

An Investigation of Essex County's COVID-19 Vaccination Program

COVID-19 COMPLIANCE
AND OVERSIGHT PROJECT



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Table of Contents

I.	<u>Introduction</u>	1
II.	<u>Background and Methodology</u>	2
III.	<u>Findings</u>	3
	A. Essex County Did Not Comply with Multiple Substantive Procurement Rules and Jeopardized Substantial Federal Grant Funds When Purchasing Goods and Services for its Vaccination Program	3
	1. Essex Over-utilized the Emergency Procurement Method and Did Not Follow Multiple Requirements under New Jersey’s Local Public Contracts Law and its Own Procurement Code	4
	2. The County’s Failure to Follow Required Procurement Processes Created an Unacceptable Level of Risk that Federal Grant Funds Could be Lost	8
	B. Essex County’s Lax Monitoring of its Contracts Relating to the Vaccination Program and Failure to Follow Applicable Procurement Rules Resulted in an Undetected Overpayment in Excess of \$110,000 and Likely Increased Costs	9
	1. The County’s Lack of Controls for its Contracts Likely Increased Costs and Resulted in an Overpayment of More Than \$110,000 Detected Only as a Result of OSC’s Investigation	9
	2. The County’s Excessive Use of the Emergency Procurement Method Also Likely Increased Costs	10
	C. The County Spent \$17 Million on Staffing Related to its Vaccination Program but Did Not Establish Adequate Controls to Protect Against Fraud, Waste, and Abuse	12
	1. The County’s Timekeeping System Lacked Appropriate Controls	13
	2. The County’s Timekeeping Policies and Recordkeeping Were Inadequate	14
	3. The County’s Response to the Multiple Instances of Fraud, Waste, and Abuse Was Inadequate to Detect, Address, and Prevent Fraud, Waste, and Abuse	17
	4. The County Did Not Implement Sufficient Controls to Ensure its 1099 Workers Were Properly Classified	18

<u>IV.</u>	<u>Essex County's Response to this Report</u>	<u>19</u>
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<u>V.</u>	<u>Recommendations</u>	<u>22</u>
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Appendix A: Promissory Note and Guaranty

I. Introduction

The COVID-19 Compliance and Oversight Project of the Office of the State Comptroller (OSC) investigated Essex County's (the County or Essex) procurement of goods and services relating to its vaccination program for County residents during the COVID-19 pandemic. The vaccination program was funded with federal COVID-19 assistance from the Coronavirus Relief Fund (CRF) pursuant to the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and Local Fiscal Recovery Fund (LFRF) provided for by the American Rescue Plan Act (ARPA). OSC also reviewed the County's administration of the vaccination program to understand the efficacy of its oversight protocols. OSC's investigation found numerous deficiencies that increased the risk of fraud, waste, and abuse, and undermined transparency and accountability in the use of public funds. In particular, OSC found that:

- The County overused the emergency exception to public bidding and did not conduct emergency procurements properly under either state law, the County's own procurement code, or, where applicable, under the federal rules for procurement. This jeopardized millions in federal grant funds.
- Essex officials failed to implement adequate policies for control and monitoring of contracts with business vendors. This practice more than likely increased overall costs for taxpayers and led to an overpayment of more than \$110,000 to a vendor that went undetected until discovered by OSC.
- The County spent \$17 million on staffing, but it did not establish effective policies and controls for timekeeping, recordkeeping, hiring, and off-site work, among other areas, which led to multiple documented instances of fraud, waste, and abuse. While the County did take some action in response to those specific instances, it did not implement systemic changes to its oversight protocols to address the underlying causes.

In reaching these conclusions, OSC is mindful that the COVID-19 pandemic was a global health crisis that presented officials across government, including County officials, with unprecedented challenges. OSC also notes that the County's vaccination program provided residents of Essex County, who were hard-hit by COVID-19, with much-needed access to life-saving vaccines.¹ But it is inevitable that public officials in New Jersey will be confronted by future emergencies, including public health emergencies, and it is valuable to draw lessons from this experience. In accordance with its mission of guarding against fraud, waste, and abuse and ensuring transparency and accountability in the use of taxpayer funds, OSC reports its findings and provides recommendations to help the County and other public entities avoid similar pitfalls in response to future emergencies.

OSC's investigation into the vaccination program examined the County's procurement of goods and services, how the County monitored contracts, and how it oversaw vendors. OSC found significant deficiencies in all three areas. These shortcomings exposed the County to avoidable

¹ In response to OSC's discussion draft, Essex stated that at the request of the State, it also vaccinated out of county residents.

risks of fraud, waste, and abuse and undermined transparency and accountability in the use of public funds.

II. Background and Methodology

OSC initiated its investigation in response to an anonymous tip alleging fraud, waste, and abuse at the County's vaccine centers. OSC reviewed a judgmental sample of \$9.94 million in payments made to 21 business vendors for goods and services related to the vaccination program. OSC also reviewed documents and information related to a sample of 63 independent contractors who provided services as "1099 workers" to the vaccination program (Individual Vendors), which represented approximately \$4.6 million of the \$17 million in total staffing costs. In addition, OSC reviewed relevant law and policy guidance, analyzed supporting documentation provided by the County, and conducted numerous interviews with vendors and County employees. OSC interviewed multiple senior officials involved in the vaccination program, including the County's Chief Financial Officer (CFO), Chief Information Officer and Deputy County Administrator (CIO), the County's Purchasing Director and Deputy County Administrator (Purchasing Director), the Director of Public Information, the County Health Officer who oversaw the vaccine program, the County Administrator, the County Executive, and other employees responsible for information technology, payroll, and timekeeping.²

After nearly two months of pre-planning in the lead up to the release of the first COVID-19 vaccines, the County launched the vaccination program in December 2020. At its peak, the vaccination program operated at five sites: Essex County College in Newark; the Essex County Donald M. Payne, Sr. School of Technology, also in Newark; the West Caldwell Technical School in West Caldwell; a former Sears store at the Livingston Mall in Livingston; and a former Kmart building in West Orange.³ Essex also operated a mobile vaccination clinic which traveled to neighborhoods throughout the County. While the vaccination sites have now closed, the mobile clinic remains operational.

COVID-19 vaccinations in New Jersey initially peaked in March and April 2021, and again in November and December 2021. According to data maintained by the Department of Health (DOH), 20 million vaccine doses were administered across the state between December 2020 and October 2023, with over 1.8 million doses administered in the County across all vaccination sources. The County's data show that it administered a total of 622,016 doses through its vaccination program from December 26, 2020 through August 30, 2023.

² In response to OSC's requests, the County provided additional information on transactions that were not directly related to the vaccination program but to the County's COVID-19 response more generally, such as documentation of payments for cleaning and sanitization of police and department of health vehicles. OSC reviewed all information provided by Essex, and the information that was beyond the scope of OSC's request provided additional context.

³ During the early stages of COVID-19 vaccination, the Federal Emergency Management Agency (FEMA) also operated a large volume vaccine site at the New Jersey Institute of Technology in Newark. Vaccines were also offered at several retail locations across the County. Vax Matters, New Jersey Department of Health (Apr. 1, 2021), https://nj.gov/health/cd/documents/topics/NCOV/040121_VaxMatters.pdf.

