

Item I. A.

Minutes of the 12/20/2022 ESNMC Directors' Meeting

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors

Held Via Teleconference

December 20, 2022

MINUTES

In Attendance

Directors: Kevin Younis, Acting Chair (Via Teleconference)
Edwin Lee
Paul Tronolone (Via Teleconference)

ESNMC Staff: Jonevan Hornsby, President
Yvonne Cooper, Acting Corporate Secretary

ESD Staff: Marcio David, Manager of Accounting
Courtney Heed, Paralegal
Felisa Hochheiser, Director of Compliance
Eugene Kwiatkowski, Senior Director of Budgeting
Olympia Moy, Excelsior Fellow
Sankar Singh, Financial Project Manager

The meeting of the Empire State New Market Corporation (“ESNMC” or the “Corporation”) was called to order at approximately 11:02 a.m.

Acting Chair Younis noted for the record that the meeting will be webcast and the public had been given the opportunity to comment on the meeting’s Agenda items by submitting their written comments before 4:30 p.m. on Friday and no comments were received.

Acting Chair Younis then stated that the Directors had received the relevant written materials in advance of the meeting and were free to ask questions at any time.

Before beginning with the substantive portion of the meeting, Acting Chair Younis asked the Directors whether anyone had any potential conflict of interest regarding any of the items on the proposed Agenda. He asked, if so, that the appropriate disclosure be made on the record to ensure that the Director is recused from any discussion or vote regarding such item(s).

Hearing none, Acting Chair Younis called for a motion to approve the first item on the Agenda: the Minutes of the March 17, 2022 Directors' Meeting. There being no corrections or deletions, upon motion duly made and seconded, the following Resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 17,
2022 MEETING OF THE DIRECTORS OF THE EMPIRE STATE NEW MARKET CORPORATION

RESOLVED, that the Minutes of the meetings of the Corporation held on March 17, 2022 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meetings as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Next, Acting Chair Younis called on Jonevan Hornsby, President of Empire State New Market Credit ("ESNMC"), to present the next item on the Agenda for the Directors' consideration.

Mr. Hornsby explained that the Directors were being asked to authorize the execution of a calendar year 2021 Allocation Agreement with the Community Development Financial

Institution Fund, (“CDFI”) to form up to 10 additional subsidiary Community Development Entities (“CDE’s”) for which ESNMC will serve as managing member.

Mr. Hornsby further explained that in October of 2022, ESNMC was awarded a calendar year 2021 allocation of New Market Tax Credits (“NMTC”) in the amount of \$45 million and intends to enter into the Allocation Agreement with the CDFI fund and close several NMTC transactions.

Mr. Hornsby noted that each transaction will be closed into a limited liability company, which must be certified as a CDE in order to allow for the admission of the investor to be able to benefit from the New Market Tax Credits.

Mr. Hornsby further noted that each transaction is likely to consist of a different investor and a unique borrower; therefore, a limited liability company that is a subsidiary CDE must be formed for each transaction.

Mr. Hornsby noted that this request constitutes a Type II action as defined by the New York State Environmental Quality Review Act and implementing regulations of the New York State Department of Environmental Conservation and no further environmental review is required in connection with this authorization.

Acting Chair Younis asked what the key differences are with this allocation application as compared to the previous application.

Mr. Hornsby stated that this application was submitted to the CDFA fund in 2021 and ESD applied for an allocation that would create investments for smaller transactions in amounts of \$4 million or less.

Mr. Hornsby also stated that in previous awards received in 2015 and 2016, ESD included a similar priority and was successful. In that round were transactions in amounts of up to \$2 million or less. Raising the guidance of up to \$4 million made it less challenging to close transactions, which have been historically challenging to do.

Lastly, Mr. Hornsby noted that the rule percentage has been increased to 40 percent of ESD's allocation to rural communities.

