



**FOR CONSIDERATION**

**August 11, 2015**

**TO:** The Board of Directors

**FROM:** Curtis Archer

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

**REQUEST FOR:** Authorization to Enter Into a Contract for Legal Services with Phillips Lytle LLP with The Gibson Firm as subcontractor and to Take Related Actions

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**I. Contract Summary**

Contractor: Phillips Lytle LLP

Scope of Services: Legal Services

Proposed Term: Expiration date of 07/31/2016

Contract Amount: Not to exceed \$ 230,000.00

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

**II. Background**

Harlem Community Development Corporation ("Harlem CDC") previously engaged Phillips Lytle ("Phillips" or "Phillips Lytle") 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 Memorandum of Understanding and development lease agreements and related documents. Phillips performed the services as co-counsel with the Gibson Law Firm ("Gibson") a certified Minority and Women Owned Business Enterprise ("MWBE") that was engaged pursuant to a separate contract.

Execution and release of the development lease between Harlem CDC and the Developer is expected to take place in early August 2015. Going forward from that date, legal counsel is required to ensure that the Corporation's interest are adequately represented and

protected in connection with the construction financing closing, which will be secured by mortgages on 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. The construction closing is also anticipated to occur in early August. Funding of the entire loan will be dependent upon the realization of certain milestones occurring over a twelve month period, the monitoring of which may require the advice of outside counsel.

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 (together the "Firm") on the Project, staff proposes that Harlem CDC enter into a contract for a total contract value of \$230,000 with Phillips Lytle, with The Gibson Firm as subcontractor, for a term extending through and including July 31, 2016.

### **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 scope of work includes 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.

### **V. Contract Term, Price and Funding**

It is proposed that the Corporation enter into a contract for an amount not to exceed \$230,000 and with an expiration date extending through and including July 31, 2016. The contract provides that the work will be performed on an hourly charge basis at HCDC's standard

rates for outside counsel. Payments will be made from the proceeds of the imprest account funded by the redevelopment project's designated developer, 233 West 125<sup>th</sup> Street Danforth LLC.

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

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient 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 30%. The overall goal shall include a Minority Business Enterprise Participation Goal of 15% and a Women Business Enterprise Participation Goal of 15% 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 has determined that the requested authorization to enter into a contact 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 an 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



August 11, 2015

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

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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 Phillips Lytle LLP to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an agreement with Phillips Lytle LLP with The Gibson Firm as subcontractor with an expiration date extending through and including July 31, 2016 for an amount not to exceed \$230,000 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.

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August 11, 2015

RESOLUTION CORRECTING JUNE 23, 2015 RESOLUTION

WHEREAS, a Resolution adopted on June 23, 2015 designating an operator and manager of the Victoria Theater Redevelopment Project- Cultural Arts Component contained an error in the second paragraph of the resolution; and

WHEREAS, the paragraph 2 should have read as shown below:

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to Conditionally Designate Apollo Theater Foundation, Inc. as the operator and manager of the Cultural Arts Space at the Victoria Theater Redevelopment Land Use Improvement and Civic Project at 235-237 West 125th Street and ~~enter into negotiations for and enter into~~ a lease/operating agreement with Apollo Theater Foundation, Inc. and be it further.

WHEREAS, the Board desires to correct the error contained in paragraph 2 of the Resolution;

NOW THEREFORE, BE IT RESOLVED that:

Paragraph 2 is hereby corrected to read as follows:

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to Conditionally Designate Apollo Theater Foundation, Inc. as the operator and manager of the Cultural Arts Space at the Victoria Theater Redevelopment Land Use Improvement and Civic Project at 235-237 West 125th Street and negotiate and enter into a lease/operating agreement with Apollo Theater Foundation, Inc. and be it further; and

BE IT FURTHER RESOLVED that the above referenced corrections are effective nunc pro tunc to June 23, 2015.

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