

Item I. A.

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors
Held at the Offices of
Empire State Development
4th Floor Conference Room
655 Third Avenue
New York, NY 10017

With videoconferencing to:

Empire State Development – Albany Offices
625 Broadway
8th Floor Conference Room
Albany, New York 12245

And:

Empire State Development – Buffalo Regional Offices
95 Perry Street
5th Floor Conference Room
Buffalo, NY 14203

June 24,2024

MINUTES

In Attendance

Directors:

Kevin Younis, Acting Chair (Via Videoconference)
Edwin Lee
Paul Tronolone (Via Videoconference)

ESNMC Staff:

Yvonne Cooper, Acting Corporate Secretary
Brendan Healy, Vice President
Jonevan Hornsby, President

ESD Staff:

Matthew Acocella, Associate Counsel
Joshua Bloodworth, General Counsel
Anthony Dalessio, Assistant Controller

The meeting of the Empire State New Market Corporation (“ESNMC” or the “Corporation”) was called to order at approximately 1:00 p.m.

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

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

Before beginning with the substantive portion of the meeting, Acting Chair Younis asked the Directors whether anyone had any potential conflict of interest regarding any of the items on the proposed Agenda. He asked, if so, that the appropriate disclosure be made on the record to ensure that the Director is recused from any discussion or vote regarding such item(s). No comments were noted.

Acting Chair Younis then called for a motion to approve the Minutes of the March 18, 2024 Directors’ Meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT JUNE 24, 2024 AND MEETING OF THE DIRECTORS OF THE EMPIRE STATE NEW MARKET CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on June 24, 2024, as presented to this meeting, are hereby approved and all actions taken by the Directors present

at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Next, Acting Chair Younis called on Jonevan Hornsby, President of the Empire State New Market Corporation (“ESNMC”), to present the final item on the Agenda for the Directors’ consideration.

Mr. Hornsby explained that the Directors were being asked to approve an allocation of up to \$8 million in federal New Market Tax Credits (“NMTC”) for the purpose of enabling the subsidiary Community Development Entity (“CDE”) to: (1) make small loans in the amount of \$4 million or less as defined by the CDFI fund, to two separate borrowers to finance the renovation inventory and or equipment purchases at two Bogopa sites in the Bronx and East New York, Brooklyn and (2) delegate authority to the president of ESNMC and his designee to take any and all actions with respect to such allocation of NMTCs, the final terms of the transaction documents, and the closing of the transaction.

Mr. Hornsby further explained that the project sponsor, Bogopa Enterprises, Inc., is a minority, family-owned company that started in 1958 by catering to low-income densely populated areas that did not have sufficient access to grocery stores. They continue to serve these communities today which include some of the most diverse neighborhoods in New York City.

Mr. Hornsby noted that the project consists of renovating two Bogopa sites in highly distressed, low-income communities and purchasing inventory and equipment for each location.

Mr. Hornsby further noted that the Bronx location will provide up to \$4 million in NMTCs to finance the purchase of inventory and equipment for an existing outdated 37,000 square-foot grocery store. The Brooklyn location will be provided with \$4 million in NMTCs to be used to finance renovations and the purchase of equipment for the replacement of the roof at a 110,000 square-foot warehouse.

Mr. Hornsby noted that the stores are located in NYC Food Retail Expansion to Support Health (“FRESH”) program zones, that were established to encourage stores in underserved communities to provide a full range of grocery products including fresh meat, fruit and vegetables.

Mr. Hornsby further noted that the proposed financing is recommended for multiple reasons. The investment is consistent with ESNMC’s strategy proposed to the Community Development Financial Institutions (“CDFI”) Fund. Part of the strategy for the \$50 million 2022 NMTC allocation is to invest in transactions that will create and retain quality jobs by growing the manufacturing, warehousing and distribution base.

Mr. Hornsby noted that ESNMC also indicated that it would dedicate 38 percent, or \$19 million, of its NMTC award to finance non-real estate uses such as machinery, equipment,

inventory and related costs. ESNMC also committed to dedicating at least 20 percent, or \$10 million, of its NMTC award to make small loans of \$4 million or less to businesses.

Mr. Hornsby further noted that in addition to meeting the requirements of ESNMC's business strategy, the investment allows ESNMC to deploy an additional 16 percent of its 2022 NMTC allocation, or 38 percent total.

