

BOND FINANCING COMMITTEE MEETING

at the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development Corporation
633 Third Avenue
New York, N.Y. 10017

Thursday

December 6, 2018 – 10:30 a.m.

AGENDA

I. FOR CONSIDERATION

- A. Issuance of State Personal Income Tax Revenue Bonds – Preliminary Actions – Approval of Applications to the Public Authorities Control Board for One or More Series of State Personal Income Tax Revenue Bonds and Authorization to Enter into Contracts to Provide Legal Services in Connection with the Issuance of the Bonds and to Take Related Actions

Item I. A.



FOR CONSIDERATION

December 6, 2018

TO: The Bond Financing Committee Members

FROM: Howard A. Zemsky

SUBJECT: Issuance of State Personal Income Tax Revenue Bonds – Preliminary Actions

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

I. INTRODUCTION/BACKGROUND

The Bond Financing Committee of the New York State Urban Development Corporation d/b/a Empire State Development (“UDC”, “ESD” or the “Corporation”) 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 to authorize the Corporation to enter into contracts with bond counsel in connection with the issuance of the PIT Bonds. The Corporation 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 PIT BONDS

The PIT Bonds are authorized by multiple project acts, as amended and supplemented, and related appropriations acts, as amended and supplemented, and the New York State Personal Income Tax Revenue Bonds Statute (collectively, the “Project Acts”). Pursuant to the Project Acts, ESD is authorized to assist in financing certain correctional facilities, economic development projects, housing, various capital projects and equipment projects (the “Projects”).

In accordance with the Project Acts, ESD intends to issue one or more series of the PIT Bonds pursuant to a general resolution of the Corporation, entitled State Personal Income Tax Bonds (General Purpose) General Resolution, as well as appropriate Supplemental and Bond Financing Committee Resolutions.

The proceeds of the PIT Bonds will be used to fund the Projects, and pay all costs and expenses of ESD incurred in connection with the issuance of the PIT 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 the Corporation. Staff is seeking the Corporation's authorization to submit an application to PACB for approval of the proposed sale and issuance under the Project Acts of one or more series or sub-series of the PIT Bonds

III. FINANCING

The Corporation intends to issue one or more series or sub-series of the PIT Bonds in accordance with the Project Acts. The PIT Bonds will have fixed rate interest and the bonds will be issued in an amount not to exceed \$1,850,000,000, including issuance costs.

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

IV. BOND COUNSEL CONTRACT SUMMARY

Bond Counsel: Nixon Peabody LLP ("Nixon") and Pearlman & Miranda, LLC ("Pearlman") (collectively, "Bond Counsel").

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

Contract Amount: \$350,000, which includes both Nixon's and Pearlman's fees under separate retainers.

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

A. BOND COUNSEL SELECTION PROCESS

On June 27, 2016 Corporation 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 Corporation attorneys, including the Deputy General Counsel, as well as the attorneys responsible for environmental, litigation, contractor and supplier diversity, bond financing, and employment matters. The Corporation's Board of Directors approved this new Pre-Qualified Counsel List on February 16, 2017.

Staff contacted four law firms identified on the Pre-Qualified Counsel List as having senior tier bond financing expertise. During each call, Corporation staff described the PIT Bond transaction and asked each firm to describe their experience and specifically address:

1. Staffing, capacity and PIT Bond experience to handle a large volume of project tax due diligence;
2. Willingness to allocate a meaningful portion and substance of duties to a certified Minority and Women-Owned Business Enterprise ("MWBE") law firm; and
3. Availability of its attorneys to meet deadlines and complete a transaction in an expedited time frame.

Staff recommends the retention of Nixon as co-bond counsel for the PIT Bonds based on: (a) knowledge and expertise of the firm; (b) prior experience as bond counsel, including specific experience in PIT bond issuances; (c) prior satisfactory work which the firm performed for the Corporation; (d) rate proposal; and (e) the Corporation's pre-qualification process. For these reasons, staff is requesting that Nixon be retained for this transaction.

Staff also contacted four law firms identified on the Pre-Qualified Counsel List as having junior tier bond financing expertise that are also certified MWBE's. During each call, Corporation staff described the PIT Bond transaction and asked each firm to provide a specific response to the following queries to describe their experience and specifically address:

1. Staffing, capacity and experience to handle a large volume of project due diligence;
2. Willingness to work with another firm; and
3. Availability of its attorneys to meet deadlines and complete a transaction promptly.

Staff recommends the retention of Pearlman as co-bond counsel for the PIT Bonds based on: (a) knowledge and expertise of the firm; (b) prior experience as bond counsel, including specific experience in PIT bond issuances; (c) rate proposal; and (d) the Corporation's pre-qualification process. For all the reasons stated above, staff is requesting that Pearlman be retained for this transaction.

The appointment of both firms also represents an equitable distribution of work among the Corporation's rotating slate of Senior and Junior Tier Bond firms and MWBE law firms to handle

the Corporation's debt in terms of size and number of transactions, fees received, and length of time since their last engagement with the Corporation.

B. SCOPE OF WORK

Bond Counsel would advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the PIT Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolution supplements and amendments, disclosure 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. The Corporation has used experienced bond counsel on every issuance of its bonds.