III. Findings

A. Essex County Did Not Comply with Multiple Substantive Procurement Rules and Jeopardized Substantial Federal Grant Funds When Purchasing Goods and Services for its Vaccination Program

The New Jersey Local Public Contracts Law, N.J.S.A. 40A:11, governs public contracting by local governments, including counties, and “was created to ensure a fair, public, and competitive bidding process for the taxpayer’s benefit.”⁴ The LPCL is a “comprehensive statutory framework”⁵ that fits with New Jersey’s “long tradition of requiring open and free competitive bidding for public contracts.”⁶ It exists “for the benefit of taxpayers, not bidders, and should be construed with sole reference to the public good.”⁷ Its primary purpose is to “guard against favoritism, improvidence, extravagance and corruption [and] to secure for the public the benefits of unfettered competition.”⁸ However, the LPCL recognizes that there may be situations when a non-competitive procurement is necessary to prevent serious harm or where the emergency affects the public health, safety, or welfare.

Although competitive public bidding may not be required during an emergency because of the time needed to conduct a full and open procurement and the immediate need for the good or service, the LPCL requires that local governments follow specific emergency procurement procedures when relying on the emergency exception to public bidding. Because of the lack of competition, the LPCL sets parameters for emergency procurements that provide for public accountability after the purchase has been made and limits the purchase to address only the immediate need. In the early stages of the COVID-19 pandemic, it may have been appropriate for the County to utilize those emergency procurement mechanisms in relation to the vaccination program. But in doing so, the County failed to follow required procedures. This violated not only the LPCL, but the County’s own procurement code.

⁴ Ernest Bock & Sons-Dobco Pennsauken Joint Venture v. Twp. of Pennsauken, 477 N.J. Super. 254, 264 (App. Div. 2023) (citing N.J.S.A. 40A:11-2(23)).

⁵ Clean Earth Dredging Techs., Inc. v. Hudson Cty. Improvement Auth., 379 N.J. Super. 261, 267 (App. Div. 2005).

⁶ Borough of Princeton v. Mercer Cty., 333 N.J. Super. 310, 328 (App. Div. 2000).

⁷ Nat’l Waste Recycling, Inc. v. Middlesex Cty. Improvement Auth., 150 N.J. 209, 220 (1997).

⁸ Clean Earth Dredging Techs., Inc. v. Hudson Cty. Improvement Auth., 379 N.J. Super. 261, 267-68 (App. Div. 2005) (quoting Keyes Martin & Co. v. Dir., Div. Of Purchase & Prop., 99 N.J. 244, 256 (1985)).

And even when the contours of the public health emergency came into focus and the County should have transitioned to competitive procurement procedures, it continued to improperly rely on emergency procurement tools for all of its contracting related to the vaccination program.

Moreover, the federal government has made it clear that local governments must comply with state and federal procurement standards when using LFRF grant funds to procure goods and services. By failing to comply with the LPCL, Essex put substantial federal funds at risk. While the federal government may or may not seek to recoup grant funds distributed to the County on these bases alone, the issue is not process over substance—on the contrary, “the efficacy of our competitive bidding statute depends upon its rigorous enforcement.”⁹

1. Essex Over-utilized the Emergency Procurement Method and Did Not Follow Multiple Requirements under New Jersey’s Local Public Contracts Law and its Own Procurement Code

The LPCL generally provides that purchases of goods and services over a certain dollar value (the bid threshold) require public bidding.¹⁰ During times of immediate threat to public health, safety, or welfare, the LPCL permits an exception to public bidding for “emergency procurement” that allows local governments to procure goods and services more quickly.¹¹ But local governments may only use the emergency procurement method when an actual or imminent emergency affecting the public health, safety, or welfare requires the immediate delivery of goods and services that could not have been reasonably foreseen.¹² In every instance, in order to use the emergency procurement process, local governments must assess whether those statutory conditions have been met. As an additional layer of accountability, they must also document their use of the emergency procurement method and the reasons it was used.¹³

The LPCL requires public officials to notify the purchasing agent or other designated individuals “of the need for the performance of a contract, the nature of the emergency, the time of its occurrence and the need for invoking [the emergency contracting procedure].”¹⁴ If the purchasing agent is satisfied that an emergency exists, the contract or contracts may be awarded, and the notification must be reduced to writing and filed with the purchasing agent as soon as practicable.¹⁵ The LPCL also stipulates that emergency contracts should be of limited duration,

⁹ Hillside Twp. v. Sternin, 25 N.J. 317, 327 (1957).

¹⁰ N.J.S.A. 40A:11-3; N.J.S.A. 40:11-4.

¹¹ N.J.S.A. 40A:11-6.

¹² See N.J.A.C. 5:34-6.1(a); LFN 2021-15.

¹³ N.J.A.C. 5:34-6.1(a); N.J.S.A. 40A:11-6.

¹⁴ N.J.S.A. 40A:11-6(a).

¹⁵ N.J.S.A. 40A:11-6.

addressing only the immediate emergency needs, and explicitly prohibits the use of the emergency purchasing procedure for multi-year contracts.¹⁶ The County's own administrative code also requires it to provide notice to the Clerk of the Board of County Commissioners in writing within 24 hours of an emergency and/or of awarding a contract for the emergency.¹⁷ Payment under an emergency contract can only be made after the County Commissioners adopt a public resolution approving the contract.

In September 2021, during the COVID-19 public health emergency, the state issued Local Finance Notice 2021-15 as a reminder to local governments dealing with emergency procurement. State law requires "that an emergency contract shall only address the immediate needs of the emergency, rather than encompass everything having to do with the emergency."¹⁸ Put another way, use of the emergency procurement method was not necessarily appropriate just because a procurement was conducted during the COVID-19 pandemic. Moreover, even when its use was justified, local governments still needed to comply with the procedural requirements outlined in the LPCL.¹⁹

The County contracted with 93 business vendors between December 2020 and August 2022 to provide goods and services in relation to the vaccination program. OSC selected a sample of those business vendors in order to review Essex's procurement procedures. Many of those vendors had contracts far exceeding the threshold requiring a competitive process under the LPCL. OSC requested all public bidding documents to support the selected purchases. In response, Essex provided nothing. The County's Purchasing Director explained that after Governor Murphy declared a State of Emergency, Essex procured all goods and services related to the vaccination program under emergency contracts, using the emergency declaration as a reason to bypass the usual procurement process. But as explained below, even where Essex claimed it was using the emergency procurement method, it failed to follow the requirements of the law.

While it is likely that at least some of the County's procurements during the earliest stages of the pandemic would have met the emergency procurement standard, the County did not follow the proper procedures and the County's continued reliance on emergency procurement into late 2022 was improper. Even in March 2020, the Department of Community Affairs issued Local Finance Notice 2020-06 to all local governments reminding them of the LPCL's requirements for emergency procurement. The LPCL requires the County to stop using the emergency procurement method and transition to public bidding after the immediate need to provide goods and services for the vaccination program was addressed, or once those needs became

¹⁶ N.J.A.C. 5:34-6.1.

¹⁷ Essex County Administrative Code 2-52.

¹⁸ LFN 2021-15.

¹⁹ N.J.A.C. 5:34-6.1.

foreseeable. Similarly, federal guidance on emergency procurements recommends that a local government begin the process of competitively procuring similar goods and services to transition to the competitively procured contracts as soon as the actual exigent or emergency circumstances cease to exist.²⁰ It may be impractical to pinpoint a precise date on which the needs of the vaccination program became foreseeable. But even viewing the facts as favorably as possible to the County, the needs of the vaccination program must have been foreseeable in or around April 2021, when all U.S. states opened vaccine eligibility to residents aged 16 and over and more than 200 million doses of the vaccine had been administered across the country. In addition, by that time, the County had clear plans to continue the vaccination program.²¹ The County's continued reliance on the public health emergency to bypass public bidding after that time was improper.

