



MEMORANDUM

TO: The Directors

FROM: Rose Jeffrey, Corporate Secretary

DATE: February 8, 2022

RE: **Board of Directors' Meeting – Friday, February 11, 2022**

CC: Richard Dorado

Notice is hereby given to all Directors of the Harlem Community Development Corporation (“Harlem CDC”) that a Board of Directors meeting, duly called by the President of the Corporation, will be held on **Friday, February 11, 2022 at 11:00 A.M. via Teleconference.**

Join by phone, audio only:
+1 929 205 6099 US (New York)
Meeting ID: 840 3862 2066
Passcode: 839468

The agenda and board materials to be considered at the meeting are attached.



BOARD OF DIRECTORS' MEETING

Via Teleconference

Friday February 11, 2022

11:00 A.M.

AGENDA

CORPORATE ACTION:

Approval of minutes for July 30, 2021 and October 29, 2021 Board of Director's Meetings.

FOR CONSIDERATION:

WEATHERIZATION ASSISTANCE PROGRAM — Authorization to Enter into Contract with Luxintec Inc. for Window Replacement Services at 428 East 117th Street; Authorization to Take Related Actions

WEATHERIZATION ASSISTANCE PROGRAM — Authorization to Enter into Contract with Luxintec Inc. for Window Replacement Services at 222-238 East 119th Street; Authorization to Take Related Actions

FOR INFORMATION:

Victoria Theatre Project Update

NEW BUSINESS

OLD BUSINESS

ADJOURNMENT

DRAFT- SUBJECT TO REVIEW AND REVISION

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

July 30, 2021

Minutes

In Attendance

Directors: Freida Foster, Acting Chair
Holley Drakeford
Dana Reed
Keisha Sutton-James

Designees:

Earnestine Bell-Temple for Assembly Member Al Taylor
Terell Brock for Senator Jose M. Serrano
Deneane Brown for NYS/HCR Commissioner RuthAnne Visnauskas
Michelle Cruz for NYC Council Member Diana Ayala, (via Video Conference)
Erik Cuello for Council Member Mark Levine
Erica Gonzalez for NYS Assembly Member Robert Rodriguez
Shana Harmongoff for NYS Senator, Brian Benjamin
Shana Marks for Representative Adriano Espaillat
Lermond Mayes for NYS Assembly Member, Inez E. Dickens
Athena Moore for Manhattan Borough President, Gale Brewer

Harlem CDC

Officers: Curtis L. Archer, President
Rose Jeffrey, Corporate Secretary

Harlem CDC Staff: Destiny Burns, Acting E.V.P.
Victoria Gordon, Director, Weatherization Assistance Program
Ruben Rahman, Director, Community Development

ESDC Staff &

HCDC Counsel: Eunice Jackson, Esq., Senior Counsel (via Teleconference)

ESD Staff: Holly Leicht, EVP, Real Estate Development (via Teleconference)
Philip Maguire, VP, Design and Construction

Guest: Craig Livingston

Stenographer: Alexiara Pierce

The July 30, 2021 meeting of the Board of Directors (the “Board” or the “Directors”) of the Harlem Community Development Corporation (“HCDC”, “Harlem CDC” or the “Corporation”) was called to order at 11:23 A.M. by Acting Chair, Freida Foster (“Chair”).

After a round table introduction of all attendees, 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 agenda items 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 if they had any potential conflicts of interest with respect to any of the items on the proposed agenda.

Hearing none, the Chair noted the foregoing for the record.

The Chair then asked for a motion on the minutes for the March 23, 2021 Board of Directors’ meeting.

There being no questions or comments, upon motion duly made and seconded, the March 23, 2021 board meeting minutes were adopted.

The Chair then called upon, Mr. Phillip Maguire, ESD’s Vice President of Design and Construction, and Mr. Craig Livingston, one of the developers of the Victoria Theatre project, to provide an overview of the project’s status. Mr. Maguire stated that the residential portion of the project has been completed and received the TCO. The developers are currently leasing the market-

rate apartments and working with HPD to begin the lottery for the affordable apartments in the coming weeks.

The commercial side of the project on 125th Street, which is the Hotel, the retail and the cultural units which will be operated by the Apollo, has fallen a little behind and the developer is about three months from calling in the buildings department to begin inspection on the final construction process.

Mr. Maguire added that there would be approximately three more months of construction followed by another three months of paperwork to take care of the last-minute details. After that six months, the developer plans to have a soft opening of the hotel, which will be early 2022.

Mr. Maguire further stated that they are working closely with the Apollo to schedule opening of the cultural units which the Apollo will take possession of after the units are completed; that opening is also scheduled for early 2022. Concerning the retail spaces, Mr. Maguire stated that the developers are looking at mid-2022 to hand over those spaces, and Craig Livingston would give an update on the leasing of the retail space.

