



**Harlem Community
Development
Corporation**

**BOARD OF DIRECTORS' MEETING
Via Teleconference
Friday, June 26, 2020
11:30 A.M.**

AGENDA

CORPORATE ACTION:

Approval of minutes for the January 17, 2020 Board of Director's Meeting.

FOR CONSIDERATION:

Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and The Gibson Firm as subcontractor to Phillips Lytle and to Take Related Actions

ADJOURNMENT

DRAFT- SUBJECT TO REVIEW AND REVISION

**Harlem Community Development Corporation
Meeting of the Board of Directors
163 West 125th Street, 17th Floor
New York, NY 10027**

January 17, 2020

Minutes

In Attendance

Directors: Freida Foster, Chairperson Pro Tem
Maria Teresa Arce
Holley Drakeford

Designees:

Aneiry Batista for NYS Congressman, Adriano D. Espaillat
Earnestine Bell-Temple for Assemblyman Al Taylor
Terell Brock for Senator Jose M. Serrano
Deneane Brown for NYS/HCR Commissioner RuthAnne Visnauskas
Erik Cuello for Council Member Mark Levine
Yolanda Ford for Superintendent of NYS DFS, Linda A. Lacewell
Shana Harmongoff for NYS Senator, Brian Benjamin
Gabriel Lewenstein for NYS Assembly Member, Daniel O'Donnell
Keith Lilly for Council Member Bill Perkins
Luisa Lopez for Council Member Diana Ayala
Lermond Mayes for NYS Assembly Member, Inez E. Dickens
Arva Rice for Manhattan Borough President, Gale Brewer

Harlem CDC

Officers: Curtis L. Archer, President

Harlem CDC Staff: Destiny Burns, Acting V.P. & Director of Small Business Services
Victoria Gordon, Weatherization Director

ESDC Staff

& HCDC Counsel: Eunice Jackson, Esq., Senior Counsel

Guests Present: Adam Kilduff, ESD
ESD Staff at 633 Third Avenue via videoconference

Stenographer: Marc Russo, MGR Reporting, Inc.

Ms. Frieda Foster stated for the record that she would be serving as Acting Chair for the meeting.

The January 17, 2020 meeting of the Board of Directors (the "Board" or the "Directors") of the Harlem Community Development Corporation ("Harlem CDC" or the "Corporation") was called to order at 10:07 A.M. by Acting Chair, Freida Foster ("The Chair").

The Chair stated that the Directors have received all relevant written materials in advance of the meeting and are free to ask questions at any time. Consistent with the policy of the parent corporation, Empire State Development, public comments on the items on the agenda are also welcome. After each item is presented and comments are received from the Directors, the members of the public will be allowed to provide comments which will be limited to two minutes and should only address the items that are under consideration.

Before beginning the substantive portion of the meeting, the Chair asked the Directors whether anyone had any potential conflicts of interest with respect to any of the items on the proposed agenda.

Ms. Brown stated that she did.

The Chair stated for the record that there was one conflict of interest from New York Homes and Community Renewal.

After a round table introduction of all attendees, the Chair asked for a motion on the minutes for the Directors' January 17, 2020 meeting.

There being no questions or comments, upon motion duly made and seconded, the January 17, 2020 board meeting minutes were adopted.

The Chair then called on Ms. Victoria Gordon to present the authorization to enter into contract with Brooklyn Mechanical HTG Corp. in an amount not to exceed \$297,150.00.

Ms. Gordon stated that the Weatherization Assistance Program ("WAP"), is a nationwide energy preservation program funded by the U.S. Department of Energy and the US Department of health and Community Services. New York Homes and Community Renewal is the grantee for New York State and Harlem CDC is one of 54 sub grantees throughout the State.

Ms. Gordon stated that WAP has been around for 35 years or more and Harlem CDC has been a part of the program since its inception.

Ms. Gordon further stated that the current project would be seeking to upgrade the domestic hot water of two buildings located at 1250 Fifth Avenue and 4 East 107th Street. The owner of the complex approached WAP to seek assistance. She stated that the owners are doing a major overhaul and rehab of the building which includes, lighting internally and installing smoke and carbon monoxide detectors. The building is currently heated with electric heat and the domestic water is gas fired. The reason it's so expensive is because it's a twenty-four unit 24-story building and this system will be on the roof of the building.

Ms. Gordon stated that there are ten bidders on the bidders list who were all invited to a pre-bid conference, four attended the conference and only two submitted bids for the work; one for \$378,000 and the other for \$283,000. The bid for \$283,000 by Brooklyn Mechanical Corporation was the bid that was chosen.