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

EMPIRE STATE NEW MARKET CORPORATION – Allocation Agreement and Subsidiary Community Development Entities ("CDEs") – Authorization to Execute Calendar Year 2021 Allocation Agreement ("Allocation Agreement") with the Community Development Financial Institutions Fund ("CDFI Fund") and Form Up to Ten (10) Additional Subsidiary CDEs and to Take Related Action

At a meeting duly called at which a quorum was present and acting throughout, the board of directors of **EMPIRE STATE NEW MARKET CORPORATION**, a New York corporation (the "Corporation"), adopted the following action for and on behalf of the Corporation:

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the "CDFI Fund") as a "qualified community development entity" (a "CDE"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and the Corporation is expected to enter into

an Allocation Agreement (the “Allocation Agreement”) with the CDFI Fund in connection with a calendar year 2021 allocation of new markets tax credits under Section 45D of the Code (“NMTCs”) in the amount of \$45,000,000;

WHEREAS, the Corporation has caused the formation of five (5) subsidiary CDEs, ESNMC Subsidiary CDE XI, LLC (“CDE XI”), ESNMC Subsidiary CDE XII, LLC (“CDE XII”), ESNMC Subsidiary CDE XIII, LLC (“CDE XIII”), ESNMC Subsidiary CDE XIV, LLC (“CDE XIV”) and ESNMC Subsidiary CDE XV, LLC (“CDE XV,” and together with CDE XI, CDE XII, CDE XIII and CDE XIV, individually, an “Existing Subsidiary CDE” and collectively, the “Existing Subsidiary CDEs”), and intends to cause the formation of up to ten (10) additional subsidiary CDEs (individually, a “Subsidiary CDE,” and collectively, the “Subsidiary CDEs”) for the purpose of receiving a sub-allocation of NMTCs from the Corporation and furthering the Corporation’s purpose of serving and providing investment capital and capital assistance for, and to the benefit of, low income communities and low income persons;

WHEREAS, the Corporation will serve as the managing member of each Subsidiary CDE;

WHEREAS, it is expected that Statewide Local Development Corporation, a New York non-profit corporation, will serve as a non-managing member of each Subsidiary CDE until such time as an investor member is admitted to each Subsidiary CDE;

WHEREAS, the Corporation has caused or intends to cause each Subsidiary CDE to submit a Community Development Entity Certification Application (collectively, the “Certification Applications”) to the CDFI Fund in order to become certified as a CDE eligible to receive a sub-allocation of NMTCs from the Corporation and execute the Allocation Agreement;

WHEREAS, the Corporation and the Existing Subsidiary CDEs intend to execute the Allocation Agreement with the CDFI Fund and, provided the Subsidiary CDEs are certified by the CDFI Fund as CDEs, the Corporation intends to execute an amendment to the Allocation Agreement adding the Subsidiary CDEs as parties;

WHEREAS, the board of directors has determined that the formation of the Subsidiary CDEs and the transactions contemplated by the Certification Applications and the Allocation Agreement, are in the best interests of the Corporation;

NOW, THEREFORE, BE IT:

RESOLVED, that the President, Secretary, Treasurer, any Vice President, Chief Financial Officer, General Counsel or Authorized Representative (as defined below) of the Corporation (each a “Principal Officer”) or Olympia Ingriselli-Moy as Organizer (the “Organizer”), each being an authorized representative of the Corporation, each Existing Subsidiary CDE and each Subsidiary CDE, be, and each of them hereby is, authorized, empowered and directed, either alone or in conjunction with any one or more of the other officers of the Corporation, to issue, execute and deliver, on behalf of the Corporation (for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs), each Existing Subsidiary CDE and each Subsidiary CDE, the following agreements, documents and instruments, with such additional, modified or revised terms as may be acceptable to the officer executing the same, each such determination to be conclusively evidenced by his/her execution thereof and each such

determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation (for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs), each Existing Subsidiary CDE and each Subsidiary CDE, respectively, approved in all respects by the board of directors of the Corporation:

- (a) the organizational documents required to be executed and filed in connection with the formation of the Subsidiary CDEs, including without limitation the Articles of Organization and the Operating Agreement for each Subsidiary CDE in substantially the form attached hereto as Exhibit A, with such revisions as any Principal Officer or the Organizer may deem appropriate, along with any other documents necessary or convenient for the formation of the Subsidiary CDEs (collectively, the “Formation Documents”);
- (b) the Certification Applications; and
- (c) the Allocation Agreement and any amendments thereto adding one or more Subsidiary CDEs.

