

Bond Financing Committee Meeting

Via Teleconference

Thursday, 11/5/2020

2:00 - 3:00 PM ET

I. For Consideration

A. Issuance of State Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue Bonds – Preliminary Actions

Authorization to Approve the Application to the Public Authorities Control Board for One or More Series of State Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue Bonds and Authorization to Enter into Contracts to Provide Legal Services in Connection with the Issuance of the Bonds and Take Related Actions

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FOR CONSIDERATION

November 5, 2020

TO: The Bond Financing Committee Members

FROM: Eric J. Gertler

SUBJECT: Issuance of State Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue Bonds – Preliminary Actions

REQUEST FOR: Authorization to Approve the Application to the Public Authorities Control Board for One or More Series of State Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue Bonds and Authorization to Enter into Contracts to Provide Legal Services in Connection with the Issuance of the Bonds and Take Related Actions

I. INTRODUCTION/BACKGROUND

The Bond Financing Committee of the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) is being asked to approve the submission of an application (the “Application”) to the New York State Public Authorities Control Board (“PACB”) in connection with the proposed issuance of State Personal Income Tax Revenue Bonds (the “PIT Bonds”) and/or State Sales Tax Revenue Bonds (the “ST Bonds” and together with the PIT Bonds, the “Bonds”) and to authorize ESD to enter into contracts with bond counsel in connection with the issuance of the Bonds. ESD will be utilizing the services of the Public Resources Advisory Group (“PRAG”) as a financial advisor. The New York State Division of Budget (“DOB”) maintains the contract and related payment obligations for PRAG.

II. PACB APPROVAL OF THE BONDS

The Bonds are authorized by multiple project acts, as amended and supplemented, and related appropriations acts, as amended and supplemented, the New York State Personal Income Tax Revenue Bond Program statute and the New York State Sales Tax Revenue Bond Program statute (collectively, the “Project Acts”). Pursuant to the Project Acts, ESD is authorized to assist in financing certain programs and projects, including correctional and youth facilities, economic development projects, housing, various capital projects and equipment projects (the “Projects”). In addition, ESD may issue bonds to refund bonds previously issued by ESD or other New York State entities in accordance with the Project Acts.

ESD intends to issue one or more series of the Bonds. If the Bonds are issued as PIT Bonds, the Bonds will be issued pursuant to ESD's existing State Personal Income Tax Bonds (General Purpose) General Resolution, as well as appropriate Supplemental and Bond Financing Committee Resolutions. If the Bonds are issued as ST Bonds, the Bonds will be issued pursuant to ESD's existing State Sales Tax Bonds General Resolution, as well as appropriate Supplemental and Bond Financing Committee Resolutions.

The proceeds of the Bonds are expected to be used to fund the Projects, refund bonds previously issued by ESD and/or other State issuers, and pay all costs and expenses of ESD incurred in connection with the issuance of the Bonds.

The Public Authorities Law, specifically Chapter 38 of the Laws of 1976, requires the approval of PACB for the acquisition, construction or financing of any project proposed by ESD. Staff is seeking ESD's authorization to submit an application to the PACB for approval of the proposed sale and issuance under the Project Acts of one or more series or sub-series of the Bonds.

III. FINANCING

ESD intends to issue one or more series or sub-series of tax-exempt or taxable Bonds in accordance with the Project Acts. The Bonds will have fixed interest rates and will be issued in an amount not to exceed \$2,500,000,000, including issuance costs.

The Bonds will be special obligations of ESD and will be payable from and secured by amounts paid to ESD by the State, acting by and through DOB, pursuant to a financing agreement between ESD and the State.

IV. BOND COUNSEL CONTRACT SUMMARY

Bond Counsel: Nixon Peabody LLP ("Nixon") and Hardwick Law Firm, LLC ("Hardwick") (collectively, "Bond Counsel").

Scope of Services: Bond Counsel would serve as co-bond counsel to provide legal services to ESD in connection with the issuance of one or more series of the Bonds.

Contract Amount: \$400,000 which includes both Nixon's and Hardwick's fees under separate retainers.

Funding Source: The contracts will be funded from the Bond proceeds as a cost of issuance.

A. BOND COUNSEL SELECTION PROCESS

On June 27, 2016, ESD staff ("Staff") reached out to multiple law firms, including firms on the existing Pre-Qualified Counsel List and placed an advertisement in the New York State Contract Reporter requesting proposals from law firms to create a new Pre-Qualified Counsel List in the

following practice areas (including, in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments; and (11) regulatory litigation.