Ms. Gordon continued that Brooklyn Mechanical has done business with WAP in the past, they're very competent and WAP is familiar with the owner. She stated that this project also requires bonding in the amount of the contract because anything over \$100,000 is required to be bonded. Brooklyn Mechanical will need to present WAP with a performance bond before they can start work.

Ms. Gordon concluded that Harlem CDC is requesting that the board authorize HCDC to enter into contract since any contract amount over \$175,000 requires board approval.

Ms. Bell-Temple asked if the staff who will work on the project represents the zip codes of the Harlem Community and if so, what are their levels of employment.

Ms. Gordon asked if she means the Harlem CDC staff.

Ms. Bell-Temple stated the community at large.

Ms. Gordon said she does not understand.

Ms. Bell-Temple said construction staff, office staff of the project; not HUDC/HCDC, the people doing the weatherization.

Ms. Gordon said she cannot speak to the staff on the site. The owners approached HCDC and met all the criteria for the program to fund the project. As far as their individual contracts in the building, she was not aware of that but could get the information.

Mr. Lilly asked who's the owner.

Ms. Gordon said the owners are Fifth and 106th Street Associates, LP and Lakeview Apartments HDFC.

The Acting Chair said if there was no further discussion, she would take a motion for approval, if there were no questions from the public.

A motion was made and seconded before Mr. Drakeford asked if the business is MWBE.

The Chair asked if the board was continuing with the discussion or moving forward with the vote.

There being no questions or comments, upon motion duly made and seconded, the request to approve the Weatherization Assistance Program authorization to enter into a contract with Brooklyn Mechanical HTG Corp. in an amount not to exceed \$297,150.00 was approved. There was one recusal from New York Homes and Community Renewal.

Weatherization Assistance Program — Authorization to Enter into a Contract with Brooklyn Mechanical HTG Corp. in an Amount Not to Exceed \$297,150.00 (Two Hundred and Ninety-Seven Thousand One Hundred and Fifty Dollars); Authorization to Take Related Actions

RESOLVED, that based upon the materials presented to this meeting (the "Materials"), a copy of which is ordered filed with the records of the Corporation, the Corporation hereby finds Brooklyn Mechanical HTG Corp. to be responsible; and be it further

RESOLVED, that the Corporation hereby authorizes the President to enter into a contract with Brooklyn Mechanical HTG Corp., in an amount not to exceed \$297,150 (Two Hundred and Ninety-Seven Thousand One Hundred and Fifty Dollars), for the Domestic Hot Water System Upgrade (the "Work") at 1250 Fifth Avenue and 4 East 107th Street, New York, NY (the "Property"); and be it further

RESOLVED, that the President or his designee (s) be, and each of them hereby is, authorized to take such actions or to execute on behalf of the Corporation such documents as he or she may deem necessary or appropriate in connection with the foregoing resolution.

Next, the Chair stated that Mr. Archer will present the President's Report which will be for informational purposes only, no votes will be required.

Mr. Archer stated that there has been a significant increase in the number of people seeking small business assistance; up to 3,550 in 2019. He also highlighted the first-time homebuyer counseling which is done here in the office and he encouraged the board members to point anyone interested in those services to harlemcdc.org.

Ms. Bell-Temple asked if it would be appropriate to have a tour of the new buildings that are being developed in the downtown area to take a look at how the work is being done and the workforce.

The Chair asked if these are buildings that the we would have a stake in.

Ms. Bell-Temple stated that the staff could do some research.

Ms. Burns said that they are in the process of scheduling a walk-through for HCDC staff at the Victoria Theater project.

Mr. Archer asked what about Moynihan.

Ms. Burns stated that we can discuss further projects that the board is interested in.

Ms. Bell-Temple said she would just like to put it on the table because there are a lot of construction in the City; a lot of work being done and the board should have some input, but basic knowledge would also be helpful.

The Chair thanked Ms. Bell-Temple for the thought and Ms. Burns for looking into the matter. She then asked Ms. Arva Rice, who arrived after the introductions, to introduce herself for the record.

Ms. Rice stated that she is the representative for Gale Brewer, Manhattan Borough President.

Mr. Archer introduced Destiny Burns as the Acting Vice President for Harlem CDC in place of Melvin Norris who resigned.

There being no further business, upon motion duly made and seconded, the Harlem CDC's Board of Directors meeting was adjourned at 10:34 A.M.