Mr. Hornsby noted that the project will retain 172 jobs across both the Bronx and the Brooklyn sites, with all non-managerial positions being union jobs, and that these employees receive comprehensive benefits and receive on-the-job-training. All of the jobs are available to people without college degrees or who have other barriers to entry.

Lastly, Mr. Hornsby noted that the project was recommended by the ESNMC Project Review Committee and approved by the ESNMC Advisory Board earlier this week.

Following the full presentation, the Chair called for further questions or comments. Director Tronolone asked if the New York City FRESH Zone is a city program.

Mr. Hornsby stated yes and that it is a program created in 2009 by way of a study to help encourage fresh foods and supermarkets in low-income communities.

Director Tronolone asked if there were other benefits to being in a FRESH zone.

Mr. Hornsby stated that to his knowledge there are not.

Director Lee asked if the food store in the warehouse will be operational while the work is being done.

Mr. Hornsby stated yes, they will be open, and the work will take approximately two months.

Director Lee asked, in regard to a line in the budget noting inventory, what does the inventory include.

Mr. Hornsby stated that in regards to the Bronx store it primarily includes anything needed for the store which would entail perishable and non-perishable items, and for the warehouse it is for bulk purchases in order to cut costs.

The Chair then called for any further questions or comments. Hearing none, and noting no comments were received from the public, upon motion duly made and seconded, the following Resolution was unanimously adopted:

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Sub-Allocation to provide financing for the renovation and/or equipment purchase for one Bogopa food store and one Bogopa warehouse – Authorization to Adopt the Proposed General Project Plan (the “GPP”); Authorization to Sub-Allocate New Markets Tax Credits (“NMTCs”); Perform Certain Acts in Connection with the Sub-Allocation of NMTCs to an ESNMC Subsidiary CDE; Close the NMTC Transaction and Take All Related Actions

WHEREAS, Empire State New Market Corporation, a New York corporation (the “Corporation”), has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”)

as a "qualified community development entity" (a "CDE"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and the Corporation is expected to enter into an Allocation Agreement (the "Allocation Agreement"), with the CDFI Fund in connection with a calendar year 2022 allocation of NMTCs under Section 45D of the Code in the amount of \$50,000,000 (the "Allocation");

WHEREAS, the Corporation desires to sub-allocate to ESNMC Subsidiary CDE XV, LLC, a New York limited liability company, or another subsidiary CDE of the Corporation (the "Subsidiary CDE"), up to \$8,000,000 in NMTC authority from the Corporation's Allocation (the "Sub-Allocation") in connection with the proposed investment to Bogopa to finance the renovation and/or equipment purchases for one food store and one warehouse in underserved, low-income communities in Bronx and East New York (Brooklyn), New York respectively (the "Project") as described in the GPP;

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

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

RESOLVED, that pursuant to Section 10(g) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that there are no families or individuals to be displaced from the location of the Project; and be it further

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

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation acting in its own capacity, or as managing member of the Subsidiary CDE, to negotiate, issue, execute and deliver any and all transaction documents and instruments, including but not limited to, operating agreement(s), loan and security agreements, indemnity agreement(s), fee agreements, asset management agreements, bank accounts, account control agreements, disbursement agreements, and any other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (collectively, the "Transaction Documents"), and to take all actions as he or she may in his or her sole discretion

consider to be necessary or proper to effectuate the foregoing resolutions, including such modifications to the terms of the transaction as he or she may deem necessary or appropriate and reasonably consistent with the GPP. Any actions previously taken by the Corporation in furtherance of the GPP are hereby ratified and approved.

* * *

There being no further business, the meeting was adjourned at 1:10 p.m.

Respectfully submitted,

Yvonne M. Cooper
Acting Corporate Secretary

Item II. A.



FOR CONSIDERATION

November 6, 2024

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Allocation Agreement

REQUEST FOR: Authorization to Form Up to Five (5) Additional Subsidiary CDEs, Execute Calendar Year 2023 Allocation Agreement (“Allocation Agreement”) with the Community Development Financial Institutions Fund (“CDFI Fund”) and an Amendment thereto, and Take Related Actions

I. Summary

Approval is hereby requested for Empire State New Market Corporation (“ESNMC”) to form up to five (5) additional subsidiary community development entities (the “Subsidiary CDEs”), execute the calendar year 2023 Allocation Agreement (the “Allocation Agreement”) with the CDFI Fund of the U.S. Department of Treasury and an Amendment thereto, and take related actions.

