

**NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a Empire State Development**

Empire State Development works to promote business investment and growth that leads to job creation and prosperous communities across New York State

Meeting of the Directors

Thursday

May 17, 2012 – 10:30 a.m.

AGENDA

FOR CONSIDERATION

I. CORPORATE ACTION

- A. Approval of Minutes of the April 17, 2012 Directors' Meeting (Corporate Action)

II. DISCRETIONARY PROJECTS

NEW YORK CITY REGION

- A. Bronx (New York City Region – Bronx County) – New York Botanical Garden DRF Capital – Downstate Revitalization Fund – Infrastructure Investment (Convertible Loan) - Findings and Determinations Pursuant to Sections 16-r and 10(g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Loan and to Take Related Actions

WESTERN NEW YORK REGION

- B. Lackawanna (Western New York Region – Erie County) - Alliance Innovative Manufacturing 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

II. **DISCRETIONARY PROJECTS – Continued**

FINGER LAKES REGION

- C. Macedon (Finger Lakes Region – Wayne County) - Pliant Capital I – 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

DISCRETIONARY PROJECTS CONSENT CALENDAR

- D. Discretionary Projects Consent Calendar – Findings and Determinations Pursuant to Sections 10(g) and 16-m of the Act; Authorization to Adopt the Proposed General Project Plans; Authorization to Make Grants and to Take Related Actions; Determination of No Significant Effect on the Environment

General Development Financing Projects

- A. Bonide Products Capital (Oneida County) - \$100,000
 B. Liberty Fresh Farms Capital (Orleans County) - \$100,000
 C. Pliant Capital II (Wayne County) - \$40,000

III. **NON-DISCRETIONARY PROJECTS**

- A. Non-Discretionary Projects – Land Use Improvement Project Findings and Determinations Pursuant to Sections 10(c) and 10(g) of the Act; Authorization to Adopt the Proposed General Project Plans; Authorization to Make Grants and to Take Related Actions

Empire Opportunity Fund (Executive)

- A. SIDA – Tops Market - Upstate City-by-City EOF Capital - (Onondaga County) - \$0

Local Assistance (Senate)

- B. GLDC-Griffiss Air Force Base Redevelopment Capital (Oneida County) - \$125,000

Community Capital Assistance Program (Senate)

- C. HCA – Safety Improvements Capital (Broome County) - \$50,000
 D. Smithtown Performing Arts Council – Facility Improvements Capital (Suffolk County) - \$50,000
 E. Village of Airmont – Road Improvements Capital (Rockland County) - \$50,000

IV. ADMINISTRATIVE ACTIONS

- A. Performance Measurement Report – Acceptance of Annual Performance Measurement Report for FY 2011-2012; Authorization to Take Related Actions
- B. Extension of the Contract with BLX Group LLC – Authorization to Amend the Contract for Arbitrage Compliance Services Consultant and to Take Related Actions
- C. Land Bank Program – Approval of Land Bank Applications; Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

V. INFORMATION

- A. Standard Form Contract for Goods and Services; and Standard Retainer Agreement for Professional Services (Law Firms)
- B. President's Report (Oral)

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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

37th Floor Conference Room

New York, New York 10017

and

Syracuse Regional Office

620 Erie Boulevard West

Syracuse, New York 13204

and

Buffalo Regional Office

95 Perry Street

Buffalo, New York 14203

April 17, 2012

MINUTES

In Attendance

Directors:

Julie Shimer – Chair

Kenneth Adams

Robert Dyson

Joyce Miller

Anthony Albanese – Designee for Superintendent – Department
of Financial Services

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Present for ESD: Maria Cassidy, Deputy General Counsel
Steve Cohen, Deputy Commissioner and Senior Vice President
Richard Dorado, Senior Counsel
Vikas Gera, Project Manager – Affirmative Action
Edwin Lee, Senior Project Manager – Loans and Grants
Sheri Lippowitsch, Vice President – Loans and Grants
Eileen McEvoy, Corporate Secretary
Kathleen Mize, Deputy CFO and Controller
Natasha Pallan, Director – Subsidiary Finance
Sheila Robinson, Deputy to CFO
Susan Shaffer, Vice President – Loans and Grants
Frances A. Walton, Chief Financial and Administrative Officer

Also Present Sam Hoyt, President - Western New York Regional Office
James Fayle, Director - Central New York Regional Office
Steve Gawlik, Vice President – Capital Projects and Senior Counsel
– Western New York Regional Office
Jeff Janiszewski, Vice President – Strategic Business Development
Kenneth McLaughlin, Director - Southern Tier Regional Office
Christina Orsi, Director - Western New York Regional Office

Also Present: 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 10:31 a.m. by Chair Shimer. 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, Chair Shimer set forth the guidelines regarding comments by the public on matters on the Agenda.

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Chair Shimer then asked the Directors to approve the Minutes of the March 27, 2012 Directors' meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 27, 2012 MEETING OF THE DIRECTORS OF THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on March 27, 2012, as presented to this meeting, are hereby approved and all actions taken by the Directors presented at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

The Chair then asked Mr. Lee to present a summary of the Discretionary Project items on the Agenda. Chair Shimer explained that following Mr. Lee's brief presentation, she would call upon the individual Regional Directors or their representatives to present the projects from their region.

Mr. Lee noted that the Directors are being asked to approve 16 projects in total. Six New York investments totaling \$26,500,000 for projects located throughout the State, three Regional Council Awards totaling \$8,000,000 for projects located in the Southern Tier Region, six grants totaling \$4,750,000 from the Economic Development Fund for projects located in Central New York, the Finger Lakes, the Mohawk Valley and Western New York Regions, and one Economic Development Purposes Fund Grant for \$1,200,000 for a project located in the North County Region. Mr. Lee added that these projects will leverage over \$259 million of

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individual investments and will assist in retaining 2,010 jobs and in creating approximately 153 jobs in New York State.

Following Mr. Lee’s summary, the Chair asked Mr. Cohen to present the Innovate New York Fund program.

Mr. Cohen explained the general workings of this fund as well as of the detailed process involved in the selection of awardees.

Among the many things considered, Mr. Cohen explained, were the management and board capacity of each company, geographic distribution factors and industry representation.

Mr. Cohen noted with regard to all six awardees being recommended, that they are quality investment entities that offer ESD the opportunity, not just to invest in small companies to create jobs and to keep technology businesses and other high-growth businesses in New York State, but also to ensure that ESD gets as much money back as possible so that in the future, ESD can make another round of Innovate New York investments.

Mr. Cohen then provided detailed background information on each of the six entities selected; namely Canrock Ventures, LLC; Cayuga Venture CVF IV, LP; Excell Partners, LLC; Golden Seeds; SCP Buffalo Incubator LP; and Stonehenge Capital Company.

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Following Mr. Cohen’s presentation, Director Dyson asked how ESD follows up on these entities. Mr. Cohen explained, among other things, that ESD will have an investor agreement with each entity and each entity will provide a report on their investments at least two times a year.

Mr. Cohen further discussed the fact that this is the New York version of a national program launched by the Obama Administration and as such, is overseen by the U.S. Treasury Department.

At Director Adams’ request, Mr. Cohen provided a brief outline of what some of the other States are doing with regard to this initiative.

Director Miller asked, with regard to reporting requirements, that the reports be quarterly rather than semi-annually to better serve the Directors regarding any responsibility they may have in this regard.

Director Miller also asked if it would be possible for the Directors to also be informed with regard to the entities’ members and whether or not the program is working and if there are any problems.

Director Miller further asked for information as to how the equity investment program works in the context of using government money and what the return is. Director Miller then

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asked if there is a return to the State and the federal government on their investment.

Mr. Cohen stated that staff will provide quarterly reports and regular updates to the Directors. Mr. Cohen continued and explained the structure as being similar to a limited partnership agreement.

Typically, Mr. Cohen explained, the entity will invest these amounts subject to some capital calls for management expenses which would come out of the total amount invested in the funds. ESD will get returns on that investment once the amount of the initial investment in the fund is returned. He further explained that there would be a split of the capital gains between the investment entity and the State. It is hoped, he added, that there will be significant money returned so that ESD can do this again.

Mr. Cohen further stated that this is a grant from the federal government once the money is invested in these funds, the returns come back to the State and are the State's to keep.

Following the full presentation, a further discussion was had with regard to, among other things, whether it is more economically prudent for the State to seek to continue to have a role in the funded companies after they have been sold or if it is wiser for the State to take all of the money out as soon as allowable and reinvest it in other seed-stage companies.

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Following that discussion, Chair Shimer called for any further questions or comments.

Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Statewide - Innovate NY Fund program - Authorization to Enter into Contracts with Awardees; Authorization to Disburse Funds; and Authorization 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 (the “Materials”), relating to the Innovate NY Fund Program (the “Fund”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced by the project; and be it further

RESOLVED, on the basis of the Materials, the Corporation is authorized to enter into investor agreements and related documentation with the investment entities named in the Materials and provide them funding, not to exceed in aggregate \$25,000,000 funded by Innovate NY program funds and \$1,500,000 from the SBTIF eligible to fund the Project; and be it further

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

RESOLVED, that the provision by the Corporation financial assistance is expressly contingent upon: (1) the approval of the Public Authorities Control Board, if applicable; (2) receipt of all other necessary approvals; and (3) the availability of funds and the approval of the State Division of the Budget, if applicable; and be it further

RESOLVED, that the President and Chief Executive Officer 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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Chair Shimer then asked Mr. McLaughlin, the Director of the Southern Tier Regional

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Office, to present the next three items on the Agenda.

Mr. McLaughlin explained that these three items represented the first group of Regional Council Awards to be presented to the Directors.

First, Mr. McLaughlin asked the Directors to approve a \$3,000,000 grant to the Southern Tier Regional Economic Development Corporation (“STREDC”) to establish the Rural Initiative Fund Program. This fund, he continued, will provide low interest loans and grants which will reduce financial risk and increase sustainability of agriculture and forestry ventures. The eligible applicants, Mr. McLaughlin noted, will be new and existing agriculture and forest-based businesses.

Next, Mr. McLaughlin asked the Directors to approve a \$2,500,000 to STREDC to be used to establish a Community Revitalization Program which will provide low interest loans and grants to revitalize downtown, rural and neighborhood centers. The eligible applicants, Mr. McLaughlin explained, will include municipalities, IDA’s and other economic development entities.

Lastly, Mr. McLaughlin asked the Directors to approve a \$2,500,000 grant to STREDC to be used to establish the Shovel Ready Program which will fund low interest loans to facilitate shovel ready sites for development. The eligible applicants, he noted, will include municipalities, chambers of commerce and local development corporations.

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Following the full presentation, the Chair called for questions or comments.

Director Adams noted that setting up these local funds was a rather unique approach and he asked if any of the other nine Regional Councils will be following the Southern Tier’s lead on this.

Mr. McLaughlin stated that he believes a lot of his counter parts are looking into this approach. Mr. McLaughlin went on to state his belief that this will become a priority in a lot of the other regions.

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

Regional Council Award - Southern Tier Region - Southern Tier Regional Economic Development Corporation – Rural Initiative Fund Program – Economic Development Purposes Fund (Capital Grant) - Findings and Determinations Pursuant to Section 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 Regional Council Award - Southern Tier Region - Southern Tier Regional Economic Development Corporation – Rural Initiative Fund Program – Economic Development Purposes Fund (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area.

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 President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with

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such changes, is hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to the Southern Tier Regional Economic Development Corporation a grant for a total amount not to exceed Three Million Dollars (\$3,000,000) from the Economic Development Purposes 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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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Regional Council Award - Southern Tier Region – Southern Tier Regional Economic Development Corporation - Community Revitalization Program – Regional Council Capital Fund (Capital Grant) – Findings and Determinations Pursuant to Section 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 Regional Council Award - Southern Tier Region – Southern Tier Regional Economic Development Corporation - Community Revitalization Program – Regional Council Capital Fund (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State

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Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area.

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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to the Southern Tier Regional Economic Development Corporation a grant for a total amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) from the Regional Council Capital 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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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Regional Council Award - Southern Tier Region - Southern Tier Regional Economic Development Corporation – Shovel Ready Program – Regional Council Capital Fund (Capital Grant) – Findings and Determinations Pursuant to Section 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 Regional Council Award - Southern Tier Southern Tier Region - Southern Tier Regional Economic Development Corporation – Shovel Ready Program – Regional Council Capital Fund (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area.

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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to the Southern Tier Regional Economic Development Corporation a grant for a total amount not to exceed Two Million Five Hundred Thousand Dollars (\$2,500,000) from the Regional Council Capital 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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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Chair Shimer then asked Ms. Orsi to present the SKF Heat Transfer EDF MAP Project for the Directors' consideration.

Ms. Orsi explained that the Directors were being asked to authorize ESD to make a \$1,375,000 grant to SKF, a manufacturer of custom engineered ball and roller bearings primarily for the aero-space industry. Ms. Orsi further explained that the Company is based in Chautauqua County and that the funds will be used for a portion of the costs associated with the acquisition and installation of new machinery and equipment.

Ms. Orsi went on to provide historical information explaining that the project dates back to 2008 when the parent corporation approached ESD and said that they were consolidating facilities. The Corporation, she explained, had a facility in Falconer in Chautauqua County and one in Jamestown that were rather dated and inefficient. SKF's parent needed to develop a new facility and they were considering either Chautauqua County or Charleston, South Carolina, where they also have a facility.

In the past, Ms. Orsi added, SKF had actually relocated one component of their operation from Jamestown to South Carolina; so a very real risk existed that SKF would move everything to South Carolina where one of their major customers is located.

With ESD's assistance, Ms. Orsi explained, SKF chose to build a brand new facility

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equipped with new machinery and equipment in Falconer, New York securing their location in Chautauqua County for the long term.

Ms. Orsi further noted that in addition to the \$1,375,000 EDF grant, ESD also provided an Upstate Blueprint grant in the same amount. She added that two \$250,000 grants were also provided from various members of the legislature.

The project, Ms. Orsi added, is expected to retain 600 jobs in the area.

Following this presentation, Chair Shimer called for questions or comment.

Director Miller asked what will happen to the employees in Jamestown. Ms. Orsi explained that Falconer is ten minutes from Jamestown and the Jamestown employees will be part of the new Falconer facility.

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

Falconer (Western New York Region – Chautauqua County) – SKF Heat Transfer MAP 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 SKF Heat Transfer MAP Capital – Empire State Economic Development Fund – General Development Financing (Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Sections 16-m

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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 President and Chief Operating Officer 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 President and Chief Operating Officer 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, the President and Chief Operating Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to SKF USA Inc. d/b/a SKF Aeroengine North America a grant for a total amount not to exceed One Million Three Hundred Seventy-Five Thousand Dollars (\$1,375,000) 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 President and Chief Operating Officer 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 President and Chief Operating Officer 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

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RESOLVED, that the President and Chief Operating Officer 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.

* * *

Mr. Janiszewski then presented the Clinton Industrial Development Acquisition (“CIDA”) working capital grant item for the Directors’ approval.

Mr. Janiszewski provided extensive background information with regard to this request. Among other things, Mr. Janiszewski noted that in 2005 Wyeth decided to phase out its pharmaceutical plant in Clinton County which had employed 4,000 people. Shortly thereafter, Wyeth was purchased by Pfizer, located in the same general area and employing approximately 6,000 people.

Over time however, Mr. Janiszewski added, the Company downsized and the Wyeth Research and Development and Manufacturing plant was slated for closure.

Mr. Janiszewski further explained that the Wyeth facility has closed and Pfizer has attempted to sell it but has so far not been successful because of its remote location. Mr. Janiszewski went on to note that because the Wyeth facility costs Pfizer \$2 million a year to carry, they are anxious to sell it and therefore, authorized ESD, for a short period of time, to offer it for one dollar to any entity ESD deemed to be a responsible party to acquire and redevelop it. The window, Mr. Janiszewski noted, was very short and Pfizer began to talk about

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holding an auction.

At the request of ESD, Mr. Janiszewski explained, Pfizer has delayed the auction and CIDA will acquire the facility from Pfizer for a nominal sum.

Mr. Janiszewski further explained that ESD will provide a \$1.2 million working capital grant to CIDA for operational costs while the facility is being marketed to a new end user.

Director Adams asked if it was correct that the IDA will handle the maintenance of the building and that ESD will have no property management role. Mr. Janiszewski stated that that was correct.

Director Miller asked if there is a potential market for this building and Mr. Janiszewski stated that there are some prospects that are actively looking at the property.

Following the full presentation, the Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Chazy (North Country – Clinton County) – Clinton Industrial Development Acquisition Working Capital – Economic Development Purposes Fund (Working Capital Grant) – Findings and Determinations Pursuant to Section 10 (g) of the Act; 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

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hereby ordered filed with the records of the Corporation, relating to the Clinton Industrial Development Acquisition Working Capital – Economic Development Purposes Fund (Working Capital Grant) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Clinton Industrial Development Acquisition, LLC a grant for a total amount not to exceed One Million Two Hundred Thousand Dollars (\$1,200,000) from the Economic Development Purposes 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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.

* * *

Chair Shimer then asked Mr. Fayle to present the Huhtamaki EDF MAP Project for the Directors’ consideration.

Mr. Fayle explained that the Directors were being asked to approve a \$500,000 grant to Huhtamaki on a \$6.2 million project, which is located in Oswego County.

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The proceeds, he continued, were used to purchase lexographic printing machinery and equipment which will be used to increase production, add efficiency and reduce waste.

Mr. Fayle added that the grant is from ESD’s EDF Manufacturing Assistance Program (MAP), the purpose of which is to incentivize and assist companies in replacing outdated equipment to increase their efficiency and reduce waste. As such, the MAP program, he continued, does not focus on job creation. Mr. Fayle further noted that the Company will retain 631 jobs and has so far reached its efficiency and waste reduction requirements based on the grant and is moving forward.

Following the full presentation, the Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Fulton (Central New York Region - Oswego County) - Huhtamaki MAP 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 Huhtamaki MAP 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;

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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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Huhtamaki, Inc. a grant for a total amount not to exceed Five Hundred Thousand Dollars (\$500,000) 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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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Next, Mr. McNary asked the Directors to approve a \$175,000 capital grant to Empire Fruit Growers (“EFG”), a for-profit, privately-owned apple packing and processing and marketing facility in Wayne County.

Mr. McNary further noted that the grant will be used for a portion of the costs associated with the purchase of new machinery and equipment.

Mr. McNary explained that the Company’s existing facility was near the end of its useful life and due to the age of the facility, EFG was no longer able to meet food safety requirements at that location. As a result, Mr. McNary continued, the apple packing used to take place in Pennsylvania.

Mr. McNary further explained that ESD’s incentive offer helps to lower costs and make EFG’s facility more competitive. As a result, the Company more than doubled the manufacturing and distribution of packed boxes, from 300,000 to 700,000 packed boxes of apples per year.

Mr. McNary added that the Company will create 18 new jobs and retain 26 at risk jobs in the area.

Following the full presentation, the Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously

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adopted:

Huron (Finger Lakes –Wayne County) – Empire Fruit Growers 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 Empire Fruit Growers 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Empire Fruit Growers Co-Op, Inc. a grant for a total amount not to exceed One Hundred Seventy Five Thousand Dollars (\$175,000) from the Empire State Economic Development Fund, for the purposes, and substantially on the terms and conditions, set forth in

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the materials presented to this meeting, with such changes as the President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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.

* * *

Huron (Finger Lakes – Wayne County) – Empire Fruit Growers Capital Empire State Economic Development Fund – General Development Financing (Capital Grant) – Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Empire Fruit Growers Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *

Mr. Lee then presented the Discretionary Projects Consent Calendar for the Directors approval.

Mr. Lee explained that there were two projects for consideration.

The first project, he continued, is a request for a \$100,000 grant to Precisionmatics,

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located in Herkimer County. The Company, he noted, is a manufacturer of customized machine parts used in several industries including the aerospace and medical industries.

In order to remain competitive, Mr. Lee explained, the Company needed to purchase new machinery and equipment and upgrade its facilities. An \$860,000 project, Mr. Lee noted, was completed in November 2011. He added that 47 jobs have been retained and that the Company has already exceeded its goal by 8 jobs.

The second project, Mr. Lee continued, is a request for a \$75,000 grant to D4, LLC. The Company, he noted, is a discovery management and litigation support company with locations in six states, including New York.

Mr. Lee further explained that the Company was seeking to locate a new data center and was considering locations in New York and California.

As a result of ESD's offer, Mr. Lee added, D4 purchased, renovated and equipped an 11,000 square foot facility in Rochester for this project.

The total project costs, Mr. Lee explained, were nearly \$1.7 million and the project was completed in October of 2011. The Company, Mr. Lee continued, has retained 55 jobs and expects to create 30 jobs by 2014.

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Following the full presentation, the Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Empire State Economic Development Fund – 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; Determination of No Significant Effect on the Environment

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 Empire State Economic Development Fund Projects identified below (the “Projects”), the Corporation hereby determines pursuant to Section 16-m of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The Projects 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 Projects would be unlikely to take place in New York State without the requested assistance.
3. The Projects are reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.
4. There are no families or individuals to be displaced from the project area(s); and be it further

RESOLVED, that with respect to the General Development Financing Capital Projects, 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 Projects submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, are hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s), that no substantive negative testimony or comment has been received at the public hearings held on the Plan, such Plan shall be effective at the conclusion of such hearings, and that upon such written findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is,

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authorized to make a grant to the party and for the amount listed below 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 President and Chief Executive Officer 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 President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grants, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grants as he or she may deem necessary or appropriate in the administration of the grants; 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;

Empire State Economic Development Fund

	Project Name	Proj #	Grantee	Assistance up to
	General Development Financing Projects			
A.	Precisionmatics Capital	X328	Precisionmatics Co., Inc.	\$100,000
B.	D4 Capital	X249	D4, LLC	75,000
			TOTAL	\$175,000

and be it further

RESOLVED, that the President and Chief Executive Officer 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.

* * *

Next, Ms. Lippowitsch presented the April Non-Discretionary Consent Calendar for approval.

Ms. Lippowitsch noted that the Directors were being asked to approve two projects

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totaling \$2,000,000 in assistance authorized or re-appropriated in the fiscal year 2012-2013 New York State budget.

Ms. Lippowitsch went on to explain that due diligence has been exercised by ESD staff and that the recipients have provided ESD with the required disclosure and accountability certifications.

The first item, Ms. Lippowitsch explained, involves a grant of \$2,000,000 to the Genesee Gateway LDC for a portion of the costs of land acquisition, design, engineering infrastructure and other related costs to prepare and market an advanced manufacturing mega site, the Western New York Science Technology and Advanced Manufacturing Park in the Town of Alabama in Genesee County.

Ms. Lippowitsch then noted that the second item involves a modification to the Town of Islip Drainage Improvement Project in Suffolk County.

This \$440,000 grant, Ms. Lippowitsch explained, was originally approved by the Directors in June of 2002. The town, she noted, is requesting a change in the location in order to address a higher priority flooding area. Ms. Lippowitsch further noted that the revised budget reflects cost increases since the project's original approval.

In closing, Ms. Lippowitsch explained that today's requested action does not involve the

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authorization of new funding.

Following the full presentation, the Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was adopted:

Local Assistance - Findings and Determinations Pursuant to Section 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions; Adoption of Findings Pursuant to the State Environmental Quality Review Act

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 Local Assistance Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area(s); and be it further

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

RESOLVED, that upon written findings of the President and Chief Executive Officer 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 findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make a grant to the party and for the amount listed below from Local Assistance, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer 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 President and Chief Executive Officer 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

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approval of the Public Authorities Control Board, if applicable, and (2) receipt of all other necessary approvals; and be it further

Local Assistance – Senate – Project Summary Table

	Project Name	Proj #	Grantee	Assistance up to
A	GGLDC – Western New York Science, Technology and Advanced Manufacturing Park Capital	X544	Genesee Gateway Local Development Corporation	2,000,000
			TOTAL	\$2,000,000

RESOLVED, that the President and Chief Executive Officer 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.

* * *

Strategic Investment Program – Authorization to Amend the Project Scope;
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 Strategic Investment Program Project (the “Project”), in accordance with Chapter 55 of the Laws of 2000, the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area(s); and be it further

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

RESOLVED, that upon written finding of the President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to

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make a grant to the party and for the amount listed below from the Strategic Investment Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer 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 President and Chief Executive Officer 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

Strategic Investment Program – Senate – Project Summary Table

	Project Name	Proj #	Grantee	Assistance up to
B	Town of Islip – Drainage Improvements Capital	P720	Town of Islip	0 ¹
	1 - this \$440,000 grant was approved by the ESD Directors on June 26, 2002. The subject request is to amend the project scope, and does not involve new funding.			
			TOTAL	\$0

RESOLVED, that the President and Chief Executive Officer 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.

* * *

Mr. Gera provided an informational report about ESD’s Procurement Contracts. Among other things, Mr. Gera noted with regard to MWBE’s, that during the third quarter of the fiscal year 2011-2012, ESD and its subsidiaries have committed approximately \$440,000 of a total

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\$87.3 million in procurements contracts and amendments. He added that this is an increase from the third quarter of the previous fiscal year, when ESD received commitments totaling approximately \$250,000.

Kenneth Adams reminded the Directors of the Governor’s request that all State agencies and authorities achieve a goal of 20 percent in procurement opportunities for New York State Certified MWBE’s and that it is gratifying that ESD has been able to meet those objectives.

Kenneth Adams provided the President’s Report. Director Adams noted that the budget was adopted by the legislature – the earliest any New York State budget has been adopted since 1983. Director Adams further noted that the early adoption of this very fiscally disciplined budget was well met by the business community. He added that the budget advances numerous economic development initiatives and that ESD will have a role in many of those initiatives.

Director Adams then outlined certain of the initiatives and ESD’s role in moving them forward. These new programs, Director Adams noted, are in addition to ESD’s staff’s core responsibilities and it is an honor for the Corporation to serve in so many ways.

Among the initiatives mentioned by Director Adams were \$720 million in newly allocated funds for Regional Councils, the New York Open for Business Campaign which is advancing in full force and the Energy Highway Task Force which involves five State agencies

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and is building out the State’s infrastructure in energy generation and transmission.

Among other things, Director Adams noted that ESD will play a lead role in the next round of BRAC which addresses the potential for reductions in military bases in New York State and the resultant job loss and facility closures.

Director Adams also noted that ESD is the lead agency for the Governor’s MWBE initiative in New York State and as a result of the recently enacted budget, ESD is bringing on new staff to strengthen its capacity in that regard.

Following Director Adams’ full report, Director Miller noted with regard to the military base closings that the Department of Defense has financing available for modernization, etc. for the bases. She asked if ESD is involved in that effort.

Director Adams stated that there is a task force which includes ESD that is looking into securing resources for studies that need to be done to make the case for funding for the State’s bases in a competitive fashion.

Director Miller asked for information on the New York Works Program and Director Adams stated that as an agency, ESD is not directly involved in a significant way yet with that Infrastructure Task Force. Director Adams added, however, that the New York Works Fund makes significant investments into more than 50 of New York State’s great parks for

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rebuilding and sprucing up and capital investment in parks because in many ways they are the crown jewels of the State’s tourism infrastructure.

There being no further business, the meeting was adjourned at 12:07 p.m.

