

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members

Wednesday

June 28, 2017 – 3:30 p.m.

AGENDA

I. FOR CONSIDERATION

CORPORATE ACTIONS

- A. Approval of the Minutes of the April 12, 2017 Members' Meeting
- B. Mission Statement, Related Performance Measurements, and FY 2016-2017 Performance Measurement Report – Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2016-2017 Performance Measurement Report
- C. Annual Financial Reports – Approval of Certain Annual Financial Reports and Authorization to Take Related Actions
- D. 2017 Procurements Guidelines - Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts
- E. Pre-Qualified Legal Counsel - Approval of Pre-Qualified Counsel

II. PROJECTS

NEW YORK CITY REGION

- A. Staten Island (New York City Region – Richmond County) – JDA Loan for the Benefit of United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association – Authorization to Amend Original Statewide Local Development Corporation Loan Approval and Take Related Actions; Determination of No Significant Effect on the Environment

FINGER LAKES REGION

- B. Ontario (Finger Lakes Region – Wayne County) – JDA Loan for the Benefit of Intergrow Holding Company, Inc. – Authorization to Amend Original Statewide Local Development Corporation Loan Approval and Take Related Actions

Item I. A.

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK JOB DEVELOPMENT AUTHORITY

Meeting of the Members
Empire State Development
633 Third Avenue
New York, New York 10017

and

New York State Department of Labor
State Campus
Building 12, Room 500
Albany, New York 12240

and

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

April 12, 2017

MINUTES

Members Present:

Howard A. Zemsky – Chairman
Adam Barsky
Emily Youssouf
Heather McArn, Designee – NYS Department of
Financial Services
Steve McGrattan, Designee – NYS Department of
Agriculture and Markets
Mario Musolino, Designee – NYS Department of Labor

Present for JDA Staff:

Kathleen Mize, Controller
Elizabeth Fine, General Counsel
Debbie Royce, Acting Corporate Secretary
Elaine Kloss, CFO

Present for ESD:

Sean Malone, Project Associate – Small Business Lending
Benson Martin, Director of Compliance
Ray Salaberrios, Senior Director – Economic Revitalization

Also Present:

The Press
The Public

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The meeting was called to order at 10:30 a.m. by Chairman Howard A. Zemsky. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

Chairman Zemsky then set forth the guidelines regarding comments by the public on matters on the Agenda, as well as with regard to any conflicts of interest the Members may have regarding any of the items on the Agenda. It was noted that no such conflicts exist.

Next, Chairman Zemsky entertained a motion to approve the Minutes of the December 14, 2016 Members' Meeting.

There being no edits or corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF THE MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT THE
DECEMBER 14, 2016 MEMBERS' MEETING OF THE NEW YORK JOB DEVELOPMENT
AUTHORITY

RESOLVED, that the Minutes of the meeting of the Authority held on December 14, 2016 as presented to this meeting, are hereby approved and all actions taken by the Members present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

* * *

Chairman Zemsky asked Ray Salaberrios to present the next Agenda item, a request for authorization to provide a loan with JDA proceeds to Sullivan County Fabrication, Inc.

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Mr. Salaberrios stated that the proposed loan amount of \$1.8 million would be used to pay for a portion of machinery and equipment expenses. The total cost of the machinery and equipment project, as stated by Mr. Salaberrios, is \$3,155,544. Mr. Salaberrios further explained that the JDA loan is secured by a first lien and security interests on the machinery and equipment purchased with the loan.

Mr. Salaberrios advised that the repayment of the loan shall be guaranteed by Sullivan County Fabrication, Resnick Supermarket Equipment Corp., BRR Brothers III, LLC, Supermarket Parts Warehouse, along with the personal guarantees of Daniel Resnick and Richard Swift.

Furthermore, Mr. Salaberrios stated that Daniel Resnick and Richard Swift own and operate Resnick Supermarkets Equipment and Supermarket Parts Warehouse, businesses that are interlinked and based in the hamlet of Mountain Dale in eastern Sullivan County. In regards to BRR Brothers III, LLC, Mr. Salaberrios stated that they are another related entity created for the companies' real estate holdings.

Mr. Salaberrios added that Resnick Supermarket Equipment has been in business for over 30 years and Supermarket Parts Warehouse has been in business for over 15 years.

Mr. Salaberrios explained that these businesses have become leading providers of supermarket equipment and services in the New York Metropolitan area, as well as in a large portion of the United States and Canada.

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In regards to their knowledge and experience, Mr. Salaberrios stated that Mr. Resnick and Mr. Swift have extensive knowledge of the supermarket refrigeration and freezer case business as well as years of financial management experience.

Additionally, Mr. Salaberrios explained that the owners of Resnick Supermarket Equipment and Supermarket Parts Warehouse are preparing to build and equip Sullivan County Fabrication to offset the growing costs and demand for replacement shelving in supermarkets. He further explained that the company will occupy approximately 25,000 square feet of manufacturing space at the 715 Glen Wild Road campus in Woodridge, New York.

In regards to the commercial refrigeration equipment industry, Mr. Salaberrios stated that the demand for these products is increasing rapidly, due to an increasing number of food service operators, food retailers and the growth in the average amount of floor space occupied by food retail outlets.

The creation of Sullivan County Fabrication, Mr. Salaberrios explained, is in response to industry consolidation that threatens to increase the acquisition cost of supplies purchased by Resnick and Supermarket Parts Warehouse from other vendors by manufacturing these items internally.

Mr. Salaberrios stated that the availability and affordability of steel shelves are critical to the sustainability and stability of both companies. Mr. Salaberrios further explained that

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both company owners will build and operate a metal fabrication company to initially build shelves for Resnick Supermarket Equipment and Supermarket Parts Warehouse.

Mr. Salaberrios explained that the ability to control the availability of shelving will ensure the health and viability of both companies. Additionally, he explained that initially it will create 13 new living-wage manufacturing jobs and a projected 27 living-wage jobs by the third year.

Mr. Salaberrios stated that Sullivan County Fabrication is located in a Rural Economic Area Partnership, or REAP Zone. REAP Zones, as explained by Mr. Salaberrios, are designated by the federal government to foster development in rural communities, which may face different challenges from those of impoverished urban and suburban communities.

Mr. Salaberrios explained that Resnick Supermarket and Supermarket Parts Warehouse currently have a combined 105 employees, and that the project will allow for the retention of these jobs, as well as the creation of an additional 27 jobs at Sullivan County Fabrication over three years.

Mr. Salaberrios noted that the guaranteeing companies currently generate enough cash flow from operations to service all of the projected debt, and that both companies are fiscally strong. In addition he noted their strong financial history, with both companies being profitable; and that the combined sales and EBITDA have increased over the recent three-year

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period.

Moreover, Mr. Salaberrios stated that based on projections provided for Sullivan County Fabrication, the new operation will generate sufficient cash flow to service all of the projected debt by the first full year of operation.

Lastly, Mr. Salaberrios reiterated that with the approval of the project, JDA would facilitate the maintenance of 105 manufacturing jobs, as well as the creation of 27 new jobs over a three-year period.

Following the full presentation, Chairman Zemsky noted that the project has been considered by the finance committee extensively and called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK JOB DEVELOPMENT AUTHORITY – Mid-Hudson (Woodridge – Sullivan County) – Sullivan County Fabrication, Inc. – New York Job Development Authority Loan Projects – Machinery and Equipment Loan – Authorization to Make Loan and Take Related Actions

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Machinery & Equipment Loan to Statewide Local Development Corporation for the benefit of Sullivan County Fabrication, Inc. for an amount not to exceed \$1,800,000 for machinery and equipment or 60% of the total machinery and equipment acquisition project cost, whichever is less, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, subsequent

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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 as he or she may deem appropriate in the administration of the Loan; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority 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; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

* * *

Next, Chairman Zemsky requested that Mr. Salaberrios present the last Agenda item, a Portfolio Summary for the New York Job Development Authority ("JDA").

Mr. Salaberrios mentioned that the Members previously requested a portfolio summary be provided on the JDA initiatives. He advised that at present, JDA's principal balance is \$25.5 million across 34 active projects, which consist of standard commercial loans and capital leases. Mr. Salaberrios indicated that a significant portion of JDA's current portfolio is comprised of a collection of capital leases.

Mr. Salaberrios also explained that over the course of JDA's history, a portfolio of commercial properties have been acquired, often through foreclosures that follow the uncured default of a real estate loan. He added that capital leases were introduced to incentivize development and create a positive cash flow. This was executed, as stated by Mr. Salaberrios, by providing a purchase money mortgage and maintaining ownership of the subject property

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throughout the repayment term to allow the purchaser to take advantage of JDA's tax exempt status.

Mr. Salaberrios explained that JDA currently has 13 of these projects, all of which are in good standing, and informed the Members that a tax cap was rescheduled for their review.

In regards to standing commercial loans, Mr. Salaberrios explained that JDA closed a single loan from 2006 to 2013. Since 2013, Mr. Salaberrios added, JDA team Members successfully introduced new marketing initiatives and focused on utilizing ten ESD regional offices as a primary source for potential JDA loans.

Mr. Salaberrios stated that since 2013 there have been 22 loans approved totaling \$57.5 million and 17 loan authorizations executed totaling \$22.3 million. He further explained that the total income generated by the loan authorizations has been \$323,000 as of December 2016.

In addition Mr. Salaberrios explained that six loans have been closed totaling \$12.9 million, all of which have generated \$414,000 in interest income. He also explained that three loans have been withdrawn by the borrower, totaling \$9.5 million.

Furthermore, Mr. Salaberrios explained that JDA loans are used as take-out financing, which may lead to an 18 to 24 month delay between board approval and closing; however, he

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advised that JDA staff remain optimistic that projects that have been issued loan authorizations will close.

In regard to current projects, Mr. Salaberrios advised that JDA is working on implementing the \$10 million JDA Agriculture Loan to Lenders Program and expects that the Program will be active shortly.

Following the full presentation, Chairman Zemsky called for questions or comments. Member Emily Youssouf commended Mr. Salaberrios on his presentation and inquired if updates can be provided to the Board on a regular basis to ensure that Members remain abreast of current events.

Mr. Salaberrios confirmed that updates can be provided regularly.

Chairman Zemsky inquired if there were any additional questions or comments. There were none.

Chairman Zemsky also provided commentary regarding loan closings and explained that there may be mitigating factors as to why loan closings do not occur, such as changing business circumstances, changing ownership and bank financing. He added that the closings require many variables and thanked Mr. Salaberrios for his presentation.

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There being no further business, the meeting was adjourned at 10:42 a.m.

Respectfully submitted,

Debbie Royce
Acting Corporate Secretary

Item. I. B.



FOR CONSIDERATION

June 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Mission Statement, Related Performance Measurements, and FY 2016-2017 Performance Measurement Report

REQUEST FOR: Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2016-2017 Performance Measurement Report

I. BACKGROUND

In accordance with the Public Authorities Law (the "PAL"), the New York Job Development Authority (the "Authority") adopted the following Mission Statement and related Performance Measurements to assist the Authority to determine how well it is carrying out its mission. Furthermore, pursuant to the PAL, the Authority must re-examine its Mission statement and related Performance Measurements annually to ensure that its mission has not changed, and the Performance Measurements continue to support its mission. To assist the Members in your review, the Mission Statement and related Performance Measurements are set forth below.

a. Mission Statement

The New York Job Development Authority spurs job growth and capital investment in New York State by using the authority granted to it and by leveraging State-guaranteed bonds to support low-interest loans to manufacturers and other targeted industries throughout New York State.

b. Performance Measurements

- Annual number of transactions closed;
- Aggregate value of bonds issued;
- Number of jobs retained and created with each investment transaction;
- Amount of private capital investment leveraged;
- Number of transactions delinquent;
- Number of transactions in default; and
- Number of transaction approved by the Authority during the reporting period.

Upon these measurements, JDA may evaluate its performance and the achievement of its goals.

II. FY 2016-2017 PERFORMANCE MEASUREMENT REPORT

During FY 2016-2017, the Authority continued its efforts to expand the Authority's loan portfolio and increase awareness of the Authority's products in the lending and business communities throughout the State. During this period, the Members approved loans for four projects evidencing firm commitments from responsible financial sources for the total project costs, exclusive of any loan request from the Authority. Pursuant to Article 8 of Title 8 of the Public Authorities Law, these projects were approved prior to their actual commencement. Closing on the Authority's loans and disbursement of its funds occurs upon project completion. The total JDA Board approved amount of the four loans is \$14,770,000. In addition, the JDA Board approved the creation of the \$10 Million JDA Agriculture Loan Fund, through which 9 participating lenders will make loans between \$50,000 and \$200,000 to NYS Agribusinesses.

It generally takes several months to more than a year to complete typical projects subsequent to approval by the Authority (and Public Authorities Control Board.) Because job creation and/or retention, and the measurement of capital investment leveraged can only properly be done after project completion and closing, the projects approved by the Authority this year have not yet resulted in reportable job creation/retention or capital leveraged.

It is noted that staff made significant effort to identify and analyze transactions that for various reasons staff determined were not eligible for presentation to the Members.

Three previously approved loans, totaling a combined \$8,755,000, closed in FY 2016-2017, leveraging \$15,573,270 in private investment. It is anticipated that these projects will result in the creation of 194 jobs, as well as the retention of an additional 73 jobs.

Zero transactions were in default during FY 2016-2017. The Authority issued no bonds during the reporting period.

III. REQUESTED ACTIONS

The Members are requested to confirm their re-examination of the Mission Statement and related Performance Measurements, and to accept the FY 2016-2017 Performance Measurement Report in accordance with the Public Authorities Law.

IV. RECOMMENDATION

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

V. ATTACHMENTS

Resolutions

June 28, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY — Mission Statement, Related Performance Measurements, and FY 2016-2017 Performance Measurement Report — Re-Examination of Mission Statement and Related Performance Measurements; and Acceptance of FY 2016-2017 Performance Measurement Report

WHEREAS, the New York State Public Authorities Law § 2824-a requires each Authority to re-examine its Mission Statement and Performance Measurements annually, therefore

BE IT RESOLVED, that the Members hereby confirm that they have re-examined the Mission Statement as previously adopted and recommend no further amendments; and

RESOLVED, that the FY 2016-2017 Performance Measurement Report contained in the materials presented to this meeting and hereby ordered to be filed with the records of the Authority is hereby accepted.

* * *

Item I.C.



FOR CONSIDERATION

June 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Annual Financial Reports

REQUEST FOR: Approval of Certain Annual Financial Reports and Authorization to Take Related Actions

I. Background

The Public Authorities Law (the Law) requires annual approval by the Authority and certifications by the Chief Executive Officer and Chief Financial Officer (or other designated finance officer) of certain financial reports (the Report). The Report consists of financial information set forth in the independent audit required by the Law. The independent audit (the Audit), entitled New York Job Development Authority Combined Financial Statements and Independent Auditors' Report March 31, 2017 and 2016 (Combined Financial Statements), which contains the required information, is attached hereto.

II. The Report

The Report includes the following:

1. Independent Auditors' Report
 - In this section the independent audit firm renders its opinion as to whether the combined financial statements present fairly, in all material respects, the financial position of the Authority and the results of its operations and cash flows for the current fiscal year, in conformity with accounting principles generally accepted in the United States of America.

The Independent Auditors' Report included in the Combined Financial Statements contains an unmodified (clean) opinion reflecting that the combined financial statements present fairly, in all material respects, the financial position, results of operations and cash flows of the Authority.

2. Management's Discussion and Analysis
 - This is not a required part of the basic financial statements, but is supplementary information required by the Government Accounting Standards Board. It is required to precede the basic financial statements, discuss current-year results in comparison with the prior year and contain condensed financial information derived from the basic combined financial statements.
3. Combined Financial Statements include
 - Combined Statements of Net Position;
 - Combined Statements of Revenue, Expenses and Changes in Net Position;
 - Combined Statements of Cash Flows; and
 - Notes to Combined Financial Statements
4. Independent Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards
 - This letter addressed to the Authority Members defines the potential weaknesses in internal control and identifies if the audit firm has discovered any such deficiencies. In addition, it discusses the Authority's compliance with certain provisions of laws, regulations, contracts and grant agreements, and other matters, non-compliance with which could have a direct and material effect on the determination of the financial statements amounts.

The Independent Auditors' Report on Internal Control over Financial Reporting and on Compliance and Other Matters included in the Combined Financial Statements contains no findings of material weaknesses in internal control and no issues of non-compliance.

5. Independent Auditors' Report on Investment Compliance

The Independent Auditors' Report on Investment Compliance included in the Combined Financial Statements reflects that the Authority complied, in all material respects, with the types of compliance requirements that could have a direct and material effect on its investment program.

III. Audit Committee

The Audit Committee of the Authority has reviewed the Report and recommends approval by the Members.

IV. Related Filing Requirements

As required under the Law certain annual reports, including various reports not of a financial nature but including the Report, will be submitted to the Governor, the Chairman and ranking minority member of the Senate Finance Committee, the Chairman and ranking minority member of the Assembly Ways and Means Committee and the State Comptroller, within ninety (90) days after the end of the Authority's fiscal year, but not later than June 30.

As also required by the Law, the Audit will be submitted to the Governor, the Chairman and ranking minority member of the Senate Finance Committee, the Chairman and ranking minority member of the Assembly Ways and Means Committee and the State Comptroller, within thirty (30) days after receipt thereof by the Authority, but not later than June 30.

V. Certifications

The Report has been certified in writing by the Chief Executive Officer and Chief Financial Officer of the Authority that based on the officer's knowledge (a) the information provided therein is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the Report to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of the operations of the Authority as of, and for, the periods presented in the Report.

Attachments

Resolutions

Certifications

Audited Combined Financial Statements

June 28, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY – (the “Authority”) Approval of Certain Annual Financial Reports and Authorization to take Related Actions

WHEREAS, the Authority wishes to comply with §2800 of the Public Authorities Law (the Law) which mandates that public benefit corporations annually prepare certain financial reports (the Report) which for the Authority consists of the independent audit;

WHEREAS, an independent audit is required by §2802 of the Law;

WHEREAS, §2800 of said Law also requires the annual approval by the Members and certifications by the Chief Executive Officer and Chief Financial Officer of the Report;

WHEREAS, an independent audit has been prepared for the fiscal year ended March 31, 2017;

WHEREAS, the Authority has reviewed said Report and found it to be satisfactory; and

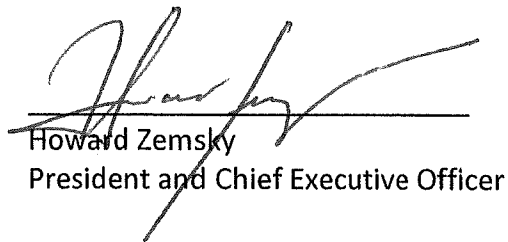
NOW, THEREFORE, based on the materials submitted herewith, IT IS HEREBY RESOLVED that the Report is hereby approved; and it is further

RESOLVED, that the President and Chief Executive Officer, Chief Financial Officer, Controller, Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Report, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation and approval of the Report and to take related actions.

* * *

CERTIFICATION

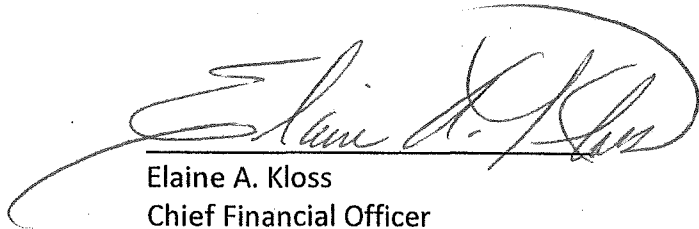
I hereby certify that to the best of my knowledge (a) the information provided in the New York Job Development Authority Combined Financial Statements and Independent Auditors' Report for the years ended March 31, 2017 and 2016 is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the New York Job Development Authority as of, and for, the periods presented in the financial statements.



Howard Zemsky
President and Chief Executive Officer

CERTIFICATION

I hereby certify that to the best of my knowledge (a) the information provided in the New York Job Development Authority Combined Financial Statements and Independent Auditors' Report for the years ended March 31, 2017 and 2016 is accurate, correct and does not contain any untrue statement of material fact; (b) does not omit any material fact which, if omitted, would cause the financial statements to be misleading in light of the circumstances under which such statements are made; and (c) fairly presents in all material respects the financial condition and results of operations of the New York Job Development Authority as of, and for, the periods presented in the financial statements.

A handwritten signature in dark ink, appearing to read "Elaine A. Kloss", is written over a horizontal line. The signature is fluid and cursive, with a large loop at the end.

Elaine A. Kloss
Chief Financial Officer

NEW YORK JOB DEVELOPMENT AUTHORITY

**Combined Financial Statements
and Independent Auditors' Report**

March 31, 2017 and 2016

NEW YORK JOB DEVELOPMENT AUTHORITY

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INDEPENDENT AUDITORS' REPORT

The Authority Members
New York Job Development Authority:

Report on the Combined Financial Statements

We have audited the accompanying combined financial statements of New York Job Development Authority (the "Authority"), a component unit of the State of New York, as of and for the years ended March 31, 2017 and 2016, and the related notes to combined financial statements, which collectively comprise the Authority's combined financial statements as listed in the table of contents.

Management's Responsibility for the Combined Financial Statements

Management is responsible for the preparation and fair presentation of these combined financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of combined financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on these combined financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the combined financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the combined financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the combined financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Authority's preparation and fair presentation of the combined financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the combined financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the net position of New York Job Development Authority as of March 31, 2017 and 2016, and the respective changes in net position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Required Supplementary Information

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 4 through 9 be presented to supplement the basic combined financial statements. Such information, although not a part of the basic combined financial statements, is required by the Governmental Accounting Standards Board ("GASB"), who considers it to be an essential part of financial reporting for placing the basic combined financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic combined financial statements, and other knowledge we obtained during our audit of the basic combined financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Reporting Required by Government Auditing Standards

In accordance with Government Auditing Standards, we have also issued our report dated June 15, 2017 on our consideration of the Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority's internal control over financial reporting and compliance.

In accordance with Government Auditing Standards, we have also issued our report dated June 15, 2017 on the Authority's compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York. The purpose of that report is to provide an opinion as to the Authority's compliance with investment guidelines contained therein. That report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority's internal control over financial reporting and compliance.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY

Management's Discussion and Analysis

March 31, 2017 and 2016

Our discussion and analysis of the New York Job Development Authority's ("JDA" or "Authority") financial performance provides an overview of the Authority's financial activities for the year ended March 31, 2017. Please read it in conjunction with the Authority's combined financial statements.

Overview

During the year ended March 31, 2017, the Authority continued its mission to spur job growth and capital investment in New York State by using authority granted to it and by leveraging State-guaranteed bonds to support low interest loans to manufacturers and other targeted industries throughout New York State. The loan program provides financing to encourage the growth of manufacturing and other private sector business in the State without requiring appropriation of taxpayers' funds.

Since 1995, the Authority has done business as Empire State Development ("ESD") and has been administratively consolidated with the New York State Urban Development Corporation ("UDC"). The Authority experienced financial difficulties in the mid-1990's. As a result, from 1997 through March 31, 2004 the Authority received an annual operating transfer from UDC, also doing business as ESD, to assist in meeting its legal obligations. No assistance was required in the years ended March 31, 2017 and 2016 and no assistance is expected to be required in the next fiscal year.

As a result of improvements in collections of the reserved loans in the loan portfolio, the absorption of personnel costs by UDC, and the consolidation of the net position of New York Liberty Development Corporation ("NYLDC"), Brooklyn Arena Local Development Corporation ("BALDC") and New York Transportation Development Corporation ("NYTDC"), the Authority has achieved a net position balance of \$111.5 million at March 31, 2017. NYLDC was created in 2002 to provide a vehicle for the State to issue Liberty Bonds in the wake of the terrorist attacks of September 11, 2001. BALDC was created in November 2008 to finance certain components of the Atlantic Yards Land Use Improvement and Civic Project. NYTDC was created in 2015 for the public purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority.

In October 2003, the Authority caused the creation of Empire State Local Development Corporation ("ESLDC"). ESLDC has state-wide jurisdiction and was created to carry out various economic development initiatives through the use of pass through grants received from outside sources.

NEW YORK JOB DEVELOPMENT AUTHORITY
Management's Discussion and Analysis, Continued

In June 2010, the Authority authorized the creation of Canal Side Local Development Corporation ("CSLDC") and the certificate of incorporation was filed in February 2012. CSLDC was created to help facilitate the financing of the Canal Side Land Use Improvement Project in Buffalo.

Summarized Statements

A summary of the Authority's financial information as of March 31, 2017 and 2016 is as follows:

<u>Summary of Combined Statements of Net Position</u>		
	<u>2017</u>	<u>2016</u>
Assets		
Cash and equivalents, restricted cash and temporary investments	\$ 130,325,004	128,297,355
Loans receivable, net	18,944,197	13,494,689
Financing leases, net	2,949,288	4,965,825
Other assets	46,654	52,355
Total assets	<u>152,265,143</u>	<u>146,810,224</u>
Liabilities		
Special purpose bonds	3,085,000	6,170,000
Due to New York State Urban Development Corporation	26,330,436	26,259,020
Accounts payable and accrued expenses	145,690	244,240
Other liabilities	-	163,523
Total liabilities	<u>29,561,126</u>	<u>32,836,783</u>
Deferred inflows of resources - unearned income	<u>11,158,481</u>	<u>12,637,949</u>
Net position - restricted	<u>\$ 111,545,536</u>	<u>101,335,492</u>

NEW YORK JOB DEVELOPMENT AUTHORITY
Management's Discussion and Analysis, Continued

Summary of Combined Statements of Revenue,
Expenses and Changes in Net Position

	<u>2017</u>	<u>2016</u>
Operating revenue:		
Loan interest	\$ 1,135,788	1,198,326
Grant income	1,629,489	4,521,641
Bond and note fee income	9,463,625	1,478,767
Other revenue	<u>568,024</u>	<u>248,426</u>
Total operating revenue	<u>12,796,926</u>	<u>7,447,160</u>
Operating expenses:		
Interest, principally bonds	317,626	479,512
Provision for loss on loans receivable, loan guarantees and financing leases	683,216	319,490
Credit and bond related fees	41,250	76,814
General and administrative	285,542	269,038
Grant expense	<u>1,629,489</u>	<u>4,521,641</u>
Total operating expenses	<u>2,957,123</u>	<u>5,666,495</u>
Operating income	<u>9,839,803</u>	<u>1,780,665</u>
Nonoperating revenue	460,635	220,013
Nonoperating expenses	<u>(90,394)</u>	<u>(43,356)</u>
Nonoperating revenue, net	<u>370,241</u>	<u>176,657</u>
Change in net position	10,210,044	1,957,322
Net position - restricted at beginning of year	<u>101,335,492</u>	<u>99,378,170</u>
Net position - restricted at end of year	<u>\$ 111,545,536</u>	<u>101,335,492</u>

Liquidity

The Authority's cash and equivalents, restricted cash and temporary investments totaled approximately \$130.3 million and \$128.3 million at March 31, 2017 and 2016, respectively. The increase is primarily due to \$6.1 million in loan and lease principal and interest collections, \$9.5 million in bond fees, and 0.2 million in commitment fees, offset by \$3.4 million in debt service disbursements, \$8.8 million in loan payments on three new loans, and \$1.6 million in grant expense.