Seventy-eight (78) firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of seven ESD attorneys, including the Deputy General Counsel, as well as the attorneys responsible for environmental, litigation, contractor and supplier diversity, bond financing, and employment matters. ESD's Board of Directors approved this new Pre-Qualified Counsel List on February 16, 2017.

Staff recommends the retention of Nixon as co-bond counsel for this transaction for the following reasons: (a) knowledge and expertise of the firm; (b) prior experience as bond counsel, including specific experience in bond issuances, specifically PIT and ST Bonds; (c) prior satisfactory work which the firm performed for ESD; (d) rate proposal; and (e) ESD's pre-qualification process.

Staff also recommends the retention of Hardwick as co-bond counsel for the Bonds. Hardwick is identified on the Pre-Qualified Counsel List as having junior tier bond financing expertise and also is a certified MWBE firm. Staff recommends the retention of Hardwick as co-bond counsel for this transaction for the following reasons: (a) knowledge and expertise of the firm; (b) prior experience as bond counsel, including specific experience in PIT and ST bond issuances; (c) rate proposal; and (d) ESD's pre-qualification process.

The appointment of both firms also represents an equitable distribution of work among ESD's rotating slate of Senior and Junior Tier Bond firms and MWBE law firms to handle ESD's debt in terms of size and number of transactions, and fees received.

B. SCOPE OF WORK

Bond Counsel will advise ESD in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolutions, supplements and amendments, disclosure documents, refunding documents and tax opinions.

C. CONTRACT - NEED, PRICE AND FUNDING

1. NEED FOR CONTRACT

In accordance with Federal tax law, an opinion from bond counsel is required to opine upon tax-exempt bonds. In addition, bond counsel expertise is necessary to ensure compliance with applicable securities laws and market practices. ESD has used experienced bond counsel on every issuance of its bonds.

2. CONTRACT PRICE AND FUNDING

Bond Counsel will bill at ESD's standard rates and will be paid on or about the closing dates from bond proceeds in an amount not to exceed \$400,000.

V. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and ESD's policy related thereto, staff has: (a) considered Bond Counsel's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Staff has also examined the proposed contractors' "responsibility" as defined in State Finance Law §163, and as provided in ESD's Procurement Guidelines. Based upon the above and an analysis of financial and organizational capacity, legal authority to do business in New York, integrity of principals and past performance on contracts, staff concludes that the proposed contractors are responsible vendors.

VI. ENVIRONMENTAL REVIEW

The authorization to approve the submission of an application to the PACB in connection with the proposed issuance of Bonds does not constitute an action as defined in the State Environmental Quality Review Act ("SEQRA") and the implementing regulations of the New York Department of Environmental Conservation ("NYSDEC"). Therefore, no environmental review is required in connection with this authorization. Prior to the authorization of the disbursement of funds for specific projects, the Projects will have completed any applicable environmental review requirements pursuant to SEQRA.

The authorization to enter into contracts with bond counsel in connection with the issuance of the Bonds constitutes a Type II action as defined by SEQRA and the implementing regulations of NYSDEC. No further environmental review is required in connection with this authorization.

VII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to these contracts. Bond Counsel shall be required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR §142.8) to solicit and utilize MWBEs for any contractual opportunities generated in connection with this procurement. ESD shall endeavor to allocate work between Bond Counsel so as to achieve MWBE utilization of at least 30% related to the total amount of ESD's fees for legal services pertaining to the Bonds.

VIII. REQUESTED ACTION

The Directors are asked to approve the submission of the attached application to the PACB, and to authorize the retention of Nixon and Hardwick as Co-Bond Counsel to ESD for such legal services as are described in these materials in an amount not to exceed \$400,000.

IX. RECOMMENDATION

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

X. ATTACHMENTS

Resolutions

Proposed PACB Resolution

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT – Issuance of State Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue Bonds – Preliminary Actions - Authorization to Approve the Application to the Public Authorities Control Board for Issuance of One or More Series of State Personal Income Tax Revenue Bonds (the “PIT Bonds”) and/or State Sales Tax Revenue Bonds (the “ST Bonds” and together with the PIT Bonds, the “Bonds”) and Authorization to Enter into Contracts to Provide Legal Services for the Corporation in Connection with the Issuance of the Bonds and to Take Related Actions

WHEREAS, the State of New York has authorized the New York State Urban Development Corporation d/b/a Empire State Development (the “Corporation”) in various project acts (collectively, the “Project Acts”) to finance multiple projects as defined in the Project Acts (the “Projects”);

WHEREAS, the Corporation has determined to issue its bonds to finance the Projects;

WHEREAS, the Corporation is authorized to issue its bonds supported by State appropriations to finance the Projects and to refund bonds previously issued by the Corporation or other authorized state entities;

WHEREAS, in accordance with Chapter 38 of the Laws of 1976, the Corporation is seeking approval of the Public Authorities Control Board (the “PACB”) for the proposed sale and issuance under the Project Acts of one or more series or sub-series of Bonds; and

WHEREAS, in order to facilitate the issuance of the Bonds, the officers of the Corporation propose the retention of bond counsel.

