

# **Item I. A.**



FOR CONSIDERATION

January 17, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: Retention of Legal Counsel

REQUEST FOR: Authorization to Retain Counsel to Provide Legal Representation; and to Take Related Actions

---

CONTRACT NEED AND JUSTIFICATION

I. Contract Summary

Contractor: Holland & Knight LLP

Scope of Services: Legal representation of Empire State New Market Corporation ("ESNMC") in all matters related to federal New Markets Tax Credits ("NMTC")

Contract Term: Four (4) years

Contract Amount: Not to exceed \$400,000

Funding Source(s): ESNMC fees and operating funds

II. Background

ESNMC recently received an allocation of additional tax credits in the amount of \$45 million and will require additional legal services. ESNMC requires legal counsel experienced in the NMTC program in order to effectuate the allocation and assist in executing new transactions. In order to execute the NMTC Allocation Agreement with the Community Development Financial Institutions ("CDFI") Fund of the U.S. Department of Treasury, ESNMC was required to provide an opinion of counsel stating, among other things, that ESNMC is authorized to enter into the Allocation Agreement. Additionally, ESNMC will require legal representation in the closing of NMTC transactions going forward. ESNMC previously authorized Holland & Knight LLP to provide legal representation on January 5, 2017. The contract expired in 2020 with

approximately \$26,000 in unspent authorizations, and a no-cost time extension was executed to utilize the remaining authorizations.

III. Adoption of Pre-Qualified Legal Counsel List and Contractor Selection Process

On March 24, 2022, after Empire State Development (“ESD”) staff conducted a broad solicitation and review process, the ESD Board adopted a list of approved law firms that are pre-qualified to act as legal counsel to the Corporation and its subsidiaries and affiliates (“Pre-Qualified Legal Counsel List”), with such approval to remain in effect until the meeting of the Directors first occurring in March 2025, or, in the discretion of the General Counsel, until the meeting of the Directors first occurring in March 2026.

On November 25, 2022, the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) conducted a mini-Request for Proposals (“mini-RPF”) on behalf of ESNMC to solicit proposals for NMTC legal services. Four firms from ESD’s Pre-Qualified Legal Counsel List, including one MWBE certified firm, were contacted. Responses were due December 12, 2022. Responses were received from two law firms and were reviewed independently by the ESNMC President, ESNMC Vice President, and ESD legal counsel, who together recommend Holland & Knight LLP (the “Firm”), which agreed to subcontract 30% participation to an MWBE firm, Schoeman Updike & Kaufman LLP. The Firm has provided excellent service to ESNMC in handling prior allocations, knows ESNMC’s portfolio, and possesses the necessary expertise in New Markets Tax Credits. Moreover, the Firm presented the most competitive rates for legal fees.

IV. Scope of Work

The Firm will form subsidiary community development entities, provide legal opinions, represent ESNMC at closings, and provide general advice related to New Markets Tax Credits.

V. Contract Term, Price and Funding

- Term: Four (4) years
- Pricing: Transaction-related legal work on deals that close will be funded by NMTC borrowers from closing proceeds, at the Firm’s hourly rates specified below, which represent a discount from the Firm’s standard rates. These rates are as follows:

<b>Attorney</b>	<b>Hourly Rate</b>
Mary Beth Hubner (Partner)	\$720
Parker Niles (Associate)	\$560
Jason Wheeler (Associate)	\$480
Maeve Christ (Paralegal Assistant)	\$100

Transaction-related legal work on deals that do not close and on non-transaction-related legal work will be paid by ESNMC at the lesser of the Firm's hourly rates and ESD's standard rates.

- Maximum Contract Amount: \$400,000 on matters not funded directly by borrowers for specific transactions including amounts, if any, paid pursuant to a Notice to Proceed. No upset amount will be imposed on matters funded by borrowers.
- Funding Source: ESNMC fees and operating funds.

