

FOR CONSIDERATION

October 22, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York (New York County) – Roundabout Theatre Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

General Project Plan

I. Project Summary

Grantee: Roundabout Theatre Company (“Roundabout” or the “Company”)

ESD* Investment: A grant of up to \$250,000 to be used for a portion of the cost of outfitting a new theater.

* The New York State Urban Development Corporation doing business as the Empire State Development Corporation (“ESD” or the “Corporation”)

Project Location: 142 West 42nd Street, New York, New York County

NYS Empire Zone: N/A

Proposed Project: Outfitting a new theater

ESD Incentive Offer Accepted: October 12, 2007

Project Completion: September 2009

Number of Employees at Project Location:
 Initial employment (at time of ESD Incentive Offer): 0
 Current employment level: 107
 Minimum employment on January 1, 2013: 103

Grantee Contact: Julia C. Levy, Executive Director
 231 West 39th Street, Suite 1200
 New York, NY 10018
 Phone: (212) 719-9393
 Fax: (212) 642-9636

Anticipated
 Appropriation
 Source: Empire State Economic Development Fund

ESD Project No.: V814

Project Team:	Origination	Joseph Tazewell
	Project Management	Susan Shaffer
	Affirmative Action	Helen Daniels
	Finance	Amit Nihalani
	Environmental	Soo Kang

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Real Estate Improvements	\$12,000,000
Machinery and Equipment	1,700,000
Soft Costs	<u>\$65,000</u>
Total Project Costs	<u>\$13,765,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$250,000	1.8%
New York City Department of Cultural Affairs Grant	1,700,000	12.4%
The Durst Organization/ Bank of America	6,000,000	43.6%
Company Equity	<u>\$5,815,000</u>	<u>42.2%</u>
Total Project Financing	<u>\$13,765,000</u>	<u>100.0%</u>

III. Project Description

A. Background

Roundabout Theatre Company, a not-for-profit corporation established in 1965, is one of New York City's major cultural institutions and the country's largest not-for-profit theatre. Home to award-winning productions and model education programs, Roundabout strives to re-energize classic plays and musicals and to develop and produce new works by today's great writers and composers. Roundabout serves its 40,000 subscribers in three homes: the American Airlines Theatre, Studio 54, and the Harold and Miriam Steinberg Center for Theatre. Through arts education programs, Roundabout reaches more than 4,800 New York City public high school students and their teachers each year, in addition to national tours, live broadcasts, and other education and outreach programs that reach millions.

Roundabout has a history of successfully revitalizing theatres, having resurrected the American Airlines Theatre and Studio 54 with capital investments of \$68 million since 1997. In 2007, the Durst Organization ("Durst"), a real estate developer, presented Roundabout with the opportunity to help revitalize the historic Henry Miller's Theatre (the "Theatre") on 43rd Street as part of the Bank of America Tower at One Bryant Park, a new 2,100,000-square-foot office building. Durst offered Roundabout a 20-year lease of this new \$38 million, state-of-the-art, 1,055-seat Broadway theatre at \$250,000 per year, well below market rent. Roundabout would be able to incorporate the Theatre, originally constructed in 1918, into its eight-play subscription season with the goal of staging works with potential to extend their run. The Company would also have the option to rent the Theatre when it is not programming the space, thereby exploiting its income potential and strengthening Roundabout's financial sustainability. Net income from operations will be reinvested in Roundabout as a working endowment. Interior outfitting for the theatre would cost \$12 million, of which Roundabout would be required to provide \$6 million; remaining funds would be covered by Durst and Bank of America. To assist Roundabout with the project, which would result in 103 new jobs, ESD offered Roundabout a \$250,000 grant on October 11, 2007. Roundabout accepted on October 12, 2007. ESD's assistance helped leverage private investment, enabling this important cultural facility's continued viability in the Times Square area.