Mr. Livingston thanked Mr. Maguire and the Board for their support and stated that 2020 and 2021 are very different from 2015 when the project began. He acknowledged that there had been some delays and stated that they are now close to completion.

Mr. Livingston provided the status of the retail component of the project stating that the first lease that was signed was with Princess Jenkins, the proprietor of the Brownstone and a long-standing Harlem resident and business owner. The second lease was signed with Sushi Inoue, a Michelin-rated sushi restaurant; and the third lease for the entire second floor was signed with JT Thompson for a Hip Hop Museum and will be effective once a deposit is wired.

. Mr. Livingston concluded by stating that getting the extension would help them to complete the construction and allow the proprietors to open before Summer 2022.

The Chair then called upon Ms. Burns to present a request to authorize HCDC to amend its ground lease with 233 Danforth, the developer of the Victoria Theater Project.

Ms. Burns stated that in August 2020 and in April 2021, the Directors authorized extensions to the lease at the request of the developer. The first extension was from August 5, 2020, to April 30, 2021. The second extended the term to October 31, 2021.

Ms. Burns explained that under the lease, HCDC is obligated to convey a completed building to the developer, with the exception of the cultural unit, upon satisfaction of certain conveyance conditions including the delivery of a Certificate of Occupancy for all the components of the project. She explained that the developer is in the process of refinancing its construction loan with the new lender and has requested additional time to close on the transaction. The financing will provide the need for additional capital to complete the project and to fulfill the lease obligations including obtaining approval and certifications required for the occupancy of the completed building.

Ms. Burns further explained that the proposal would permit up to two additional lease extensions of six months each with some modifications to the provisions regarding lender's rights and obligations, which were requested by the proposed lender to protect their interest. The first extension would be six months from the closing date of the developer's refinancing and, if the project is not substantially complete at the end of that six-month period, a second six-month extension would be permitted. That extension would be contingent upon the developer agreeing to HCDC's option to bring in a third-party construction manager or additional development partner

with experience successfully completing large construction projects in New York City to take over the management of the project until the conveyance conditions are satisfied.

In conclusion, Ms. Burns stated that after reviewing the status of the project construction summary and the developer's need for refinancing to provide additional capital, while acknowledging the impact the COVID-19 pandemic has had in delaying the construction process, the Directors were being asked to authorize HCDC's proposed lease amendment.

Ms. Reed commented that she agreed with giving the developers the time needed but was not sure how six months extension was arrived at and proposed entertaining a discussion about a nine-month extension, citing the need for contingency due to the potential for delays caused by the pandemic. She stated that she is not comfortable with the idea that another party would be involved after only six months.

Ms. Leicht explained that the proposed new lender and the developer proposed the six-month extension and that she and Mr. Livingston agreed upon the six-month extension and the possibility of bringing in another developer to avoid a foreclosure process. She further explained that in order to keep the current team in place rather than begin a lengthy legal process on an almost completed project, the six-month extension would be better than what the lender had originally proposed. She asked Mr. Livingston to confirm if he felt that amount of time was sufficient.

Mr. Livingston confirmed that the developer did ask for six months which he confirmed is the amount of time needed to complete the project. He stated that the State is looking for performance and that the lender also has some rights and that ESD staff has been very accommodating and flexible. He addressed Ms. Reid's comments regarding a contingency and

stated that the extra time could not hurt, considering what has been happening with the virus and the potential for another shut down.

Ms. Reed asked if the six months was a request from the lender.

Mr. Livingston explained that the lender has given them three years, but he is not sure if the documents call for compliance with the lease.

Ms. Sutton-James stated that her understanding was that there was threat of a foreclosure in six months.

Mr. Livingston explained that the lender's position is that the developer's performance should be in line with the lease completion date, so if the lease completion date is extended, that would stall any actions from the lender. Mr. Livingston added that ESD staff has been extremely supportive.

Ms. Sutton-James stated that she now understands that it's up to ESD and the Board whether there are changes made to extend the lease.

Ms. Reed reiterated her concern for a contingency and stated that the Board would not like to see anything in the community go into foreclosure especially from factors which are out of their control, and asked if there is an opportunity to offer a further extension.

Ms. Foster asked if it was possible for the Board to offer the proposed extension.

Ms. Leicht stated that she believes everyone is working towards the same goal, not having the lender holding up completion of the project while going through a legal process. She stated that she believes six months is reasonable because there have been several extensions and she would rather continue with the six months which is what the lender and developer identified as

reasonable. Ms. Leicht stated that if there is another shut down, she would rather work out a plan then but keep the pressure on now to finish the project.