(the documents referred to in clauses (a) through (c) above are referred to herein collectively as the “Principal Documents,” and individually as a “Principal Document”); and it is further

RESOLVED, the Corporation authorizes the formation up to ten (10) additional Subsidiary CDEs for the purpose of receiving a sub-allocation of NMTCs from the Corporation and furthering the Corporation’s purpose of serving and providing investment capital and capital assistance for, and to the benefit of, low income communities and low income persons and authorizes the Corporation in its own capacity and as managing member of the Subsidiary CDEs, and each Principal Officer as an authorized representative acting on behalf of the Subsidiary CDEs, to execute any amendments to the Allocation Agreement adding the Subsidiary CDEs as parties;

RESOLVED, that any Principal Officer or the Organizer of the Corporation be, and each of them hereby is, authorized, empowered and directed (either alone or in conjunction with any one or more of the other officers of the Corporation) to execute and deliver, on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, all other documents, agreements and instruments (collectively, the “Other Documents”) contemplated by any Principal Document (the Principal Documents and the Other Documents (with such additional, modified or revised terms as may be acceptable to the officer executing the same, each such determination to be conclusively evidenced by his/her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation) are hereinafter sometimes referred to collectively as the “Transaction Documents” and individually as a “Transaction Document”); and it is further

RESOLVED, that any Principal Officer or the Organizer of the Corporation be, and each of them hereby is, authorized, empowered and directed, for and on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, to

consummate the transactions contemplated by each Transaction Document, and to perform, and cause to be performed by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, the obligations contained in such Transaction Documents, as required thereunder; and it is further

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed to take any and all action necessary to effectuate the purpose and intent of the foregoing resolutions, including, without limitation, (i) the execution and delivery on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, all such other agreements, documents and instruments, and the performance by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, thereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, and (ii) the consummation of the transactions contemplated hereby and the performance by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, as required hereunder, as each of them shall determine, in his/her exclusive and reasonable judgment, to be necessary, appropriate or advisable, each such determination pursuant to the immediately preceding clauses (i) and (ii) to be conclusively evidenced by the taking of any such action by any officer of the Corporation and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation; and it is further

RESOLVED, that the appointment of Jonevan Hornsby as “Authorized Representative” of the Corporation, the Existing Subsidiary CDEs and/or each of the Subsidiary CDEs for purposes of the Certification Applications, the Allocation Agreement, and communications with the CDFI Fund (in such capacity, the “Authorized Representative”) is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation; and it is further

RESOLVED, that each of Holland & Knight LLP, Schoeman Updike & Kaufman LLP and the CDFI Fund and its successors and assigns are hereby authorized to rely upon these resolutions, and upon any certificate of any Principal Officer of the Corporation with respect thereto until receipt of actual written notice of the revocation thereof, and may conclusively presume that the persons designated as officers or Authorized Representative of the Corporation in any certificates signed by any Principal Officer of the Corporation continue to hold office until actual receipt of a certificate from the Secretary of the Corporation to the contrary.

RESOLVED, that all acts and deeds heretofore done by any officer of the Corporation for and on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, in entering into, executing, acknowledging or attesting any of the Transaction Documents to which the Corporation is a party or performing any of the transactions contemplated thereby or in carrying out the terms and intentions of these resolutions, are hereby ratified, approved and confirmed in all respects.

* * *

Acting Chair Younis called Mr. Hornsby to present the next item on the Agenda related to the approval of the New Market Tax Credit Deployment and Investment Selection Process for the Directors' consideration.

Mr. Hornsby explained that in October 2022, ESNMTC received a \$45 million NMTC allocation award from the calendar year 2021 NMTC application round.

Mr. Hornsby further explained that ESNMC indicated the types of projects that it would invest in and provided an initial priority pipeline as part of the NMTC application to the CDFI fund.

Mr. Hornsby noted that ESNMC is proceeding to quickly review the initial potential pipeline and expects to bring two to three initial transactions for closing in the first quarter of 2023. Quick deployment during the first quarter of 2023 is essential for demonstrating to the CDFI fund that ESMNC can deploy and manage an award efficiently.

Mr. Hornsby further noted that the CDFI fund requires community development entities to deploy at least 20 percent of the current round award, which is \$9 million for ESMNC, in order to be eligible to apply for an award in the next NMTC application round.

Mr. Hornsby noted that this request constitutes a Type II action as defined by the New York State Environmental Quality Review Act and implementing regulations of the New York

State Department of Environmental Conservation and no further environmental review is required in connection with this authorization.

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

EMPIRE STATE NEW MARKET CORPORATION – NMTC Deployment and Investment Selection Process - Approval of NMTC Deployment and Investment Selection Process

RESOLVED, that the Corporation hereby adopts the funding criteria for determining which projects should be funded with New Markets Tax Credits on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Corporation hereby adopts the Deployment and Investment Selection process, which includes the issuance of non-binding Reservation Letters and transaction closing on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate.

