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<b>EMPIRE STATE DEVELOPMENT</b>	Dated: April 2015 Supersedes: N/A
Approved: <u>/s/ Ed Hamilton</u> Ed Hamilton Sr. Vice President, Administration and Sr. Deputy Commissioner for Finance & Administration	<b>SUBJECT: WHISTLEBLOWER POLICY &amp; PROHIBITION ON RETALIATION AGAINST WHISTLEBLOWERS</b>

New York State and federal laws protect public employees and other personnel of public entities, including those of the New York State Urban Development Corporation, doing business as Empire State Development and its subsidiaries and affiliated entities, including the New York Job Development Authority and its affiliated local development corporations and the New York State Department of Economic Development (collectively, “ESD”), against retaliation for disclosing to a designated individual or law enforcement agency any wrongful conduct. This Whistleblower Policy and Prohibition on Retaliation Against Whistleblowers (“Policy Statement”) sets forth ESD’s policy toward the reporting of wrongful conduct and the protection of ESD personnel who report such wrongful conduct. The purpose of this Policy Statement is to require ESD personnel to report misconduct; protect those who do from retaliation; create a framework for reporting and investigating claims of retaliation; and ensure that ESD complies with all applicable laws protecting whistleblowers.

**Definitions**

**Designated Individual** means any of the following: the employee’s immediate supervisor; the employee’s unit, division or department head; the General Counsel; Ethics Officer; the Vice President of Human Resources; the Chief Financial Officer; the Chief Operating Officer; the Chief of Staff to the Chief Executive Officer; any member of the board; the Senior Vice President for Internal Audit; the Commissioner of Economic Development; any Assistant or Deputy Commissioner; or the Chief Executive Officer.

**Employee** means each person employed by ESD whether full-time, part-time, temporary, or employed pursuant to contract and each member of any ESD Board of Directors.

**Public body** means any of the following: the United States Congress, any State legislature, or any popular-elected local governmental body, or any member or employee thereof; any federal, State or local judiciary, or any member or employee thereof, or any grand or petit jury; any federal, State or local regulatory, administrative or public agency or authority, or instrumentality thereof; any federal, State, or local law enforcement agency, prosecutorial office, or police or peace officer; any federal, State or local department

of an executive branch of government; or any division, board, bureau, office, committee or commission of any of the public bodies described above.

**Remedial action** means any action appropriate under the circumstances to restore the employee to his or her former status, which may include one or more of the following: reinstatement or redeployment of the employee to a position the same as or comparable to the position the employee held or would have held if not for the retaliation, or, as appropriate, to an equivalent position; reinstatement of full seniority rights; payment of lost compensation including both wages and benefits; and any other employment action necessary to effectuate a “make whole” remedy that addresses the effects of the retaliation.

**Retaliation means** punitive action against a whistleblower for reporting wrongful conduct. This may include any material alteration to existing terms, conditions and privileges of employment including, without limitation, dismissal, demotion, suspension, compulsory leave, disciplinary action, negative performance evaluation, harassment, threats, any action resulting in loss of staff, office space or equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected employee.

**Whistleblower** means an employee who discloses wrongful conduct to a designated individual, law enforcement entity or otherwise in accordance with law.

**Wrongful Conduct** means behavior by an ESD employee with respect to that employee’s official duties that the employee reasonably believes to be true and a violation of a law, rule, regulation, or a conflict of interest, waste, intentional reporting of false or misleading information, or abuse of authority.

#### **Policy Regarding the Reporting of Wrongful Conduct**

Any employee who discovers or has knowledge of wrongful conduct shall report such activity in accordance with this Policy Statement or otherwise in accordance with law in a prompt manner.

Any person who receives a report from a whistleblower regarding wrongful conduct shall inform the General Counsel’s Office of the report. The General Counsel’s Office shall review and investigate the allegation in a timely manner. If such review indicates the reasonable possibility that wrongful conduct has occurred, the General Counsel’s Office shall recommend appropriate corrective action and/or refer the matter to an appropriate law enforcement agency, as may be appropriate or required by law.

#### **Policy Against Retaliation**

No ESD employee shall retaliate against a whistleblower. An ESD employee who believes that another officer or employee has retaliated against another ESD employee shall report such action to a designated individual or otherwise in accordance with law. Any person who learns of an ESD employee being retaliated against shall immediately inform the General Counsel.

Any employee who retaliates against a whistleblower shall be subject to disciplinary action, including informal and formal corrective action up to and including termination from employment.

