

COUNCIL ON DEVELOPMENT FINANCE

December 19, 2016

PUBLIC HEARING 428

THOSE PRESENT:

Mr. Andrew Lubin, Chairman	Honorable Bernice Whaley, DEDO Director
Honorable Nancy Cook	Mr. David Archer
Mr. Tariq Haskins	Ms. Patricia Cannon
Mr. Jack Riddle	Ms. Kimberly Cruz
Mr. Richard Rowland	Mrs. Leilani Decena-Shepherd
Mr. Fred Sears	Mrs. Jodie Green
Honorable Bryon Short	Mr. Lawrence Lewis, DAG
Ms. Richelle Vible	Mrs. Amber Mudri
	Mr. David Root
	Mrs. Jordan Schulties

ALSO PRESENT:

Cohesive Strategies, Inc. DBA The Archer Group (Archer Group)

Mike Derrins, CEO of The Archer Group
Tim Mihok, CFO of The Archer Group

Delaware Technology Park (DTP)

Michael Bowman, Chairman & CEO of Delaware Technology Park
Tracy Shickel, Marketing of Delaware Technology Park

Applicant: RLDP Holding, LP

Donald Hollenbeck, President of Craig Technologies, Inc.

Erin Innes, Office of Management and Budget
Art Jenkins, Office of the Controller General

LOCATION: Buena Vista Conference Center, 661 South DuPont Highway, New Castle,
Delaware 19720

TIME: 9:11 a.m.

CALL TO ORDER:

The meeting was called to order 9:11 a.m. by Council Chairman Mr. Andrew Lubin, on Monday, December 19, 2016.

OLD BUSINESS:

Mr. Andrew Lubin called for a motion to approve the minutes of the November 28, 2016 Council on Development Finance meeting as presented. Mr. Fred Sears approved the motion; Mr. Richard Rowland seconded the motion, which was then adopted by unanimous vote.

NEW BUSINESS:

Cohesive Strategies, Inc. DBA The Archer Group (“Archer Group” or the “Applicant”) – The Applicant is requesting the following grants from the Delaware Strategic Fund: a \$454,674 Performance Grant for the retention of 67 full-time Delaware positions; a \$189,102 Performance Grant for the creation of 28 new full-time Delaware positions; and a Capital Expenditures Grant in an amount up to \$120,000 for the expansion of its new facility in Wilmington, Delaware.

DEDO staff presented the project to the Council. Mr. Dave Archer, DEDO’s New Castle County Business Development Leader, gave the background on the project as well as highlighted the business case. Mrs. Jordan Schulties, DEDO’s Capital Resources Director, presented the financial analysis of the company.

Mr. Archer stated to the council he had no connection with the Archer Group.

Tim Mihok, CFO of The Archer Group, made remarks before the Council on behalf of Cohesive Strategies, Inc. He explained that their request will allow the company to be competitive in the Mid-Atlantic region and attract creative and digital talent. Mike Derrins, CEO of The Archer Group, added that the city of Wilmington is the perfect location to grow the company.

In response to a council member’s question about talent recruitment, Mr. Mihok replied that many of their employees come from Delaware. However, he said they end up moving to Philadelphia and commuting to work. He informed council members that the company is working with local schools to develop local-grown talent, but most of its employees come from outside of Delaware. He claimed that Philadelphia-area schools produce graduates with the skill sets they are looking for. Meanwhile, Mr. Derrins emphasized that the company’s job retention rate is higher than industry average.

Despite recent negative press about crime in Wilmington, Mr. Mihok said that The Archer Group is attracted to the city because of its close proximity to the train station. He said the company has been in downtown Wilmington since 2008 and its employees do not have a negative perception of the area. He mentioned that he feels safer walking down the streets of Wilmington than in Philadelphia.

Chairman Andrew Lubin called for a recommendation and motion for the Cohesive Strategies, Inc. DBA The Archer Group Application.

Motion Made By: Mr. Fred Sears
Seconded By: Ms. Richelle Vible

Chairman Lubin asked if there were any public comments and there were none.

MOTION: After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the council made the following

findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$20,000, which funds, including the grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the grant will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period immediately prior to the approval of the Applicant's application for assistance, the council shall recommend to Mrs. Bernice Whaley, Chairperson, The Delaware Economic Development Authority, approval of the following grants from the Delaware Strategic Fund to Cohesive Strategies, Inc. DBA The Archer Group: a \$454,674 Performance Grant for the retention of 67 full-time Delaware positions; a \$189,102 Performance Grant for the creation of 28 new full-time Delaware positions; and a Capital Expenditures Grant in an amount up to \$120,000 for the expansion of its new facility in Wilmington, Delaware., contingent upon the approval remaining in effect through and including December 18, 2017.