II. Background

ESNMC has been awarded an allocation of \$50 million of New Markets Tax Credits (“NMTCs”) in the calendar year 2023 allocation round. With its \$50 million allocation of NMTCs, ESNMC intends to enter into the Allocation Agreement with the CDFI Fund and to close several NMTC transactions. Staff recommends that the Directors authorize ESNMC to (i) form the Subsidiary CDEs and (ii) execute the Allocation Agreement and any future amendment thereto to add the Subsidiary CDEs and any other additional subsidiary CDEs as parties (the “Allocation Agreement Amendment”).

III. Environmental Review

The requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

IV. Requested Action

The Directors are requested to authorize ESNMC to form the Subsidiary CDEs, execute the Allocation Agreement and the Allocation Agreement Amendment with the CDFI Fund, and take related actions.

V. Attachments
Resolution

November 6, 2024

EMPIRE STATE NEW MARKET CORPORATION – Authorization to Form Up to Five (5) Additional Subsidiary CDEs, Execute Calendar Year 2023 Allocation Agreement with the Community Development Financial Institutions Fund and an Amendment thereto, and Take Related Actions

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

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation is expected to enter into an Allocation Agreement (the “Allocation Agreement”) with the CDFI Fund in connection with a calendar year 2023 allocation of new markets tax credits under Section 45D of the Code (“NMTCs”) in the amount of \$50,000,000;

WHEREAS, the Corporation has caused the formation of ten (10) subsidiary CDEs, ESNMC Subsidiary CDE XVI, LLC (“CDE XVI”), ESNMC Subsidiary CDE XVII, LLC (“CDE XVII”), ESNMC Subsidiary CDE XVIII, LLC (“CDE XVIII”), ESNMC Subsidiary CDE XIX, LLC (“CDE XIX”), ESNMC Subsidiary CDE XX, LLC (“CDE XX”), ESNMC Subsidiary CDE XXI, LLC (“CDE XXI”), ESNMC Subsidiary CDE XXII, LLC (“CDE XXII”), ESNMC Subsidiary CDE XXIII, LLC (“CDE XXIII”), ESNMC Subsidiary CDE XXIV, LLC (“CDE XXIV”), and ESNMC Subsidiary CDE XXV, LLC (“CDE XXV,” and together with CDE XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV and CDE XXV, individually, an “Existing Subsidiary CDE” and collectively, the “Existing Subsidiary CDEs”), and has caused or intends to cause the formation of up to five (5) additional subsidiary CDEs (individually, a “Subsidiary CDE,” and collectively, the “Subsidiary CDEs”) for the purpose of receiving a sub-allocation of NMTCs from the Corporation and furthering the Corporation’s purpose of serving and providing investment capital and capital assistance for, and to the benefit of, low income communities and low income persons;

WHEREAS, the Corporation serves and/or will serve as the managing member of each Existing Subsidiary CDE and each Subsidiary CDE;

WHEREAS, Statewide Local Development Corporation, a New York non-profit corporation, serves and/or will serve as a non-managing member of each Existing Subsidiary CDE and each Subsidiary CDE until such time as an investor member is admitted to each Existing Subsidiary CDE and each Subsidiary CDE;

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

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

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

NOW, THEREFORE, BE IT:

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

- (a) the organizational documents required to be executed and filed in connection with the formation of the Subsidiary CDEs, including without limitation the Articles of Organization and the Operating Agreement for each Subsidiary CDE, along with any other documents necessary or convenient for the formation of the Subsidiary CDEs (collectively, the "Formation Documents");
- (b) the Certification Applications; and
- (c) the Allocation Agreement, the Allocation Agreement Amendment and any other amendments to the Allocation Agreement adding one or more other existing or to-be-formed subsidiary CDEs as parties;

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

RESOLVED, the Corporation in its own capacity and as managing member of the Existing Subsidiary CDEs and the Subsidiary CDEs, authorizes the Corporation, the Existing Subsidiary CDEs and the Subsidiary CDEs and each Principal Officer as an authorized representative acting on behalf of the Corporation, the Existing Subsidiary CDEs and the Subsidiary CDEs, to submit the Certification Applications and to execute the Allocation Agreement and the Allocation Agreement Amendment, as applicable;

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed (either alone or in conjunction with any one or more of the other officers of the Corporation) to execute and deliver, on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, all other documents, agreements and instruments (collectively, the "Other Documents") contemplated by any Principal Document (the Principal Documents and the Other Documents (with such additional, modified or revised terms as may be

acceptable to the officer executing the same, each such determination to be conclusively evidenced by his/her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, approved in all respects by the board of directors of the Corporation) are hereinafter sometimes referred to collectively as the "Transaction Documents" and individually as a "Transaction Document"; and it is further

RESOLVED, that any Principal Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed, for and on behalf of the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, to consummate the transactions contemplated by each Transaction Document, and to perform, and cause to be performed by the Corporation, for itself or as managing member of the Existing Subsidiary CDEs and/or the Subsidiary CDEs, the obligations contained in such Transaction Documents, as required thereunder; and it is further

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

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

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

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

* * *

Item II. B.



