

FOR CONSIDERATION

September 15, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Kew Gardens (New York City Region – Queens County) – Brookman Construction Company Working Capital – Small Business and Minority-Owned and Women-Owned Business Enterprises Transportation Capital Assistance and Guaranteed Loan Program – Empire State Development/New York State Department of Transportation – Government Contractor Loan Program

REQUEST FOR: Authorization to Make a Loan and to Take Related Actions

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I. Project Summary

Borrower: Brookman Construction Company, Inc.

ESD\* Investment: A loan of up to \$400,000 for working capital to be used for expenses associated with a subcontract (the “Subcontract”), for installation of reinforced steel on the Van Wyck Expressway in Queens, NY from Ecco III Enterprises Inc. the prime contractor (the “Prime Contractor”) under New York State Department of Transportation (“NYSDOT”) Contract D261344 (the “Prime Contract”).

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

Project Location: Van Wyck Expressway, Kew Gardens, Queens County.

Proposed Project: The Borrower has been awarded the Subcontract, for the installation of reinforced steel on the Van Wyck Expressway by the Prime Contractor under the Prime Contract with NYSDOT. Program loan funding will help offset working capital expenses associated with the project.

ESD Incentive Offer Accepted: August 29, 2011

Project Completion: November 2014

Security: The Subcontract proceeds pursuant to a collateral assignments in favor of ESD with respect to the Prime Contract and consents by NYSDOT and the prime contractor to such assignment and to the direct payment to ESD by the Prime Contractor of all amounts due Subcontractor pursuant to the Subcontract. Prime Contractor' address is Ecco III Enterprises Inc., 201 Sawmill River Rd., Yonkers, NY 10701.

Borrower Contact: Jose Coello, President  
400 Myrtle Ave.  
Brooklyn, NY 11205  
Phone: (718) 243-1753  
Fax: (718) 243-1075

Anticipated  
Appropriation  
Source: NYSDOT Sub-Allocation

ESD Project No.: X462

Project Team:	Origination	Ron Novita
	Project Management	Destiny Burns
	Legal	Antovk Pidedjian
	Affirmative Action	Denise Ross
	Finance	Amit Nihalani
	Environmental	Soo Kang

Regional Council: The New York City Regional Council has been made aware of this item.

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Working Capital	<u>\$1,200,000</u>

Total Project Costs	<u>\$1,200,000</u>
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<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
ESD-Loan	\$400,000	33%	Prime*/36 months/1st on Contract
NYSDOT Contract	<u>\$800,000</u>	<u>67%</u>	

Total Project Financing	<u>\$1,200,000</u>	<u>100%</u>	
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\* Prime rate to be set at closing

### III. Project Description

#### A. Background

The ESD/NYS DOT Government Contractor Loan – Small Business and Minority-Owned and Woman-Owned Business Enterprises Transportation Capital Assistance and Guaranteed Loan Program (the “Program”) was established in 1993 pursuant to Section 134, Chapter 56 of the Laws of 1993 and set forth in Section 38 of the New York State Urban Development Corporation Act.

ESD entered into an agreement dated February 16, 1994 (the “Agreement”), with NYSDOT to implement the direct loan component of the Program. Pursuant to the Agreement, NYSDOT refers to ESD contractors with a NYSDOT contract(s) or sub-contract(s) who have achieved a satisfactory score on the scoring model established under the Agreement. NYSDOT, working with the Small Business Development Centers, prepares a package of information for each applicant and submits it to ESD along with copies of the applicant’s NYSDOT contract(s) or sub-contract(s) (subcontracts are accompanied by copies of the prime contract(s) with NYSDOT).

The ultimate purpose of the Program is to provide contract-specific financing to qualifying small contractors that will successfully complete their contracts and thereby establish credibility and creditworthiness with private funding sources for future capital requirements. Programmatic policy also states that preference should be given to applicant firms that currently do not qualify for bank business credit under normal guidelines. Consideration may also be given to firms that have received or currently benefit from existing credit facilities but that do not qualify for additional credit to be able to finance the NYSDOT contract award.

Brookman Construction Company, Inc., the Borrower, is a subcontractor of the Prime Contractor under the Prime Contract with NYSDOT.

Brookman Construction Company, Inc., incorporated in 2004, is a New York State certified Minority and Woman-owned Business Enterprise (“MWBE”) located in Brooklyn, NY. In March 2010, the Borrower obtained the Subcontract, for the installation of reinforced steel on the Van Wyck Expressway from Ecco III Enterprises, the Prime Contractor, under the Prime Contract with NYSDOT. Without out this loan, Borrower would not be able to move forward with this subcontract.

#### B. The Project

The proceeds of the loan will be used by the Borrower for working capital requirements for the Borrower’s work pursuant to the Subcontract. Specifically the Borrower will complete installation of reinforced steel necessary for expressway repair. The Subcontract is valued at \$5,597,323. The work began in March 2011 and is expected to be completed in September 2014.

### C. Financial Terms and Conditions

1. The Borrower will demonstrate no material adverse change in its financial condition prior to closing.
2. The Borrower or the Borrower's shareholders will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Borrower financial statements or Borrower accounts, if so requested by ESD.
3. Personal Guaranty by Jose Coello.
4. Disbursement Terms: 100% of the loan (\$400,000) shall be disbursed at the closing upon assignment of the Subcontract, evidence of commencement of work as defined, and such other documentation as ESD may require.
5. Repayment will be fully amortized in 36-monthly installments; the first installment is due 30-days after ESD loan closing. The Prime Contractor will pay directly to ESD all of the assigned Subcontract proceeds, ESD will promptly apply the proceeds to the payment of the accumulated installments, interest and other amounts then due and owing to ESD from the Borrower, and ESD shall promptly forward to the Borrower all proceeds in excess of such amounts.
6. Collateral: First assignment in favor of ESDC of the proceeds of the Borrower's Subcontract with the Prime Contractor on NYSDOT Contract and the consents of NYSDOT and the Prime Contractor with respect to the said assignment and the direct payment to ESDC by the Prime Contractor of all Subcontract payments and Borrower's irrevocable instruction to the Prime Contractor regarding payment to ESDC of Subcontract payments.

### IV. Statutory Basis

The project is undertaken in compliance with New York State Urban Development Corporation Act Section 38.

### 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. Affirmative Action

ESD's Non-discrimination and Affirmative Action policy will apply. The Company is encouraged to include minorities and women in any job opportunities created by the project, and to solicit and

utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the project.

VII. ESD Employment Enforcement Policy

ESD's Employment Enforcement Policy will not apply since the project will not directly create or retain jobs.

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

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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 Brookman Construction Company Working Capital – Small Business and Minority – and Woman-Owned Business Enterprises Transportation Capital Assistance and Guaranteed Loan Program – Empire State Development/New York State Department of Transportation – Government Contractor Loan Program Project (the “Project”), the Corporation is hereby authorized to make to Brookman Construction, Inc. a loan for a total principal amount not to exceed Four Hundred Thousand Dollars (\$400,000) from the New York State Department of Transportation Sub-Allocation, 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 each of them hereby is, authorized to take such actions and make such modifications to the terms of the loan 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 (3) availability of funds from the New York State Department of Transportation Sub-Allocation; 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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