

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION**

d/b/a Empire State Development Corporation  
Meeting of the Directors  
New York City Regional Office  
633 Third Avenue  
37<sup>th</sup> Floor Conference Room  
New York, New York 10017

and

Buffalo Regional Office  
95 Perry Street  
Buffalo, New York 14203

and

New York State Department of Financial Services  
1 State Street  
New York, New York 10006

November 4, 2011

**MINUTES**

**In Attendance**

**Directors:**

Kenneth Adams – Acting Chair  
Derrick Cephas  
Paul Ciminelli  
Robert Dyson (via telephone)  
Joyce Miller  
Regina Stone – Designee for Superintendent – Department of  
Financial Services

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**ESD Officers:** Maria Cassidy, Deputy General Counsel  
Joseph Chan, Executive Vice President – Business Development  
Randy Cohen, Vice President – Marketing  
Steven Cohen, Deputy Commissioner & Senior VP – Community  
Economic Development  
Peter Davidson, Executive Director  
Richard Dorado, Senior Counsel  
Leecia Eve, Executive Vice President – Legal and General Counsel  
Justin Ginsburgh, Chief of Staff  
Edwin Lee, Senior Project Manager – Loans and Grants  
Diana Lopez, Executive Vice President - Business Services  
Eileen McEvoy, Corporate Secretary  
Kathleen Mize, Deputy CFO and Controller  
Natasha Pallan, Director – Subsidiary Finance  
Sheila Robinson, Deputy to CFO  
Frances A. Walton, Chief Financial and Administrative Officer  
Simon Wynn, Senior Counsel

**Also Present** Steve Gawlik, Vice President, Capital Projects and Senior Counsel  
– Western New York  
Sam Hoyt, Regional President – Western New York  
The Press  
The Media

The meeting of the Directors of the New York State Urban Development Corporation (“UDC”) d/b/a Empire State Development (“ESD” or the “Corporation”) was called to order at 9:09 a.m. by Acting Chair Adams. It was noted for the record that the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Next, Acting Chair Adams set forth the guidelines regarding comments by the public on matters on the Agenda.

Acting Chair Adams then asked Steve Cohen to present the State Small Business Credit

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Initiative Guidelines item for the Directors’ approval.

Mr. Cohen provided the relevant background information with regard to this request.

Mr. Cohen explained that the Directors were being asked to authorize the promulgation of regulations for the Capital Access Program and the Innovate New York Fund which are two business assistance programs established pursuant to the New York State Urban Development Corporation Act (“UDC Act”) to be operated by the Urban Development Corporation d/b/a Empire State Development and funded with \$55.4 million coming from the State Small Business Credit Initiative, which is a U.S. Department of Treasury Program authorized by the U.S. Small Business Jobs Act of 2010.

Mr. Cohen went on to explain that the State Small Business Credit Initiative was created to support small business credit initiatives in states around the U.S. New York, he continued, submitted an application and was awarded \$55.4 million.

Mr. Cohen then provided an outline of the workings of the first program – the Capital Access Program, a loan portfolio insurance program.

Next, Mr. Cohen provided a description of the second program – the Innovate New York Program, a seed stage equity capital program funded with \$25 million in funds that will be allocated to investment entities around the State.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Mr. Cohen asked if there were any questions and Director Miller asked for clarification with regard to the amount of funds to be provided for the Innovate New York Program. Specifically, she noted that the materials state the amount as \$26 million and in his presentation, Mr. Cohen mentioned \$25 million as the amount of funding.

Mr. Cohen explained that \$25 million is the amount of funds that will be invested in the investment entity and that there is approximately \$1 million in administrative dollars that will come from the State to assist in the operation of that fund.

Director Miller then asked if there will be any return on the investment of these funds should they succeed.

Mr. Cohen answered in the affirmative and noted that it is ESD's expectation and hope that this will not be a grant program but rather an investment program.

Director Miller then suggested coordination with the SUNY and CUNY technology commercialization programs.

Director Ciminelli requested clarification with regard to the structure of the Innovate New York Program. Mr. Cohen confirmed that ESD will not be making direct investments but instead the moneys will be distributed to four or five entities with an existing fund or a new

**DRAFT – SUBJECT TO REVIEW AND REVISION**

fund the entity will create and leverage with other capital.

Director Ciminelli then inquired as to how the moneys will be distributed geographically. Mr. Cohen stated that great effort is being made to ensure fair geographic distribution around the State.

