.

Whenever the minutes of any meeting are not adopted solely by reason of the absence of sufficient Board members who were present at the meeting which the minutes in question concern, to reach the majority required to approve the minutes, the votes of those members who were present shall be recorded, notwithstanding the failure of the motion on the minutes, and carried forward to future meetings at which time the minutes shall be moved again until such time as the required majority is reached.

Section 2.11 Quorum

A majority of the members of the Authority shall be necessary to constitute a quorum for the transaction of business, and the affirmative acts of a majority of the members present at a meeting at which a quorum is present shall be the acts of the Authority. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

Section 2.12 Governor's Veto

No action taken at any meeting of the Authority shall have force or effect until ten (10) days, exclusive of Saturdays, Sundays, and public holidays, after at least two (2) true copies of the minutes of such meetings are delivered by and under the certification of the Secretary to the Governor of New Jersey, or at such earlier time as the Governor shall sign a statement of approval thereof. If, in said 10-day period, the Governor returns a copy of the minutes with veto of an action taken by the Authority or any member thereof at such meeting, such action shall be null and of no effect. If the Governor shall not return the minutes within said 10-day period, any action therein recited shall have force and effect according to the wording thereof. At any time prior to the expiration of the said 10-day period,

the Governor may sign a statement of approval of all or any such action of the Authority.

Section 2.13 *Compensation of Members*

The members of the Authority shall serve without compensation, but the Authority may reimburse its members for necessary expenses incurred in the discharge of their official duties. All employees of the Authority shall receive such compensation as shall be determined and fixed by the members of the Authority.

Section. 2.14 *Officers of the Authority*

The officers of the Authority shall be the Chairman, Vice-Chairman, Secretary, Assistant Secretary, Treasurer, and Assistant Treasurer and such other officers as may from time to time be elected by the Board. The same persons may be elected to hold more than one office, except that no persons may hold any office in addition to the Office of Chairman or Vice-Chairman.

Section 2.15 *Officers' Election and Terms of Office*

The officers of the Authority, except the Chairman, shall be chosen annually by the members of the Authority at its Annual Meeting, and each officer so chosen shall hold his/her office for one year and until his/her successor shall have been duly chosen.

Section 2.16 *Chairman*

The Chairman shall:

- (a) Preside at all meetings of the Authority;
- (b) Rule on all questions of order, subject to appeal to the Authority;
- (c) Unless otherwise provided by resolution of the Authority, jointly, with the Secretary, execute all contracts;
- (d) Have general and active management of the affairs of the Authority;
- (e) Have such other duties and powers as conferred upon him/her by these By-Laws or by any resolution adopted by the Authority.

Section 2.17 *Vice-Chairman*

The Vice-Chairman shall:

- (a) Have all the powers and duties of the Chairman in the absence of the Chairman;
- (b) Have such other duties and powers as conferred upon him/her by these By-Laws or by any resolution adopted by the Authority.

Section 2.18 *Secretary*

The Secretary, or at the request of the Secretary, or in the event of the Secretary's absence or disability, the Assistant Secretary shall:

- (a) Act as clerk of all meetings of the Authority;
- (b) Record, or cause to be recorded, all proceedings of the meetings of the Authority, and cause such records to be kept in such a manner as to ensure their permanence;
- (c) Give proper notice of all meetings as described herein;
- (d) Have custody of all the books and records of the Authority, except those kept by the Treasurer;
- (e) Unless otherwise provided by resolution of the Authority, jointly, with the Chairman, execute all contracts;
- (f) Perform all other duties as conferred upon him/her by these By-Laws or by any resolution adopted by the Authority.

Section 2.19 *Treasurer*

The Treasurer or, in his/her absence, the Assistant Treasurer, shall:

- (a) Keep the financial records of the Authority;
- (b) Provide for the custody of the funds and other property of the Authority;
- (c) Perform all other duties as conferred upon him/her by these By-Laws or by any resolution adopted by the Authority.

Section 2.20 *Removal of Officers*

Any officer or agent of the Authority, other than the Chairman, may be removed by the Authority whenever in its judgement the best interest of the Authority will be served thereby. The removal of a member of the Authority from an office thereof shall in no way constitute such member's removal as a member of the Authority.