Respectfully submitted,

Eileen McEvoy
Corporate Secretary

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Bronx (New York City Region – Bronx County) – New York Botanical Garden DRF Capital – Downstate Revitalization Fund – Infrastructure Investment (Convertible Loan)

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

General Project Plan

I. Project Summary

Borrower: The New York Botanical Garden (“NYBG” or the “Garden”)

ESD* Investment: A convertible loan of up to \$1,000,000 to be used for a portion of the cost of construction of a new parking facility.

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

Project Location: 2960 Webster Avenue, Bronx, Bronx County

Proposed Project: Construction of an 825 car parking garage adjacent to Metro-North Botanical Garden station.

Project Type: Infrastructure investment involving job creation.

Regional Council: The New York City Regional Council has been made aware of this item. Project predates the Regional Council Initiative. The Incentive Offer was accepted in March 2, 2010. The project is consistent with the Regional Plan.

Employment: Initial employment at time of ESD Incentive Offer: 0
 Current employment level: 0
 Minimum employment within 36 months of loan closing date: 10

Loan Financing: The loan will provide permanent financing for a 5 year term at an annual interest rate of 3%, convertible to a grant over that term if required job levels are maintained.

Security: N/A

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Land Acquisition	\$7,750,000
Demolition including Environmental Remediation	1,395,000
Construction including Contingency	32,860,364
Infrastructure Costs including Machinery, Furniture, Fixtures and Equipment	2,628,923
Soft Costs including Contingency	<u>3,865,713</u>
Total Project Costs	<u>\$48,500,000</u>

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term</u>
ESD-Loan	\$1,000,000	2%	3%/5 yrs.
ESD-Grant* (U823)	\$10,000,000	20%	
NYC – Department of Cultural Affairs - Grant	29,918,420	62%	
Federal Transportation Administration - Grant	836,000	2%	
NYBG – Individuals & Foundations Contributions	<u>6,745,580</u>	<u>14%</u>	
Total Project Financing	<u>\$48,500,000</u>	<u>100%</u>	

*Previously approved by the ESD Board on December 18, 2006

III. Project Description

A. Company

Industry: The New York Botanical Garden (“NYBG”) is one of the premier botanical gardens in the world and the largest in any city in the United States. It contains a diverse landscape, extensive collections and gardens, and offers programs in horticulture, education and science.

Company History: NYBG was founded in 1891. The land which became The New York Botanical Garden was acquired by the City of New York from the Lorillard family to create a zoo and botanical garden.

Ownership: Not-for-Profit

Size: The NYBG's only location is in the Bronx.

Market: The Garden is a main employer, tax revenue generator and a major tourist attraction for NYC. Last year the Garden attracted more than 800,000 visitors.

ESD Involvement: The Garden requested financial assistance from ESD to invest in the construction of a new parking facility to address the limited and inadequate parking issue particularly during its peak periods and during popular exhibits. ESD offered a \$1,000,000 convertible loan incentive proposal that was accepted on March 2010 to assist the Garden with its project.

Competition: N/A

Past ESD Support: In March 2002, the Directors approved a \$2,000,000 grant for the Garden's water main replacement project. The project is complete.

In October 2003, the Directors approved a \$6,150,000 grant to construct the new visitor's center. The project is complete.

In December 2004, the Directors approved a \$4,000,000 grant to design and construct the Pfizer Plant Research Laboratory at the NYBG. The project is complete.

B. The Project

Completion: March 2012

Activity: The Garden invested in the construction of an Intermodal Transportation Facility directly adjacent to the Metro-North Harlem Line Botanical Garden station. The new garage will accommodate 825 vehicles. The parking garage will meet LEED standards and it will facilitate transit usage by providing a "park and ride" option, including a new pedestrian connection from the garage to the Metro North Railroad platform. Most important, the new garage will support the Garden's space needs during its most popular exhibits including the Holiday Train Show and the Orchid Show.

Results:

As a result of the new parking facility, the Garden will be able to handle its need for additional vehicle space especially during its peak periods. Additionally, 10 new jobs will be created.

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 \$1,953,372;
- Fiscal cost to NYS government is estimated at \$11,525,510;
- Project cost to NYS government per direct job is \$1,641,065;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,003,593;
- Ratio of project fiscal benefits to costs to NYS government is 0.17:1;
- Fiscal benefits to all governments (state and local) are estimated at \$3,616,901;
- Fiscal cost to all governments is \$11,525,510;
- All government cost per direct job is \$1,641,065;
- All government cost per total job is \$1,003,593;
- The fiscal benefit to cost ratio for all governments is 0.31:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$20,448,062, or \$1,780,531 per job (direct and indirect);
- The economic benefit to cost ratio is 1.77:1;
- Project construction cost is \$38,121,077, which is expected to generate 196 direct job years and 105 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 0.63 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is over seven years.

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

This project is funded by the Downstate Revitalization Fund. Downtown Revitalization Fund projects may involve few permanent job commitments with fiscal or economic benefits below NYS investment. Longer-term community benefits of such projects are not captured in this analysis.

Borrower Contact: David Kleiser
Vice President for Finance and Planning
The New York Botanical Garden
200th Street and Southern Boulevard
Bronx, NY 10458-5126
Phone: (718) 817-8730

ESD Project No.: X022

Project Team:	Origination	Joseph Tazewell
	Project Management	Javier Roman-Morales
	Legal	Antovk Pidedjian
	Contractor & Supplier Diversity	Denise Ross
	Finance	Ross Freeman
	Environmental	Soo Kang

C. Financial Terms and Conditions

1. The Borrower shall pay a commitment fee of 1% of the \$1,000,000 loan (\$10,000). In addition, at the time of closing, the Borrower will reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Borrower will demonstrate no materially adverse changes in its financial condition prior to closing.
3. Guarantees: N/A
4. The Borrower will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after ESD's announcement of the project. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
5. Up to \$1,000,000 will be disbursed to the Borrower upon completion of the project substantially as described in these materials including documentation of \$48,500,000 in project costs, assuming that all project approvals have been completed and funds are available. Expenses reimbursed by ESD's loan must be incurred on or after March 2, 2010, to be considered eligible project costs. Disbursement of the loan must be requested by April 1, 2013.
6. Prior to disbursement, the Borrower 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 Borrower'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 Borrower to other employees with comparable rank and duties; or (b) two part-time, permanent, private-sector employees on Borrower'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 Borrower to other employees with comparable rank and duties.

7. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$1,000,000, 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.
8. Rate/Term: 3% interest rate over 5 years (sixty months). Loan becomes immediately due and payable if Borrower sells or closes the Project Location.
9. Repayment Term: Sixty (60) monthly interest-only payments beginning after disbursement of the convertible loan, with outstanding principal due in full in the 60th month, subject to any incremental reductions in principal based upon Borrower's achievement of Job Commitments and Loan Compliance (See Conversion Terms below).
10. Conversion Terms: The loan principal may be subject to incremental reductions of 20% annually over the five-year term of the loan for each respective year of the loan. Upon timely submission by Borrower of an annual Principal Reduction Request Form verifying Job Commitments and Loan Compliance as approved by ESD, the principal balance of the loan shall be reduced for such year by \$200,000. Each such approved reduction shall be deemed a prepayment of the Borrower's Promissory Note to ESD pursuant to the terms contained therein. If during the term of the loan, Job Commitments and/or Loan Compliance are not submitted and approved for any particular year, principal reduction will not occur for that year and the corresponding amount of principal, when added to any other unconverted principal, shall remain payable upon maturity. (See Job Commitments below.)

Job Commitments:

Baseline Employment	0
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A	B
Reporting Date	Employment Goals
Anniversary Date of Loan Closing 2013	0
Anniversary Date of Loan Closing 2014	5
Anniversary Date of Loan Closing 2015	10
Anniversary Date of Loan Closing 2016	10
Anniversary Date of Loan Closing 2017	10

- 11. The Borrower will submit to ESD annual reviewed financial statements and quarterly internal financial statements certified by an officer of the Borrower.
- 12. Financial Disclosure: Updated financial disclosure on Borrower and all guarantors acceptable to ESD must be provided prior to closing.
- 13. Lien/Collateral: Unsecured
- 14. Due Diligence: Appraisals and engineering and environmental reviews acceptable to ESD must be provided prior to closing, if applicable.

IV. Statutory Basis

This project is authorized under Section 16-r of the New York State Urban Development Corporation Act (the “Act”) and satisfies the eligibility criteria in the Act and the rules and regulations for the Downstate Revitalization Fund Program. No residential relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

Pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the proposed project, the Directors made a Determination of No Significant Effect on the Environment at their meeting of December 18, 2006. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

VI. Smart Growth Public Infrastructure Review

Pursuant to the requirements of the State Smart Growth Public Infrastructure Policy Act (the “SG Act”), ESD’s Smart Growth Advisory Committee has prepared a Smart Growth Impact

Statement for the project and found that the project is consistent with the State Smart Growth Public Infrastructure Criteria (“Smart Growth Criteria”). The Chief Executive Officer of the Corporation or his designee has attested that the project, to the extent practicable, meets the relevant Smart Growth Criteria set forth in the SG Act.

VII. Non-Discrimination and Contractor Diversity

ESD’s Non-discrimination and Contractor Diversity policy will apply. The borrower is encouraged to use good faith efforts to achieve a Minority Business Enterprise participation goal of 10% and a Women Business Enterprise participation goal of 5% of the total value of ESD’s funding and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and to include minorities and women in any job opportunities created by the project.

VIII. 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.

IX. Additional Submissions to Directors

Resolutions

New York State Map

Project Finance Memorandum

Benefit-Cost Analysis

May 17, 2012

Bronx (New York City Region – Bronx County) – New York Botanical Garden DRF Capital – Downstate Revitalization Fund – Infrastructure Investment (Convertible Loan) – Findings and Determinations Pursuant to Sections 16-r and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Loan 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 New York Botanical Garden DRF Capital – Downstate Revitalization Fund – Infrastructure Investment (Convertible Loan) Project (the “Project”), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to New York Botanical Garden a loan for a total amount not to exceed One Million Dollars (\$1,000,000) from the Downstate Revitalization 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 President and Chief Executive Officer 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 President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the loan and grant, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the loan or grant or collateral securing the loan as he or she may deem necessary or appropriate in the administration of the loan and 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 President and Chief Executive Officer 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.

* * *

FINANCE MEMORANDUM

TO: Frances Walton
CC: Sheila Robinson
FROM: Ross Freeman
DATE: March 12, 2012
RE: The NY Botanical Gardens

Borrower (Convertible Loan)

- Name: The New York Botanical Gardens
- Corporate Location: Bronx, NY
- Corporate Form: Not for Profit
- Nature of Business: Botanical Garden
 - Major Customers: Tourists.

Financial Information

- Information provided for: The New York Botanical Gardens
- Industry: Zoos & Botanical Gardens
- NAICS Code: 712130
- ESD credit rating (score): Very Good (5)
 - Profitability:
 - Sales: Increasing over 3 year historical period.
 - Profit Margin: Above industry median in most recent year.
 - EBITDA: Positive and increasing over 3 year period.
 - Net Income: Increasing over 3 year historical period.
 - Liquidity:
 - Current ratio: Above the industry median in most recent year and above 1.
 - Solvency:
 - Total debt/total assets: Below the industry median in most recent year and less than 65%.
 - EBITDA/Debt Service: Strong

**New York Botanical Gardens
Years Ending June 30**

	Industry Median	2009	2010	2011
Net Sales		69,668,157	61,645,417	96,705,922
EBITDA		(80,248,859)	16,252,846	87,792,771
Pre-tax Profit		(91,227,162)	4,576,420	76,280,744
Pre-tax profit/net sales	0.70%	-130.95%	7.42%	79.00%
Net Income		(91,227,162)	4,576,420	76,280,744
Current Assets		59,633,683	53,636,286	62,773,686
Current Liabilities		8,641,328	9,012,729	16,493,425
Current Ratio	1.50	6.90	5.95	3.81
Total Assets		467,828,164	481,161,760	566,510,226
Long-term Debt		66,978,352	71,590,000	75,090,000
Total Debt		66,978,352	71,590,000	75,090,000
Total Liabilities		86,551,782	95,308,958	104,376,680
Net Worth		381,276,382	385,852,802	462,133,546
Total debt/total assets	0.24	0.14	0.15	0.13
EBITDA/Debt Service		-21.94	4.03	23.46

Debt Service Coverage Ratio

Debt Service Coverage

EBITDA 87,792,771

Total Debt Service:

Existing Debt 3,742,617

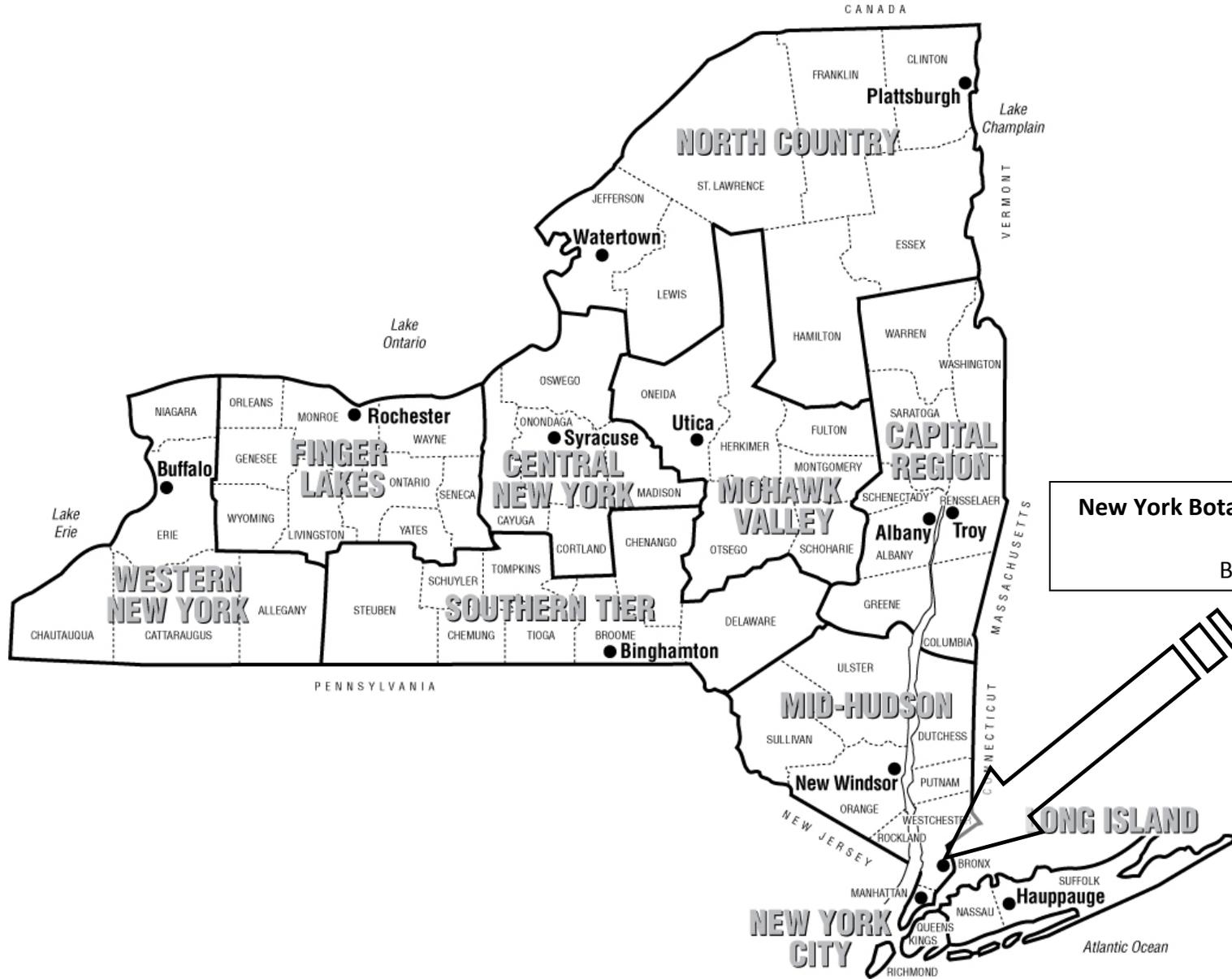
ESD Loan 30,000

Total Debt 3,772,617

Debt Coverage 23.27

Additional Information

- The organization generates sufficient cash flow to service the ESD loan.



New York Botanical Garden DRF Capital
Bronx
Bronx County

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Lackawanna (Western New York Region – Erie County) – Alliance Innovative Manufacturing 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: Alliance Innovative Manufacturing, Inc. (“Alliance” or the “Company”)

ESD* Investment: A grant of up to \$181,000 to be used for a portion of the costs associated with the acquisition and installation of new machinery and equipment.

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

Project Location: 1 Alliance Drive, Lackawanna, Erie County

Proposed Project: Building renovations and the acquisition and installation of machinery and equipment to expand operations.

Project Type: Business expansion involving job retention and creation.

Regional Council: The Western New York Regional Council has been made aware of this item. The project predates the Regional Council Initiative. The Incentive Proposal was accepted in July 2011. The project is consistent with the Regional Plan.

Employment:	Initial employment at time of ESD Incentive Offer:	33
	Current employment level:	38
	Minimum employment on January 1, 2014:	39

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>		
Building Renovation/Utility Upgrades	\$ 126,000		
Machinery & Equipment	<u>2,159,654</u>		
Total Project Costs	<u>\$2,285,654</u>		
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Grant	\$ 181,000	8%	
First Niagara Bank-Loan*	1,518,264	66%	4.59%/7 yrs/1 st on Co. assets
RDC/ECIDA-Loan	357,825	16%	4%/7 yrs/2 nd on Borrower's personal property and all Co. assets
Company Equity	<u>228,565</u>	<u>10%</u>	
Total Project Financing	<u>\$2,285,654</u>	<u>100%</u>	

*A portion of a \$1,877,835 loan which includes additional M&E, not included in this project.

III. Project Description

A. Company

Industry: The Company specializes in precision contract machining for aircraft engines, motion control, hydraulic, power transfer, radiation detection, and robotic systems.

Company History: Originally founded as FP PLA Tool and Manufacturing, Inc. in 1945, the Company began operating as Alliance in 2007 after acquiring its sister companies, FP PLA Tool and Manufacturing and East Coast Tool.

Ownership: Privately held

Size: The Company's only facility is in Lackawanna, NY.

Market: The Company primarily serves manufacturers in the aerospace, compression, mining, energy and industrial markets. Major competitors include Precise Manufacturing (Rochester, NY); Stellar Precision Components (Jeannette, PA); and Kalt Manufacturing (Cleveland, OH).

ESD Involvement: In mid-2007, Alliance notified ESD that it was losing market share due to its inability to produce large parts. To remain competitive, the Company needed to update its facility, acquire new machinery and equipment, and expand its manufacturing capacity. The Company lacked sufficient funds to complete the capital investment. On July 21, 2011, Alliance accepted ESD's incentive proposal of an \$181,000 capital grant resulting in the Company's decision to proceed with the capital investment. Without ESD assistance, the project would not have taken place and the future of the Company was at risk.

Competition: The larger parts were being machined by competitors located in Pennsylvania, Texas and Ontario, Canada.

Past ESD Support: This is the Company's first project with ESD.

B. The Project

Completion: July 2012

Activity: Renovations to an existing 35,000-square-foot facility including utility and infrastructure upgrades and the acquisition and installation of new machinery and equipment including milling and vertical turning machines, cranes and heavy tow motors, necessary to expand into the large format machining market.

Results: The project is expected to retain 33 jobs and create 6 new jobs by January 1, 2014. The Company has already created 5 new jobs.

Grantee Contact: Richard St. John, President
1 Alliance Drive
Lackawanna, NY 14218
Phone: (716) 822-1626, ext. 306 Fax: (716) 822-1626

ESD Project No.: X467

Project Team:	Origination	Will Welisevich
	Project Management	Jean Williams
	Contractor & Supplier Diversity	Vikas Gera
	Environmental	Soo Kang

C. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$181,000 capital grant or (\$1,810) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project. The eligibility for equity is June 23, 2011, the date a hold payment was made on the machinery and equipment.
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 \$181,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$90,500) upon completion of the project substantially as described in these materials including the acquisition and installation of \$2 million in machinery and equipment; submission of documentation verifying project expenditures of approximately \$2.2 million; and documentation of the employment of at least 33 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$45,250) will be disbursed upon documentation of the employment of at least 36 Full-time Permanent Employees at the Project Location (Employment Increment of 3), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$45,250) will be disbursed upon documentation of the employment of at least 39 Full-time

Permanent Employees at the Project Location (Employment Increment of 3), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures must be incurred on or after July 21, 2011, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$181,000, 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	33
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A	B
Reporting Date	Employment Goals
February 1, 2013	33+X+Y
February 1, 2014	33+X+Y
February 1, 2015	33+X+Y
February 1, 2016	33+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=3, and Employment Goals shall equal $[33 + X = 36]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Y=3, and Employment Goals shall equal $[33 + X + Y = 39]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

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 maintain its employment level of 33 and create 6 new jobs by January 1, 2014.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

Without ESD assistance to lower costs and make the Company's facility competitive, the cost would have been too high to make the project feasible in New York.

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 \$1,612,746;
- Fiscal cost to NYS government is estimated at \$181,000;
- Project cost to NYS government per direct job is \$6,768;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$3,110;
- Ratio of project fiscal benefits to costs to NYS government is 8.91:1;
- Fiscal benefits to all governments (state and local) are estimated at \$2,759,059;
- Fiscal cost to all governments is \$181,000;
- All government cost per direct job is \$6,768;
- All government cost per total job is \$3,110;

- The fiscal benefit to cost ratio for all governments is 15.24:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$15,117,522, or \$259,717 per job (direct and indirect);
- The economic benefit to cost ratio is 83.52:1;
- Project construction cost is \$252,000, which is expected to generate 2 direct job years and 2 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.18 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is two 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

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Non-Discrimination and Contractor Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business in the performance of ESD contracts. For purposes of this Contract, however, project performance has already been completed, and therefore, Contract goals cannot be established.

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

Resolutions
 New York State Map
 Cost-Benefit Analysis

May 17, 2012

Lackawanna (Western New York Region – Erie County) – Alliance Innovative Manufacturing 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 Alliance Innovative Manufacturing 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Alliance Innovative Manufacturing, Inc. a grant for a total amount not to exceed One Hundred Eighty-One Thousand Dollars (\$181,000)

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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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.

* * *

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Macedon (Finger Lakes Region – Wayne County) – Pliant Capital I – 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: Pliant, LLC (“Pliant” or the “Company”)

ESD* Investment: A grant of up to \$150,000 to be used for a portion of the cost of renovations, the purchase of machinery and equipment and relocation of equipment.

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

Project Location: 200 East Main Street, Macedon, Wayne County

Proposed Project: Facility renovations, purchase and relocation of machinery and equipment, and utility upgrades to relocate a manufacturing operation from Canada.

Project Type: Business expansion involving job retention and creation.

Regional Council: The Finger Lakes Regional Council has been made aware of this item. Project predates the Regional Council Initiative. The Incentive Offer was accepted in March 2007. The project is consistent with the Regional Plan.

Employment:	Initial employment at time of ESD Incentive Offer:	461
	Current employment level:	530
	Minimum employment on January 1, 2013:	511

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>	
Building Renovations	\$264,000	
Machinery Acquisition	1,254,837	
Equipment Relocation and Utility Upgrades	<u>4,500,000</u>	
Total Project Costs	<u>\$6,018,837</u>	
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD-Grant	\$150,000	2%
Company Equity	<u>5,868,837</u>	<u>98%</u>
Total Project Financing	<u>\$6,018,837</u>	<u>100%</u>

III. Project Description

A. Company

Industry: Pliant, LLC is a major producer of film and flexible packaging. The Company is North America's largest producer of taco shell zipper bags and the second largest producer of bread bags.

Company History: In 2009, then-Pliant Corporation was acquired by Berry Plastics Corporation ("Berry"), headquartered in Evansville, Indiana. With over 13,000 customers, Berry is a leading manufacturer and marketer of plastic packaging products. Its products include open- and closed-top packaging, polyethylene-based plastic films, industrial tapes, medical specialties, flexible packaging, and heat-shrinkable coatings.

Ownership: Pliant is a wholly owned subsidiary of Berry, which is privately held by the investment groups Apollo Management L.P. and Graham Partners, Inc. In March 2012, Berry Plastics Group, Inc., the parent of Berry, announced a proposed initial public offering of its common stock.

Size: With approximately 18 plants in the US, and facilities in Australia, Mexico and Canada, Pliant has over 2,800 worldwide employees. The Macedon facility is the largest of its 23 plants and produces over 50 million pounds of finished packaging film a year.

2. The Company will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute a minimum of 10% of the total project cost in the form of equity contributed after the Company's acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
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 \$150,000 will be disbursed to the Grantee in two installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$75,000) upon completion of the project substantially as described in these materials, documentation of project costs totaling \$6 million, and documentation of the employment of at least 461 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 50% of the grant (\$75,000) will be disbursed upon documentation of the employment of at least 511 Full-time Permanent Employees at the Project Location (Employment Increment of 50), provided Grantee is otherwise in compliance with program requirements;

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 March 12, 2007, to be considered eligible project costs. All disbursements must be requested by April 1, 2013.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$150,000, 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	461
A	B
Reporting Date	Employment Goals
February 1, 2013	461+X
February 1, 2014	461+X
February 1, 2015	461+X

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. X=50, and Employment Goals shall equal [461+ X = 511] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

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 maintain its employment level of 461 employees and create 50 new jobs.

2. The proposed project would be unlikely to take place in New York State without the requested assistance.

Without ESD assistance, this manufacturing line would likely have been relocated to an existing facility in Kentucky or Georgia.

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 \$1,984,840;
- Fiscal cost to NYS government is estimated at \$125,000;
- Project cost to NYS government per direct job is \$3,834;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$1,815;
- Ratio of project fiscal benefits to costs to NYS government is 15.88:1;
- Fiscal benefits to all governments (state and local) are estimated at \$3,342,098;
- Fiscal cost to all governments is \$125,000;
- All government cost per direct job is \$3,834;
- All government cost per total job is \$1,815;
- The fiscal benefit to cost ratio for all governments is 26.74:1;
- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$16,739,874, or \$243,091 per job (direct and indirect);
- The economic benefit to cost ratio is 133.92:1;
- Project construction cost is \$4,764,000, which is expected to generate 47 direct job years and 33 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.12 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is one 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

ESD staff has determined that the project constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the project.

VI. Non-Discrimination and Contractor Diverstiy

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of ESD contracts. For purposes of this Project, however, project performance has already been completed, and therefore, Project goals cannot be established.

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

Resolutions
New York State Map
Benefit-Cost Analysis

May 17, 2012

Macedon (Finger Lakes – Wayne County) – Pliant Capital I – 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 Pliant Capital I – 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make to Pliant, LLC a grant for a total amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000) 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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.