At a minimum, once the vaccination program was operational, the County should have meaningfully analyzed whether it could transition to public bidding. When asked whether Essex considered transitioning to public bidding, the Purchasing Director said that was not considered, explaining that the County did not know how long the vaccination program would continue and did not want to disrupt a program that appeared to be effective. But the County itself engaged in public bidding throughout the pandemic for numerous purchases unrelated to the vaccination program.²² The County's misuse of the emergency exception to public bidding not only undermined important protections that provide transparency and accountability to the public, but it ran afoul of the LPCL's explicit prohibition on using emergency procurement for multi-year contracts. For 12 of the 21 contracts OSC reviewed, Essex paid regular and repeated purchase orders to the same vendor, for the same good or service, for more than a year. These de facto multi-year emergency contracts totaled nearly \$8.6 million, or 87 percent of the dollar value of OSC's sample.

In addition, while OSC did not individually evaluate each of Essex's 93 business vendors to determine whether each one would have met the substantive criteria for use of the emergency procurement method, the Purchasing Director and County Administrator were unable to confirm that the County followed the procedural requirements of the law in every instance. The LPCL requires the local government to document its reasons necessitating use of the emergency procurement method. Only if the purchasing agent is satisfied that an emergency exists can the

²⁰ FEMA, Procurement Disaster Assistance Team (PDAT) Field Manual, October 2021, Section 3.3, p. 53.

²¹ Several additional data points indicate that the need for services in relation to the vaccination program became foreseeable by spring 2021. In April 2021, two months before the leases were set to expire, Essex extended its lease agreements for the vaccine sites at the former retail spaces in Livingston and West Orange for six months until December 2021, indicating it intended to continue operating the vaccination program for at least another 8 months. The leases were later extended into 2022. Essex also transitioned to a computer-based time and attendance system for its vaccine site workers in spring 2021 indicating that the County intended to continue running the vaccine sites.

²² For example, between 2020 and 2021, the County publicly issued bids for goods and services such as xerographic paper, landscape maintenance, deer butchering services, voting machines, HVAC services, snow plowing services, first aid products and equipment, general electrical services, and janitorial services, among others.

exception be used. The Purchasing Director recognized the normal procedure for emergency contracting in Essex was for the department to complete a standard form providing a description of the emergency and the need, which he would then review and approve if appropriate. But he stated that during COVID, he did not believe they followed that usual process. When questioned why Essex diverted from the normal procedural requirements, the Purchasing Director drew a distinction between COVID-19 and other emergencies. He reasoned that the County did not consciously circumvent the normal process for emergency procurements, but that it was not followed because of the magnitude of the COVID emergency.

Moreover, Essex failed to follow its own procurement rules which require that emergency procurements be brought to the Board of County Commissioners for review and approval prior to the payment being made. None of the emergency contracts was brought to the Board for approval, removing an important layer of oversight and accountability.

OSC found many examples during the pandemic when the County seemingly followed the appropriate procedures to enter into emergency contracts for goods and services unrelated to the vaccine sites, demonstrating that the County was aware of these requirements. For example, in spring 2020, the County extended all its contracts in reliance on the emergency exception to bidding through December 2020. While blanket extensions of this kind are generally inappropriate under applicable procurement rules, the County demonstrated that it understood the proper procedural steps that should have been taken for each individual emergency contract. The County Administrator certified that an emergency required extension of those contracts, it was approved by the Purchasing Director, and the County Commissioners adopted a resolution approving payment.

This trend continued throughout the pandemic. For example, the County properly documented emergency costs to respond to Tropical Storm Isaias in August 2020 and Hurricane Ida in September 2021 and brought the emergency contracts to the Commissioners for ratification. Even for some procurements related to the pandemic, like costs associated with indigent burials due to COVID-19, Essex appeared to have followed the required process when it entered into an emergency contract with the vendor. Despite this, neither the Purchasing Director nor the County Administrator was able to explain why the County was able to properly procure goods and services for certain programs relating to COVID-19, but did not do so for the costs associated with the vaccination program that OSC reviewed.

Throughout the COVID-19 pandemic, the County improperly used the emergency procurement process as a blanket tool to award millions of dollars of contracts relating to the vaccination program without public bidding. It continued to do so for years without considering whether it should have transitioned to non-emergency procurement methods. In addition, while using the emergency procurement method, the County failed to follow procedures required by state law, which are in place to limit abuse of non-competitive procurements and provide for public accountability. These practices exposed the County to unacceptable risk and deprived the public of meaningful opportunity to hold its government accountable for its spending decisions.

2. The County's Failure to Follow Required Procurement Processes Created an Unacceptable Level of Risk that Federal Grant Funds Could be Lost

Essex spent over \$40 million between August 9, 2020, and August 9, 2022, to administer the vaccination program.²³ As discussed above, these public funds were federal COVID-19 financial assistance to local governments under the CARES Act, CRF, and the ARPA, LFRF. As a condition to accepting this federal financial assistance, fund payments are subject to federal rules and requirements, including audit requirements. Essex was required to establish and maintain effective internal controls over the federal award that provides reasonable assurance that it is managing the award in compliance with the terms and conditions of the award.²⁴

LFRF grants in particular were explicitly conditioned on compliance with the terms of a grant agreement that included many substantive requirements. The United States Department of Treasury has made clear that LFRF funds are subject to many aspects of the Uniform Administrative Requirements, Costs Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200 (Uniform Guidance) including federal procurement standards.²⁵

Pursuant to 2 C.F.R. 200.317, recipients that are non-state entities, such as counties, must comply with various portions of the Uniform Guidance, including 2 C.F.R. 200.318, which provides that recipients must use procurement procedures consistent with state and local laws and regulations in addition to complying with federal standards. As described above, Essex's procurement related to the vaccination program did not comply with state law or the local ordinance, violating the contract terms and putting these funds at risk of recoupment. Similarly, the Uniform Guidance also requires that a recipient's contracts must contain any applicable provisions of standard federal contract terms.²⁶ The County did not enter into any formal contracts with its vendors. In the absence of a formalized contract, the purchase order serves as the agreement which legally binds Essex and the vendor.²⁷ Although not all federal contract terms would apply to every purchase, the County's standard purchase order forms for the vaccination program did not include any reference to the federal contract terms. The County's failure to comply with these federal requirements relating to required contract terms and procurement methods exposed it to remedial action by the federal government, including the recoupment of grant funds determined to be ineligible.²⁸ This misstep causes a large portion of the County's expenditures relating to the vaccination program to be subject to recoupment.

²³ This does not include the cost of vaccines which were provided at no cost to Essex.

²⁴ 2 CFR 200.303.

²⁵ <https://home.treasury.gov/system/files/136/Financial-Assistance-Agreement-Local-Governments.pdf>.

²⁶ 2 C.F.R. 200.327 and Appendix II to Part 200.

²⁷ N.J.A.C. 5:34-1.2.

²⁸ 31 C.F.R. 35.10; 2 C.F.R. 200.339.

B. Essex County's Lax Monitoring of its Contracts Relating to the Vaccination Program and Failure to Follow Applicable Procurement Rules Resulted in an Undetected Overpayment in Excess of \$110,000 and Likely Increased Costs

The County, like all government agencies in New Jersey, has an obligation to properly monitor its contracts according to established guidelines to track performance, ensure cost-effectiveness, manage risks, identify and address issues promptly, and promote accountability. But the County failed to ensure compliance with best practices in monitoring contracts relating to its vaccination program, resulting in documented waste and likely increased costs.