Section 2.21 *Surety Bonds*

Each member of the Authority, and its Treasurer, shall be covered by a surety bond, provided that this requirement shall not be applicable to persons already covered by bonds of other State Departments or instrumentalities thereof. Such bond shall be secured by corporate surety authorized to transact business in the State of New Jersey as a surety. Each bond shall be submitted to the Attorney General of the State of New Jersey for his/her approval and, upon such approval, said bond shall be filed with the Secretary of State. Costs of such bonds shall be borne by the Authority. At all times thereafter, the members of the Authority shall maintain such bonds in full force and effect. Nothing herein should be construed as a proscription against the Authority from applying to be included within the State's blanket position bonds, in accordance with N.J.S.A. 52:14-17.16 et seq.

Section 2.22 *Amendments*

These By-Laws may be altered, amended and/or repealed by the Authority at any meeting after written notice of such an intention by the Secretary to each member of the Authority.

Section 2.23 *Check-Signing Authority*

Any checks upon moneys of the Authority shall be signed by any two members of the Authority who are also officers of the Authority.

**ARTICLE III
POWERS OF THE AUTHORITY**

Pursuant to the New Jersey Health Care Facilities Financing Authority Law, P.L. 1972, c. 29 (N.J.S.A. 26:21-1 et seq.), as amended by P.L. 1997, c. 435 (the "Law"), the general powers and duties of the Authority will be:

Section 3.1 To adopt By-Laws for the regulation of its affairs and the conduct of its business and to alter and revise such By-Laws from time to time at its discretion;

Section 3.2 To adopt and have an official seal and alter the same at its pleasure;

Section 3.3 To maintain an office at such place or places within the State as it may designate;

Section 3.4 To sue and be sued in its own name;

Section 3.5 To borrow money and to issue bonds of the Authority and to provide for the rights of the holders thereof as provided in the Law;

Section 3.6 To acquire, lease as lessee or lessor, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under the Law.

Section 3.7 To acquire in the name of the Authority by purchase or otherwise, on such terms and conditions and in such manner as it may deem proper, any land or interest therein and other property which it may determine is reasonably necessary for any project; and to hold and use the same and to sell, convey, lease or otherwise dispose of property so acquired, no longer necessary for the Authority's purposes for fair consideration after public notice.

Section 3.8 To receive and accept, from any federal or other public agency or governmental entity of the State or any health care organization, grants or loans for or in aid of the acquisition or construction of any project, and to receive and accept aid or contributions from any other source of either money, property, labor, or other things of value, to be held, used and applied only for the purposes for which such grants, loans and contributions may be made.

Section 3.9 To prepare, or cause to be prepared, plans, specifications, designs and estimates of costs for the construction and equipment of health care organization projects for health care organizations under the provisions of the Law and, from time to time, to modify such plans, specifications, designs or estimates.

Section 3.10 By contract or contracts with and for health care organizations only to construct, acquire, reconstruct, rehabilitate and improve, and furnish and equip, health care organization projects. No such contract shall be entered into for the doing of any work or the hiring of equipment or vehicles where the sum to be expended exceeds the sum of \$7500, or the amount as determined in accordance with N.J.S.A. 26:21-5(j), unless the Authority shall first publicly advertise for bids therefor, and shall award the contract to the lowest responsible bidder; provided, however, that such advertising shall not be required where the contract to be entered into is one for the furnishing or performing of services of a professional nature or for the supplying of any product or the rendering of any service by a public utility subject to the jurisdiction of the Board of Public Utilities, and tariffs and schedules of the charges made, charged, or exacted by the public utility for

any such products to be supplied or services to be rendered are filed with the said Board.

Section 3.11 To determine the location and character of any project to be undertaken, subject to the provisions of the Law, and subject to State health and environmental laws, to construct, reconstruct, maintain, repair, lease as lessee or lessor, and regulate the same, and operate the same in the event of a default by a health care organization of its obligations and agreements with the Authority; to enter into contracts for any or all such purposes; and to enter into contracts for the management and operation of a project in the event of a default as provided herein. The Authority shall use its best efforts to conclude its position as an operator as herein provided as soon as is practicable.

Section 3.12 To establish rules and regulations for the use of a project or any portion thereof and to designate a health care organization as an agent to establish rules and regulations for the use of a project undertaken by a health care organization.