NEW YORK JOB DEVELOPMENT AUTHORITY
Management's Discussion and Analysis, Continued

The Authority's loans receivable balance totaled \$18.9 million and \$13.5 million at March 31, 2017 and 2016, respectively. The increase is primarily due to the issuance of \$8.8 million in new loans offset by decreases of \$2.8 million in principal loan collections and \$0.6 million in loan loss reserves.

Approximately 46% of the consolidated net position balance results from the net fees earned by NYLDC over the last several years.

Cash generated from operations exceeded the Authority's operating requirements for the year ended March 31, 2017 by approximately \$9.6 million, primarily due to the receipt of \$9.5 million in bond fees and \$0.9 million in loan and lease interest collections offset by \$0.3 million in interest on bonds, \$0.3 million in general administrative expenses and \$0.2 million in NYTDC's bond counsel expenses.

Capitalization

As of March 31, 2017, the Authority had approximately \$3.1 million in outstanding bonds. Total debt decreased by approximately \$3.1 million through scheduled principal maturities of bonds.

Bond Ratings

As of March 31, 2017, the Authority's outstanding debt had the following ratings from the following two rating agencies:

<u>Issue</u>	<u>Ratings</u>	
	<u>FITCH</u>	<u>S&P</u>
Special Purpose Fixed Rate Bonds Series '04 B	AA+	AA+

Change in Net Position

The change in net position for the fiscal year ended March 31, 2017 amounted to \$10.2 million compared with \$2.0 million in fiscal 2016. The increase is primarily due to increases in bond and note fee income of \$8.0 million and in investment income of \$0.2 million.

Revenue

Operating revenue approximated \$12.8 million in fiscal 2017 compared to \$7.4 million in fiscal 2016. The increase is primarily due to increases in bond and note fee income of \$8.0 million and \$0.3 million in other revenue offset by decreases of \$0.06 million in loan interest and \$2.8 million in grant revenue income.

NEW YORK JOB DEVELOPMENT AUTHORITY
Management's Discussion and Analysis, Continued

Loan interest decreased by approximately \$0.06 million as a result of the principal payoff of approximately \$5.3 million of loan and financing leases balances.

Grant income from ESLDC decreased by \$2.9 million as fewer projects were funded than in the previous fiscal year.

Bond and note fee income increased by approximately \$8.0 million primarily due to the fact that there was a \$2.0 million fee earned on the sale of PILOT Revenue Bonds related to Barclays Center, \$4.5 million fee earned on the sale of Bonds related to the LaGuardia Airport Terminal B Redevelopment Project and \$3.0 million fee earned on the sale of Bonds related to American Airlines, Inc. John F. Kennedy International Airport Project, compared to \$1.5 million in fiscal 2016.

Other revenue increased by approximately \$0.3 million due to an increase in recoveries against loan loss reserves.

Nonoperating revenue increased by \$0.2 million due to an increase in investment income as a result of slightly better investment rates throughout the year.

Operating Expenses

Operating expenses for the fiscal year ended March 31, 2017 were \$3.0 million compared with \$5.7 million in the fiscal year ended March 31, 2016. The decrease is primarily due to decreases of \$2.9 million in grant expense for ESLDC and \$0.2 million in interest on bonds, offset by an increase of \$0.4 million in provision for loss on loans receivable, loan guarantees and financial leases. Grant expense represents immediate disbursement of funds received from the Port Authority because ESLDC is merely a pass through. There is no effect on net income.

Interest on bonds decreased by \$0.2 million due to the scheduled maturity of certain bonds.

In fiscal year 2017, there were three new loans issued in the total amount of \$8.8 million. A \$2.2 million loan was issued to Upstate Specialty Properties, LLC for the purpose of purchasing real estate and the construction of a new facility located in Latham, New York. The total cost of the project is \$5.4 million. A \$5.3 million loan was issued to Love Beets Production, LLC to be used to take out sixty percent (60%) of a loan provided by M&T Bank. Including the property renovations and installation costs along with the machine and equipment acquisitions, the total project cost is \$17.2 million. A \$1.3 million loan was issued to The Case Group, LLC to be used toward the expansion of an existing facility located in Green Island, New York. The total cost of the project is \$2.4 million.

NEW YORK JOB DEVELOPMENT AUTHORITY
Management's Discussion and Analysis, Continued

There were approximately \$35.1 million in loans approved but not closed.

The Authority's financial position remains strong. No assistance has been received from UDC since the fiscal year ended March 31, 2004.

In the coming fiscal year, no events are anticipated that would have a significant negative effect on the financial position of the Authority. It is expected that the continued marketing of the JDA program throughout the State will provide additional financing opportunities to businesses.

Request for Information

This financial report is designed to provide a general overview of the Authority's finances for all those with an interest in the New York Job Development Authority's finances. Questions concerning any of the information provided in this report, or requests for additional financial information should be addressed to the Chief Financial Officer, New York Job Development Authority d/b/a Empire State Development, 633 Third Avenue, New York, New York 10017.

COMBINED FINANCIAL STATEMENTS

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Net Position
March 31, 2017 and 2016

Assets	<u>2017</u>	<u>2016</u>
Cash and equivalents	\$ 9,920,325	6,719,642
Cash and equivalents - restricted	87,917	87,900
Temporary investments in marketable securities	120,316,762	121,489,813
Accrued interest receivable	46,654	33,493
Loans receivable, net of allowance of \$1,613,233 in 2017 and \$1,139,326 in 2016	18,944,197	13,494,689
Financing leases, net of allowance of \$391,697 in 2017 and \$588,864 in 2016	2,949,288	4,965,825
Prepaid insurance	-	18,862
Total assets	<u>152,265,143</u>	<u>146,810,224</u>
 Liabilities		
Special purpose bonds	3,085,000	6,170,000
Due to New York State Urban Development Corporation	26,330,436	26,259,020
Accounts payable and accrued expenses	145,690	244,240
Other liabilities	-	163,523
Total liabilities	<u>29,561,126</u>	<u>32,836,783</u>
Commitments and contingencies (notes 10 and 11)	<u> </u>	<u> </u>
Deferred inflows of resources - unearned income	<u>11,158,481</u>	<u>12,637,949</u>
Net position - restricted	<u>\$ 111,545,536</u>	<u>101,335,492</u>

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Revenue, Expenses and Changes in Net Position
Years ended March 31, 2017 and 2016

	<u>2017</u>	<u>2016</u>
Operating revenue:		
Loan interest	\$ 1,135,788	1,198,326
Grant income	1,629,489	4,521,641
Bond and note fee income	9,463,625	1,478,767
Other revenue	<u>568,024</u>	<u>248,426</u>
Total operating revenue	<u>12,796,926</u>	<u>7,447,160</u>
Operating expenses:		
Interest, principally bonds	317,626	479,512
Provisions for loss on loans receivable, loan guarantees and financing leases	683,216	319,490
Credit and bond related fees	41,250	76,814
General and administrative	285,542	269,038
Grant expense	<u>1,629,489</u>	<u>4,521,641</u>
Total operating expenses	<u>2,957,123</u>	<u>5,666,495</u>
Operating income	<u>9,839,803</u>	<u>1,780,665</u>
Nonoperating revenue (expenses):		
Investment income, including change in fair value	460,635	220,013
Interest - New York State Urban Development Corporation	<u>(90,394)</u>	<u>(43,356)</u>
Nonoperating revenue, net	<u>370,241</u>	<u>176,657</u>
Change in net position	10,210,044	1,957,322
Net position - restricted at beginning of year	<u>101,335,492</u>	<u>99,378,170</u>
Net position - restricted at end of year	<u>\$ 111,545,536</u>	<u>101,335,492</u>

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Cash Flows
Years ended March 31, 2017 and 2016

	<u>2017</u>	<u>2016</u>
Cash flows from operating activities:		
Cash received from interest on loans and financing leases	\$ 860,063	897,827
Cash received from bond and related fees	9,463,625	1,478,767
Cash received for bond counsel expenses	70,000	601,066
Other operating cash receipts	161,548	43,980
Interest paid on bonds payable	(331,329)	(492,983)
Cash paid for related bond expenses	(41,250)	(76,814)
Cash paid for general and administrative expenses	(265,797)	(276,279)
Cash paid for bond counsel expenses	(317,562)	(353,504)
Cash paid for NYLDC operating expenses	-	(200)
Cash paid for BALDC operating expenses	(602)	-
Cash paid for NYTDC operating expenses	(20,068)	(778)
Net cash provided by operating activities	<u>9,578,628</u>	<u>1,821,082</u>
Cash flows from noncapital financing activities - special purpose bond retirements	<u>(3,085,000)</u>	<u>(3,085,000)</u>
Cash flows from investing activities:		
Proceeds from sale of temporary investments in marketable securities	331,503,310	347,823,731
Purchase of temporary investments in marketable securities	(330,270,883)	(345,456,524)
Interest on investments	436,277	170,277
Loan disbursements	(8,755,000)	(3,480,000)
Principal collected on loans receivable	2,843,259	1,274,923
Principal collected on financing leases	2,464,594	1,343,263
Reduction of Port Authority appropriation for grant disbursements	(1,629,489)	(4,521,641)
Port Authority appropriation received for grant	114,987	2,551,979
Net cash used in investing activities	<u>(3,292,945)</u>	<u>(293,992)</u>
Net increase (decrease) in cash and equivalents	3,200,683	(1,557,910)
Cash and equivalents at beginning of year	<u>6,719,642</u>	<u>8,277,552</u>
Cash and equivalents at end of year	<u>\$ 9,920,325</u>	<u>6,719,642</u>

(Continued)

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Combined Statements of Cash Flows, Continued

	<u>2017</u>	<u>2016</u>
Reconciliation of operating income to net cash provided by operating activities:		
Operating income	\$ 9,839,803	1,780,665
Adjustments to reconcile operating income to net cash provided by operating activities:		
Provision loss on loans receivable, loan guarantees and financing leases	276,740	118,547
Operating expenses paid by UDC	(18,978)	(17,187)
Amortization - deferred loan income	(11,673)	(73,252)
Amortization - deferred lease premiums	(250,891)	(212,755)
Changes in:		
Accrued interest receivable	(13,161)	(14,493)
Prepaid insurance	18,862	(9,227)
Accounts payable and accrued expenses	(98,551)	85,261
Other liabilities	<u>(163,523)</u>	<u>163,523</u>
Net cash provided by operating activities	<u>\$ 9,578,628</u>	<u>1,821,082</u>

See accompanying notes to combined financial statements.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements
March 31, 2017 and 2016

Note 1 - Corporate Background and Activities

(a) General

New York Job Development Authority (the "Authority" or "JDA"), doing business as Empire State Development ("ESD"), is a public benefit corporation organized and existing under the laws of the State of New York (the "State"). The Authority's mission is to spur job growth and capital investment in New York State by using authority granted to it and by leveraging State-guaranteed bonds to support low interest loans to manufacturers and other targeted industries throughout New York State. As a public benefit corporation, the Authority is tax exempt. The Authority is a component unit of the State and, as such, its combined financial statements are included in the State's general purpose financial statements.

(b) Activities

The principal activity of the Authority is providing business and industry loans, described in the New York Job Development Authority Act as "Special Purpose Loans." All such loans are made to entities with operations in the State and are provided for real estate acquisition, construction, rehabilitation or improvement or machinery and equipment. The Authority requires security for the loans with the underlying assets and other available collateral.

The Authority finances these activities through recycled loan proceeds and the issuance of State guaranteed bonds and notes (the "Bonds") limited by the Constitution of the State and applicable legislation to an aggregate principal amount of \$900,000,000 outstanding at any time. To date, enabling legislation allows an aggregate principal amount of \$750,000,000 to be outstanding at any time.

The guarantee of the Bonds by the State is authorized by the New York Job Development Authority Act, as amended by Section 1813 of Title 7 Article 8 of the Public Authorities Law and Section 8 Article X of the Constitution of New York State. Under these provisions, if the Authority fails to pay when due, the principal or interest on the Bonds, or, if sued by any holder of the Bonds, the State Comptroller must set apart from the first revenues thereafter received from any source, applicable to the General Fund of the State, a sum sufficient to pay such principal and interest, and shall so apply the monies thus set apart. Effectively, the State is subrogated to the rights of the bondholders. The net position of the fund is considered restricted.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 1 - Corporate Background and Activities, Continued

(b) Activities, Continued

The Authority has the power to create local development corporations under Section 1804 of the New York Job Development Authority Act and Section 1411 of the New York Not-for-Profit Corporation Law. The Authority has created five Local Development Corporations: New York Liberty Development Corporation ("NYLDC"), Empire State Local Development Corporation ("ESLDC"), Brooklyn Arena Local Development Corporation ("BALDC"), Canal Side Local Development Corporation ("CSLDC"), and New York Transportation Development Corporation ("NYTDC").

The Authority substantially controls the operations of the Local Development Corporations. Under Governmental Accounting Standard Board (GASB) Statement No. 39 - "The Financial Reporting Entity," NYLDC, ESLDC, BALDC, CSLDC and NYTDC are considered blended component units of the Authority, and their assets, liabilities, and results of operations are combined with the operations of the Authority for financial reporting purposes.

Note 2 - Summary of Significant Accounting Policies

(a) Basis of Accounting

The Authority is an enterprise fund that follows the economic resource measurement focus and the accrual basis of accounting.

The Authority complies with all applicable pronouncements of GASB as well as with authoritative pronouncements applicable to non-governmental entities (e.g. Financial Accounting Standards Board Statements) that do not conflict with GASB pronouncements.

The Authority's combined financial statements are presented consistent with enterprises whose principal activities are considered a financing enterprise.

(b) Use of Estimates

The preparation of combined financial statements in accordance with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the amounts reported in the combined financial statements and accompanying notes. Accordingly, actual results could differ from those estimates.

(c) Cash and Equivalents

Cash and equivalents include cash deposits with banks and highly liquid temporary investments with original or remaining maturities of 90 days or less.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 2 - Summary of Significant Accounting Policies, Continued

(d) Investment Securities

Investment securities consist of temporary investments of available cash and debt service reserve funds in marketable securities. Investment securities are reported at fair value in the combined statements of net position, and investment income, including changes in fair value, is reported as nonoperating revenue in the combined statements of revenue, expenses and changes in net position.

The fair value of investment securities, which include United States Government and Federal agency obligations, and obligations of state and local governments is generally based on quoted market prices. Interest earning investment instruments, including time deposits and repurchase agreements with maturities of one year or less, are reported at amortized cost. Investment income also includes realized gains and losses from disposition of investments on a specific identification basis. Collateral for these investments is held in the Authority's name by financial institutions as custodians. Investment securities that are not required by bond indentures to be held by independent trustees are maintained and held by the New York State Department of Taxation and Finance.

(e) Loans and Financing Leases Receivable

Loans and financing leases are generally reported at their principal amounts outstanding, net of allowances for possible credit losses. The Authority lends funds for the acquisition of land and buildings which are generally repayable over 15 to 20 years. Loans to fund machinery and equipment are generally repayable over 7 to 10 years. Generally, all loans represent second mortgages or other subordinated positions. Interest revenue on loans and financing leases is credited to interest income based on loan principal amounts outstanding at appropriate interest rates. Interest is not accrued on loans which are delinquent three or more months and which management considers uncollectible. In addition, the Authority provides financing leases for property previously acquired in foreclosure. Financing leases generally require repayment over periods ranging from 1 to 20 years.

(f) Allowance for Possible Credit Losses and Estimated Loan Losses

The allowance for possible credit losses provides for risks of losses inherent in the credit extension process. The Authority maintains this allowance on a specific and general basis at levels considered adequate to meet present and future losses on loans and financing leases. This evaluation encompasses business and economic conditions, the character, quality and performance of the portfolios, availability of collateral and the risks inherent in these loans. Accordingly, these estimates could change in the near term.

(g) Foreclosed Properties

The Authority may hold title to properties acquired in satisfaction of loans, including in-substance foreclosures. Such amounts, if any, are carried at the lower of cost or estimated fair market value.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 2 - Summary of Significant Accounting Policies, Continued

(h) Grant Revenue and Expense

ESLDC administers certain grant funds from various sources. These grants are awarded for specifically designated projects and are distributed directly to the projects. ESLDC records revenue upon disbursement of the grants to grantees. Grant advances not disbursed to grantees are recorded as unearned income.

NYLDC recognizes grant expense upon the disbursement of grants to grantees.

(i) Subsequent Events

The Authority has evaluated subsequent events through the date of the report which is the date the combined financial statements were available to be issued.

Note 3 - Local Development Corporations

(a) New York Liberty Development Corporation

In August 2002, at the request of the Governor, the Authority caused the creation of New York State Liberty Development Corporation ("NYLDC"). NYLDC was created as a conduit for the issuance of qualified New York Liberty Bonds ("Liberty Bonds") and such other non-federally tax-exempt obligations as may be appropriate. Bond proceeds are used to finance private projects primarily in the New York Liberty Zone located in lower Manhattan. NYLDC receives fees in connection with each bond or note issuance. In certain instances, the bond issuance fees earned are shared with other entities. The summarized statements of net position of NYLDC as of March 31, 2017 and 2016 are as follows:

	<u>2017</u>	<u>2016</u>
Cash and equivalents	\$ 122,073	2,131,176
Temporary investments in marketable securities	51,100,608	48,904,959
Accounts payable and accrued expenses	<u>-</u>	<u>(19,562)</u>
Net position	\$ <u>51,222,681</u>	<u>51,016,573</u>

The summarized statements of revenue, expenses and changes in net position of NYLDC for the years ended March 31, 2017 and 2016 are as follows:

	<u>2017</u>	<u>2016</u>
Bonds and note fee income	\$ -	567,467
Other revenue	-	3,504
Investment income	206,108	109,886
Operating expenses	<u>-</u>	<u>(3,704)</u>
Changes in net position	\$ <u>206,108</u>	<u>677,153</u>

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(a) New York Liberty Development Corporation, Continued

NYLDC did not issue Liberty Bonds or notes during the year ended March 31, 2017.

In October 2015, NYLDC issued Additional Series 2005 Liberty Revenue Bonds (Second Tranche) (Goldman Sachs Headquarters Issue) in the aggregate face amount of \$19,380,000 (at an issue price of \$22,693,399). The proceeds of the Additional Series 2005 Bonds were used to make a loan to Goldman Sachs Headquarters LLC (the "Borrower"). The Borrower used the proceeds of the loan to refund the portion of the Original Series 2005 Bonds maturing on October 1, 2015. The loan to the Borrower is guaranteed by the Goldman Sachs Group, Inc.

Since inception, NYLDC has issued an aggregate of \$6,161,000,000 of Liberty Bonds (at face amount of \$5,958,000,000), \$338,000,000 of Recovery Zone Bonds, and \$730,000,000 of taxable notes excluding remarketing and refunding bonds on behalf of project owners. As of March 31, 2017, the total outstanding conduit debt amounted to \$6,124,000,000. Liberty Bonds, Recovery Zone Bonds, and taxable notes are not the obligation of NYLDC, the Authority, or the State. Repayment of the bonds and notes is the obligation of respective project owners.

(b) Empire State Local Development Corporation

In October 2003, the Authority caused the creation of Empire State Local Development Corporation ("ESLDC"). ESLDC has state-wide jurisdiction and was created to carry out various economic development initiatives through the use of pass through grants received from outside sources. The summarized statements of net position of ESLDC as of March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Cash and equivalents	\$ 2,135,778	339,308
Temporary investments in marketable securities	9,022,703	12,298,641
Deferred inflows of resources - unearned revenue	<u>(11,158,481)</u>	<u>(12,637,949)</u>
Net position	\$ <u> </u>	<u> </u>

The deferred inflows of resources - unearned revenue represents grant funds received from the Port Authority of New York and New Jersey ("the Port Authority") under its Transportation, Economic Development and Infrastructure Renewal ("TEDIR") projects program that have not yet been disbursed to the designated grantees. The projects included in this grant program are approved by the Port Authority in accordance with TEDIR program requirements and payments are processed through JDA. In general, these projects have a long life span.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(b) Empire State Local Development Corporation, Continued

The summarized statements of revenue, expenses and changes in net position of ESLDC for the years ended March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Grant revenue	\$ 1,629,489	4,521,641
Grant expenses	<u>(1,629,489)</u>	<u>(4,521,641)</u>
Change in net position	\$ <u> -</u>	<u> -</u>

(c) Brooklyn Arena Local Development Corporation

In November 2008, the Authority caused the creation of Brooklyn Arena Local Development Corporation ("BALDC"). BALDC has state-wide jurisdiction and was created as a conduit for the issuance of both taxable and tax-exempt bonds to finance the construction and related cost of the Barclays Center Project.

The summarized statements of net position of BALDC at March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Cash and equivalents	\$ 2,179,312	197,428
Accounts payable and accrued expenses	<u> -</u>	<u> -</u>
Net position	\$ <u>2,179,312</u>	<u>197,428</u>

The summarized statements of revenue, expenses and changes in net position of BALDC for the years ended March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Interest income	\$ 1,491	237
Bond and note fee income	1,980,995	-
Operating expenses	<u>(602)</u>	<u> -</u>
Change in net position	\$ <u>1,981,884</u>	<u>237</u>

In September 2016, BALDC issued PILOT Revenue Refunding Bonds, Series 2016 (Barclays Center Project) in the aggregate face amount of \$494 million (at an issue price of \$567 million) for the purpose of refunding a portion of the Series 2009 PILOT Revenue Bonds (Barclays Center project) and to pay the costs of issuance of the Series 2016 PILOT Bonds.

BALDC did not issue bonds during the year ended March 31, 2016.

As of March 31, 2017, the total outstanding conduit debt is \$750 million. BALDC bonds are not the obligation of BALDC, the Authority or the State. Repayment of the bonds will be made from payment-in-lieu-of taxes and rental payments made by the Barclays Center Project developer.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(d) Canal Side Local Development Corporation

In June 2010, the Authority authorized the creation of Canal Side Local Development Corporation ("CSLDC") and the certificate of incorporation was filed in February 2012. CSLDC was created to help facilitate the financing of the Canal Side Land Use Improvement Project in Buffalo. There was no activity during the years ended March 31, 2017 and 2016.

(e) New York Transportation Development Corporation

In August 2015, the Authority authorized the creation of New York Transportation Development Corporation ("NYTDC") and the certificate of incorporation was filed in October 2015. NYTDC was formed for the public purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority. It will undertake its public purpose by issuing tax exempt bonds for transportation and any other purposes or objective described above (the "Bonds") and in the case of certain tax exempt bonds, shall obtain the approval of the Governor of the State of New York to the extent required by applicable federal tax law; by issuing such other non-federally tax-exempt obligations as may be appropriate (the "Obligations"); and by exercising all or any part of such public functions and doing any work related to or in connection with the issuance of the Bonds or Obligations, and engaging in all other lawful business purposes.

The summarized statements of net position of NYTDC at March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Cash and equivalents	\$ 1,377,803	1,139,040
Temporary investments in marketable securities	7,017,829	-
Accounts payable and accrued expenses	(205)	(64,477)
Other liabilities	<u>-</u>	<u>(163,523)</u>
Net position	\$ <u>8,395,427</u>	<u>911,040</u>

The summarized statements of revenue, expenses and changes in net position of NYTDC for the years ended March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>
Bond and note fee income	\$ 7,482,630	911,300
Interest income	22,030	518
Operating expenses	<u>(20,273)</u>	<u>(778)</u>
Change in net position	\$ <u>7,484,387</u>	<u>911,040</u>

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued

On June 1, 2016, NYTDC issued Special Facilities Bonds, Series 2016A and 2016B (LaGuardia Airport Terminal B Redevelopment Project) (the "Series 2016 Bonds") in the aggregate face amount of \$2,410,380,000 (at an issue price of \$2,644,634,342) to be used (i) to finance a portion of the costs relating to the design and construction of the Construction Project, which includes a new Terminal B and certain related facilities to be constructed by LaGuardia Gateway Partners, LLC (the "Borrower") at LaGuardia Airport in Queens, New York, (ii) to partially fund a capitalized interest account during construction, (iii) to fund the working capital reserve account, and (iv) pay certain costs of issuance related to the Series 2016 Bonds. The proceeds of the Series 2016 Bonds were loaned to the Borrower pursuant to a Building Loan Agreement and a Project Loan Agreement.

On June 16, 2016, NYTDC issued Special Facility Revenue Refunding Bonds, Series 2016 (American Airlines, Inc. John F. Kennedy International Airport Project) in the aggregate face amount of \$844,210,000 (at an issue price of \$906,626,356) for the purpose of providing a portion of the funds to defease and redeem in full the outstanding (i) New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2002B (American Airlines, Inc. John F. Kennedy International Airport Project) (the "Prior Series 2002B Bonds"), and (ii) New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2005 (American Airlines, Inc. John F. Kennedy International Airport Project) (the "Prior Series 2005 Bonds," and together with the Prior Series 2002B Bonds, the "Prior Bonds").

In December 2015, NYTDC issued Special Facility Revenue Refunding Bonds, Series 2015 (Terminal One Group Association, L.P. Project) in the aggregate face amount of \$167,260,000 (at an issue price of \$187,189,816) for the purpose of (i) defeasing and redeeming all outstanding New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2005 (Terminal One Group Association, L.P. Project) previously issued to refinance the demolition of an existing facility and the construction of a new passenger terminal facility at John F. Kennedy International Airport known as Terminal One and to finance certain capital improvements and the acquisition of certain equipment for the facility and (ii) paying certain costs of issuance related to the issuance of the Series 2015 Bonds, for the benefit of Terminal One Group Association, L.P. ("TOGA"), a New York limited partnership.

As of March 31, 2017, the total outstanding conduit debt is \$3,401,000,000. NYTDC bonds are not the obligation of NYTDC, the Authority or the State. Repayment of the bonds is the obligation of the respective project borrower.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 4 - Cash and Equivalents

Demand deposits are secured by surety bonds and collateral held by a bank or trust company as custodians. Securities are either delivered or registered by book entry in UDC's name with bond trustees or custodian banks.

At March 31, 2017 and 2016, cash held in demand and custodial deposits, as well as cash equivalents were collateralized by the depository, generally with obligations of the United States, its agencies, or New York State obligations with a remaining maturity when purchased of 90 days or less, as follows:

	<u>2017</u>		<u>2016</u>	
	<u>Carrying amount</u>	<u>Bank balance</u>	<u>Carrying amount</u>	<u>Bank balance</u>
Insured (FDIC)	\$ 337,917	337,917	337,900	337,900
Uninsured - collateral held by custodian in UDC's name	<u>9,670,325</u>	<u>5,658,325</u>	<u>6,469,642</u>	<u>6,469,957</u>
Total cash and cash equivalents	\$ <u>10,008,242</u>	<u>5,996,242</u>	<u>6,807,542</u>	<u>6,807,857</u>

Note 5 - Investments

Authorization for investments is governed by written internal investment guidelines, statutes, State guidelines and bond resolutions. Permitted investments include:

- Obligations of the United States Treasury, agencies and instrumentalities;
- Direct obligations of the State of New York, its political subdivisions, and public authorities;
- Bonds and other obligations of governmental authorities, political subdivisions, Federal Agencies, Government Sponsored Enterprises ("GSE's") or public authorities of the State or of the United States of America, which are securities in which the Corporation lawfully may invest pursuant to applicable statutes, regulations and bond resolutions including but not limited to Federal National Mortgage Association ("FNMA"), Federal Farm Credit Bank ("FFCB"), Federal Home Loan Bank ("FHLB"), Federal Home Loan Mortgage Corporation ("FHLMC - Freddie Mac"), and Student Loan Marketing Association ("SLMA - Sallie Mae");
- Repurchase agreements with financial institutions doing business in the State of New York which are listed as primary government securities dealers by New York's Federal Reserve Bank and which are collateralized by U.S. Government securities;
- Commercial paper issued by domestic banks, corporations and financial companies rated "A-1" or better by Standard & Poor's Corporation or "P-1" or better by Moody's Investors Services, Inc.;
- Certificates of deposit of banks or trust companies authorized to do business in the State;
- Units, shares or interest in a mutual fund or money market fund of regulated investment companies that meet specified criteria; and
- Real property.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 5 - Investments, Continued

Temporary and debt service reserve fund investments, reported at fair value, at March 31, 2017 and 2016 consist of the following:

	<u>2017</u>		<u>2016</u>	
	<u>Cost</u>	<u>Fair value</u>	<u>Cost</u>	<u>Fair value</u>
U.S. Government and Federal Agency obligations	\$ <u>120,213,791</u>	<u>120,316,762</u>	<u>121,385,143</u>	<u>121,489,813</u>

Fair Value Measurements

Generally accepted accounting principles established a framework that provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (level 1 measurements) and the lowest priority to unobservable inputs (level 3 measurements). The three levels of the fair value hierarchy under generally accepted accounting principles are as follows:

- Level 1 - Valuations are based on quoted prices in active markets for identical assets or liabilities that the Authority has the ability to access.
- Level 2 - Valuations are based on quoted prices in markets that are not active or for which all significant inputs are observable directly, or indirectly.
- Level 3 - Valuations are based on inputs that are unobservable and significant to overall fair value measurement.