1. The County's Lack of Controls for its Contracts Likely Increased Costs and Resulted in an Overpayment of More Than \$110,000 Detected Only as a Result of OSC's Investigation

In May 2020, the County began using Dunton Consulting, LLC (Dunton), to place robo-calls informing residents about COVID-19 and the vaccination program. These services were procured on an emergency basis without public bidding and ultimately cost the County \$1.29 million. Many invoices submitted by Dunton to the County contained mathematical errors, incorrect dates and incorrect descriptions of the services provided, inaccuracies in quantity and unit price, and inconsistent pricing information. The County's lack of contract monitoring practices failed to catch these errors or mitigate the associated risks. As a result, the County paid Dunton \$110,514.41 twice on an invoice dated May 25, 2021 (Dunton Invoice) for the same services.²⁹

Essex issued a purchase order for the Dunton Invoice on June 30, 2021 and paid Dunton on July 16, 2021. Then, less than a week later, the County issued a separate purchase order based on the same invoice, and made a second \$110,514.41 payment to the vendor on September 10, 2021. Both the County and Dunton stated that they were unaware of the duplicative payment until OSC brought it to their attention, and neither could provide any explanation for the oversight. This could have been prevented through effective management of the contract and proper payment controls.

The Dunton Invoice is just one example of the County's general failure to exercise consistent oversight of its purchasing related to the vaccination program. The lack of oversight compounded the risks brought about by the County's overuse of emergency procurement without public bidding and other safeguards which typically mitigate risk. In 15 separate instances amounting to \$871,211 in expenditures, invoices, an essential document related to purchasing, were missing entirely, making it difficult to validate what goods or services were provided by particular vendors and to determine if the cost was appropriate. For example, the County paid a vendor to provide advertising services and issued a purchase order for \$264,000. Although the County retained a proposal prepared by the vendor, it was not able to produce an invoice from the vendor to support the dollar amount that was paid, or to validate that those services were performed.

²⁹ Even though it was dated May 25, 2021, the Dunton Invoice related to services provided between April 30, 2021 and May 30, 2021. Dunton speculated that this was the result of a typographical error.

In other instances, the invoices and purchase orders retained by the County revealed serious deficiencies in documentation. For example, on January 7, 2021, Dunton billed the County for 231,049 calls that were 95 seconds each at a rate of 6.3 cents per call. Just two weeks later, on January 24, 2021, Dunton billed the County for 231,688 calls that were also 95 seconds each at a rate of 7 cents per call. This second batch of calls at the higher rate resulted in an increased charge of \$1,622. On January 3, 2021, Dunton billed the County \$21,024 for 231,028 calls that were 141 seconds each, at a rate of 6.3 cents per call. Based on the number of calls and rate on the invoice, Essex should have only been billed \$14,555. The mathematical error on the invoice resulted in an overcharge of \$6,469. Additionally, on January 17, 2021, Dunton submitted an invoice for \$21,547 for 231,684 calls that were 140 seconds at a unit price of 9.3 cents. If Essex was billed at the same unit price of 6.3 cents charged just two weeks earlier, this invoice would have only been \$14,596, or \$6,951 less.

The Public Information Director who oversaw the contract said that he questioned the invoices on a few occasions but was satisfied with Dunton's explanation and remedy each time. It is unclear, however, how Essex could possibly confirm the billing was accurate because it could not produce any detailed pricing sheet that would explain the various rates. Dunton's owner acknowledged errors in the invoices but claimed that she provided a pricing sheet to the County even though she was unable to produce a copy. The County's Public Information Director stated he never received a pricing sheet and reported that he did not routinely check to see if the services were provided, relying instead on whether he or others received the expected calls. On one occasion, he challenged Dunton on whether the calls had been made, and according to Dunton's owner, she provided a report demonstrating the calls had been made. Neither Dunton nor Essex was able to provide a copy of that report.³⁰

OSC sent relevant excerpts of this report to Dunton to provide it with an opportunity to comment on the facts and issues identified. In its response, Dunton noted that it is "taking steps to create better internal controls" and "revamping the internal accounting system" that it uses.

2. The County's Excessive Use of the Emergency Procurement Method Also Likely Increased Costs

A lack of competitive bidding is generally associated with higher costs to the public because it diminishes the incentive for vendors to offer their goods or services at the most cost-effective rates, potentially leading to inflated prices. Additionally, competitive bidding promotes transparency, fairness, and accountability in the procurement process, safeguarding against favoritism and corruption.

The County's Purchasing Director opined that the risk of uncompetitive pricing was reduced because the County primarily contracted with familiar vendors, but he also acknowledged that Essex did not compare prices to confirm whether the County was receiving a fair price for its

³⁰ When the robo-call contract was publicly bid in July/August 2021, the advertisement mandated that as part of the contract the vendor would provide a report within 24 hours of calls being completed, suggesting that the County was aware of the importance of verifying performance.

emergency purchases. The risk of this practice is exemplified by the County's contract with Dunton, the robo-call vendor discussed above. According to Dunton, it was notified of the contract opportunity after receiving a phone call from the Director of Public Information for the County. The owner stated she believed she was approached because she had provided robo-call services related to snow removal work for the County before and had worked for the political campaigns of several County officials. She also noted that the Public Information Director was familiar with her work. The County's Public Information Director, who oversaw the contract, stated he was unfamiliar with Dunton prior to the vaccination program and recalled that the vendor was suggested in a strategy meeting and that no alternatives were considered, though he could not recall who made the suggestion.

After more than a year of payments to Dunton, in July 2021, the County put the robo-call contract out to bid. The County's Public Information Director stated that he was told at a meeting in May or June 2021 that the emergency was over, and so the contract should be publicly bid.³¹ The first bid in July 2021 was cancelled and the contract was rebid a few weeks later in August 2021. When the contract was eventually awarded, the winning bid was \$0.0094 (or less than 1 cent) per one-minute call. By comparison, Dunton's bid for that contract was 4 cents per one-minute call, more than four times the cost of the winning bid. When interviewed by OSC, Dunton told OSC that the markup on her robo-call services was about 40 percent, but she still expressed surprise that the winning bidder was able to provide the service for so much less. The terms of the Dunton emergency "contract"³² were even worse. There was no pricing sheet and there were no fixed call rates—or, if there were, neither the County nor Dunton was able to provide them to OSC. A purchase order from Dunton dated August 17, 2021—just before the contract was put out to bid—for robo-calls from the end of July to the end of August, cost the County \$121,316. If Essex had paid the rate offered by the winning bidder through the competitive process instead, the cost for those calls would have been \$31,275—approximately \$90,000 less.

The County's contract with Dunton demonstrates that excessive emergency contracting without competitive bidding can result in a shocking price tag for taxpayers.

³¹ Neither the Purchasing Director nor the County Administrator could recall a meeting during that timeframe in which it was determined that the "emergency was over." OSC found that no other emergency contracts related to the vaccine program, even contracts for services such as advertisement and public awareness campaigns, were transitioned to public bidding during that time period.

³² There was no pricing sheet for the emergency contract. The price paid by the County on its emergency contract varied depending on the length of the call, but was in all cases significantly more than the winning bid price. Dunton appears to have charged a unit price between a low of 2.8 cents and high of 9.8 cents per call for calls ranging 31 seconds to 159 seconds, or just over two and a half minutes. Calls around the one minute length ranged from 3.5 cents for a 57 second call to 5.5 cents for a 66 second call. The rates are not exactly proportionate to the length of the call, making it difficult to determine the per-minute rate charged by the vendor without a pricing sheet.

C. The County Spent \$17 Million on Staffing Related to its Vaccination Program but Did Not Establish Adequate Controls to Protect Against Fraud, Waste, and Abuse

The County's supervision of the 854 Individual Vendors who supported the vaccination program lacked essential controls, elevating the risk of fraud, waste, and abuse. While the County identified and responded to some documented instances of abuse, it exposed itself to additional risks by failing to take adequate, proactive measures to address systemic shortcomings. These vendors were ultimately paid more than \$17 million by the County, which represented nearly 42 percent of the total cost of the vaccination program.