Approved By Vote of 8 to 0.

Delaware Technology Park, Inc. ("DTP" or the "Applicant") – The Applicant is asking the Council to re-consider a request to modify the terms of an existing loan in the amount of \$3,000,000, by reducing monthly payments and adding a balloon payment at the end of the term. The loan proceeds were used for fit-out of incubator lab space, as part of an expansion at the STAR Campus located off of Marrows Road in Newark, Delaware.

Mr. Andrew Lubin and Mrs. Bernice Whaley recused themselves from the meeting. The DTP discussion was led by Mr. Larry Lewis, DEDO's Deputy Attorney General. The acting chairman was Mr. Richard Rowland.

Mr. Lewis informed council members that since the last CDF meeting, he and Ms. Patricia Cannon, DEDO's Director of Intergovernmental Relations and Special Projects, contacted WSFS counsel for a second lien position of Delaware Technology Park's property on Innovation Way. After reviewing the documents presented to them, the bank's highest authorities decided not to extend the second lien position because of a combination of the following reasons:

1. Once the bank has a legal contractual arrangement, they don't allow that secondary position because it would affect their legal rights to collect;
2. It would affect the bank's rights to provide financing later on to secure the collateral in the applicant/borrowers position; and
3. DEDO's UCC filing, in terms of the \$3,000,000 loan taken out and approved in 2015, occurred after that loan in 2015. The bank had a UCC filing and mortgage filing in 2014. The bank believed a change in their position would adversely affect their position without having any need or benefit on their part.

Several council members expressed concern that a second position on the real estate property was not pursued in 2015. Meanwhile, other council members conveyed that WSFS' decision on the second lien position would not have changed from then until now.

There was discussion amongst council members about UCC filings. Some brought up the idea of an inter-creditor agreement, while others believed that DTP can get an extension with the bank without the council or state's involvement.

Mr. Michael Bowman, Chairman and CEO of Delaware Technology Park, indicated that he is confident that DTP can make its balloon payment because it did a 20-year cash flow analysis. However, DEDO staff expressed concern that they have not seen the cash flow report and therefore, cannot comment on whether a payment can be made or not.

Mr. Fred Sears made a motion to reduce DTP's scheduled principal payments from \$25,000 to \$12,500, effective July 1, 2019, with a balloon payment of all remaining balances due, which is projected to be \$1,262,500, on June 1, 2028.

However, several council members insisted to continue discussions about reducing the forbearance period. Ms. Cruz mentioned that DEDO ran a couple of scenarios with DTP, including a balloon payment of \$804,000. She explained that the payments would increase in \$3,000 increments every two years, with a starting payment of \$12,500.

Mr. Rowland said there will not be any collateral change and everything remains the same. He asked Council if they will accept a modification to the new motion, in which principle payments will begin July 1, 2019 for \$12,500 per month for 24 months; beginning July 1, 2021, payments will be \$15,500 per month for 24 months; beginning July 1, 2023, payments will be \$18,500 per month for 24 months; beginning July 1, 2025, payments will be \$21,500 per month for 24 months; beginning July 1, 2027, payments will be \$24,500 per month for 11 months with all remaining principles being paid in a balloon payment due June 1, 2028.

Motion Made By: Mr. Fred Sears
Seconded By: Mr. Tariq Haskins

Acting Chairman Mr. Rowland asked if there were any public comments and there were none.

MOTION: After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) the Project will contribute to maintaining or providing gainful employment of the citizens of the State, (ii) the Project will serve a public purpose by contributing to the prosperity, health or general welfare of the State; (iii) the Project will require a capital investment of at least \$20,000, which funds, including the grant proceeds, will be available or expended on the date on which The Delaware Economic Development Authority disburses the requested grant funds; (iv) the grant will effectuate the purposes of Chapter 50, Subchapter IV of Title 29 of the *Delaware Code*, and (v) the Applicant is a financially responsible person to the extent required by statute and has not been convicted of a major labor law violation or other illegal conduct involving moral turpitude by any agency or court of the federal government or agency or court of any state in the two-year period

immediately prior to the approval of the Applicant's application for assistance, the Council shall recommend to Mrs. Bernice Whaley, Chairperson, The Delaware Economic Development Authority, approval of a loan modification of Delaware Technology Park's existing loan, in which principle payments will begin July 1, 2019 for \$12,500 per month for 24 months; beginning July 1, 2021, payments will be \$15,500 per month for 24 months; beginning July 1, 2023, payments will be \$18,500 per month for 24 months; beginning July 1, 2025, payments will be \$21,500 per month for 24 months; beginning July 1, 2027, payments will be \$24,500 per month for 11 months with all remaining principles being paid in a balloon payment due June 1, 2028, contingent upon the approval remaining in effect through and including December 18, 2017.