* * *

A. Bonide Products Capital (X192)

May 17, 2012

General Project Plan

Grantee:	Bonide Products, Inc. (“Bonide” or the “Company”)	
ESD Investment:	A grant of up to \$100,000 to be used for a portion of the cost of construction and renovations.	
Project Location:	6301 Sutliff Road, Oriskany, Oneida County	
Proposed Project:	The Company will expand its operations and construct a 75,000-square-foot storage and distribution facility.	
Project Type:	Business expansion involving job retention and creation.	
Regional Council:	The Mohawk Regional Council has been made aware of this item. Project predates the Regional Council Initiative. The Incentive Proposal was accepted in August 2010. The project is consistent with the Regional Plan.	
Employment:	Initial employment at time of ESD Incentive Offer:	98
	Current employment level:	112
	Minimum employment through January 1, 2016:	113

Background:

Industry - Bonide specializes in formulating and packing of home and garden weed, insect and vegetative disease control products as well as insect repellents.

Company History - Established in 1926, Bonide Products, Inc. provides organic gardeners with effective solutions for home, lawn and garden pest problems. Today, it produces and markets over 450 products for home and garden pest control.

Ownership - Privately owned family company.

Size - The Company operates out of a state-of-the-art 165,000 square foot manufacturing facility in Oriskany, NY.

Market - The Company’s major customers include Home Depot, Lowe’s, Tractor Supply, TruServe and Ace. The primary Competitors are Scott’s Spectrum Brands, Central Garden & Pet, Bayer Advanced, and Woodstream.

ESD Involvement – The Company was experiencing challenges in meeting production

A. Bonide Products Capital (X192)

May 17, 2012

goals due to the increase of regulatory and competitive market pressures. In addition, the national recession and unfavorable weather trends also hindered the Company. In an effort to increase the Company's competitive advantage, plans were developed to expand its facilities and create new products. The Company considered leasing warehouse space in Atlanta, GA. and making that facility the Company's main storage and distribution facility. If the expansion project took place in Atlanta, the Company would have eventually relocated all of its manufacturing facilities to the south. To encourage the Company to remain in New York, ESD made an offer of a \$100,000 capital grant, which was accepted in August 2010.

Competition - Without ESD's assistance, the Company would have relocated to Atlanta, GA.

Past ESD Support - This is the Company's first project with ESD.

The Project:

Completion – November 2011

Activity – The Company has completed a \$4.49 million warehouse expansion project including the construction of a 75,000-square-foot building and installation of machinery and equipment. The project will facilitate and increase the Company's production, storage, and shipping of its products.

Results - The expansion project will facilitate significant growth in lawn and garden product sales; which will increase the Company's competitive advantage and provide an opportunity for the Company to hire 15 additional people.

Financing Uses	Amount	Financing Sources	Amount	Percent
Construction/Renovation	\$4,000,000	ESD Grant	\$100,000	2%
Machinery and Equipment Acquisition	495,000	First Niagara Bank N.A.- Loan*	3,595,000	80%
		Company Equity	800,000	18%
Total Project Costs	\$4,495,000	Total Project Financing	\$4,495,000	100%

*1.75/7yrs/First lien on Real Estate

Grantee Contact - Donald Stevenson, Controller

6301 Sutliff Road

Oriskany, NY 13424

Phone: (315)736-8231 Fax: (315)736-7582

A. Bonide Products Capital (X192)

May 17, 2012

<u>Project Team</u> - Origination	James Falcone
Project Management	Beverly Bobb
Contractor & Supplier Diversity	Denise Ross
Environmental	Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$100,000 capital grant (\$1,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute at least 10% of the total project cost in the form of equity contributed after the Company's written acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
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 \$100,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$50,000) upon completion of the project substantially as described in these materials, as evidenced by a certificate of occupancy, documentation verifying project expenditures of approximately \$3,885,000, and documentation of the employment of at least 100 Full-time Permanent Employees at the Project Location (Employment Increment of 2), assuming that all project approvals have been

A. Bonide Products Capital (X192)

May 17, 2012

- completed and funds are available;
- b) a Second Disbursement of an amount equal to 25% of the grant (\$25,000) will be disbursed upon documentation of the employment of at least 107 Full-time Permanent Employees at the Project Location (Employment Increment of 7), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$25,000) will be disbursed upon documentation of the employment of at least 113 Full-time Permanent Employees at the Project Location (Employment Increment of 6), provided Grantee is otherwise in compliance with program requirements.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenses reimbursed by ESD's grant must be incurred on or after August 11, 2012, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

- 6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$100,000, 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

A. Bonide Products Capital (X192)

May 17, 2012

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	98
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A	B
Reporting Date	Employment Goals
February 1, 2013	98+X+Y+Z
February 1, 2014	98+X+Y+Z
February 1, 2015	98+X+Y+Z
February 1, 2016	98+X+Y+Z
February 1, 2017	98+X+Y+Z

X = Grantee's Employment Increment that will be the basis of the First Disbursement of the Grant as described in section C.5 above (i.e. X=2, and Employment Goals shall equal $[98 + X = 100]$ if the First Disbursement is made, in the year such disbursement is made and for each year thereafter). If the First Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section C.5 above (i.e. Y=7, and Employment Goals shall equal $[98 + X + Y = 107]$ if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

Z = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section C.5 above (i.e. Z=6, and Employment Goals shall equal $[98 + X + Y + Z = 113]$ if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Z=0.

Environmental Review:

The Whitestown Planning Board, as lead agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be a Type I Action, which would not have a significant effect on the environment. The lead agency issued a Negative Declaration on April 15, 2011. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

A. Bonide Products Capital (X192)

May 17, 2012

Non-Discrimination and Contractor Diversity:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business in the performance of ESD contracts. For purposes of this Project, however, project performance has already been completed, and therefore, Project goals cannot be established.

Statutory Basis – Empire State Economic Development Fund:

1. The 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 maintain its employment level of 98 and create 15 new jobs.
2. The project would be unlikely to take place in New York State without the requested assistance.
The Company considered relocating its operations to Atlanta, GA. ESD's assistance helped to reduce costs and make the project feasible in New York. ESD assistance is needed to fill a financing gap.
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, project fiscal benefits to New York State government are expected to be \$2,469,596, which exceed the cost to the State.
4. The requirements of Section 10(g) of the Act are satisfied.
See cover memo.

May 17, 2012

Oriskany (Mohawk Region – Oneida County) Bonide Products Capital – Empire State
Economic Development Fund – General Development Financing (Capital Grant) –
Determination of No Significant Effect on the Environment

RESOLVED, that based on the material submitted to the Directors with respect to the Howe Caves Capital Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

General Project Plan

Grantee:	Liberty Fresh Farms, Inc. (“LFF” or the “Company”)	
ESD Investment:	A grant of up to \$100,000 to be used for a portion of the cost to purchase machinery and equipment.	
Project Location:	3816 Oak Orchard Road, Albion, Orleans County	
Proposed Project:	Purchase and renovate an existing 38,000-square-foot building, and install a food dryer and packaging line.	
Project Type:	Business expansion involving job creation.	
Regional Council:	The Finger Lakes Region Regional Council has been made aware of this item. Project predates the Regional Council Initiative. The Incentive Proposal was accepted in April 2011. The project is consistent with the Regional Plan.	
Employment:	Initial employment at time of ESD Incentive Offer:	0
	Current employment level:	18
	Minimum employment on January 1, 2016:	26

Background:

Industry – Liberty Fresh Farms, Inc. packs, sells, and distributes sweet onions to the food service, retail, and wholesale sectors.

Company History – Liberty Fresh Farms, Inc. was founded as a subchapter-S corporation by Michael Cutler, Jim Panek, Allen Panek and Dan Whitworth. Jim and Allen Panek, conceived of the Company to diversify the operations of Panek Farms, a sustainable farm located in Orleans County which grows corn, soybeans, onions, squash and strawberries, among other produce. Using the marketing assistance of the Michael Cutler Company, a leader in the produce shipping industry, LFF was created to expand Panek Farms’ growth and harvest of sweet onions by adding a packaging and shipping component. The newly formed LFF has a guaranteed marketing agreement with Panek Farms for a 5 year contract to grow and harvest sweet onions which, once purchased from Panek Farms, become the possession of LFF. With this new operation, LFF hopes to support local farms, reduce environmental burdens and provide jobs for Orleans County where the unemployment rate is one of the highest in the state.

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

Ownership – The Company is privately owned.

Size – LFF operates out of an existing 36,000-square-foot building.

Market – According to the National Onion Association, onion consumption in the United States has risen over 63% in the last two decades from 12.2 pounds per person in 1983 to an estimated 20 pounds per person in 2008. Sweet onions have become the preferred product for retailers because they are more versatile for consumers to use for a wide variety of dishes.

ESD Involvement – To encourage the Company to proceed with the project, ESD provided an incentive offer for a \$100,000 capital grant, which was accepted in April 2011.

Competition - The Company's competition is largely comprised of out of state produce packers. In New York State, competitors are located in Orange and Oswego counties. Without ESD's assistance, the Company had considered moving LFF to New Jersey or Pennsylvania.

Past ESD Support – This is the first ESD grant to the Company.

The Project:

Completion – November 2011

Activity – In April 2011, LFF purchased a 38,000-square-foot building, and invested over \$700,000 to renovate it for the processing and packaging of sweet onions. The building was outfitted with new machinery and equipment including an onion packaging machine, an onion dryer, and electrical upgrades. The facility operates seasonally when crop is available to pack and ship. LFF intends to increase the production and demand of onions in Orleans County, and will bring onions from other local farms to the facility for processing.

Results – Create 26 new jobs by January 1, 2014. The Company has created 18 jobs to date.

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

Financing Uses	Amount	Financing Sources	Amount	Percent
AG Packaging machine	\$331,010	ESD Grant	\$100,000	13%
Equipment	386,502	Company Equity	317,650	42%
Electrical work	45,138	County of Orleans IDA - Grant	145,000	19%
		Orleans Land Restoration Corp - Grant	200,000	26%
Total Project Costs	\$762,650	Total Project Financing	\$762,650	100%

Grantee Contact - Wendy Mitchko, Controller

110 Terrace Drive

Olyphant, Pennsylvania 18447

Phone: (570) 291-5103

Fax: (570) 383-2690

Project Team - Origination

Project Management

Contractor & Supplier Diversity

Environmental

Helen Blum

Simone Bethune

Vikas Gera

Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$100,000 capital grant (\$1,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute at least 10% of the total project cost in the form of equity contributed after the Company's written acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
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

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

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 \$100,000 will be disbursed to the Grantee in three installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$50,000) upon completion of the project substantially as described in these materials, documentation of the purchase and installation of machinery and equipment totaling approximately \$720,000, documentation of the employment of at least 10 Full-time Permanent Employees at the Project Location, and submission of documentation verifying project expenditures of approximately \$1.4 million, assuming that all project approvals have been completed and funds are available;
 - b) a Second Disbursement of an amount equal to 25% of the grant (\$25,000) will be disbursed upon documentation of the employment of at least 18 Full-time Permanent Employees at the Project Location (Employment Increment of 8), provided Grantee is otherwise in compliance with program requirements;
 - c) a Third Disbursement of an amount equal to 25% of the grant (\$25,000) will be disbursed upon documentation of the employment of at least 26 Full-time Permanent Employees at the Project Location (Employment Increment of 8), provided Grantee is otherwise in compliance with program requirements.

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 April 5, 2011, to be considered eligible project costs. All disbursements must be requested by April 1, 2014.

6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$100,000, 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:

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

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	10
A	B
Reporting Date	Employment Goals
February 1, 2013	10+X+Y
February 1, 2014	10+X+Y
February 1, 2015	10+X+Y
February 1, 2016	10+X+Y

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section 5 above (i.e. X=8, and Employment Goals shall equal [10 + X = 18] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Y = Grantee's Employment Increment that will be the basis of the Third Disbursement of the Grant as described in section 5 above (i.e. Y=8, and Employment Goals shall equal [10 + X + Y = 26] if the Third Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Third Disbursement has not yet been made then Y=0.

B. Liberty Fresh Farms Capital (X369)

May 17, 2012

Non-Discrimination and Contractor Diversity:

ESD's Non-Discrimination and Contractor Diversity policy will apply. Grantee is encouraged to use its good faith efforts 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.

Statutory Basis – Empire State Economic Development Fund:

1. The 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 26 new jobs.
2. The project would be unlikely to take place in New York State without the requested assistance.
Without ESD assistance, this project would have been located in Pennsylvania or New Jersey. ESD's assistance helped to reduce costs and make the project feasible in New York.
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, project fiscal benefits to New York State government are expected to be \$746,634, which exceed the cost to the State.
4. The requirements of Section 10(g) of the Act are satisfied.
See cover memo.

C. Pliant Capital II (W477)

May 17, 2012

General Project Plan

Grantee:	Pliant, LLC (“Pliant” or the “Company”)	
ESD Investment:	A grant of up to \$40,000 to be used for a portion of the cost of renovations and relocation/upgrading of equipment.	
Project Location:	200 East Main Street, Macedon, Wayne County	
Proposed Project:	Facility renovations, relocation of machinery and equipment, and new tower buildout to accommodate manufacturing operations moved from Massachusetts.	
Project Type:	Business expansion involving job retention and creation.	
Regional Council:	The Finger Lakes Regional Council has been made aware of this item. Project predates the Regional Council Initiative. The Incentive Offer was accepted in September 2008. The project is consistent with the Regional Plan.	
Employment:	Initial employment at time of ESD Incentive Offer:	518
	Current employment level:	530
	Minimum employment on January 1, 2013:	530

Background:

Industry - Pliant, LLC is a major producer of film and flexible packaging. The Company is North America’s largest producer of taco shell zipper bags and the second largest producer of bread bags.

Company History - In 2009, then-Pliant Corporation was acquired by Berry Plastics Corporation (“Berry”), headquartered in Evansville, Indiana. With over 13,000 customers, Berry is a leading manufacturer and marketer of plastic packaging products. Its products include open- and closed-top packaging, polyethylene-based plastic films, industrial tapes, medical specialties, flexible packaging, and heat-shrinkable coatings.

Ownership - Pliant is a wholly owned subsidiary of Berry, which is privately held by the investment groups Apollo Management L.P. and Graham Partners, Inc. In March, 2012 Berry Plastics Group, Inc., the parent of Berry, announced a proposed initial public offering of its common stock.

Size – Pliant has 18 plants in the US, and facilities in Australia, Mexico and Canada, and s

C. Pliant Capital II (W477)

May 17, 2012

over 2,800 employees worldwide. The Macedon facility is the largest of its plants and produces over 50 million pounds of finished packaging film a year.

Market - Major bakery customers include Pepperidge Farms, Weston's Interstate (Friehofer, Arnold, Thomas), Schwebel and Martin's. A smaller part of Pliant's business comes from personal care products such as baby wipes for Kimberly Clark and Proctor and Gamble.

ESD Involvement - In 2008, Pliant considered moving several manufacturing lines from Deerfield, Massachusetts, to other U.S. facilities to gain economics of scale. ESD offered a \$40,000 capital grant in September 2008, which allowed the project to proceed at the Macedon facility.

Competition - The Macedon site was the first choice, but other plants were in consideration, especially those in Kent, Washington, and in McAlester, Oklahoma.

Past ESD Support - In 2005, ESD made a \$37,500 grant to then-Pliant Corporation for machinery and equipment. The grant was disbursed and job commitments were met. The Directors are also being asked to approve a \$150,000 capital grant to Pliant, to be presented in separate materials.

The Project:

Completion – January 2010

Activity – The Company has completed the relocation of two blown film extrusion lines from its Deerfield, Massachusetts plant to Macedon. Pliant has also completed plant renovations.

Results - Retain 518 existing jobs and create 12 new jobs. The Company has already created the 12 new jobs.

Financing Uses	Amount	Financing Sources	Amount	Percent
Building Renovations	\$950,000	ESD Grant	\$40,000	2%
Equipment Relocation/Upgrading Expenses and New Tower Buildout	1,700,000	Company Equity	2,610,000	98%
Total Project Costs	\$2,650,000	Total Project Financing	\$2,650,000	100%

C. Pliant Capital II (W477)

May 17, 2012

Grantee Contact - Bob Beecher, Controller
200 East Main Street
Macedon, NY 14502
Phone: (315) 986-6272 Fax: (315) 986-6009

Project Team -

Origination	Kevin Hurley
Project Management	Edward Muszynski
Contractor & Supplier Diversity	Vikas Gera
Environmental	Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$40,000 capital grant or interest subsidy grant (\$400) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Company will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. The Company will be required to contribute at least 10% of the total project cost in the form of equity contributed after the Company's written acceptance of ESD's offer. Equity is defined as cash injected into the project by the Company or by investors, and should be auditable through Company financial statements or Company accounts, if so requested by ESD. Equity cannot be borrowed money secured by the assets in the project.
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 \$40,000 will be disbursed to the Grantee in two installments as follows:
 - a) an Initial Disbursement of an amount equal to 50% of the grant (\$20,000) upon completion of the project substantially as described in these materials,

C. Pliant Capital II (W477)

May 17, 2012

documentation of project costs totaling \$2,377,800, and documentation of the employment of at least 518 Full-time Permanent Employees at the Project Location, assuming that all project approvals have been completed and funds are available;

- b) a Second Disbursement of an amount equal to 50% of the grant (\$20,000) will be disbursed upon documentation of the employment of at least 530 Full-time Permanent Employees at the Project Location (Employment Increment of 12), provided Grantee is otherwise in compliance with program requirements;

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 September 30, 2008, to be considered eligible project costs. All disbursements must be requested by April 1, 2013.

- 6. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$40,000, 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.

C. Pliant Capital II (W477)

May 17, 2012

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	518
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A	B
Reporting Date	Employment Goals
February 1, 2013	518+X
February 1, 2014	518+X
February 1, 2015	518+X

X = Grantee's Employment Increment that will be the basis of the Second Disbursement of the Grant as described in section 5 above (i.e. X=12, and Employment Goals shall equal [518 + X = 530] if the Second Disbursement is made, in the year such disbursement is made and for each year thereafter). If the Second Disbursement has not yet been made then X=0.

Non-Discrimination and Contractor Diversity:

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned business in the performance of ESD contracts. For purposes of this Project, however, project performance has already been completed, and therefore, Project goals cannot be established.

Statutory Basis – Empire State Economic Development Fund:

1. The 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 maintain its employment level of 518 employees and create 12 new jobs.
2. The project would be unlikely to take place in New York State without the requested assistance.
Without ESD assistance, these manufacturing lines would likely have been relocated to an existing facility in Washington or Oklahoma.
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, project fiscal benefits to New York State government are expected to be \$551,880, which exceed the cost to the State.

C. Pliant Capital II (W477)

May 17, 2012

4. The requirements of Section 10(g) of the Act are satisfied.
See cover memo.

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Discretionary Projects Consent Calendar

REQUEST FOR: Findings and Determinations Pursuant to Sections 10(g) and 16-m of the Act; Authorization to Adopt the Proposed General Project Plans; Authorization to Make Grants and to Take Related Actions; Determination of No Significant Effect on the Environment

Attached are summaries of discretionary projects requesting ESDC assistance of \$100,000 and under in the following categories:

Empire State Economic Development Fund

	Project Name	Proj #	Grantee	Assistance up to
	General Development Financing Projects			
A.	Bonide Products Capital	X192	Bonide Products Inc.	\$100,000
B.	Liberty Fresh Farms Capital	X369	Liberty Fresh Farms, Inc.	100,000
C.	Pliant Capital II	W477	Pliant, LLC	40,000
			TOTAL	\$240,000

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

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

Environmental Review

Unless otherwise noted on a project summary, ESD staff has determined that the projects constitute Type II actions as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the projects.

Office of Contractor and Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses in the performance of ESD contracts. Accordingly, ESD's Non-discrimination and Supplier Diversity policy will apply to the projects. In the case of training, global export market service and productivity improvement projects, the grantees and/or the beneficiary companies, as applicable, shall use their good faith efforts to provide for the meaningful participation of minorities and women in any job or training opportunities created by the projects and to solicit and utilize minority and women-owned businesses for any contractual opportunities generated in connection with the projects.

For all other projects, unless otherwise specified in the project summary, grantees shall use their good faith efforts to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 23% related to the total value of ESD's funding. This shall include a Minority Business Enterprise ("MBE") Participation goal of 13% and a Women Business Enterprise ("WBE") Participation goal of 10%. Grantee shall use good faith efforts to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and to include minorities and women in any job opportunities created by the Projects.

Reallocation of Funds

ESD may reallocate each project's funds to another form of assistance, at an amount no greater than the amount approved, for the same project if ESD determines that the reallocation of the assistance would better serve the needs of the recipient 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.

ESD Employment Enforcement Policy

Unless otherwise noted on a project summary, the ESD Employment Enforcement Policy will not apply because these projects do not directly create jobs.

Statutory Basis

A. Empire State Economic Development Fund

Please see individual project summaries for factual bases for items 1, 2, and 3.

1. Each 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. Each proposed project would be unlikely to take place in New York State without the requested assistance.
3. Each proposed project is reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.
4. The requirements of Section 10(g) of the Act are satisfied.
No residential relocation is required in connection with any project involving the acquisition, construction, reconstruction, rehabilitation, or improvement of property because no families or individuals reside on the sites.

Attachments

New York State Map

Resolutions

Project Summaries

May 17, 2012

Empire State Economic Development Fund – 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; Determination of No Significant Effect on the Environment

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 Empire State Economic Development Fund Projects identified below (the “Projects”), the Corporation hereby determines pursuant to Section 16-m of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that

1. The Projects 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 Projects would be unlikely to take place in New York State without the requested assistance.
3. The Projects are reasonably likely to accomplish its stated objectives and the likely benefits of the project exceed costs.
4. There are no families or individuals to be displaced from the project area(s); and be it further

RESOLVED, that with respect to the General Development Financing Capital Projects, 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 Projects submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, are hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer of the Corporation or his designee(s), that no substantive negative testimony or comment has been received at the public hearings held on the Plan, such Plan shall be effective at the conclusion of such hearings, and that upon such written findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make a grant to the party and for the amount listed below 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 President and Chief Executive Officer 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 President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grants, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grants as he or she may deem necessary or appropriate in the administration of the grants; 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;

Empire State Economic Development Fund

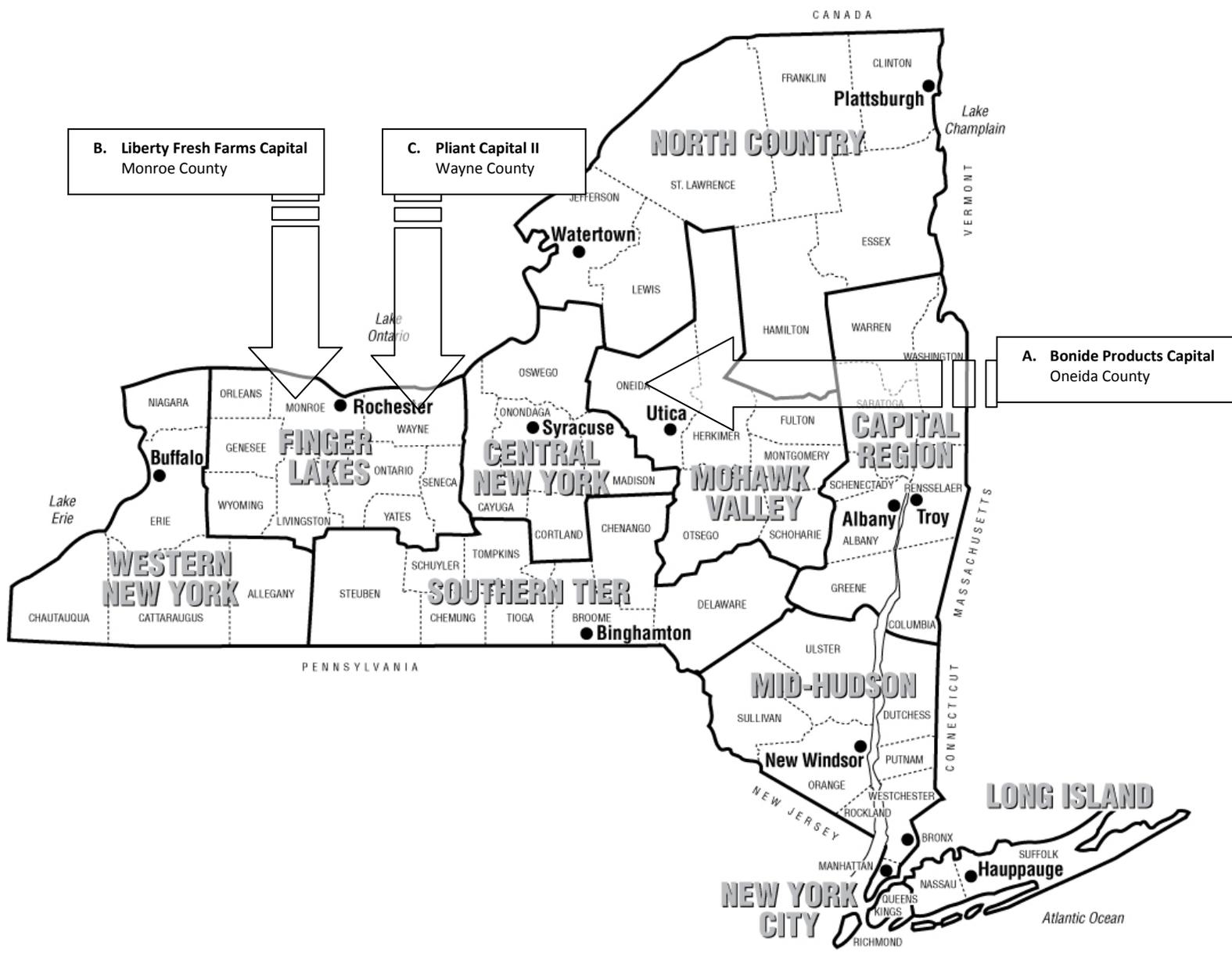
	Project Name	Proj #	Grantee	Assistance up to
	General Development Financing Projects			
A.	Bonide Products Capital	X192	Bonide Products Inc.	\$100,000
B.	Liberty Fresh Farms Capital	X369	Liberty Fresh Farms, Inc.	100,000
C.	Pliant Capital II	W477	Pliant, LLC	40,000
			TOTAL	\$240,000

and be it further

RESOLVED, that the President and Chief Executive Officer 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.

* * *

Empire State Economic Development Fund



FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Non-Discretionary Projects

REQUEST FOR: Land Use Improvement Project Findings and Determinations Pursuant to Sections 10 (c) and 10 (g) of the Act; Authorization to Adopt the General Project Plans; Authorization to Make Grants and to Take Related Actions

Attached are the summaries of projects sponsored by the New York State Executive and Legislative branches:

	Project Name	Proj #	Grantee	Assistance up to
	Empire Opportunity Fund (Executive)			
A	SIDA – Tops Markets – Upstate City-by-City EOF Capital	X753	Syracuse Industrial Development Agency	0 ¹
	1 – a \$2 million grant was approved for this grantee by the ESD Directors on April 17, 2008, but that project did not move forward. This request is to reallocate \$275,000 of the \$2 million for the subject project, and does not involve new funding.			
	1 project		Sub-total	\$0

	Project Name	Proj #	Grantee	Assistance up to
	Local Assistance (Senate)			
B	GLDC – Griffiss Air Force Base Redevelopment Capital	X641	Griffiss Local Development Corporation	125,000
	1 project		Sub-total	\$125,000
	Community Capital Assistance Program (Senate)			
C	HCA – Safety Improvements Capital	W557	The Handicapped Children’s Association of Southern NY, Inc.	50,000
D	Smithtown Performing Arts Council – Facility Improvements Capital	V489	Smithtown Performing Arts Council, Inc.	50,000
E	Village of Airmont – Road Improvements Capital	V535	Village of Airmont	50,000
	3 projects		Sub-total	\$150,000
	TOTAL NON-DISCRETIONARY – 5 PROJECTS		TOTAL	\$275,000

I. Statutory Basis

The projects are sponsored by the Executive, Assembly or Senate, and were authorized or reappropriated in the 2012-2013 New York State budget. No residential relocation is required as there are no families or individuals residing on the site(s).