The vaccination program was initially supported by volunteers, but as the demand for vaccines grew, the County began to retain Individual Vendors paid as "1099 workers," including not only medical professionals to administer vaccines and provide other related services, but also other workers who performed services such as patient check-in and registration, queue management, charting patient information, and greeting visitors. Each Individual Vendor's rate of pay was determined based on their role—in addition to overtime pay (150 percent), non-medical workers were paid \$18 per hour; "site leads," who tracked the number of vaccinated patients and gathered equipment, were paid \$25 per hour; medical workers such as nurses were paid \$50 per hour; and "site supervisors," who had primary responsibility for the vaccination site, were also paid \$50 per hour.³³ Site supervisors served as leaders at the vaccination sites and performed general operational management, including supervising workers, ensuring sufficient coverage, coordinating breaks, preparing end of day numbers, and addressing patient concerns, among other similar duties.

Despite the significant cost of staffing, the County failed to reduce the risk of fraud, waste, and abuse in this area and used inefficient and ineffective timekeeping and attendance practices. OSC found that the County:

- Used an electronic timekeeping system that allowed for remote log-ins from any internet connected device;
- Did not provide on-site site supervisors with access to check vendors' time records for accuracy;
- Used paper sign-in sheets that were incomplete, missing, and riddled with errors;
- Did not adopt policies relating to where or how workers should log time and supervisors' role in overseeing time and attendance;
- Did not verify that vendors were actually on-site;

³³ The County also hired COVID-19 contact tracers for employees, technical back-end assistance staff, and call center staff. However, most of those roles were not relevant to OSC's review unless otherwise noted.

- Did not train site supervisors; and
- Did not address the lack of communication between site supervisors and the payroll department.

These deficiencies resulted in more than theoretical risks—OSC learned of at least three confirmed incidents in which an Individual Vendor, in some cases with the help of a County employee, exploited the gaps in the time and attendance system in order to obtain additional pay. While the County identified these issues, it did very little to reevaluate and remedy any of the foreseeable and known risks related to the time and attendance system.

1. The County's Timekeeping System Lacked Appropriate Controls

When the vaccination program started, the County relied on a manual paper sign-in sheet process to record and pay Individual Vendors, but by April 2021, the County added an electronic timekeeping system, known as the LGS System, to make the tracking and recording of Individual Vendors' time more efficient. Instead, because of the way the County set up the system, the shift to the LGS System increased the risk for fraud, waste, and abuse.

According to the County's Chief Information Officer (CIO), access to the LGS System was initially restricted to only allow time entries from on-site computers. Each fixed vaccine site had dedicated on-site computers for Individual Vendors to clock in and out. This provided an internal measure of corroboration that the worker was on-site and that the timekeeping was an accurate reflection of their work. But shortly after the LGS System was implemented, the County removed those restrictions and opened up the system to permit time to be recorded from any internet-connected device, regardless of physical location.³⁴ This opened up the system to vulnerability, because unless the on-site computer was used to access the LGS System, Essex could not corroborate that the Individual Vendor was on-site.³⁵ To test this, OSC reviewed the IP addresses associated with the timekeeping entries made by every Individual Vendor working at the vaccine sites from April 3, 2021 to August 8, 2023. Based on the data, only slightly more than 50 percent of the time and attendance records could be linked to the on-site computers.

³⁴ The CIO explained this was because County officials realized that certain Individual Vendors would need to move from site to site, and they decided it was necessary to have open access to the system to accommodate this movement. He explained that the vaccine sites were in "chaos mode" and they had to move people around, so they "removed the wall" and allowed Individual Vendors to clock in from anywhere because they did not know where they would be. But each vaccination site, except for the mobile vaccine site, had an on-site computer that could be used to log in to the LGS System. As more and more Individual Vendors recorded time into the LGS System each day, the risk of removing the wall only grew.

³⁵ The on-site computers were also equipped with a device allowing the computer to connect to the internet through a cellular network in the event of a power or other connectivity interruption. The cellular network did not have a fixed IP address. If the cellular network was used, the IP address recorded could not be used to corroborate the location.

Even though the County was able to limit the LGS system to only be accessed through the on-site computers, Essex chose not to do so, even after abuse of the system was uncovered. The CIO also acknowledged that it would have been possible for the County to enact and enforce a policy that required the Individual Vendors to clock in at the fixed on-site computers only, but he stated that it was not done because the County was focused on vaccine accessibility, and he believed that abuse of the system was limited.

The risks of the electronic system from an internal control perspective were identified by others in the County. In fact, the County CFO recommended that Individual Vendors continue to use the paper sign-in sheets as an additional layer of control. The CFO envisioned that Individual Vendors would clock in and out on-site and also sign in and out on a paper sign-in sheet.³⁶ But the sign-in sheets proved ineffective at validating and confirming Individual Vendors' time because of lax enforcement of the policy. OSC reviewed 25 days between April 3, 2021, when the LGS System went live, and April 1, 2022 to see if the LGS System data was supported by paper sign-in sheets.³⁷ None of the days had an equal number of people on sign-in sheets as Individual Vendors clocking hours in the LGS System. Most times, it was far less. This means that on most days, Individual Vendors logged in electronically but did not sign in in person. Worse still, on 6 out of the 25 days reviewed, there were no correlating sign-in sheets at all.

In addition, the sign-in sheets were often missing critical information such as an Individual Vendor's "time in" and "time out." When either the time in or the time out was missing, the sign-in sheet was useless to confirm that the hours recorded in the LGS System were an accurate reflection of the hours actually worked. As an example, on December 17, 2021, an Individual Vendor signed in at 2:01 p.m. but did not sign out. Yet her LGS data had her clocked in at 7:34 a.m.—a 6.5 hour difference. And even where a complete record existed on the paper sign-in sheet, the LGS System data did not agree with the sign-in sheet in at least two instances. On June 18, 2021, an Individual Vendor signed in at 8:03 a.m. and signed out at 9:00 a.m. on the sign-in sheet. Yet the LGS System data associated with that Individual Vendor shows they clocked out at 11:13 a.m., resulting in two unexplained hours. On January 20, 2022, another Individual Vendor signed in at 8:00 a.m. and signed out at 3:30 p.m. on the sign-in sheet. The LGS data shows they clocked out at 5:03 p.m., a difference of 1.5 hours. Thus, while several officials at Essex County pointed to the sign-in sheets as a control to the otherwise open LGS system, it is clear that they were ineffective for that purpose and that the County officials were not using them for their intended purpose. If they had, discrepancies such as these would have justified further review to ensure the time record was accurate and that there was no fraud, waste, or abuse occurring. The County simply failed to implement an effective system for timekeeping with appropriate and routine controls.

2. The County's Timekeeping Policies and Recordkeeping Were Inadequate

Essex also lacked clear policies related to timekeeping or the oversight of time and attendance

³⁶ The CFO, CIO, and County Health Officer all agreed that the maintenance of paper sign-in sheets would have provided an effective control for the LGS System.

³⁷ For many days reviewed, the sign-in sheets appeared to contain the names of Individual Vendors, volunteers, and County staff. However, OSC only counted the total number of people on the sign-in sheets for its review, irrespective of if they could be identified as an Individual Vendor or not.

records. Despite County officials' suggestion that Individual Vendors were required to clock in and out on-site (if not on on-site computers), the only thing resembling a formal, written policy on the topic was an email sent to site supervisors around the time of the County's implementation of the LGS System advising that Individual Vendors should only be clocking in and out on-site. But the email did not specify that the LGS System entries were to be made exclusively on the on-site computers, nor did it direct the site supervisors to monitor whether workers were using the computers to log onto the LGS System.³⁸

The communication notified supervisors about the use of the LGS System, instructing them that paper-based time sheets would no longer be used to record time. The communication did not effectively notify site supervisors of their responsibility to maintain a sign-in sheet that could be used as a control to confirm Individual Vendors' time. Ultimately, no clear policy existed that cemented responsibility for verifying the time and attendance of Individual Vendors.