FOR CONSIDERATION

November 6, 2024

TO: The Directors

FROM: Jonevan Hornsby

SUBJECT: Rochester (Finger Lakes Region – Monroe County) – New Markets Tax Credit Sub-Allocation to provide financing for the renovation of Foodlink’s headquarters and the construction of a community education center

REQUEST FOR: Authorization to Adopt the Proposed General Project Plan (“GPP”); Sub-Allocate New Markets Tax Credits (“NMTCs”) to an Empire State New Market Corporation (“ESNMC”) Subsidiary; Close the NMTC Transaction Take all Related Actions

General Project Plan

I. Project Summary

Project Sponsor: The sponsor is Foodlink, Inc. (“Foodlink” or the “Project Sponsor”).

Borrower: ESNMC Subsidiary CDE XVI, LLC, a New York limited liability company, or another subsidiary of ESNMC (the “Subsidiary CDE”) is expected to make loans to two borrowers, which will qualify as Qualified Low Income Community Investments (“QLICs”, each a “QLICI”), as defined under the NMTC program (further described below), to the borrowers. The borrower for the Mt. Read Project (as defined below) is Foodlink (in such capacity, the “Mt. Read Borrower”) , and the borrower for the Lexington Project (as defined below) will be a newly formed non-profit support corporation of Foodlink (the “Lexington Borrower,” and together with the Mt. Read Borrower, each, a “Borrower,” and collectively, the “Borrowers”). A portion of the business of Foodlink that operates the Mt. Read Project (the “POB”) and the Lexington Borrower will each be a Qualified Active Low Income Business (“QALICB”) under the NMTC program (further described below).

ESNMC* Request: Approval (1) to allocate up to \$9,000,000 in federal NMTCs for the purpose of enabling the Subsidiary CDE to make loans to the Borrowers to finance the renovation of Foodlink’s headquarters at the Mt. Read Site (as defined below) and the construction of a community education center at the Lexington Site (as defined below), and (2) to delegate authority to the President of Empire State New Market Corporation (“ESNMC”) and his

designee(s) to take any and all actions with respect to such allocation of NMTCs, the final terms of all transaction documents, and closing the transaction.

*ESNMC is a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”).

Project Location: The Subsidiary CDE will make loans to two Borrowers at the following locations:
Mt. Read Borrower. Mt. Read – 2011 Mt. Read Blvd., Rochester, NY 14615 (the “Mt. Read Site”)
Lexington Borrower. Lexington – 617 Lexington Ave., Rochester, NY 14613 (the “Lexington Site”)

Proposed Project: The Subsidiary CDE will make loans to two (2) Borrowers to finance the (i) renovation of Foodlink’s headquarters at the Mt. Read Site which will convert 17,569 SF of unused or underutilized space into expanded cold storage, dry storage, a curbside market, and a commercial kitchen allowing Foodlink to expand its programming, meet increasing demand, and serve more Low-Income People (“LIPs”) and Low-Income Community Residents (“LICRs”) through its core foodbank programming; healthy meal prep for local schools, daycares, and community-based organizations; culinary apprenticeship program; and curbside market (the “Mt. Read Project”); and (ii) the construction of a community education center at the Lexington site (the “Lexington Project,” and together with the Mt. Read Project, the “Projects”). The Lexington Project includes site work and the construction of a 2,800 SF community program space, to be known as the Edible Education Center. The center will support field trips to teach STEM and food studies, offering nutrition education, taste testing, and promoting healthy eating habits.

Project Type: These Projects will bring free and affordable fresh, quality food to underserved low-income communities located in a food desert. The Projects will also offer workforce training and youth engagement/education, and create quality, accessible jobs. These investments address ESNMC’s goals of (i) increasing access to essential goods and services in underserved, low-income communities (“LICs”); (ii) create quality jobs by growing the manufacturing, warehousing, and distribution base; and (iii) making small QLICs [defined above], which the CDFI Fund defines as loans that are less than \$4 million.