* * *

Acting Chair Younis called on Mr. Hornsby to present the last item on the Agenda related to GLOW YMCA and United Memorial Medical Center for the Directors' consideration.

Mr. Hornsby explained that the Directors were being asked to adopt the proposed General Project Plan, sub-allocate New Market Tax Credits to an Empire State New Market Corporation subsidiary, close the NMTC transaction, make a determination of no significant effect on the environment and take all related actions.

Mr. Hornsby further explained that ESNMC requests approval to allocate up to \$9 million in federal NMTCs for the purpose of enabling the subsidiary CDE to make loans to Genesee, Livingston, Orleans, and Wyoming Young Men's Christian Association, Inc. ("GLOW YMCA") to be used to finance the construction of the Healthy Living Campus in Batavia, New York and to delegate authority to the President of ESNMC or his designee to take any and all actions with respects to such allocation of NMTCs.

Mr. Hornsby noted that the current YMCA facility opened in 1977 and offers a variety of youth sports, wellness programs and fitness classes.

Mr. Hornsby further noted that the project consists of the construction of a 78,500 square-foot building next door to the existing YMCA building which will be demolished. The new building will include 58,000 square-feet of space for the YMCA and 20,000 square-feet of space for the United Memorial Medical Center's primary care facility.

Mr. Hornsby noted that the investment will finance the core and shell of the entire building along with the fit-out for the space. The YMCA will pay for tenant improvements using separate financing.

Mr. Hornsby noted that the project has commenced; the final financial closing is anticipated to occur in early 2023; and construction is expected to be completed in the Spring of 2024.

Mr. Hornsby explained that the proposed financing is recommended for various reason in that it fits well with the strategy to help revitalize a highly distressed community and provide critical health and wellness services to a low-income community.

Mr. Hornsby further explained that in addition to meeting the requirements of ESNMC's business strategy, the project allows for the deployment of 20 percent of its NMTC application with the minimum threshold needing to be deployed by May of 2023 in order to be eligible for another NMTC award in the 2022 round.

Mr. Hornsby noted that as lead city, the City of Batavia Planning and Development Committee completed an environmental review of the project pursuant to the requirements of the SEQRA and the implementing regulations of the New York State Department of Environmental Conservation and found the project to be an Unlisted Action, which would not have a significant effect on the environment.

Mr. Hornsby noted that the lead agency issued a Negative Declaration on September 22, 2021, and ESD on behalf of ESNMC, reviewed the Declaration and supporting materials and agreed that the Directors should make a determination of no significant effect on the environment.

Following the presentation, Acting Chair Younis called for questions or comments from the Directors. Director Lee noted that in the sources and uses section of the board materials there is a Restore and DRI award and asked how this is reflected in the sources and uses.

Mr. Hornsby stated that the Restore and DRI awards will be used to leverage into the NMTC structure. They will then flow through the New Market Tax Credit structure in order to entice or incentivize the equity investment.

Mr. Hornsby also stated that the equity investment will be pulled in with the leveraged funds and put into an investment fund that will make the qualified equity investment into ESD's subsidiary CDE.

Lastly, Mr. Hornsby stated that in the sources and uses, it's actually seen as, the Empire State New Market Corporation QLICIES, which stands for Qualified Low-Income Community Investments and Enterprise.

Director Lee then asked when the project is anticipated to begin.

Mr. Hornsby stated that the financial closing is anticipated to be in February or March of 2023 and the project should be completed in 2024.

Acting Chair Younis then called for any further questions or comments. Hearing none, upon motion duly made and seconded, the following Resolution was unanimously adopted:

EMPIRE STATE NEW MARKET CORPORATION – Batavia (Finger Lakes Region – Genesee County) – New Markets Tax Credit Sub-Allocation to provide financing in the construction of the Healthy Living Campus, a collaboration between the GLOW YMCA and United Memorial Medical Center – Authorization to Adopt the Proposed General Project Plan ("GPP"); Sub-Allocate New Markets Tax Credits ("NMTCs") to an Empire State New Market Corporation ("ESNMC") Subsidiary; Close the NMTC Transaction;

Make a Determination of No Significant Effect on the Environment; and Take all Related Actions

WHEREAS, Empire State New Market Corporation, a New York corporation (the "Corporation"), has been certified by the Community Development Financial Institutions Fund (the "CDFI Fund") as a "qualified community development entity" (a "CDE"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and the Corporation is expected to enter into an Allocation Agreement (the "Allocation Agreement"), with the CDFI Fund in connection with an allocation of NMTCs under Section 45D of the Code in the amount of \$45,000,000 (the "Allocation");

