



FOR CONSIDERATION
SEPTEMBER 30, 2016

TO: The Board of Directors

FROM: Curtis Archer

SUBJECT: **Real Estate and Tax Legal Services**

REQUEST FOR: Authorization to Amend a Contract for Real Estate and Tax Legal Services with the Law Firm of Bryant Rabbino, LLP; Authorization to Take Related Actions and to Take Related Actions

I. Contract Summary

Contractor: Bryant Rabbino, LLP (the "Firm")
220 East 42nd Street, Suite 3302
New York, NY 10017

Subcontractor: Nixon Peabody LLP
437 Madison Avenue
New York, NY 10022

Scope of Services: To provide real estate and tax legal services and counsel to the Harlem Community Development Corporation (the "Corporation" or "Harlem CDC") in connection with the Corporation's ownership interest in five low-income housing tax credit development properties.

Original Contract Term: Expiration Date July 19, 2015

Proposed Term Extension Expiration date of July 31, 2018

Contract Amount: No change to current contract amount, which is not to exceed \$ 150,000.00

Proposed Amendment Amount: \$0

**New Proposed Total:
Contract Amount** \$150,000

Funding Source(s): Harlem CDC HDFC (Housing Development Fund Corporation) fund

II. Background

In 1989, the Corporation's predecessor, Harlem Urban Development Corporation ("HUDC") and its subsidiaries, HUDC TC, Inc. and HUDC TC Limited Partnership entered into several limited partnership agreements to develop as low income housing five properties located at 303-311 West 117th Street, 275-279 West 150th Street, 2825 & 2829-31 Frederick Douglass Boulevard, 2837-45 Frederick Douglass Boulevard and 1963-1969 Madison Avenue ("Site BSW"), New York, NY. The transactions that led to the development of the five sites are similar and involve HUDC, the limited partnerships, tax credit investors and private and not-for profit developers. The developments all received federal low income housing tax credits when developed in exchange for which the properties were required to adhere to the federal low-income housing tax credit rules during a fifteen-year compliance period. HUDC acquired the properties and received permanent financing from the City of New York Department of Housing Preservation and Development ("HPD"). The New York State Department of Housing and Community Renewal ("DHCR") allocated the federal tax credits to the properties. Since all of the development sites received both types of government assistance, they are subject to regulatory agreements that extend the low-income restrictive periods beyond the terms of the tax credit compliance period. The DHCR and HPD regulatory agreements are still in effect but can be terminated under specific circumstances outlined in those agreements.

For all of the sites the fifteen-year tax compliance period has ended. All sites are leased and operated in accordance with the low-income requirements of the regulatory agreements. The sites have not undergone any extensive rehabilitation since their initial development more than twenty years ago. In 2009, Harlem CDC undertook a capital needs assessment for each site. Based upon the projections in those reports, each of the sites will require significant capital improvements in the near future. Harlem CDC and the limited partnerships need to explore the options available for financing these costs, including consideration of additional tax credit financing, taking into account the complicated ownership interests in the sites.

In addition, the Black Social Workers Corporation ("BSW") is the general partner in Site BSW. Its affiliate, the Association of Black Social Workers ("ABSW"), has been interested in acquiring full control of that site and has submitted a draft proposal to do so.

In order to receive expert legal assistance regarding financing options for potential capital improvements, and in evaluating the ABSW acquisition proposal, Harlem CDC proposes to amend its contract with Bryant Rabbino, LLP (the "Firm")

HCDC has called upon the Firm's its expertise as specific issues have arisen. As HCDC works toward the development of a final plan for the sites, including exploration of potential relinquishment of site control for any one or all of the sites, the Firm's expertise will be needed. The Firm is extremely knowledgeable about the deeds, partnership, regulatory and other project agreements that affect the sites and is therefore uniquely qualified to perform the required services. This historical involvement with the Project uniquely qualifies the Firm to provide the required counsel in the most cost effective manner.

III. Contractor Selection Process

On September 28, 2012, the Corporation adopted the list of pre-qualified counsel of its parent organization, the New York State Urban Development Corporation, d/b/a, Empire State Development ("ESD"). The Firm is a certified Women's Business Enterprise ("WBE") that is on ESD's competitively solicited pre-qualified list for legal services.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has; a) considered each proposed contractor's ability to perform the services provided for in the proposed contract; and b) consulted the list maintained by the New York State Office of General Services of offerers determined to be non-responsible bidders and debarred offerers. Based on the foregoing, staff considers the Firm to be responsible.

IV. Scope of Work

The scope of work remains the same as under the original contract for legal services.