The Authority holds financial instruments with quoted prices in active markets for identical assets (level 1) of \$120,316,762 and \$121,489,813 at March 31, 2017 and 2016, respectively.

Note 6 - Financing Leases Receivable

Minimum lease payments to be received under financing lease agreements for each of the next five years and thereafter as of March 31, 2017 were as follows:

2018	\$ 920,461
2019	912,767
2020	1,076,991
2021	375,703
2022	375,703
Thereafter	<u>207,576</u>
	3,869,201
Less:	
Portion attributable to interest	(528,216)
Allowance for possible credit losses	<u>(391,697)</u>
Total	\$ <u>2,949,288</u>

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 7 - Allowances for Possible Credit Losses and Estimated Loan Losses

The estimated allowances for possible credit and loan losses are based primarily on a continuing evaluation of the portfolios, and of current economic conditions and such other factors which management believes require consideration in estimating future risks. Additions to the allowances are made by charges to expense. Reductions of the allowances are reported as other revenue. A summary of loan loss allowance activity for year ended March 31, 2017, with comparative totals for the year ended March 31, 2016, is as follows:

	Allowances for losses on			
	<u>Loans</u>	<u>Financing leases</u>	<u>Totals</u>	
			<u>2017</u>	<u>2016</u>
Beginning balances	\$ 1,139,326	588,864	1,728,190	1,609,643
Net provisions (reductions)	<u>473,907</u>	<u>(197,167)</u>	<u>276,740</u>	<u>118,547</u>
Ending balances	<u>\$ 1,613,233</u>	<u>391,697</u>	<u>2,004,930</u>	<u>1,728,190</u>

Note 8 - Special Purpose Bonds Payable

The principal amount of special purpose bonds outstanding as of March 31, 2017 and 2016 is as follows:

	<u>2017</u>	<u>2016</u>	<u>Coupon rate percentage</u>	<u>Maturity date</u>
Fixed rate special purpose bonds:				
2004 Series B	<u>\$ 3,085,000</u>	<u>6,170,000</u>	5.41	2018

The maturities of special purpose bonds outstanding for the year following March 31, 2017 are as follows:

	<u>Principal</u>	<u>Interest</u>	<u>Total</u>
2018	<u>\$ 3,085,000</u>	<u>166,899</u>	<u>3,251,899</u>

The Authority has the option, in some cases, to retire bonds prior to maturity as stipulated in the respective debt agreements.

No commercial paper was outstanding at March 31, 2017 and 2016.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 9 - Due to New York State Urban Development Corporation

New York State Urban Development Corporation ("UDC") provides all of the management and operational oversight for the Authority. At March 31, 2017 and 2016, amounts due to UDC are primarily attributable to costs, including all payroll and related costs, allocated to or paid by UDC on behalf of the Authority for various general and administrative expenses. These costs, plus interest, approximated \$321,687 and \$312,312 during the years ended March 31, 2017 and 2016, respectively. The balance due at March 31, 2017 and 2016, excluding grant funds held by the Authority, amounted to \$26,330,436 and \$26,259,020, respectively. The interest rate used is the annualized average weighted yield earned by UDC on its investment portfolio. The interest portion of the accumulated liability covers the last twenty-two fiscal years and amounts to approximately \$7,508,000 at March 31, 2017.

Note 10 - Commitments

Special Purpose Fund loans approved by the Authority, but not yet closed, approximated \$35.1 million at March 31, 2017.

Note 11 - Contingencies

The Authority has been named as a defendant in legal actions arising from the operation of various economic development initiatives. In addition, defendants in mortgage loan foreclosure proceedings initiated by the Authority have asserted defenses and counter claims for damages. The Authority believes that the ultimate outcome of such litigation will not have a material adverse effect on its financial condition.

Note 12 - Accounting Standards Issued But Not Yet Implemented

GASB Statement No. 74 - "Financial Reporting for Postemployment Benefit Plans Other Than Pension Plans." This Statement, issued in June 2015, replaces existing standards of accounting and financial reporting for postemployment benefit plans other than pension plans and also replaces existing requirements for defined contribution OPEB plans. The provisions of this Statement are effective for financial statements for fiscal years beginning after June 15, 2016, which is the fiscal year beginning April 1, 2017 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 12 - Accounting Standards Issued But Not Yet Implemented, Continued

GASB Statement No. 75 - "Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions." This Statement, issued in June 2015, establishes new accounting and financial reporting requirements for governments whose employees are provided with OPEB, as well as for certain non-employer governments that have a legal obligation to provide financial support for OPEB provided to the employees of other entities. This Statement is effective for fiscal years beginning after June 15, 2017, which is the fiscal year beginning April 1, 2018 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 80 - "Blending Requirements for Certain Component Units - an Amendment of GASB Statement No. 14." This Statement, issued in January 2016, amends the blending requirements for the financial statement presentation of component units of all state and local governments. It requires blending of a component unit incorporated as a not-for-profit Corporation in which the primary government is the sole corporate member. The provisions of this Statement are effective for financial statements for years beginning after June 15, 2016, which is the fiscal year beginning April 1, 2017 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 81 - "Irrevocable Split-Interest Agreements." This Statement, issued in March 2016, establishes accounting and reporting standards for irrevocable split-interest agreements with characteristics that are equivalent to irrevocable split-interest agreements in which a donor irrevocably transfers resources to an intermediary who administers these resources for the unconditional benefit of a government and at least one other beneficiary. The provisions of this Statement are effective for financial statements for years beginning after December 15, 2016. For the Authority, this statement becomes effective for the fiscal year beginning April 1, 2017. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 82 - "Pension Issues - an Amendment of GASB Statements No. 67, No. 68, and No. 73." This Statement, issued in March 2016, addresses issues regarding (1) the presentation of payroll-related measures in required supplementary information, (2) the selection of assumptions and the treatment of deviations from the guidance in an Actuarial Standard of Practice for financial reporting purposes, and (3) the classification of payments made by employers to satisfy employee (plan member) contribution requirements. The requirements of this Statement are effective for reporting periods beginning after June 15, 2016, which is the fiscal year beginning April 1, 2017 for the Authority, except for the requirements of this Statement for the selection of assumptions in a circumstance in which an employer's pension liability is measured as of a date

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 12 - Accounting Standards Issued But Not Yet Implemented, Continued

other than the employer's most recent fiscal year-end. In that circumstance, the requirements for the selection of assumptions are effective for that employer in the first reporting period in which the measurement date of the pension liability is on or after June 15, 2017, which is the fiscal year beginning April 1, 2018 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 83 - "Certain Asset Retirement Obligations." This Statement, issued in November 2016, addresses accounting and financial reporting for certain asset retirement obligations (AROs). Governments that have legal obligations to perform certain future asset retirement activities related to tangible capital assets should recognize a liability based on the guidance in this Statement. The requirements of this Statement are effective for reporting periods beginning after June 15, 2018, which is the fiscal year beginning April 1, 2019 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 84 - "Fiduciary Activities." This Statement, issued in January 2017, established criteria for identifying fiduciary activities of all state and local governments. The focus of the criteria generally is on (1) whether a government is controlling assets of the fiduciary activity and (2) the beneficiaries with whom a fiduciary relationship exists. This Statement is effective for reporting periods beginning after December 15, 2018, which is the fiscal year beginning April 1, 2019 for the Authority. This Statement is not expected to have a material effect on the combined financial statements of the Authority.

GASB Statement No. 85 - "Omnibus 2017." This Statement, issued in March 2017, addresses issues that have been identified during implementation and application of certain GASB Statements. The requirements of this Statement are effective for reporting periods beginning after June 15, 2017, which is the fiscal year beginning April 1, 2018 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

GASB Statement No. 86 - "Certain Debt Extinguishment Issues." This Statement, issued in May 2017, addresses issues related to in substance defeasances occurring through repayment of debt from existing resources. The requirements of this Statement are effective for reporting periods beginning after June 15, 2017, which is the fiscal year beginning April 1, 2018 for the Authority. Management is in the process of evaluating the potential impact due to the implementation of this Statement on the combined financial statements of the Authority.

**INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER
FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS
BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED
IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS**

The Authority Members
New York Job Development Authority:

We have audited, in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, the combined financial statements of New York Job Development Authority (the "Authority"), a component unit of the State of New York, which comprise the combined statement of net position as of March 31, 2017, and the related combined statements of revenue, expenses and changes in net position and cash flows for the year then ended, and the related notes to combined financial statements, and have issued our report thereon dated June 15, 2017.

Internal Control Over Financial Reporting

In planning and performing our audit of the combined financial statements, we considered the Authority's internal control over financial reporting (internal control) to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the combined financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect and correct, misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the Authority's combined financial statements will not be prevented, or detected and corrected on a timely basis. A significant deficiency is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal control was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's combined financial statements are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the Authority's internal control or on compliance. This report is an integral part of an audit performed in accordance with Government Auditing Standards in considering the Authority's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2017

INDEPENDENT AUDITORS' REPORT ON INVESTMENT COMPLIANCE

The Authority Members
New York Job Development Authority:

Report on Investment Compliance

We have audited the New York Job Development Authority's (the "Authority"), a component unit of the State of New York, compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York for the year ended March 31, 2017.

Management's Responsibility

Management is responsible for compliance with the requirements of Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

Auditor's Responsibility

Our responsibility is to express an opinion on investment compliance based on our audit of the compliance requirements referred to above. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. An audit includes examining, on a test basis, evidence supporting the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances.

We believe that our audit provides a reasonable basis for our opinion on investment compliance. However, our audit does not provide a legal determination of the Authority's compliance.

Opinion on Investment Compliance

In our opinion, the New York Job Development Authority complied, in all material respects, with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York for the year ended March 31, 2017.

Other

In accordance with Government Auditing Standards, we are required to report all deficiencies that are considered to be significant deficiencies or material weaknesses in internal control; fraud and noncompliance with provisions of laws and regulations that have a material effect on the Authority's compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York and any other instances that warrant the attention of those charged with governance; noncompliance with provisions of contracts or grant agreements, and abuse that has a material effect on the subject matter. We are also required to obtain and report the views of responsible officials concerning the findings, conclusions, and recommendations, as well as any planned corrective actions. We performed our audit to express an opinion on whether the Authority complied with the aforementioned requirements and not for the purpose of expressing an opinion on the internal control over compliance with those requirements or other matters; accordingly, we express no such opinion. The results of our tests disclosed no matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of management of the Authority, the New York State Office of the State Comptroller, the New York State Division of the Budget, and the New York State Authority Budget Office and is not intended to be and should not be used by anyone other than those specified parties.

EFPR Group, CPAs, PLLC

Williamsville, New York
June 15, 2017

Item I. D.



FOR CONSIDERATION

June 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: 2017 Procurements Guidelines

REQUEST FOR: Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Background

At its April 25, 2016 meeting, the Members adopted updated and revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, as mandated by §2879 of the Public Authorities Law (the "2016 Guidelines"). There have been no substantive changes to relevant laws, Executive Orders and directions to authorities, in the past year. However there have been some important internal procedural initiatives that impact the 2016 Guidelines. Accordingly, the Procurements Manager and staff from the Legal Department, supported by representatives of the Contracts Administration and Finance Departments, have engaged in a revision of the Guidelines. Approval of these Guidelines (the "Proposed 2017 Guidelines") is sought.

As with the 2016 Guidelines, the Proposed 2017 Guidelines are in lockstep with ESD's procurements guidelines.

Procurement Guidelines Summary

The Proposed 2017 Guidelines attached to this memorandum set forth the policies and procedures to be followed by JDA when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law, and are intended as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The Proposed 2017 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by JDA must be competitive, except where State law provides for non-competitive sourcing (e.g., goods purchased from approved non-profit agencies for the blind, and procurements from the Office of General Services Centralized Contracts List). Based on the expected cost of procured goods

and/or services, procurement contracts must be obtained after advertisement in the NYS Contract Reporter, except in limited instances where an exemption is obtained, generally for sole or single source procurements when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process. The Proposed 2017 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of the Corporation's Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

The Proposed 2017 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions, and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

Notable changes from the 2016 Guidelines include:

- Emphasis on soliciting proposals from MWBEs and SDVOBs and coordination with ESD's Office of Contractor and Supplier Diversity early in the procurement process; guidance about how to evaluate diversity practices and certification status in a solicitation;
- Clarification about appropriate circumstances for single source procurements;
- Option to enter into open retainer agreements with one or more firms on a pre-qualified list approved by the Board;
- Additional guidance about conducting vendor responsibility determinations, including a revised template for documenting such determinations;
- Model language for informal solicitations;
- Guidance about how to cancel an unsuccessful solicitation;
- Illustrative examples of various permissible contract amendment scenarios;
- Additional guidance about submission of certain contracts valued in excess of \$1 million to the Office of the State Comptroller;
- Additional guidance regarding restrictions on appearances by former ESD employees
- New integrity provisions regarding conflicts of interest and prohibiting consideration of proposals from firms that participate in drafting solicitation materials.

The Proposed 2017 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and JDA/ESD policy and procedure documents can also be accessed from within the document by hyperlinks. The hard copy of the Proposed 2017 Guidelines presented to the Members for approval cannot contain these links, but they are shown in highlight form.

Environmental Review

ESD staff has determined that approval of the Proposed 2017 Guidelines does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

Recommendation and Requested Action

The Members are requested to adopt the Proposed 2017 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

Attachments

Resolution

Proposed 2017 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

June 28, 2017

**NEW YORK JOB DEVELOPMENT AUTHORITY – 2017 Procurements Guidelines - Adoption
of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement
Contracts**

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Authority, the Proposed 2017 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, and the Chairman, President and Chief Executive Officer or his/her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use by JDA, and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

Revised Procurement Guidelines 2017

NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring
and Reporting of Procurement Contracts

Effective June 28, 2017

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NEW YORK JOB DEVELOPMENT AUTHORITY
Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective June 28, 2017

1. Overview and Requirements

The following guidelines (the “Guidelines”) are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York Job Development Authority (“JDA”). JDA is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law (“PAL”). The same law requires annual review and updating of the guidelines by the JDA Members (“Board”). These guidelines are in lockstep with those of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”).

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the “SPC Guidelines”). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by JDA (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by JDA, but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the SPC Guidelines.

In these JDA Guidelines, a person, firm or corporation who wishes to provide goods and/or services to JDA may be called a “**vendor**” or “**offerer**” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming a JDA vendor, a “**respondent**.”

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to PAL § 2879 (2), “**Procurement Contracts**” are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see p. 12), Procurement Contracts also include the purchase, lease or grant of any other interest in real property which involves an estimated annualized expenditure by JDA in excess of fifteen thousand dollars (\$15,000).

Disposition of property (real or personal) by JDA is not a procurement covered by these Guidelines, but is instead subject to ESD’s Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans made by JDA in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller (“OSC”) review and approval for grants over \$1 million (see p. 23, Section 10.5).

A Contract or Memorandum of Understanding (“**MOU**”) with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

In connection with certain of its projects, JDA may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor’s premises and perform work. As a precondition to receiving the license, JDA can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor’s personnel or contractors, as well as payment of licensor costs by JDA. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as “**forced contracts**,” are not covered by the competitive solicitation requirements of these Guidelines, because JDA has no discretion or authority with respect to the work to be performed by the licensor’s personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under \$50,000** may be handled by **Purchase Order** approved by Department Head, Procurement Department, Controller’s Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurements Director.

1.2. Types of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with a JDA project, or to support the administrative needs of JDA.

Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of JDA.

Reasons for procuring personal services include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services required;

- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Short-term or infrequent need for the services; and
- e. Distance of the location(s) where the services must be performed from JDA offices or facilities.

1.3. General Procurement Principles

JDA's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of JDA, the State and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice is published in the **New York State Contract Reporter** where the amount of the contract is **\$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority- or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds.

Competition in the procurement process serves both JDA and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain JDA business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain JDA business.

2. Procurement: Overview and Requirements

2.1. The Procurement Process Guide

I. Procurements \$5,000 to \$50,000

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If JDA's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business. See Section 2.6.



If JDA's needs cannot be met by the above mentioned options, you may elect to use an informal solicitation. Contact the Procurement Unit for further assistance if needed.



If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head has to justify the need to Single Source or Sole Source this request in the justification memo.

II. Procurements \$50,000 +

If JDA's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



If JDA's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If JDA's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business up to \$200,000. See Section 2.6.



If JDA's needs cannot be met by the above mentioned, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI), and advertise in the Contract Reporter if this is not an emergency situation and JDA's needs can be met by more than one vendor.



If this is an emergency situation or only one vendor can meet the needs required, obtain a Contract Reporter Exemption from the Legal Department using Single Source or Sole Source exemption as appropriate.

2.2. NYS Preferred Sources

Goods and services needed by JDA may be available, without the need for competitive procurement, from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by JDA, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services (“OGS”) Preferred Sources Guide. The Guide is exhaustive, but the main points are easy to follow.

2.3. OGS Centralized Contracts

Goods and services needed by JDA may be available, without the need for competitive procurement, through centralized contracts held by OGS. Information about centralized contract offerings can be obtained from the list of approved State contractors maintained by OGS.

Note that even if an OGS centralized contractor is available, it is recommended that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, including at least one MWBE or SDVOB certified firm, unless a compelling justification exists (e.g., experience with a particular project). Staff should confirm that a firm is certified on either the MWBE directory (<https://ny.newnycontracts.com>) or SDVOB directory (http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf).

2.4. Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with JDA’s need, such item may be purchased from the centralized contract. However, JDA may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.5. Service Contracts

JDA has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, JDA may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.6. Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i), ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A of the Executive Law (MWBES), or commodities or technology products that are recycled or remanufactured, in an amount up to two hundred thousand dollars (\$200,000) without a “formal competitive process.” In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits. Recommended language for such advertisements can be found at <http://www.ogs.ny.gov/procurecounc/pdffdoc/DiscretionaryPurchasingGuidelines.pdf>. Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet ESD’s needs. The award of a discretionary purchase contract should be published in the Contract Reporter..

As with any other procurement, for discretionary purchases the initiator must:

- review the Preferred Source list and OGS Centralized Contracts to determine whether the desired goods or services are available to meet ESD’s needs;
- ensure that the commodities, services or technology acquired meet ESD’s form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that ESD buys from responsible vendors.

2.7. Piggyback Contracts

JDA may find it efficient to establish a contract based on another governmental entity’s contract. This is known as “piggybacking” and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPIggybackGuide_2.2015.pdf. Note that a piggyback procurement requires approval by the OGS Procurement Services Group – this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by JDA. This may lead to delay, if OGS decides to seek approval of the proposed JDA contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority.

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

- (a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD operating systems that no-one else offers; (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.
- (b) **Single Source.** The required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with JDA and/or ESD's operations; experience with similar projects of JDA and/or ESD, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be a competitively-procured environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source. Where a vendor's past experience or familiarity with JDA/ESD was gained through a non-competitively awarded contract, staff are strongly encouraged to conduct a competitive solicitation rather than pursue a single source exemption for that vendor to perform additional work. *In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods.*
- (c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by JDA: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of \$50,000 or more should be published in the Contract Reporter (Economic Development Law, §143(4)). This publication requirement does not apply to contract amendments.

3.2. Authorization for Exemptions

The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

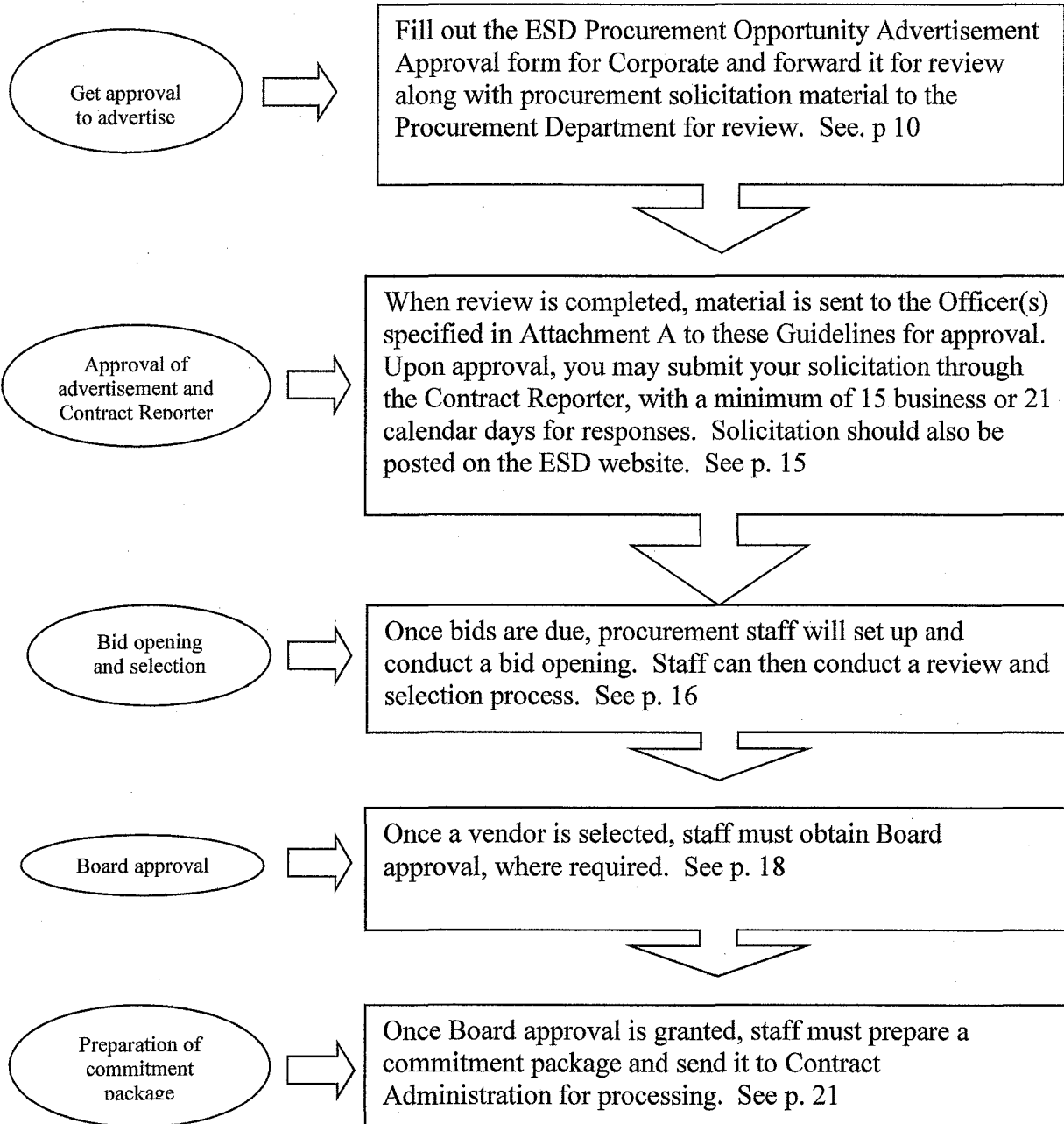
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found [here](#).

If the proposed contract amount is over \$250,000, or is a personal services contract that will last more than one year, the exemption authorization should be obtained before Board or President approval. If the proposed amount is \$250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time JDA enters into a contract with a single or sole source provider for an amount in \$50,000 or more, JDA should submit an announcement of the contract for publication in the NYS Contract Reporter, and must identify the recipient of the contract.

4. How to Conduct a Competitive Solicitation



5. Approval to Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals (“RFPs”), Requests for Statements of Qualifications (“RFQs”) and Requests For Expression of Interest (“RFEIs”) (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the ESD Procurement Opportunity Advertisement Approval form (select Corporate) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date (the Contract Reporter is published daily).

6. Contents of ANY Procurement Solicitation

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ or RFI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an MWBE for up to \$200,000, or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

- (i) What goods are being sought or what scope of services is desired;
- (ii) What the projected length (“term”) of the resultant contract will be;
- (iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders’ expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD’s mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm’s status as a certified MWBE and/or SDVOB¹;
- (iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc);
- (v) Contact information for a designated contact at ESD who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.
- (vi) JDA’s insurance requirements (obtained from ESD’s Contract Administration for all solicitations);

(vii) JDA's contractor and supplier diversity requirements: MWBEMWBE and SDVOB goals, if applicable (goals should be identified before seeking approval to advertise);

(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(ix) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be JDA's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms). **IMPORTANT:** JDA's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.

(x) VENDREP Form where needed (See Section 8.13);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked [here](#);

(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed [here](#).

7. Types of Solicitations

7.1. General

There are a number of procurement techniques available, including Request for Proposals (RFP) and Request for Statements of Qualifications (RFQ) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible vendors. "Best value" is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis

for a “best value” contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by JDA are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what JDA wants to buy;

Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria;

Openness: All relevant vendors should have an equal opportunity to respond to the offering.

Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record;

Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests for Proposals (“RFP”)

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both JDA and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, “what” is needed and “how” services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor.

Click [here](#) to view ESD’s standard RFP template.

7.3. Requests for Statements of Qualification (“RFQ”)

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by JDA on a regular or semi-regular basis as the need arises. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If JDA has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to JDA outside the list. Amendments to contracts with vendors selected from a pre-qualified list should also follow this mini-bid process (and comply with all requirements in Section 9.2).

Where a vendor's eligibility to be on a pre-qualified list is contingent upon the vendor's agreement that professional services will be rendered at pre-established rates, or will not exceed certain limits, this solicitation should be accomplished through an RFP.

After JDA has established a list of pre-qualified vendors, staff may enter into open retainer contracts with one or more vendors on the list, for no set dollar amount but in the case of personal services not to exceed a term of one year. This process facilitates the use of purchase orders against the contract, and Board or President/CEO approval, if required, can be obtained at such time as a scope of services and dollar amount are identified, or if the term will be extended beyond one year. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

7.4. Requests for Expressions of Interest ("RFEI")

RFEIs are generally appropriate when JDA does not know the precise scope of services or goods required, and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of JDA or other State surplus property, where the re-use is likely to be dependent on the prospective respondents' needs or ideas.