WHEREAS, the Corporation desires to sub-allocate to ESNMC Subsidiary CDE XI, LLC, a New York limited liability company, or another subsidiary CDE of the Corporation (the "Subsidiary CDE"), up to \$9,000,000 in NMTC authority from the Corporation's Allocation (the "Sub-Allocation") in connection with the proposed investment to GLOW YMCA, Inc. to finance the construction of the Healthy Living Campus, pay for transaction costs and other related uses that will allow the Borrower to increase its community, wellness and healthcare services (the "Project") as described in the GPP;

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

RESOLVED, the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to cause the Corporation to make to the Subsidiary CDE, the Sub-Allocation for the purposes of making NMTC financing available to the Project described in the GPP, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President of the Corporation or his designee(s) may deem appropriate, and be it further

RESOLVED, that 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 location of the Project; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, subsequent to the making of the allocation, and each of them hereby is, authorized to cause the Corporation to take such actions and make such modifications to the terms of the Sub-Allocation as he or she may deem necessary or appropriate in the administration of the allocation; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation acting in its own capacity, or as managing member of the Subsidiary CDE, to negotiate, issue, execute and deliver any and all transaction documents and instruments, including but not limited to, operating agreement(s), loan and

security agreements, indemnity agreement(s), fee agreements, asset management agreements, bank accounts, account control agreements, disbursement agreements, and any other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (collectively, the "Transaction 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, including such modifications to the terms of the transaction as he or she may deem necessary or appropriate and reasonably consistent with the GPP. Any actions previously taken by the Corporation in furtherance of the GPP are hereby ratified and approved.

RESOLVED, that based on the material submitted to the Directors with respect to GLOW YMCA's Healthy Living Campus Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment.

* * *

There being no further business, the meeting was adjourned at 11:24 a.m.

Respectfully submitted,

Yvonne M. Cooper
Acting Corporate Secretary

Minutes of the 1/17/2023 ESNMC Directors' Meeting

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors

Held Via Teleconference

January 17, 2023

MINUTES

In Attendance

Directors: Kevin Younis, Acting Chair
Edwin Lee
Paul Tronolone

ESNMC Staff: Yvonne Cooper, Acting Corporate Secretary
Brendan Healey, Vice President
Jonevan Hornsby, President
Kathleen Mize, Controller

ESD Staff: Eugene Kwiatkowski, Senior Director of Budgeting
Olympia Moy, Excelsior Fellow
Sankar Singh, Financial Project Manager

The meeting of the Empire State New Market Corporation (“ESNMC” or the “Corporation”) was called to order at approximately 11:00 a.m.

Acting Chair Younis noted for the record that the meeting will be webcast and the public had been given the opportunity to comment on the meeting’s Agenda items by submitting their written comments before 4:30 p.m. on Friday and no comments were received.

Acting Chair Younis then stated that the Directors had received the relevant written materials in advance of the meeting and were free to ask questions at any time.

Before beginning with the substantive portion of the meeting, Acting Chair Younis asked the Directors whether anyone had any potential conflict of interest regarding any of the items on the proposed Agenda. He asked, if so, that the appropriate disclosure be made on the record to ensure that the Director is recused from any discussion or vote regarding such item(s).

Hearing none, Acting Chair Younis called on Jonevan Hornsby, President of Empire State New Market Credit (“ESNMC”), to present the first item on the Agenda related to the retention of counsel to provide legal representation for the Directors’ consideration.

Mr. Hornsby explained that Empire State New Market Corporation (“ESNMC”) recently received an allocation of federal New Market Tax Credits (“NMTC”) in the amount of \$45 million and will require additional legal services in order to effectuate the allocation and assist in executing new transactions.

Mr. Hornsby noted that in order to execute the New Market Tax Credits allocation agreement with the Department of Treasuries Community Development Financial Institutions Fund, ESNMC was required to provide an Opinion of Counsel stating, among other things, that ESNMC is authorized to enter into the allocation agreement.

Mr. Hornsby noted that ESNMC will also require legal representation for the closing of NMTC transactions going forward.