#### VI. Non-Discrimination and Contractor & Supplier Diversity

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

An ESD / DED certified Woman-owned Business Enterprise ("WBE"), Schoeman Updike & Kaufman LLP, has been selected by Holland and Knight LLP as subcontractor to perform 30% of the ESNMC work. Both firms are listed on the Pre-Qualified Legal Counsel List.

#### VII. Responsible Party

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel'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 Counsel to be responsible.

#### VIII. Environmental Review

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

IX. Requested Action

The Directors are requested to (1) make a determination of responsibility with respect to the proposed contractor; and (2) authorize the Corporation to enter into a contract with Holland & Knight LLP for an amount not to exceed \$400,000.

X. Recommendation

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

XI. Attachment  
Resolution

January 17, 2023

EMPIRE STATE NEW MARKET CORPORATION – Retention of Legal Counsel - Authorization to Retain Counsel to Provide Legal Representation 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 Empire State New Market Corporation, (the “Corporation”) hereby finds Holland & Knight LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Holland & Knight LLP for an amount not to exceed FOUR HUNDRED THOUSAND DOLLARS (\$400,000) 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. Any actions taken related to the subject matter herein prior to the date hereof are hereby ratified and approved.

\* \* \*

# **Item II. A.**



FOR CONSIDERATION

January 17, 2023

TO: The Directors

FROM: Jonevan C. Hornsby

SUBJECT: New Markets Tax Credit Allocation Application

REQUEST FOR: Authorization to Sign and File a Calendar Year 2022 NMTC Allocation Application; and to Take Related Actions

---

I. Background

Empire State New Market Corporation (“ESNMC” or the “Corporation”) was incorporated in 2004 for the purpose of applying for an allocation of New Markets Tax Credits (“NMTCs”) from the Community Development Financial Institutions (“CDFI”) Fund of the U.S. Department of Treasury.

ESNMC received its first allocation of NMTCs in 2009 in the amount of \$30 million. All of this initial allocation was deployed into NMTC projects for Chobani (formerly known as Agro-Farma) and the Brooklyn Navy Yard Development Corporation. In 2016, ESNMC received a second allocation in the amount of \$55 million. ESNMC used all of that allocation in connection with the National Comedy Center, SUNY Broome Culinary Arts Center, Hornell Medical Center, Boys and Girls Club of Schenectady, 37 Chandler Street, Thin Man Brewery, Currier Plastics, the Chautauqua Center, and ALDI NMTC projects. In 2022, ESNMC received a third allocation in the amount of \$45 million that it is deploying consistent with that related NMTC application and allocation agreement with the CDFI Fund. ESNMC continues to service the closed transactions that are still outstanding.

ESNMC intends to apply for a new fourth allocation of NMTCs from the CDFI Fund and submit its allocation application to the CDFI Fund requesting a calendar year (CY) 2022 round allocation of up to \$55 million on or before January 26, 2023. The application reflects ESNMC’s strategy, past successful projects, potential future projects, ongoing management capacity, and other related ESNMC experience to enhance its qualifications to obtain a new allocation of NMTCs. ESNMC staff has worked closely with ESNMC’s NMTC consultant, Rise Community Capital, to prepare the application.



II. Environmental Review

Empire State Development staff, on behalf of the ESNMC, has determined that the requested authorization to sign and file a CY 2022 NMTC allocation application does not constitute an action as defined by the New York State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

III. Requested Action

The Directors are requested to approve the authorization to sign and file a CY 2022 NMTC allocation application, and direct and authorize Jonevan Hornsby, as the Authorized Representative of ESNMC, to act in connection with the allocation application and to provide such additional information as may be required.

Attachment  
Resolution

January 17, 2023

EMPIRE STATE NEW MARKET CORPORATION – New Markets Tax Credit Allocation Application – Authorization to Sign and File a Calendar Year 2022 New Market Tax Credit Allocation Application; and to Take Related Actions

---

RESOLVED, that the Corporation is authorized to sign and file a calendar year 2022 New Market Tax Credit allocation application on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate. Any actions previously taken by the Corporation in furtherance of the actions authorized herein are hereby ratified and approved.

\* \* \*