Alignment with Priorities: These investments align with the following ESNMC priorities and focus areas in the NMTC allocation application submitted to the CDFI Fund and the related Allocation received by ESNMC.

- (1) Finance projects that provide critical goods and services to LICs: The Projects will bring critically needed free or affordable food to LIPs and LICRs as well as workforce training and community education. The projects are in a Federally Designated Food Desert.
- (2) Invest in projects that create quality jobs by growing the manufacturing, warehousing, and distribution base. The Projects are expected to retain 131 jobs, 27 of which are at risk of being eliminated without this project, and create 17 permanent full-time jobs.
- (3) Make small loans (those less than \$4 million) to QALICBs: QALICBs will be made to 2 QALICB as part of the Project. The Lexington Borrower for the Lexington Project will receive loans that are approximately \$2.5 million.
- (4) Highly Distressed Areas
The Project sites are located in areas of severe distress because the census tract for each site meets the following criteria:

- Mt. Read Site
 - 2011 Mt. Read Blvd., Rochester, NY 14615
 - Census Tract: 36055001800
 - Average Median Income: 60.00%
 - Poverty Rate: 16.90%
 - Unemployment: 14.30%, or 2.65x the national average
 - Food Desert
 - This Unemployment Rate qualifies the site as “Deeply Distressed” based on the CDFI Fund’s new definition of Deep Distress.
- Lexington Site
 - 617 Lexington Ave., Rochester, NY 14613
 - Census Tract: 36055002300
 - Average Median Income: 30.00%
 - Poverty Rate: 44.40%
 - Unemployment: 6.70%, or 1.24x the national average
 - Opportunity Zone
 - This low family median income and high poverty rate qualify this site as Deeply Distressed.

II. Project Cost and Financing Sources

The table below outlines approximate amounts of the NMTC Allocation targeted to the Borrowers and the expected Project uses and financing sources, which will be finalized, reviewed and approved by ESNMC prior to closing.

	Mt. Read	Lexington	TOTAL
Targeted NMTC Allocation⁽¹⁾	\$6,500,000	\$2,500,000	\$9,000,000
Sources			
ESNMC QLICIS ⁽²⁾	\$6,240,000	\$2,400,000	\$8,640,000
Foodlink, Inc. Contribution	\$2,034,701	\$347,026	\$2,381,727
Total Sources	\$8,274,701	\$2,747,026	\$11,021,727
Uses			
	Mt. Read	Lexington	Total
Hard Construction Costs	\$7,286,039	\$2,193,578	\$9,479,617
Soft Costs	\$309,912	\$210,698	\$520,610
NMTC Closing Fees/Reserves	\$678,750	\$342,750	\$1,021,500
Total Budget	\$8,274,701	\$2,747,026	\$11,021,727

Notes

- (1) These funds are indirectly sourced partially from equity from U.S. Bancorp Community Development Corporation (“USBCDC”), which will be ESNMC’s NMTC Investor and partially from a loan made by the Sponsor.
- (2) This figure is the \$9,000,000 NMTC Allocation net of approximately \$360,000 of ESNMC’s CDE fee paid at closing.

III. Project Description

A. Borrowers

Industry: The Project Sponsor is Foodlink, a nonprofit based in Rochester, NY that is one of the ten food banks in New York State.

Borrower and Sponsor History: Founded in 1978, Foodlink was created with the mission to rescue and redistribute food from manufacturers, retailers, and other donors to human-service organizations. In 2023, the Company distributed over 20 million pounds of food through a network of 400 partner organizations, across 10 counties. In addition to being a regional food bank, Foodlink’s approach to the fight against hunger includes many innovative programs: a curbside market, which includes delivery services as well as direct sales of affordable and fresh food; a culinary apprenticeship program; nutrition education; healthy meals for students, daycares, and other community-based programs; a Community Café that provides training opportunities for Foodlink’s culinary apprentices; and pop-up food pantries.

Ownership: The QALICBs and ESNMC’s Borrowers are expected to be two separate entities. The Borrower for the Mt. Read Site is the Mt. Read Borrower and the POB is expected to be a QALICB for NMTC purposes, and the Borrower for the Lexington Site is the Lexington Borrower, which is expected to be a QALICB for NMTC purposes.