II. Environmental Review

Unless otherwise noted on a project summary, ESD* staff has determined that the projects constitute Type II actions as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the projects.

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

III. Non-discrimination and Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned businesses in the performance of ESD contracts. Accordingly, ESD's Non-discrimination and Supplier Diversity policy will apply to the projects. Unless otherwise specified in the project summary, grantees shall use their Good Faith Efforts to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 23% related to the total value of ESD's funding. This shall include a Minority Business Enterprise ("MBE") Participation goal of 13% and a Women Business Enterprise ("WBE") Participation goal of 10%. Grantee shall use Good Faith Efforts to solicit and utilize MWBEs for any contractual opportunities generated in connection with the projects and to include minorities and women in any job opportunities created by the projects.

IV. ESD Employment Enforcement Policy

Unless otherwise noted on a project summary, the ESD Employment Enforcement Policy will not apply since the projects will not directly create or retain jobs.

V. 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.

VI. Additional Requirements

Pursuant to direction received from the New York State Office of the Attorney General ("OAG"), individual project summaries may be subject to comment and approval by the OAG.

Due diligence has been exercised by ESD staff in reviewing information and documentation received from grantees/borrowers and other sources, in preparation for bringing projects to the ESD Directors for approval. The due diligence process also involves coordination with a number of external constituents, including the OAG, and grantees/borrowers have provided ESD with the required Disclosure and Accountability Certifications.

Also, pursuant to s.2879-a of the Public Authorities Law, the Office of the State Comptroller ("OSC") has notified the Corporation that it will review all grant disbursement agreements ("GDAs") of more than one million dollars (\$1 million) that are supported with funds from the Community Projects Fund ("007"). Such GDAs, therefore, will not become valid and enforceable unless approved by the OSC. A clause providing for OSC review will be included in all GDAs that are subject to such approval.

VII. Additional Submissions to Directors

New York State Maps
Resolutions
Project Summaries

May 17, 2012

Empire Opportunity Fund – Land Use Improvement Findings and Determinations
Pursuant to Sections 10 (c) and 10 (g) of the Act; Authorization to Make a Grant and to
Take Related Actions

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

Land Use Improvement Project

- 1) That the area in which the project is to be located is a substandard or unsanitary area, or is in danger of becoming a substandard or unsanitary area and tends to impair or arrest the sound growth and development of the municipality;
- 2) That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto;
- 3) That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole;
- 4) That the proposed facilities or project is consistent with any existing local or regional comprehensive plan; and
- 5) The requirements of Section 10(g) of the Act are satisfied.

and be it further

RESOLVED, the Project is in compliance with Chapter 84 of the Laws of 2002 and the Corporation’s guidelines established thereunder. Individual Project funding does not exceed 25 percent of the total project costs, or if project funding does exceed 25 percent of total project costs, the Director of the Division of the Budget has authorized the provision of such amount; and be it further

RESOLVED, that upon written findings of the President and Chief Executive Officer 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 findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make a grant to the party and for the amount listed below from the Empire Opportunity 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 President and Chief Executive Officer 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 President and Chief Executive Officer 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

Empire Opportunity Fund – Executive - Project Summary Table

	Project Name	Proj #	Grantee	Assistance up to
A	SIDA – Tops Markets – Upstate City-by-City EOF Capital	X753	Syracuse Industrial Development Agency	0 ¹
	1 – a \$2 million grant was approved for this grantee by the ESD Directors on April 17, 2008, but that project did not move forward. This request is to reallocate \$275,000 of the \$2 million for the subject project, and does not involve new funding.			
			TOTAL	\$0

RESOLVED, that the President and Chief Executive Officer 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.

* * *

May 17, 2012

Local Assistance - Findings and Determinations Pursuant to Section 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 Local Assistance Project (the "Project"), the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that there are no families or individuals to be displaced from the project area(s); 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 President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, are hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written findings of the President and Chief Executive Officer 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 findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make a grant to the party and for the amount listed below from Local Assistance, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer 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 President and Chief Executive Officer 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

Local Assistance – Senate – Project Summary Table

	Project Name	Proj #	Grantee	Assistance up to
B	GLDC – Griffiss Air Force Base Redevelopment Capital	X641	Griffiss Local Development Corporation	125,000
			TOTAL	\$125,000

RESOLVED, that the President and Chief Executive Officer 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.

* * *

May 17, 2012

Community Capital Assistance Program – Authorization to Adopt the Proposed General Project Plans; Authorization to Make Grants 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 Community Capital Assistance Program Projects (the “Projects”), in accordance with Chapter 84 of the Laws of 2002 for the Community Capital Assistance Program, the Corporation hereby determines pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that 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 General Project Plans (the “Plans”) for the Projects submitted to this meeting, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plans, together with such changes, are hereby ordered filed with the records of the Corporation; and be it further

RESOLVED, that upon written findings of the President and Chief Executive Officer of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearings held on the Plans, such Plans shall be effective at the conclusion of such hearing, and that upon such written findings being made, the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to make grants to the parties and for the amounts listed below from the Community Capital Assistance Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President and Chief Executive Officer 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 President and Chief Executive Officer of the Corporation or his designee(s) be, subsequent to the making of the grants, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the grants as he or she may deem necessary or appropriate in the administration of the grants; 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

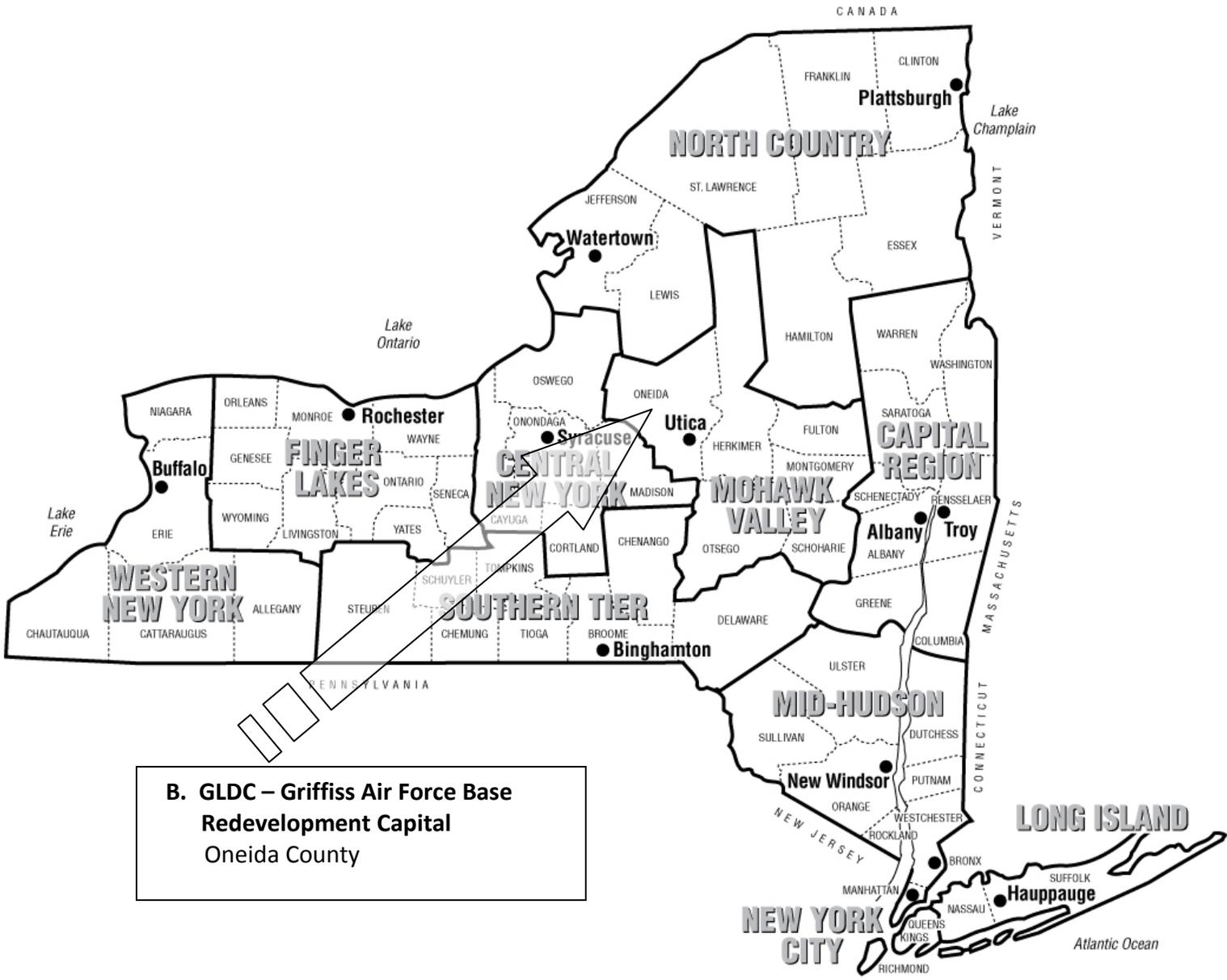
Community Capital Assistance Program – Senate - Project Summary Table

	Project Name	Proj #	Grantee	Assistance up to
C	HCA – Safety Improvements Capital	W557	The Handicapped Children’s Association of Southern NY, Inc.	50,000
D	Smithtown Performing Arts Council – Facility Improvements Capital	V489	Smithtown Performing Arts Council, Inc.	50,000
E	Village of Airmont – Road Improvements Capital	V535	Village of Airmont	50,000
			TOTAL	\$150,000

RESOLVED, that the President and Chief Executive Officer 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.

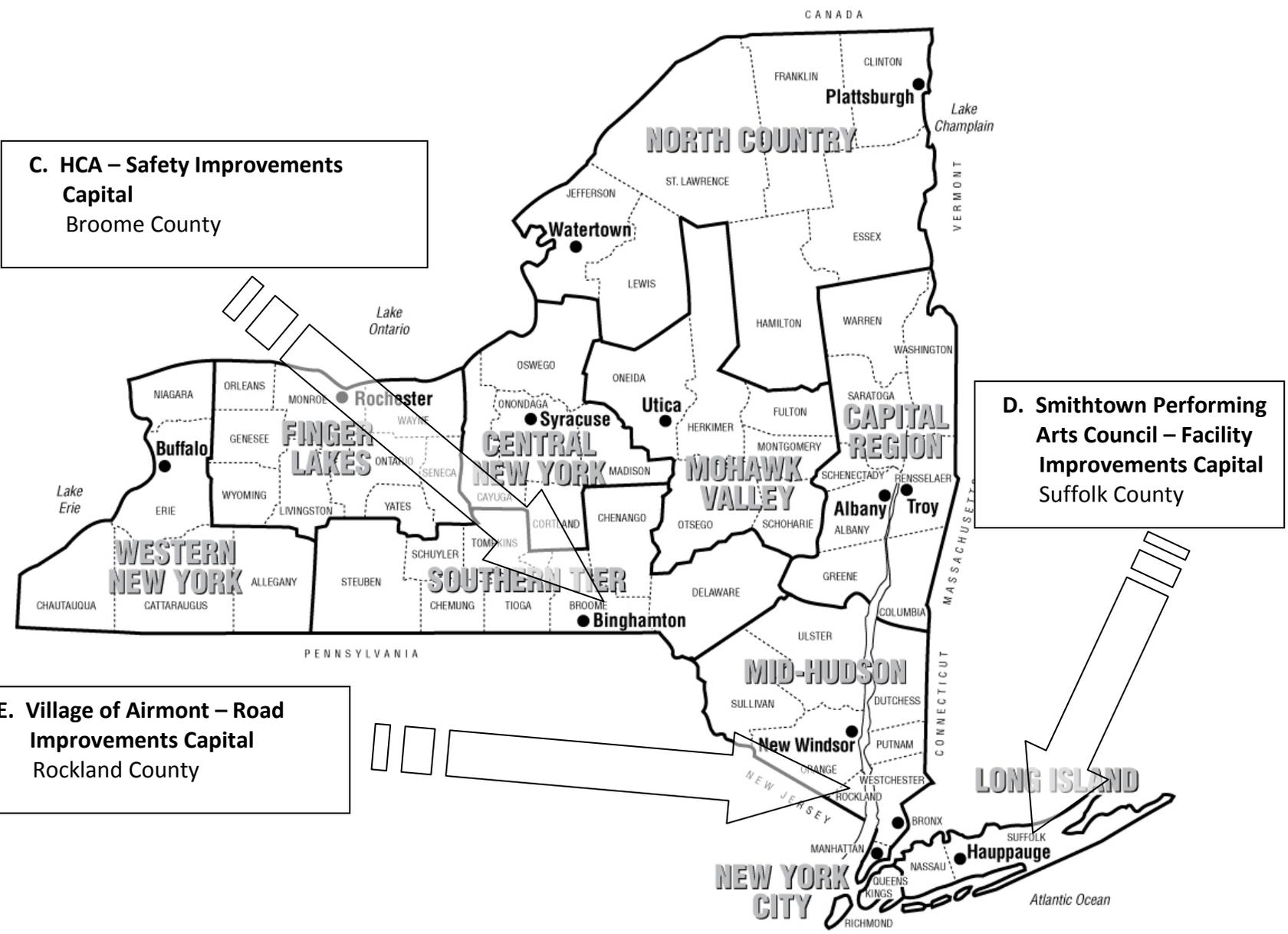
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LOCAL ASSISTANCE PROJECT LOCATION



**B. GLDC – Griffiss Air Force Base
Redevelopment Capital
Oneida County**

COMMUNITY CAPITAL ASSISTANCE PROGRAM PROJECT LOCATIONS



C. HCA – Safety Improvements Capital
Broome County

D. Smithtown Performing Arts Council – Facility Improvements Capital
Suffolk County

E. Village of Airmont – Road Improvements Capital
Rockland County

A. SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

May 17, 2012

General Project Plan

- Grantee:** Syracuse Industrial Development Agency (“SIDA” or the “Organization”)
- Beneficiary Company:** Tops Markets, LLC (“Tops” or the “Company”)
- ESD Investment:** A grant of up to \$275,000 to be used for a portion of the cost of building/infrastructure improvements and the acquisition and installation of new machinery and equipment at the site of the former P&C Market in Valley Plaza.
- Project Location:** 4141 South Salina Street, Syracuse, Onondaga County
- Proposed Project:** The lease of a 36,000-square-foot vacant storefront and the purchase of new machinery, equipment, furniture and fixtures, and renovations associated with the build-out of the leased space, into a full-service grocery store.
- Project Type:** Build out and equipping of a vacant storefront into a grocery store.
- Regional Council:** The Central New York Regional Council has been made aware of this item.

Background:

Industry - Tops supermarkets are full-service stores that provide fresh produce, meats, seafood, deli foods, carry out, general merchandise, health and beauty care products, floral products, and pharmacy and customer services involving bill payment and check cashing. Tops is widely recognized as a strong retail supermarket brand name in Upstate and Central New York and Northern Pennsylvania.

Grantee History - Founded in 1979, the Syracuse Industrial Development Agency, the grantee on behalf of the project, is a public benefit corporation designed to enhance Syracuse’s (the “City”) economic development capabilities through tax incentives to qualified applicants. SIDA provides financing for the acquisition, construction or reconstruction of manufacturing, warehouse, research, commercial, industrial, and pollution control projects.

SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

May 17, 2012

Beneficiary History – Tops, the beneficiary company, is headquartered in Williamsville, NY, and was co-founded in 1962 by Thomas Buscaglia, Armand Castellani and Savino Nanula, under the name Tops Friendly Markets. Over the next 30 years, the chain implemented warehousing and centralized purchasing, allowing the Company to grow efficiently. Tops was acquired by Dutch grocery giant Royal Ahold in 1991 and operated as a division of Giant Food Stores until it was sold to the current owners in late 2007 for a total purchase price of approximately \$326.6 million.

Ownership – Tops Markets, LLC, a privately held, single member limited liability company, is a wholly owned subsidiary of Tops Holding Corporation (“Tops Holding” or the “Parent”), which is owned by Morgan Stanley Capital Partners V Funding LP, a private equity affiliate of Morgan Stanley; HSBC Bank; and a corporate employee. M&T Bank owns \$10 million of Tops’ senior debt facility.

Size – Tops is a privately held company that owns and operates over 130 retail supermarkets in Central and Western New York State, Pennsylvania and Northeastern Ohio, and franchises an additional five stores, employing approximately 12,500 people.

Market – Tops consistently captures either a first or second place market share in the Buffalo area and maintains a first or second position in its Pennsylvania and Northeastern Ohio markets. The Company’s major New York State competitors include Wal-Mart Super Centers, Aldi’s and Wegmans Grocery Stores. Giant Eagle supermarkets competes with Tops in Pennsylvania and Northeast Ohio. The Company’s strategy is to build on its solid market share in the areas it operates by continuing to differentiate itself from competitors by offering quality products at affordable prices with superior customer service and by remaining an integral part of the community.

ESD Involvement – Originally, to complete the project, Tops intended on investing \$1 million of its own resources and anticipated grant funding from the NYS Healthy Food Healthy Communities Fund for the balance. Recently, the Company was advised that it did not receive the requested grant from the program, putting the project in jeopardy. It then approached SIDA after deciding to make a further investment of \$225,000 and requested SIDA fill the remaining gap with grant funding. SIDA in turn approached ESD and requested that \$275,000 from its original \$2 million Upstate City-by-City grant for the 438 North Franklin Square Capital project, be reallocated to Tops. ESD agreed to the reallocation, and the project is moving forward.

Grantee Past ESD Support - Previously, SIDA received a \$2 million grant, approved by the ESD Directors on April 17, 2008, for the construction a 64,000-square-foot mixed-use facility in the Franklin Square district of Syracuse at the northern edge of the City’s

SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

May 17, 2012

central business district located at 438 N. Franklin Street. Since 2008 approval, due to delays in the project because of the faltering economy and reduced financial commitments, the developer walked away, and the City decided not to move forward. On December 16, 2010, the Directors approved a \$500,000 reallocation of the original \$2 million grant previously approved for 438 N. Franklin, for the development of a 152,000-square-foot, seven-story, mixed-use Marriot hotel complex situated in the center of Downtown Syracuse's historical retail and entertainment district. Subsequent to that approval, SIDA decided to request that the remainder of the \$2 million balance for the 438 N. Franklin project be reallocated to Tops and two other significant projects in the City of Syracuse.

Beneficiary Past ESD Support – Previously, Tops received a \$300,000 capital grant, approved by the ESD Directors on February 14, 2002, to Supermarket Management, Inc., a Tops franchisee, to construct a new supermarket in the Buffalo Empire Zone, and on January 15, 2004, the ESD Directors approved a \$500,000 capital grant to assist with the construction of a new full-service supermarket in a blighted area of the City of Buffalo. On March 19, 2009, the ESD Directors approved a \$1.2 million Jobs Now grant to be used for the relocation of the Tops headquarters operations including accounting, IT and purchasing functions, from Carlisle, PA to Western New York. Funds have been fully disbursed and the Company is in compliance with the terms of all of the previous grants.

The Project:

Completion – December 2012

Activity – The Company will lease, renovate and equip a 36,000-square-foot, vacant storefront in the City's Southside neighborhood. The facility will support neighborhood demand for a full-service grocery store left by the closing of P&C Market, the former tenant.

Results – Valley Plaza (the "Plaza") has operated for more than 50 years on the south side of the City, and for most of that time a full-service grocery store was the main anchor tenant. The closing of the P&C store at that location four years ago negatively impacted an already underserved low-income neighborhood surrounding it, which was left with no other full-service food options in the vicinity. Further, the Plaza itself saw its vacancy rate rise to 78% as other tenants left following the P&C closure. Tops proposes an investment of \$1.5 million at this location in the form of build-out expenses, furniture and fixtures, and machinery and equipment. At opening, the Company projects the store will hire 82 full-time and part-time employees. The SIDA Board, after a review of the project's finances, agreed to request that ESD reallocate \$275,000 of the Upstate City-by-City funding to the project. SIDA took this step because of the strong support this project has received from the community, as the replacement of a full-

SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

May 17, 2012

service grocery store at Valley Plaza has been the single most important issue and goal of the neighborhood since the P&C closed.

Financing Uses	Amount	Financing Sources	Amount	Percent
Machinery & Equipment	\$500,000	ESD Grant	\$275,000	18%
Furniture & Fixtures	386,500	Company Equity	1,225,000	82%
Building/Infrastructure Improvements	613,500			
Total Project Costs	\$1,500,000	Total Project Financing	\$1,500,000	100%

Grantee Contact - Benjamin R. Walsh, Executive Director
Syracuse Industrial Development Agency
333 West Washington Street, Suite 130
Syracuse, NY 13202
Phone: (315) 473-3275 Fax: (315) 435-3669

Beneficiary Contact - Bart Coleman, Director of Real Estate
6363 Main Street
Williamsville, NY 14221
Phone: (716) 635-5000

Project Team - Project Management Jessica Hughes
Contractor and
Supplier Diversity Diane Kinnicutt
Environmental Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. Up to \$275,000 will be disbursed to Grantee upon completion of the project substantially as described in these materials, and documentation of project costs totaling \$1.5 million, 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. Expenditures must be incurred on or after February 29, 2012 to be considered eligible project costs.

SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

May 17, 2012

4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$275,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee 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.

Non-discrimination and Supplier Diversity:

ESD's Non-discrimination and Supplier Diversity policy will apply. The Grantee shall use good faith efforts to achieve an overall Minority and Women-Owned Business Enterprise ("MWBE") goal of 23%, a Minority-Owned Business Enterprise goal of 20% and a Women-Owned Business Enterprise goal of 3%, to provide meaningful participation by MWBEs as primary contractors, subcontractors or suppliers in the performance of the project.

Statutory Basis – Empire Opportunity Fund:

Section 10 Land Use Improvement Findings

1. That the area in which the project is to be located is a substandard or unsanitary area, or is in danger of becoming a substandard or unsanitary area and tends to impair or arrest the sound growth and development of the municipality.

The property that the project is located on is currently underutilized as a full-service grocery store. The closing of the former grocery store four years ago negatively impacted the already underserved low-income neighborhood surrounding it, which was left with no other full-service food options in the vicinity. Further, the Plaza itself saw its vacancy rate rise to 78% as other tenants followed the former store's closure. This retail project will begin the transformation of a once vibrant section of the Syracuse Southside community.

2. That the project consists of a plan or undertaking for the clearance, replanning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto.

The proposed redevelopment for 4141 South Salina Street is interior building improvements to accommodate the acquisition and installation of new machinery and equipment associated with the build-out of the 36,000-square-foot, full-service, retail grocery store.

3. That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.

SIDA will be working with Tops Markets, LLC, to build this facility. As tenants of the renovated space, it is expected to serve the needs of the surrounding Southside community and the municipality as a whole.

SIDA – Tops Markets – Upstate City – by – City EOF Capital (X753)

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4. That the proposed facilities or project is consistent with any existing local or regional comprehensive plan.

Several local and revitalization strategies demonstrate consistency with the redevelopment proposal for this project. The City of Syracuse's Comprehensive Plan has identified seven "Strategic Economic Areas" that support distinct economic development opportunities. Southside Syracuse was one of these strategic economic areas.

5. 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.

Empire Opportunity Fund Determinations

The Project is in compliance with Chapter 84 of the Laws of 2002 and the Corporation's guidelines established thereunder. Individual project funding does not exceed 25 percent of the total of that project's costs, or if project funding does exceed 25 percent of that project's total costs, the Director of the Division of the Budget has authorized the provision of such amount.

Disclosure and Accountability Certifications:

The Grantee and Beneficiary have provided ESD with the required Disclosure and Accountability Certifications. Grantee's and Beneficiary's certifications indicate that Grantee and Beneficiary have no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

HCA – Safety Improvements Capital (W557)

May 17, 2012

General Project Plan

- Grantee:** The Handicapped Children’s Association of Southern NY, Inc. (“HCA” or the Organization”)
- ESD Investment:** A grant of up to \$50,000 to be used for a portion of the cost of replacing the roof at the Organization’s 10,000-square-foot building in the downtown district, replacing all smoke detectors, and blacktopping/sealing the parking lot at their second location.
- Project Locations:** 18 Broad Street and 139 Grand Avenue, Johnson City, Broome County
- Proposed Project:** Replacing the roof, installing new smoke detectors and rehabilitating the parking lot at the association’s two Johnson City locations to enable property safety and maintenance.
- Project Type:** Rehabilitation/repair of existing properties
- Regional Council:** The Southern Tier Regional Council has been made aware of this item. The project predates the Regional Council initiative.

Background:

Industry - The Handicapped Children’s Association of Southern NY, Inc.’s mission includes establishing and maintaining diagnostic and treatment services for developmentally and physically disabled persons and their families. The goal is to enable those disabled individuals to remain in the community, develop to their fullest potential and be independent members of the community. Individuals are provided assistance services from birth to the elderly.

Organization History – HCA was established in 1947 and is a not-for-profit whose purpose is to serve individuals with developmental disabilities. HCA is managed by an executive director and governed by a 10-member board of directors with four officers, who meet on a monthly basis.

Size – The Broad Street facility has been the home of HCA for the past 40 years and was formerly an A&P grocery store with 10,000 square feet. The Grand Avenue location is used for office space and was formerly a bowling alley with approximately 6,000 square feet. The building was donated by a local business person five years ago. The buildings are centrally located to downtown Johnson City and residential neighborhoods, and are easily accessible to clients.

HCA – Safety Improvements Capital (W557)

May 17, 2012

ESD Involvement – The project was reappropriated in the 2012-2013 New York State budget.

Past ESD Support – This is the first ESD-administered grant to the Organization.

The Project:

Completion – June 2009

Activity – The project included replacing the entire roof of the Broad Street facility, which is the Organization’s main office, including pre-school and clinical programs, as well as administrative offices. Additional work at this location consisted of replacing all smoke detectors with new system sensor units and replacing the fire alarm panel with a new panel including a battery backup device. At the Grand Avenue location, project work included repaving and seal coating the entire parking lot. This building houses the Organization’s finance, human resources and family services departments. Local contractors were selected through a bidding process. Selected were: Karl J. Silfee Construction, Harpursville (roof); Pro-Tech Alarms, Owego (smoke/heat detectors); and Triple S Black Sealcoating, Port Crane (parking lot). ESD assistance offset the substantial expense of providing needed maintenance on the properties and improving building safety, making the project financially viable.

Results – HCA invested a total of \$51,690 in rehabilitating the two properties, ensuring needed maintenance and improving facility safety. The Organization serves hundreds of individuals with disabilities annually. The successful completion of this project in 2009 has allowed HCA to continue to provide services and maintain their mission in the community.