Section 3.13 Generally to fix and revise from time to time and to charge and collect wages, rates, rents, fees and other charges for the use of and for the services furnished or to be furnished by a project or any portion thereof and to contract with holders of its bonds and with any other person, party, association, corporation or any other body, public or private, in respect thereof.

Section 3.14 To enter into agreements, credit agreements or contracts, execute any and all instruments, and duly perform any and all acts or things necessary, convenient or desirable for the purposes of the Authority or to carry out any power expressly given in the Law.

Section 3.15 To invest any monies held in reserve or sinking funds, or any monies not required for immediate use or disbursement, at the discretion of the Authority, in such obligations as are authorized by resolution of the Authority.

Section 3.16 To obtain, or aid in obtaining, from any department or agency of the United States any insurance or guarantee as to, or of, or for the payment or repayment of interest or principal or both, or any part thereof, on any loan or any instrument evidencing or securing the same, made or entered into pursuant to the provisions of the Law; and, notwithstanding any other provisions of the Law, to enter into agreement, contract or any other instrument whatsoever with respect to any such

insurance or guarantee, and accept payment in such manner and form to be provided therein in the event of a default by the borrower.

Section 3.17 To obtain from any department or agency of the United States or a private insurance company or insurance or guarantee as to, or of, or for the payment or repayment of interest or principal, or both, or any part thereof, on any bonds, issued by the Authority pursuant to the provisions of the Law; and, notwithstanding any other provisions of the Law, to enter into any agreement, contract or any other instrument whatsoever with respect to any such insurance or guarantee except to the extent that any such action would in any way impair or interfere with the Authority's ability to perform and fulfill the terms of any agreement made with the holders of the bonds of the Authority.

Section 3.18 To receive and accept, from any department or agency of the United States or of the State or from any other entity, any grant, appropriation or any other monies to be used for or applied to any corporate purpose of the Authority, including, without limitation, the meeting of debt service obligations of the Authority in respect of its bonds.

Section 3.19 To exercise any other powers enumerated by the Law.

Section 3.20 To exercise any other powers which may hereinafter be delegated to the Authority by the Legislature.

**ARTICLE IV
DEBARMENT, SUSPENSION AND DISQUALIFICATION PROCEDURES
IMPLEMENTING EXECUTIVE ORDER NO. 34**

Section 4.1 Debarment, suspension and disqualification are measures which shall be invoked by the Authority to exclude or render ineligible certain persons from participation in contracts and subcontracts with the Authority, or in projects or contracts performed with the assistance of and subject to the approval of the Authority, on the basis of a lack of responsibility. These measures shall be used for the purpose of protecting the interests of the Authority and not for punishment. To assure the Authority the benefits to be derived from the full and free competition between and among such persons and to maximize the opportunity for honest competition and performance, these measures shall not be invoked for any longer than deemed necessary to protect the public interest.

Section 4.2

As used in these By-Laws,

- (a) "Debarment" means an exclusion from Authority contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.
- (b) "Suspension" means an exclusion from Authority contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.
- (c) "Disqualification" means a debarment or suspension which denies or revokes a qualification to bid or otherwise engage in Authority contracting which has been granted or applied for pursuant to statute or rules and regulations.
- (d) "Authority" means the New Jersey Health Care Facilities Financing Authority.
- (e) "Person" means any natural person, company, firm, association, corporation or other entity.
- (f) "Authority Contracting" means any arrangement giving rise to an obligation to supply any thing to or perform any service for the Authority, other than by virtue of Authority employment, or to supply any thing to or perform any service for a private person where the Authority provides substantial financial assistance and retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.
- (g) "Affiliates" means persons having an overt or covert relationship such that any one of them directly or indirectly controls or has the power to control another.