While County officials claimed that the site supervisors were responsible for monitoring Individual Vendors' time, site supervisors interviewed by OSC denied that they were told it was their responsibility to monitor time and attendance. And there is little evidence that the County communicated those responsibilities, or the purpose of the sign-in sheets, to site supervisors. The site supervisors reported that they did not understand their role as monitoring or approving time and they were not routinely or consistently using sign-in sheets for any purpose. They believed the payroll department was responsible for reconciling time.³⁹ Some site supervisors understood their role as being to remind people to use the sign-in sheets, but they did not check to see if people were there or reconcile the sign-in sheets. Others understood the policy to be that individuals had to sign in and out, but as the supervisor, they believed they had no role in monitoring the sign in or out activity.

In fact, while site supervisors did have access to the paper time records and were present on-site, they did not have access to the LGS System that would have been required for them to review their workers' time and attendance. In other words, a site supervisor could not see when their workers signed in or out in the LGS System and they could not see if an Individual Vendor was logged in on a day that they were not present at the site.

³⁸ Not surprisingly, there was an inconsistent understanding among site supervisors about whether workers were permitted to, or even could, log in remotely. The County Health Officer said that workers were supposed to be signing in at the on-site computers, and that vendors could not use other means to log into LGS. She also said that she did not believe it was possible to use another means to access the LGS system although this was known to the technology department staff who set up the LGS System. Some site supervisors knew Individual Vendors could access the LGS System from a personal device and that many did. Some site supervisors were unaware that remote log-ins were possible but became aware after time abuse was discovered.

³⁹ The payroll department did not routinely use the sign-in sheets to verify or check time Individual Vendors entered into the LGS System. The payroll department's monitoring was limited to instances in which an Individual Vendor failed to sign in or out electronically on a given day. In those instances, the payroll department would check the paper sign-in sheets, if they were available, to verify a clock in or out time.

The County did not provide any formal training to any of the site supervisors interviewed. Generally, they received informal, on-the-job training, some learning from other Individual Vendors. Several site supervisors felt that the lack of training and support was inadequate given the scale and conditions on the ground. Every site supervisor that OSC talked to described chaotic scenes at the vaccine sites, with a large number of people present, including Individual Vendors, volunteers, and other workers provided by a staffing agency, making it difficult to track workers as they came and went. Site supervisors also reported that they had little control over work assignments, some expressing frustration about the lack of communication between site supervisors who were supposed to manage workers and the County employees who were responsible for hiring and onboarding. On occasion, Individual Vendors were dismissed by a site supervisor, and then would report to their assigned duty location the next day having been told by the payroll department to disregard their site supervisor's decision and return to work. Movement between sites was frequent and site supervisors reported not knowing many of the people they supervised and having difficulty tracking who was coming and going.

It appears that these inadequate timekeeping policies meant that neither the payroll department nor the site supervisors were validating the time and attendance records. Site supervisors were present on-site but could not view vendors' time and attendance records on the LGS System. Conversely, the County's payroll department had access to the LGS System and the paper sign-in sheets but did not regularly compare the two, eliminating their value as a meaningful control.

In light of OSC's initial finding that the County's inadequate timekeeping controls led to a high risk of abuse, OSC reviewed data from the County's timekeeping system and other sources and found numerous irregularities that were not previously detected by the County, including:

- Essex did not have a formal policy governing remote work by Individual Vendors; approvals for remote work were not tracked and several vendors continued to work remotely despite the County's initial claim that remote work for the vaccine sites had ended.
- One site supervisor worked remotely for a private employer while at the same time working on-site at the vaccine sites. The County was aware that this vendor was working two jobs simultaneously.
- Eight Individual Vendors were simultaneously employed by the County and another public employer.
 - Evidence suggests two of the eight workers were routinely working their public jobs at the same time they were logging time at the County, thus being paid by both public entities for the same hours.
 - One of these workers teleworked for the County; Essex did not know she was simultaneously working for another public entity.
 - The other worker earned over \$130,000 from Essex in an 11-month period, but the County Health Officer did not know this person or what she did for the vaccination

program. This worker was also simultaneously logging hours with another public employer.

The County therefore spent \$17 million on staffing costs related to the vaccination program but did not have adequate controls in place to properly monitor these expenditures.

In view of these and other findings, OSC has made referrals to the appropriate entities as necessary.

3. The County's Response to the Multiple Instances of Fraud, Waste, and Abuse Was Inadequate to Detect, Address, and Prevent Fraud, Waste, and Abuse

In July 2021, Essex discovered that two Individual Vendors were clocking in and out from remote locations, or being clocked in or out "administratively" while not present on-site, since May 2021, just weeks after the County converted to using the LGS System for Individual Vendors.⁴⁰ An internal investigation confirmed that time records for one Individual Vendor were altered several times by a full-time County employee. Starting in late May through July, the time records for the Individual Vendor were changed (either altered or added) a total of 26 times by the County employee on behalf of the Individual Vendor. The employee explained that the Individual Vendor was authorized to work from home but frequently forgot to clock in and out in the LGS System. IP data confirmed that the Individual Vendor's clock-ins were made remotely. The investigation also revealed that Individual Vendor had a familial relationship to the County employee who altered the timekeeping records.

IP data also confirmed that another Individual Vendor logged in and out off-site many times in July 2021, even though a limited sample of IP data for the Individual Vendor was reviewed. Relying on the IP addresses associated with the clock in and clock outs, the County determined that the Individual Vendor was clocking in every morning mostly from home, and clocking out at various places in New Jersey. Data reviewed by the County revealed only one instance when the Individual Vendor appeared to clock out from the vaccine site. The investigation also revealed that the Individual Vendor logged hours on days she was not scheduled to work. The Individual Vendor explained that she was not able to arrive at work on time, so she logged in remotely from home or would leave early and delegate her responsibilities to others on-site. She stated that it was not clear that she needed to be on-site to clock in and out, and on days she was not scheduled to work, she was "working from home," but the County determined that she had never sought authorization to do so. The County terminated both vendors.

Again, in February 2022, just six months later, the County became aware that a third Individual Vendor was suspected of clocking in off-site and logging hours before her shift began. The concern arose because another independent contractor observed that the Individual Vendor's

⁴⁰ Administrative entries are entries of time that were not recorded by the LGS System when the individual clocked in or out, but are manually added or altered later. Certain County employees had the ability to make such entries to the system. OSC was told that administrative entries often occurred when an individual "missed a punch," requiring a manual entry.

paycheck seemed to be out of proportion to the amount of time she worked and suggested she was receiving pay at a rate that was inconsistent with her job duties. The County again looked at IP data and reviewed other data to confirm that the Individual Vendor was not on-site when she was clocking into the LGS System. The County found that the Individual Vendor was clocking in in the morning but not showing up to the vaccine site until the afternoon when she was expected for her shift. Again, the County terminated the Individual Vendor.

While the County responded appropriately to the above incidents in the short term by investigating them and taking administrative action to dismiss the Individual Vendors involved, Essex made no systemic changes to reduce the ability of Individual Vendors to clock in or out off-site. And there is no evidence that the County took any concerted action to investigate whether additional incidents of timekeeping fraud, waste, and abuse occurred. The County claimed that, as a result, it “implemented new supervisory staffing assignments at the site so strict and close monitoring of vaccination site personnel could be accomplished,” but there is no evidence this occurred.