Approved By Vote of 7 to 0.

RLDP Holdings, LP ("RLDP" or the "Applicant") - The Applicant is requesting a loan modification related to terms of an existing loan in the amount of \$500,000. The loan proceeds were used for leasehold improvements on 108 Park Avenue in Seaford, DE.

Mr. Jack Riddle abstained from any action related to the project.

DEDO staff presented the project to the Council. Mr. David Root, DEDO's Sussex County Business Development Leader, gave the background on the project as well as highlighted the business case for granting an extension. Ms. Kim Cruz, DEDO's Senior Business Finance Specialist, presented the financial analysis of the company.

Mr. Donald Hollenbeck, President of Craig Technologies, Inc., made remarks before the Council on behalf of RLDP. He thanked the State of Delaware for their ongoing support, and indicated that their current request is largely related to challenging real estate conditions in Seaford. Mr. Hollenbeck said that because they are unable to obtain or refinance any mortgages in order to make the required balloon payment, they are asking for a term note so that they may continue to pay the loan.

Several council members questioned the existing security held by DEDO on this note. It was indicated at prior meetings that DEDO held a first lien position on the properties at 103 Davis Drive and 108 Park Avenue; staff communicated that the only security DEDO currently holds on this note are UCC filings on all business assets located at these two locations. Staff further clarified that under this request, DEDO would be adding property liens at 103 Davis Drive, 108 Park Avenue, and 213 Nesbitt Drive, with the restriction that sale proceeds from any of these properties must be used to pay down the note principal.

Mr. Hollenbeck informed council members that 108 Park Avenue is currently listed for sale, and should not be included as part of this request. He also indicated that any proceeds from the sale of this property will be used to pay off the mortgage held by WSFS. Mr. Hollenbeck also shared that there are mortgages held at both of the other properties: a first position is held by WSFS at 103 Davis Drive, and both first and second position are held by Community Bank at 213 Nesbitt Drive. He assured Council that there is equity present in both of the properties.

DEDO staff expressed concern that the recommendation presented to the council is not consistent with their understanding of the project. Internal staff discussions centered on adding the property

Commented [DL(1): Not sure if this is the proper way to phrase this in the document. Also unsure if December 18, 2017 should be changed. Larry, Your thoughts? And since Bernice was recused from this project hearing, is she mentioned in this section or is it Jordan?

liens at all three locations, with the sale of any of the properties triggering pay down of the note balance. Removal of the property at 108 Park Avenue is not consistent with the staff recommendation.

There was discussion amongst council members as how to best move forward. Several council members expressed their desire to move the project despite the change; in response, several other council members voiced that they were not comfortable overriding the staff recommendation. The suggestion was made to grant a short term extension in order to give DEDO staff the necessary time to evaluate the available security positions with the banks.

Chairman Andrew Lubin called for a recommendation and motion for postponing the RLDP hearing for up to 90 days so DEDO staff can get answers to questions that were raised, both in respect to first lien institutions as well as available security positions.

Motion Made By: Mr. Fred Sears
Seconded By: Representative Bryon Short

Mr. Lubin asked if there were any public comments and there were none.

MOTION: After duly considering, inter alia, the nature of the business, its competitive situation in Delaware, its location, the employment and other requirements under applicable statutory and regulatory provisions, the Council made the following findings: (i) that DEDO staff needs additional time to investigate institutions for first lien positions; (ii) and examine available security positions regarding properties pertaining to the Project, the Council shall recommend to Mrs. Jordan Schulties, Director of Capital Resources, The Delaware Economic Development Office, to postpone the hearing for RLDP for up to 90 days so the DEDO can get answers to the questions presented at today's meeting.

Approved By Vote of 7 to 0, 1 abstention

ADJOURNMENT

The meeting adjourned at 10:41 a.m.

Respectfully submitted,
Leilani Decena-Shepherd, Portfolio Administrator
LDS

cc: Members of the Council on Development Finance
Director Bernice Whaley
Lawrence Lewis, DAG