Mr. Hornsby noted that on March 24, 2022, after ESD staff conducted a broad solicitation and review process, the ESD Board adopted a list of approved law firms that are pre-qualified to act as legal counsel to ESD and its subsidiaries and affiliates. On November 25, 2022, ESD conducted a mini-RFP on behalf of ESNMC to solicit proposals for NMTC legal services.

Mr. Hornsby further noted that four firms from ESD's pre-qualified legal counsel list were contacted, including one MWBE certified firm. One of the firms, Holland & Knight, LLC, has agreed to sub-contract 30% participation to MWBE firm, Schoeman Updike and Kaufman, LLP.

Mr. Hornsby noted that the terms of the contract will be four years in an amount not to exceed \$400,000 and the funding source will be ESNMC fees in operating funds.

Mr. Hornsby also noted that ESD's non-discrimination and contractor and supplier diversity policies will apply to this agreement.

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

EMPIRE STATE NEW MARKET CORPORATION – Retention of Legal Counsel -
Authorization to Retain Counsel to Provide Legal Representation and to Take Related
Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Empire State New Market Corporation, (the “Corporation”) hereby finds Holland & Knight LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Holland & Knight LLP for an amount not to exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution. Any actions taken related to the subject matter herein prior to the date hereof are hereby ratified and approved.

* * *

Acting Chair Younis called Mr. Hornsby to present the final item on the Agenda for the Directors’ consideration.

Mr. Hornsby explained that the Directors were being asked to approve authorization to sign and file a calendar year 2022 New Market Tax Credit Allocation Application and take related actions.

Mr. Hornsby further explained that ESNMC has received three allocations of federal NMTCs to date totaling \$130 million. The most recent \$45 million award was received in October 2022 for the 2021 allocation round. A fourth allocation is being applied for requesting a calendar 2022 round allocation of up to \$55 million on or before January 26, 2023.

Mr. Hornsby noted that the application reflects ESNMC’s strategy, past successful projects, potential future projects, ongoing management capacity and other related ESNMC experience to enhance its qualifications to obtain a new allocation of NMTC.

Mr. Hornsby further noted that on December 19, 2022, ESNMC received approval from its advisory board to move forward with the NMTC application based on the strategy and preliminary pipeline.

Following the full presentation, Acting Chair Younis called for questions or comments from the Directors. Acting Chair Younis asked why are we doing an allocation for 2022 in 2023.

Mr. Hornsby stated that it takes about 4 or 5 months for the Community Financial Institute to start to review applications, which causes an almost one-year lag before we know whether or not we've received the allocation.

Acting Chair Younis then called for any further questions or comments. Hearing none, upon motion duly made and seconded, the following Resolution was unanimously adopted:

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Allocation Application – Authorization to Sign and File a Calendar Year 2022 New Market Tax Credit Allocation Application; and to Take Related Actions

RESOLVED, that the Corporation is authorized to sign and file a calendar year 2022 New Market Tax Credit allocation application on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate. Any actions previously taken by the Corporation in furtherance of the actions authorized herein are hereby ratified and approved.

* * *

There being no further business, the meeting was adjourned at 11:16 a.m.

Respectfully submitted,

Yvonne M. Cooper
Acting Corporate Secretary

Item I. B.



FOR CONSIDERATION

March 20, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Empire State New Market Corporation
FY 2023-24 Operating Budget

REQUEST FOR: Approval of the Corporation's Operating Budget for the Fiscal Year ("FY")
2023-24 (April 1, 2023 – March 31, 2024)

I. Summary

New York State Finance Law requires that prior to the commencement on April 1 of each new fiscal year, the Directors of Empire State New Market Corporation ("ESNMC" or the "Corporation") adopt an annual operating budget. Approval is hereby requested for the proposed FY2023-24 Operating Budget (April 1, 2023 – March 31, 2024).

II. Background

ESNMC was incorporated in 2004 for the purpose of applying for an allocation of New Markets Tax Credits ("NMTCs") from the Community Development Financial Institutions ("CDFI") Fund of the U.S. Department of Treasury. ESNMC received its first allocation of NMTCs in 2009 in the amount of \$30 million. All of this initial allocation was deployed into NMTC projects for Chobani (formerly known as Agro-Farma) and the Brooklyn Navy Yard Development Corporation. In 2016, ESNMC received a second allocation in the amount of \$55 million. ESNMC used all of that allocation in connection with the National Comedy Center, SUNY Broome Culinary Arts Center, Hornell Medical Center, Boys and Girls Club of Schenectady, 37 Chandler Street, Thin Man Brewery, Currier Plastics, the Chautauqua Center, and ALDI NMTC projects. In 2022, ESNMC received a third allocation in the amount of \$45 million that it is deploying consistent with that related NMTC application and allocation agreement with the CDFI Fund. In January 2023, ESNMC submitted an NMTC allocation application requesting a new \$55 million allocation; ESNMC is currently awaiting notification from the CDFI Fund. ESNMC continues to service the closed transactions and expects to deploy its current \$45 million allocation during the 2023 and 2024 calendar years. The ESNMC board of directors is thus presented with the following proposed Operating Budget for Fiscal Year 2023-24. (ESNMC's 2023-24 fiscal year coincides with that of its parent, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), so both fiscal years start on April 1 and end on March 31.)