None of the site supervisors reported any change to the practices or procedures after the first incident, even though they were broadly aware of the issue. The County’s Health Officer stated that after the first incident, she sometimes informally “spot-checked” timekeeping by observing whether a particular person was on-site and then asking someone with access to the LGS System to identify when that person logged into the LGS System. However, the County Health Officer did not perform these checks on any regular interval and could only provide one example of having done so at all.

The email sent to site supervisors around the time of conversion to the LGS System explained that Individual Vendors should only be clocking in on-site, and that the County would be “tracking” the clock-ins and clock-outs to ensure that they were on-site. It does not appear that the County followed through with any monitoring of the timekeeping system. Except for when asked to do so as part of one of the internal investigations into possible time theft by an Individual Vendor discussed above, the County’s technology department did not routinely check IP data for irregularities.

The CIO acknowledged that the decision to allow open access to the LGS System permitted abuse to occur but noted that they fired those that they had caught abusing the system and speculated that the issue was not widespread. However, the County made no real effort to investigate whether the problem was in fact not more widespread, seemingly accepting the risk without assessing its extent. By not evaluating the efficacy of its controls despite the multiple documented instances of abuse, the County exposed itself to unnecessary risk that public funds would be wasted or even stolen.

4. The County Did Not Implement Sufficient Controls to Ensure its 1099 Workers Were Properly Classified

Under state law, an individual providing services for an employer for pay is presumptively considered an employee unless: (a) the individual has been and will continue to be free from control or direction over the performance of work performed, both under contract of service and

in fact; (b) the work is either outside the usual course of the business for which such service is performed, or the work is performed outside of all the places of business of the enterprise for which such service is performed; and (c) the individual is customarily engaged in an independently established trade, occupation, profession, or business.⁴¹

The “ABC test” is a highly fact-sensitive inquiry and is used to determine classification of workers for purposes of various employee protection programs such as the state’s minimum wage law, unemployment compensation law, and disability insurance law. The distinction between regular employee and independent contractor is significant because it impacts an employer’s responsibility to provide those and other workplace protections and the manner in which contributions to social safety net programs are made.⁴² Under state law, employers who incorrectly classify their employees can be subject to penalties, back contributions, or back wages, if applicable.

The County’s CFO stated that he and the Treasurer determined the Individual Vendors were independent contractors and not County employees because they made their own schedule. The County cited no other factors and made no apparent distinction between the different functions Individual Vendors performed, such as nurses and others working at the sites. The County’s apparently limited review and reliance on one data point was likely insufficient because state law presumes regular employee status unless the ABC test is met. The County hired over 800 Individual Vendors for its vaccination program, so the risk of financial consequences, including penalties, if these workers were misclassified is significant. The County should have performed a more robust analysis to ensure its Individual Vendors were properly classified and should have implemented sufficient measures to ensure—consistent with its policy objectives—that the Individual Vendors were not in fact regular employees.

In light of the findings regarding the classification of the Individual Vendors, OSC is referring this matter to the Department of Labor for review and whatever action it deems appropriate.

IV. Essex County’s Response to this Report

OSC sent a discussion draft of this Report to Essex County to provide the County with an opportunity to comment on the facts and issues identified during this review. OSC considered the response and addresses it below, as appropriate.

In its written response, the County takes issue with the report’s conclusion that it overused the emergency procurement method, contending that County officials properly relied on Executive Order 103, which Governor Murphy issued to declare a public health emergency and state of emergency, and the nationwide COVID-19 emergency to “waive” procurement procedures. The County further contends that its continuous use of emergency procurement was not improper because “multi-year de-facto emergency contracts are legal and appropriate so long as the emergency is multi-year which in the case of COVID-19 it clearly was.” But the requirements of

⁴¹ See Hargrove v. Sleepy’s, LLC, 220 N.J. 289 (2015).

⁴² OSC did not make a determination as to whether each Individual Vendor was properly classified, and similarly did not determine if or to what degree there would be a financial or other impact to the County.

the relevant statutes and regulations related to emergency contracting were not relaxed during the COVID-19 pandemic. As noted in the report, the law requires local governments to determine in each instance whether there are sufficient grounds to forgo public bidding and use the emergency contracting procedure. Local governments must also document those decisions. Essex did not comply with these requirements. Conditions related to the COVID-19 pandemic may have justified the use of emergency procurement in some instances, but a blanket waiver of procurement procedures is inconsistent with the law. As this report finds, the County should have transitioned to competitive procurement methods when the needs of the vaccine centers became foreseeable and there was no longer an immediate need for goods and services.

Essex also took exception to the finding that the County's excessive use of emergency procurement methods likely increased costs, contending that increased costs are "speculative" and "not factually supported." The County cited to several policies that it contends likely resulted in cost savings to the County, including electing not to charge County employee salaries to the COVID-19 grant funds and hourly wages for nurses and other vaccine center workers that were below market rate.

It is well-established that public bidding secures for the public the many benefits of open and transparent competition in the award of public funds, including securing the most economical result available. As the report finds, the County circumvented the proper procurement process by continuing emergency contracting for years, long after it should have analyzed its contracts and transitioned to public bidding. This practice makes it difficult to quantify the actual overall impact to the County. In this case, however, the benefits that inure to the public by fostering competition are not merely theoretical. As highlighted in the report, just one contract related to the vaccine centers was publicly bid during this time. That one contract exemplifies the impact of competitive bidding because it resulted in significantly lower costs for the County and demonstrates in very real terms the impact a competitive procurement can have on costs.

As indicated above in Section B(1), OSC found that Dunton Consulting, LLC received a duplicate payment totaling \$110,514.41 in September 2021. In response to this finding, Essex advised OSC that "the vendor has signed a promissory note, personal guaranty and has already started repayment." In light of this unusual arrangement, OSC requested these documents from Essex. See Appendix A. The documents clearly describe the arrangement as a "loan" of \$110,000 from Essex County as lender to Dunton Consulting, LLC as borrower.⁴³ The documents are signed by Rasheida Smith, President, CEO of Dunton Consulting, LLC and attested to by an individual named Michael Del Plato, who was identified as her accountant.⁴⁴ The loan is dated February 22, 2024, more than six months after the date OSC informed Essex County of the improper overpayment. The terms of the loan allow Dunton to retain the funds for an additional five-year period, with repayments of just \$1,000 per month starting March 1, 2024 until February 1, 2029 and a final

⁴³ The New Jersey Constitution prohibits governments, including counties, from loaning public funds to private companies.

⁴⁴ The loan is not signed by anyone from Essex County and Essex County has provided no indication that the loan was presented to or approved by the County Commissioners at a public meeting, how the loan will be accounted for, and whether the County has the proper internal controls to monitor a long-term loan.

payment of \$50,000 on March 1, 2029. These terms are without interest, and the agreement covers less than the total amount of the improper payment, which was \$110,514.41.

Essex's approach to recouping these funds is flawed in several ways and warrants serious reconsideration. First, Dunton has had illegitimate possession of substantial government funds for two and a half years. Yet, rather than demanding an immediate return of the funds, County Counsel reported that the County negotiated with "Smith's representative (her accountant) for the repayment and reached a settlement." Further, despite the plain language of the document, the County asserts that it is not a "loan" but rather a repayment plan and contends that the agreement is in the interest of the County because it avoids the risk and time of litigation to recover the funds and is secured by a personal guaranty. In exchange, the County provided a discount to the amount of the repayment and did not charge interest. A serious concern not addressed by the County is that the County used federal grant funds for this expenditure and should be well aware that an improper overpayment to a vendor is not an allowable use of federal grant funds. The County has not stated how it plans to address this impact to its grant funds.