Section 4.3

Subject to the conditions hereinafter described, the Authority may debar a person in the public interest for any of the following causes:

- (a) Commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract thereunder, or in the performance of such contract or subcontract.
- (b) Violation of the Federal Organized Crime Contract Act of 1970, or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, perjury, false swearing, receiving stolen property, obstruction of justice, or any other offense indicating a lack of business integrity or honesty.
- (c) Violation of the Federal or State Antitrust Statutes, or of the Federal Anti-Kickback Act (18U.S.C. 874, 40 U.S.C. 276 b, c).
- (d) Violations of any of the laws governing the conduct of elections of the State of New Jersey or of its political subdivisions.
- (e) Violation of the "Law Against Discrimination" (P.L. 1945, c. 169, C.10:5-1 et seq., as supplemented by P.L. 1975, c 127), or of the act banning discrimination in public works employment (C.10:2-1 et seq.) or of the act prohibiting

discrimination by industries engaged in defense work in the employment of persons therein (C.114, L.1942, C.10:1-10 et seq.).

- (f) Violations of any laws governing hours of labor, minimum wage standards, prevailing wage standards, discrimination in wages, or child labor.
- (g) Violations of any laws governing the conduct of occupations or professions or regulated industries.
- (h) Willful failure to perform in accordance with contract specifications or within contractual time limits.
- (i) A record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that such failure or unsatisfactory performance has occurred within a reasonable time preceding the determination to debar and was caused by acts within the control of the person debarred.
- (j) Violation of contractual or statutory provisions regulating contingent fees.
- (k) Any other cause affecting responsibility as an Authority contractor of such serious and compelling nature as may be determined by the Authority to warrant debarment, including such conduct as may be prescribed by the laws of contracts enumerated in this paragraph even if such conduct has not been or may not be prosecuted as violations of such laws or contracts.
- (l) Debarment by any department or agency in the Executive Branch.

Section 4.4

Debarment shall be made only upon the following conditions:

- (a) Debarment shall be made only upon the final determination of the Authority, except as otherwise provided by law.
- (b) The existence of any of the causes set forth in paragraph 4.3 hereof shall not necessarily require that a person be debarred. In each instance, the decision to debar shall be made within the discretion of the Authority unless otherwise required by law, and shall be rendered in the best interests of the public.
- (c) All mitigating factors shall be considered in determining the seriousness of the offense, failure or inadequacy of performance and in deciding whether debarment is warranted.
- (d) The existence of a cause set forth in subparagraphs (a), (b), (c), (d), (e), (f), and (g) of Section 4.3 hereof shall be established upon the rendering of a final judgement or conviction by a court of competent jurisdiction or by an administrative agency empowered to render such judgement. In the event an appeal taken from such judgement or conviction results in reversal thereof, the debarment shall be removed upon the request of the debarred person unless other cause for debarment exists.

- (e) The existence of a cause set forth in subparagraphs (h), (i), (j), and (k) of Section 4.3 hereof shall be established by evidence which the Authority determines to be clear and convincing in nature.
- (f) Debarment for the cause set forth in subparagraph (l) of Section 4.3 hereof shall be proper provided that one of the causes set forth in subparagraphs (a) through (l) of Section 4.3 was the basis for debarment by the original debarring agency. Such debarment may be based entirely on the record of facts obtained by the original debarring agency or upon a combination of such facts and additional facts.

Section 4.5

The following provisions regarding procedures, period of debarment and scope of debarment shall apply:

- (a) A person or his affiliates considered for debarment shall be furnished by the Authority with a written notice: (i) stating that debarment is being considered; (ii) setting forth the reasons for the proposed debarment; and, (iii) indicating that such party will be accorded an opportunity for a hearing if he so requests within a stated period of time. Also such hearings shall be conducted in accordance with the provisions of the Administrative Procedures Act. However, where any department or agency has imposed debarment upon a party, the Authority may also impose a similar debarment without according an opportunity for a hearing, provided that the Authority furnishes notice of the proposed similar debarment to that party, and accords that party an opportunity to present information in his behalf to explain why the proposed similar debarment should not be imposed in whole or in part.
- (b) Debarment shall be for a reasonable, definitely stated period of time determined by the Authority which, as a general rule, shall not exceed five years. Debarment for an additional period may be imposed by the Authority provided that notice thereof is furnished and the party is accorded an opportunity to present information in his behalf to explain why the additional period of debarment should not be imposed.
- (c) Except as otherwise provided by law, a debarment may be removed or the period thereof may be reduced in the discretion of the Authority upon the submission of a good faith application under oath, supported by documentary evidence, setting forth substantial and appropriate grounds for the granting of relief, such as newly discovered material evidence, reversal of a conviction or judgement, actual change of ownership, management or control, or the elimination of the cause for debarment.
- (d) A debarment may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis giving due regard

to all relevant facts and circumstances. The offense, failure or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effected by him with the knowledge or approval of such person.