ESNMC revenues come from fees charged on transactions. In FY2021-22, ESNMC revenue was approximately \$487,000. In FY2022-23, ESNMC revenue is projected to be approximately \$500,000. However, revenue is projected to be approximately \$1.2 million (assuming 50% of its \$45 million allocation is deployed) in Fiscal Year 2023-2024 primarily from fees from newly closed transactions. If ESNMC receives a new NMTC allocation, then FY2023-24 revenue would be higher. In addition to the expenses funded by fees ESNMC receives from transactions, ESNMC incurs certain transaction-specific

consulting expenses that are paid by borrowers directly from transaction closing proceeds; such expenses (and the reimbursements associated therewith) have been excluded from this budget. However, these transaction-specific consulting expenses have been factored into the maximum contract amounts for the relevant legal, accounting, and consulting contracts.

III. Budget Synopsis

The proposed FY2023-24 Operating Budget reflects \$417,596 of expenses. \$300,000 of those expenses is projected as fees to ESNMC's consultant, Rise Community Capital, for preparation of a 2023 NMTC allocation application and assistance with allocation deployment, and \$100,000 is projected for legal and accounting services associated with closed NMTC transactions. The remaining \$17,596 is projected for insurance and other non-personal services. The expenses will consist primarily of payments for the following:

- Consulting Fees (72%)
- Legal / Accounting Fees (24%)
- Insurance (2%)
- Other Expenses (2%)

V. Environmental Review

Approval of the Corporation's Operating Budget for FY2023-24 constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this request.

VI. Requested Action

The Directors are requested to approve the attached proposed ESNMC budget for FY2023-24.

VII. Attachments

Resolution

Fiscal Year 2023-24 Proposed Operating Budget

March 20, 2023

EMPIRE STATE NEW MARKET CORPORATION – Approval of the Corporation’s Operating Budget for the Fiscal Year (“FY”) 2023-24 (April 1, 2023 – March 31, 2024)

RESOLVED, that the Corporation hereby adopts the proposed Fiscal Year 2023-24 budget on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate.

* * *

Empire State Development
Empire State New Markets Corporation
FY 2023-24 Proposed Operating Budget

	Board Approved Budget FY 2022-23	Proposed Budget FY 2023-24
<u>PERSONAL SERVICES</u>		
Salaries	\$ -	\$ -
Fringe Benefits	-	-
TOTAL PERSONAL SERVICES	<u>\$ -</u>	<u>\$ -</u>
HEADCOUNT	0	0
<u>NON-PERSONAL SERVICES</u>		
Professional Fees		
Legal / Accounting Fees	\$ 100,000	\$ 100,000
Consultant Fees	300,000	300,000
Total Professional Fees	<u>\$ 400,000</u>	<u>\$ 400,000</u>
Other Non-Personal Services		
Employee Travel & Meals	\$ 4,000	\$ 4,000
On-line Services/ Due & Subscriptions	3,500	3,500
Office Occupancy Expenses	-	-
Insurance	11,000	7,846
Other Outside Services	1,250	1,250
Telephone/Internet	1,000	1,000
Office Supplies and Expense	-	-
Computers/Software/Equipment	-	-
Total Other Non Personal Services	<u>\$ 20,750</u>	<u>\$ 17,596</u>
TOTAL NON-PERSONAL SERVICES	<u>\$ 420,750</u>	<u>\$ 417,596</u>
TOTAL OPERATING BUDGET	<u>\$ 420,750</u>	<u>\$ 417,596</u>

Item I. C.