### **Investigation of Reports of Wrongful Conduct, Including Retaliation**

All reports of wrongful conduct, including retaliation, shall be investigated. All investigations conducted by ESD in accordance with this Policy Statement shall be conducted under the direction and supervision of the General Counsel or the Director of Compliance. Investigators may include representatives of the Legal Department, Human Resources Department, internal or external auditors and/or outside counsel.

Reports of wrongful conduct made directly to the New York State Inspector General's Office or other outside governmental authority shall be investigated by the Inspector General's Office or the outside governmental authority, as the case may be, unless referred back to ESD for investigation. Unless otherwise directed by the Inspector General's Office, or other outside governmental authority as the case may be, the General Counsel shall serve as liaison with the Inspector General's Office and other outside governmental authority. All information requests shall be forwarded to the General Counsel for appropriate action including gathering the requested information and thereafter forwarding to the requesting entity.

All employees are required to cooperate fully in the investigation of the report of wrongful conduct by providing any information they possess concerning the matters being investigated and being candid about such matters.

During any investigation, the whistleblower may disclose his or her identity if he or she wishes to do so. Confidentiality of the whistleblower will be maintained to the fullest extent possible, consistent with the need to conduct an adequate investigation. In the course of any investigation, however, the designated individual or General Counsel's office may find it necessary to share information with others on a "need to know" basis.

### **Investigation Reports**

The findings of investigations conducted by ESD hereunder shall, as appropriate, be set forth in a written report which shall include findings of fact, conclusions and recommendations including any disciplinary action, ("Report"). Upon the completion of an investigation initiated under this Policy Statement, the General Counsel or the Director of Compliance shall provide a written summary of the final determination to the officer or employee who complained of the retaliatory action. The summary shall include the General Counsel's or the Director of Compliance's recommendation, if any, for remedial actions, or shall state the General Counsel has determined to dismiss the complaint and terminate the investigation. All reports received by ESD from the Inspector General's Office shall be directed to the General Counsel and if present, the Audit Committee. All Reports prepared by outside third parties, including outside counsel and alike, shall be directed to the General Counsel and if present, the Audit Committee.

### **Disposition of Substantiated Claims**

Upon a determination that retaliation has been taken, the General Counsel shall without undue delay report his or her findings and, if appropriate, recommendations to: the Commissioner of Economic Development, the President of ESD, and if present, the Audit Committee. The President shall, without undue delay, determine whether to take remedial action and report such determination on remedial action to the General Counsel and if present, the Audit Committee. If present, the Audit Committee will, as warranted, take such actions as is deemed appropriate. If no Audit Committee is present, the President shall determine the remedial action and Human Resources will implement it.

### **Other Legal Rights Not Impaired**

Nothing in the Policy Statement shall limit or impair any rights or remedies that a whistleblower may have under any other federal or State statute or any collective bargaining agreement or preclude a whistleblower or designated individual from disclosing potential wrongdoing to the Office of the Inspector General or other law enforcement agency charged with the responsibility of investigation wrongdoing.

### **Abuse of Practices and Procedures and Meritless Claims**

It shall be a violation of this Policy Statement for any employee to report or disclose information that the employee knows or reasonably should know to be untrue, unfounded or misleading or for which there is no basis. Any such report shall itself constitute wrongful conduct and be subject to the same reporting, investigation, and disposition set forth in this Policy Statement.

### **Disciplinary Action**

Disciplinary action brought under this Policy Statement shall be subject to all collective bargaining provisions, laws, regulations and policies applicable to the employee against whom disciplinary action is being taken for alleged violations of this Policy Statement.

### **Training**

The General Counsel or the Director of Compliance shall conduct ongoing educational efforts to inform ESD employees of their rights and responsibilities as set forth under this Policy Statement and applicable law. ESD shall conspicuously display and annually publish for all officers and employees, written or electronic notices of such rights and responsibilities and enforcement procedures.

### **Periodic Reporting to the Members**

Not later than December thirty-first of each year, the Audit Committee, in consultation with the General Counsel, shall provide a written summary to the ESD Board(s) for the period setting forth the status of matters reported pursuant to this Policy Statement.

### **Record Retention and Administration**

All information obtained and work product prepared pursuant to this practice and procedure, including but not limited to Reports, statements, physical evidence, non-investigation reports, memos and notes shall be maintained by ESD in files maintained and administered by the General Counsel, the Director of Compliance and/or the President as appropriate.

### **Recusal**

In the event it becomes necessary for directors, officers or employees to recuse themselves from responsibilities assigned to them under this Policy Statement, these practices and procedures shall be administered with such reasonable adjustments as are necessary in furtherance of their purpose.