Section 4.6 Subject to the conditions hereinafter described, the Authority may suspend a person in the public interest for any cause specified in Section 4.3 hereof, or upon a reasonable suspicion that such cause exists.

Section 4.7 Suspension shall be made only upon the following conditions:

- (a) Suspension shall be imposed only upon the final determination of the Authority and upon approval of the Attorney General, except as otherwise provided by law.
- (b) The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Authority and of the Attorney General, and shall be rendered in the best interests of the public.
- (c) Suspension shall not be based upon unsupported accusation, but upon adequate evidence that cause exists or upon evidence adequate to create a reasonable suspicion that cause exists.
- (d) In assessing whether adequate evidence exists, consideration shall be given to the amount of credible evidence which is available, to the existence or absence of corroboration as to important allegations, and to inferences which may properly be drawn from the existence or absence of affirmative facts.
- (e) Reasonable suspicion of the existence of a cause described in subparagraphs (a), (b), (c), (d), (e), (f), and (g) of Section 4.3 hereof may be established by the rendering of a final judgement or conviction by a court or administrative agency of competent jurisdiction, by grand jury indictment, or by evidence that such violations of civil or criminal law did in fact occur.
- (f) A suspension invoked by an agency for any of the causes described in subparagraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), (j), (k), and (l) of Section 4.3 hereof may be the basis for the imposition of a concurrent suspension by any agency, which may impose such suspension without the approval of the Attorney General.

Section 4.8 The following provisions regarding procedures, period of suspension and scope of suspension shall apply:

- (a) The Authority may suspend a person or his affiliates, provided that within ten days after the effective date of the suspension, the Authority provides such party with a written notice: (i) stating that a suspension has been imposed and its

effective date; (ii) setting forth the reasons for the suspension to the extent that the Attorney General determines that such reasons may be properly disclosed; (iii) stating that the suspension is for a temporary period pending the completion of an investigation and such legal proceedings as may ensue; and, (iv) indicating that, if such legal proceedings are not commenced or the suspension removed within sixty days of the date of such notice, the party will be given either a statement of the reasons for the suspension and an opportunity for a hearing if he so requests, or a statement declining to give such reasons and setting forth the position of the Authority regarding the continuation of the suspension. Where a suspension by any agency has been the basis for suspension by the Authority, the Authority shall note that fact as a reason for suspension.

- (b) A suspension shall not continue beyond eighteen months from its effective date unless civil or criminal action regarding the alleged violation shall have been initiated within that period, or unless debarment action has been commenced. Whenever prosecution or debarment action has been initiated, the suspension may continue until the legal proceedings are completed.
- (c) A suspension may include all known affiliates of a person, provided that each decision to include an affiliate is made on a case by case basis after giving due regard to all relevant facts and circumstances. The offense, failure, or inadequacy of performance of an individual may be imputed to a person with whom he is affiliated, where such conduct was accomplished within the course of his official duty or was effectuated by him with the knowledge or approval of such person.

Section 4.9 These By-Laws shall be subject to any existing practices and procedures under any relevant prequalification statutes to the procedures governing debarment and suspension required herein, to the extent that such existing practices and procedures may concern the disqualification of any person from Authority contracting.

Section 4.10 The exclusion from Authority contracting by virtue of debarment, suspension or disqualification shall extend to all Authority contracting and subcontracting within the control or jurisdiction of the Authority. However, when it is determined essential to the public interest by the Authority, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular contract.

Section 4.11 Insofar as practicable, prior notice shall be given to the Attorney General and the Treasurer of any proposed debarment or suspension.

Section 4.12 Nothing required by these By-Laws shall be construed to limit the authority of the Authority to refrain from contracting within the discretion allowed by law.