8. Compliance with Other Laws

8.1. Compliance with State Finance Law § 139-j and 139-k (Lobbying)

State Finance Law ("SFL") § 139-j and 139-k apply to all Procurement Contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted JDA contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from

the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with JDA's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by JDA after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k(5) requires potential vendors to certify that the information they provide to JDA for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139-j and § 139-k as part of their proposals: 1) the Offerer's Affirmation of Understanding and Agreement; and 2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offerer from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, staff engaged in the procurement process should review JDA's policy regarding permissible lobbying contacts, and the required language for solicitations by JDA to ensure compliance with SFL § 139-j and 139-k.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present. However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more

development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. Compliance with State Tax Law § 5-a (Sales Tax Registration)

State Tax Law § 5-a prohibits JDA from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance ("DTF") for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed \$100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that JDA practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor's sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. [INTENTIONALLY OMITTED]

8.4. Compliance with Executive Law Articles 15-A & 17-B: Contractor and Supplier Diversity

Background

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in

State contracting. The MWBE Program contributes significantly to JDA's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the MWBE Operations Primer published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance published by OGS to ensure compliance with SDVOB-related laws and requirements.

Staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal-setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation. Click here for an example of how to advertise potential opportunities for MWBEs: <http://www.panynj.gov/business-opportunities/pdf/OBDCR-LGA-MWBE-Flyer-16-F4%20.pdf>.

Goal-setting

All State contracts exceeding \$25,000 for commodities or services and \$100,000 for construction must be assessed for MWBE & SDVOB goals. For ESD's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted² from goal setting, or excluded³ from goal setting.

It is important to note that whole projects cannot be assessed for goals; rather individual contracts must be assessed for goals.

OCSD may determine that an MWBE goal below the agency-specific goal of 30% is appropriate because there are limited or no subcontracting opportunities and/or limited or no availability of certified MWBEs to perform or provide specific good or services. All goals of less than 30% MWBE participation, other than a zero goal determination, must be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

Waiver Requests

A firm responding to a solicitation or already engaged on an JDA contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit an MWBE Waiver Request Form or SDVOB Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts"⁴ to meet its goals. The waiver process includes reviews by: OCSD and the OCSD Counsel. The Executive Chamber must approve a waiver before it can be issued.

Waivers must be sought even if the overall MWBE goal is met but either the Minority-owned Business Enterprise or the Women-owned Business Enterprise component of the MWBE goal is not met in part or in full.

A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

- A statement setting forth the basis for the waiver request;
- The names of general circulation, and trade association publications in which certified MWBE/SDVOBs were solicited for the purposes of complying participation goals related to this contract;
- A list identifying the date(s) that all solicitations for certified MWBE/SDVOB participation were published in any of the above publications;
- A list of all certified MWBEs appearing in the NYS Directory of Certified Firms and all certified SDVOBs appearing in the OGS Directory that were solicited for purposes of complying with the participation goals;
- Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations to all certified MWBEs/SDVOBs;
- Copies of responses to solicitations received from certified MWBEs/SDVOBs;
- Copies of bid prices from all respondents to a solicitation; and
- A description of any contract documents, plans, or specifications made available to certified MWBEs/SDVOBs for purposes of soliciting bids and the date and manner in which these documents were made available.

In the event that a waiver is not granted or approved by one or all of the above parties, OCSD may assess liquidated damages or seek settlement in accordance with the MWBE and/or SDVOB Regulations and the provisions of the contract language.

Where practical, feasible and appropriate, JDA shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for

OCSD's review and approval, prior to contract award. The required forms are accessible at http://intranet.empire.internal/Resources/Data/Finance/2017/MWBE_SDVOB_DBE/OCSD-4_MWBEUtilizationPlan.docx and http://intranet.empire.internal/Resources/Data/Finance/2017/MWBE_SDVOB_DBE/SDVOBUti lizationPlan100.pdf.

8.5. Compliance with Iran Divestment Act of 2012

Every bid or proposal made to JDA pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law."

The list in question is maintained by OGS and is available here: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at http://intranet.empire.internal/Resources/Data/Procurement/03042014_NYS_SubcontractorsandSuppliers.pdf

8.7. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, State governmental entities specified in the law are required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is

a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. As well as, appearances following the award of a State contract do not need to be reported.

8.8. Publication on ESD Website

Competitive solicitations must be made available on the ESD website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement.

8.9 Contract Reporter Advertising Process

As stated above, JDA must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of \$50,000 or more, unless an exemption is granted. In order to access the online system and place the advertisement, the initiator should contact Contracts Administration.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). The Contract Reporter website provides authorized users with a publication calculator tool in order to calculate the earliest due date for a solicitation.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate MWBEs maintained by OCSD, as well as any appropriate SDVOBs, listed at http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf.

8.10. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however many JDA procurements are based on “Best Value,” which allows for factors other than price to be taken into account. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the

goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

8.11. Bid Opening Procedures

All proposals should be received by the Procurement Department (unless the Procurements Director directs otherwise), and immediately should be stamped with the date and time of receipt. **Do not open any bid packages for any reason before the formal bid opening.** JDA staff members representing Contracts Administration, Procurements, Legal and the initiating Department should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

A **Public Bid Opening is required** for Public Works contract solicitations, pursuant to State Finance Law § 144. This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. JDA must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). The definition of a “Public Work” is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

8.12. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three JDA/ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. In some cases, one or more non-JDA/ESD team members may join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-JDA/ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as JDA to “take into consideration the views and policies of any elected official or body, or other person” in the exercise of its powers and duties, provided that JDA must “apply independent judgment in the best interest of the authority, its mission and the public.” If non-JDA/ESD staff is included in the review team, the team must be expanded in number such that a majority will always be JDA/ESD staff members.

Analysis of the proposals and/or bids submitted and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected.

In reviewing bids, all members of the team must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc). Original scoring sheets must be signed and retained by the Procurements Director as part of the Procurement Record.

8.13. Determination of Responsibility – “CLIP Review” and the VendRep form

Pursuant to State Finance Law § 163, the Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are “responsible.”

There are two methods of ascertaining vendor responsibility:

- “CLIP” review. This review involves an assessment of responsibility in four categories:

Category	Factors to be considered include, but not are limited to:
Financial and Organizational <u>C</u> apacity	Assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, and proper auditing and accounting controls.
<u>L</u> egal Authority	Authority to do business in New York State, licenses, and registrations.
<u>I</u> ntegrity	Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.
Previous Contract <u>P</u> erformance	Reports of less than satisfactory performances, early contract termination for cause, contract abandonment, court determinations of breach of contract.

For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted a CLIP review and finds the vendor to be responsible and indicating what steps were taken to make that determination. View Determination of Responsibility form. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC’s list of suggested resources, at <http://www.osc.State.ny.us/vendrep/webresources.htm>, or review OGS’s bulletin of best practices for determining vendor responsibility.

CLIP review is not needed for procurements from the OGS Centralized Contracts list.

- The OSC VendRep Questionnaire, which should be used wherever possible and is required for all purchases of \$100,000 or more. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and in some cases may be criminal. The VendRep forms for different types of vendors can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the ESD Legal Department in such cases, after having reviewed the information at <https://nyspro.ogs.ny.gov/sites/default/files/uploaded/OSCBestPracticeforVendorResponsibility.pdf>.

8.13.1. Cancellation of a Solicitation

On occasion, the competitive solicitation process does not yield any satisfactory responses and JDA wishes to pursue other methods of procurement. To notify the public that ESD has cancelled a solicitation, the initiator should (1) inform all respondents via phone call (which should be documented for the procurement record), letter or email of the cancellation and (2) publish or post notice of the cancellation in each place that the solicitation was published (usually the Contract Reporter and the ESD website) for no less than 2 weeks. If the decision is made to re-advertise the opportunity, the project team should scrutinize the initial solicitation document to determine whether any restrictions can be lifted or the document can otherwise be revised to produce better results.

8.14. Procurement Record

The initiator shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Director before a contract is executed.

9. Contract Approval

Procurement Contracts in amounts of **\$250,000 and under** that will be completed within one year (for services contracts) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but contracts **between \$50,000 and \$250,000** must be approved by the President of JDA (or subsidiary) Board or his or her designee.

Procurement Contracts priced at **over \$250,000**, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the Board.

Note that **warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases and software support services)** are not considered

personal service contracts and do not require approval by the Board unless the amount of the contract is over \$250,000 in aggregate through its term. All contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Directors' Materials for Procurement Contracts (these materials can also be used for obtaining approval of the President or his or her designee by adding a CEO/Designee Approval Cover Memo).

The Board materials must set out:

- a. the need for goods and services;
- b. a brief description of the goods or services needed;
- c. the expected maximum cost of the proposed goods or services;
- d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
- e. the funding source.

9.2. JDA Contract and Amendment Approval

- a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted.
- b. Contracts for services to be rendered over a period in excess of one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the Board, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The

annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.

- c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, may issue a letter authorizing a contractor to commence work pending completion and execution of formal contract documents ("**Notice to Proceed**"), provided that:
 - i. the contract is not subject to OSC approval (See Section 10.5); and
 - ii. the authorization contained in the Notice to Proceed is \$250,000 or less; and

the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of two of the following: JDA President & Chief Executive Officer, Executive Vice President & Chief Operating Officer, General Counsel, Chief Financial Officer, Treasurer or Controller.

d. **Contract Amendments**

- i. **Amendments to existing contracts** follow the same process as new contracts, i.e., any amendment over \$50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.

- ii. Amendments that increase the **contract amount** to more than \$250,000 must be approved by the Board. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the JDA Chief Executive Officer or Chief Financial Officer without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and the Board's approval has not been previously obtained.
- iii. If a proposed amendment will increase the **term** of the contract to more than one year, Board approval is necessary, and Contract Reporter advertising is necessary unless (i) as discussed in paragraph (c) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB firm. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount**, the initiator need not submit a new Commitment Request Package.
- iv. In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and the Chief Financial Officer of JDA. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

Example A: Original contract for \$100,000 was awarded competitively. The initiator wishes to amend the contract for an additional \$5,000. Because the amendment is for less than \$50,000 it does not require advertisement/exemption, and because it will not increase the total contract amount to more than \$250,000 and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend personal services beyond one year, and so will not require Board approval.

Example B: Original contract for \$40,000 was awarded via purchase order. The initiator wishes to amend the contract for additional \$20,000. Because the amendment is less than \$50,000, it too can be procured via purchase order. However, staff should carefully examine future needs to avoid repeated awards of small noncompetitive amendments.

Example C: Original contract for \$5 million was awarded competitively and approved by the Board. The initiator wishes to amend the contract for an additional \$300,000. Because the amendment is less than 10%, and the

contract has previously been approved by the Board, no further Board approval is necessary, but Contract Reporter advertising (or exemption) is still necessary.

Example D: Original contract for \$100,000 was awarded to a firm on a Board-approved pre-qualified list. The initiator wishes to amend the contract for an additional \$50,000 and extend the term beyond one year. Because the amendment will extend the contract term beyond one year, Board approval is necessary. However, because the firm was pre-qualified through a competitive process, no further Contract Reporter advertising is necessary (but the initiator should solicit bids from three other firms on the list where practicable, including at least one MWBE and one SDVOB).

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (for contracts of \$50,000 or more)

- a. The contract initiator should assemble a Commitment Request Package containing the following documents:
 1. A completed Commitment Request Form.
 2. A Contract Summary/Justification Memorandum explaining the need for the procurement and the method of procurement used.
 3. One (1) completed original of the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures); (iv) Schedule B-1 (Participation by Service-Disabled Veteran-Owned Businesses with Respect to State Contracts); (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offerer's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offerer Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k).

Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and JDA, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;
 - the description of the services to be performed;
 - the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the projected starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that JDA and any relevant State agency has the right to audit the contractor's records;
4. Written explanation of the responsibility determination/CLIP review. View Determination of Responsibility form. For contracts valued at \$100,000 or more, staff must also submit a VendRep Form completed by the vendor.
5. Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Cover Memo.
6. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
- b. All appropriate insurance certificates, as approved by the JDA Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
8. A completed Commitment Package Checklist.
- c. The initiator signs and obtains the Department Head approval on the Commitment Request form and forwards the commitment package (all documents listed above) to Procurement for compliance review and approval. When approved, Procurement will route the commitment package to Contract Administration.
- d. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various departments.

- e. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
- f. After receiving three (3) signed sets from the vendor, Contract Administration sends all three sets to the Officer(s) specified in Attachment A to these Guidelines for signature.
- g. One original copy of the fully-executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered awarded when it is executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

10.3. [INTENTIONALLY OMITTED]

10.4. Department of Budget ("DoB") Approval

Under DOB Bulletin B-1184, approval for certain procurements over \$500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the "Agency Spending Controls Application" process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an JDA project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. JDA has implemented the cost control measures described in Bulletin B-1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by DOB known as Attachment A. An Attachment B form was also created for spending involving Federal reimbursement of at least 75% or presenting a public health and/or safety issue.

For instructions and forms, see the ESD Employee Intranet: Financial Resources. If in doubt, contact the ESD Controller's Department for guidance.

10.5. OSC Jurisdiction Over Contracts in Excess of \$1 Million

Under Public Authorities Law § 2879-a (effective March 1, 2010), JDA must make certain communications to OSC about certain types of contracts valued at more than one million dollars. OSC has issued final regulations implementing this law, and OSC approval shall be deemed part

of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed [here](#).

“Eligible Contracts” are contracts in excess of one million dollars that are either: (i) to be paid for in whole or in part by State appropriations; or (ii) noncompetitively awarded (regardless of the funding source).

“Eligible Contract Amendment” is any modification to (A) an Eligible Contract; or (B) a contract executed after March 1, 2010 where the value as amended is in excess of \$1 million where (i) the contract as amended will be funded in whole or in part by State appropriations; or (ii) the contract was originally awarded noncompetitively; or (iii) the contract was originally awarded competitively but the modification was “neither contemplated nor provided for” in the original solicitation (i.e., new scope).

- JDA must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year, and revise such report within 30 days of learning of any significant changes to the annual report.
- JDA must give OSC 10 days’ notice before (i) publishing a solicitation that JDA expects will result in an Eligible Contract/Amendment that was reported to OSC in a revision to the annual report or (ii) executing a noncompetitive Eligible Contract/Amendment that was reported to OSC in a revision to the annual report.
- JDA must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.

Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active written notices can be viewed [here](#). If approval by OSC has not been obtained, the signed contract “shall not be a valid enforceable contract.”

All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.

OSC has confirmed that contracts for the sale of real property for an amount over \$1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

12. Monitoring of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed; that use of JDA/ESD personnel, supplies and facilities is documented; that the MWBE and SDVOB requirements, as provided by OCSD, are being met; and that the established starting and completion dates for major components of the contract are being/have been met.

JDA/ESD employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract, including MWBE and SDVOB participation goals.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, MWBE and SDVOB utilization plans and written correspondence should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed; the timeliness of submission of contract deliverables; the adequacy of cost and performance records and other supporting documentation; the ability of the vendor to meet MWBE and SDVOB participation goals; and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

All MWBE and SDVOB performance should be reported to OCSD.

Performance that is below expectations or established standards should be reported to JDA management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this.

13. Ethical Considerations

13.1 Procurement Contracts Involving Former Employees

Public Officers Law § 73 and ESD's Ethics Policies impose restrictions on former ESD officers and employees deriving compensation from JDA/ESD contracts or appearing before JDA/ESD. Accordingly, evaluation team members should carefully review lists of all proposed staff submitted by vendors to identify any former ESD employees. If a former JDA/ESD employee is

identified, review his/her employment history to ensure it is appropriate and allowable. Direct any questions to the ESD Ethics Officer.

13.2 Conflicts of Interest

All actions of JDA/ESD staff, including but not limited to procurement, are subject to ESD's Ethics Policies and the provisions of Public Officers Law §§ 73 and 74. Evaluation team members should ensure that they do not have any conflict of interest with respect to any bidder, and should alert the ESD Ethics Officer immediately upon identifying any potential conflict. For particularly large or complex solicitations, especially where outside consultants are assisting with the evaluation process, the project team should consider having each member of the evaluation team complete an Evaluation Conflict Disclosure Statement. Procurement counsel can advise on how to use this form.

13.3 Unfair Advantage Prohibited

Firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a procurement must be excluded from competing in any resulting procurement.

14. Implementation of These Guidelines

ESD's Legal Department, in conjunction with the Procurement/Contract Administration Department, shall be responsible for:

- a. Preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines.
- b. Preparing proposed amendments to the Guidelines for approval by the CEO and the Board when and as required.

15. Reporting

15.1. Quarterly Reports

ESD's VP/Contract Administration shall prepare for presentation by the Office of Contractor and Supplier Diversity to the Board, quarterly reports of new and amended Procurement Contracts and required Schedules of MWBE Participation. For each Procurement Contract, the report shall include the contract amount, reason for award, initial scope of services and the selection process used. Such reports shall include information related to amendments approved on contracts during the reporting period.

15.2. Annual Reports

Annually, ESD's VP/Contract Administration shall prepare for the Board's review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by JDA for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

- a. The Division of Budget;
- b. The Department of Audit and Control;
- c. The Senate Finance Committee;
- d. The Assembly Ways and Means Committee;
- e. Members of the public (upon receipt of reasonable requests therefor); and
- f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

16. Effect on Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be "valid or enforceable" without OSC approval. (See Section 10.5)

Item I. E.



FOR CONSIDERATION

JUNE 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Pre-Qualified Legal Counsel

REQUEST FOR: Approval of Pre-Qualified Counsel

Background

As the New York Job Development Authority ("JDA") expands its portfolio of job creation loans, JDA may be required to call on the assistance of outside counsel in various areas of expertise. A list of pre-qualified counsel will permit the JDA to respond to the needs of these projects expeditiously, while having available to the JDA the benefits of a broad solicitation of qualified outside law firms. The current list was adopted in 2012. Empire State Development ("ESD") Staff, therefore, has conducted a broad solicitation of interested law firms, has reviewed the submissions and compiled a new list based on this solicitation which is now recommended to you for adoption. As in the past, we recommend that the list remain in effect for 3 years, subject to extension by an additional year, in the discretion of the General Counsel.

As with the 2012 pre-qualified counsel list, the proposed 2017 pre-qualified counsel list the same as ESD's pre-qualified counsel list.

The Solicitation

On June 27, 2016, ESD staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following areas of law (including, in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments¹; and (11) regulatory litigation. Proposals were due by July 22, 2016.

¹ As provided in the RFP, all firms that are currently on the list of pre-qualified counsel for transactional direct and indirect investments that was approved by the ESD Board in August 2014 have been automatically included on the investment practice area of the list that is before the Board today. Firms that were not on the 2014 investment counsel list were permitted to apply for consideration in this area and there are several new firms proposed to be added in this area.

In addition, ESD staff contacted the following individuals and law firms via email to advise them of the Contract Reporter opportunity:

- All law firms on ESD's list of pre-qualified counsel that was approved by the Board in 2012 and all law firms on the list of pre-qualified investment counsel approved by the Board in 2014;
- All law firms that are State-certified Minority- or Women-Owned Business Enterprises ("MWBEs");
- All law firms that are State-certified Service-Disabled Veteran-Owned Businesses ("SDVOBs")
- Amistad Long Island Black Bar Association
- Arab American Bar Association
- Asian American Bar Association of New York
- Association of Black Women Attorneys
- Capital District Black and Hispanic Bar Association
- Dominican Bar Association
- Neysa Alsina, NY Regional President of the Hispanic National Bar Association
- Korean American Lawyers Association of Greater New York
- Latino Lawyers Association of Queens County
- Long Island Hispanic Bar Association
- Metropolitan Black Bar Association
- Muslim Bar Association of New York
- Nigerian Lawyers Association, Inc.
- The Puerto Rican Bar Association
- South Asian Bar Association of New York
- Westchester Black Bar Association
- Women's Bar Association of the State of New York

78 firms responded to the solicitation. Because a number of firms on the 2012 pre-qualified list failed to respond, ESD publicly re-opened the solicitation on August 2, 2016, with proposals due on August 17. Nine additional firms responded to the re-opened RFP, including some that were previously listed on the 2012 list and some new firms. The responses were evaluated by a Review Committee consisting of seven ESD attorneys, including the Senior Counsels responsible for environmental, litigation, contractor and supplier diversity, and employment matters and the Deputy General Counsel. The Review Committee's recommendations were discussed with the General Counsel. The responses were evaluated on the following criteria:

- (1) relevant firm experience and the qualifications and experience of the staff proposed to be assigned to the ESD engagement (50%);
- (2) anticipated cost of services and willingness to work with ESD to minimize costs (20%);

- (3) overall organization, completeness, and quality of the proposal, including cohesiveness, clarity of response and demonstrated understanding of ESD, its mission and activities (20%); and
- (4) demonstrated commitment of time and resources to ESD or other State agencies or other public entities (10%).

In some cases, additional information was requested in clarification of an initial submission and 13 firms were selected for interviews.

Based on this review, staff recommends the approval of the firms listed on Attachment A to these materials as pre-qualified legal counsel to JDA.

Responsible Parties

Pursuant to State Finance Law Section 139-j and 139-k and JDA's policy related thereto, staff has: a) considered the ability of each firm to perform the services as set forth in these materials, 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 finds each firm to be responsible.

Financial Commitment and Selection from the List

The Members are not now being asked to authorize the retention of any particular firm. Instead, the requested authorization serves to make available to the JDA a panel of law firms that have been identified through a broad solicitation process. This would allow staff to select firms from among the pre-qualified firms and, after evaluation of those firms for a particular project, to make a recommendation to the Members (or to the President and CEO or his or her designee, depending on the proposed dollar amount and length of the contract) in connection with such project, without the need to conduct an entire solicitation process in each instance. This should save for each project two or more months that is normally needed to conduct a solicitation, perform the necessary review and formulate a recommendation.

In the event that the principal partners and attorneys identified as being responsible for JDA's matters (as required by Section IV(A)(3) of the RFP) or other key members of a pre-qualified firm's team in a particular area of expertise, leave the prequalified law firm, the pre-qualification will "follow" these key law firm member(s). Similarly, if a pre-qualified firm combines with another firm and such principal partners and other attorneys remain with the newly combined firm, the newly combined firm will be considered to be pre-qualified in that area of expertise.

Every firm on the proposed pre-qualified list has agreed to bill at or below ESD's maximum rate policy.

Duration of List

Staff recommends that the pre-qualified list remain in effect for three years, with the option to extend the duration of the list for an additional year at the discretion of the General Counsel.

Environmental Review

ESD staff has determined that approval of this pre-qualified list does not constitute an action as defined by the New York State Environmental Quality Review Act and its implementing regulations. No further environmental review is required in connection with the requested approval.

Requested Action

The Members are being asked to approve the law firms listed on Attachment A to these materials as qualified to advise JDA in the areas of expertise identified in Attachment A (and in each case related litigation) and, in the discretion of the General Counsel, such related areas of expertise as s/he may deem appropriate and advisable in connection with any matter, for a term of three years (until the first meeting of the Members after the third anniversary date hereof), plus an additional year at the option of the General Counsel.

Recommendation

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

Attachments

Resolution
Attachment A

June 28, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY– Approval of Pre-Qualified Counsel

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the New York Job Development Authority, the law firms, listed in Attachment A to this Resolution be and each hereby is, approved as pre-qualified to act as legal counsel to JDA in their various areas of expertise (and, in each case, related litigation), and in such other areas as the General Counsel, may in his or her sole discretion may deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the meeting of the Members first occurring after the third anniversary date of the date hereof or, in the discretion of the General Counsel, until the meeting of the Members first occurring after the fourth anniversary date of the date hereof.