Respectfully Submitted by,

Rose Jeffrey
Corporate Secretary



FOR CONSIDERATION

June 26, 2020

TO: The Board of Directors

FROM: Curtis Archer

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

REQUEST FOR: Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and The Gibson Firm as subcontractor to Phillips Lytle and to Take Related Actions

I. Contract Summary

Contractor: Phillips Lytle LLP
340 Madison Avenue, FL 17
New York, NY 10173-1922

Subcontractor: The Gibson Firm
380 Lexington Ave FL 17th
New York, NY 10168

Scope of Services: Legal Services

Contract Term: Expiration date of 07/31/2020

Proposed Term Extension expiration date of 9/30/2021

Contract Amount: Not to exceed \$ \$246,000

Proposed Amendment Amount: \$100,000

New Proposed Total Contact Amount: \$346,000

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

II. Background

Harlem Community Development Corporation (“Harlem CDC” or the “Corporation”) previously engaged Phillips Lytle (“Phillips”) and co-counsel, the Gibson Firm (together the “Firm”) to perform legal services in connection with the Victoria Theater redevelopment project (the “Project”). The Gibson firm is a NYS certified Minority and Women Owned Business Enterprise (“MWBE”). The contract had an initial term that began September 9, 2015 with a contract value of \$230,000. In September 2016, the Directors authorized an amendment to the contract to increase the contract value by \$16,000, for a total contract value not to exceed \$246,000 and to extend the contract term by three years, with the option to extend the term an additional one year, at the discretion of the President. Pursuant to that authorization, the contract was extended to July 31, 2020. The current approved contract amount is nearly exhausted.

The Firm has provided counsel to Harlem CDC on a variety of issues in connection with the Project, including but not limited to the negotiation and drafting of a Memorandum of Understanding, a development lease agreement and related documents and representation at the designated developer, 233 West 125th Street Danforth, LLC’s, construction financing closing and providing ongoing counsel during the construction phase of the project to ensure that the Corporation’s interests are adequately represented.

There is a continuing need for legal representation as the Project nears completion, in particular, advising on HCDC’s rights under the contract and responding to various claims or requests of the developers that may have impacts on the project schedule and budget. Currently, the developers have requested an extension of the scheduled contract construction completion date of August 2020, alleging delays related to the impact of the COVID-19 pandemic on workforce numbers and other factors.

III. Contractor Selection Process

On March 24, 2017 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 appears on the list of pre-qualified counsel.

The 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.

Staff proposes that Harlem CDC extend the term of the contract with the Firm from July 31, 2020 to September 30, 2021 and that the contract amount of \$246,000 be increased by \$100,000 for a total contract value of \$346,000.

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 original contract scope of work included review and drafting of documentation in connection with the development lease execution, the construction financing closing, the enforcement documentation to reflect the Project's affordable housing obligations, the build-out of the cultural space component of the Project and related contract administration during the construction period. The proposed scope of work remains the same as under the original contract for legal services.

V. Contract Term, Price and Funding

The current contract, as amended, has a contract value of \$246,000 and expires July 31, 2020. It is proposed that the expiration date be extended to September 30, 2021. It is also proposed that the contract amount be increased by \$100,000 to an amount not to exceed \$346,000. The contract provides that the work will be performed on an hourly charge basis at amounts not to exceed the lesser of the maximum of ESD's standard rates for outside counsel in effect during the contract term or the Firm's regular billing rates. Payments will be made from the proceeds of the imprest account funded by the redevelopment project's designated private developer, 233 West 125th Street Danforth, LLC.

VI. Non-Discrimination/Affirmative Action

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%.

VII. Environmental Review

On behalf of CCDC, ESD staff has determined that the requested authorization to amend the Contract, as set forth in these materials, to perform 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 contract amendment.

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 into an amendment to the 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
ESD Standard Rates for Outside Counsel



**Harlem Community
Development
Corporation**

June 26, 2020

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and The Gibson Firm as subcontractor to Phillips Lytle 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 Corporation, the Corporation hereby finds Phillips Lytle LLP and its subcontractor The Gibson Firm to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an amendment to the agreement with Phillips Lytle LLP to extend the term of the contract to September 30, 2021 and to increase the contract value by ONE HUNDRED THOUSAND dollars and NO Cents (\$100,000) for a total amount not to exceed THREE HUNDRED FORTY-SIX THOUSAND DOLLARS (\$346,000), 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.

FOR CONSIDERATION

April 21, 2016

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Compensation for Outside Counsel

REQUEST FOR: Authorization to Increase Compensation Rates for Outside Legal Counsel

Background

Since 2005, the Corporation has compensated its outside legal counsel at the top rate of \$400.00 per hour for partners, \$375.00 per hour for senior associates¹, \$350.00 per hour for mid-level associates², \$300.00 per hour for junior associates³, \$220.00 per hour for law clerks⁴, and \$90.00 per hour for legal assistants. These rates apply unless a firm's regular billing rates would yield lower overall bills. These rates are considerably lower than the going rates of most New York City firms.