Financing Uses	Amount	Financing Sources	Amount	Percent
Roof Replacement	\$45,000	ESD Grant	\$50,000	97%
New Smoke Detectors and Fire Panel	2,440	Grantee Equity	1,690	3%
Repaving and Sealing	4,250			
Total Project Costs	\$51,690	Total Project Financing	\$51,690	100%

Grantee Contact: Stephen Sano, Executive Director
18 Broad Street
Johnson City, NY 13790
Phone: (607) 798-7117 Fax: (607) 798-0074

HCA – Safety Improvements Capital (W557)

May 17, 2012

Project Team:

Project Management	Robin Alpaugh
Contractor and	
Supplier Diversity	Denise Ross
Environmental	Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. Up to \$50,000 will be disbursed to Grantee upon documentation of property rehabilitation project costs totaling \$51,690, 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. All project expenditures must have been incurred after April 1, 2008.
4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$50,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee 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.

Statutory Basis – Community Capital Assistance Program:

The project was authorized in accordance with Chapter 84 of the Laws of 2002 and reappropriated in the 2012-2013 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

Disclosure and Accountability Certifications:

The Grantee has provided ESD with the required Disclosure and Accountability Certifications. Grantee's certifications indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

HCA – Safety Improvements Capital (W557)

May 17, 2012

B. GLDC - Griffiss Air Force Base Redevelopment Capital (X641)

May 17, 2012

General Project Plan

- Grantee:** Griffiss Local Development Corporation (“GLDC”)
- ESD Investment:** A grant of up to \$125,000 to be used for the cost of rehabilitation, abatement, engineering, and marketing activities.
- Project Location:** Griffiss Business and Technology Park, Rome, Oneida County
- Proposed Project:** Rehabilitation of vacant and deteriorating buildings and marketing activities to promote business growth at the Griffiss Business and Technology Park (the “Park”).
- Project Type:** Business promotion and expansion.
- Regional Council:** The Mohawk Valley Regional Council has been made aware of this item. The project is consistent with the Regional Plan to promote and expand the defense and aerospace industry in the region.

Background:

Industry - Redevelopment of base property and to stimulate the local economy through the attraction of new businesses and jobs. GLDC has been successful in attracting several technology-based businesses, including Premier Aviation Overhaul Center, BAE Systems and ITT Systems, to the former base which has been transformed into the Griffiss Business and Technology Park.

Grantee History - Formed in 1994 by New York State legislation, GLDC is a private not-for-profit corporation charged with facilitating and coordinating the redevelopment efforts of the Griffiss Business and Technology Park. The redevelopment is governed by the Master Reuse Strategy, published in 1995 and updated in 1996 with the approval of the surrounding communities and the U.S. Department of Defense (“DoD”). To date, GLDC’s efforts have resulted in approximately 6,200 jobs at the Park and approximately \$5 million in real estate and PILOT revenue into the City of Rome.

Size – All facilities located in Rome, NY.

ESD Involvement - A \$125,000 appropriation was included in the FY 2011-2012 New York State budget.

GLDC - Griffiss Air Force Base Redevelopment Capital (X641)

May 17, 2012

Past ESD Support - Since 2007, the ESD Directors have approved approximately \$8.6 million in grants to GLDC for redevelopment efforts at the Park. GLDC has complied with all requirements and all the grants are fully disbursed.

The Project:

Completion – January 2013

Activity - Buildings 770, 796 and 798, located in the Technology Heights section of the Park, will be renovated or expanded to accommodate existing technology companies at the Park. ESD funds will be used to undertake architectural and engineering services related to the renovations to the building shells and other electrical and mechanical improvements.

The project also includes fit-out of the new Assured Information Security (“AIS”) building at 153 Brooks Road. ESD funds will be used to offset architectural and engineering support for fit-out of vacant 10,587 square feet in the new 46,307-square-foot facility.

Building 302 is a vacant, deteriorating, former Griffiss Air Force Base facility targeted for demolition. ESD funds will be used for environmental abatement and engineering services.

GLDC, through a sub-recipient arrangement with the Central New York Defense Alliance, Ltd. (“CNYDA”), will also promote economic development activities among defense and aerospace contractors in the region, increase the visibility of the Air Force Research Laboratory (“AFRL”) at the Park, promote the retention and redevelopment of an educated and qualified workforce in the region and provide a mechanism for the interchange of information between the CNYDA’s members and entities responsible for supporting the national security of the United States.

CNYDA was established in 2011 with support from GLDC, Mohawk Valley EDGE, private businesses, academic institutions, and individuals with a common interest in promoting the Central New York Region as a recognized National Center of Excellence in Cyber and Information Technology. CYNDA focuses on formulating strategic partnerships and action plans based upon strengthening the Central New York region’s cyber and information technology capabilities.

Results – GLDC will be able to move toward its goal of redeveloping the former base. CNYDA will continue efforts to secure the presence of the AFRL and protect the remaining military assets and approximately 2,800 associated jobs.

GLDC - Griffiss Air Force Base Redevelopment Capital (X641)

May 17, 2012

Financing Uses	Amount	Financing Sources	Amount	Percent
Rehabilitation	\$50,000	ESD Grant	\$125,000	83%
Abatement & Engineering	75,000	ESD Grant (X643, RCCF)*	25,000	17%
Marketing	25,000			
Total Project Costs	\$150,000	Total Project Financing	\$150,000	100%

*Regional Council Capital Fund Grant, anticipated to be presented a later date.

Grantee Contact - Steven J. DiMeo, Authorized Representative
584 Phoenix Drive
Rome, NY 13441
Phone: (315) 338-0393 Fax: (315) 338-5694

Project Team - Project Management Glendon McLeary
Contractor and
Supplier Diversity Denise Ross
Design & Construction Joseph Burkard
Environmental Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. Up to \$125,000 will be disbursed to Grantee, upon documentation of rehabilitation, abatement and engineering and marketing project costs, 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 April 1, 2011 to be considered eligible project costs.
4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$125,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee 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.

GLDC - Griffiss Air Force Base Redevelopment Capital (X641)

May 17, 2012

Design and Construction:

The project consists of funding for architectural and engineering services for various shell renovations and electrical and mechanical improvements to four buildings (770, 796, 798 and AIS building) along with abatement and associated engineering services prior to demolition of building 302.

Design and Construction (“D&C”) staff will review and approve the renovation and demolition documents, environmental reports, addendum, and cost estimates for the above. D&C will review and approve the A&E requisitions and verify that all requirements have been satisfied prior to completion and final payment.

Non-discrimination and Supplier Diversity:

ESD’s Non-discrimination and Supplier Diversity policy will apply. The Grantee shall use good faith efforts to achieve an overall Minority and Women-owned Business Enterprise (“MWBE”) goal of 20%, a Minority-owned Business Enterprise goal of 10% and a Women-owned Business Enterprise goal of 10%, to provide meaningful participation by MWBEs as primary contractors, subcontractors or suppliers in the performance of the project.

Statutory Basis – Local Assistance:

The project was authorized in the 2011-2012 New York State budget and reappropriated in the 2012-2013 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

Disclosure and Accountability Certification:

The Grantee has provided ESD with the required Disclosure and Accountability Certification. Grantee’s certification indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

D. Smithtown Performing Arts Council – Facility Improvements Capital (V489)

May 17, 2012

General Project Plan

- Grantee:** Smithtown Performing Arts Council, Inc. (the “Council”)
- ESD Investment:** A grant of up to \$50,000 to be used for the cost of purchasing new equipment, upgrading existing equipment and facility renovations.
- Project Location:** 2 East Main Street, Smithtown, Suffolk County
- Proposed Project:** Purchase and installation of new equipment, upgrades to existing equipment, and facility improvements and renovations.
- Project Type:** Facility improvements
- Regional Council:** The Long Island Regional Council has been made aware of this item. The project pre-dates the Regional Council Initiative.

Background:

Industry – Performing Arts. The Council’s primary mission is to produce, provide and educate the citizens of Smithtown and the surrounding communities with a vast array of performing arts opportunities.

Organization History – The Smithtown Performing Arts Council is a 501 (c) (3) not-for-profit organization formed in 2005. The purpose of the Council is to take over the operations of the Smithtown Center for the Performing Arts, a 75-year-old movie house that was renovated in 2002 into a live performance hall.

Size – All facilities located in Smithtown, NY.

ESD Involvement – The project was reappropriated in the 2012-2013 New York State budget.

Past ESD Support – This is the first ESD-administered grant to the organization.

The Project:

Completion – August 2012

Activity – In order to improve the quality of the performing arts performances, the Council will invest in the purchasing of new equipment and upgrades of existing equipment. Also, the project will include improvements and renovations to the theatre

Smithtown Performing Arts Council – Facility Improvements Capital (V489)

May 17, 2012

lobby, including a customer’s assistance system and new software for a ticketing program.

Results – The capital improvements, as well as the purchase and upgrades of equipment, will allow the Grantee to improve the quality of art performances as well as increase the number of presentations year-round. In addition, the installation of new technology systems will improve the quality of performances for disabled and/or handicapped individuals.

Financing Uses	Amount	Financing Sources	Amount	Percent
Purchase and installation of new equipment including new speakers for sound system combined with infrared hearing assistance system	\$11,700	ESD Grant	\$50,000	100%
Upgrade ticketing program, new lighting instruments and operating light board	13,300			
Improvements and renovations to the theatre lobby, including electrical, demolition, installation, and supplies	25,000			
Total Project Costs	\$50,000	Total Project Financing	\$50,000	100%

Grantee Contact - Ken Washington, Managing and Artistic Director
 2 East Main Street
 Smithtown, NY 11787
 Phone: (631) 724-3700 Fax: (631) 543-6428

Project Team - Project Management Contractor and Supplier Diversity Environmental Javier Roman-Morales Vikas Gera Rachel Shatz

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.

Smithtown Performing Arts Council – Facility Improvements Capital (V489)

May 17, 2012

2. The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. Up to \$50,000 will be disbursed to Grantee upon completion of the project substantially as described in these materials, 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.
4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$50,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee 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.

Statutory Basis – Community Capital Assistance Program:

The project was authorized in accordance with Chapter 84 of the Laws of 2002 and reappropriated in the 2012-2013 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

Disclosure and Accountability Certifications:

The Grantee has provided ESD with the required Disclosure and Accountability Certifications, which disclosed the following under Conflict of Interest:

Grantee's certifications indicate that Mr. Ken Washington holds the position of Managing and Artistic Director for Smithtown Performing Arts Council, Inc. and is also a 50% member in the Smithtown Theatre Holding Co., LLC (the "Theatre") which owns the building located at 2 East Main Street, Smithtown. Grantee indicates that there is no conflict of interest between itself and Mr. Ken Washington's interest in the Theatre due to the fact that all decisions are guided by the Grantee's Board of Directors.

In addition, the Theatre does receive rent which Mr. Washington does benefit from, but the Grantee states that the rent is fair and equitable with current rates in the local community. Improvements and repairs are the responsibility of the Grantee, whose mission is to maintain this historic structure in the town, as well as to produce and present professional performing arts presentations.

The above situation was disseminated to the IRS upon seeking approval of 501 (c) (3) status, and was accepted by the IRS when this status was granted to the Grantee.

The Disclosure and Accountability Certifications, while disclosing the above, do not indicate that the Grantee has any other current conflict of interest or good standing violations, and therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

E. Village of Airmont – Road Improvements Capital (V535)

May 17, 2012

General Project Plan

Grantee:	Village of Airmont (“Airmont” or the “Village”)
ESD Investment:	A grant of \$50,000 to be used for a portion of the cost of repairing and repaving a Village road.
Project Location:	Church Road, Tallman, Rockland County
Proposed Project:	Repair and repaving of Church Road.
Project Type:	Infrastructure Improvements.
Regional Council:	The Mid-Hudson Regional Council has been made aware of this item. Project predates the Regional Council Initiative.

Background:

Village History - Airmont, located in Rockland County, is about 14 miles from the Tappan Zee Bridge and 30 miles northwest of New York City. Incorporated in 1991, the Village of Airmont is a community of 9,000 people. Today, Airmont occupies a five-square-mile area. Located in the Ramapo Mountains, its terrain is characterized by gently rolling topography which Airmont’s governing body has a strong interest in conserving. The Village is governed by a four-member board of trustees and a mayor who is responsible for running Village services.

Size – Church Road is a .82 mile road badly damaged from winter weather. It’s a main thoroughfare in Airmont.

ESD Involvement – The project was reappropriated in the 2012-2013 New York State budget.

Past ESD Support – This is the first ESD-administered grant to the Village of Airmont.

The Project:

Completion – November 2006.

Activity – The project involved repaving Church Road, which was heavily damaged by winter weather. In 2005, Airmont contracted with the Town of Ramapo to perform road work. Bids were solicited on Airmont’s behalf, and Tilcon New York, located in West Nyack, was awarded the construction contract. Environmental work, which

Village of Airmont – Road Improvements Capital (V535)

May 17, 2012

involved paving, drainage and sewer repair, was performed by Environmental Construction, Inc. of Stony Point. Environmental Construction, Inc. is an MWBE.

Results – Church Road was paved. Repaving was undertaken to correct the damage and positively impact the safety and economic well-being of the residents and local businesses of Airmont. Without completion of the project, the safety of the Village residents would have been impaired because emergency responders use Church Road to access the Village. The road also serves Village residents and businesses that travel between home and their place of employment.

Because of the sudden and urgent need to repave Church Road, special financing had to be secured. ESD’s reimbursement of a portion of the project cost will greatly assist Airmont at a time of severe budget constraints.

Financing Uses	Amount	Financing Sources	Amount	Percent
Paving work	\$84,005	ESD Grant	\$50,000	58%
Asphalt	\$2,758	Grantee Equity	\$36,763	42%
Total Project Costs	\$86,763	Total Project Financing	\$86,763	100%

Grantee Contact - Irene Murphy, Village Clerk/ Treasurer
251 Cherry Lane PO Box 578
Tallman, NY 10982
Phone: (845) 357-8111 Fax: (845) 357-8307

Project Team - Project Management Simone Bethune
Contractor and
Supplier Diversity Denise Ross
Environmental Soo Kang

Financial Terms and Conditions:

1. Upon execution of the grant disbursement agreement, the Grantee shall reimburse ESD for all out-of-pocket expenses incurred in connection with the project.
2. The Grantee will be obligated to advise ESD of any materially adverse changes in its financial condition prior to disbursement.
3. Up to \$50,000 will be disbursed to Grantee upon completion of the project substantially as described in these materials and documentation of project costs totaling approximately \$86,000, assuming that all project approvals have been completed and funds are available. Payment will be made upon presentation to ESD

Village of Airmont – Road Improvements Capital (V535)

May 17, 2012

of an invoice and such other documentation as ESD may reasonably require.

4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$50,000, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Grantee 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.

Statutory Basis – Community Capital Assistance Program:

The project was authorized in accordance with Chapter 84 of the Laws of 2002 and reappropriated in the 2012-2013 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

Disclosure and Accountability Certifications:

The Grantee has provided ESD with the required Disclosure and Accountability Certifications. Grantee's certifications indicate that Grantee has no conflict of interest or good standing violations and, therefore, staff recommends that the Corporation authorize the grant to the Grantee as described in these materials.

Empire State Development (ESD) Performance Measures

Fiscal Year 2011-12

May 17, 2012

- Number of firms assisted (with cash, loans, technical assistance, problem-solving)
 - 180 companies and organizations were assisted
 - 77 privately-held or publicly-traded companies, 16 public entities, 87 not-for-profit entities
 - 2 minority owned, 1 woman owned
 - 138 small-sized entities (less than 100 employees), 31 medium-sized entities (100 to 499 employees), 11 large-sized entities (over 500 employees)
 - Note that amount of jobs is for the entity receiving the financial assistance and not necessarily a larger, parent company
- Jobs retained/created through ESD assistance
 - 19,797 jobs retained and 5,405 jobs created
- Capital investment made in New York State (both total and private leveraged with public assistance)
 - \$6.87 billion total capital investment
 - \$5.78 billion private capital funds leveraged with public assistance (ESD and non-ESD)

ESD PERFORMANCE MEASURES - BY FUNDING SOURCE										
FY 2011-2012										
Programs	Number of Companies/ Organizations Assisted	FY 11-12 Grant Amount	FY 11-12 Loan Amount	Total Investment	Non-ESD Public Investment	Private Investment	Jobs Existing	Jobs Retained	Jobs Created	Total Projected Jobs
Core Discretionary Programs*	59	\$ 43,657,500	\$ 5,500,000	\$ 1,278,595,583	\$ 50,400,863	\$ 1,154,106,815	16,557	15,320	3,967	20,524
Downstate Revitalization Fund	3	\$ 1,800,000	\$ 2,000,000	\$ 6,950,000	\$ 1,500,000	\$ 1,900,000	1,058	1,058	50	1,108
Upstate Regional Blueprint Fund	19	\$ 21,076,000	\$ 9,223,713	\$ 467,820,275	\$ 309,973,500	\$ 134,047,062	3,221	3,221	699	3,920
Restore NY Communities	11	\$ 18,135,174	\$ 0	\$ 68,939,652	\$ 19,077,265	\$ 16,156,687	0	0	0	0
Community Development Financial Institutions	28	\$ 2,990,000	\$ 0	\$ 2,990,000	\$ 0	\$ 0	0	0	0	0
Entrepreneurial Assistance Program	22	\$ 1,764,000	\$ 0	\$ 3,599,599	\$ 1,835,599	\$ 0	0	0	0	0
Metropolitan Economic Revitalization Fund	5	\$ 610,000	\$ 1,000,000	\$ 55,300,000	\$ 0	\$ 47,700,000	185	185	17	202
Non-ESD/Other**	4	\$ 18,000,000	\$ 3,097,800	\$ 103,671,286	\$ 7,951,374	\$ 82,622,112	13	13	7	20
Legislative/Non-Discretionary***	29	\$ 435,257,309	\$ 0	\$ 5,172,854,596	\$ 132,475,580	\$ 4,606,201,835	315	0	665	980
TOTAL	180	\$ 543,289,983	\$ 20,821,513	\$ 7,160,720,991	\$ 523,214,181	\$ 6,042,734,511	21,349	19,797	5,405	26,754
TOTAL CAPITAL INVESTMENT		\$ 526,836,983	\$ 20,345,826	\$ 6,874,414,374	\$ 513,402,208	\$ 5,776,758,554	18,001	16,449	4,950	22,951

* Core Discretionary Programs: Empire State Economic Development Fund, Jobs Now Program, Urban and Community Development Program

** Non-ESD/Other: 1 Job Development Authority Loan (~\$2.6MM), 2 Working Capital Loans via Dept. of Transportation allocation (~\$500K), 1 New Markets Tax Credit Allocation to Agro Farma (~\$18 MM)

*** Legislative/Non-Discretionary: ESD administers these funds but does not select the funding recipients. Includes \$300 MM Research Foundation of SUNY grant for Semiconductor Transition Program (\$4.8 billion total investment)

Empire State Development (ESD) Performance Measures
Fiscal Year 2011-12
May 17, 2012

ESD PERFORMANCE MEASURES - BY REGION										
FY 2011-2012										
Region	Number of Companies/ Organizations Assisted	FY 11-12 Grant Amount	FY 11-12 Loan Amount	Total Investment	Non-ESD Public Investment	Private Investment	Jobs Existing	Jobs Retained	Jobs Created	Total Projected Jobs
Capital	9	\$ 311,709,500	\$ 400,000	\$ 4,964,612,398	\$ 114,267,329	\$ 4,538,135,697	698	687	530	1,228
Central	13	\$ 4,364,812	\$ 5,000,000	\$ 60,771,440	\$ 5,563,965	\$ 45,842,663	2,012	1,991	62	2,074
Finger Lakes	26	\$ 19,904,700	\$ 5,010,000	\$ 245,613,238	\$ 42,369,926	\$ 165,137,207	7,992	6,787	1,085	9,077
Long Island	10	\$ 19,866,000	\$ 0	\$ 275,446,943	\$ 2,148,464	\$ 252,892,479	280	280	55	335
Mid Hudson	17	\$ 10,890,000	\$ 2,000,000	\$ 250,420,923	\$ 5,109,261	\$ 226,531,662	2,215	2,215	816	3,031
Mohawk Valley	9	\$ 2,192,500	\$ 2,313,713	\$ 33,263,299	\$ 967,499	\$ 27,789,587	483	483	324	807
New York City	45	\$ 38,302,000	\$ 4,022,113	\$ 247,152,446	\$ 15,272,721	\$ 185,205,612	2,051	1,736	381	2,432
North Country	7	\$ 8,333,500	\$ 0	\$ 56,127,166	\$ 6,200,500	\$ 41,593,166	170	170	300	470
Southern Tier	15	\$ 31,057,000	\$ 75,687	\$ 327,430,021	\$ 15,565,414	\$ 289,811,920	1,112	1,112	1,019	2,131
Western New York	27	\$ 66,669,971	\$ 2,000,000	\$ 669,883,117	\$ 315,749,102	\$ 269,794,518	4,336	4,336	833	5,169
Statewide	2	\$ 30,000,000	\$ 0	\$ 30,000,000	\$ 0	\$ 0	0	0	0	0
TOTAL	180	\$ 543,289,983	\$ 20,821,513	\$ 7,160,720,991	\$ 523,214,181	\$ 6,042,734,511	21,349	19,797	5,405	26,754

ESD PERFORMANCE MEASURES - BY INDUSTRY										
FY 2011-2012										
Industry	Number of Companies/ Organizations Assisted	FY 11-12 Grant Amount	FY 11-12 Loan Amount	Total Investment	Non-ESD Public Investment	Private Investment	Jobs Existing	Jobs Retained	Jobs Created	Total Projected Jobs
Biotechnology/Science/Chemicals/Hi-tech Manufacturing or Research and Development	16	\$311,059,000	\$850,000	\$5,064,611,329	\$107,030,000	\$4,645,672,457	6,965	6,965	1,288	8,253
Food or Retail Manufacturing/Distribution	14	\$28,569,000	\$6,813,713	\$439,155,728	\$22,148,611	\$389,624,404	2,569	1,803	1,707	4,276
Health	2	\$10,250,000	\$0	\$309,798,000	\$297,648,000	\$1,900,000	384	384	0	384
Hospitality/Tourism	12	\$48,621,997	\$2,475,687	\$126,184,667	\$11,028,976	\$63,959,007	950	950	194	1,144
Miscellaneous Manufacturing	38	\$22,992,000	\$5,682,113	\$795,591,038	\$22,018,150	\$726,317,370	7,969	7,498	1,681	9,650
Municipal/Government/Not-for-Profit	94	\$117,431,986	\$0	\$356,009,063	\$56,088,444	\$162,508,107	1,604	1,289	535	2,139
Professional Services/Insurance	2	\$866,000	\$0	\$16,651,000	\$0	\$15,785,000	608	608	0	608
Real Estate Development	1	\$1,000,000	\$5,000,000	\$29,175,000	\$3,500,000	\$19,675,000	300	300	0	300
Utilities	1	\$2,500,000	\$0	\$23,545,166	\$3,752,000	\$17,293,166	0	0	0	0
TOTAL	180	\$ 543,289,983	\$ 20,821,513	\$ 7,160,720,991	\$ 523,214,181	\$ 6,042,734,511	21,349	19,797	5,405	26,754

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Performance Measurement Report

REQUEST FOR: Acceptance of Annual Performance Measurement Report for FY 2011 –2012;
Authorization to Take Related Actions

I. **Background**

In April and December, 2011, in accordance with the requirements of the Public Authorities Law, the Corporation adopted the following Mission Statement and related performance measures to assist the Corporation in determining how well it is carrying out its mission.

II. **Mission Statement (adopted December 2011):**

The New York State Urban Development Corporation, now doing business as Empire State Development (“ESD”), was formed by legislative act in 1968 to address conditions of unemployment, underemployment and blight which impede the economic and physical development of municipalities, increase the burdens on the State and adversely affect the welfare and prosperity of the State’s citizens. ESD seeks to promote a vigorous and growing economy, prevent economic stagnation, encourage the creation of new job opportunities, increase revenues to the State and its municipalities and achieve stable and diversified local economies. In furtherance of these goals, ESD leverages private investment with loans, grants, tax credits and other forms of financial assistance; assists with site assemblage; and provides targeted relief from legal and regulatory requirements through its participation in projects, programs and other initiatives. ESD’s performance of its economic development services is driven by core values that include efficiency, accountability, transparency and collaboration with other public and private sector partners. Its success is measured by the number of jobs created and retained for New Yorkers, the degree to which its public resources leverage new private investment in the State and the number of businesses served, including minority, women-owned and other small businesses. Empire State Development works to promote business investment and growth that leads to job creation and prosperous communities across New York State.

III. Performance Measures (adopted April 2011):

- Customers served: number and types (private, public, not-for-profit); size of entity by number of employees; MWB status
- Financing provided and leveraged: amounts of ESD support, other public support, private investment
- Jobs projected to be retained and created
- Regional and industry breakdowns of assistance, jobs retained and created, and leveraged investment

IV. 2011-2012 Performance Report

Attached is a report on the assistance provided by the Corporation during FY 2011 – 2012, using the measures adopted by the Corporation last year and set forth above. In summary, the Corporation accomplished the following:

Performance Measures (FY 2011 – 2012)

- a total of 180 companies and organizations were assisted;
- this assistance will result in the creation of 5,405 jobs and the retention of 19,797 jobs;
- a total of \$6.87 billion total capital investment was made in NYS (including ESD investment of \$564.1 million); and
- \$5.78 billion in private capital funds were leveraged with public assistance (ESD and non-ESD).

The attached report, in spreadsheet format, provides additional detail on the assistance provided by the Corporation, broken down by major program categories, regions and industry.

V. Requested Action

The Directors are requested to: (1) accept the annual performance measures report for FY 2011–2012 and (2) authorize the posting of all of the above on the ESD’s website and the filing of the same with the Authorities Budget Office, in accordance with the requirements of the Public Authorities Law.

VI. Recommendation

Based upon the foregoing, I recommend approval of the requested actions.

VII. Attachments

FY 2011 – 2012 Performance Measures Report
Resolution

May 17, 2012

NEW YORK STATE URBAN DEVELOPMENT CORPORATION - Acceptance of Annual Performance Measurement Report for FY 2011 – 2012; Authorization to Take Related Actions

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is ordered filed with the records of the Corporation (the "Materials"), the annual performance measurement report for FY 2011 – 2012 be and it hereby is accepted; and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized and directed to post all of the above referenced documents on the website of the Corporation, to file all such documents with the Authorities Budget Office in accordance with the requirements of the Public Authorities Accountability Act, as amended, and to take any and all such other actions as may be necessary or proper in connection with the foregoing.