* * *

Attachment A:
Pre-Qualified Legal Counsel
Adopted by the Board on June 28, 2017

ATTACHMENT A
Pre-Qualified Legal Counsel
Adopted by the Board on June 28, 2017

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED † M/WBE CERT PENDING ** SDVOB CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
BANKRUPTCY	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica
	Bryan Cave LLP		New York	
	Dentons US LLP		New York	
	Hodgson Russ LLP		Buffalo	Albany, New York, Saratoga Springs
	Law Offices of Donald J. Tobias		New York	
	Menter, Rudin & Trivelpiece, PC		Syracuse	Watertown
	Mintz Levin Cohen Ferris Glovsky and Popeo PC		New York	
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester
	Shearman & Sterling LLP		New York	
	Venable LLP		New York	
	Winston & Strawn LLP		New York	
BOND - SENIOR TIER	Dentons US LLP		New York	
	Harris Beach PLLC		Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Hawkins Delafield & Wood LLP		New York	
	Holland & Knight LLP		New York	
	Mintz Levin Cohen Ferris Glovsky and Popeo		New York	
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Squire Patton Boggs US LLP		New York	
	Winston & Strawn LLP		New York	

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES	
		† M/WBE CERT PENDING			
		** SDVOB CERTIFIED			
BOND - JUNIOR TIER	Barclay Damon LLP		Buffalo		
	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica	
	Bryant Rabbino LLP	*	New York		
	Buchanan, Ingersoll & Rooney PC		Buffalo	New York	
	Burgher Gray Jaffe LLP	*	New York		
	D. Seaton & Associates, PA	*	New York		
	Day Pitney LLP		New York		
	Drohan Lee LLP	*	New York		
	Golden Holley James LLP	*	New York		
	Hardwick Law Firm, LLC	*	New York		
	Hodgson Russ LLP		Buffalo	Albany, New York, Saratoga Springs	
	Law Offices of Barry D. Lites LLP	*	Huntington	New York	
	Law Offices of Joseph C. Reid, PA	*	New York		
	Lewis & Munday PC	*	New York		
	Love & Long, LLP	*	New York		
	McGlashan Law Firm, PC	*	New York		
	Norton Rose Fulbright US LLP		New York		
	Pearlman & Miranda LLC	*	New York		
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester	
	Pugh, Jones & Johnson, PC	*	New York		
	CONDEMNATION	Barclay Damon LLP		Buffalo	
Berger & Webb, LLP			New York		
Bond, Schoeneck & King, PLLC			Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica	
Carter Ledyard & Milburn LLP			New York		
Harris Beach PLLC			Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains	
Love & Long, LLP		*	New York		
Nixon Peabody LLP			New York	Buffalo, Rochester	
Phillips Lytle LLP			Buffalo	Albany, Garden City, Jamestown, New York, Rochester	

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
		† M/WBE CERT PENDING		
		** SDVOB CERTIFIED		
CONSTRUCTION	Alisa Lukasiewicz PLLC	†	Buffalo	
	Barclay Damon LLP		Buffalo	New York
	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica
	Buchanan Ingersoll & Rooney PC		Buffalo	New York
	Carter Ledyard & Milburn LLP		New York	
	Goldberg Segalla		Buffalo	Albany, Garden City, New York, Rochester, Syracuse, White Plains
	Goulston & Storrs		New York	
	Harris Beach PLLC		Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Hawkins Delafield & Wood LLP		New York	
	Hodgson Russ LLP		Buffalo	Albany, New York, Saratoga Springs
	Hoguet Newman Regal & Kenney, LLP	*	New York	
	Holland & Knight LLP		New York	
	Ingram Yuzek Gainen Caroli & Bertolotti LLP		New York	
	Kilpatrick Townsend & Stockton LLP		New York	
	Love & Long, LLP	*	New York	
	McNamee, Lochner, Titus & Williams, PC		Albany	Saratoga County
	Mintz Levin Cohen Ferris Glovsky and Popeo PC		New York	
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Pannone Lopes Devereaux & West LLC		Albany	Uniondale, White Plains
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester
	Rozario & Associates, PC	†	New York	
	Rupp Baase Pfalzgraf Cunningham LLC		Buffalo	Jamestown, Lockport, Rochester
	Saunders Kahler, LLP	*	Utica	
	Schiff Hardin LLP		New York	
	Schoeman Updike & Kaufman LLP	*	New York	
	Sive, Paget & Riesel PC		New York	
	Towne, Ryan & Partners, PC	*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs
	Venable LLP		New York	
	Wasserman Grubin & Rogers, LLP		New York	
	Whiteman Osterman & Hanna LLP		Albany	Hudson

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES	
		† M/WBE CERT PENDING			
		** SDVOB CERTIFIED			
ENVIRONMENTAL	Akerman LLP		New York		
	Barclay Damon LLP		Buffalo		
	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica	
	Bryan Cave LLP		New York		
	Buchanan Ingersoll & Rooney PC		Buffalo	New York	
	Carter Ledyard & Milburn LLP		New York		
	Greenberg Traurig, LLP		New York		
	Harris Beach PLLC		Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains	
	Hodgson Russ LLP		Buffalo	Albany, New York, Saratoga Springs	
	Holland & Knight LLP		New York		
	Kavinoky Cook LLP		Buffalo		
	Knauf Shaw LLP		Rochester		
	Nixon Peabody LLP		New York	Buffalo, Rochester	
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester	
	Rupp Baase Pfalzgraf Cunningham LLC		Buffalo	Jamestown, Lockport, Rochester	
	Sive, Paget & Riesel PC		New York		
	Towne, Ryan & Partners, PC	*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs	
	Venable LLP		New York		
	Whiteman Osterman & Hanna LLP		Albany	Hudson	
	FORECLOSURE	Bryan Cave LLP		New York	
		Buchanan Ingersoll & Rooney PC		Buffalo	New York
Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP			Uniondale		
Harris Beach PLLC			Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains	
Law Offices of Barry D. Lites LLP		*	Huntington	New York	
Law Offices of Donald J. Tobias			New York		
McNamee, Lochner, Titus & Williams, PC			Albany	Saratoga County	
Menter, Rudin & Trivelpiece, PC			Syracuse	Watertown	
Nixon Peabody LLP			New York	Buffalo, Rochester	
Phillips Lytle LLP			New York	Albany, Garden City, Jamestown, New York, Rochester	
Towne, Ryan & Partners, PC		*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs	

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
		† M/WBE CERT PENDING		
		** SDBOB CERTIFIED		
INVESTMENTS	Bryant Rabbino LLP	*	New York	
	Buchanan Ingersoll & Rooney PC		Buffalo	New York
	Burgher Gray Jaffe LLP	*	New York	
	Carter Ledyard & Milburn LLP		New York	
	Colón & Peguero and Herrick Feinstein LLP	*	New York	
	Dentons US LLP		New York	
	Drohan Lee	*	New York	
	Harris Beach PLLC and McGlashan Law Firm, PC	*	Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Hodgson Russ LLP		Buffalo	Albany, New York, Saratoga Springs
	Holland & Knight LLP		New York	
	Law Offices of Barry D. Lites LLP	*	Huntington	New York
	Lewis & Munday PC and Buckley King	*	New York	
	Lippes Mathias Wexler Friedman LLP		Buffalo	Albany, New York
	Love & Long, LLP	*	New York	
	McNamee, Lochner, Titus & Williams, PC		Albany	Saratoga County
	Miller Mayer, LLP		Ithaca	
	Mintz Levin Cohen Ferris Glovsky and Popeo PC		New York	
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Peter Papagianakis Business Law Firm		New York	
	Schoeman Updike & Kaufman LLP	*	New York	
	Silverman Shin Byrne & Gilchrest PLLC	*	New York	
	The Nelson Law Firm, LLC		White Plains	
	Venable LLP		New York	

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
		† M/WBE CERT PENDING		
		** SDVOB CERTIFIED		
LABOR & EMPLOYMENT	Akerman LLP		New York	
	Alisa Lukasiewicz PLLC	†	Buffalo	
	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica
	Brown Hutchinson LLP	*	Rochester	
	Buchanan Ingersoll & Rooney PC		Buffalo	New York
	Carter Ledyard & Milburn LLP		New York	
	Drohan Lee LLP	*	New York	
	Goldberg Segalla		Buffalo	Albany, Garden City, New York, Rochester, Syracuse, White Plains
	Gordon Rees Scully Mansukhani, LLP		New York	
	Harris Beach PLLC		Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Hodgson Russ LLP and Law Offices of Sandra Rivera, PLLC*	*	Buffalo	Albany, New York, Saratoga Springs
	Hoguet Newman Regal & Kenney, LLP	*	New York	
	Kavinoky Cook LLP		Buffalo	
	Law Offices of Donald J. Tobias		New York	
	McNamee, Lochner, Titus & Williams, PC		Albany	Saratoga County
	Mintz Levin Cohen Ferris Glovsky and Popeo PC		New York	
	Paulose PLLC	*		
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester
	Pugh, Jones & Johnson, PC	*	New York	
	Putney, Twombly, Hall & Hirson LLP		New York	
	Rozario & Associates, PC	†	New York	
	Saunders Kahler, LLP	*	Utica	
	Schoeman Updike & Kaufman LLP	*	New York	
	Schroeder, Joseph & Associates, LLP	*	Buffalo	
	Towne, Ryan & Partners, PC	*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs
	Tully Rinckey PLLC	**	Albany	Binghamton, Buffalo, Rochester, Syracuse
	Venable LLP		New York	
	Whiteman Osterman & Hanna LLP		Albany	Hudson
	Wong Fleming, PC	*	New York	

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED † M/WBE CERT PENDING ** SDVOB CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
REAL ESTATE & LAND USE	Alisa Lukasiewicz PLLC	†	Buffalo	
	Barclay Damon LLP		Buffalo	
				Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica
	Bond, Schoeneck & King, PLLC		Syracuse	
	Bryan Cave LLP		New York	
	Bryant Rabbino LLP	*	New York	
	Buchanan Ingersoll & Rooney PC		Buffalo	New York
	Carter Ledyard & Milburn LLP		New York	
	Divitta Alexander PLLC	*	Buffalo	
	Drohan Lee LLP	*	New York	
	Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP		Uniondale	
	Goulston & Storrs		New York	
	Hardwick Law Firm, LLC	*	New York	
				Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Harris Beach PLLC		Rochester	
	Hawkins Delafield & Wood LLP		New York	
	Herrick Feinstein LLP		New York	
	Hodgson Russ LLP and Law Offices of Sandra Rivera, PLLC	*	Buffalo	Albany, New York, Saratoga Springs
	Holland & Knight LLP		New York	
	Ingram Yuzek Gainen Caroll & Bertolotti LLP		New York	
	Kavinoky Cook LLP		Buffalo	
	Knauf Shaw LLP		Rochester	
	Law Offices of Barry D. Lites LLP	*	Huntington	New York
	Law Offices of Donald J. Tobias		New York	
	Love & Long, LLP	*	New York	
	Menter, Rudin & Trivelpiece, PC		Syracuse	Watertown
	Mintz Levin Cohen Ferris Glovsky and Popeo PC		New York	
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Pannone Lopes Devereaux & West LLC		Albany	Uniondale, White Plains
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester
	Rozario & Associates, PC	†	New York	
	Rupp Baase Pfalzgraf Cunningham LLC		Buffalo	Jamestown, Lockport, Rochester
	Saunders Kahler, LLP	*	Utica	
	Schiff Hardin LLP		New York	
	Schoeman Updike & Kaufman LLP	*	New York	
	Shearman & Sterling LLP		New York	
	Sive, Paget & Riesel PC		New York	
	Skadden, Arps, Slate, Meagher & Flom LLP		New York	
	Towne, Ryan & Partners, PC	*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs
	Venable LLP		New York	
Whiteman Osterman & Hanna LLP		Albany	Hudson	
Windels Marx Lane & Mittendorf, LLP		New York		

PRACTICE AREA	FIRM NAME	* M/WBE CERTIFIED	MAIN NY OFFICE	ADDITIONAL NY OFFICES
		† M/WBE CERT PENDING		
		** SDVOB CERTIFIED		
REGULATORY LITIGATION	Alisa Lukasiewicz PLLC	†	Buffalo	
	Bond, Schoeneck & King, PLLC		Syracuse	Albany, Buffalo, Garden City, Ithaca, New York, Oswego, Rochester, Utica
	Bryan Cave LLP		New York	
	Carter Ledyard & Milburn LLP		New York	
	Goldberg Segalla		Buffalo	Albany, Garden City, New York, Rochester, Syracuse, White Plains
	Harris Beach PLLC		Rochester	Albany, Buffalo, Ithaca, Melville, New York, Saratoga Springs, Syracuse, Uniondale, White Plains
	Hodgson Russ LLP and Law Offices of Sandra Rivera, PLLC	*	Buffalo	Albany, New York, Saratoga Springs
	Hoguet Newman Regal & Kenney, LLP	*	New York	
	Kavinoky Cook LLP		Buffalo	
	Law Offices of Donald J. Tobias		New York	
	McNamee, Lochner, Titus & Williams, PC		Albany	Saratoga County
	Nixon Peabody LLP		New York	Buffalo, Rochester
	Pannone Lopes Devereaux & West LLC		Albany	Uniondale, White Plains
	Phillips Lytle LLP		Buffalo	Albany, Garden City, Jamestown, New York, Rochester
	Rupp Baase Pfalzgraf Cunningham LLC		Buffalo	Jamestown, Lockport, Rochester
	Sive, Paget & Riesel PC		New York	
	Towne, Ryan & Partners, PC	*	Albany	Burnt Hills, Cobleskill, Poughkeepsie, Saratoga Springs
	Venable LLP		New York	
	Whiteman Osterman & Hanna LLP		Albany	Hudson

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Item II. A.



FOR CONSIDERATION

June 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Staten Island (New York City Region – Richmond County) – JDA Loan for the Benefit of United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association

REQUEST FOR: Authorization to Amend Original New York Job Development Authority Loan Approval and Take Related Actions; Determination of No Significant Effect on the Environment

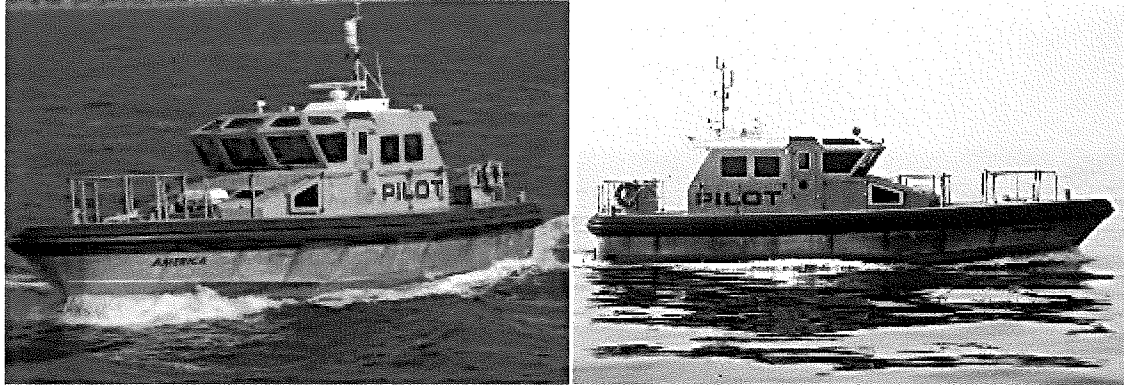
I. SUMMARY

In August of 2014, the JDA Board approved a \$3,435,000 JDA loan for the benefit of the United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association (the "Associations" or the "Pilots") (see original loan memos attached). In March of 2017, the Associations requested an additional \$6,475,000 to increase the total project cost to \$12,200,000. A significant portion of the building has been completed, including nearly all of the structural portions of the building. Pilings, structural concrete and structural steel are mostly complete. However, there are portions of the building that require remediation due to mistakes made by the original contractor, who, as a result, was terminated and replaced by a new contractor to complete the project. The new contractor's revised budget is higher than the original budget, resulting in the new sources and uses listed below:

JDA Budget (permanent financing)					
Uses			Sources		
Construction	\$ 10,200,000	84%	Northfield Bank Loan (first lien)	\$ 3,500,000	29%
Soft Costs	2,000,000	16%	JDA (second lien)	3,435,000	28%
			Sandy Hook Pilots Equity	3,265,000	27%
			SBA Disaster Loan (third lien)	2,000,000	16%
Total Project Costs	\$ 12,200,000	100%	Total Project Financing	\$12,200,000	100%

Because of the increased project cost and debt associated with the project, the Associations have agreed to offer their four vessels as additional collateral (along with the second lien, behind Northfield, originally offered on the building, which is valued at \$5.9MM).

There are currently four America class boats (America, Wanderer, Phantom, and Yankee). These are used for pilot boarding and transporting pilots to and from the pilot station. The four vessels are valued at a combined \$3.9MM.



America Class Launch

The new proposed JDA terms would be:

Potential JDA Loan Terms (Real Estate)	
Borrower:	United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association
Economic Region:	New York City (Staten Island)
Loan Amount Requested:	\$3,435,000
Rate:	4.54% (fixed)
Term:	20 years
Distressed Area:	Yes
Initial Payment:	\$21,805.74

Projected Debt Service Coverage Ratio			
	2016	2017	2018
EBITDA	\$31,888,365	\$32,845,016	\$33,830,366
Annual Debt Service			
Existing Debt	\$909,769	\$909,769	\$909,769
JDA Loan	261,672	261,672	261,672
Bank Loans	372,140	372,140	372,140
Total Debt Service	\$1,543,581	\$1,543,581	\$1,543,581
DSCR	20.66	21.28	21.92
Minimum DSCR	1.20	1.20	1.20
EBITDA at Minimum DSCR	\$1,852,298	\$1,852,298	\$1,852,298
Decrease Allowed	\$30,036,067	\$30,992,718	\$31,978,069
Percentage (%)	94.2%	94.4%	94.5%

Loan-to-Value for Real Estate Loan	
Loans	
Northfield Bank Loan	\$3,500,000
JDA Loan	\$3,435,000
Total Loans	\$6,935,000
Collateral Value	
Real Estate	\$5,900,000
Boats (discount value at 50%)	\$1,950,000
Total Value	\$7,850,000
Loan-to-Value:	88.34%

II. RECOMMENDATION

JDA staff recognizes that this was a difficult situation for the Pilots, and the increased cost of the project is unfortunate. However, the EBITDA generated by the Associations more than adequately covers the projected increased debt service, and the fact that the Pilots are willing to utilize the boats as collateral puts the loan-to-value ratio below the JDA maximum. There will be no change to the amount of JDA financing provided; it will remain at \$3,435,000. The Pilots have explored and found alternative sources of financing to get the project done, without resorting to asking for additional JDA funds, and have also increased the share of equity that they will invest in the new building. Based on these circumstances and the vital role that the Pilots play in the New York shipping industry, staff recommends approval of the new project costs and capital stack.

III. ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA has determined that, although the funding of this project by the JDA may constitute an "action" as defined by the State Environmental Quality Review Act ("SEQRA"), a significant portion of the project construction has been previously completed. The JDA's action in the funding decision will not alter the adverse environmental impacts, if any, of the project as completed. ESD staff accordingly believes that funding the substantially completed project will not have any significant adverse impacts on the environment. Therefore, it is recommended that the JDA make a Determination of No Significant Effect on the Environment.

IV. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-discrimination & Contractor and Supplier Diversity policy will apply to the Project. The Recipient shall be required to use good faith efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise ("MWBE") participation of 40%, Minority Business Enterprise ("MBE") participation of 25% and a Women Business Enterprise ("WBE") participation of 15% related to the total value of ESD's funding and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project. MBE participation requirements may not be substituted for WBE participation, or the reverse.

V. ADDITIONAL SUBMISSIONS

Resolution

Original JDA Board Materials (August 4, 2014)

June 28, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY – Staten Island (New York City Region – Richmond County) – United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association – New York Job Development Authority Loan Projects – Real Estate Loan — Authorization to Make Loan and Take Related Actions; Determination of No Significant Effect on the Environment

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Real Estate Loan to Statewide Local Development Corporation for the benefit of United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association for an amount not to exceed \$3,435,000 or 28% of the total project cost, whichever is less, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority 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 as he or she may deem appropriate in the administration of the Loan; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority 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; and be it further

RESOLVED, that the provision of financial assistance by the Corporation is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

RESOLVED, that based on the materials submitted to the Authority with respect to the project, the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby determines that the proposed action will not have a significant effect on the environment.

* * *

ORIGINAL JDA BOARD MATERIALS



FOR CONSIDERATION

TO: The Members

FROM: Kenneth Adams

DATE: August 4, 2014

SUBJECT: Staten Island (New York City Region – Richmond County) – JDA Real Estate Loan for the benefit of United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association

RE: Authorization to Make a Real Estate Loan with New York Job Development Authority Proceeds and Take Related Actions; Determination of No Significant Effect on the Environment

JDA Loan Terms	
Borrower:	United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association
Economic Region:	New York City (Staten Island)
Loan Amount Requested:	\$3,435,000
Rate:	4.73% (fixed)
Term:	20 years
Classification:	IA-
Distressed Area:	Yes
Initial Payment:	\$22,160.28

JDA Budget					
Uses			Sources		
Building Construction	\$ 4,725,000	83%	JDA ⁽¹⁾	\$ 3,435,000	60%
Soft Costs	1,000,000	17%	Northfield Bank Loan	1,717,500	30%
			Equity	572,500	10%
Total Project Costs	\$ 5,725,000	100%	Total Project Financing	\$ 5,725,000	100%
(1) 20-year term at 4.73% fixed annual rate.					

Security: A second lien on the real estate located at 201 Edgewater Street in Staten Island, NY. The value of the collateral is \$5,900,000.

Job Information (at project site):

Existing: 130 full-time jobs retained

JDA Loan Amount per job: \$26,423

Project Summary:

Borrower: United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association
201 Edgewater Street
Staten Island, NY 10305

Contact: Captain Thomas P. Walsh, Vice President
Phone: 718-448-3900 x200
Fax: 718-816-8036

This report concerns a proposed New York Job Development Authority ("JDA") loan for the amount of \$3,435,000 (the "JDA Loan"). The JDA Loan is to be used towards the construction of a facility located in Staten Island, New York (the "Project"). The total cost of the Real Estate Project is \$5,725,000 (the "Project Cost").

Project location: 201 Edgewater Street
Staten Island, NY 10305

Project Completion: 2nd Quarter 2015

1) PROJECT OVERVIEW AND RECOMMENDATION

Background

The United New York Sandy Hook Benevolent Association & United New Jersey Sandy Hook Benevolent Association (the "Associations") history began in 1694, when New York's colonial assembly commissioned a small group of local seamen to aid the captains of ships in navigating the tricky tidal currents and narrow passages of New York Harbor. At the time, the city's population was only about 3,000, but its business grew with the harbor, turning into a highly competitive trade where various local pilot groups vied for the business of ships arriving off the ocean. This format continued until the Blizzard of 1888 struck New York City. While the city was paralyzed, the pilot groups were devastated. Nine boats and 17 pilots were lost in the blizzard.

Following this tragedy, the New York State Board of Commissioners forced the competing pilot groups to combine into a single entity and pursue the safe boarding method of a steam powered station boat. Now known as the Sandy Hook Pilots, this group is responsible for

providing pilotage to all foreign flag vessels entering and leaving the Port of New York and New Jersey (the "Port").

Today, the 75 pilots in the Associations provide pilotage services to all foreign flag vessels and American vessels under register (regulated vessels) entering or departing the Port, the Hudson River, the East River, Atlantic City, Jamaica Bay, and Long Island Sound as required by state law. Pilotage is provided on a 24-hour basis, 365 days of the year in all weather conditions and port circumstances. These highly trained men and women provide the port navigational safety, protect the interests of the bi-state region, and serve the public trust. The apprentice training program creates licensed harbor pilots capable of piloting the largest of seafaring vessels entering and leaving the port. These pilots provide this service for all foreign flagged vessels, and vessels under registry, comprising of 95% of all cargo entering the Port.

The Associations now take in over \$54MM a year in fees from pilotage services. The top five major customers in terms of annual pilotage revenue include: Moran Shipping Agencies (\$5.8MM/year), Mediterranean Shipping Company (\$4.8MM), Maersk, Inc. (\$4MM), Norton Lilly International (\$3.4MM), Hapag-Lloyd Inc. (\$2.7MM). The Associations collect and process the pilotage fees, assign and provide logistical services for the pilots, maintain the headquarters on Staten Island and the boats, and provide payroll, health insurance, and pensions for the pilots.

The pilots function in a highly regulated industry. The states issue the licenses to qualified applicants in order to have competent pilots in sufficient number to provide all of the pilotage needs of the port. Changes in ships sizes and cargo volumes speak to this required number of pilots. These are the only market trends for this navigational service in the port. The Board of Commissioners of Pilots is a public agency, created by the New York State Legislature, to provide for the selection, training, licensing, and regulation of pilots, who navigate oceangoing vessels, and also set prices for pilotage services based on tonnage volume.

Project Description

The Associations are the sole providers of pilotage service to ships entering and departing from the Port. The base of operations, located on the North Shore of Staten Island, suffered heavy damages from Hurricane Sandy and an entirely new building is needed. The project calls for the construction of a 14,000-square-foot facility 8 feet above FEMA Flood Plain (see maps, renderings, and pictures in the Diagrams and Photos section on pages 14-17). The facility will house a machine and engine repair shop, administration offices, pilot dispatch and operations command center and will include the installation of back-up systems for the communications systems and power.

The \$5.725MM project will support 20 construction jobs and retain 130 jobs at the Staten Island location. Currently in design and permitting phase the construction is expected to begin in 2014 and be completed by April 2015. The Associations came to JDA to finance along with Northfield Bank. JDA was willing to provide 60% of permanent financing,

extending over 20 years, which Northfield couldn't match on its own. The pilot members are responsible for servicing the debt. Spreading the debt payments over a longer time horizon will enable newer and future members to more equally share in the debt obligations with the seasoned pilots who will be retiring shortly, and also more accurately mirror the asset life.

The Associations' pilots take distributions (in lieu of salary) based on seniority and licensure levels. The average annual distribution per pilot in 2013 was \$367k (not including benefits and pension). Based on a decision by the Board of Trustees with backing by a majority of the pilot members, debt can be assumed by the Pilots to make capital expenditures. Debt service payments, as with all other common expenses, will reduce annual per pilot distributions.

The economic priority of this project stems directly from the vital services the Associations provide throughout the chain of intrastate, interstate, and international commerce created on the waters of New York. Moreover, the Pilots are responsible for significant job retention and creation within New York State. Currently, the Associations employ 130 people, the majority of whom are New York State residents. This workforce includes the pilots, shoreman, mechanics, administrators, and various other professionals. Combined, the Associations are responsible for creating over \$45 million in direct workforce revenue each year.

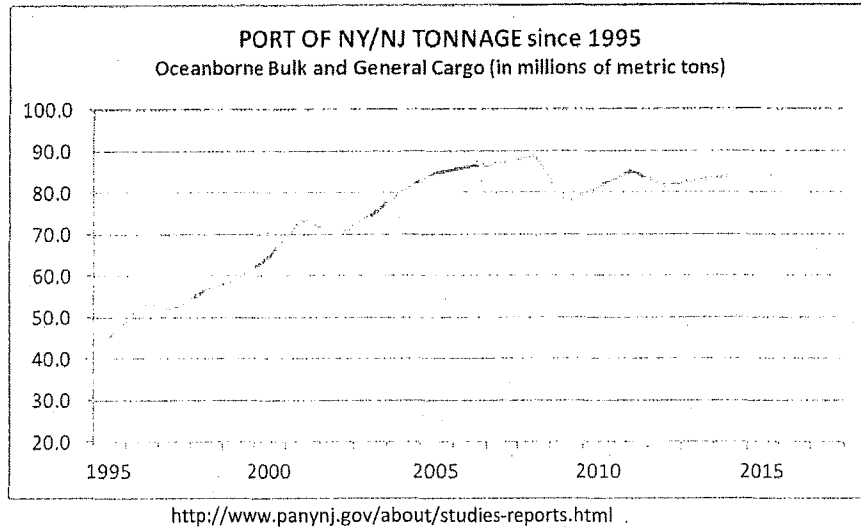
The project is located in a highly distressed area of Staten Island post-Sandy.

Market Analysis

The global shipping climate was obviously affected by the "Great Recession" in 2008. Countries throughout the world faced fiscal crisis and fuel prices rose. However, the New York-New Jersey Port Industry continued to invest in the infrastructure needed for efficient global supply chains. This included deepening of the channels, significant terminal enhancements and expansions, state-of-the-art inland connections, and new terminals in the Jersey City/Bayonne area to accommodate and support the larger Post-Panamax ships that are now being developed.

The Port of NY/NJ industry supports more than 279,200 local jobs representing nearly \$12B in annual wages. Many of these jobs are allotted to increasingly-scarce high-quality skilled trades. Meanwhile the port generates more than \$5B in annual tax revenues to state and local governments.¹

¹ <http://www.panynj.gov/port/regional-economic-benefits.html>



Recommendation

The JDA Loan is recommended for approval based on the following:

- The Associations are financially strong with pilotage fees stable over the 3-year historical period. Based on 2013 financials, the Associations have the ability to repay the JDA loan with a projected Debt Service Coverage Ratio ("DSCR") that meets JDA's minimum standard of 1.20.
- Per the Articles of Association, the Associations members are only paid after the Association pays out all collected pilotage fees to operating costs, debt service, insurance, and pension obligations.
- At the completion of this project, 130 full-time jobs will be retained for each of the five years after loan disbursement. The Associations considered relocating to New Jersey.

2) COVENANTS AND CONDITIONS

This Loan is predicated upon the following financial conditions:

- The Associations must obtain firm commitments satisfactory to JDA from responsible financial sources for the total project cost exclusive of any loan requested from JDA.
- The Associations must provide an appraisal of the subject property that indicates a loan to value not to exceed 90% at the time of closing.
- The Associations must maintain a minimum debt service coverage ratio of 1.20 throughout the term of the loan.
- The Associations cannot amend Section 3 of their Articles of Association without the expressed written consent of the New York Job Development Authority.
- The Associations must meet all other standard JDA requirements as follows:
 - a. Completion of the Real Estate Project to the satisfaction of JDA, as evidenced by a certificate of occupancy and such other

certification (including environmental approvals) required for the Facility to be used for the purposes intended.