ESD's previous involvement with the project includes approving actions on October 16, 2003, and January 28, 2004, to help facilitate the development of the Bank of America Tower at One Bryant Park. In order to achieve ESD's Land Use Improvement goals in accordance with the UDC Act (i.e., eliminating blight and physical decay, returning legitimate theater use to one of the district's theaters and creating a state-of-the-art Broadway playhouse, developing the area's commercial and retail potential, helping to upgrade public facilities and amenities in the area) and to increase the area's economic contribution to the City, ESD acquired the project location pursuant to the New York State Eminent Domain Procedure Law; overrode the New York City Zoning Resolution and Landmarks Law as they would otherwise apply to the project location; entered into a long-term ground lease and related documents with One Bryant Park LLC; participated in the inducement of \$650,000,000 in Liberty Bonds for use by the One Bryant Park LLC; waived payment of mortgage recording tax on the construction or permanent Liberty Bond financing of up to \$650,000,000; and waived payment of sales and use tax for tenant improvements and build-out of the premises through initial occupancy. As part of the overall construction project, Henry Miller's Theatre, in the northwest corner of the project site, was rebuilt with in-place restoration of the

Theatre's landmarked 43rd Street façade in consultation with the State Office of Parks, Recreation and Historic Preservation under Section 14.09 of the State Historic Preservation Act. Other amenities include a new subway entrance, public pedestrian walkway, and public space.

Roundabout has previously received a Community Enhancement Facilities Enhancement Program grant of \$500,000 for renovation of the American Airlines Theatre and a Strategic Investment Program grant of \$1,000,000 and a Port Authority TEDIR program grant of \$300,000 for acquisition and renovation of Studio 54. All grant funds have been disbursed, and grant terms have been satisfied.

B. The Project

While select interior box office elements were preserved from the original Theatre and will be installed in their original locations, the remainder of the Theatre is new construction. Outfitting began in July 2006 and involved three main areas: theatre operating and support spaces, main public spaces, and miscellaneous spaces such as restrooms and concessions. Work included design and finishes for the stage, orchestra pit, dressing rooms, offices, and cellar spaces as well as seating, platforms, and railings. Machinery and equipment was purchased and installed for lighting, sound, and communication systems. The new Henry Miller's Theatre will have 107 staff on site in October when it opens with Roundabout's revival of the classic musical *Bye Bye Birdie*.

C. Financial Terms and Conditions

1. The Company shall pay a commitment fee of 1% of the \$250,000 capital grant (\$2,500) upon execution of the grant disbursement agreement. In addition, at the time of disbursement, the Company will reimburse ESD for 50% of all out-of-pocket expenses incurred in connection with the project.
2. The Company will demonstrate no material adverse change in its financial condition prior to disbursement.
3. The Company or the Company's shareholders will contribute at least 10% in equity to the project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by ESD.
4. Prior to disbursement, the Company must employ at least the number of Full-time Permanent Employees set forth as the Baseline Employment in the table below. A Full-time Permanent Employee shall mean (a) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties.

5. Up to \$250,000 will be disbursed to Grantee upon documentation of interior construction and outfitting project costs totaling \$13,765,000 (as verified by a Certified Public Accountant's letter), completion of the project substantially as described in these materials, and documentation of the employment of at least 103 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenses must be incurred on or after October 12, 2007, to be considered eligible project costs.
6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$250,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.
7. In consideration for the making of the Grant, Grantee will achieve the Employment Goals set forth in Column B of the table below. If the Full-time Permanent Employee Count for the year prior to the reporting date set forth in Column A of the table below is less than eighty-five percent (85%) of the Employment Goal set forth in Column B (an "Employment Shortfall"), then upon demand by ESD, Grantee shall be obligated to repay to ESD a portion of each disbursement of the Grant, as follows:

The Recapture Amount is based on the time that has lapsed between when the Grant funds were disbursed and when the Employment Shortfall occurred. The Recapture Amount shall be calculated by aggregating the Recapture Amount for each disbursement of the Grant, which in each instance shall be equal to:

- (i) 100% of the disbursed amount if the Employment Shortfall occurred in the calendar year that the disbursement was made, or in the first full calendar year after the disbursement was made;
- (ii) 80% of the disbursed amount if the Employment Shortfall occurred in the second full calendar year after the disbursement was made;
- (iii) 60% of the disbursed amount if the Employment Shortfall occurred in the third full calendar year after the disbursement was made;
- (iv) 40% of the disbursed amount if the Employment Shortfall occurred in the fourth full calendar year after the disbursement was made;
- (v) 20% of the disbursed amount if the Employment Shortfall occurred in the fifth full calendar year after the disbursement was made.