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Extension of the Contract with BLX Group LLC

REQUEST FOR: Authorization to Amend the Contract for Arbitrage Compliance Services
Consultant and to Take Related Actions

Contract Summary

Contractor BLX Group LLC ("BLX")

Scope of Services Arbitrage Compliance Services Consultant

Contract Term Four years commencing June 16, 2012 (with two year renewal option)

Current Contract
Amount Cumulative contract amount totals \$472,000

Requested
Amendment Amount \$200,000

New Proposed Total
Contract Amount \$672,000

Funding Source State Appropriations reimburse corporate funds

Background

Federal tax law prohibits issuers, such as ESD, from earning arbitrage profits on the investment of proceeds from tax-exempt bond issuances. Compliance with such laws requires detailed monitoring of current tax regulations and rules and their application to specific bond transactions; in-depth knowledge of both tax law and bond law is required. Expertise in this field is necessary to both ensure compliance as well as to minimize any potential tax liability. ESD employs an arbitrage rebate compliance consultant to perform such work. BLX has been providing arbitrage rebate compliance services to ESD since February 1999.

Selection Process

On February 24, 2012, a request for proposals (“RFP”) was advertised in the New York State Contract Reporter, and also placed in the procurement section on the ESD website. Proposals were received from five firms. The proposals were reviewed by the Treasurer, the Senior Director of Treasury Operations, and the Senior Director of Debt Management. After reviewing these responses based on experience, tax and bond law proficiency, and fees, it is recommended that BLX be selected to continue to provide arbitrage rebate compliance services to ESD. BLX received the best overall ranking, including being the lowest cost provider.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation’s policy related thereto, staff has; a) considered proposed contractor’s ability to perform the services provided for in the proposed contract; and b) determined that all the requirements of the New York State Vendor Responsibility System have been satisfied. Based on the foregoing, staff considers the proposed contractor to be responsible.

Scope of Work

The required services include collection and review of pertinent documents related to the entire bond portfolio of ESD (approximately \$9.8 billion), data analysis, preparation of tax forms and related reports, and all associated tax and legal counsel.

Proposed Contract Amendment and Term

ESD initially entered into a contract with BLX in 1999 and the cumulative contract amount currently totals \$472,000. The resolution incorporated herein amends the overall expenditures under this contract for an additional \$200,000, bringing the total contract amount to \$672,000 covering a four year term commencing June 16, 2012 (with two year renewal option with the consent of the CFO or Treasurer). The source of funding is State appropriations that reimburse corporate funds.

Non-Discrimination & Contractor Diversity

Pursuant to New York State Executive Law Article 15-A, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority-and women-owned businesses in the performance of ESD contracts. For purposes of this contract, however, goals will not be established due to the unavailability of minority and women-owned businesses for performance of these services.

Environmental Review

ESD staff has determined that the authorization of the proposed contract amendment does not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

Requested Action

The Directors are requested 1) to approve an increase of \$200,000 to the contract with BLX Group LLC for services covering a four year term commencing June 16, 2012 (with two year renewal option with the consent of the CFO or Treasurer); 2) to make a determination of responsibility with respect to the proposed contractor.

Recommendation

Based on the foregoing, we recommend approval of the requested action.

Attachment

Resolution

May 17, 2012

NEW YORK STATE URBAN DEVELOPMENT CORPORATION - Authorization to Amend the Contract with BLX Group LLC to provide Arbitrage Compliance Services and to Take Relate Actions

RESOLVED, that on the basis of the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered to be filed with the records of the Corporation, the Directors hereby approve an amendment to the existing contract (the "Contract") with BLX Group LLC; and the Corporation hereby finds BLX Group LLC to be responsible; and be it further

RESOLVED, that the Chief Executive Officer, or other officer of the Corporation, or his or her designee(s) are authorized to amend the Contract with BLX Group LLC for an additional \$200,000 such that the total amount of the Contract shall not exceed \$672,000 for services covering a four year term commencing June 16, 2012 (with two year renewal option with the consent of the CFO or Treasurer) and be it further

RESOLVED, that the Chief Executive Officer, or other officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to negotiate and execute said Contract amendment upon such terms as may be substantially consistent with the foregoing, and to take such further actions as they may deem necessary and appropriate.

* * *

FOR CONSIDERATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Land Bank Program

REQUEST FOR: Approval of Land Bank Applications; Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

I. BACKGROUND

New York State's Land Bank Program (the "Program") was established with enactment of Article 16 of the New York State Not-for-Profit Corporation Law (the "Act"). The Legislative intent of the Act found and declared that New York's communities are important to the social and economic vitality of the state and that whether urban, suburban or rural; many communities are struggling to cope with vacant, abandoned and tax delinquent properties.

In order to combat the problem of vacant and abandoned properties, the Act permits local communities on their own, or together through the execution of intergovernmental agreements, to create not-for-profit corporation land banks to be utilized to facilitate the return of vacant, abandoned and tax-delinquent properties to productive use. The primary focus of land bank operations is the acquisition of real property that is tax delinquent, tax foreclosed, vacant and/or abandoned, and to use the tools of the Act to eliminate the harms and liabilities caused by such properties.

Pursuant to Section 1603 of the Act, the creation of a land bank is conditioned upon approval of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD").

II. THE PROGRAM GUIDELINES

ESD's role in this initiative is to approve applications from municipalities seeking to create land banks in their communities. Pursuant to the Act, the number of land banks state-wide is limited to ten. At its November Board meeting, the Directors approved guidelines for the Program which set forth the application process, eligibility criteria, evaluation criteria, the approval process and other terms and conditions regarding approval of applications (the "Guidelines").

Pursuant to the Guidelines, ESD anticipates approving applications in multiple rounds from interested municipalities. The first round of applications were due on March 30, 2012. Per the Guidelines, ESD will not approve more than five applications in Round 1 to ensure that municipalities will be able to seek approval for their land banks in later application rounds if they were not prepared to submit an application in March.

III. RECOMMENDATIONS

ESD received seven applications from interested municipalities prior to the Round 1 deadline. Applications were received by ESD from the following municipalities:

- 1) Cities of Buffalo, Lackawanna, Tonawanda and Erie County
- 2) City of Syracuse and Onondaga County
- 3) City of Schenectady, County of Schenectady and City of Amsterdam
- 4) Chautauqua County
- 5) City of Newburgh
- 6) Suffolk County
- 7) Broome County

The Guidelines adopted by ESD cite the criteria in which ESD evaluated the applications. In general, the factors can be broken down into three categories: 1) the level of intergovernmental cooperation; 2) the need for a land bank; and 3) the likely success of the land bank as proposed. Based on staff review of the applications, it is recommended that five land bank applications be approved in Round 1. These applications were submitted by:

- 1) Cities of Buffalo, Lackawanna, Tonawanda and Erie County
- 2) City of Syracuse and Onondaga County
- 3) City of Schenectady, County of Schenectady and City of Amsterdam
- 4) Chautauqua County
- 5) City of Newburgh

For the Buffalo, Syracuse and Schenectady applications, intergovernmental cooperation agreements have been executed detailing significant collaborative efforts in implementing, staffing and supporting the land banks. While Chautauqua County and Newburgh did not join with any other municipalities in their applications, each provided various letters of support and indicated a willingness to expand their geographical area at a later date. Each of these applicants have also demonstrated a significant problem with vacant, abandoned and tax foreclosed properties and have identified ideal properties that could be subject to land bank control. Based on the implementation plan, funding and in-kind services presented in the applications, the applicants have made a strong case that the land bank will be successful in their communities.

With respect to the applications submitted by Suffolk County and Broome County, they were limited to the acquisition of properties subject to environmental contamination which

somewhat limits the effectiveness of the Program. Regardless, both applicants are not precluded from reapplying in future rounds.

IV. ENVIRONMENTAL REVIEW

Pursuant to the requirements of the State Environmental Quality Review Act (“SEQRA”) and the implementing regulations of the New York State Department of Environmental Conservation, ESD staff performed a environmental review for the proposed approval of land bank applications. This review determined the project to be an Unlisted Action, which would not have a significant effect on the environment. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

V. REQUESTED ACTIONS

The Directors are requested to: 1) pursuant to Section 1603 of the Act, approve the creation of land banks based on the applications submitted by i) the Cities of Buffalo, Lackawanna, Tonawanda and Erie County; ii) the City of Syracuse and Onondaga County; iii) the City of Schenectady, County of Schenectady and City of Amsterdam; iv) Chautauqua County; and v) the City of Newburgh; 2) make a determination that the proposed action will not have a significant effect on the environment; and 3) take all related actions.

VI. RECOMMENDATION

Based upon the foregoing, I recommend approval of the requested actions.

ATTACHMENTS

Resolution

May 17, 2012

Land Bank Program – Approval of Land Bank Applications; Determination of No Significant Effect on the Environment; and Authorization to Take All Related Actions

RESOLVED, that on the basis of the materials (the “Materials”) presented at this meeting, a copy of which is hereby ordered filed with the records of the New York State Urban Development Corporation d/b/a Empire State Development (the “Corporation”), relating to the Land Bank Program (the “Program”), the Corporation hereby approves creation of a land bank by the following applicants: i) Cities of Buffalo, Lackawanna, Tonawanda and Erie County; ii) the City of Syracuse and Onondaga County; iii) City of Schenectady, County of Schenectady and City of Amsterdam; iv) Chautauqua County; and v) City of Newburgh for the purposes and substantially in the form set forth in the Materials, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate; and be it further

RESOLVED, that based on the materials submitted presented at this meeting, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that President and Chief Executive Officer or his designee(s) be, and each of them hereby is, authorized in the name of and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as may be necessary or proper to effectuate the foregoing resolution.

FOR INFORMATION

May 17, 2012

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Standard Form Contract for Goods and Services; and
Standard Retainer Agreement for Professional Services (Law Firms)

At the last meeting of Directors, held April 26, 2012, the Directors requested information on the terms of contracts entered into by the Corporation for goods and services obtained from outside vendors ("procurement contracts"). In response to that request, attached please find the standard forms of contract used by the Corporation for such outsourced goods and services, including the form of retainer agreement used for legal services.

As you will see, these standard agreements provide for uniform terms and conditions for procurement contracts. These forms are used when the total contract amount is \$15,000 or more. Under that amount, a simple purchase order form is used.

Each of the attached forms has a cover sheet or, in the case of the legal retainer agreement, a cover letter, which identifies the outside contracting party, the nature of the services being provided and the contract amount.

Incorporated into that cover document are Schedules A and B, and various attachments, which establish uniform contract terms. (The legal retainer agreement was modeled on the standard procurement contract, but eliminates certain contract language and attachments that do not relate to professional services.) Schedule B provides the opportunity for a more detailed listing of the scope of work and project schedule than is possible on the cover form.

The attachments are identified by the number of the paragraph of Schedule A to which they relate:

Attachment 4.5 sets forth the applicable provisions relating to M/WBE participation in the contract. This attachment is tailored to each contract as appropriate and as indicated in the attachment itself.

Attachments 4.6 and 4.7-1 contain forms for completion by the outside provider, which forms are required by State Tax and State Finance laws.

Attachments 5.7 and 6.1 are standard forms for use by the outside provider when invoicing for services.

Attachment 6.3 is the Corporation's current schedule of maximum reimbursement allowances.

Attachment 7.1, 7.2 and 7.5 set forth insurance requirements applicable to each contract.

The use of these standard forms of contract assures compliance with statutory requirements and allows for efficient contract preparation and administration.

STANDARD FORM CONTRACT – SHORT FORM FOR MATERIALS/SERVICES

<p>FOR UDC USE ONLY</p> <p>1. Contract No. _____</p>	<p>2. Project Name: _____</p>	<p>3. Project Number: _____</p>
<p>4. THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION (UDC), a corporate governmental Agency and Public benefit corporation organized under the laws of the State of New York, pursuant to the New York State Urban Development Act, having its principal office and place of business at 633 Third Avenue, New York, N.Y., 10017</p>		
<p>5. HEREBY REQUESTS YOU</p> <p><i>Name of Contractor:</i> _____ <i>Address Line 1:</i> _____ <i>Address Line 2:</i> _____ <i>City, State, Zip:</i> _____</p> <p>ATTENTION: <i>Title:</i> _____ <i>Phone:</i> _____</p>		
<p>6. TO PROVIDE the materials/services as described below and in accordance with the terms set forth in this agreement</p>		
<p>7. The above materials/services are to be provided on or before (date) _____</p>		
<p>8. COMPENSATION for the above materials/services shall be as follows:</p> <p><input type="checkbox"/> materials/services for this project are tax exempt</p> <p><input type="checkbox"/> compensation/rate schedule attached</p> <p>Total Compensation for materials/services provided pursuant to this Agreement shall in the aggregate not exceed \$ _____</p>		
<p>9. "This contract may be subject to review and approval by the Office of the State Comptroller ("OSC") pursuant to Public Authorities Law section 2879-a and the regulations issued thereunder. Such OSC review and approval may be required of contracts with a value in excess of one million dollars, or modifications to contracts that result in an aggregate value in excess of one million dollars, where such contracts are paid in whole or in part with monies appropriated by the state, or were awarded on a basis other than a competitive procurement (as that term is defined in the law and regulations). <u>If this contract is subject to OSC review and approval, the contract shall not be valid and enforceable, nor shall the Corporation have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.</u>"</p> <p>Any questions related to this Agreement may be referred to (individual's name) : _____ at telephone number: _____</p>		
<p>10. To receive payments, a substantiated invoice must refer to the above Contract Number and be forwarded to the UDC Accounts Payable Department, 633 Third Avenue, New York, N.Y., 10017.</p>		
<p>11. Schedule A and other schedules (if applicable) attached hereto are an integral part of this Agreement.</p>		
<p>12. If the proposed Agreement is acceptable please execute all copies and return to UDC's Contracts Office for final approval. A copy of the fully executed Agreement will be forwarded to you which will then constitute your authorization to proceed with the work described herein.</p>		
<p>13. UDC LOCAL EXECUTIVE OFFICE (if applicable)</p> <p>DATE: _____</p>	<p>14. AGREED TO AND ACCEPTED BY</p> <p>Name of Contractor _____</p> <p>BY _____ Name & Title _____ Date _____</p>	<p>15. APPROVED: NEW YORK STATE URBAN DEVELOPMENT CORPORATION</p> <p>By _____</p> <p>Title _____</p> <p>Date _____</p>

SCHEDULE A

**CONDITIONS APPLICABLE TO THE CORPORATION'S⁽¹⁾ AGREEMENTS
FOR MATERIALS/SERVICES**

ARTICLE 1
RELATION OF CONTRACTOR TO THE CORPORATION

1.1 **SUPERVISION BY THE CORPORATION.** The services to be performed by Contractor under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Contractor of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 **CONTRACTOR'S PERSONNEL.** The Contractor shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Contractor and who shall be the Corporation's normal point of contact with the Contractor on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

1.3 **APPROVAL OF SUBCONTRACTORS.** The Contractor shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subcontractor") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Contractor shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subcontractor, and of any interest the Contractor may have in the proposed Subcontractor.

1.4 **CONTRACTOR AS INDEPENDENT CONTRACTOR.** Notwithstanding any other provisions of this Agreement, the Contractor's status (and that of any Subcontractor) shall be that of independent contractor and not that of an agent or employee of the Corporation. Accordingly, neither the Contractor nor any Subcontractor shall hold itself out as, or claim to be acting in the capacity of, an employee or agent of the Corporation.

1.5 **THE CORPORATION'S REPRESENTATIVE.** The Corporation will designate in writing to the Contractor an individual who will serve as the Corporation's Representative and normal point of contact for the Contractor in regard to this Agreement and the Contractor's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Contractor.

1.6 **APPROVALS OR ACCEPTANCE BY THE CORPORATION.** Whenever action is to be taken, or approval or acceptance given, by the Corporation, such action, approval or acceptance shall be deemed to have been taken or given only if so taken or given by the Corporation's Representative, by the official of the Corporation who signed this Agreement on behalf of the Corporation, or by another officer or employee of the Corporation duly designated by such signing officer to represent the Corporation in connection therewith. The Corporation shall notify the Contractor in writing of the giving or withholding of each such approval or acceptance within a reasonable period of time. The Corporation's acceptance or approval of any specifications, drawings, plans, reports or other materials prepared by the Contractor hereunder shall in no way relieve the Contractor of responsibility for such materials.

1 As used in this Schedule A, the "Corporation" shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the Contract for Materials/Services of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD, in which case the "Corporation" shall mean such subsidiary corporation.

1.7

CONFLICT-OF-INTEREST. The Contractor represents and warrants that:

(a) The Contractor has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Contractor's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Corporation, or any of its subsidiaries shall be permitted by the Contractor to share in any benefit to arise from the Contractor's work.

(c) The Contractor shall not permit any officer, employee, agent or director of the Corporation, or any of its subsidiaries to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals, or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation, or any of its subsidiaries be permitted by the Contractor to have any interest, direct or indirect, in this Agreement or the proceedings thereof.

(d) The Contractor shall cause, for the benefit of the Corporation, every contract or agreement with any Subcontractor to include the representations contained in subsections (a), (b), (c) of this Section 1.7. The Contractor will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.8 **NO BROKER.** The Contractor represents that it has not employed any person, corporation or partnership, to solicit or procure this Agreement, and has not made, and will not make, any payment or agreement for the payment of any commission, percentage, brokerage or contingent fee, or other compensation in connection with the procurement of this Agreement.

1.9 **NOTICE OF OVERRUNS AND DELAYS.** The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, the discovery of a condition or the failure of an event or action to occur or a condition to exist as anticipated, which may result in an increase in (a) the compensation due Contractor; (b) reimbursable expenses and/or (c) the number of hours necessary to perform the work.

The Contractor shall promptly give written notice to the Corporation's Representative of the occurrence of an event or action, or the discovery of a condition, or the failure of an event or action to occur or a condition to exist as anticipated, which may delay completion of the work (or extend the Completion Date).

ARTICLE 2 **DOCUMENTS AND RECORDS**

2.1 **OWNERSHIP OF DOCUMENTS AND OTHER MATERIALS.** All originals and negatives of all plans, drawings, reports, photographs, charts, programs, models, specimens, specifications, and other documents or materials required to be furnished by the Contractor under this Agreement including drafts and reproduction copies thereof, shall be and remain the exclusive property of the Corporation, and the Corporation shall have the right to publish, transfer, sell, license and use all or any part of such reports, plans, drawings, specifications and other documents without payment of any additional royalty, charge or other compensation to Contractor. Upon request of the Corporation during any stage of the work, Contractor shall deliver all such materials to the Corporation.

The Contractor agrees that it shall not publish, transfer, license or, except in connection with carrying out its obligations under this Agreement, use or reuse all or any part of such reports and other documents, including working papers, without the prior written approval of the Corporation, except that Contractor may retain copies of such reports and other documents for general reference use.

22 MAINTENANCE OF RECORDS. The Contractor shall, and shall require any and all subcontractors to, until six (6) years after completion of services hereunder or termination of this Agreement by Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Contractor's (and Subcontractors') performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Contractor (and Subcontractor) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Contractor is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Contractor (and Subcontractors) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Contractor (and Subcontractor) in performing its obligations hereunder (or under any subcontract). Contractor (and Subcontractor) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Contractor shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Contractor invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE 3 **TERMINATION**

31 DEFAULT BY CONTRACTOR. If any material representation made by the Contractor in this Agreement shall prove to be false or misleading in any material respect, or if the Contractor shall default in the timely performance of any of its obligations under this Agreement and such default shall continue for a period of ten (10) days after written notice from the Corporation specifying the occurrence, omission or failure giving rise to such default, or if, in the opinion of the Corporation, by reason of the nature of such default, such default cannot be cured within such ten (10) day period, then if the Contractor shall not within such period commence with due diligence the curing of such default and thereafter prosecute and complete the curing of such default as promptly as possible, except that the Corporation shall not be required to give Contractor such written notice and Contractor shall not have such right to cure for Contractor's failure to comply with Section 1.9 hereof, the Corporation, in addition to any other remedies or claims it may have with respect to such representation or such default may terminate this Agreement immediately upon verbal or written notice to the Contractor. In the event of such termination, the Corporation, without waiving any such remedy or claims, (including consequential damages) shall not be required to pay the Contractor any portion of the fee specified in this Agreement remaining to be paid for which valid vouchers have not been submitted pursuant to this Agreement on or before the date of the Corporation's notice of termination.

32 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone or delay all or any part of the Agreement upon written notice to the Contractor. In the event of such termination, postponement or delay, the Corporation shall pay the Contractor for professional time and out-of-pocket expenses incurred by Contractor to the date notice of such action is received by Contractor. The Contractor agrees to cause any agreement or contract entered into by Contractor with any Subcontractor to provide for an optional termination by Contractor similar to the provisions of this Section 3.2.

ARTICLE 4 **REQUIRED PROVISIONS**

41 CONTRACTOR TO COMPLY WITH LEGAL REQUIREMENTS. The Contractor in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this

Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 **CONTRACTOR TO OBTAIN PERMITS, ETC.** Except as otherwise instructed in writing by the Corporation, the Contractor shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Contractor in connection with this Agreement.

4.3 **WORKERS' COMPENSATION INSURANCE.** The Contractor agrees that:

(a) It will secure Workers' compensation and disability insurance and keep insured during the life of this Agreement such employees as are required to be insured by the provisions of Chapter 41 of the Laws of 1914, as amended, known as the Worker's Compensation Law; and

(b) This Agreement shall be voidable at the election of the Corporation and of no effect unless the Contractor complies with this provision.

4.4 **NO ASSIGNMENT WITHOUT CONSENT.** The Contractor agrees that:

(a) It is prohibited from assigning, transferring or otherwise disposing of this Agreement, or of its rights or interests therein, or its power to execute such agreement to any person, company, partnership, or corporation, without the previous written consent of the Corporation;

(b) If the prohibition of Section 4.4(a) be violated, the Corporation may revoke and annul this Agreement and the Corporation shall be relieved from any and all liability and obligations thereunder to the Contractor and to the person, company, partnership or corporation to whom such assignment, transfer or other disposal shall have been made and the Contractor and such assignee or transferee shall forfeit and lose all the money theretofore earned under this Agreement.

4.5 **NON-DISCRIMINATION & AFFIRMATIVE ACTION**

The Contractor shall comply and cause each of its subcontractors to comply with the provisions of Attachment 4.5 attached to and made a part of this Agreement, relating to non-discrimination and affirmative action. Attachment 4.5 is replaced by Schedule C.

4.6 **TAX LAW SECTION 5-a COMPLIANCE**

(a) During the term of this Agreement, the Contractor shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Contractor's initial Form ST-220-CA is attached hereto as Attachment 4.6. Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Contractor's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Contractor is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Contractor is exempt), the Contractor shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA.

4.7 **STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE**

The Contractor hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's

Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.7 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.7 – (2), is complete, true and accurate. The Contractor acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

ARTICLE 5
OTHER STANDARD PROVISIONS

51 **NO WAIVER.** No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Contractor, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Corporation. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.2 **INDEMNIFICATION.** Notwithstanding anything to the contrary contained herein, Contractor shall be responsible for all injuries to persons, including death, and all damage sustained while performing or resulting from the work under this Agreement, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or Subcontractors, or their employees, agents, servants, independent contractors or subcontractors retained by Contractor pursuant to this Agreement. Contractor agrees to defend, indemnify and hold the Corporation, the State of New York and, if the Corporation is an ESD subsidiary, ESD and each of their respective officers, directors, commissioners, employees and representatives (collectively, the "Indemnitees") harmless from any and all claims, judgments and liabilities, including but not limited to, claims, judgments and liabilities for injuries to persons (including death) and damage, if and to the extent the same results from any act, omission, negligence, fault or default of Contractor or its Subcontractors, or their agents, employees, servants, independent contractors and subcontractors and from any claims against, or liability incurred by the Indemnitees by reason of claims against Contractor or its Subcontractors, or their employees, agents, servants, independent contractors and subcontractors for any matter whatsoever in connection with the services performed under this Agreement, including, but not limited to, claims for compensation, injury or death, and agree to reimburse the Indemnitees for reasonable attorneys' fees incurred in connection with the above. Contractor shall be solely responsible for the safety and protection of all its Subcontractors, or the employees, agents, servants, independent contractors, or subcontractors of Contractor or its Subcontractors, and shall assume all liability for injuries, including death, that may occur to said persons due to the negligence, fault or default of Contractor, its Subcontractors, or their respective agents, employees, servants, independent contractors or subcontractors.

This Article shall survive the expiration or earlier termination of this Agreement.

5.3.1 **ASSIGNMENT BY THE CORPORATION.** The Corporation may transfer and assign any and all of its rights and obligations under this Agreement, including transferring and assigning its rights to the Contractor's performance of any portion of the services provided for herein, together with the Corporation's obligations and rights pertaining to such portion of services, to any partnership, firm, corporation, governmental agency or department or other entity which the Corporation determines has undertaken or will undertake any part of the Agreement. The Corporation shall give the Contractor written notice of any such transfer and assignment. Such transfer and assignment shall relieve the Corporation of any further liability or obligation hereunder

5.3.2 **NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the Corporation's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an

assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The Corporation retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the Corporation's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

5.4 **GOVERNING LAW.** This Agreement shall be construed and enforced in accordance with the laws of the State of New York, except where the Federal supremacy clause requires otherwise.

5.5 **ENTIRE AGREEMENT/AMENDMENT.** This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.6 **CONFIDENTIALITY.** Contractor hereby agrees that all data, recommendations, reports and other materials developed in the course of performance under this Agreement are strictly confidential between Contractor and the Corporation and Contractor may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation. Notwithstanding the preceding sentence, Contractor shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Contractor in connection with performance under this Agreement.

5.7 **RELEASE AND DISCHARGE.** Simultaneously with request for final payment hereunder, Contractor shall execute and deliver to the Corporation an instrument releasing the Corporation from any and all claims, demands and liabilities whatsoever of every kind of nature both at law and in equity arising from, growing out of, or in any way connected with this Agreement. A copy of such release is annexed hereto as Attachment 5.7 and made a part hereof.

5.8 **NOTICES.** All notices permitted or required hereunder shall be in writing and shall be transmitted either:

- (a) via certified or registered United States mail, return receipt requested;
- (b) by facsimile transmission;
- (c) by personal delivery;
- (d) by expedited delivery service; or
- (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

State of New York [Agency Name]

Name:
Title:

Address:
Telephone Number:
Facsimile Number:
E-Mail Address:

[Contractor Name]

Name:
Title:
Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

2. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

3. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

59 **NO ARBITRATION** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

59.1 **MISCELLANEOUS**. The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

ARTICLE 6 **BILLING POLICY**

61 The Contractor is required to submit detailed documentation in support of Contractor's request for reimbursement. All invoices and their accompanying documentation must be forwarded along with a completed copy of the sample INVOICE SUMMARY attached hereto as Attachment 6.1 and a letter of transmittal to:

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue
New York, New York 10017-6754

Invoices should be submitted monthly and include the Corporation's contract and project numbers, if any. Contractor should also include federal identification number with the first invoice.

62 Out-of-pocket expenses should be delineated on any invoices by general category. The Contractor must submit supporting documentation for each individual expense category in excess of \$250.

63 **MEALS**. Business meals will be reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances, a copy of which is attached as Attachment 6.3, provided that the names of all attendees shall be included in the request for reimbursement.

6.4 **PRINTING**.

(a) Internal print or xeroxing is not reimbursable. It is part of the Contractor's overhead cost, unless ordered by or for specific use of the Corporation,

(b) Outside printing will be reimbursed only to the extent of prints requested by the Corporation, and at cost evidenced by a receipt.