ARTICLE V INDEMNIFICATION PROVISION

Section 5.1 The Authority shall indemnify any past, present or future member or employee of this Authority for claims arising from an act or omission of such member or employee within the scope of the performance of such individual's duties as an Authority member or employee. Such indemnification shall include reasonable costs and expenses incurred in defending such claims. Nothing contained herein shall authorize the Authority to pay punitive damages or exemplary damages or damages arising from the commission of a crime by such an individual, and the Authority shall not provide for the defense or indemnification of such an individual when the act or omission which caused the injury was the result of actual fraud, actual malice, or willful misconduct of such individual, or in the event of a claim against such an individual by the State of New Jersey or the Authority. The determination as to whether an individual's conduct falls within any of the above exceptions shall be made by the Attorney General or an attorney selected by the Authority to handle such matters.

Section 5.2 A past, present or future member or employee of the Authority shall not be entitled to a defense or indemnification from the Authority unless:

- (a) Within ten (10) calendar days of the time he/she is served with the summons, complaint, process, notice, or pleading, he delivers the original or exact copy to the Attorney General or an attorney selected by the Authority to handle such matters and requires that the Authority provide for his defense;
- (b) He cooperates in the preparation and presentation of the defense with the attorney selected to defend the case;
- (c) Except in those instances when a conflict of interest exists, as determined by the Attorney General or an attorney selected to handle such matters, the present or future member or employee shall agree that the Authority and its counsel shall have exclusive control over the handling of the litigation.

Section 5.3 The foregoing right of indemnification shall not be exclusive of any other rights to which any member or employee may be entitled as a matter of law or which may be lawfully granted to him; and the right to indemnification hereby granted by this Authority shall be in addition to and not in restriction or limitation of any other

privilege or power which this Authority may lawfully exercise with respect to the indemnification or reimbursement of an Authority member or employee; except that in no event shall an Authority member or employee receive compensation in excess of the full amount of a claim and reasonable costs and expenses incurred in defending such claim.

Section 5.4 Expenses incurred by any member or employee in defending an action, suit, or proceeding may be paid by this Authority in advance of final determination of such action, suit, or proceeding as authorized by the governing body of this Authority in a specific case upon receipt of an undertaking by or on behalf of such member or officer to repay such amount in the event of an ultimate determination that his conduct was such as to fall outside the scope of coverage under this indemnification provision.

ARTICLE VI STAFF

Section 6.1 *Executive Director*

The Authority shall employ an Executive Director qualified by training and experience for the duties of the position. The Executive Director shall have general supervisory and management responsibility over the Authority staff and day-to-day activities of the Authority. In addition to any other duties assigned by resolution of the Authority, the Executive Director shall:

- (a) Supervise and direct the internal organization and reorganization of the staff of the Authority;
- (b) Assign functions and duties to any member of the staff and modify such assignments as needed;
- (c) Prepare and submit a proposed annual budget for the Authority for each ensuing year for adoption by members of the Authority;
- (d) Approve the procurement of supplies, materials, and equipment needed for the efficient and effective operation of the Authority, provided that the Executive Director may not approve any individual purchase in excess of such amount as the Board may determine from time to time by resolution.

ARTICLE VII
FINANCE COMMITTEE

Section 7.1 ***Members of the Finance Committee***

The Finance Committee of the Authority shall consist of three members of the Authority, other than those members who sit upon the Authority ex-officio under N.J.S.A. 26:21-1 et seq., elected by the Authority members at the Authority's annual organizational meeting. The member of the Authority who does not sit upon the Authority ex-officio under N.J.S.A. 26:21-1 et seq. and who has not been elected to the Finance Committee shall be an Alternate Member of the Finance Committee, entitled to sit and vote as a member of the Finance Committee at all meetings at which a member of the Finance Committee is absent, and shall be considered to be a member of the Finance Committee for all purposes during the absence of a member of the Finance Committee from a meeting of the Finance Committee.

Section 7.2 ***Election of Chairman of the Finance Committee***

At the Authority's Annual organizational meeting it shall elect a Chairman of the Finance Committee, who shall hold office until April 30 next ensuing and shall continue to serve until his/her successor shall have been appointed and qualified.

Section 7.3 ***Place of Meeting***

All meetings of the Finance Committee shall be held at the Authority's principal office, unless a majority of the members of the Finance Committee agree that such meetings be held at another location within the State of New Jersey.