Market: Located in underserved low-income neighborhoods, Foodlink serves LIPs and is one of the ten foodbanks in New York State. In 2023, the Company distributed over 20 million pounds of food through a network of 400 partner organizations, across 10 counties. In addition to core foodbank programming, Foodlink also manages mobile distributions and pop up pantries with a focus on rural communities, provides healthy meals to students, manages the Foodlink Career Fellowship in the culinary arts, and operates a curbside market all with the goal of leveraging the power of food to end hunger and build healthier communities. All people served by Foodlink are LIPs or LICRs.

ESD Involvement: New York State legislation requires ESD to select and prioritize projects demonstrating certain goals or benefits and approve the Project as an ESD project. In accordance therewith, on November 21, 2024, the ESD board of directors will be requested to separately approve the Project.

Past ESD Support: The Borrower has received a CFA grant award totaling \$685,000 for the Project.

B. The Projects
Activity

As noted above, the Subsidiary CDE will make loans to two Borrowers to finance the renovation of Foodlink’s headquarters at the Mt. Read Site and the construction of a community education center at the Lexington Site.

Mt. Read Project: ESNMC will provide up to \$6.5 million in NMTC Allocation to make up to \$6.24 million in QLICIs to the POB to renovate 17,569 SF of Foodlink’s headquarters to expand refrigeration, dry storage, the curbside market and commercial kitchen in addition to a roof replacement, enhanced safety measures, and energy efficient windows.

Lexington Project: ESNMC will provide up to \$2.5 million in NMTC Allocation to make up to \$2.4 million in QLICIs to the Lexington Borrower to construct a 2,800 SF community program space, to be known as the Edible Education Center, and complete site work.

Results:

The Projects will provide local, underserved communities with increased access to fresh, healthy, free and low-cost foods, prepared meals, workforce training, and youth engagement/education, and both sites will retain and create quality and accessible jobs. The following are important outcomes that are expected to be achieved:

Estimated Job Creation: The Projects are expected to maintain 131 jobs, 27 of which are at risk of being eliminated without these projects, and create 17 permanent full-time jobs. The table below details the job creation/retention per site:

Project	# of Existing Jobs	# of Created Jobs	Total # of Jobs
Mt. Read	128	15	143
Lexington	3	2	5
TOTAL	131	17	148

Quality Jobs/Benefits Offered to Employees

- 94% of the total permanent FTE jobs to be created and retained will be paid above Rochester’s living wage of \$21.60/hr.

Project	# of Existing Quality Jobs	# of Created Quality Jobs	Total # Quality Jobs
Mt. Read	121	15	136
Lexington	2	1	3
TOTAL	123	16	139

- All full-time and part-time employees receive comprehensive benefits including medical, dental and vision insurance, retirement plans, profit sharing, paid time off, and disability.
- All employees and fellows/interns will receive on-the-job training as well as onboarding training.

Job Accessibility to the Low-Income Community

- The Projects are expected to retain and create 122 Accessible FTE jobs (or 82% of the total) that are available to people without a college degree or who face other barriers to employment (prior criminal record, veterans, workers with disabilities, non-native English speaking).

Project	# of Existing Accessible Jobs	# of Created Accessible Jobs	Total # of Accessible Jobs
Mt. Read	103	14	117
Lexington	3	2	5
TOTAL	106	16	122

Community Goods and Services

In Foodlink’s 10 county service area, the food insecurity rate climbed from 9.3% in 2021 to 12% in 2022, with a neighborhood in Rochester at 29.8%. The Projects will bring critically needed free or affordable food to LIPs and LICRs as well as workforce training and community education. The Mt. Read Project estimates the following impacts:

- Serve 9,532 students a year with healthy meals (100% LIPs).
- Partner with 400 organizations through its foodbank program, distributing 20 million pounds of food to 200,000 LIPs and LICRs.
- Train 25 LIPs through its culinary apprenticeship program annually.

The Lexington Project will serve 1,500 people through its community education programming (100% LIPs)

Commercial Goods and Services

In addition to the critical need of food banks to address food insecurity, Foodlink operates a curbside market to directly serve the low-income community with affordable and healthy foods. The Mt. Read Project’s expansion of the curbside market to 6,317 SF will serve an estimated 4,000 people annually. All visits are by LIPs or Low-Income Community Residents.