V. Contract Term, Price and Funding

The contract term had an initial term that began July 19, 2013 and had an expiration date of July 19, 2015. The contract amount was not to exceed \$150,000. It is proposed that the expiration date be extended from July 19, 2015 to July 31, 2018, nunc pro tunc. The contract amount would remain unchanged. The Firm will be compensated at an hourly rate, and the firm has agreed to provide the services at or below ESD's standard hourly rates in effect during the contract term. The source of funding is Harlem CDC's Harlem CDC HDFC (Housing Development Fund Corporation) fund.

The requested contract amount also includes amounts to be paid to the law firm of Nixon Peabody, LLP., which the Firm intends to engage as its sub-contractor to provide expertise with regard to any income or real estate tax issues in connection with the representation. Nixon Peabody is also on the Corporation's list of pre-qualified legal counsel in the areas of Real Estate and Land Use, as well as Tax and has in the past provided direct legal services to ESD.

VI. Non-Discrimination/Affirmative Action

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Contractor shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of ESD's funding.

Bryant Rabbino, LLP is a New York State certified Minority Business Enterprise.

VII. Environmental Review

ESD staff, on behalf of HCDC, has determined that the requested authorization to enter into a contract for legal services 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. No further environmental review is required in connection with the requested authorization.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to Bryant Rabbino, LLP, the proposed contractor and with respect to Nixon Peabody LLP, subcontractor to Bryant Rabbino, LLP; (2) authorize the Corporation's officers to enter into an amendment to the agreement with Bryant Rabbino, LLP and to execute such other actions as are necessary to enter into and perform the agreement.

IX. Recommendation

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

X. Attachments

Resolution
ESD Standard Rates for Outside Counsel



Resolution #:

September 30, 2016

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Real Estate and Tax Legal Services with the Law Firm of Bryant Rabbino, LLP; Authorization to Take Related Actions and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Bryant Rabbino, LLP and its subcontractor, Nixon Peabody LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an amendment to the agreement with Bryant Rabbino, LLP to extend the expiration date to July 31, 2018, on the terms and conditions, set forth in the Materials with such amendments and modifications as the President, or his designee(s) shall deem necessary and appropriate;

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

ATTACHMENT 6

SCHEDULE OF MAXIMUM BILLING RATES AND REIMBURSEMENT ALLOWANCES

	<u>Maximum Rate Structure (per hr)</u>
Partner/Of Counsel	\$600.00
Senior Associate (At least four years of experience)	\$550.00
Mid-level Associate (Three or four years of experiences)	\$500.00
Junior Associate (Passed the bar exam but less than three years of experience)	\$425.00
Law Clerk (Law student interns or first year associates who have yet to pass the bar exam)	\$325.00
Legal Assistant/Paralegal	\$150.00

NOTE: Firms will be limited to the lesser of the hourly rate normally charged by the firm to its government clients and the applicable ESD maximum hourly rate.

On occasion, it will be advisable to compensate firms at a blended rate, whereby all attorneys would be paid at the same rate per hour, regardless of their status as a partner, of counsel, associate or law clerk. Blended rates, up to \$550.00 per hour, are permitted if determined to be necessary in the discretion of the General Counsel or his or her designee(s). The recommended blended rate would not apply to the billing categories of Law Clerk or Legal Assistant/Paralegal, which categories would be billed at the rates listed above.

Additionally, on occasion, a private developer or other private third party agrees to reimburse the Corporation's legal expenses in connection with the Corporation's participation in a particular project. On such occasions, the Corporation has the authority (but is not required) to pay to outside counsel the full, undiscounted rates, regardless of whether they exceed the Corporation's maximum rates.



**Harlem Community
Development
Corporation**

FOR CONSIDERATION

September 30, 2016

TO: The Board of Directors

FROM: Curtis Archer

SUBJECT: **Victoria Theater Redevelopment-Real Estate Legal Counsel**

REQUEST FOR: Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and The Gibson Firm as subcontractor to Phillips Lytle and to Take Related Actions

I. Contract Summary

Contractor: Phillips Lytle LLP
620 Eighth Avenue
New York, NY 10018-1405

Subcontractor: The Gibson Firm
380 Lexington Ave FL 17th
New York, NY 10168

Scope of Services: Legal Services

Contract Term: Expiration date of 07/31/2016

Proposed Term Extension Expiration date of 7/30/2019

Contract Amount: Not to exceed \$ \$230,000

Proposed Amendment Amount: \$16,000

New Proposed Total Contact Amount: \$246,000

Funding Source(s): Imprest account funded by the redevelopment project's private developer.

II. Background

Harlem Community Development Corporation ("Harlem CDC" or the "Corporation") previously engaged Phillips Lytle ("Phillips" or the "Firm") to perform legal services in connection with the Victoria Theater redevelopment project (the "Project"). The prior agreement had a term with a "tentative expiration date" of December 13, 2013. Pursuant to that contract Phillips provided counsel to Harlem CDC on a variety of issues in connection with the Victoria Theater Land Use

Improvement and Civic Project, including but not limited to the negotiation and drafting of a Memorandum of Understanding, a development lease agreements and related documents and representation at the designated developer, 233 West 125th Street Danforth, LLC's, construction financing closing. Phillips performed those services as co-counsel with the Gibson Law Firm ("Gibson" or the "Gibson Firm") a certified Minority and Women Owned Business Enterprise ("MWBE") that was engaged pursuant to a separate contract.