(c) No postage will be reimbursed for printing requested by the Corporation.

6.5 TELEPHONE.

(a) Only calls to the Corporation and calls relating to telephone surveys are chargeable. All other calls are part of Contractor's overhead costs.

(b) Calls between the Contractor's office and its employees are not reimbursable.

6.6 TRANSPORTATION. Reimbursed in accordance with the the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.7 LODGING. Reimbursed in accordance with the Corporation's Schedule of Reimbursable Allowances (see Attachment 6.3).

6.8 NON-REIMBURSABLES.

(a) Flight insurance

(b) Valet Services (except five or more consecutive days of travel)

(c) Personal expenses of any type

(d) Expenses paid for the Corporation's employees.

(e) Travel to any office of the Corporation to "deliver vouchers or pick up check".

6.9 EQUIPMENT AND SUPPLIES. Where the Agreement allows reimbursement for equipment and supplies, insurance or similar items, the Contractor must supply the following detailed documentation:

(a) Receipts of suppliers' invoices for costs of commodities, equipment and supplies, insurance or other reimbursable items. Invoices must show quantity, description and price (less applicable discounts and purchasing agent's commission).

(b) Title to all equipment purchased pursuant to this Agreement is vested in the Corporation. The Corporation has the option of claiming any or all of such equipment.

6.10 GENERAL.

(a) All receipts must be legible. Illegible receipts will not be reimbursed.

(b) Whenever possible original receipts should be presented for reimbursement.

(c) At any time or times until three years after completion of Contractor's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

ARTICLE 7
INSURANCE

7.1 The Contractor shall carry, and shall require each of its Subcontractors to carry, insurance of the following types and minimum amounts. Additional types and amounts of coverage may be required

depending on the nature of the services to be performed under this Agreement or a subconsulting agreement. Any such additional types or amounts of coverage shall be specified on Attachment 7.1 attached hereto.

7.2 Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than Two Million Dollars (\$2,000,000) aggregate and One Million Dollars (\$1,000,000) per occurrence. Such insurance is to be written on an occurrence basis. The Corporation and, if different, the New York State Urban Development Corporation d/b/a Empire State Development Corporation and each of their directors, officers, employees, agents and representatives shall be named as an additional insureds (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85). Other additional insured as the Corporation may specify in writing on Attachment 7.2 attached hereto.

7.3 Automobile Liability and Property Damage Insurance in an amount not less than \$1,000,000 combined single limit for both Bodily Injury and Property Damage.

7.4 Professional Liability Insurance if and as may be specified on Attachment 7.1.

7.5 Workers' Compensation: Employers liability and disability benefits as required by New York State. Proof of compliance shall be in the form specified on Attachment 7.5.

7.6 Excess Liability Insurance if and as may be specified on Attachment 7.1

7.7 Certificates of Insurance for all of the aforementioned coverages shall be of form and substance acceptable to the Corporation and shall be provided to the Corporation prior to the commencement of work under this Agreement.

7.8 Other requirements.

(a) Acceptance and/or approval by the Corporation of any insurance does not and shall not be construed to relieve the Contractor of any obligations, responsibilities or liabilities.

(b) All required insurance shall be obtained at the Contractor's sole cost and expense; shall be primary and non-contributing to any insurance or self-insurance maintained by the Corporation; shall be endorsed to provide written notice be given to the Corporation at least thirty (30) days prior to the cancellation, non-renewal, or material alteration of such policies, which notice shall be evidenced by return receipt of United States Certified Mail.

(c) All required insurance shall be maintained with insurance carriers licensed to do business in New York State, acceptable to the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report. If, during the term of the policy, a carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the the Corporation and rated at least "A-" Class "VII" in the most recently published Best's Insurance Report.

(d) Contractor shall be solely responsible for the payment of all deductibles and self insured retentions to which such policies are subject. Deductibles and self-insured retentions must be approved by the Corporation.

(e) Contractor shall require that any of its subcontractors hired in connection with the services to be performed under this Agreement carry insurance of the same types and with the same limits and provisions provided herein.

(f) The Contractor shall cause all insurance to be in full force and effect as of the commencement of this Agreement and to remain in full force and effect throughout its term until conclusion of the services to be performed hereunder or earlier termination of this Agreement. Contractor shall not take

any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect.

(g) Not less than thirty (30) days prior to the expiration or renewal date, the Contractor shall supply the Corporation with updated replacement Certificates of Insurance, and amendatory endorsements.

(h) The Contractor shall cause to be included in each of its policies insuring against loss, damage or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Corporation or, if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Contractor waives or has waived before the casualty, the right of recovery against the Corporation or (ii) any other form of permission for the release of the Corporation.

SCHEDULE B
SCOPE OF WORK

1. Project Area and Purpose

2. Scope of Project

(Indicate technical scope and identify specific work tasks and product deliverables for each phase of the work aggregating the total fee.)

3. Project Schedule

Dated: _____

Attachment 4.5

Non-Discrimination and Affirmative Action Provisions

SEE APPENDIX C

MODEL LANGUAGE

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. The [AGENCY] is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor to the subject contract (the “Contractor” and the “Contract,” respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to the New York State [AGENCY] (the “[AGENCY]”), to fully comply and cooperate with the [AGENCY] in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBEs”). Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

[PLEASE NOTE THAT FOR EACH CONTRACT AGENCIES SHOULD DETERMINE WHETHER THE 20% OVERALL GOAL FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION SET FORTH IN SECTION III (A) BELOW SHOULD BE REVISED TO MORE CLOSELY REFLECT THE FINDINGS OF THE 2006 DISPARITY STUDY TITLED “THE STATE OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: EVIDENCE FROM NEW YORK,” WHICH FOUND THE OVERALL AVAILABILITY OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE MARKET PLACE TO BE APPROXIMATELY 30%.]¹

- A. For purposes of this procurement, the [AGENCY] hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation,

¹ This language is to be deleted from the final Contract.

MODEL LANGUAGE

**PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

- A. The [AGENCY] is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
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- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

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[PLEASE NOTE THAT FOR EACH CONTRACT AGENCIES SHOULD DETERMINE WHETHER THE 20% OVERALL GOAL FOR MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES PARTICIPATION SET FORTH IN SECTION III (A) BELOW SHOULD BE REVISED TO MORE CLOSELY REFLECT THE FINDINGS OF THE 2006 DISPARITY STUDY TITLED “THE STATE OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES: EVIDENCE FROM NEW YORK,” WHICH FOUND THE OVERALL AVAILABILITY OF MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES IN THE MARKET PLACE TO BE APPROXIMATELY 30%.]¹

- A. For purposes of this procurement, the [AGENCY] hereby establishes an overall goal of 20% for Minority and Women-Owned Business Enterprises (“MWBE”) participation,

¹ This language is to be deleted from the final Contract.

Appendix C

XX% for Minority-Owned Business Enterprises (“MBE”) participation and XX% for Women-Owned Business Enterprises (“WBE”) participation (based on the current availability of qualified MBEs and WBEs).

- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Contractor should reference the directory of New York State Certified MBWEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Contractor is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Contractor must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Contractor acknowledges that if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Contractor shall be liable to the [AGENCY] for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Contractor agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Contractor shall comply with the following provisions of Article 15-A:
1. Contractor and Subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Contractor shall submit an EEO policy statement to the [AGENCY] within seventy two (72) hours after the date of the notice by [AGENCY] to award the Contract to the Contractor.
 3. If Contractor or Subcontractor does not have an existing EEO policy statement, the [AGENCY] may provide the Contractor or Subcontractor a model statement (see Form _____ – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).

Appendix C

4. The Contractor's EEO policy statement shall include the following language:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Contractor shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.
 - d. The Contractor will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. Form _____ - Staffing Plan

To ensure compliance with this Section, the Contractor shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Contractors shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Form _____ - Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Contractor is responsible for updating and providing notice to the [AGENCY] of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Contractor and any subcontractor performing work on the Contract.

Appendix C

3. In limited instances, Contractor may not be able to separate out the workforce utilized in the performance of the Contract from Contractor's and/or subcontractor's total workforce. When a separation can be made, Contractor shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Contractor's and/or subcontractor's total workforce, Contractor shall submit the Workforce Report and indicate that the information provided is Contractor's total workforce during the subject time frame, not limited to work specifically under the contract.
- E. Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Contractor represents and warrants that Contractor has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Contractor agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section III-A of this Appendix.
- C. Contractor further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, [AGENCY] shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsiveness.

V. Waivers

- A. For Waiver Requests Contractor should use Form _____ – Waiver Request.
- B. If the Contractor, after making good faith efforts, is unable to comply with MWBE goals, the Contractor may submit a Request for Waiver form documenting good faith efforts by the Contractor to meet such goals. If the documentation included with the waiver request is complete, the [AGENCY] shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C. If the [AGENCY], upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Contractor is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-

Appendix C

compliance, the [AGENCY] may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Contractor is required to submit a Quarterly MWBE Contractor Compliance Report (Form _____) to the [AGENCY] by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages - MWBE Participation

- A. Where [AGENCY] determines that Contractor is not in compliance with the requirements of the Contract and Contractor refuses to comply with such requirements, or if Contractor is found to have willfully and intentionally failed to comply with the MWBE participation goals, Contractor shall be obligated to pay to the [AGENCY] liquidated damages.

[PLEASE NOTE THAT WHILE ARTICLE 15-A REQUIRES THE INCLUSION OF LIQUIDATED DAMAGES IN THE RFP, ARTICLE 15-A DOES NOT PROVIDE THE METHOD TO BE USED FOR CALCULATING LIQUIDATED DAMAGES. THEREFORE, THE CALCULATION SET FORTH IN THE NEXT PARAGRAPH IS JUST ONE OF A NUMBER OF ACCEPTABLE METHODS THAT MAY BE USED IN CALCULATING LIQUIDATED DAMAGES. PUNITIVE DAMAGES MAY NOT BE USED IN DETERMINING LIQUIDATED DAMAGES]²

- B. Such liquidated damages shall be calculated as an amount equaling the difference between:
1. All sums identified for payment to MWBEs had the Contractor achieved the contractual MWBE goals; and
 2. All sums actually paid to MWBEs for work performed or materials supplied under the Contract.
- C. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the [AGENCY], Contractor shall pay such liquidated damages to the [AGENCY] within sixty (60) days after they are assessed by the [AGENCY] unless prior to the expiration of such sixtieth day, the Contractor has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages shall be payable if Director renders a decision in favor of the [AGENCY].

² This language is to be deleted from the final Contract.

ATTACHMENT 4.5 – (1)
STATE FINANCE LAW SECTION 139-j

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

ATTACHMENT 4.6

Tax Law Section 5-a

Form ST-220-CA



Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(6/06)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name		For covered agency use only Contract number or description	
Contractor's principal place of business	City	State	ZIP code
Contractor's mailing address (if different than above)		Estimated contract value over the full term of contract (but not including renewals)	
Contractor's federal employer identification number (EIN)	Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number	Covered agency name		\$
Covered agency address		Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____
(name) (title)

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on the Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____
(insert contract number or description)

and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20 _____

(sign before a notary public) (title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. This publication is available on our Web site, by fax, or by mail. (See *Need help?* for more information on how to obtain this publication.) In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

If you have questions, please call our information center at 1 800 698-2931.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a covered agency within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a contractor within the meaning of the statute (see Publication 223, Q&A 6); and
- iii. The contract is a contract within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for commodities or services, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2006, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF)

SS.:

COUNTY OF)

On the ___ day of _____ in the year 20___, before me personally appeared _____, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that ___he resides at _____,

Town of _____,

County of _____,

State of _____; and further that:

[Mark an X in the appropriate box and complete the accompanying statement.]

- (If an individual): ___he executed the foregoing instrument in his/her name and on his/her own behalf.
(If a corporation): ___he is the _____ of _____, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, ___he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.
(If a partnership): ___he is a _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, ___he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.
(If a limited liability company): ___he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that ___he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, ___he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

Notary Public

Registration No.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 605, 697, 1096, 1142, and 1415 of that Law, and may require disclosure of social security numbers pursuant to 42 USC 406(c)(2)(C)(i). This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose. Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law. Failure to provide the required information may subject you to civil or criminal penalties, or both, under the Tax Law. This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Hartman Campus, Albany NY 12227; telephone 1 800 225-8629. From areas outside the United States and outside Canada, call (518) 485-8900.

Need help?
Internet access: www.nystax.gov (for information, forms, and publications)
Fax-on-demand forms: 1 800 748-3676
Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday. 1 800 698-2931
To order forms and publications: 1 800 462-8100
From areas outside the U.S. and outside Canada: (518) 485-8800
Hearing and speech impaired (telecommunications device for the deaf (TDD) callers only): 1 800 634-2110
Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

ATTACHMENT 4.7 -(1)
STATE FINANCE LAW SECTION 139-j

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law § § 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).

By: _____ Date: _____

Name: _____

Title: _____

Contractor Name: _____

Contractor Address:

ATTACHMENT 4.7 – (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

**Model Language to Obtain the Offerer Disclosure of Prior
Non-Responsibility Determinations**

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by a Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms “Offerer” and “Governmental Entity” are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

ATTACHMENT 5.7

RELEASE

KNOW ALL MEN BY THESE PRESENTS, that the undersigned hereby acknowledges that pursuant to an agreement dated the day of _____, 20 (the "Agreement"), pursuant to which the undersigned agreed to furnish to the Urban Development Corporation d/b/a Empire State Development Corporation or one of its subsidiaries (as the case may be, the "Corporation") all of the work necessary to complete the Agreement, and that the Corporation has paid or will pay the undersigned, or a person, firm or corporation claiming by or through the undersigned, the sum of:

(\$ _____) Dollars and up to _____

(\$) Dollars in reimbursable expenses, in each case subject to the terms, covenants and conditions of the Agreement, said amounts being the full and entire sum due from the Corporation to the undersigned pursuant to the Agreement by reason of work, labor or materials furnished or performed by the undersigned, in connection with the Agreement. In consideration of such payment, the undersigned hereby releases and discharges the Corporation, its officers, agents, and employees, of and from all claims of liability for any payment, fee or expenses payable to the undersigned pursuant to the Agreement.

The undersigned further acknowledges that neither the aforesaid payment nor acceptance by the Corporation of the work covered by the Agreement, shall in any way or manner operate as or constitute a release or waiver of the undersigned's obligations, undertakings or liabilities under the Agreement or in any way affect or limit the same.

IN WITNESS WHEREOF, the undersigned has caused its name to be hereunto subscribed and its seal to be hereunto affixed this _____ day of _____, 20 .

Name of Firm

(Corporate Seal)

By: _____

ATTACHMENT 6.1

INVOICE SUMMARY
(Submit with Letter of Transmittal)

Accounts Payable Department
New York State Urban Development Corporation
633 Third Avenue, New York, NY 10017-6754

Date: _____
Invoice No: _____
Amount \$ _____

Contractor _____

Address _____

Project _____

Contract No. _____ Project No. _____

	Original Contract Amount	Amendments Total	Revised Contract Amount	Previously Billed	This Invoice**	Invoiced To Date	Contract Balance
1. Fee							
2. Reimbursables							
3. Extra Services* 4.Total		\$	\$	\$	\$	\$	\$
\$							

Latest Contract Amount \$ _____
Billed to Date \$ _____
Paid to Date \$ _____
Balance Due \$ _____

*Attach letters of Authorization

**Attach back-up

SAMPLE

SCHEDULE OF REIMBURSABLE ALLOWANCES

	BREAKFAST	LUNCH	DINNER
	Without Receipt	Without Receipt	Without Receipt
I. MEALS ALLOWANCES			
A. OVERTIME			
NORMAL WORKDAY - 8:00 PM (10 or more hours worked)			\$15.00
<u>SAT., SUN & HOLIDAYS</u>			
OVER 4 HOURS		\$10.00	
OVER 10 HOURS			\$15.00
B. BUSINESS GUESTS (PER PERSON)			
METRO N.Y. & OUT OF STATE	\$10.00	\$25.00	\$45.00
UPSTATE N.Y.	\$ 8.00	\$20.00	\$35.00
C. NON-OVERNIGHT TRAVEL DAY TRIPS			
	\$8.00 ^(a)		\$15.00 ^(b)
D. OVERNIGHT			
TRAVEL 1st & last		\$7-\$9 ^(a)	\$27-\$37 ^(b)
Interim full days	(REIMBURSEMENT RATES ARE BASED ON LOCALITY-See Attached)		

BREAKDOWN OF MEALS BASED ON LOCATION

DAILY	BREAKFAST	DINNER
\$64	\$13	\$51
\$59	\$12	\$47
\$54	\$11	\$43
\$49	\$10	\$39
\$44	\$9	\$35
\$39	\$8	\$31

II. LODGING (See attached)
III. TRANSPORTATION ALLOWANCES

- A. PERSONAL CAR MILEAGE 44.5 cents per mile.
- B. PERSONAL CAR OVERTIME Actual \$50 limit on overtime
- C. CAR RENTAL Actual
Note: Be sure that sales tax is not charged and that collision damage waiver insurance is accepted when renting in NYS.
- D. AIRLINE & OTHER PUBLIC TRANSPORTATION ~~Actual - evidenced by receipt~~
coach rate.
- E. TAXI FARES Actual - evidenced by receipt \$50 limit on overtime

(a) When travel status begins prior to 7:00 AM
(b) When travel status ends after 8:00 PM

Per Diem Locality		Maximum Lodging Amount	Meal Date	Maximum Per Diem Date
City	County			
Albany	Albany	94	49	143
Binghamton/Owego	Broome and Tioga	71	39	110
Buffalo (October 1 - November 19)	Erie	70	54	124
Buffalo (November 20 - September 30)	Erie	79	54	133
Floral Park/Garden City/Glen Cove/Great Neck/Roslyn	Nassau	162	64	226
Glens Falls (October 1 - June 30)	Warren	75	49	124
Glens Falls (July 1 - August 31)	Warren	121	49	170
Glens Falls (September 1 - September 30)	Warren	75	49	124
Ithaca/Waterloo/Romulus	Tompkins and Seneca	86	44	130
Kingston	Ulster	83	49	132
Lake Placid (October 1 - November 30)	Essex	95	54	149
Lake Placid (December 1 - February 28)	Essex	114	54	168
Lake Placid (March 1 - June 30)	Essex	83	54	137
Lake Placid (July 1 - August 31)	Essex	142	54	196
Lake Placid (September 1 - September 30)	Essex	95	54	149
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island (October 1 - December 31))	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	226	64	290
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island (January 1 - May 31))	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	201	64	265
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	180	64	244

(June 1 -August31)	Staten Island			
Manhattan (includes the boroughs of Manhattan, Brooklyn, Queens, the Bronx and Staten Island (September 1 - September 30)	The boroughs of Manhattan, Brooklyn, Queens, the Bronx, and Staten Island	226	64	290
Niagara Falls (October 1 - June 30)	Niagara	60	44	104
Niagara Falls (July 1 - August31)	Niagara	83	44	127
Niagara Falls (September 1 - September 30)	Niagara	60	44	104
Nyack/Palisades	Rockland	95	49	144
Poughkeepsie	Dutchess	102	54	156
Riverhead/Ronkonkoma/Melville/Smithtown/Huntington Station/Amagansett/East Hampton/Montauk/Southampton/Islandia/Commack/Medford/Stony Brook/Hauppauge/Centereach	Suffolk	126	64	190
Rochester	Monroe	81	44	125
Saratoga Springs/Schenectady (October 1 - June 30)	Saratoga and Schenectady	93	44	137
Saratoga Springs/Schenectady (July 1 - August31)	Saratoga and Schenectady	147	44	191
Saratoga Springs/Schenectady (September 1 - September 30)	Saratoga and Schenectady	93	44	137
Syracuse	Onondaga	78	44	122
Tarrytown/White Plains/New Rochelle/Yonkers	Westchester	130	59	189
Troy	Rensselaer	80	39	119
West Point	Orange	97	44	141

Additional Insurance

Additional Insureds

Proof of Workers' Compensation and Disability Benefits Insurance

To comply, you must submit one of the following proofs:

Private Insurer	-	Form C-1 05.2
State Insurance Fund	-	Form U.26.3
Status as Self-Insured	-	Form SI-12
Status as Member of Group Self Insurance	-	Form GSI-1 05.2

(Please obtain the above forms from your insurance carrier, licensed insurance agent or self-insurance administrator.)

Statement that Applicant is Not Required to Carry New York State Worker's Compensation Insurance	-	Form WC/DB-100 OR Form WC/DB-101
--	---	--

Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.web.state.ny.us.

If you have questions regarding workers' compensation insurance coverage requirements, please contact the Bureau of Compliance at: **1-800-298-7830**.

DISABILITY BENEFITS INSURANCE

Section 220 of the New York State Workers' Compensation Law requires that before any permit, license or contract is issued by any municipal, county or state government entity, the applicant must submit proof of compliance with NYS disability benefits coverage requirements.

To comply, you must submit one of the following proofs:

All Insurance Carriers	-	Form DB-1 20.1 or DB-820/829
Status as Self-Insured	-	Form DB-155

(Please obtain the above forms from your insurance carrier or self-insurance administrator.)

Statement that Applicant is Not Required to Carry New York State Disability Insurance	-	Form WC/DB-100 OR Form WC/DB-101
---	---	--

Form WC/DB-100 and Form WC/DB-101 may be found on the Board's website at www.wcb.state.ny.us.

If you have questions regarding disability benefits insurance coverage requirements, please contact the Disability Benefits Office at: **1-800-353-3092**.

FORM OF RETAINER AGREEMENT

DATE

ADDRESSEE

Dear Mr. _____ :

The New York State Urban Development Corporation, doing business as Empire State Development ("ESD"), has authorized the retention of _____ (the "Firm") as of DATE, 20___, to provide legal services to ESD with respect to _____.

The attorney who will have principal responsibility for assuring timely delivery of the aforesaid legal advice and counseling will be _____.

ESD will compensate the Firm for such legal services at the lesser of the Firm's ordinary billing rate or the following: \$400 per hour for partners; \$375 per hour for senior (fifth year and up) associates; \$350 per hour for mid-level associates (third through fourth year); \$300 per hour for junior associates (passed bar exam through second year); \$220 per hour for law clerks (law student interns and first year associates until bar exam passed); and \$90 per hour for legal assistants. In addition to the foregoing, ESD will reimburse the Firm for its reasonable out-of-pocket disbursements incurred in connection with the services rendered by it hereunder. Total compensation under this agreement shall not exceed **DOLLAR AMOUNT IN WORDS** (\$_____).

The Firm will submit monthly billings, which shall describe in detail the services rendered with respect to each matter, the names of all attorneys and paraprofessionals who have worked on the matter, the number of hours expended by each such person of each matter, the hourly rate charged for each person, and an itemization of disbursements for which reimbursement is requested, together with such other documentation as ESD may require. Bills shall be in the attached format. Time shall be billed on a 1/10th of an hour basis. Original billings shall be submitted directly to the General Counsel. Reimbursable expenses shall be billed currently (following month) and in any event within 60 days of being incurred.

This retainer may be canceled at will by either party. In the event of cancellation the Firm shall be compensated as set forth above for services rendered through the date of termination.

The terms and conditions set forth in the annexed Schedule A, "Conditions Applicable to Corporation's Law Firms and Other Special Consultants" are incorporated in, and made a part of, this retainer.

If the foregoing is acceptable to you, please so indicate by signing five copies in the space provided below, and returning it to me together with a list of each individual whom you expect will regularly bill time to this matter, their titles and hourly billing rate. Thank you.

Very truly yours,

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION D/B/A
EMPIRE STATE DEVELOPMENT

By: _____
Name:
Title:

By: _____
Name:
Title:

APPROVED:

(FIRM NAME)

By: _____ Date: _____
Name:
Title:

[FIRM LETTERHEAD]

Date

Bill # _____

ESD Contract No: _____

To: New York State Urban Development
Corporation d/b/a
Empire State Development
633 Third Avenue
New York, New York 10017
Attn: General Counsel

Matter Name/No.: _____

FOR PROFESSIONAL SERVICES rendered through (date) \$ _____

FOR PROFESIONAL FEES

<u>Date</u>	<u>Timekeeper</u>	<u>Hours*</u>	<u>Fees**</u>	<u>Description of Services</u>
xx/xx/xxxx	Partner A			Review Court decision.
xx/xx/xxxx	Partner B			Review of Appraisals.
xx/xx/xxxx	Associate A			Review copies of maps.
xx/xx/xxxx	Associate B			Conference re: appraisals.
xx/xx/xxxx	Legal Asst. A			Prepare and file court documents.

TOTAL HOURS: \$

TOTAL FEES: \$

TIMEKEEPER SUMMARY

<u>Timekeeper</u>	<u>Rate</u>	<u>Hours</u>	<u>Fees</u>
<u>Partners</u>			
Partner A			\$
Partner B		_____	_____
Partner Totals			
<u>Mid-level Associates</u>			
Associate A			
Associate B		_____	_____
Associate Totals			\$
<u>Legal Assistants</u>			
Legal Assistant A		_____	_____
Legal Assistant Totals			\$
		_____	_____
Total All Timekeepers			\$

* Billing on 1/10th of an hour preferred.

** # of hours x the applicable rate.

Examples of Charges and Disbursements (grouped by category):***

<u>Date</u>	<u>Description</u>	<u>Amount</u>
	PHOTOCOPY CHARGES:	
xx/xx/xxxx	Photocopy 2400 copies @ 0.10	
xx/xx/xxxx	Photocopy 1400 copies @ 0.10	
	TOTAL PHOTOCOPY CHARGES 3800 @ 0.10	\$ _____
	FAX CHARGES:	
xx/xx/xxxx	4 pgs @ \$1.00 to (name of individual)	
xx/xx/xxxx	3 pgs @ 1.00 each to (names of 3 individuals)	
	TOTAL FAX CHARGES 13 pgs @ 1.00	\$ _____
	FEDEX CHARGES	
xx/xx/xxxx	Fedex to General Counsel of ESD	
xx/xx/xxxx	Fedex to Deputy General Counsel of ESD	
	TOTAL FEDEX CHARGES	\$ _____
	TOTAL CHARGES AND DISBURSEMENTS	\$ _____
	TOTAL FOR MATTER (MATTER NAME):	\$ _____

***Please note any individual line item over \$250 requires supporting documentation.

**SCHEDULE OF MAXIMUM REIMBURSEMENT ALLOWANCES FOR
ESD LEGAL RETAINER AGREEMENTS**

January 2012

Consultant will be reimbursed for the following types of expenses at the following maximum rates. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$50/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$50; amounts over \$50 must be submitted for approval on a case-by-case basis.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$30 and reasonable cost of outside catering service for meetings.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; Actual cost if out sourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (No overhead)
Out-of-Town Travel	Reasonable expenses, to be submitted for approval on a case-by-case basis.

Postage and Overnight Mail

None for individual letters;
FedEx and other special delivery services will be
reimbursed at actual cost

Messenger Service

Actual cost up to \$15.

SCHEDULE A

CONDITIONS APPLICABLE TO THE CORPORATION'S¹ LAW FIRMS AND OTHER SPECIAL CONSULTANTS

ARTICLE I: RELATION OF CONSULTANT TO THE CORPORATION

1.1 SUPERVISION BY THE CORPORATION. The services to be performed by Consultant under this Agreement shall be subject to the general supervision and direction of the Corporation provided that neither the Corporation's exercise nor failure to exercise such supervision and direction shall relieve the Consultant of any of its obligations or responsibilities for its acts or failure to act in regard to this Agreement.