Director Ciminelli then asked if a portion of the funds will be spent on minority and women business enterprises.

Mr. Cohen explained that there is language in the Legislation to make sure that outreach is made to under-served communities in general.

Further discussion was had regarding the structure of the fund and ESD's monitoring role as included in that structure.

Acting Chair Adams noted with regard to the discussion that this involves a national program and therefore the design of the program must comply with the federal program from which the funds come.

Director Cephas then noted that the lending criteria appears to be very broad. In that vein, he asked if there is any type of loan that does not qualify. Mr. Cohen stated that he believes that a long term real estate purchase would not be included.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Director Cephas then asked for an explanation of how the reserve account works.

Mr. Cohen provided a detailed outline of the workings of the reserve account.

In the discussion that followed regarding the reserve account, it was noted that it is not an entirely risk free endeavor. It was further noted, however, that it is the intent of the federal government to accelerate small business lending in situations where lenders are holding back as a result of the credit crisis across the nation.

Following this discussion, the Acting Chair called for any further questions or comments. Director Dyson again noted his belief that the program is not risk free and that of the millions of dollars that will be put in, the chances are that only a third to half of it will work out. Director Dyson added that the advantage is the third that will work out.

Mr. Cohen stated that he believes that the federal government's view is that a large portion of these moneys will be used for loan losses. He further stated that the expectation is that the program will leverage new private dollars at a rate of about 21-1.

The Acting Chair then expressed his agreement with Mr. Cohen's statement and added that if this activity did not have risk, ESD would not be complying with the intent of the law nor with the intent of the program.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Acting Chair Adams further noted that this is a very good model in that ESD is taking federal funds and allocating them to intermediaries with the requisite expertise to ensure the success of this program.

The Acting Chair then called for comments from the public. Hearing none and upon motion duly made and seconded, the following resolution was unanimously adopted:

(Statewide) - State Small Business Credit Initiative - Capital Access Program, New York State Urban Development Corporation Act (“UDC Act”) Section 16-k and Innovate NY Fund, UDC Act Section 16-u - Authorization to Promulgate and Adopt Rules, Regulations and Guidelines; Authorization to Take Related Actions

---

RESOLVED, that the Corporation hereby authorizes the promulgation and adoption of the rule and regulations (the “Rules” and individually, the “Rule”) respectively for the Capital Access Program (the “CAP”) created pursuant to Section 16-k of the New York State Urban Development Corporation Act (the “Act”) and the Innovate NY Fund (the “Fund”) created pursuant to Section 16-u of the Act substantially in the form described and included in the materials presented in this meeting, a copy of which is ordered filed with the records of the Corporation, to provide for the implementation of CAP and the Fund, respectively, in accordance with Section 16-k and 16-n of the Act; and be it further

RESOLVED, that the General Counsel or Deputy General Counsel of the Corporation, or her designee, is authorized to proceed with and make modifications and additions to each Rule as necessary in order to implement the CAP and the Fund and comply with the State Administrative Procedure Act (“SAPA”), including Executive Order 17 (2009) and the emergency process under SAPA, and applicable laws and regulations; and be it further

RESOLVED, that the General Counsel or Deputy General Counsel of the Corporation, or her 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 action as he or she may in his or her sole discretion consider to be necessary or appropriate to effectuate the foregoing resolutions.

\* \* \*

Mr. Steven Cohen then asked the Directors to authorize the Corporation to enter into a

**DRAFT – SUBJECT TO REVIEW AND REVISION**

contract with Cayemitte Group for consulting services in an amount not to exceed \$59,500 in connection with a Bonding Assistance Program.

Mr. Cohen explained, in part, that this Program is the third program under the State Small Business Credit Initiative.

Mr. Cohen noted that the Rules and Regulations for this program will be presented at a future Directors' meeting.

The program, he explained, involves providing letters of credit of up to 30 percent to surety companies to assist small and minority and women contractors in securing surety bonds on government contracts and potentially to expand to private contracts as well.

Mr. Cohen went on to note that this program is new and that few other states have similar programs. He indicated that the Corporation would need assistance in setting up the program and that the Cayemitte Group has unique experience in New York State in assisting companies to set up programs of this type. ESD's program, he continued, was modeled in part on the State's Dormitory Authority program for which the Cayemitte Group was a consultant.