Sponsor Contact: Terra Keller
Chief Financial & Operating Officer
tkeller@foodlinkny.org

Project Team:	Origination	Jonevan Hornsby
	Project Management	Brendan Healey
	Contractor & Supplier Diversity	Denise Ross
	Finance	Jonevan Hornsby
	Environmental	Soo Kang

Statutory Basis
And Findings: Section 45D of the Internal Revenue Code, Section 10 (g) and Sections 12 and 16 (2) of the New York State Urban Development Corporation Act of 1968, as amended (the “UDC Act”). As noted below, the NMTC program, enacted in 2000, offers a non-refundable tax credit intended to encourage private capital investment in low-income communities. The Project will comply with all applicable NMTC program requirements. ESD is required to approve the Project (and is scheduled to do so at a meeting to be held on November 21, 2024) and ESNMC will comply with applicable federal tax laws and consummate the transaction. ESNMC is making certain findings as part of its approval of the Project.

IV. NMTC Program Background and ESNMC Role

The NMTC program, enacted in 2000, offers a non-refundable tax credit intended to encourage private capital investment in low-income communities. The U.S. Department of the Treasury's Community Development Financial Institutions Fund (the "CDFI Fund") allocates NMTCs under a competitive application process. Investors who make qualified equity investments ("QEIs") in community development entities ("CDEs") reduce their federal income tax liability by claiming the NMTC.

CDEs, such as ESNMC, the CDE that is controlled by ESD, apply to the CDFI Fund for an allocation of NMTCs. After an award of NMTC allocation, the CDE uses subsidiary CDEs to attract private equity investors who make QEIs in the subsidiary CDEs in order to claim the NMTCs. The subsidiary CDE then makes loans or equity investments in qualified businesses that are located in low-income communities. These loans and/or equity investments are made on better rates and terms than market.

The tax credit value is 39% of the cost of the QEI and is claimed over a seven-year credit allowance period. In each of the first three years, the investor receives a credit equal to 5% of the total amount paid for the stock or capital interest in the subsidiary CDE at the time of purchase. For the final four years, the value of the credit is 6% annually. Investors must retain their interest in a QEI throughout the seven-year period.

By federal law, any CDE must be a domestic corporation or partnership that must go through a certification process to obtain its status. Partnerships and limited liability companies (that are treated as partnerships for tax purposes) ("LLCs") are the preferred subsidiary to structure NMTC projects. ESNMC has created certified subsidiary CDEs as LLCs and has sub-allocated and will sub-allocate its NMTCs to one of these LLCs for each project.

Through the NMTC program, \$81 billion in NMTCs have been awarded to CDEs across the country since inception.

ESNMC received its first allocation of NMTCs in 2009 in the amount of \$30 million. All of this initial allocation was deployed in two NMTC projects. ESNMC received a second allocation in the amount of \$55 million in the 2015-2016 round of the NMTC program and deployed the allocation into 12 projects across NYS. ESNMC received a third allocation in the amount of \$45 million for the 2021 round (the "2021 Allocation"), and has deployed \$29.5 million into the GLOW YMCA, Flanigan Square, and Bogopa projects. ESNMC received a fourth allocation in the amount of \$50 million in the 2022 round of the NMTC program (the "2022 Allocation"), and has deployed \$23 million into Cimolai-HY, and Bogopa. ESNMC received a fifth allocation in the amount of \$50 million in the 2023 round of the NMTC program. ESNMC will use \$6.5 million from the 2021 Allocation, and \$2.5 million from the 2022 Allocation for the Projects.

V. Overall Structure of NMTC Project Transaction

The Project will be structured as follows: USBCDC will make an equity investment in the approximate amount of \$2,737,800 (the “NMTC Equity”) in a special purpose fund (the “Fund”) wholly-owned by USBCDC and formed for the purpose of this transaction. Foodlink Foundation, Inc. will be the Leverage Lender for this transaction and will provide approximately \$6,262,200 in leverage debt to the Fund (the “Fund Loan”).

The proceeds of the Fund Loan and the NMTC Equity will be combined by the Fund and used to make one or more QEIs in the aggregate amount of \$9,000,000 in the Subsidiary CDE. ESNMC will sub-allocate \$9,000,000 of NMTC allocation authority to the Subsidiary CDE. The Subsidiary CDE will use the proceeds of the QEI(s) from the Fund to make loans to separate Borrowers in an aggregate amount equal to approximately \$8,640,000 and to pay a fee to ESNMC in the aggregate amount of \$360,000.

