

April 17, 2017

Honorable Andrew M. Cuomo  
Governor of the State of New York  
Executive Chambers  
633 Third Avenue  
New York, New York 10017

**Re: Buffalo Billion/Nano Projects**

Dear Governor Cuomo:

I write concerning our work regarding the Buffalo Billion/Nano Projects and to supplement my letter of September 22, 2016. State officials have advised us that they are in a position to take over the work we were asked to perform and to implement the Review Protocols that we suggested.

Summary of our work from September 23 through December 16, 2017

Payment Requests

- We have continued to review and analyze payment and billing requests and the processes followed to do so, for equipment, professional, materials, construction fees and costs (“Requests”), bringing the total amount reviewed and analyzed to approximately \$417 million. As you are aware, we made recommendations to the funding agencies involved for each of the matters we reviewed (“Recommendations”). For most of the additional Requests presented, upon first review they lacked sufficient information and documentation to establish that required procedures had been followed. In those Requests we recommended against the payment of the amounts requested until proper information was received and questions answered. Eventually, we received the necessary information for all but approximately \$49 million of the additional Requests. As to the \$49 million, issues of insufficient documentation, appropriate authorization, or other issues surfaced during the reviews, which indicated to us that we should recommend that payment should not be made or should be withheld until answers to questions and production of additional documentation were provided and we continued our recommendation that payment be delayed or not be made (collectively “Withhold Recommendations”). As you are aware, the Withhold Recommendations were forwarded to the funding agencies involved for each of the matters we reviewed for which we recommend funds be withheld. In addition, for each request for payment

reviewed, we recommended that the Grantor, Grantee and/or Payee, each execute an entity specific certification with regard to lack of bribery, collusive procurement and fair pricing, which practice we believe, should continue.

### Review Protocols

- The Review Protocols that we recommended as part of the system of controls to help guide the reviews to be conducted in the future, previously provided, have been reviewed by operational and legal staff from various State agencies and authorities including your staff and the staffs of the funding agencies. We have met with both and we have had additional interaction and meetings with those who, we are informed, will be conducting future Reviews. Most recently, we had further discussions of the implementation and revisions to the Protocols and the transition of the review process from Guidepost to the ESDC staff. We believe that this implementation should help provide adequate and more transparent review of the grant, procurement and payment processes.

### Areas of Concern

- We have since September 22, followed up on a number of previously identified areas of concern, including “hiring goals and practices” and the “change order process”.
- With regard to subcontractors, we have had a number of conversations and meetings with various personnel from the Chamber and from the agencies in which we discussed our concerns based on our reviews. We provided information about a number of subcontractors. We have been advised that broader inquiries are being made so that controls may be strengthened.
- With regard to the “Change Order of Process”, after the commencement of our review of the RiverBend Park Capital Requisitions both for the contractors, the equipment and the machinery suppliers, we informed the relevant parties that we believed that the combined prices for construction, machinery and equipment exceeded the allowed amount in the Grant Disbursement Agreement, as amended, and that the total cost to the State for the entire RiverBend Park Capital project could exceed the applicable Legislative appropriations for such project and the amount approved by the Public Authorities Control Board for it. We made specific recommendations to resolve this issue and additional recommendations to prevent this from occurring in the future and to assure that the total cost to the State will be within the amount set by the Legislature.

### Transition to ESDC

- Our review of payment requests has been concluded. We had been advised by Chamber personnel that any requests forwarded to us for review after Monday, November 21, 2016, as well as others for which Guidepost had not commenced its review, will be reviewed by ESDC staff and not by the Guidepost Team. Transition meetings, as indicated above have been ongoing. Reviews for pending payment requests will now be conducted by ESDC.

### Attention to Processes and Procedures

We have found issues with many phases of the contracting process including the grant and payment processes, the procurement bid process; the sole source selection procedures; the change order approval process and hiring of subcontractors. Our activities have made clear that appropriate processes, procedures and protocols must be followed in all phases of construction projects. Given that criminal charges were leveled on September 23, 2016, against officers and personnel of some of the contractors involved in some of the projects under review, and given some contractors invoices presented the hiring goal issues described above, we have recommended against payment to those entities on outstanding payments due to them for retainage, general conditions and self-performed work for Buffalo Billion and Nano projects or, have recommended that if some payments for such items be made, sufficient balances be held, in the event of an adverse decision against the entity or a finding made of improper credit, and have further recommended payment to their subcontractors be made only by two-party check or by direct payment to the subcontractors.

### Conclusion

Consistent with your instructions and the requests from the U.S. Attorney's office for the Southern District of New York, we have limited our review of the procurement for construction projects to be sure that we did not interfere with the Southern District's investigation and now, prosecution.

This, of course, is not unusual when a law enforcement inquiry is underway.

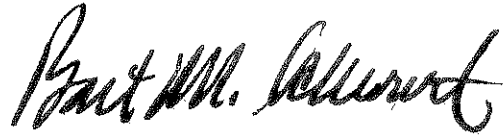
As you requested, our focus has been to create a fair but rigorous review process to protect the taxpayers of the State and to see that work properly done is paid for in a timely manner. During this project we have reviewed approximately \$417,000,000.00 in payment requests and recommended that over \$190,000,000.00 be delayed or withheld until appropriate information and documentation were delivered, so that taxpayer funds were spent only in accordance with the grant agreements, contractual requirements and proper procedures and protocols. Of the latter amount, we have recommended that approximately \$49 million be delayed or not be paid at this juncture. State authorities have been an integral part of these reviews as they became familiar with our procedures and protocols. We are pleased that the Chamber has been engaged with attempting to rectify the issues we have raised. We are hopeful that actions in which we have engaged will result in stronger controls to prevent fraud, waste and abuse.