Following Mr. Cohen's full presentation, Acting Chair Adams called for questions or comments. Director Ciminelli, noted his belief, as someone with longstanding experience in construction, that this is a great program. He noted the problem that minority and women

**DRAFT – SUBJECT TO REVIEW AND REVISION**

business enterprises have in obtaining the bonding capacity to bid State work lies in the fact that they are not big enough and the only way they are going to grow is to do lots of State work.

Acting Chair Adams thanked Director Ciminelli for his comments. The Acting Chair went on to note his belief in the importance of ESD partnering with the Dormitory Authority on this matter as he views that Authority as the Agency in State Government that has the greatest number of best practices when it comes to working with MWBE firms, particularly in construction.

Among other things, Acting Chair Adams noted that the Governor encourages State Commissioners to work in collaboration agency to agency whenever possible to explore the best practices of other agencies and not reinvent the wheel.

The Acting Chair then asked when the program will be up and running.

Mr. Cohen stated that staff would like to have the infrastructure in place to do the first letter of offer by the end of the year.

Acting Chair Adams then asked if the Cayemitte Group is itself a MWBE firm. Mr. Cohen stated that they are a New York State certified MWBE firm.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

There being no further questions or comments from the Directors or from the public, and upon motion duly made and seconded, the following resolution was unanimously adopted:

State Small Business Credit Initiative – Bonding Assistance Program – Authorization to Enter into a Contract with The Cayemitte Group for Consulting Services and to Take Related Actions

---

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds The Cayemitte Group to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a contract with The Cayemitte Group for consulting services, the cost of which is not to exceed Fifty-Nine Thousand Five Hundred Dollars (\$59,500) for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolutions.

\* \* \*

Next, Mr. Harvey Cohen asked the Directors to authorize ESD to enter into a contract with BBDO USA LLC for services as a full service Advertising Marketing, Branding, Media and Communications Agency in connection with the “New York Open for Business” marketing campaign.

Before providing the background information with regard to this request, Mr. Cohen made personal statements with regard to the need for this project to assist the people in New York who are hurting because they need jobs.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

This endeavor, he continued, will serve to get the message out to businesses and to people in general to have faith that the State is turning things around.

Mr. Cohen went on to speak positively about the marketing team that was selected for consideration for approval by the ESD Directors.

Mr. Cohen then presented the specifics of the project explaining that since his election, Governor Cuomo has implemented a number of initiatives to make New York State a more attractive place for businesses to locate and grow, including the adoption of a local property tax cap and reshaping the way the State supports and fosters economic activity through the creation of Regional Economic Development Councils.

An important aspect of the economic agenda, Mr. Cohen continued, is communicating to business leaders across the world that New York State is now open for business.

To assist in this initiative, Mr. Cohen explained, it is proposed that ESD enter into a contract for a full-service advertising agency to develop an integrated market campaign that communicates the advantages of doing business in New York State.

The proposed contract, he continued, will have a maximum cost of \$50 million to be paid by a combination of appropriated corporate and departmental funds as well as cost recovery funds directed by the Division of Budget to this project.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Mr. Cohen further noted that the contract term is for two years from the date of execution with the option on the part of ESD to extend for two further periods of one year each.

Among other things, Mr. Cohen explained in detail the process involved in selecting this team and further noted that the Directors are also being asked to make a determination of responsibility with respect to the proposed contractor.

Following the presentation, the Acting Chair called for questions or comments. Director Miller asked if the \$50 million contract included the media budget and Mr. Cohen stated that the media budget is included in the contract. He added that the \$50 million will go towards the expenditures of the campaign.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION – Authorization to Enter into a Contract with BBDO USA LLC to provide Services as a Full Service Advertising, Marketing, Branding, Media and Communications Agency, and to Take Related Actions**

---

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds BBDO USA LLC to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with BBDO USA LLC in an amount not to exceed Fifty Million Dollars (\$50,000,000.00) and for a term of two

**DRAFT – SUBJECT TO REVIEW AND REVISION**

years with two one-year extensions at the option of the Corporation, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

\* \* \*

Before closing the meeting, Acting Chair Adams noted that Leecia Eve has been asked by Governor Cuomo to serve as his new Secretary for Economic Development.

Acting Chair Adams further stated that we share her honor and her excitement about this new role through which she will continue to be a forceful advocate for the Directors and for ESD.

There being no further business, the meeting was adjourned at 9:53 a.m.

Respectfully submitted,

Eileen McEvoy  
Corporate Secretary