FOR CONSIDERATION

March 20, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Retention of Legal Counsel

REQUEST FOR: Authorization to Retain Counsel to Provide Legal Representation and to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Riemer & Braunstein LLP

Scope of Services: Legal representation of Empire State New Market Corporation ("ESNMC") in all matters related to federal New Markets Tax Credits ("NMTC")

Contract Term: Four (4) years

Contract Amount: Not to exceed \$400,000

Funding Source(s): ESNMC fees and operating funds

II. Background

ESNMC recently received an allocation of additional tax credits in the amount of \$45 million and will require additional legal services. ESNMC requires legal counsel experienced in the NMTC program in order to effectuate the allocation and assist in executing new transactions. In order to execute the NMTC Allocation Agreement with the Community Development Financial Institutions ("CDFI") Fund of the U.S. Department of Treasury, ESNMC was required to provide an opinion of counsel stating, among other things, that ESNMC is authorized to enter into the Allocation Agreement. Additionally, ESNMC will require legal representation in the closing of NMTC transactions going forward.

III. Adoption of Pre-Qualified Legal Counsel List and Contractor Selection Process

On March 24, 2022, after Empire State Development (“ESD”) staff conducted a broad solicitation and review process, the ESD Board adopted a list of approved law firms that are pre-qualified to act as legal counsel to the Corporation and its subsidiaries and affiliates (“Pre-Qualified Legal Counsel List”), with such approval to remain in effect until the meeting of the Directors first occurring in March 2025, or, in the discretion of the General Counsel, until the meeting of the Directors first occurring in March 2026.

On February 17, 2023, the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) conducted a mini-Request for Proposals (“mini-RPF”) on behalf of ESNMC to solicit proposals for NMTC legal services. Five (5) firms from ESD’s Pre-Qualified Legal Counsel List, including one (1) MWBE certified firm, were contacted. Responses were due February 27, 2023. Responses were received from two law firms and were reviewed independently by the ESNMC President, ESNMC Vice President, and ESD legal counsel, who together recommend Riemer & Braunstein LLP (the “Firm”), which agreed to subcontract 30% participation to an MWBE firm, Schoeman Updike & Kaufman LLP. The Firm knows ESNMC’s portfolio well and possesses the necessary expertise in New Markets Tax Credits. Moreover, the Firm presented the most competitive rates for legal fees.

IV. Scope of Work

The Firm will form subsidiary community development entities, provide legal opinions, represent ESNMC at closings, and provide general advice related to New Markets Tax Credits.

V. Contract Term, Price, and Funding

- Term: Four (4) years
- Pricing: Transaction-related legal work on deals that close will be funded by NMTC borrowers from closing proceeds, at the Firm’s hourly rates specified below, which represent a discount from the Firm’s standard rates. These rates to be paid by NMTC borrowers are as follows:

Attorney	Hourly Rate
Mary Beth Hubner (Partner)	\$713
Michelle Fonseca (Partner)	\$783
Joslyeen Mitri (Associate)	\$435
Lilly Thang (Paralegal)	\$265
Kristine Salvatore (Paralegal)	\$265

Transaction-related legal work on deals that do not close and on non-transaction-related legal work will be paid by ESNMC at ESD’s approved standard hourly rates.

- Maximum Contract Amount: \$400,000 on matters not funded directly by borrowers for specific transactions including amounts, if any, paid pursuant to a Notice to Proceed. No upset amount will be imposed on matters funded by borrowers.
- Funding Source: ESNMC fees and operating funds.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this agreement. Riemer & Braunstein LLP shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women-owned Business Enterprises ("MWBE") Participation Goal of 30% related to the total value of ESD's funding.

An ESD / DED certified Woman-owned Business Enterprise ("WBE"), Schoeman Updike & Kaufman LLP, has been selected by Riemer & Braunstein LLP as subcontractor to perform 30% of the ESNMC work. Both firms are listed on the Pre-Qualified Legal Counsel List.

VII. Responsible Party

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VIII. Environmental Review

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

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; and (2) authorize the Corporation to enter into a contract with Riemer & Braunstein LLP for an amount not to exceed \$400,000.

X. Recommendation

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

XI. Attachments
Resolutions

March 20, 2023

EMPIRE STATE NEW MARKET CORPORATION – Retention of Counsel - Authorization to Retain Counsel to Provide Legal Representation; and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Empire State New Market Corporation, (the “Corporation”) hereby finds Riemer & Braunstein LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Riemer & Braunstein LLP for an amount not to exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000) for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution. Any actions taken related to the subject matter herein prior to the date hereof are hereby ratified and approved.

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