



**Harlem
Community
Development
Corporation**

163 West 125th Street
New York, NY 10027
212-961-4100
212-961-4143 fax
www.harlemcdc.com

BOARD OF DIRECTORS MEETING

Friday, April 12, 2013

10:00 A.M.

DRAFT AGENDA

FOR CONSIDERATION:

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

Victoria Theater Redevelopment Land Use Improvement and Civic Project; Authorization to Accept the Final Environmental Impact Statement; Authorization to Recommend that Empire State Development Accept and Approve the Final Environmental Impact Statement and Authorize it to be Published, Filed and Circulated; Authorization to take Related Actions

OLD BUSINESS

NEW BUSINESS

ADJOURNMENT



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FOR CONSIDERATION

April 12, 2013

TO: The Directors

FROM: Curtis L. Archer

SUBJECT: NEW YORK (NEW YORK COUNTY) – Victoria Theater Redevelopment Land Use Improvement and Civic Project

REQUEST FOR: Victoria Theater Redevelopment Land Use Improvement and Civic Project; Authorization to Accept the Final Environmental Impact Statement; Authorization to Recommend that Empire State Development Accept and Approve the Final Environmental Impact Statement and Authorize it to be Published, Filed and Circulated; Authorization to take Related Actions

BACKGROUND

On July 13, 2012, the Directors authorized the Corporation to request that the Board of Directors of the New York State Urban Development Corporation d/b/a/ Empire State Development (“ESD”) accept the Draft Environmental Impact Statement (“DEIS”) for the Victoria Theater Redevelopment Land Use Improvement and Civic Project (the “Project”) as Satisfactory with Respect to its Scope, Content and Adequacy for public review under the State Environmental Quality Review Act (“SEQRA”) and for Publication, Circulation and Filing. On July 18, 2012 the ESD Directors (i) authorized acceptance of the Draft Environmental Impact Statement (“DEIS”) for the Victoria Theater Redevelopment Land Use Improvement and Civic Project (the “Project”) as satisfactory with respect to its scope, content and adequacy for purposes of commencing public review under SEQRA and the implementing regulations of the New York State Department of Environmental Conservation; and (ii) authorized the Corporation to hold a duly noticed public hearing on the DEIS under SEQRA. Pursuant to these authorizations, the DEIS was appropriately filed and publicly distributed on July 19, 2012, the public hearing was held on December 10, 2012 in the Adam Clayton Powell, Jr. State Office Building jointly with the public hearing on the Project required pursuant to Section 16 of the Urban Development Corporation Act (the “UDC Act”), also as authorized by the Harlem CDC and ESD Directors, and the period within which written comments on the DEIS were accepted remained open until January 10, 2013. Harlem CDC and ESD staff and environmental and legal consultants have worked diligently to respond to all substantive comments received during this public process.

The EIS has now been finalized in conformity with SEQRA and its implementing regulations. The Final Environmental Impact Statement ("FEIS") describes the Project and its goals, assesses probable environmental impacts of the Project (including land-use, social, historic, economic, traffic, construction and other conditions), identifies feasible measures to mitigate significant adverse environmental impacts from the Project, considers the relative environmental merits of alternatives, and responds to oral and written comments submitted on the DEIS by the public and government agencies and officials. A copy of the FEIS and an Executive Summary of same are enclosed herewith. The FEIS has also been posted to the Harlem CDC and ESD websites.

SEQRA requires ESD, in its capacity as lead agency for the Project's environmental review, to file and distribute the FEIS in the same manner as the DEIS and to afford members of the public an opportunity of not less than 10 days duration to consider the document before issuing a written findings statement and making a determination as to whether to approve the Project. Before the FEIS is issued, however, Harlem CDC and ESD must make a determination that it is complete. It is important to emphasize that, in accepting the FEIS, the Directors are not being asked at this time to affirm the General Project Plan for the proposed Project. The Directors are only being asked to determine that the FEIS is complete, adequately assesses the environmental impacts of the Project and otherwise meets the requirements of SEQRA.

FUTURE ACTIVITIES

Following acceptance of the FEIS providing the requisite time for the public, as well as involved and interested agencies to consider the document, ESD will then have the ability and authority to make the findings required under SEQRA and the UDC Act and to act on the proposed Project.

REQUESTED ACTIONS

The Directors are requested to (i) accept the Final Environmental Impact Statement as complete with respect to scope, content and adequacy; and (ii) authorize the Corporation to recommend that the Board of ESD accept and approve the Final Environmental Impact Statement as complete with respect to scope, content and adequacy and to authorize its publication, filing and circulation in accordance with applicable law.

RECOMMENDATION

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

ATTACHMENTS

Resolutions
Executive Summary - Final Environmental Impact Statement
Final Environmental Impact Statement



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RESOLVED, that, in connection with the Victoria Theater Land Use Improvement Project (the "Project") and on the basis of the materials submitted prior to and during this meeting, the Corporation hereby determines that the Final Environmental Impact Statement ("FEIS") is complete with respect to scope, content and adequacy, adequately assesses the environmental impacts of the Project, and otherwise meets the requirements of the New York State Environmental Quality Review Act ("SEQRA") and is in proper form for publication, filing and circulation to the public; and be it further

RESOLVED, that the President or his designee, and each of them hereby is authorized to recommend that the Board of Directors of Empire State Development ("ESD") Accept and Approve the Final Environmental Impact Statement and Authorize it to be published, filed and circulated in accordance with applicable law; 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 to execute and deliver all documents and to take all such further actions as may be considered necessary or appropriate to effectuate the foregoing resolutions; and be it further

RESOLVED, that any and all acts performed by any officers of the Corporation prior to the date of these resolutions in furtherance of these resolutions, are hereby ratified, adopted, confirmed and approved in all respects.



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FOR CONSIDERATION DRAFT

April 12, 2013

TO: The Directors

FROM: Curtis Archer

SUBJECT: Procurement of Legal Services

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

CONTRACT NEED AND JUSTIFICATION

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. .

Contract Term: Not to exceed two years from the date of the retainer. Further term subject to Directors approval.

Contract Amount: Not to exceed \$ 150,000 for legal fees and reimbursable expenses.

Funding Source(s): Harlem CDC's Operating Budget

BACKGROUND AND STATEMENT OF NEED

I. 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, all are subject to regulatory agreements that extended 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 enter into a contract with Bryant Rabbino, LLP.

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 Minority 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 Firm would be retained to assist the Corporation in evaluating the ABSW proposal and would be expected to work with the Corporation and its parent ESD, to lay out the options available to the Corporation should it elect to dispose of its interest in the site. The Firm should take into account the proposal terms, compliance with the Urban Development Corporation Act and the Public Authorities Law with respect to real property dispositions and its obligations with respect to compliance with the regulatory agreements. In addition, it would be expected to provide the Corporation with an assessment of the implications of a transfer for the Corporation, the limited partners and the tax credit investors. Lastly, the Firm would be expected to identify any Federal income tax or other relevant considerations that need to be addressed.

V. Contract Term, Price and Funding

The term of the Contract will be for two years, subject to extension upon authorization from the Directors. 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. The total value of the contract shall not exceed \$150,000. The source of funding is Harlem CDC's operating budget.

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 and Contractor & Supplier Diversity

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 Business Enterprise ("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 23% 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; and (2) authorize the Corporation to enter into a contract with Bryant Rabbino, LLP for

services substantially in accordance with the terms and conditions as set forth in these materials for an amount not to exceed \$150,000.00, and to authorize related actions.

IX. Recommendation

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

XI. Attachments

Resolution



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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 to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Bryant Rabbino, LLP in an amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00), for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

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.