Approximately \$6,240,000 will be loaned in connection with the Mt. Read project, and approximately \$2,400,000 will be loaned in connection with the Lexington project.

The balance of funding required by each Borrower to finance the renovation or construction will be contributed from the Sponsor through investments and grants/donation proceeds.

USBCDC will require the Subsidiary CDE and its managing member, ESNMC, to indemnify USBCDC from the recapture or disallowance of the NMTC caused by acts or omissions of the Subsidiary CDE, so that USBCDC will be made whole (subject to any caps that may be negotiated) in respect to its investment even if the NMTCs are lost or recaptured.

Notwithstanding the foregoing, the structure of the overall transaction and each project is still under review and discussion and may be affected by receipt of additional documentation and further evaluation by the transaction parties.

VI. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority- and women-owned business enterprises (MWBEs) and service disabled veteran owned businesses (SDVOBs) in the performance of ESD projects. Accordingly, ESD’s Non-Discrimination and Contractor & Supplier Diversity policy will apply to the project. No specific MWBE or SDVOB participation goals shall be required of this project, however, the sponsor shall adhere to ESD’s Non-Discrimination and Equal Employment Opportunity (“EEO”) policy.

VII. Environmental Review

ESD staff on behalf of ESNMC 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.

VIII. Requested Actions

The Directors are being asked to adopt, subject to the requirements of Section 16(2) of the UDC Act, the herein described General Project Plan (“GPP”), and to make a sub-allocation of up to Nine Million Dollars (\$9,000,000) from the Allocation for the purposes set forth in the GPP. The Directors are also being asked to delegate to one or more authorized officers of ESNMC, acting in its own capacity, or as managing member of the Subsidiary CDE, the authority to determine the terms of the NMTC transaction documents and to execute such NMTC transaction documents on behalf of ESNMC and the Subsidiary CDE in connection with the closing of the NMTC transaction.

IX. Additional Submissions to Directors

Resolutions
New York State Map

November 6, 2024

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Sub-Allocation to provide financing for the renovation of the Foodlink headquarters and the construction of a community education center – Authorization to Adopt the Proposed General Project Plan (the “GPP”); Authorization to Sub-Allocate New Markets Tax Credits (“NMTCs”); Perform Certain Acts in Connection with the Sub-Allocation of NMTCs to an ESNMC Subsidiary CDE; Close the NMTC Transaction and Take All Related Actions

WHEREAS, Empire State New Market Corporation, a New York corporation (the “Corporation”), has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation has entered into (i) an Allocation Agreement (the “2021 Allocation Agreement”), with the CDFI Fund in connection with an allocation of NMTCs under Section 45D of the Code in the amount of \$45,000,000 (the “2021 Allocation”), and (ii) an Allocation Agreement (the “2022 Allocation Agreement,” and together with the 2021 Allocation Agreement, the “Allocation Agreement”) with the CDFI Fund in connection with an allocation of NMTCs under Section 45D of the Code in the amount of \$50,000,000 (the “2022 Allocation,” and together with the 2021 Allocation, the “Allocation”);

WHEREAS, the Corporation desires to sub-allocate to ESNMC Subsidiary CDE XVI, LLC, a New York limited liability company, or another subsidiary CDE of the Corporation (the “Subsidiary CDE”), up to \$6,500,000 in NMTC authority from the Corporation's 2021 Allocation and up to \$2,500,000 in NMTC authority from the Corporation's 2022 Allocation (collectively, the “Sub-Allocation”) in connection with the proposed investments to Foodlink, Inc., a New York not-for-profit corporation (“Foodlink”), and an affiliate of Foodlink to finance the renovation of Foodlink's headquarters site and the construction of a community education center in Rochester, New York (the “Project”) as described in the GPP;

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

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

RESOLVED, that pursuant to Section 10(g) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that there are no families or individuals to be displaced from the location of the Project; and be it further

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

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation acting in its own capacity, or as managing member of the Subsidiary CDE, to negotiate, issue, execute and deliver any and all transaction documents and instruments, including but not limited to, operating agreement(s), loan and security agreements, indemnity agreement(s), fee agreements, asset management agreements, bank accounts, account control agreements, disbursement agreements, and any other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (collectively, the "Transaction Documents"), and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions, including such modifications to the terms of the transaction as he or she may deem necessary or appropriate and reasonably consistent with the GPP. Any actions previously taken by the Corporation in furtherance of the GPP are hereby ratified and approved.

* * *

Foodlink
Rochester
Monroe County