- b. Execution and delivery of the Note, the Security Agreement, the Mortgage and Loan and Use Agreement (furnished by JDA), and related documents by the Associations, all satisfactory to JDA.
- c. Procurement by the Associations of funds which shall be used at or prior to the closing to pay the Real Estate Project Cost, exclusive of the proceeds of the Loan.
- d. Receipt by JDA of policies of insurance, including flood insurance if required, in amount, form and substance and issued by companies satisfactory to JDA.
- e. Receipt by JDA of an itemized statement of Real Estate Project Cost, satisfactory to JDA. (PLEASE BE ADVISED THAT, FOR ACQUISITION OF EXISTING BUILDINGS, THERE MUST BE SUFFICIENT ELIGIBLE BUILDING CONSTRUCTION REHABILITATION COSTS TO SATISFY THE REQUIREMENTS SET FORTH IN THE INTERNAL REVENUE CODE AS DETERMINED BY JDA'S BOND COUNSEL).
- f. Receipt by JDA of financing documents of other lender(s) satisfactory to JDA.
- g. Satisfaction of such other conditions as JDA, with advice of counsel, deems necessary or advisable to effectuate the Loan, secure the interest of JDA and insure compliance with the JDA Statute and applicable provisions of the Internal Revenue Code.
- h. Execution of documents to permit monthly electronic debit of the Pilots' checking account to repay the Loan.
- i. Compliance with ADDITIONAL REQUIREMENTS stipulated in all Schedules, Exhibits and Riders, attached hereto and made a part hereof.
- j. Compliance with any other terms and conditions deemed to be necessary and appropriate in the opinion of the General Counsel of JDA.
- k. The Associations will contribute at least 10% in equity to the Real Estate Project. Equity is defined as any non-debt source of capital and should be auditable through the Associations' financial statements or the Associations' accounts, if so requested by JDA.
- l. Subordination of any loans to the Associations from those certain officers and members of the Associations stipulated herein in a manner satisfactory to JDA.
- m. The Associations shall not enter into any agreement by which the terms of payment of any principal or interest under any other bank loan are waived, modified, deferred, delayed, increased or reduced in rate or amount, without the prior written consent of JDA.

- n. All certifications and permits for the operating purposes of the Facility to be in full force and effect prior to closing the Loan.
- o. Subordination of any leases which may affect the Facility to the Mortgage.

3) ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA 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.

4) NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-discrimination & Contractor and Supplier Diversity policy will apply to the Project. The Recipient shall be required to use good faith efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise ("MWBE") participation of 40%, Minority Business Enterprise ("MBE") participation of 25% and a Women Business Enterprise ("WBE") participation of 15% related to the total value of ESD's funding and to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project. MBE participation requirements may not be substituted for WBE participation, or the reverse. A further explanation of the MWBE requirements is attached hereto.

5) ADDITIONAL SUBMISSIONS TO MEMBERS

New York State Map
JDA Loan Underwriting Classification System
Diagrams and Photos

August 4, 2014

Staten Island (New York City Region – Richmond County) – United New York Sandy Hook Benevolent Association & United New Jersey Sandy Hook Benevolent Association – New York Job Development Authority Special Purpose Fund Direct Loan Project – Real Estate Loan -- Authorization to Make Loans and to Take Related Action

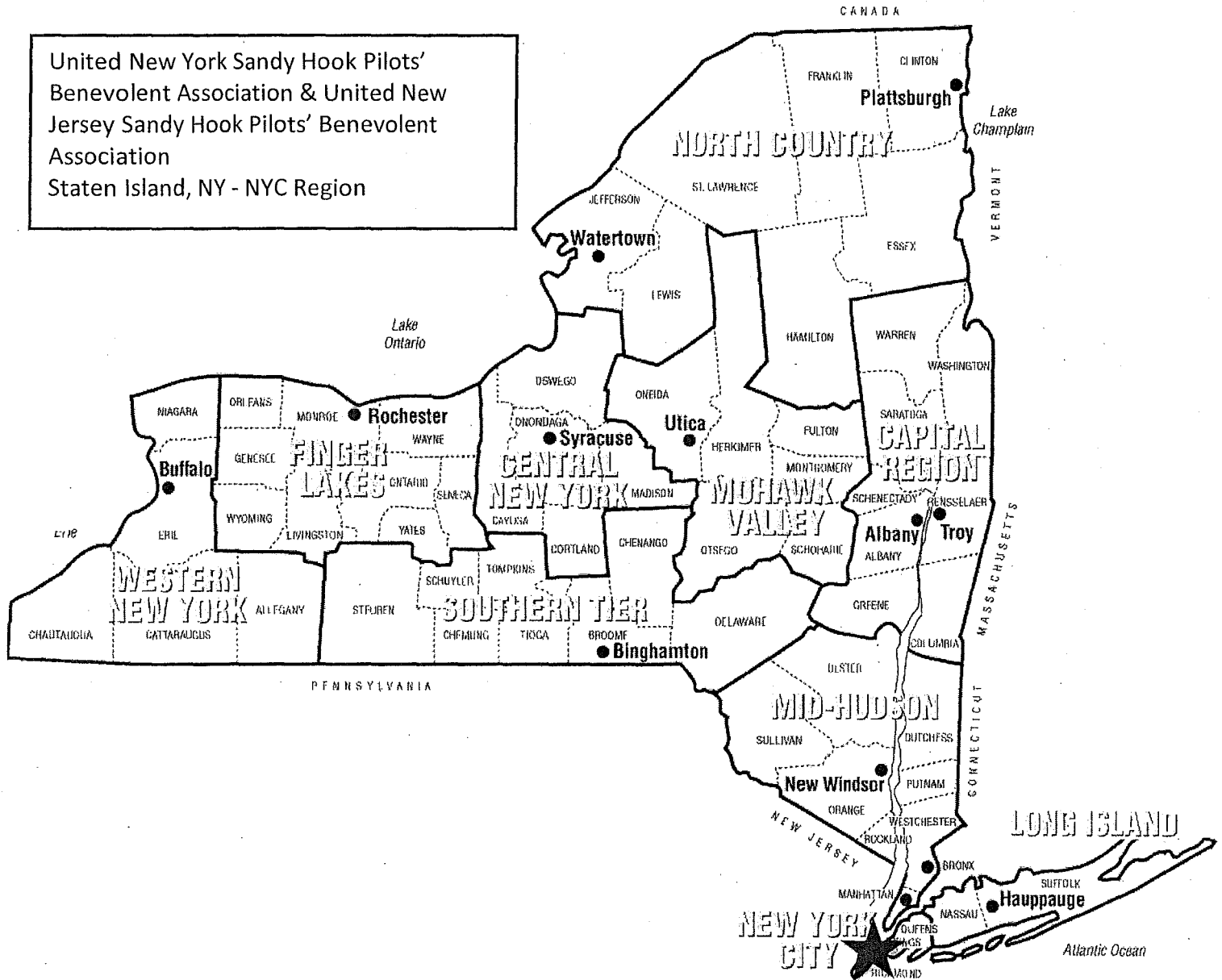
RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Real Estate Loan to Statewide Local Development Corporation for the benefit of United New York Sandy Hook Benevolent Association & United New Jersey Sandy Hook Benevolent Association for an amount not to exceed \$3,435,000 or 60% of the total project cost, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

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

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority 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; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

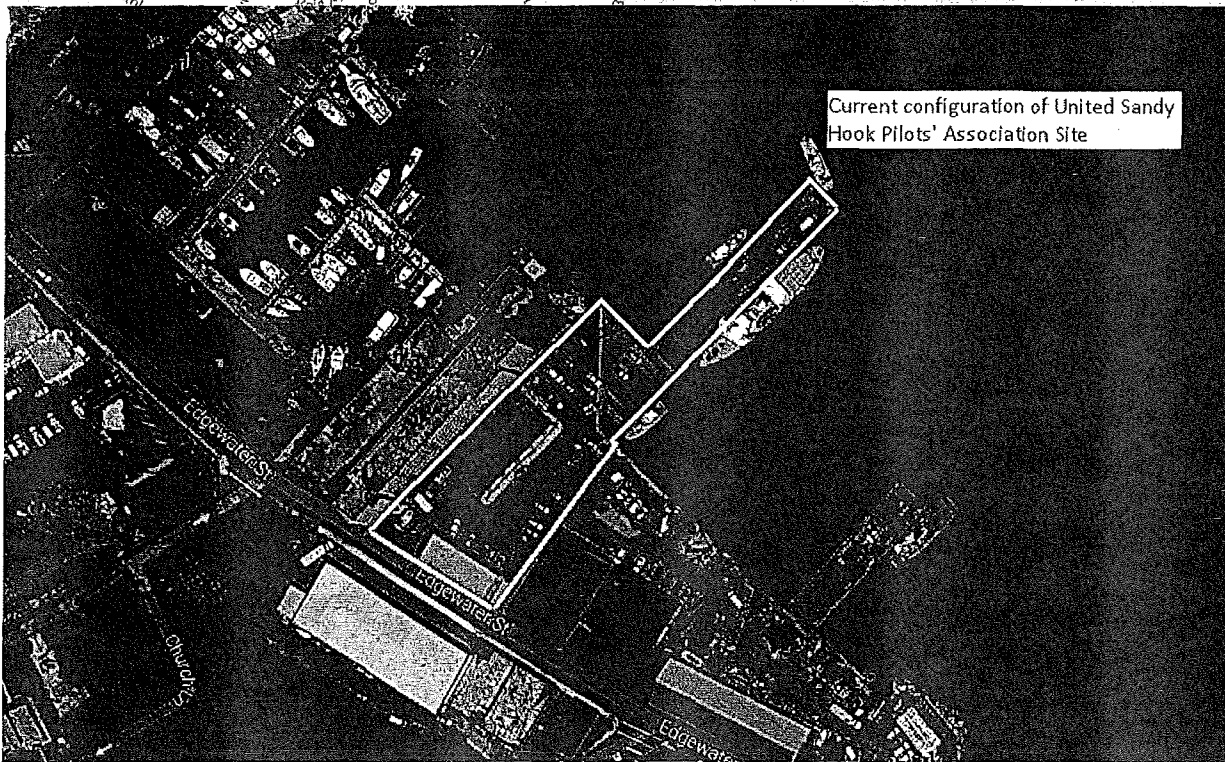
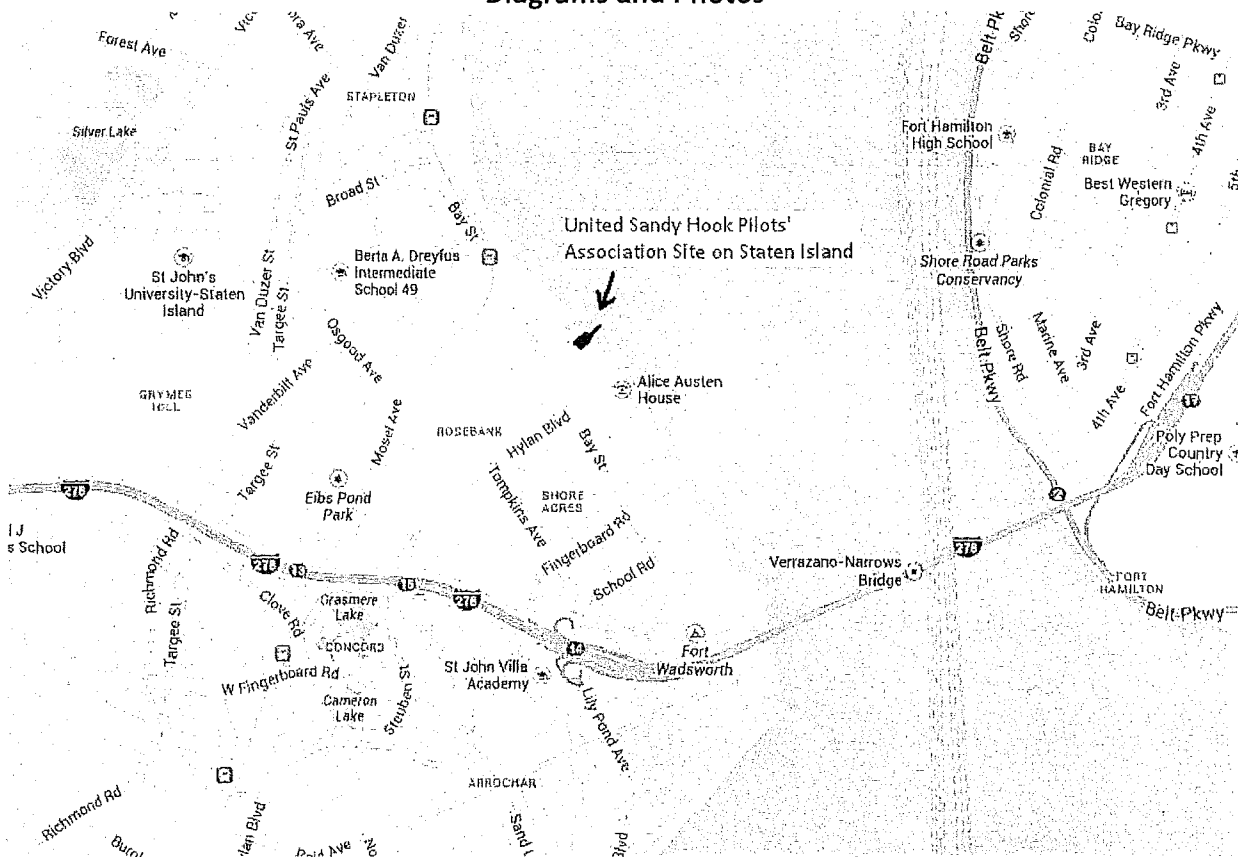
United New York Sandy Hook Pilots' Benevolent Association & United New Jersey Sandy Hook Pilots' Benevolent Association
Staten Island, NY - NYC Region



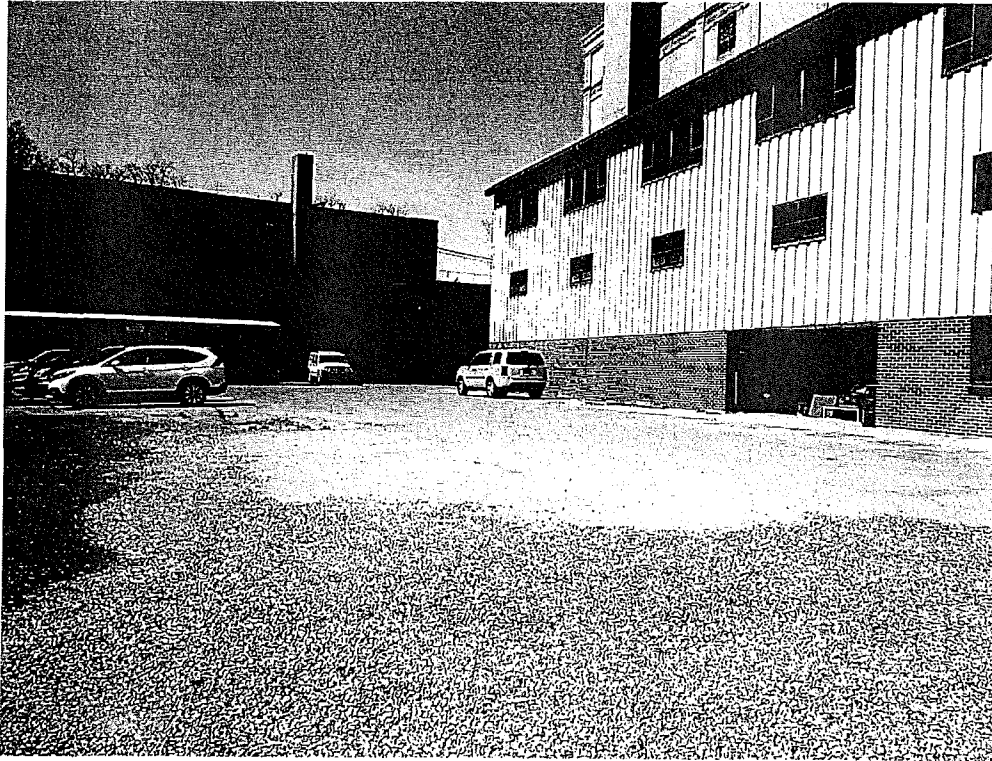
JDA Underwriting Classification Chart

Level I: Cash Flow		Level II: Default Risk	Level III: Collateral Value
I	Actual or Adjusted Debt Service Coverage \geq 1.2:1	A Score of \geq 4 on the Default Risk Model Low Risk	Liquid value of collateral + + adjusted value of personal guarantee \geq total loan value
	Actual or Adjusted Debt Service Coverage $<$ 1.2:1, but with Projected Debt Service Coverage \geq 1.2:1	B Score of 3 on the Default Risk Model Moderate Risk	Liquid value of collateral+ - adjusted value of personal guarantee $<$ total loan value
		C Score of \leq 2 on the Default Risk Model Higher Risk	

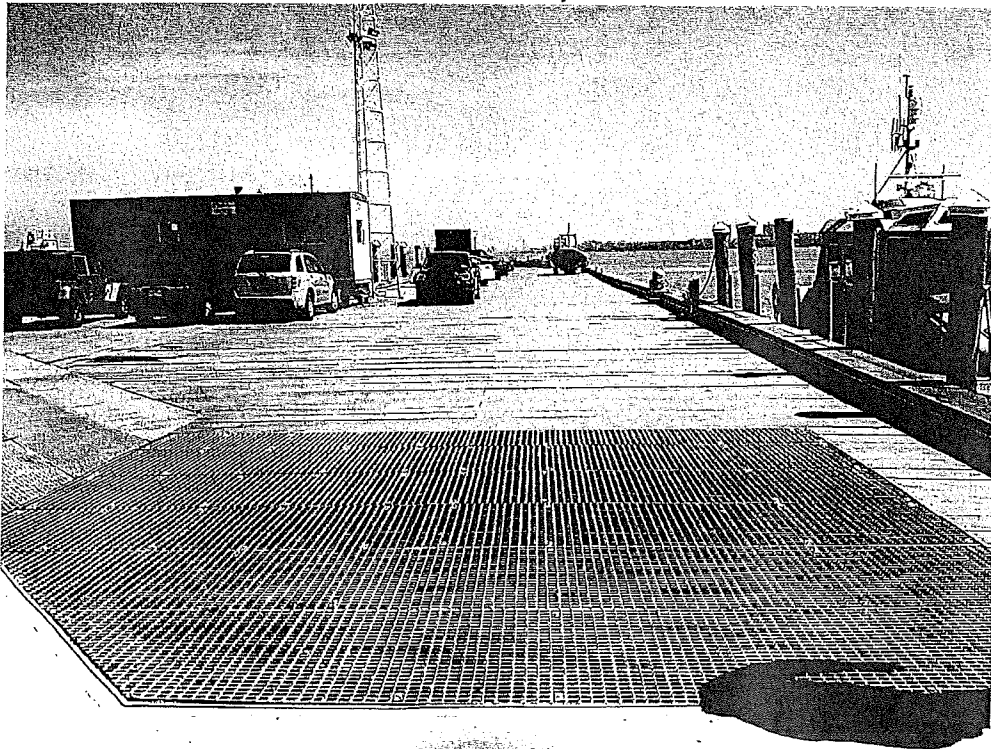
Diagrams and Photos



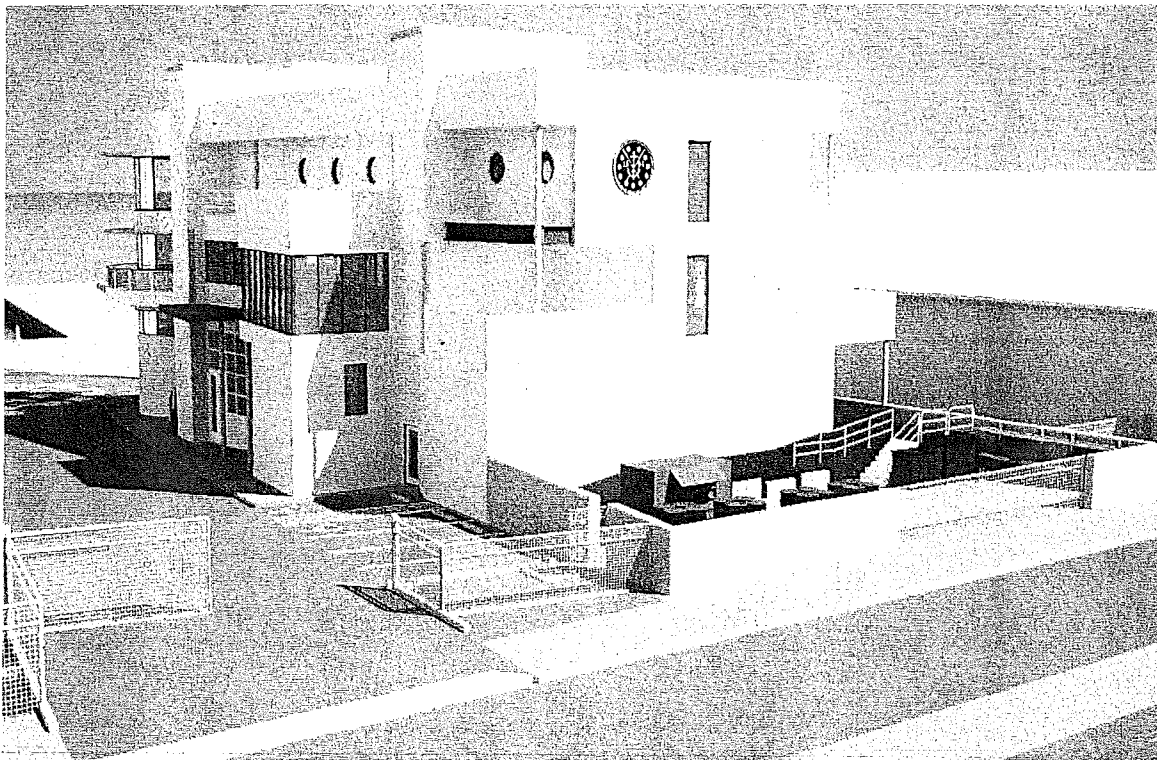
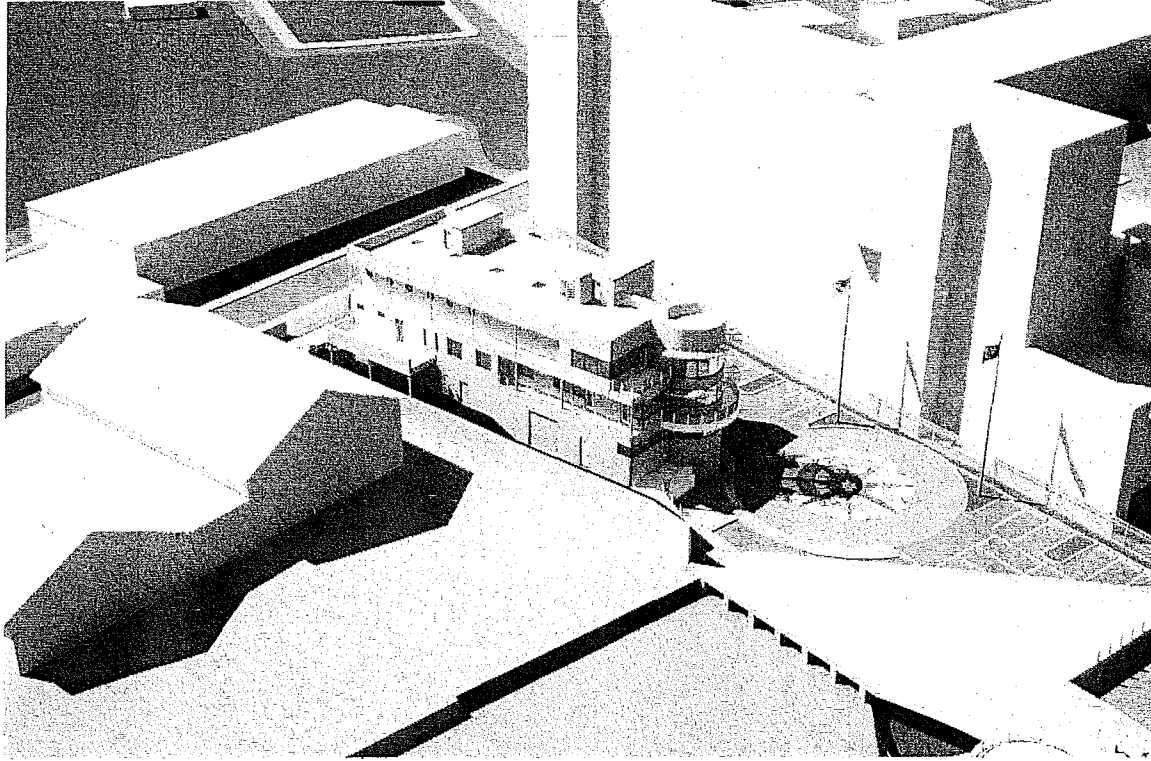
Current View of Site with Buildings to be demolished



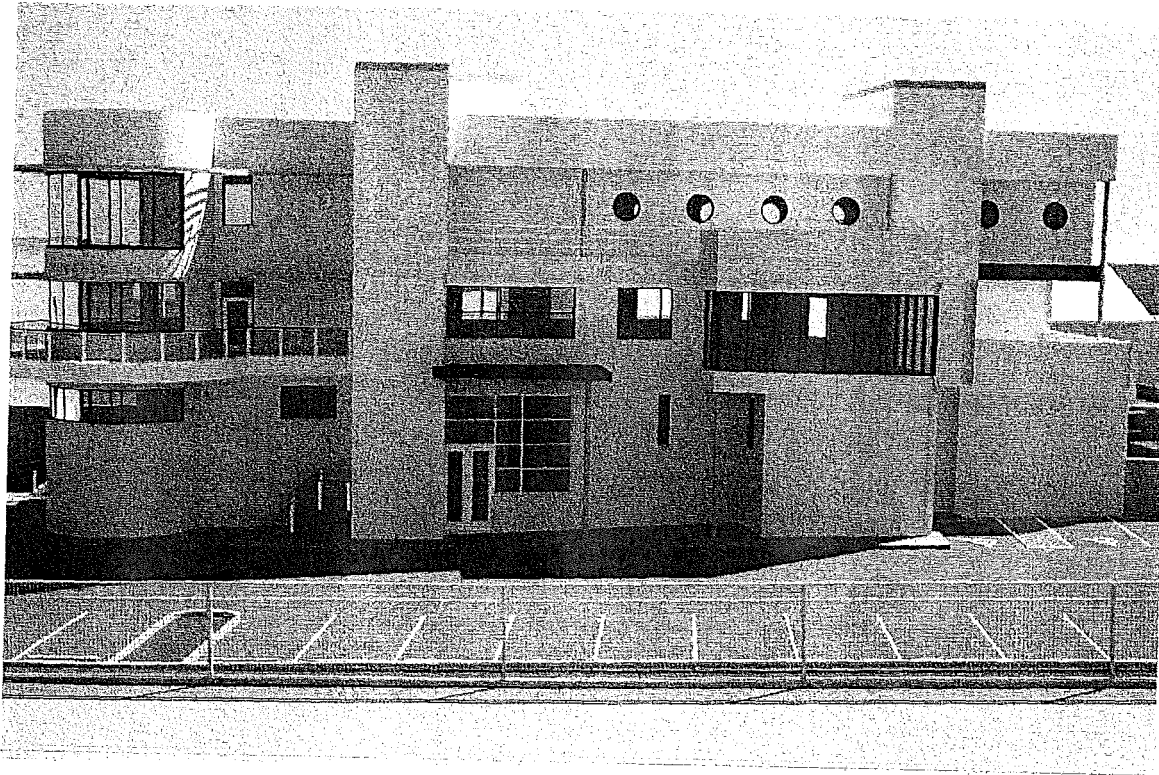
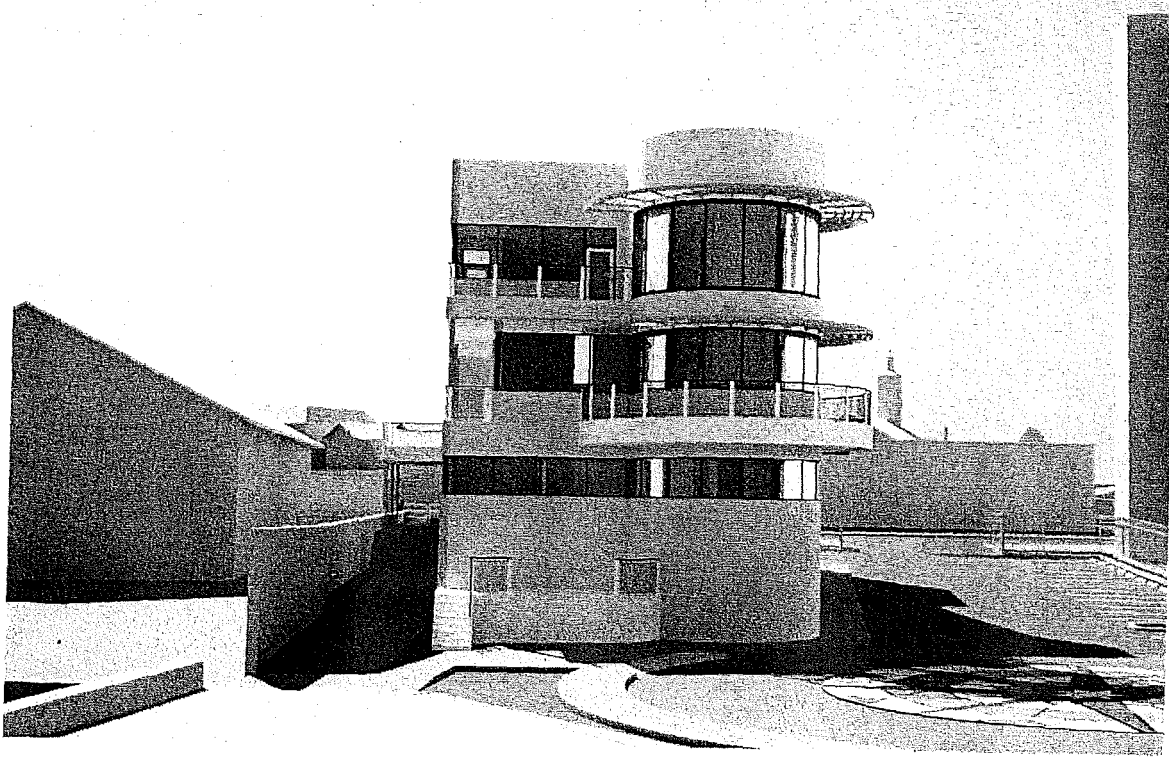
Current View of Newly Rebuilt Pier



Architect's Renderings of Proposed Building



Architect's Renderings of Proposed Building continued



Item II. B.