The Grantee's number of Full-time Permanent Employees shall be deemed to be the greater of the number as of the last payroll date in the month of December for such year or the average employment for the 12 month period computed by quarter.

Baseline Employment	0
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A	B
Reporting Date	Employment Goals
February 1, 2011	103
February 1, 2012	103
February 1, 2013	103

IV. Statutory Basis

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms.
As a result of this project, the Company will create 103 new jobs.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.
ESD assistance is needed to support the fundraising efforts of this not-for-profit organization, allowing it to better leverage private support.

3. The project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$3,658,106;
- Fiscal cost to NYS government is estimated at \$250,000;
- Project cost to NYS government per direct job is \$4,140;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$2,677;
- Ratio of project fiscal benefits to costs to NYS government is 14.63:1;
- Fiscal benefits to all governments (state and local) are estimated at \$6,801,477;
- Fiscal cost to all governments is \$2,001,000;
- All government cost per direct job is \$33,136;
- All government cost per total job is \$21,428;
- The fiscal benefit to cost ratio for all governments is 3.40:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$39,702,279, or \$425,153 per job (direct and indirect);
- The economic benefit to cost ratio is 19.84:1;
- Project construction cost is \$12,065,000 which is expected to generate 71 direct job year and 40 indirect job year of employment;
- For every permanent direct job generated by this project, an additional 0.55 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is 1 year.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

4. The requirements of Section 10(g) of the Act are satisfied.
No residential relocation is required because there are no families or individuals residing on the site.

V. Environmental Review

Pursuant to the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617), ESD, as lead agency, completed an environmental review of the One Bryant Park project, which included the reconstruction of the Henry Miller Theater. ESD Directors adopted SEQRA Findings on January 28, 2004, based on the Final Environmental Impact Statement (“FEIS”) for One Bryant Park. By adoption of SEQRA Findings, the Directors certified that the requirements of 6 NYCRR Part 617 have been met. The present request for ESD funding for interior construction and outfitting of the Henry Miller Theater constitutes a Type II action as defined by SEQRA. Therefore, no further environmental review is required in connection with the project.

VI. Affirmative Action

ESD’s Non-Discrimination and Affirmative Action policy will apply. Roundabout Theatre Company is encouraged to include minorities and women in any job opportunities created by the Project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the Project.

VII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

VIII. Additional Submissions to Directors

Resolution
New York State Map
Project Finance Memorandum
Cost-Benefit Analysis

October 22, 2009

New York (New York County) – Roundabout Theatre Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) – Findings and Determinations Pursuant to Sections 16-m and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Roundabout Theatre Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m and 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The proposed project would promote the economic health of New York State by facilitating the creation or retention of jobs or would increase activity within a municipality or region of the state or would enhance or help to maintain the economic viability of family farms;
2. The project would be unlikely to take place in New York State without the requested assistance;
3. The project is reasonably likely to accomplish its stated objectives and that the likely benefits of the project exceed costs;
4. There are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the Corporation does hereby adopt, subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Roundabout Theatre Company a grant for a total amount not to exceed Two Hundred and Fifty Thousand Dollars (\$250,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) may deem appropriate, subject to the availability of funds and the approval of the State Division of the Budget; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, subsequent to the making of the grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grant as he or she may deem necessary or appropriate in the administration of the grant; and be it further

RESOLVED, that the provision of ESD financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the Chairman and Chief Executive Officer-Designate of the Corporation or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

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