I. PACB Application

RESOLVED, that the Corporation’s application to the PACB for the Bonds, substantially in the form attached to this resolution, is approved for submission to the PACB.

II. Retention of Bond Counsel

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation hereby finds Nixon Peabody LLP (“Nixon”) to be responsible; and be it further

RESOLVED, that in accordance with the Materials presented to this meeting, the Corporation hereby finds Hardwick Law Firm, LLC (“Hardwick”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into contracts with Nixon and Hardwick for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials.

III. Authorized Officers

RESOLVED, that each of the President and Chief Executive Officer Designate, the Executive Vice President – Legal and General Counsel, the Chief Financial Officer, any Senior Vice President, any Vice President, the Senior Managing Attorney, the Treasurer, the Deputy Chief Financial Officer and Controller, the Secretary and the Assistant Secretary of the Corporation, and any person duly authorized to act in such capacity, is designated an “Authorized Officer” for the purposes of this resolution; and further

IV. Further Action

RESOLVED, that the Authorized Officers are each hereby authorized and directed to approve and execute such documents, make such payments and take such other actions, in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary or appropriate to carry out the foregoing resolutions, and that all such actions heretofore taken in connection with the Bonds by any Authorized Officer, or his or her designee(s), are hereby ratified and approved. Delivery of any documents authorized hereunder shall constitute conclusive evidence of the Corporation’s due authorization and approval thereof.

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PERSONAL INCOME TAX REVENUE BONDS AND/OR STATE SALES TAX REVENUE
BONDS
SERIES 2020
NEW YORK STATE URBAN DEVELOPMENT CORPORATION
EXECUTIVE SUMMARY FOR THE PUBLIC AUTHORITIES CONTROL BOARD

The Project:

The Project consists of the financing of multiple programs and specific projects throughout the State as well as the refunding of previously issued State-supported debt. The programs and projects include: Information Technology projects, Economic Development Initiatives, Housing Capital programs, Correctional Facilities, MTA Transportation Facilities, State Police Facilities, Youth Facilities, State Facilities, and Environmental Infrastructure projects. All the programs and projects have been previously authorized by legislative action.

Dated: NOVEMBER __, 2020

NEW YORK STATE URBAN DEVELOPMENT
CORPORATION

By: _____
Elaine A. Kloss
Chief Financial Officer

NEW YORK STATE PUBLIC AUTHORITIES CONTROL BOARD

R E S O L U T I O N No. 20-UD
APPROVING A SPECIFIED PROJECT OF THE NEW YORK STATE URBAN
DEVELOPMENT CORPORATION
(Personal Income Tax Revenue Bonds and/or State Sales Tax Revenue
Bonds) Series 2020

WHEREAS, the New York State Public Authorities Control Board ("PACB") created pursuant to Chapter 38, Laws of 1976, as amended, is empowered by section 51 of the Public Authorities Law to receive applications from the New York State Urban Development Corporation ("UDC"), for the approval of the acquisition, construction or financing of any project proposed by any such public benefit corporation; and

WHEREAS, pursuant to Part I of Chapter 383 of the Laws of 2001, as it may be amended or supplemented from time to time (the "PIT Revenue Bond Enabling Legislation"), UDC is authorized to issue Personal Income Tax Revenue Bonds (General Purpose) ("PIT Revenue Bonds") and is further authorized by Part HH of Chapter 57 of the Laws of 2013, as it may be amended or supplemented from time to time (the "Sales Tax Revenue Bond Enabling Legislation"), to issue State Sales Tax Revenue Bonds ("State Sales Tax Revenue Bonds"), for authorized purposes but not in excess of any statutory authorization for authorized programs, including the refunding of debt issued by UDC and certain other New York State ("State") entities through the issuance of refunding bonds; and

WHEREAS, UDC and other authorized issuers have been authorized by the PIT Revenue Bond Enabling Legislation and by the Sales Tax Revenue Bond Enabling Legislation to issue PIT Revenue Bonds and/or State Sales Tax Revenue Bonds to assist in the financing of capital expenditures and refunding of bonds on behalf of the State for certain programs for which UDC and other authorized issuers are authorized respectively to issue State-supported debt (collectively referred to herein as the "Project", and the authorizations therefor, the "Project Acts"); and