FOR CONSIDERATION

June 28, 2017

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Ontario (Finger Lakes Region – Wayne County) – JDA Loan for the Benefit of Intergrow Holding Company, Inc.

REQUEST FOR: Authorization to Amend Original New York Job Development Authority Loan Approval and Take Related Actions

I. SUMMARY

In June of 2016, the JDA Board approved a \$5.7 million JDA loan for the benefit of Intergrow Holding Company, Inc. ("Intergrow" or the "Company") (see original loan memo attached).

Intergrow planned to develop a new facility for the production and distribution of greenhouse tomatoes on a 115-acre site in the Town of Webster, New York. In 2016, the Company secured a purchase agreement for the land and completed the design of a 3-phase project that would create approximately 74 acres of tomato production and support space. The first phase of the project had an estimated capital cost of \$33.2 million, comprised of \$23 million in financing from Farm Credit East, \$5.7 million from JDA, \$3.7 million in cash equity, and various economic development agency and utility grants.

With a construction start planned for the fall of 2016, Intergrow began the site approval process with the Town of Webster Planning Board. During that process, issues were raised regarding an easement that restricts the nature of development on the site. Those issues delayed the site review and eventually the Company withdrew its application. Intergrow continues to dispute the planning board's delays and findings and believes there was no reasonable cause to delay the site plan review.

As a result of the Webster site issues, representatives of the Town of Ontario in Wayne County contacted Intergrow to offer an alternative site located on Timothy Lane in the BEH Industrial Park, right off of Route 104, which is just four miles from the Webster location. That site includes 115 acres and can accommodate a 3-phase project almost identical to the one planned for the Webster site.

The new sources and uses would be as follows:

JDA Budget					
Uses			Sources		
Building Construction	\$ 24,850,000	65%	Farm Credit East Senior Loan ⁽¹⁾	\$ 16,620,000	44%
Utility Engineering and Installation	7,350,000	19%	Farm Credit East Subordinate Loan ⁽²⁾	7,000,000	18%
M&E Purchase	2,000,000	5%	JDA Loan ⁽³⁾	5,700,000	15%
Soft Costs and Working Capital	1,600,000	4%	Equity	5,700,000	15%
Land Acquisition	1,500,000	4%	ESD Grant	1,500,000	4%
Construction Interest	650,000	2%	Office of Community Renewal Grant*	730,000	2%
			Rochester Gas & Electric Grant*	700,000	2%
Total Project Costs	\$ 37,950,000	100%	Total Project Financing	\$ 37,950,000	100%
(1) First mortgage.					
(2) Third mortgage.					
(3) Second mortgage.					
* Estimate.					

Due to the location change from Webster to Ontario, the borrower's name will change to Intergraw East, Inc. However, the company ownership structure will remain the same.

The new proposed JDA terms would be:

Potential JDA Loan Terms (Real Estate)	
Borrower:	Intergraw East, Inc. (for the benefit of Intergraw Holding Company, Inc.)
Economic Region:	Finger Lakes (Wayne County)
Loan Amount Requested:	\$5,700,000
Rate:	4.04% (fixed)
Term:	10 years
Distressed Area:	Yes
Initial Payment:	\$57,818.15

Projected Debt Service Coverage Ratio			
	2019	2020	2021
EBITDA	\$4,756,000	\$3,629,000	\$8,938,000
Annual Debt Service			
JDA Loan	\$693,818	\$693,818	\$693,818
Farm Credit East Loans	2,836,136	2,836,136	2,836,136
Total Debt Service	\$3,529,954	\$3,529,954	\$3,529,954
DSCR	1.35	1.03	2.53
Minimum DSCR	1.20	1.20	1.20
EBITDA at Minimum DSCR	\$4,235,944	\$4,235,944	\$4,235,944
Decrease Allowed	\$520,056	-\$606,944	\$4,702,056
Percentage (%)	10.9%	-16.7%	52.6%

Intergrow expects to plant a much larger crop in the fall of 2020 and incur the costs of goods sold associated with that crop in the same year. However, the Company will not realize most of the revenue from the crop until 2021, therefore EBITDA in 2020 is projected to decline.

Loan-to-Value	
Loans	
JDA Loan	\$5,700,000
Farm Credit East Loan	23,620,000
Total Loans	\$29,320,000
Collateral Value	
Real Estate	\$37,950,000
Total Value	\$37,950,000
Loan-to-Value:	77%

The map shows a proposed development site divided into two main phases. Phase 1 is located in the upper right and Phase 2 is in the lower right. Both phases are rectangular and have a level corridor. The site is bounded by a road to the north and a road to the east. The map also shows existing infrastructure, including a road and a canal.

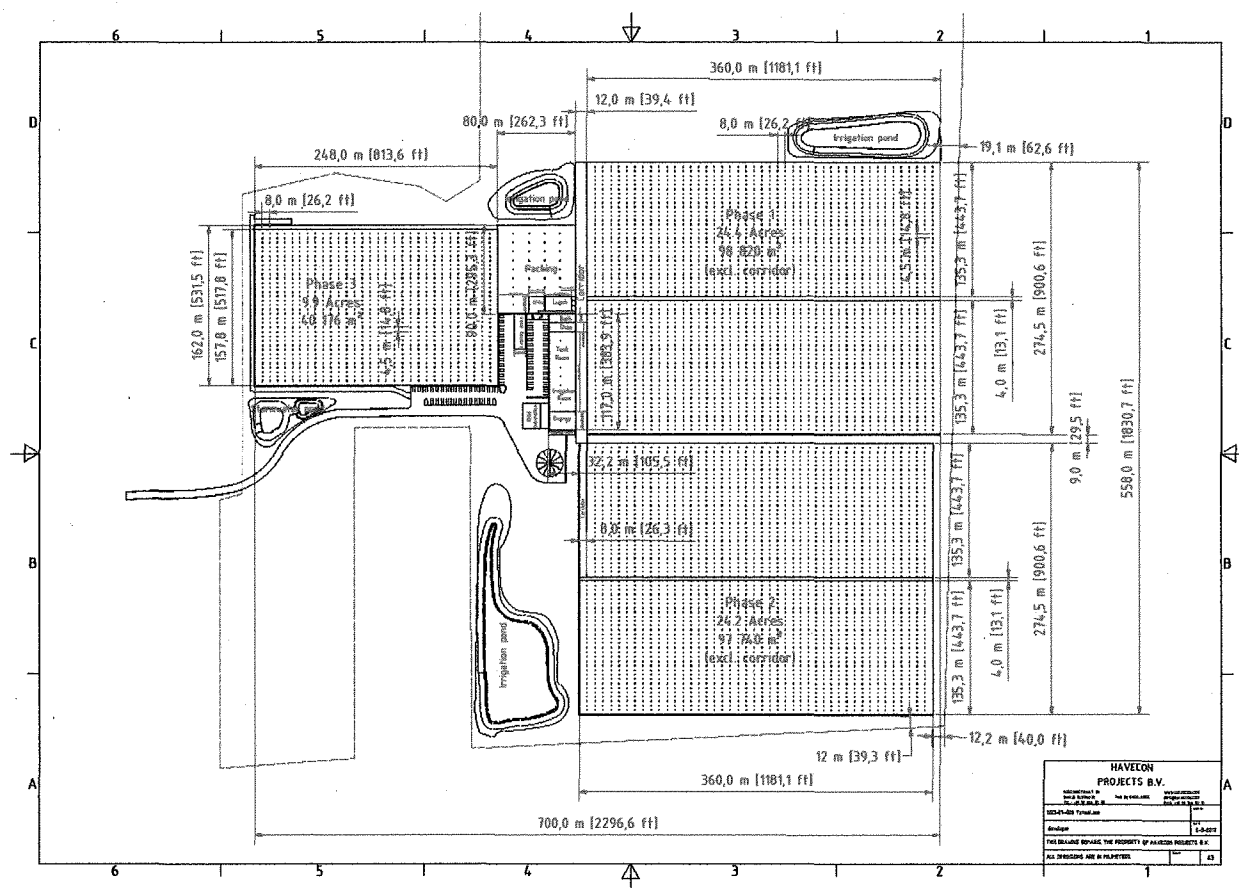
Phase 1
24.4 Acres
98,820 m²
(level corridor)

Phase 2
24.2 Acres
97,740 m²
(level corridor)

Phase 3
9.9 Acres
40,176 m²

Dimensions (m [ft]):

- Top boundary: 360.0 m [1181.1 ft]
- Left boundary (top): 240.0 m [813.6 ft]
- Left boundary (middle): 80.0 m [262.3 ft]
- Left boundary (bottom): 80.0 m [262.3 ft]
- Right boundary (top): 19.5 m [62.6 ft]
- Right boundary (middle): 274.5 m [900.6 ft]
- Right boundary (bottom): 550.0 m [1800.7 ft]
- Bottom boundary: 700.0 m [2296.6 ft]
- Internal dimensions (Phase 1): 12.0 m [39.4 ft], 8.0 m [26.2 ft], 4.5 m [14.8 ft]
- Internal dimensions (Phase 2): 32.2 m [105.5 ft], 8.0 m [26.3 ft], 17.0 m [55.9 ft]
- Internal dimensions (Phase 3): 4.5 m [14.8 ft], 90.0 m [295.3 ft]
- Internal dimensions (Right): 135.3 m [443.7 ft], 4.0 m [13.1 ft], 9.0 m [29.5 ft]



II. RECOMMENDATION

The JDA loan amount will not change, and although the Farm Credit East loans will increase slightly (from \$23,000,000 to \$23,620,000), the Company is projected to generate sufficient cash flow from operations to service all debt. In addition, the loan-to-value percentage will be well below the JDA maximum of 90%. The Company will now increase its equity contribution from \$3,700,000 to \$5,000,000, and seek additional grant funding from ESD, the Office of Community Renewal, and Rochester Gas and Electric, to cover the added project costs as a result of the new location (higher land acquisition cost, additional utility engineering, etc.). Based on the circumstances, staff recommends approval of the new location, project costs, and capital stack.

III. ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA 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 for the New York State Department of Environmental Conservation. The project meets the criteria for a Type II action under Part 617.5(c)(3), which states: "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" are not subject to review under Part 617. Therefore, no further environmental review is required in connection with the project.

Due to the JDA's mortgage position on the loan, a Phase I Environmental Site Assessment must be submitted to ESD for review and approval prior to closing on the loan.

IV. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, JDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBEs") in the performance of the Corporation's contracts. JDA's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

V. ADDITIONAL SUBMISSIONS

Resolution

Original JDA Board Materials (June 27, 2016)

June 28, 2017

NEW YORK JOB DEVELOPMENT AUTHORITY – Ontario (Finger Lakes – Wayne County)
– Intergrow East, Inc. for the Benefit of Intergrow Holding Company, Inc. – New York
Job Development Authority Loan Projects — Real Estate Loan — Authorization to Make
Loan and Take Related Actions

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Real Estate Loan to Statewide Local Development Corporation for the benefit of Intergrow Holding Company, Inc. for an amount not to exceed \$5,700,000 or 15% of the total project cost, whichever is less, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority 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 as he or she may deem appropriate in the administration of the Loan; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority 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; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

* * *

ORIGINAL JDA BOARD MATERIALS



**New York Job
Development
Authority**

DATE: June 27, 2016

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Webster (Finger Lakes – Monroe County) – JDA Loan for the Benefit of Intergrow Holding Company, Inc. – Authorization to Make a Real Estate Loan with New York Job Development Authority Loan Proceeds and Take Related Actions.

JDA Loan Terms	
Borrower:	Intergrow Webster, Inc. (for the benefit of Intergrow Holding Company, Inc.)
Economic Region:	Finger Lakes (Monroe County)
Loan Amount Requested:	\$5,700,000
Rate:	3.58% (fixed)
Term:	10 years
Classification:	IA+
Distressed Area:	Yes
Initial Payment:	\$56,578.80

JDA Budget					
Uses			Sources		
Building Construction	\$ 23,600,000	71%	Farm Credit East Senior Loan ⁽¹⁾	\$ 16,000,000	48%
M&E Purchase	4,155,000	13%	Farm Credit East Subordinate Loan ⁽²⁾	7,000,000	21%
Utility Installation	2,145,000	6%	JDA Loan ⁽³⁾	5,700,000	17%
Utility Engineering	1,140,000	3%	Equity	3,700,000	11%
Soft Costs	950,000	3%	ESD Grant	750,000	2%
Construction Interest	650,000	2%			
Land Acquisition	510,000	2%			
Total Project Costs	\$ 33,150,000	100%	Total Project Financing	\$ 33,150,000	100%
(1) First mortgage; 10-year term at 3.75% (fixed).					
(2) Third mortgage; 10-year term at 3.75% (fixed).					
(3) Second mortgage; 10-year term at 3.58% (fixed).					

Security: A second lien on the to be constructed real estate located at the intersection of Salt and State Roads in Webster, NY, and second liens on the existing facilities located in Albion, NY (the Gaines facility) and Portageville, NY (the Fillmore facility). The post-construction appraised value of the collateral in Webster, NY is expected to be \$33.15MM. The appraised value of the collateral in Albion, NY is \$14.00MM, and the appraised value of the collateral in Portageville, NY is \$2.50MM. JDA will take a second position on \$5.70MM, with Farm Credit East taking the first and third positions on \$16.00MM and \$7.00MM, respectively.

Guarantors: Repayment of the loan shall be guaranteed by Intergrow Holding Company, Inc. and its subsidiaries, Intergrow Greenhouses, Inc., Fillmore Greenhouses, Inc., and Intergrow Trucking, Inc. Also personal guarantees will be provided by Dirk Biemans, Mario van Logten, Dirk van den Plas, and John Vermeiren.

Job Information (at project site):

Existing: 150 full-time

New Jobs Projected: 50 full-time by five years after loan disbursement

JDA Loan Amount per Job: \$28,500

Project Summary:

Borrower: Intergrow Webster, Inc. (for the benefit of Intergrow Holding Company, Inc.)
2428 Oak Orchard Road
Albion, NY 14411

Contact: Dirk Biemans, President
Phone: 585-682-0052
Email: dirk.biemans@intergrowgreenhouses.com

Ownership: Intergrow Webster, Inc., the operating entity for the Webster facility, is a wholly-owned subsidiary of Intergrow Holding Company, Inc. Intergrow Holding Company, Inc. is owned 25% by Dirk Biemans, 25% by Mario van Logten, 25% by Dirk van den Plas, and 25% by John Vermeiren. Intergrow Holding Company, Inc. also owns 100% of the stock of Intergrow Greenhouses, Inc., the operating entity for the Gaines facility; Fillmore Greenhouses, Inc., the operating entity for the Fillmore facility; and Intergrow Trucking, Inc., the entity that owns the transportation fleet and transports tomato crop to customers.

Nature of Business: Producer of greenhouse-grown tomatoes. The company grows tomatoes that are sold on a wholesale basis to large food distributors throughout the eastern United States.

This report concerns a proposed New York Job Development Authority ("JDA") loan for the amount of \$5,700,000 (the "JDA Loan"). The \$5,700,000 loan is to be used towards the purchase of land and the construction of a new facility (the "Facility") located in Webster, New York. The total cost of the project is \$33,150,000 (the "JDA Project Cost").

Project location: Intersection of Salt and State Roads
Webster, NY 14580

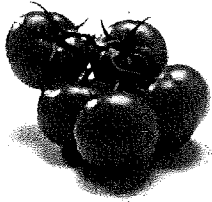
Project Completion: 4th Quarter 2017

1) PROJECT OVERVIEW AND RECOMMENDATION

a) Background

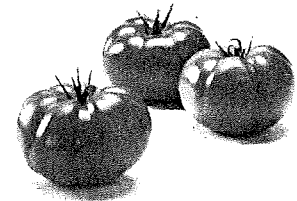
Intergrow Holding Company, Inc. ("Intergrow" or the "Company") is a hydroponic tomato grower that produces and sells high quality tomatoes-on-the-vine and beefsteak tomatoes on a wholesale basis to large retail grocery chains located throughout the eastern United States including Wegman's, Hanneford, and Aldi's. The Company began its operations in 1998 with a facility in Portageville, New York in northeastern Allegany County. The success of that operation led to the construction of a similar operation in 2003 in the Town of Gaines, New York in Orleans County. In 2014, the Company expanded the Gaines facility, adding a 7.5 acre greenhouse. Intergrow also added grow lights on 25 acres, allowing the Company to extend its growing season capabilities and remain competitive in the marketplace. The \$14MM project was completed in early 2015 and the facility now totals 55 acres. Combined with the Portageville greenhouse, Intergrow now has 69 greenhouse acres.

Tomatoes On the Vine



Hydroponic tomato plants are rooted in a growing medium made of Rockwool, a stonewool substrate. Drippers are used to irrigate the plants with a water and nutrient mix. As the plants grow, the vines are tethered to the ceiling and grow up to 25 to 30 feet in length within the 11- month growing season. As a result, fruit can be harvested almost daily throughout the year. The facilities are computer-controlled, sustainable, closed environments that produce tomatoes on thick vines that can be picked at the peak of ripeness and delivered fresh within 24 hours.

Beefsteak Tomatoes



As an alternative to using municipal water, the Company collects rain water and snow melt from its roofs, and, as an alternative to fossil fuels, Intergrow uses a 2.4MW Combined Heat and Power (CHP) installation as well as biomass boilers that burn waste wood. The boilers heat the rainwater that is pumped through piping in the greenhouse floor. Carbon dioxide (CO₂) emissions from the boiler are recycled and the CO₂ is used to increase photosynthesis and plant production. All excess water is recycled, creating a completely closed system. Curtains that cover the glass ceiling in the winter conserve additional energy. Emission-free electric carts collect and transport the harvested tomatoes ready for shipping.

Bumble bees are used for natural pollination, with 40 hives brought into the Gaines facility every two weeks to pollinate the greenhouse. While Intergrow's tomatoes are not organic, Integrated Pest Management (IPM) is used whereby predator bugs are introduced to control any pests.

b) The Project

With growing demand for its product and solid profitability, Intergrow has made the decision to significantly expand its operations with the new Town of Webster facility. The Company will purchase a 115-acre site and develop a total of 25 acres of growing and support space. This is expected to be supplemented in 2019 by a second phase on the Webster site of an additional 25 acres. The 50 acres will be added to the existing total of 69 acres, allowing production to be increased by over 50%. New employment is estimated to be 100 new permanent full-time employees (50 phase one, 50 phase two). All permanent employees receive company-paid health insurance at 70% of cost, paid holidays, and paid vacation time.

The project will include growing, packing, and administrative space, the purchase and installation of lighting, heating and irrigation systems, and the purchase of new machinery and equipment. The Company will incur significant costs for various utility connections and is working with Rochester Gas & Electric (RG&E) to finance the estimated \$5.5MM cost.

Infrastructure and foundation work will begin in September 2016, with the greenhouse construction to be completed by June 2017. Machinery, equipment, and furnishings will be installed by August 2017, with planting of the first tomato crop in the new facility scheduled for October 2017.

Intergrow is projecting that it will achieve total sales revenue of \$39.1MM in 2018, the first full year of the Webster facility's operation. The Webster facility is expected to account for \$12MM (31%) of this volume with the Albion facility generating \$19.6MM (50%) and the Fillmore facility generating \$7.5MM (19%).

c) The Greenhouse Tomato Market

The Webster expansion will allow Intergrow to provide more locally-grown produce to satisfy the Northeast region's growing demand for year-round production. Food safety, product quality, and traceability are extremely important to produce consumers who highly value the locally-grown produce and service Intergrow provides.

The current greenhouse tomato market in the Northeast continues to grow annually. In 1998, only 17% of the U.S. tomato market came from greenhouses. Today, greenhouses supply over half of all tomatoes sold in the country.

With the limited conventional growing season in the Northeast, customers are forced to purchase from southern countries like Mexico and Guatemala for a portion of the year. The result is growing dissatisfaction with the poor quality fruit shipped during the cold weather months. Retail chains and their shoppers are demanding better quality fruit and are willing to pay a premium for this product. In addition to premium locally-grown produce, customers also want to know where their food is coming from. Incidents of contaminated produce from unknown sources has made food safety and traceability

a top consumer priority. The solution to this problem is the development of more artificially-lighted greenhouse acreage in close proximity to major consumer markets.

Intergrow is, by far, the largest greenhouse tomato producer in New York State. Its only regional competition is H2Gro Greenhouses, which operates a 12-acre greenhouse in Youngstown, New York. The only notable competition in the Northeast is Backyard Farms, which operates a 40-acre tomato greenhouse in central Maine. Other tomato greenhouses are located in Ontario, but, the growth of greenhouse production in Canada has been hindered due to the inadequate available electrical supply in Ontario that necessitates a greater reliance on natural light.

Intergrow's current acreage enables the Company to service customers in New England, the Mid-Atlantic, and the near Mid-West, but the Company cannot satisfy additional demand during the cold weather months of the year due to production limitations. For example, Intergrow currently services only one distribution center for Walmart, but with Walmart's three additional distribution centers within a 5-hour drive of Intergrow's facilities, Intergrow is one of the few greenhouse companies that can provide the other Walmart distribution centers with New York State produce. As Intergrow's year-round production increases with the fully artificially-lighted Webster facility, the Company can supply Walmart with additional produce for these distribution centers. The Company can also obtain additional business from its existing customers with the additional Webster acreage. In 2015, Intergrow added major new customers such as Whole Foods, Price Chopper, and most recently, Stop and Shop. The Company believes that major food service buyers and national restaurant chains, such as McDonald's, represent a major market for future growth.

The Webster expansion will also provide additional acreage to expand the Company's current product

line of tomatoes-on-the-vine and beefsteak tomatoes. Select retail customers prefer to purchase multiple items from the same supplier making less work for buyers. The additional acreage will allow Intergrow to produce more tomato varieties and explore other greenhouse commodities, further penetrating the current customer base. For example, the new Cherry tomatoes-on-the-vine variety became available this spring, and has been received with great feedback from customers. Due to strong pre-sale commitment volumes, Intergrow plans to double the acreage for the following season. Intergrow has created a branded image in the Northeast as the premium grower of tomatoes and one of the few suppliers to offer year-round locally grown produce.



Intergrow rolls out greenhouse cherry tomato

By Andy Nelson April 11, 2016 | 8:00 pm EDT

Intergrow Greenhouses Inc. has a new tomato for 2016.

Albion, N.Y.-based Intergrow is now shipping cherry tomatoes on-the-vine in addition to its tomatoes-on-the-vines and beefsteaks, according to a news release.

The variety is very sweet and slightly larger than other cherry tomatoes.

"We trialed a number of varieties over the past few years to find the perfect cherry tomato," Kris Gibson, Intergrow's vice president of sales and marketing, said in the release. "We wanted this tomato to capture the consumers with its sweet taste, and this tomato does exactly that."

Intergrow plans to grow the cherries year-round in New York. The company uses grow lights for winter production.

d) Conclusions

- Based on the IA+ rating, Intergrow currently generates sufficient cash flow from operations to service all the projected project debt, with a projected Debt Service Coverage Ratio ("DSCR") that meets JDA's minimum standard of 1.20, and staff believes that the Company is fiscally strong. Revenue growth has been strong and cash flow projections indicate that the Company will be able to service the debt going forward. In addition, JDA will have second lien positions on the to be constructed real estate collateral in Webster, NY, the real estate collateral in Albion, NY, and the real estate collateral in Portageville, NY; thus, there will be sufficient security for JDA to be completely collateralized.
- Intergrow meets JDA's loan-to-value requirement of 90%.
- With the project, Intergrow expects capacity to increase significantly from existing levels. At the completion of the project 150 full-time jobs will be retained, and it is expected that 50 new jobs will be created over five years.

2) COVENANTS AND CONDITIONS

This Loan is predicated upon the following financial conditions:

- The Company must obtain firm commitments satisfactory to JDA from responsible financial sources for the total project cost exclusive of any loan requested from JDA.
- The Company must provide evidence of the subject property that indicates a loan to value not to exceed 90% at the time of closing.
- The Company must maintain a minimum debt service coverage ratio of 1.20 throughout the term of the loan.
- The Company cannot take on additional debt without JDA approval.
- Subordination of the shareholder loans in regards to both collateral and repayment. Interest will be allowed as long as it does not cause an event of default.
- The Company must meet all other standard JDA requirements as follows:
 - a. Completion of the Project to the satisfaction of JDA.
 - b. Procurement by the Company of funds which shall be used at or prior to the closing to pay the Project Cost, exclusive of the proceeds of the Loan.
 - c. Receipt by JDA of policies of insurance, including flood insurance if required, in amount, form and substance and issued by companies satisfactory to JDA.
 - d. Receipt by JDA of an itemized statement of Project Cost, satisfactory to JDA.
 - e. Receipt by JDA of financing documents of other lender(s) satisfactory to JDA.
 - f. Satisfaction of such other conditions as JDA, with advice of counsel, deems necessary or advisable to effectuate the Loan, secure the interest of JDA and insure compliance with the JDA Statute and applicable provisions of the Internal Revenue Code.