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Given the status of our assignment, we believe it is time for us to end our engagement, subject to any further instructions from you. We stand ready to continue to assist the State in any additional work requested. Once again, I want to thank you for having confidence in me and our team at Guidepost Solutions.

Very truly yours,



Bart M. Schwartz  
Chairman

**By Hand**

September 22, 2016

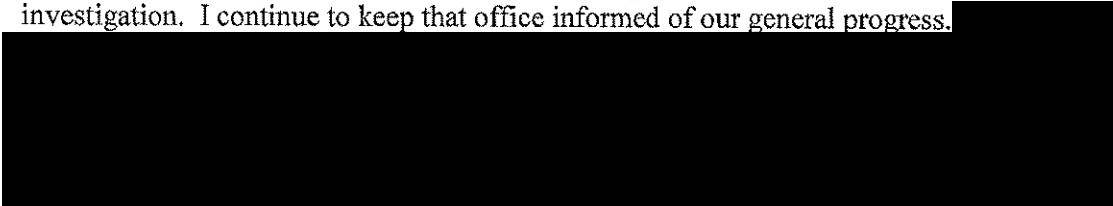
The Honorable Andrew M. Cuomo  
Governor of New York State  
Executive Chamber  
633 Third Avenue  
New York, NY 10017

RE: Buffalo Billion and Nano Projects

Dear Governor Cuomo:

In late April 2016 you announced, and thereafter the Chamber agreed, that I would undertake an assignment relating to the so-called Buffalo Billion and Nano Projects in the State. Disturbing headlines and accusations required action. You asked that the inquiry (1) determine if ongoing activities were improper or unlawful; (2) make recommendations for changes, to give the public confidence in the integrity of the system; and, (3) investigate any past wrongdoings. You also instructed that I follow the facts wherever they would lead, but to be careful not to interfere or appear to interfere with any ongoing law enforcement investigation. You also authorized me to communicate with law enforcement as I saw necessary.

Along with my colleagues, we decided to divide the work into two broad areas: Procurement and Performance. I consulted with the United States Attorney's Office for the Southern District of New York and with their concurrence I laid out a plan to first focus on performance, thus making it unlikely that I would interfere with their investigation. I continue to keep that office informed of our general progress.



Although we have performed extensive reviews of payment and performance issues, I take responsibility for the decision to delay the investigation in procurement issues since my discussions with the Southern District of New York made it clear to me that we could not navigate around their investigation without the risk of unintentional interference with it. The press has raised this issue and has asked for my comments on it. However, I decided that it was better for me to be silent than to speak at that time about

the existence of confidential discussions with the Southern District of New York. As explained to your staff, the United States Attorney's office for the Southern District of New York also requested that we delay certain interviews with individuals or entities in whom they have an interest relating to performance. This has held up inquiries which we believe we would have pursued, but to ignore that request could be viewed as interference with their investigation

A brief summary of what we have found to this point is as follows:

- We found systemic problems with the approval, review and inspection process for the authorization to release New York State funds.
  - Our numerous reports to your staff in real time have resulted in your placing this responsibility with new hands in the State for some of the funding entities involved. The New York State Economic Development Corporation will now oversee, the Athenex Project instead of the Fort Schuyler Management Corporation.
  - To overcome many of these problems we have drafted and shared with your staff recommended protocols for review in the major areas involved in the funding process. These are being reviewed by your staff and the staffs of the funding agencies and should be rolled out to the agencies in the next few weeks by them.
  - We have identified projects which we recommend be subjected to a "stress audit" to see if protocols and procedures are being followed. A list of those projects was previously furnished to your staff.
- In a relatively brief time we have analyzed payment requests for more than \$193 million for Equipment, Professional, Property and Construction fees. We recommended against payment of \$64 million of these requests and they were denied because required procedures and required documentation were not in compliance. Once required documentation was received with respect to a particular payment request, the applicable State agencies made such payments. We are currently awaiting answers to questions and production of documentation on more than another \$45 million in pending requests for payments. We recommended that the State not pay approximately \$1 million for transactions in construction and property acquisition which we believe and have demonstrated, should not be paid. We understand that the State has not made these payments.

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I hasten to add that the systemic problems do not necessarily translate into unethical or criminal behavior. However, establishment and strengthening of financial and operational controls and discipline in spending the taxpayers' money and the insistence on the delivery of required documentation and following of prescribed procedures eliminates the opportunity for those who have nefarious motives to take advantage of the sloppy process.

We have also identified other areas of concern, including compliance with "hiring goals and practices" and the "change order" process. We are available to follow up on these important areas and others we have identified, brief government authorities so that they may begin inquiries or perhaps some combination of the two. This is true, also, for the "stress audits" previously described. If you would like to discuss the additional work, please let me know.

I want to thank you for having confidence in me and my colleagues at Guidepost Solutions and for your patience in allowing me to proceed as I saw best, even when it led to some unwarranted criticism.

Very truly yours,



Bart M. Schwartz