After the expiration of that agreement, on August 11, 2015, the Directors approved a new contract for legal services solely with Phillips, with the Gibson Firm as a subcontractor to Phillips to ensure that the Corporation's interests were adequately represented and protected in connection with the development lease, the enforcement note and mortgages that will secure the developer's obligation to provide long term affordable housing units and with respect to finalizing the Developer's construction plans for the build-out of the cultural unit that will be owned and operated by Harlem CDC or its designee.

There is a continuing need for legal representation during the construction phase of the Project, specifically in connection with enforcement of the development lease, including the completion of the planning and build-out of the cultural unit and the enforcement note and mortgages that will secure the developer's obligation to provide long term affordable housing units.

Phillips Lytle LLP as co-counsel with The Gibson Firm has demonstrated the experience and capability to provide advice and counsel for the Project and because of its historical involvement with the Project is uniquely qualified to provide the required counsel in the most cost effective manner. In order to continue working with Phillips Lytle and The Gibson Firm on the Project, staff proposes that Harlem CDC extend the term of the contract with the Firm to July 30, 2019, with the option to extend the term an additional year at the discretion of the President and that the contract amount be increased by \$16,000 for a total contract value of \$246,000.

III. Contractor Selection Process

On September 28, 2012, the Corporation adopted the competitively solicited list of pre-qualified law firms of its parent organization, the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"). Phillips Lytle LLP and the Gibson Firm, a certified MWBE are listed jointly.

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has, a) considered the proposed contractor's ability to perform the services provided for in the proposed contract; 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 considers the proposed contractor to be responsible.

IV. Scope of Work

The original contract scope of work included review and drafting of documentation in connection with the development lease execution, the construction financing closing, the enforcement note and mortgages related to the affordable housing obligations and the build-out of the cultural space component of the Project. The proposed scope of work remains the same as under the original contract for legal services.

V. Contract Term, Price and Funding

The contract had an initial term that began August 12, 2015 and had an expiration date of July 31, 2016. The contract amount was \$230,000. The current contract balance is approximately \$84,000. It is proposed that the expiration date be extended to July 30, 2019, nunc pro tunc, with an option to extend the term an additional year at the discretion of the President of the Corporation. It is also proposed that the contract amount be increased by \$16,000 to an amount not to exceed \$246,000. The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the lesser of the maximum of ESD's standard rates for outside counsel in effect during the contract term or the Firm's regular billing rates. Payments will be made from the proceeds of the imprest account funded by the redevelopment project's designated private developer, 233 West 125th Street Danforth, LLC.

VI. Non-Discrimination/Affirmative Action

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Contractor shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprises ("MWBES") for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% related to the total value of ESD's funding.

The Gibson Law Firm is both a New York State Certified Minority-owned and Women-owned Business.

VII. Environmental Review

ESD staff, on behalf of Harlem CDC, has determined that the requested authorization to enter into a contract for legal services 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. No further environmental review is necessary.

VIII. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to Phillips Lytle LLP, the proposed contractor; (2) authorize the Corporation's officers to enter into an amendment to the agreement with Phillips Lytle LLP and to execute such other actions as are necessary to enter into and perform the agreement.

IX. Recommendation

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

XI. Attachments

Resolution
ESD Standard Rates for Outside Counsel



Resolution #:

September 30, 2016

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and The Gibson Firm as subcontractor to Phillips Lytle and to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Phillips Lytle LLP and its subcontractor The Gibson Firm to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an amendment to the agreement with Phillips Lytle LLP to extend the tentative completion or expiration date to July 30, 2019, with an option to extend the term an additional year at the discretion of the President of the Corporation, and to increase the contract amount by \$16,000 from \$230,000 to \$246,000, on the terms and conditions, set forth in the Materials with such amendments and modifications as the President, or his designee(s) shall deem necessary and appropriate;

RESOLVED, that the President of the Corporation or his designee be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.

ATTACHMENT 6

SCHEDULE OF MAXIMUM BILLING RATES AND REIMBURSEMENT ALLOWANCES

	<u>Maximum Rate Structure (per hr)</u>
Partner/Of Counsel	\$600.00
Senior Associate (At least four years of experience)	\$550.00
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Additionally, on occasion, a private developer or other private third party agrees to reimburse the Corporation's legal expenses in connection with the Corporation's participation in a particular project. On such occasions, the Corporation has the authority (but is not required) to pay to outside counsel the full, undiscounted rates, regardless of whether they exceed the Corporation's maximum rates.