- g. Execution of documents to permit monthly electronic debit of the Company's checking account to repay the Loan.
- h. Compliance with ADDITIONAL REQUIREMENTS stipulated in all Schedules, Exhibits and Riders, attached hereto and made a part hereof.
- i. Compliance with any other terms and conditions deemed to be necessary and appropriate in the opinion of the General Counsel of JDA.
- j. The Company or the Company's owners will contribute at least 10% in equity to the Real Estate Project. Equity is defined as any non- debt source of capital and should be auditable through the Company's financial statements or bank accounts, if so requested by JDA.
- k. Subordination of any loans to the Company from those certain officers and members of the Company stipulated herein in a manner satisfactory to JDA.
- l. The Company shall not enter into any agreement by which the terms of payment of any principal or interest under any other bank loan are waived, modified, deferred, delayed, increased or reduced in rate or amount, without the prior written consent of JDA.
- m. All certifications and permits for the operating purposes of the Facility to be in full force and effect prior to closing the Loan.

3) ADDITIONAL MORTGAGE AND LIEN DETAILS

A promissory note in the principal amount of the Loan, with interest thereon (the "Note"), shall be secured by a mortgage to JDA (the "Mortgage") on the fee interest of the premises located at: Intersection of Salt and State Roads, Webster, NY 14580.

The Mortgage may be junior to the lien securing the real estate loan of Farm Credit East (the "Bank") but not to any modifications, extensions or renewals thereof. The Bank Mortgage shall not be collateral security for any other loans.

4) ENVIRONMENTAL REVIEW

ESD staff on behalf of the JDA 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 for the New York State Department of Environmental Conservation. The project meets the criteria for a Type II action under Part 617.5(c)(3), which states: "agricultural farm management practices, including construction, maintenance and repair of farm buildings and structures, and land use changes consistent with generally accepted principles of farming" are not subject to review under Part 617. Therefore, no further environmental review is required in connection with the project.

Due to the JDA's mortgage position on the loan, a Phase I Environmental Site Assessment must be submitted to ESD for review and approval prior to closing on the loan.

5) NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Article 15-A, JDA recognizes its obligation under the law to promote opportunities for maximum feasible participation of NYS certified Minority and Women-owned Business Enterprises ("MWBEs") in the performance of the Authority's contracts. JDA's Non-Discrimination and Contractor & Supplier Diversity policy will apply to this initiative.

6) ADDITIONAL SUBMISSIONS

Resolution

New York State Map

JDA Loan Underwriting Classification System

Financial Projections

Diagrams and Photos

June 27, 2016

NEW YORK JOB DEVELOPMENT AUTHORITY – Webster (Finger Lakes – Monroe County)
– JDA Loan for the Benefit of Intergrow Holding Company, Inc. – Authorization to
Make a Real Estate Loan with New York Job Development Authority Proceeds and Take
Related Actions

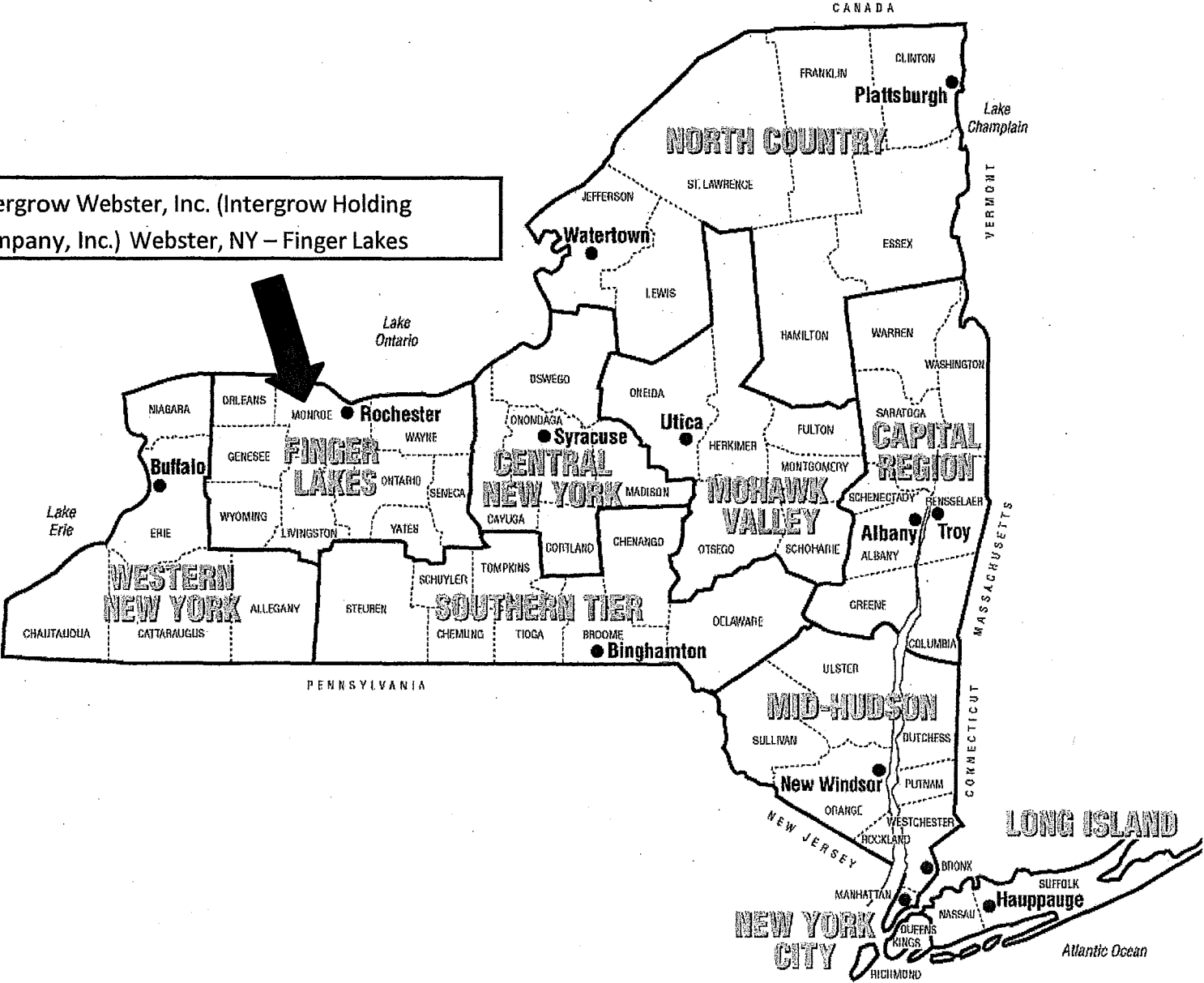
RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Loan to Statewide Local Development Corporation for the benefit of Intergrow Holding Company, Inc. for an amount not to exceed \$5,700,000 or 17% of the total project cost, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

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

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RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals.

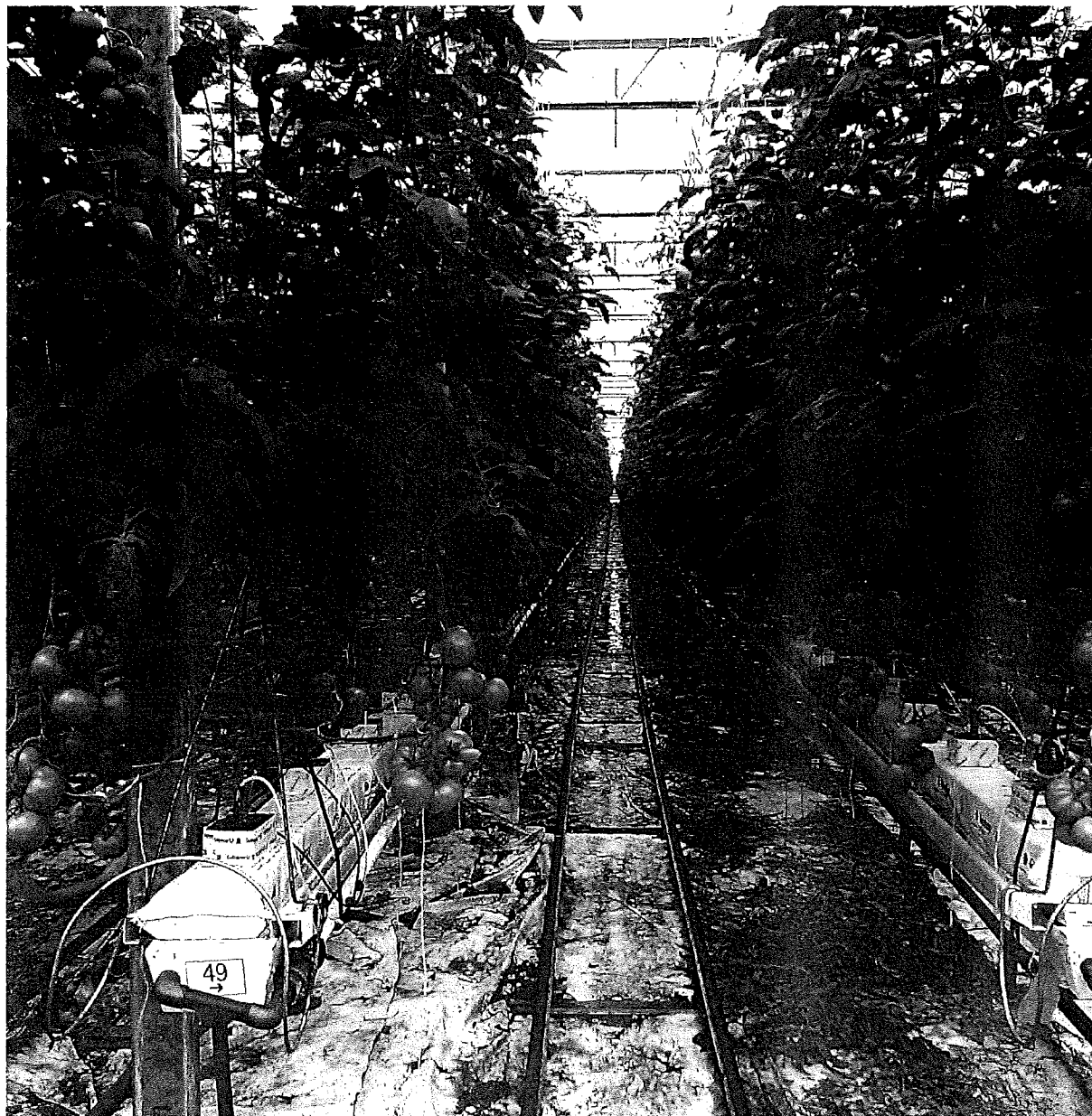
Intergrow Webster, Inc. (Intergrow Holding Company, Inc.) Webster, NY – Finger Lakes

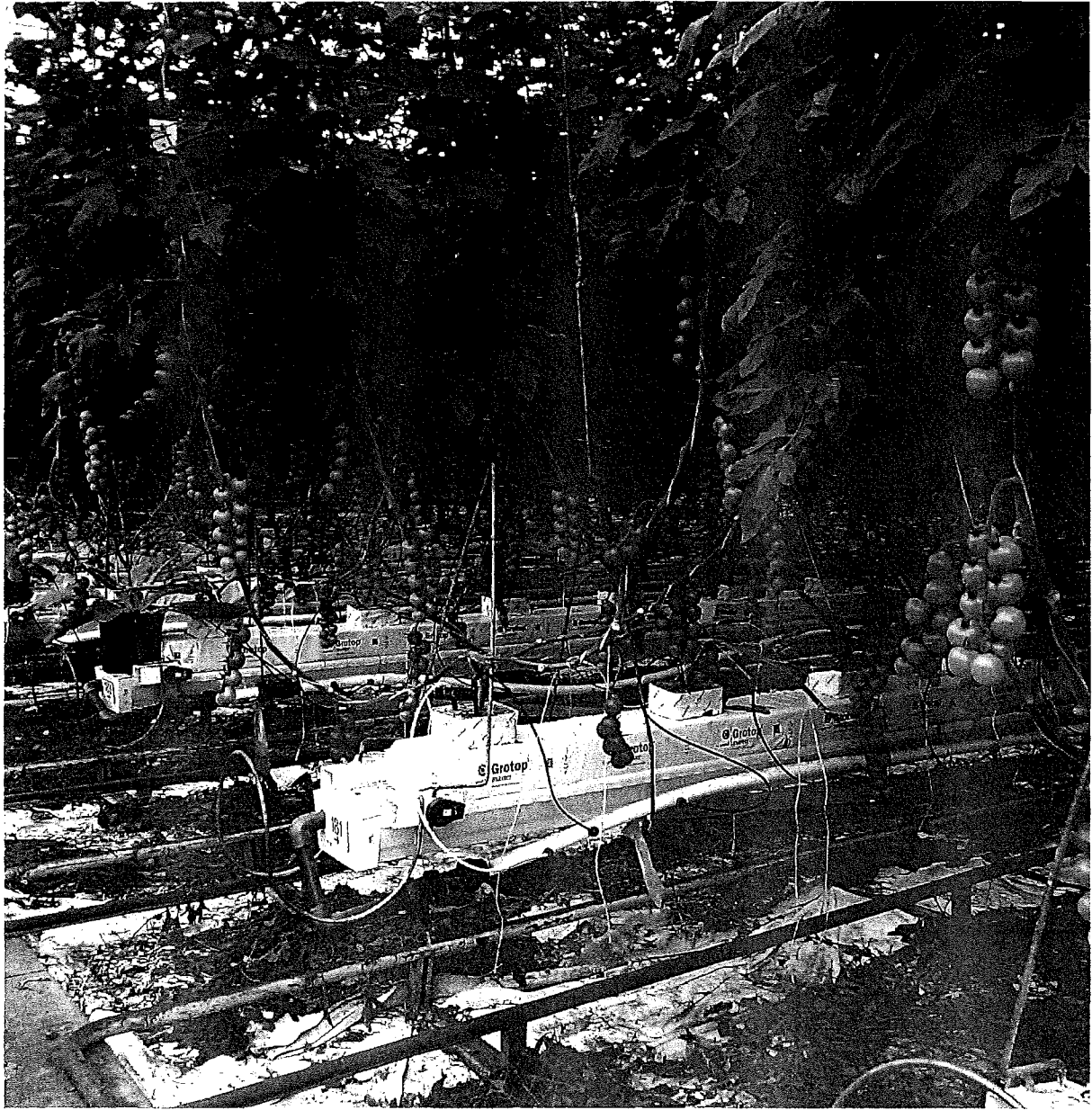


JDA Underwriting Classification Chart

Level I: Cash Flow	Level II: Default Risk	Level III: Collateral Value
I Actual or Adjusted Debt Service Coverage $\geq 1.2:1$	A Score of ≥ 4 on the Default Risk Model Low Risk	Liquid value of collateral + + adjusted value of personal guarantee \geq total loan value
II Actual or Adjusted Debt Service Coverage $< 1.2:1$, but with Projected Debt Service Coverage $\geq 1.2:1$	B Score of 3 on the Default Risk Model Moderate Risk	Liquid value of collateral+ adjusted value of personal guarantee $<$ total loan value
	C Score of ≤ 2 on the Default Risk Model Higher Risk	

Photos of Existing Albion, NY Facility

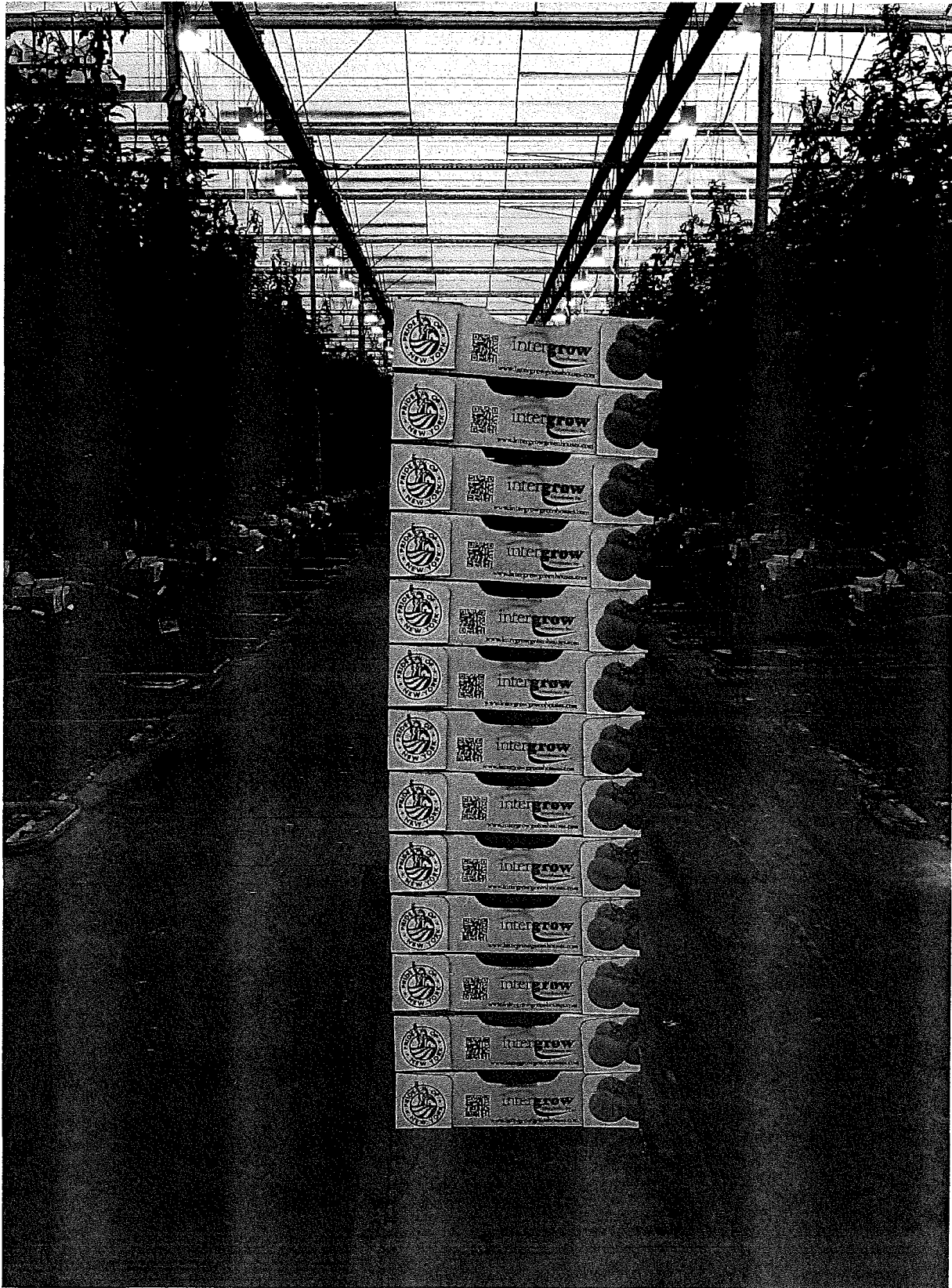




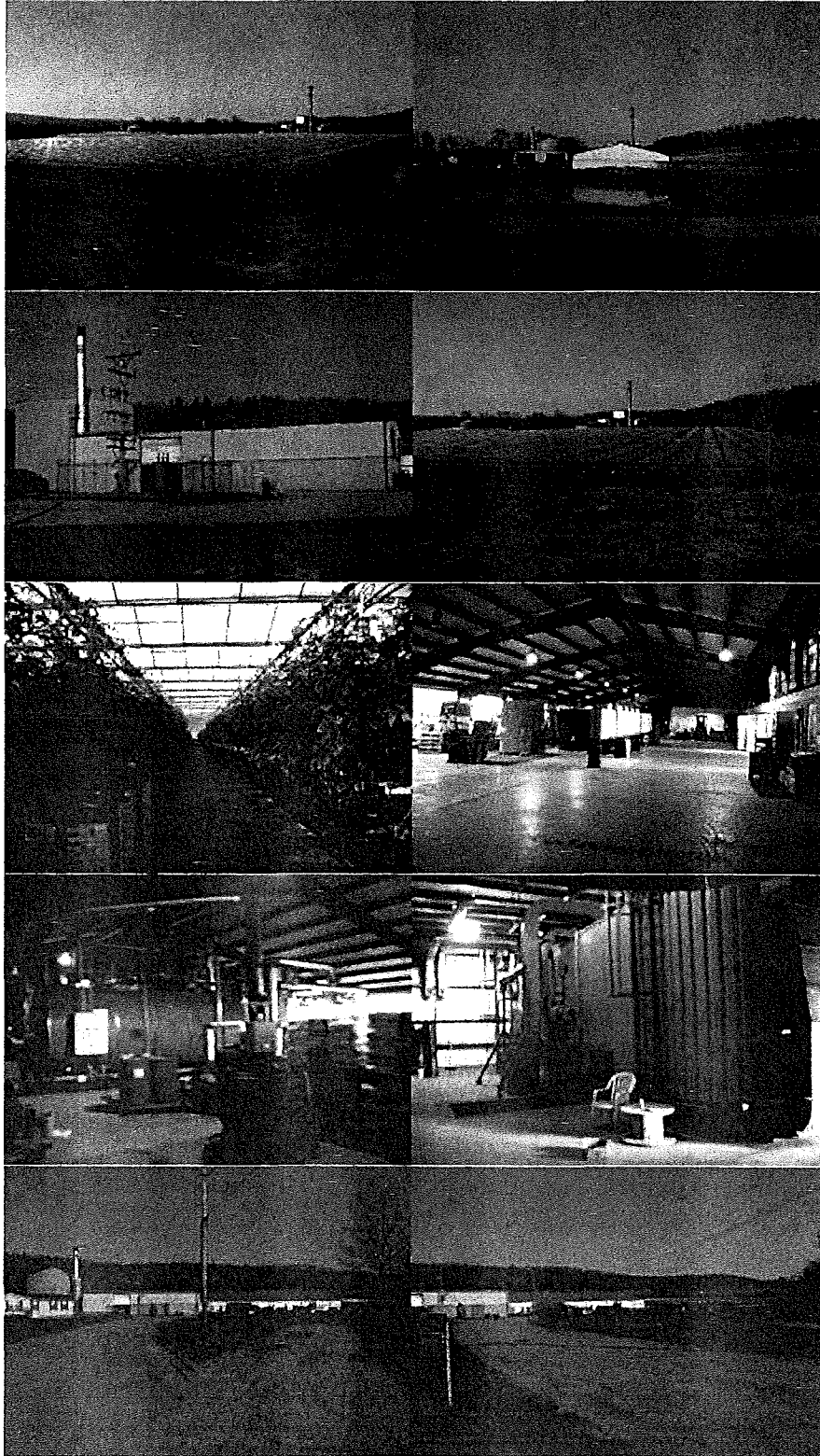




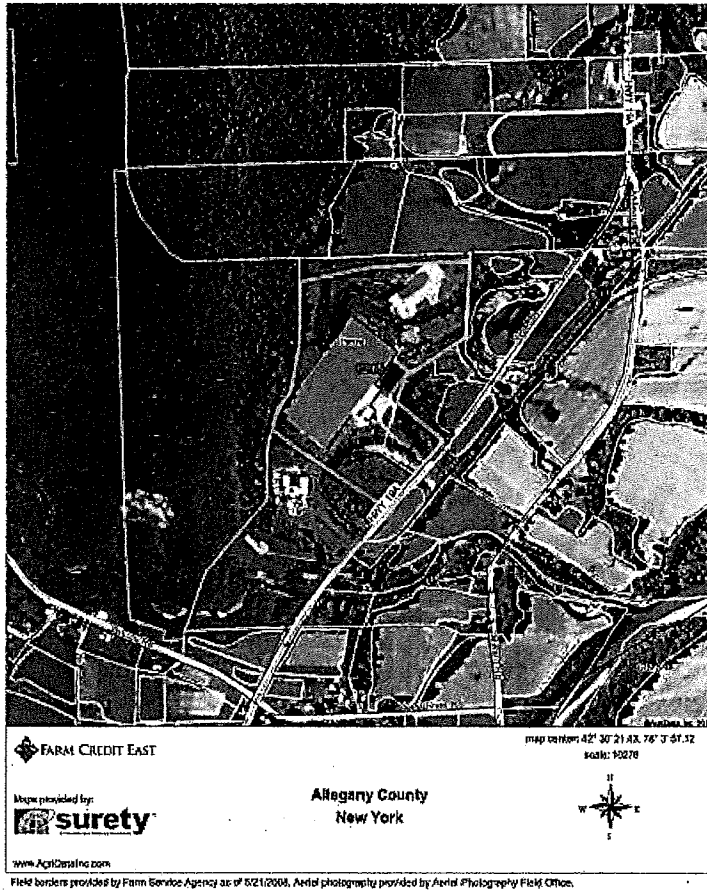




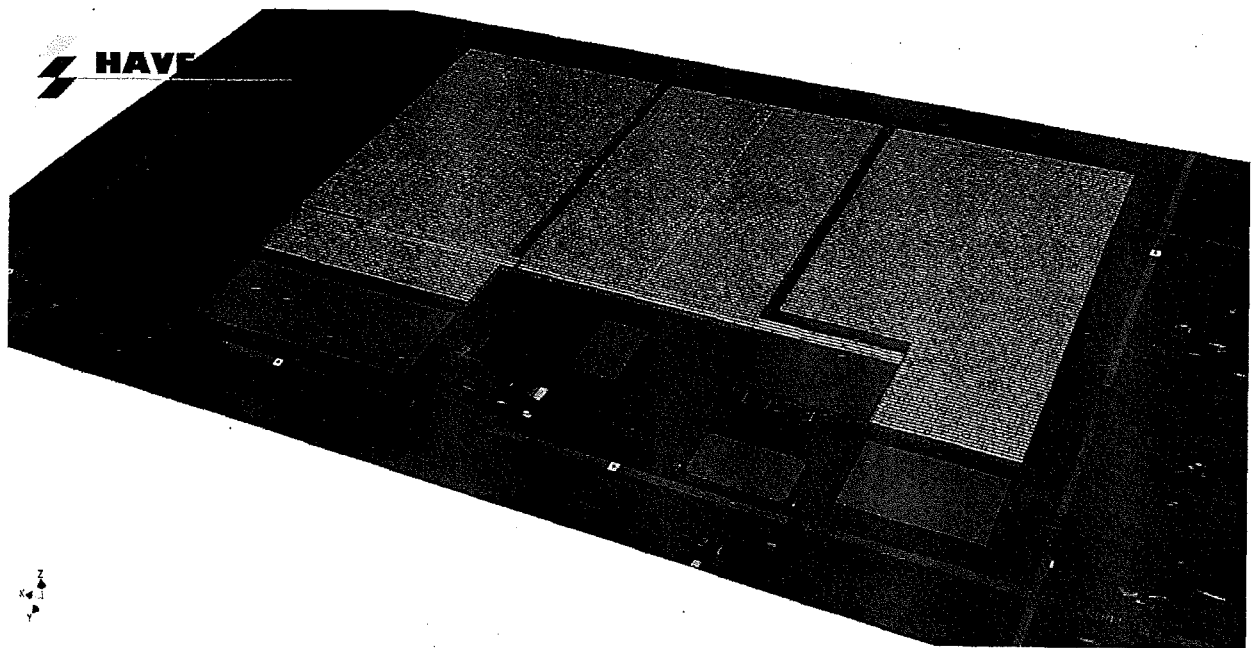
Photos of Existing Portageville, NY (Fillmore) Facility



Aerial Map



Schematics of to be Built Webster, NY Facility



Z
K
Y

HAVECON
Projects