Since the Corporation's last rate increase in May of 2005, the hourly billing rates of many of the firms with which the Corporation works have increased substantially and a number of these firms have declined to even be considered for the Corporation's work because, in their judgment, the rates are simply too low. Firms that previously agreed to accept our rates have complained about them. While the overall quality of the Corporation's representation has remained acceptable, the Corporation's staff is concerned that quality representation will become increasingly difficult to procure absent a rate increase.

Proposal to Increase Rates

In view of the foregoing, senior management has determined that the Corporation should increase its rates of compensation for outside legal counsel, effective upon approval by the Directors. Currently, the Corporation's outside counsel rate structure consists of six categories of legal service provider: partners/of counsel, senior associates, mid-level associates, junior associates, law clerks, and legal assistants/paralegals. Staff recommends increasing the rates of compensation in accordance with the following:

¹ Senior associates have at least four years of experience.

² Mid-level associates have three or four years of experiences.

³ Junior associates have passed the bar exam but have less than three years of experience.

⁴ Law clerks are law student interns or first year associates who have yet to pass the bar exam.

	<u>Current Maximum Rate Structure (per hr)</u>	<u>Proposed Maximum Rate Structure (per hr)⁵</u>
Partner/Of Counsel	\$400.00	\$600.00
Senior Associate	\$375.00	\$550.00
Mid-level Associate	\$350.00	\$500.00
Junior Associate	\$300.00	\$425.00
Law Clerk	\$220.00	\$325.00
Legal Assistant/Paralegal	\$90.00	\$150.00

Staff determined the proposed rate structure after researching the outside counsel rates paid by nine other New York State public benefit corporations and finding that the Corporation's current maximum rate is significantly lower than all nine. The proposed rate structure would bring the Corporation within the range of maximum rates paid by the other public benefit corporations.

On occasion, as in the past, it will be advisable to compensate firms at a blended rate, whereby all attorneys would be paid at the same rate per hour, regardless of their status as a partner, of counsel, associate or law clerk. This structure is occasionally necessary as a way of attracting top-flight law firms to work on specific matters where a firm's billing structure makes our rates uneconomic for the firm. It is proposed that blended rates, up to \$550.00 per hour, be permitted if determined to be necessary in the discretion of the General Counsel or his or her designee(s). The recommended blended rate would not apply to the billing categories of Law Clerk or Legal Assistant/Paralegal, which categories would be billed at the proposed rates listed above. Staff believes that the need for such special billing arrangements will be reduced by the proposed rate structure.

⁵ As under the current policy, firms will be limited to the lesser of the hourly rate normally charged by the firm to its government clients and the applicable ESD maximum hourly rate.

Additionally, on occasion, a private developer or other private third party agrees to reimburse the Corporation's legal expenses in connection with the Corporation's participation in a particular project. On such occasions, the Corporation has the authority to pay to outside counsel the full, undiscounted rates, regardless of whether they exceed the Corporation's maximum rates. Staff believes that this arrangement is fair and should continue, as it comes at no additional cost to the Corporation.

Staff believes that this increase in rates will assist the Corporation in its efforts to attract and retain top quality legal counsel. Also, we expect that the higher rates will permit firms to staff the Corporation's legal matters with more experienced attorneys.

Requested Actions and Recommendation

The Directors are requested to authorize the Corporation to modify its outside counsel maximum compensation rate schedule as set forth in these materials and amend existing legal retainer agreements accordingly.

Attachments

Resolution

April 21, 2016

NEW YORK STATE URBAN DEVELOPMENT CORPORATION – Compensation for Outside Counsel -
Authorization to Increase Compensation Rates for Outside Legal Counsel

BE IT RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby filed with the records of the Corporation, and effective immediately, the Corporation is hereby authorized to increase its maximum compensation rates for outside legal counsel as follows:

Maximum Rate Structure for Outside Counsel

Partner/Of Counsel	\$600.00 per hour
Senior Associate	\$ 550.00 per hour
Mid-level Associate	\$ 500.00 per hour
Junior Associate	\$ 425.00 per hour
Law Clerk	\$ 300.00 per hour
Legal Assistant	\$ 150.00 per hour; and be it further

RESOLVED, that the President and Chief Executive Officer and General Counsel of the Corporation or their designee(s) be, and each of them hereby is, authorized, as determined to be necessary in his or her discretion, to enter into alternate compensation rates of up to \$550.00 per hour for all attorneys (excluding Law Clerks); and be it further

RESOLVED, that the Corporation is hereby authorized to permit a firm to charge its normal rates for legal services and expenses in those instances in which the Corporation will be fully reimbursed for such costs by a third party; and be it further

RESOLVED, that the President and Chief Executive Officer and General Counsel of the Corporation or their designee(s) be, and each of them hereby is, authorized to execute amendments to the Corporation's existing legal retainer agreements to modify the applicable compensation rates to those approved at this meeting.

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