With regard to OSC's findings related to the staffing at the vaccine centers, the County "acknowledges that its timekeeping system was not fool-proof." However, the County suggests that OSC failed to recognize an additional control it had in place – a site supervisor would notice whenever a chair was empty and they needed to get someone to fill it. This is an ineffective control. As noted in the report, site supervisors lacked access to the LGS system to verify whether an individual was clocked in for the day, and Essex did not have adequate policies regarding supervisors' role in overseeing time and attendance. The County also contends that the risk of fraud, waste, and abuse was not unappreciated by the County, but rather the County considered, but rejected, more foolproof systems due to cost. Nevertheless, the County contends that it directed its Inspector General to "aggressively root out any dishonesty," and the County asserts that its investigation into wrongdoing remains ongoing. As noted in the report, however, the County failed to consider simple, cost-neutral steps such as limiting the sign in/sign out to designated computers. Nor did it reevaluate or adjust its existing policies even as instances of abuse were uncovered. The County did conduct two investigations and take appropriate action to dismiss the three Individual Vendors involved. But, critically, based upon interviews and documentation produced by Essex, no meaningful changes were made to address the underlying issues or to understand the scope of the problem.

The County also disagreed that it did not implement sufficient controls to ensure its Individual Vendors were properly classified, and analogized the vaccine center workers to the facts of Trauma Nurses Inc. v. Board of Review, New Jersey Dep't. of Labor, 242 N.J. Super. 135 (App. Div. 1990). As noted in the report, OSC did not undertake an analysis about whether each vendor was properly classified but, instead, appropriately relied on the CFO's statement that the only consideration was that Individual Vendors made their own schedules. Such a limited review is likely insufficient given that state law requires that all three factors of the ABC test be met to overcome the presumption of employee classification, and Essex made no apparent distinction between the various types of positions and job responsibilities.

V. Recommendations

In view of the findings in this report, OSC recommends that Essex County:

1. Engage an independent external auditor to conduct a reconciliation of vaccination program expenditures to ensure that all payments were appropriate.
2. Utilize all available legal mechanisms, including litigation if necessary, to recover the duplicative payment of \$110,514.41 and other overpayments made to the vendor Dunton Consulting, LLC. Essex should immediately determine the federal grant implications of the improper payment before the grant deadline. Essex should immediately contact the United States Department of Treasury to report that it has been unable to fully recover the improper payment and to request instruction to ensure compliance with grant requirements.
3. Conduct a comprehensive internal review of the vaccination program and prepare a Corrective Action Plan for OSC and the public within 60 days identifying areas where the County's practices and procedures should be improved for future emergencies, specifically addressing the following subjects:
 - a. Ensuring that the emergency procurement process is utilized properly and that all contracting complies with federal procurement standards, the LPCL, and the County's procurement code.
 - b. Strengthening contract monitoring and oversight protocols to ensure high standards of performance by vendors and that all expenditures are proper.
 - c. Implementing effective human resources policies to limit the risk of fraud, waste, and abuse.

PROMISSORY NOTE

Loan Amount: \$110,000.00

This Promissory Note (the "Note") is made on February 22, 2024

BETWEEN the Borrower, DUNTON CONSULTING, LLC, a New Jersey Limited Liability Company, with offices at 28 Washington Street, Suite 100, East Orange, New Jersey 07017,

referred to as the "Borrower,"

AND the Lender, COUNTY OF ESSEX, with offices at 465 Dr. Martin Luther King Jr. Boulevard, Newark, New Jersey 07102,

referred to as the "Lender".

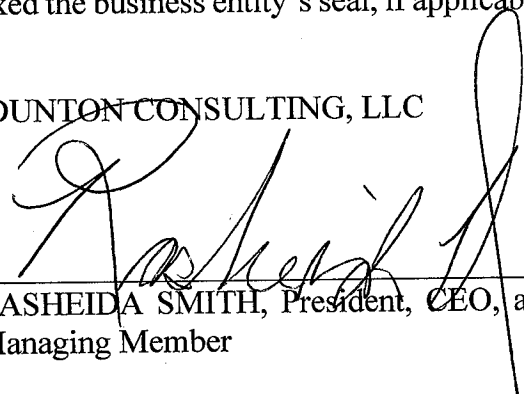
1. **Borrower's Promise to Pay Principal.** In repayment for an overpayment in the amount of \$110,000.00 the Borrower received from the Lender, the Borrower promises to pay \$110,000.00 (the "principal").
2. **Payments.** The Borrower will pay principal only as follows: (a) Sixty (60) monthly installment payments in the sum of \$1,000.00 no later than the first (1st) day of each and every month commencing on March 1, 2024 until February 1, 2029; and (b) a final payment in the sum of \$50,000.00 on March 1, 2029 (the "maturity date"). All payments will be made to the Lender at the address shown above or to a different place upon receipt of written notice from the Lender.
3. **Early Payments.** The Borrower has the right to make payments at any time before they are due. These early payments will mean that this Note will be paid in less time. However, unless the Borrower pays this Note in full, the monthly installment payments will remain the same.
4. **Late Charges for Overdue Payments.** If the Lender has not received any payment within fifteen (15) days after its due date, the Borrower will pay the Lender a late charge of five (5%) percent of the payment. This charge will be paid with the late payment.
5. **Default.** If the Borrower fails to make any payment required by this Note within thirty (30) days after its due date, or if the Borrower fails to keep any other promise it makes in this Note, the Lender may declare that the Borrower is in default on this Note. Upon default, the Borrower must immediately pay the full amount of all unpaid principal; other amounts due under this Note; default interest at the rate of eight (8%) percent per annum on the amount of unpaid principal; and the Lender's costs of collection and reasonable attorney fees.

6. **Waivers.** The Borrower gives up its right to require that the Lender do the following: (a) to demand payment (called "presentment"); (b) to notify the Borrower of nonpayment (called "notice of dishonor"); and (c) to obtain an official certified statement showing nonpayment (called a "protest"). The Lender may exercise any right under this Note, or under any law, even if the Lender has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. Lender does not waive its right to declare that the Borrower is in default by making payments or incurring expenses on the Borrower's behalf.
7. **Each Person Liable.** The Lender may enforce any of the provisions of this Note against any one or more of the Borrowers who sign this Note.
8. **No Oral Changes.** This Note can only be changed by an agreement in writing signed by both the Borrower and the Lender.
9. **No Assignment.** This Note shall not be assigned by the Borrower without the consent of the Lender in writing.
10. **Binding.** This Note shall be binding upon the parties, and their heirs, successors, and assigns. The Borrower represents that the person signing this Note has the authority to bind the Borrower to the terms hereof.
11. **Signatures.** The Borrower agrees to the terms of this Note. If the Borrower is a corporation, limited liability company, or other legal business entity, its proper corporate or business entity officer has signed and has affixed the business entity's seal, if applicable.

ATTEST:

DUNTON CONSULTING, LLC

Michael Ellett

By: 
 RASHEIDA SMITH, President, CEO, and
 Managing Member

STATE OF NEW JERSEY)
) ss:
 COUNTY OF ESSEX)

THERESA MOONEY
 NOTARY PUBLIC
 STATE OF NEW JERSEY
 ID # 50164026
 MY COMMISSION EXPIRES JUN 29, 2026

Sworn or affirmed and subscribed to before me by RASHEIDA SMITH, the authorized officer of Dunton Consulting, LLC, this 11th day of February, 2024.

Theresa Mooney

Notary Public
 My commission expires: 6-29-26 (Seal)