WHEREAS, PACB has duly received an application from UDC for the approval of PIT Revenue Bonds and/or State Sales Tax Revenue Bonds (collectively the "Bonds") in accordance with the Project Acts for the Project as described below; and

WHEREAS, UDC intends to issue one or more series or sub-series of fixed-rate tax-exempt and/or taxable Bonds, notes or other obligations at one or more times for the Project; and

WHEREAS, the Bonds attributable to the Project will have a maximum maturity not to exceed thirty years or, where the Bonds are issued to refund other bonds, not to exceed the fiscal year of the final maturity of the bonds to be refunded; and

WHEREAS, the total amount of the Bonds attributable to the Project, and any services to be authorized by UDC for Project purposes, shall not exceed \$2,500,000,000; and

WHEREAS, if any Bonds are issued as PIT Revenue Bonds, the PIT Revenue Bonds will be issued pursuant to a State Personal Income Tax Revenue Bonds (General Purpose) General Resolution, and pursuant to one or more Supplemental Resolutions, authorizing the issuance by UDC of one or more series or sub-series of tax-exempt and/or taxable PIT Revenue Bonds for Project purposes; and

WHEREAS, the PIT Revenue Bonds Financing Agreement with the Director of the New York State Division of the Budget obligates the State to make periodic payments, subject to appropriation by the Legislature, of interest, principal and other costs related to the issuance of PIT Revenue Bonds, including expenses of UDC, in amounts and at all times such that payments are sufficient to pay principal and sinking fund installments of and interest on all outstanding PIT Revenue Bonds and all other costs associated therewith; and

WHEREAS, such periodic payments will be made by the State from the Revenue Bond Tax Fund, as defined in the PIT Revenue Bond Enabling Legislation, after appropriation by the Legislature; and

WHEREAS, if any Bonds are issued as State Sales Tax Revenue Bonds, any State Sales Tax Revenue Bonds will be issued pursuant to a State Sales Tax Revenue Bonds General Bond Resolution, and pursuant to one or more Supplemental Resolutions authorizing the issuance by UDC of one or more series or sub-series of tax-exempt and/or taxable State Sales Tax Revenue Bonds for Project purposes; and

WHEREAS, the State Sales Tax Revenue Bonds Financing Agreement with the Director of the Division of the Budget obligates the State to make periodic payments, subject to appropriation by the Legislature, of interest, principal and other costs related to the issuance of State Sales Tax Revenue Bonds, including expenses of UDC, in amounts and at all times so that such payments are sufficient to pay principal and sinking fund installments of and interest on all outstanding State Sales Tax Revenue Bonds and all other costs associated therewith; and

WHEREAS, such periodic payments will be made by the State from the State Sales Tax Revenue Bond Tax Fund (as defined in the Sales Tax Revenue Bond Enabling Legislation) after appropriation by the Legislature; and

WHEREAS, this authorization shall expire on December 31, 2021; and

WHEREAS, a copy of such application has been filed with the New York State Comptroller and he has had the opportunity to comment.

NOW THEREFORE BE IT RESOLVED that PACB approves the Project identified below, in accordance with section 51 of the Public Authorities Law:

(Continued on next page)

PROJECT IDENTIFICATION

Description of Project

Any projects including Information Technology projects, Economic Development Initiatives, Housing Capital projects, Correctional Facilities, MTA Transportation Facilities, State Police Facilities, Youth Facilities, State Facilities, and Environmental Infrastructure projects and refunding of previously issued State-supported debt.

<u>Source of Funds</u>	<u>Estimated Amount</u>
Par Amount of Bonds	\$2,111,062,500
Total Sources	\$2,111,062,500

Uses of Funds

Transportation (MTA)	\$550,000,000
Environment (ORDA)	50,000,000
Correctional Facilities	125,000,000
Economic Development	200,000,000
Housing	350,000,000
Information Technology	100,000,000
Youth Facilities	25,000,000
State Facilities	60,000,000
Division of Military & Naval Affairs	20,000,000
Division of State Police	5,000,000
Total	\$1,485,000,000
Refunding	600,000,000
Cost of Issuance Including	
Underwriters Discount	26,062,500
Total Uses	\$2,111,062,500

Amount of Bonds to be issued:
Not to exceed \$2,500,000,000

* * * * *

This resolution shall become effective upon the sales of the Bonds by UDC at a true fixed rate interest cost not to exceed 7.5 percent on tax-exempt bonds and/or at a true fixed rate interest cost not to exceed 10.0 percent on taxable bonds.

Robert J. Mujica, Jr., Chair
Public Authorities Control Board

Amy Paulin, Member of the Board

Leroy Comrie, Member of the Board

20-UD

Date: _____, 2020