Section 7.4 ***Establishment of Schedule for Meetings; Public Notice of Meetings***

The Authority shall, at its Annual meeting, establish a schedule of regular meetings for the then current calendar year of the Finance Committee, and no further notice of such regularly scheduled meetings need be given to any member of the Authority, except that any member not in attendance at the meeting at which the schedule was adopted shall be notified in writing of such schedule within seven (7) days of the meeting at which the schedule was adopted. Special meetings of the Finance Committee may be called by the Chairman of the Finance Committee and shall be called at the written request of two or more members of the Finance Committee and shall be held at the Authority's principal office unless another time and place shall be designated in the call of the meeting. Written notice of each such special meeting shall be given at least forty-eight (48) hours prior to the time named for the meeting to

each member of the Authority. Public notice of the meetings of the Finance Committee shall be given in the same manner as public notice for meetings of the Authority provided in the Authority's By-Laws.

Section 7.5 ***Executive Session***

The Finance Committee may, by resolution, close its session to the public to meet in Executive Session in the same manner and for the same reasons as the Authority as provided in Section 2.9 of the Authority's By-Laws.

Section 7.6 ***Minutes***

The Finance Committee shall keep minutes in the same manner as provided for the Authority in Section 2.10 of the Authority's By-Laws.

Section 7.7 ***Quorum***

Two members (of which one may be the Alternate Member of the Finance Committee) of the Finance Committee shall be necessary to constitute a quorum for the transaction of business, and the affirmative acts of a majority of the members present at a meeting at which a quorum was present shall be acts of the Finance Committee. No vacancy in the membership of the Authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the Finance Committee.

Section 7.8 ***Attendance of Meetings by Other Authority Members***

Any member of the Authority not a member of the Finance Committee shall be entitled to attend meetings of the Finance Committee and to participate in all discussions at such meetings. However, no member of the Authority who is not a member of the Finance Committee shall be entitled to vote at meetings of the Finance Committee. No Alternate Member of the Finance Committee shall be permitted to vote at a meeting when three members of the Finance Committee are present.

Section 7.9 ***Chairman***

The Chairman of the Finance Committee shall:

- (a) preside at all meetings of the Finance Committee;
- (b) rule on all questions of order, subject to appeal to the Finance Committee;
- (c) report the recommendations and actions of the Finance Committee to the Authority; and,
- (d) have such other duties and powers as conferred upon him by these By-Laws or by any other resolution adopted by the Authority.

Section 7.10 *Absence of Chairman*

In the absence of the Chairman, the members of the Finance Committee shall select one member from their number to act as Chairman for that meeting.

Section 7.11 *Powers of the Finance Committee*

The Finance Committee shall be empowered to act as an advisor to the full Board with regard to financially-related issues of the Authority, such as to review and to discuss financial transactions of the Authority including, without limitation, contracts, Authority investment policies, Authority fee schedules, releases of mortgaged and pledged property, the Authority budget and feasibility studies; and, to make recommendations to the Authority for action.

Section 7.12 *Other Committees*

The Authority may appoint such Committees as may be necessary to facilitate its purposes from time to time, including, without limitation, the following:

(a) Audit Committee. The Audit Committee shall be responsible for assisting the Board in retaining an independent auditor to conduct an audit of the Authority's financial statements by making a recommendation to the Board after engaging in an auditor selection process, and assisting in the financial reporting and audit process of the Authority, all in accordance with the provisions of Executive Order No. 122 (McGreevey 2004). The Audit Committee shall meet at least twice (2) each year. Criteria for membership on the Audit Committee is governed by the provisions of Executive Order No. 122 (McGreevey 2004).

(b) Evaluation Committee. The Evaluation Committee shall be responsible for conducting the solicitation and evaluation of eligible independent auditors. The Evaluation Committee is responsible for drafting requests for proposals ("RFPs"), soliciting responses to such RFPs, accepting and evaluating proposals and providing a final written report to the Audit Committee, all in accordance with the provisions of Executive Order No. 122 (McGreevey 2004). The Evaluation Committee may draw upon the expertise of the Department of the Treasury, Division of Purchase and Property to assist it in the drafting of the RFPs, soliciting proposals in response to the RFPs and evaluating proposals. Criteria for membership on the Evaluation Committee are governed by the provisions of Executive Order No. 122 (McGreevey 2004).