1.2 CONSULTANT'S PERSONNEL. The Consultant shall designate in writing to the Corporation one individual, satisfactory to the Corporation, who shall be responsible for coordinating all of the services to be rendered by the Consultant and who shall be the Corporation's normal point of contact with the Consultant on matters relating to such services. Such individual shall be replaced upon the Corporation's written request.

1.3 APPROVAL OF SUBCONSULTANTS. The Consultant shall not employ, contract with or use the services of any consultant, special contractors, or other third parties (collectively "Subconsultant") in connection with the performance of its obligations under this Agreement without the prior written consent of the Corporation. The Consultant shall inform the Corporation in writing of the name, proposed service to be rendered, and compensation of the Subconsultant, and of any interest the Consultant may have in the proposed Subconsultant.

1.4 CONFLICT OF INTEREST. The Consultant represents and warrants that:

(a) The Consultant has not now, and will not acquire, any interest, direct or indirect, present or prospective, in the project to which the Consultant's work relates or the real estate which is the subject of the project, or in the immediate vicinity thereof and has not employed and will not knowingly employ in connection with work to be performed hereunder, any person or entity having any such interest during the term of this Agreement.

(b) No officer, employee, agent or director of the Corporation shall be permitted by the Consultant to share in any benefit to arise from the Consultant's work.

¹ "Corporation" as used herein shall mean the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") unless the retainer agreement of which this Schedule A forms a part has been entered into by a subsidiary corporation of ESD or an affiliate entity, in which case the "Corporation" shall mean such subsidiary corporation or affiliate.

(c) The Consultant shall not permit any officer, employee, agent or director of the Corporation to participate in any decision relating to this Agreement which affects the personal interest of the aforementioned individuals or the interests of any corporation, partnership, or association in which those individuals are directly or indirectly interested; nor shall any officer, agent, director or employee of the Corporation be permitted by the Consultant to have any interest, direct or indirect, in this Agreement.

(d) The Consultant shall cause, for the benefit of the Corporation, every contract or agreement with any Subconsultant to include the representations contained in subsections (a), (b), (c) of this Section 1.4. The Consultant will take such action in enforcing such provisions as the Corporation may direct, or, at its option, assign such rights as it may have to the Corporation for enforcement by the Corporation.

1.5 THE CORPORATION'S REPRESENTATIVE. The Corporation will designate in writing to the Consultant an individual who will serve as the Corporation's Representative and normal point of contact for the Consultant in regard to this Agreement and the Consultant's services and obligations hereunder. The Corporation may from time to time change this designation by written notification to the Consultant.

ARTICLE II: DOCUMENTS AND RECORDS

2.1 MAINTENANCE OF RECORDS. The Consultant shall, and shall require any and all subconsultants to, until seven (7) years after completion of services hereunder or termination of this Agreement by Corporation, maintain (a) the original books, documents, materials and other records created or collected in the course of Consultant's (and Subconsultant's) performance of its (their) obligations under this Agreement (and any subconsulting agreement), and indexes of the same; (b) unless waived or modified in writing by the Corporation, complete and correct records of time spent by Consultant (and Subconsultant) in the performance of its obligations under this Agreement (and any subconsulting agreement); and (c) if Consultant is being reimbursed for out-of-pocket expenses, complete and correct books and records relating to all out-of-pocket expenses incurred under this Agreement (and any subcontract), including, without limitation, accurate cost and accounting records specifically identifying the costs incurred by Consultant (and Subconsultants) in performing such obligations. Said time records shall specify the dates and numbers of hours or portions thereof spent by Consultant (and Subconsultant) in performing its obligations hereunder (or under any subcontract). Consultant (and Subconsultant) shall make such books, records and indexes available to the Corporation, the State of New York, any other governmental entity having an interest in the performance of services under this Agreement (or any subconsulting agreement) and any of their authorized representatives for review and audit at all such reasonable times as the Corporation or any such other entity may from time to time request. Consultant shall submit duplicate copies of time records and substantiation of out-of-pocket expenses at the time of submission of Consultant invoices in accordance with this Agreement.

This Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE III: TERMINATION

3.1 OPTIONAL TERMINATION BY THE CORPORATION. The Corporation at any time, in its sole discretion, may terminate this Agreement or postpone, or delay all or any part of the Agreement upon written notice to the Consultant. In the event of such termination, postponement or delay, the Corporation shall pay the Consultant for professional time and out-of-pocket expenses incurred by Consultant to the date notice of such action is received by Consultant. The Consultant agrees to cause any agreement or contract entered into by Consultant with any Subconsultant to provide for an optional termination by Consultant similar to the provisions of this Section 3.1.

ARTICLE IV: REQUIRED PROVISIONS

4.1 CONSULTANT TO COMPLY WITH LEGAL REQUIREMENTS. The Consultant in performing its obligations and in preparing all documents required under this Agreement shall comply with all applicable laws and regulations. All provisions required by such laws and regulations to be included in this Agreement shall be deemed to be included in this Agreement with the same effect as if set forth in full.

4.2 CONSULTANT TO OBTAIN PERMITS, ETC. Except as otherwise instructed in writing by the Corporation, the Consultant shall obtain and comply with all legally required licenses, consents, approvals, orders, authorizations, permits, restrictions, declarations and filings required to be obtained by the Corporation or the Consultant in connection with this Agreement.

4.3 NON-DISCRIMINATION & AFFIRMATIVE ACTION. The Consultant shall comply and cause each of its Subconsultants to comply with the provisions of Attachment 7 attached to and made part of this Agreement, relating to non-discrimination and affirmative action.

4.4 TAX LAW SECTION 5-a COMPLIANCE

(a) During the term of this Agreement, the Consultant shall, at the times specified in paragraph (b) of this subsection, properly complete and deliver to the Corporation for inclusion in this Agreement, an updated NYS Tax Form 220-CA: Contractor Certification Pursuant to Section 5-a of the Tax Law. A copy of the Consultant's initial Form ST-220-CA is attached hereto as Attachment 4.4(a). Immediately upon delivery, such updated form shall form a part of this Agreement.

(b) The Consultant's updated certification shall be made if this Agreement authorizes renewal thereof at the conclusion of an initial or subsequent term, by the day prior to the commencement date of the applicable renewal term.

(c) If the Consultant is exempt from compliance with Tax Law Section 5-a (see the provisions of said section to determine if Consultant is exempt), the Consultant

shall so certify to the Corporation, including in such certification the reason(s) for exemption, in a notarized statement submitted in lieu of Form ST-220-CA. A sample affidavit is attached hereto as Attachment 4.4(b).

4.5 STATE FINANCE LAW SECTION 139-J AND 139-K COMPLIANCE

The Consultant hereby certifies that all information provided to the Corporation with respect to State Finance Law Section 139-j, including, without limitation, the information contained in Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law Section 139-j, attached to this Agreement as Attachment 4.5 – (1), and Offerer Disclosure of Prior Non-Responsibility Determinations, attached to this Agreement as Attachment 4.5 – (2), is complete, true and accurate. The Consultant acknowledges that the preceding sentence is a material representation upon which the Corporation is relying in entering into this Agreement. Should any such information be found to be intentionally false or intentionally incomplete, this Agreement shall be subject to termination pursuant to Section 3.1 hereof.

ARTICLE V: OTHER STANDARD PROVISIONS

5.1 GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of New York except where the Federal supremacy clause requires otherwise.

5.2 ENTIRE AGREEMENT/AMENDMENT. This Agreement constitutes the entire Agreement between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and this Agreement shall not be changed, modified or altered in any manner except by an instrument in writing executed by the parties hereto.

5.3 CONFIDENTIALITY. Consultant hereby agrees that all data, recommendations, reports and other materials developed in the course of this study are strictly confidential between Consultant and the Corporation and Consultant may not at any time reveal or disclose such data, recommendations or reports in whole or in part to any third party without first obtaining permission from the Corporation, other than as required by law. Notwithstanding the preceding sentence, Consultant shall cooperate fully with such third parties as the Corporation may designate by written request. Such cooperation shall include making available to such parties, data, information and reports used or developed by Consultant in connection with this study.

5.4 **NO WAIVER.** No failure by the Corporation to insist upon the strict performance of any term or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial performance during the continuance of any such breach, shall constitute a waiver of any such breach or such term or condition. No term or condition of this Agreement to be performed or complied with by Consultant, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the Consultant. No waiver of any breach shall affect or alter this Agreement, but each and every term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

5.5 **NOTICES.**

- (a) All notices permitted or required hereunder shall be in writing and shall be transmitted either:
 - (a) via certified or registered United States mail, return receipt requested;
 - (b) by facsimile transmission;
 - (c) by personal delivery;
 - (d) by expedited delivery service; or
 - (e) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

New York State Urban Development Corporation
d/b/a Empire State Development
Attn: General Counsel
Address: 633 Third Avenue, New York, NY 10017
Telephone Number: (212) 803-3100
Facsimile Number: (212) 803-3775
E-Mail Address: [TBD]@esd.ny.gov

[Consultant Name]

Name:

Title:

Address:

Telephone Number:

Facsimile Number:

E-Mail Address:

(b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.

(c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

5.5 **NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

5.6 **MISCELLANEOUS.** The parties hereto agree that this Schedule A shall be controlling in the event of any inconsistencies or conflicts between the terms of this Schedule A and any other part of this Agreement.

ARTICLE VI: BILLING POLICY

6.1 **INVOICES.** The Consultant is required to submit detailed documentation in support of Consultant's request for reimbursement. All invoices and their accompanying documentation must be forwarded to:

General Counsel
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue
New York, New York 10017.

Invoices shall be made on the Consultant's own invoice forms or letterhead and must include the Corporation's contract and project numbers, if any. Consultant shall also include their federal identification number with their first invoice, and a list of each individual who is expected regularly to bill time to this matter, his/her title and hourly billing rate. See Attachment 6 for maximum hourly rates. Time shall be billed on a 1/10th of an hour basis.

6.2 **REIMBURSABLE EXPENSES.**

Consultant's monthly invoices should present out-of-pocket expenses on a daily, itemized basis, grouped by general category. The Consultant must submit supporting documentation for each individual expense item over \$250. Out-of-pocket expenses will be reimbursed only in accordance with the Schedule of Maximum Allowances for the Corporation's Legal Retainer Agreements in Attachment 6. Reimbursable expenses must be billed currently and in any event within 60 days of being incurred:

6.3

NON-REIMBURSABLES.

The following will not be reimbursed:

- a) Flight insurance
- b) Personal expenses of any type
- c) Expenses paid for employees of the Corporation
- d) Travel to/from any office of the Corporation, except with prior written approval of the Corporation.

6.4

GENERAL.

All receipts must be legible. Illegible receipts will not be reimbursed.

Whenever possible, original receipts should be presented for reimbursement.

At any time or times until three years after completion of Consultant's services or earlier termination of this Agreement by the Corporation, the Corporation may have the vouchers and statements of cost audited. Each payment made shall be subject to reduction for amounts included in the related voucher which are found by the Corporation on the basis of such audit, not to constitute allowable cost. Any such payment may be reduced for overpayments or increased for underpayment, as the case may be.

ATTACHMENT 4.4(a)

Tax Law Section 5-a

Form ST-220-CA



New York State Department of Taxation and Finance

Contractor Certification to Covered Agency

(Pursuant to Section 5-a of the Tax Law, as amended, effective April 26, 2006)

ST-220-CA

(12/11)

For information, consult Publication 223, *Questions and Answers Concerning Tax Law Section 5-a* (see *Need Help?* on back).

Contractor name				For covered agency use only	
Contractor's principal place of business				Contract number or description	
City	State	ZIP code			
Contractor's mailing address (if different from above)					
Contractor's federal employer identification number (EIN)			Contractor's sales tax ID number (if different from contractor's EIN)		
Contractor's telephone number			Covered agency name		
Covered agency address				Covered agency telephone number	

I, _____, hereby affirm, under penalty of perjury, that I am _____

of the above-named contractor, that I am authorized to make this certification on behalf of such contractor, and I further certify that:

(Mark an X in only one box)

- The contractor has filed Form ST-220-TD with the Department of Taxation and Finance in connection with this contract and, to the best of contractor's knowledge, the information provided on this Form ST-220-TD, is correct and complete.
- The contractor has previously filed Form ST-220-TD with the Tax Department in connection with _____ (insert contract number or description) and, to the best of the contractor's knowledge, the information provided on that previously filed Form ST-220-TD, is correct and complete as of the current date, and thus the contractor is not required to file a new Form ST-220-TD at this time.

Sworn to this _____ day of _____, 20_____

(sign before a notary public) (title)

Instructions

General information

Tax Law section 5-a was amended, effective April 26, 2006. On or after that date, in all cases where a contract is subject to Tax Law section 5-a, a contractor must file (1) Form ST-220-CA, *Contractor Certification to Covered Agency*, with a covered agency, and (2) Form ST-220-TD with the Tax Department before a contract may take effect. The circumstances when a contract is subject to section 5-a are listed in Publication 223, Q&A 3. See *Need help?* for more information on how to obtain this publication. In addition, a contractor must file a new Form ST-220-CA with a covered agency before an existing contract with such agency may be renewed.

Note: Form ST-220-CA must be signed by a person authorized to make the certification on behalf of the contractor, and the acknowledgement on page 2 of this form must be completed before a notary public.

When to complete this form

As set forth in Publication 223, a contract is subject to section 5-a, and you must make the required certification(s), if:

- i. The procuring entity is a *covered agency* within the meaning of the statute (see Publication 223, Q&A 5);
- ii. The contractor is a *contractor* within the meaning of the statute (see Publication 223, Q&A 5); and
- iii. The contract is a *contract* within the meaning of the statute. This is the case when it (a) has a value in excess of \$100,000 and (b) is a contract for *commodities or services*, as such terms are defined for purposes of the statute (see Publication 223, Q&A 8 and 9).

Furthermore, the procuring entity must have begun the solicitation to purchase on or after January 1, 2005, and the resulting contract must have been awarded, amended, extended, renewed, or assigned on or after April 26, 2006 (the effective date of the section 5-a amendments).

Individual, Corporation, Partnership, or LLC Acknowledgment

STATE OF _____
COUNTY OF _____

On the ____ day of _____ in the year 20__ , before me personally appeared _____
known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that
he resides at _____

Town of _____
County of _____
State of _____ and further that:

(Mark an X in the appropriate box and complete the accompanying statement.)

- () If an individual: he executed the foregoing instrument in his/her name and on his/her own behalf.
() If a corporation: he is the _____
of _____ the corporation described in said instrument; that, by authority of the Board
of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for
purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on
behalf of said corporation as the act and deed of said corporation.
() If a partnership: he is a _____
of _____ the partnership described in said instrument; that, by the terms of said
partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth
therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said
partnership as the act and deed of said partnership.
() If a limited liability company: he is a duly authorized member of _____
LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument
on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed
the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited
liability company.

Notary Public

Registration No _____

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to sections 5-a, 171, 171-a, 267, 305, 429, 475, 505, 697, 1696, 1742, and 1743 of that Law, and may require disclosure of social security numbers pursuant to 45 USC 206(c)(2)(D).

This information will be used to determine and administer tax liabilities and when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support agreement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

We aim to provide the most efficient information that subject you to civil or criminal penalties or both, under the Tax Law.

This information is maintained by the Manager of Document Management NY&NJ Tax Department, 30 A Hamilton Campus, Albany, NY 12227; telephone (518) 487-5155.

Need help?



- Visit our Web site at www.tax.ny.gov
get information and manage your taxes online
check for new online services and features



Telephone assistance

- Sales Tax Information Center (518) 485-2886
To order forms and publications (518) 487-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY) (518) 485-5093



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our facilities, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.

ATTACHMENT 4.4(B)

AFFIDAVIT OF NON-APPLICABILITY OF STATE TAX LAW § 5-A

State of New York }
 } ss.:
County of }

_____ being duly sworn, do depose and state under penalty of perjury that I am the _____ [state title] of the contractor _____ [state name of contractor] responding to the procurement solicitation by the New York State Urban Development Corporation d/b/a Empire State Development or its subsidiary (collectively, "ESD") herein. I have read and am aware of the requirements of State Tax Law § 5-a with respect to registration with the New York State Department of Taxation and Finance ("NYSDTF") in connection with collection of sales and compensating use taxes imposed by Articles 28 and 29 of the State Tax Law. Neither the contractor nor any affiliate or sub-contractor as defined in the State Tax Law is registered or is required to be registered with NYSDTF for this purpose pursuant to any provision of the State Tax Law. I make this affidavit intending that ESD will rely thereon in considering the contractor's response to the solicitation, and with knowledge that any false information contained herein shall render the contractor's response to the solicitation non-responsive, and may result in other action by ESD including, without limitation, reporting the statement to relevant authorities.

_____ [LS]

Print Name: _____

Sworn to before me, a Notary Public, this _____ day of _____, 20__

STAMP

My commission expires on _____

ATTACHMENT 4.5 – (1)
STATE FINANCE LAW SECTION 139-I

OFFERER'S AFFIRMATION OF UNDERSTANDING AND AGREEMENT

Model Language to Obtain Offerer's Affirmation of Understanding of and Agreement pursuant to State Finance Law § 139-j (3) and § 139-j (6) (b)

Background:

State Finance Law § 139-j(6)(b) provides that:

Every Governmental Entity shall seek written affirmations from all Offerers as to the Offerer's understanding of and agreement to comply with the Governmental Entity's procedures relating to permissible contacts during a Governmental Procurement pursuant to subdivision three of this section.

Instructions:

A Governmental Entity must obtain the required affirmation of understanding and agreement to comply with procedures on procurement lobbying restrictions regarding permissible Contacts in the restricted period for a procurement contract in accordance with State Finance Law §§ 139-j and 139-k. It is recommended that this affirmation be obtained as early as possible in the procurement process, such as when the Offerer submits its proposal or bid. The following language can be used to obtain the affirmation.

<p>Offerer affirms that it understands and agrees to comply with the procedures of the Government Entity relative to permissible Contacts as required by State Finance Law § 139-j (3) and § 139-j (6) (b).</p> <p>By: _____ Date: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Contractor Name: _____</p> <p>Contractor Address: _____</p> <p>_____</p> <p>_____</p>
--

ATTACHMENT 4.5 – (2)

STATE FINANCE LAW SECTION 139-j

OFFERER DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS

Model Language to Obtain the Offerer Disclosure of Prior Non-Responsibility Determinations

Background:

Under New York State Finance Law § 139-k(2), covered governmental entities are obligated to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to State Finance Law § 163(9). In accordance with State Finance Law § 139-k, an Offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by an Governmental Entity due to: (a) a violation of State Finance Law § 139-j or (b) the intentional provision of false or incomplete information to a Governmental Entity. The terms "Offerer" and "Governmental Entity" are defined in State Finance Law § 139-k(1). State Finance Law § 139-j sets forth detailed requirements about the restrictions on Contacts during the procurement process. A violation of State Finance Law § 139-j includes, but is not limited to, an impermissible Contact during the restricted period (for example, contacting a person or entity other than the designated contact person, when such Contact does not fall within one of the exemptions).

As part of its responsibility determination, a covered governmental entity must consider whether an Offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no Procurement Contract shall be awarded to any Offerer that fails to timely disclose accurate or complete information under this section, unless a finding is made that the award of the Procurement Contract to the Offerer is necessary to protect public property or public health safety, and that the Offerer is the only source capable of supplying the required Article of Procurement within the necessary timeframe.

Instructions:

A Governmental Entity must include a disclosure request regarding prior non-responsibility determinations in its solicitation of proposals or bid documents or specifications or contract documents, as applicable, for procurement contracts. The attached form is to be completed and submitted by the individual or entity seeking to enter into a Procurement Contract.

6. If yes, please provide details below.

Governmental Entity:

Date of Termination or Withholding of Contract:

Basis of Termination or Withholding:

(Add additional pages as necessary)

Offerer certifies that all information provided to the Governmental Entity with respect to State Finance Law § 139-k is complete, true and accurate

By:

Date:

Signature

Name:

Title:

**NEW YORK STATE VENDOR RESPONSIBILITY QUESTIONNAIRE FOR-PROFIT
BUSINESS ENTITY**

<http://www.osc.state.ny.us/vendrep/documents/questionnaire/forprofit.pdf>

ATTACHMENT 6

**SCHEDULE OF MAXIMUM BILLING RATES AND REIMBURSEMENT
ALLOWANCES**

MAXIMUM HOURLY RATE AND EXPENSE SCHEDULE

Partner/Of Counsel	\$400/hr
Senior Associate (5 th year and up)	\$375/hr
Mid-level Associate (3 rd through 4 th year)	\$350/hr
Junior Associate (first year, after bar exam is passed through 2 nd year)	\$300/hr
Law Clerk (law student interns and first year associates until bar exam is passed)	\$220/hr
Legal Assistants	\$90/hr

<u>TYPE OF EXPENSE</u>	<u>RATE OF REIMBURSEMENT</u>
Secretarial	None (unless overtime)
Word Processing	None (unless overtime and then up to \$50/hr)
Local Telephone Expenses	None
Taxis or Private Cars	Actual cost up to \$50; amounts over \$50 must be submitted for approval on a case-by-case basis.
Meal Charges	Actual cost of evening or overtime meals in the office up to \$30 and reasonable cost of outside catering service for meetings.
Time Spent Preparing Bills	None
Long Distance Telephone	Actual cost
Photocopying	Firm's standard rate, up to \$.25/page; Actual cost if outsourced.
Fax Transmission	None for incoming faxes; Firm's standard rate, up to \$1.00/page for outgoing faxes
Computer Research	Actual cost (No overhead)
Out-of-Town Travel	Reasonable expenses, to be submitted for approval on a case-by-case basis.
Postage and Overnight Mail	None for individual letters; FedEx and other special delivery services will be reimbursed at actual cost
Messenger Service	Actual cost up to \$15.

ATTACHMENT 7

PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

I. General Provisions

- A. ESD is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. Consultant agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Consultant's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, payments pursuant to section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this procurement, ESD hereby establishes an overall goal of 20% for New York State Certified Minority and Women-Owned Business Enterprises ("MWBE") participation: 12% for Minority-Owned Business Enterprises ("MBE") participation and 8% for Women-Owned Business Enterprises ("WBE") participation (based on the current availability of qualified MBEs and WBEs).
- B. For purposes of providing meaningful participation by MWBEs on the subject contract ("Contract") and achieving the Contract Goals established in section II-A hereof, Consultant should reference the directory of New York State Certified MBWEs found at the following internet address:
http://www.empire.state.ny.us/Small_and_Growing_Businesses/mwbe.asp.

Additionally, Consultant is encouraged to contact the Division of Minority and Woman Business Development at (518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Consultant must document “good faith efforts” to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with section 316-a of Article 15-A and 5 NYCRR §142.13, the Consultant acknowledges that if Consultant is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding constitutes a breach of contract and the Consultant shall be liable to ESD for liquidated or other appropriate damages and remedies as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Consultant agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Consultant shall comply with the following provisions of Article 15-A:
1. Consultant and Subconsultants shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Consultant shall submit an EEO policy statement to ESD within seventy two (72) hours after the date of the notice by ESD to award the Contract to the Consultant.
 3. If Consultant or Subconsultant does not have an existing EEO policy statement, ESD may provide the Consultant or Subconsultant a model statement (see Form – Minority and Women-Owned Business Enterprises Equal Employment Opportunity Policy Statement).
 4. The Consultant’s EEO policy statement shall include the following language:
 - a. The Consultant will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Consultant shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal

employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

- c. The Consultant shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Consultant 's obligations herein.
- d. The Consultant will include the provisions of sections (a) through (c) of this subsection 4 and paragraph "E" of this Section III, which provides for relevant provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subconsultant as to work in connection with the Contract.

C. Staffing Plan

To ensure compliance with this section, the Consultant shall submit a staffing plan, when retained on a legal matter, to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Consultant shall complete the Staffing plan form and submit it as part of their bid or proposal or within a reasonable time, but no later than the time of award of the contract.

D. Workforce Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Consultant is responsible for updating and providing notice to ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Consultant and any subconsultant performing work on the Contract.
3. In limited instances, Consultant may not be able to separate out the workforce utilized in the performance of the Contract from Consultant's and/or subconsultant's total workforce. When a separation can be made, Consultant shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Consultant's and/or subconsultant's total workforce, Consultant shall submit the Workforce Report and indicate that the information provided is Consultant's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Consultant shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Consultant and subconsultants shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Consultant represents and warrants that Consultant has submitted an MWBE Utilization Plan either prior to, or at the time of, the execution of the contract.
- B. Consultant agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in section II-A hereof.
- C. Consultant further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein.

V. Waivers

- A. If the Consultant, after making good faith efforts, is unable to comply with MWBE goals, the Consultant may submit a Request for Waiver form documenting good faith efforts by the Consultant to meet such goals. If the documentation included with the waiver request is complete, ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- B. If ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Consultant Compliance Reports determines that Consultant is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, ESD may issue a notice of deficiency to the Consultant. The Consultant must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Consultant Compliance Report

Consultant is required to submit a Quarterly MWBE Consultant Compliance Report to ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. ESD Remedies, Including Liquidated Damages or Other Appropriate Remedies for Willful and Intentional Failure to Comply with MWBE Participation Requirements

- A. Where ESD in its sole discretion determines that Consultant is not in compliance with the requirements of the Contract and Consultant refuses to comply in good faith with such requirements, or if Consultant is determined by ESD in its sole discretion to have willfully and intentionally failed to comply in good faith with the MWBE participation goals, ESD has elected to apply liquidated damages or other appropriate remedies as follows: ESD may determine that it will not award Consultant any further contracts for a period of up to two (2) years, and in addition ESD may require Contractor to pay to ESD an amount equal to 5% of the shortfall in MWBE participation, which amount ESD shall contribute to an internal fund to promote MWBE participation in ESD contracts.

**MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUAL
EMPLOYMENT OPPORTUNITY POLICY STATEMENT**

M/WBE AND EEO POLICY STATEMENT

I, _____, the (Contractor) _____ agree to adopt the following policies with respect to the project being developed or services rendered at _____

M/WBE

The Contractor will take, and will cause its contractors and subcontractors to take, good faith actions to achieve the M/WBE contract participations goals set by ESD in this Contract, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State-certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhanced participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

(a) The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing

EEO

programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.

(b) The Contractor shall state in all solicitation or advertisements for employees that in the performance of this contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of ESD, the Contractor shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

(d) Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(e) The Contractor will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with this contract.

Agreed to this _____ day of _____, 20 _____

By _____

Print: _____ Title: _____

_____ is designated as the Minority Business Enterprise Liaison
(Name of Designated Liaison)

responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

_____ 20% Minority and Women's Business Enterprise Participation

_____ % Minority Business Enterprise Participation

_____ % Women's Business Enterprise Participation

EEO Contract Goals

_____ % Minority Labor Force Participation

_____ % Female Labor Force Participation

(Authorized Representative)

Title: _____

Date: _____