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**Testimony before the New York State Urban Development Corporation**

**D/B/A Empire State Development**

***Public hearing on the proposed subsidies to FreshDirect***

***and FreshDirect's Application for a Zoning Override***

**November 17, 2014**

**Comments of Elizabeth Bird, Good Jobs New York**

Thank you for the opportunity to testify today. My name is Elizabeth Bird and I am the Project Coordinator of Good Jobs New York, a project of Good Jobs First based in Washington, DC in partnership with the Fiscal Policy Institute, with offices in New York City and Albany.

Good Jobs New York promotes accountability to taxpayers in the use of economic development subsidies. Since our launch in 2000, we have worked to improve public participation in and transparency of these subsidy programs including our online database of over 40,000 subsidies approved by the New York City Industrial Development Agency (IDA), the Lower Manhattan Development Corporation and the Industrial and Commercial Incentive Program. Our Database of Deals is available on our website, [www.goodjobsny.org](http://www.goodjobsny.org).

I strongly oppose the subsidy for the FreshDirect project because it: (1) fails to adequately consider impacts to other businesses and FreshDirect's current workforce. (2) would pay low wages with no guarantee of jobs to local residents, (3) is inconsistent with efforts to protect the South Bronx waterfront flood zone in the wake of Hurricane Sandy, and (4) fails to justify the excessive subsidies being sought by FreshDirect and should be denied as a matter of public policy.

## **1. The FreshDirect project fails to adequately consider impacts to other businesses and to FreshDirect's current workforce**

I question the due diligence efforts of New York City and State economic development agencies. There has not been a cost-benefit analysis to consider the impact that this subsidy would have upon existing brick-and-mortar grocery stores throughout New York City – a problematic oversight. Given the needs of the South Bronx, allocating tremendous resources to one company is irresponsible. This is particularly the case when subsidizing FreshDirect so heavily will harm other grocery stores throughout the city, and in the South Bronx in particular.

Likewise, documents analyzing whether FreshDirect could remain in its currently subsidized location<sup>1</sup> in Long Island City have not been included with project materials. When FreshDirect appealed to the New Jersey Economic Development Authority, however, project documents showed that the company does indeed have the ability to expand in its current facility<sup>2</sup>.

Similarly, no clear analysis has ever shown the expected impact this move would have on FreshDirect's current employees in Long Island City. Could taxpayers be subsidizing the loss of jobs for Queens residents? It is simply wasteful to subsidize moving jobs to one neighborhood at the expense of another.

## **2. The FreshDirect project would pay low wages with no guarantee of jobs to local residents.**

This board has an obligation to ensure that subsidies go to good employers paying decent wages. That clearly is not the case for FreshDirect, a company which spent hundreds of thousands of dollars to be excluded from the living wage requirements of the city and which has a deeply concerning record of discrimination and unfair labor claims.

Last year, New York City Council passed the Fair Wages for New Yorkers Act, which requires any private development project directly accepting \$1 million or more in taxpayer subsidies to pay employees a living wage of \$10/hour with supplemental health benefits or \$11.50/hour without benefits. FreshDirect, however, angled to receive a pass on this "living wage" requirement despite seeking a subsidy more than 100 times the threshold. FreshDirect spent more than \$300,000 lobbying to undermine this monumental

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<sup>1</sup> In 1999, Fresh Direct was awarded a \$6 million subsidy package by the New York City Industrial Development Agency.

<sup>2</sup> Copies of documents are available here: <http://www.southbronxunite.com/p/legal-documents.html>

legislation<sup>3</sup>. Even Mayor Bloomberg criticized the speaker of city council for delaying the living wage legislation vote to exclude FreshDirect.<sup>4</sup>

Moreover, in the past four years, FreshDirect has faced at least 27 discrimination complaints and has had nine unfair labor claims filed with city, state and federal agencies. As disclosed in its subsidy application, these include claims of unfair labor practices and claims of discrimination on the basis of race, national origin, age, disability, religion, and gender.<sup>5</sup> The company is also currently being sued by current and former employees in a class action lawsuit for violating federal and state law by withholding more than \$23 million per year in overtime wages and tips from drivers<sup>6</sup>.

For a project that continually claims that it will bring jobs to the South Bronx, it is alarming that there is actually no guarantee in any of the project's materials that the majority of jobs promised will go to residents of the Bronx. Although FreshDirect signed an MOU with Bronx Borough President Ruben Diaz Jr., the MOU, an unenforceable document, commits FreshDirect to "make its best efforts" to hire Bronx residents for 30% of all new jobs. This is not a commitment to actually hire Bronx residents, only a non-binding promise to *try* to hire them.

### **3. The FreshDirect project is inconsistent with the City's efforts to protect the South Bronx waterfront flood zone in the wake of Hurricane Sandy**

In February 2012, the NYCIDA contemplated FreshDirect's application for more than \$80 million in subsidies to move to a South Bronx waterfront flood zone. Nine months later, Hurricane Sandy hit, wreaking unprecedented damage to homes, businesses, and communities along the coast.

FreshDirect's proposed facility would be located in a South Bronx flood zone that sustained significant damage during Hurricane Sandy. Upwards of three and half feet of water swelled Harlem River Yards at Lincoln Avenue, damaging businesses and polluting the streets. FreshDirect's proposed site is located directly opposite of a power plant, which was badly damaged during the storm.

As you know, a central component throughout plans to protect New York City from climate change and sea level rise is to study how natural areas and especially waterfront open space can be used to protect adjacent neighborhoods.

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<sup>3</sup> <http://www.nyc.gov/lobbyistsearch/search?client=Fresh+Direct%2C+LLC>

<sup>4</sup> <http://www.capitalnewyork.com/article/politics/2012/06/6100107/bloomberg-freshdirect-never-would-have-come-bronx-living-wage>

<sup>5</sup> Industrial Development Agency, *Application: Fresh Direct, LLC and U.T.F. Trucking, Inc.* (Oct. 21, 2011).

<sup>6</sup> <http://www.law360.com/articles/520906/freshdirect-s-ot-tips-policy-rotten-delivery-drivers-say>

The New York City - Region 2 Advisory Committee (RAC) for the New York State Open Space Conservation Plan recommended for priority status the community-developed Mott Haven-Port Morris Waterfront Plan that would preserve seven inter-connected waterfront projects lining the South Bronx shoreline as open space, including the site on which FreshDirect proposes to build its warehouse. Subsidizing FreshDirect's plan for the South Bronx waterfront would be a severe misuse of taxpayer money and would thwart city- and state-wide efforts toward coastal protection and climate change adaptation.

**4. The FreshDirect project fails to justify the excessive subsidies being sought by the company and should be denied as a matter of public policy**

Taking into account the authorized approval of over \$80 million in New York City Industrial Development Agency subsidies approved in July 2013, the ESD's proposal of \$10 million, and other additional benefits the company is seeking, FreshDirect is poised to receive one of the largest subsidies in New York City in over a decade. Such excess in corporate subsidies is counter-productive to the goals and mission of this body, particularly in this instance when the community's concerns about the project have been completely overlooked. For all these reasons, I urge you to deny FreshDirect's application for subsidies and for a Zoning Override.

Thank you for the opportunity to testify today.