2. CONTRACT PRICE AND FUNDING

Bond Counsel will bill at the Corporation's standard rates and will be paid on or about the closing dates from bond proceeds in an amount not to exceed \$350,000.

V. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation'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. Based on the foregoing, staff considers Bond Counsel to be responsible. Staff has examined the proposed contractors' "responsibility" as defined in State Finance Law §163, and as provided in the Corporation's Procurement Guidelines. Based on this 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 contractor is a responsible vendor.

VI. ENVIRONMENTAL REVIEW

The authorization to approve the submission of an application to the PACB in connection with the proposed issuance of PIT 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 issuance of

such bonds, 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 PIT 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

The Corporation'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. The Corporation shall endeavor to allocate work between Bond Counsel so as to achieve MWBE utilization of at least 30% related to the total amount of the Corporation's fees for legal services pertaining to the PIT 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 Pearlman as Bond Counsel to the Corporation for such legal services as are described in these materials in an amount not to exceed \$350,000.

IX. RECOMMENDATION

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

X. ATTACHMENT

Resolutions
Proposed PACB Resolution

December 6, 2018

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a EMPIRE STATE DEVELOPMENT –
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
Authorization to Enter into Contracts to Provide Legal Services for the Corporation in
Connection with the Issuance of the PIT Bonds and to Take Related Actions

WHEREAS, the State of New York has authorized the New York State Urban Development Corporation (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

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 the PIT Bonds.

WHEREAS, in order to facilitate the issuance of the PIT 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 PIT 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 LLC (“Nixon”) to be responsible; and be it further

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

RESOLVED, that the Corporation is hereby authorized to enter into contracts with Nixon and Pearlman 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, the Executive Vice President – Legal and General Counsel, the Chief Financial Officer, any Senior Vice President, any Vice President, Deputy General Counsel, the Treasurer, the 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 PIT 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.

* * *

STATE PERSONAL INCOME TAX REVENUE BONDS
SERIES 2019
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. The programs and projects include: Information Technology projects, High Technology and Development projects, Economic Development Initiatives, Housing Capital projects, Correctional Facilities, MTA Transportation Facilities, State Police Facilities, Environmental Infrastructure projects, and Homeland Security projects. All the programs and projects have been previously authorized by legislative action.

Dated: December ____, 2018

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. 18-UD
APPROVING A SPECIFIED PROJECT OF THE NEW YORK STATE URBAN
DEVELOPMENT CORPORATION
(Personal Income Tax Revenue Bonds) Series 2019

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 Section 24 of Part I of Chapter 60 of the laws of 2015, UDC is authorized to issue Personal Income Tax Revenue Bonds (General Purpose) ("PIT Revenue Bonds"), for any authorized purpose of any authorized issuer of PIT Revenue Bonds, but not in excess of any statutory authorization for authorized programs, including the refunding of debt issued by certain other New York State ("State") entities through the issuance of refunding bonds; and

WHEREAS, UDC and other authorized issuers have been authorized by Part I of Chapter 383 of the Laws of 2001, as may be amended or supplemented from time-to-time, (the "Enabling Legislation"), to issue PIT 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 bonds, (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 the PIT Revenue Bonds as described below in accordance with the Project Acts through the issuance of PIT Revenue Bonds; 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 PIT Revenue Bonds attributable to the Project will have a maximum maturity not to exceed thirty years; and

WHEREAS, the total amount of PIT Revenue Bonds attributable to the Project, and any services to be authorized by the UDC for Project purposes, shall not exceed \$1,850,000,000; and

WHEREAS, the PIT Revenue Bonds will be issued pursuant to a State Personal Income Tax Revenue Bonds (General Purpose) General Resolution (the "General Resolution"), and pursuant to one or more Supplemental Resolutions pursuant to the General Resolution, 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 Enabling Legislation, after appropriation by the Legislature; and

WHEREAS, this authorization shall expire on December 31, 2019; 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:

PROJECT IDENTIFICATION

Description of Project

Any projects including Information Technology projects, High Technology and Development projects, Economic Development Initiatives, Housing Capital projects, Correctional Facilities, MTA Transportation Facilities, State Police Facilities, Environmental Infrastructure projects, and Homeland Security projects.

<u>Source of Funds</u>	<u>Estimated Amount</u>
Par Amount of Bonds	\$1,747,257,000
Total Sources	\$1,747,257,000

Uses of Funds

2008 and 2009 Economic Development Initiatives	7,000,000
Economic Development Initiatives	1,145,000,000
SAM	63,000,000
H.H. Richardson Complex/Darwin Martin House	500,000
High Technology and Development	257,000
Economic Development 2006	500,000
Information Technology	76,000,000
Correctional Facilities	50,000,000
Homeland Security	8,000,000
Division of State Police	22,000,000
Housing Capital Programs	200,000,000
Division of Military and Naval Affairs	7,000,000
MTA Transportation Facilities	164,000,000
Environmental Infrastructure Projects	4,000,000
Total	1,747,257,000
Costs of Issuance including Underwriters Discount	\$25,000,000
Total Uses	\$1,772,257,000

Amount of Bonds to be issued:
Not to exceed \$1,850,000,000

* * * * *

This resolution shall become effective upon the sales of the Bonds by the 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

James L. Seward, Member of the Board

18-UD

Date: December 19, 2018