Ms. Reed asked if it means that if there is another shut down there will be another six months regardless.

Ms. Jackson stated that she thinks there may be a misinterpretation of the language in the document. She explained that if the project is not complete after the first six months, they will have to bring in a new developer. She further explained that the intent is to have the flexibility to look at the lease again in six months, but that may not be required. Ms. Jackson stated that every day the project is delayed costs the developers lots of money, so there is a strong incentive to get the project completed.

Ms. Reed stated that if what is being asked to vote on is not restricting the Board into bringing in another developer in six months, she's fine because the flexibility was what was needed.

Ms. Leicht agreed that the six months would give ESD and HCDC the flexibility to assess the best approach to getting the project completed without going the legal route, and that may include bringing in an additional partner to complete the project.

Ms. Sutton-James asked what the impact would be on Danforth if a third-party construction manager is brought in?

Ms. Leicht answered that all parties would need to negotiate the outcome.

The Chair asked if all parties are comfortable with what is being stated: that in six months, if there is a delay because of something beyond their control, that there is the flexibility to extend the six months but, if the delay is caused by the developers, then a different team will take over.

Ms. Burns said not a team, but someone would be brought in to manage the project and bring it to completion.

Ms. Reed asked if that negotiation would be brought back to the Board.

Ms. Sutton-James said what she is reading is that the request is for the Board to give authorization for six months and then in six months ESD and Danforth would negotiate the terms of the agreement and she is concerned about that.

Ms. Reed said she is not comfortable with that.

Ms. Jackson stated that the negotiation would be between the developer and the new construction manager.

Some concern was raised that those negotiations would be taking place without the Board's input.

Ms. Leicht asked if this Board usually voted on contractors, which she stated is a procurement process.

Ms. Sutton-James asked if bringing in a third party could affect Danforth's equity in the project.

Ms. Leicht said that the Board's interest should be getting a cultural unit completed without undue expenditures and she did not understand why the Board was interested in any financial transaction between Danforth and another contractor.

Ms. Reed stated that she did not think the Board should be told what their interest should be and that they are all interested in MWBE first.

Ms. Leicht stated that MWBE is part of the mandate on all projects and the staff would also monitor that aspect. Ms. Leicht further stated that they can certainly return with any arrangement if it's the requirement of the Board, but that is not typically the procedure that's followed.

Ms. Jackson explained that the construction manager would be retained by the developers; the Corporation would not be forcing that relationship.

The Chair stated that most of the Board has a vested interest in the community and in this project.

Mr. Drakeford asked for an explanation of the refinancing loans and the penalties associated with getting the loan.

Mr. Livingston stated that the lender who would be providing the bridge loan is Ladder Capital. He explained that a bridge loan is a type of loan that, when provided to a project, bridges it between construction and permanent financing. It's a real estate investment trust and it also has a debt fund. He continued that because of what has been happening in the hospitality market as a result of the pandemic, they are not able to independently finance the residential and hospitality part of the project separately.

Mr. Livingston continued that they had to get a bridge loan because there are no lenders for an empty hotel. The bridge loan would be for three years, up to 2024, assuming they are able to close this year.

Mr. Livingston further stated that the residential section of the project is completed and will start renting in the next month, so from the lenders perspective three years will be enough time, and there are additional extensions with the bridge loan. If the lease terminates in six months the lenders will have no collateral and the lenders would have to enforce their rights to protect their

investment. Mr. Livingston stated that the most important part of the discussion is what will happen in six months.

Ms. Sutton-James asked Mr. Livingston if it's his understanding that the terms of his negotiations would be with the construction manager.

Mr. Livingston stated that those terms have not yet been defined but what Ms. Leicht had offered is an accommodation to the lender to avoid litigation.

The Chair stated that Ms. Leicht and Mr. Livingston sounds as if they have already had a discussion and come to an agreement and the Board is being asked to vote on that agreement. She said the Board is asking for information on the discussion that will take place in six months since it's a community-based Board.

Mr. Drakeford asked what would happen if the refinancing does not go through. Mr. Livingston stated that without the loan the project would come to a complete stop.

Mr. Livingston continued by explaining again how close the project is to completion; construction within three months once the financing closes and then another three months of paperwork.

Ms. Sutton-James stated a modification to the motion to extend the first six months to nine months.

Ms. Reed added that she would like the discussion to come back to the Board at the end of the nine-month period with further clarification.

The Chair said that she would like to make sure that conversations between ESD and Danforth have not already sealed the decision and that the Board's vote can't change those decisions.

Ms. Jackson stated that working out the language in the lease may be vital to the lender's decision.

A discussion ensued about how extending the time from six to nine months may impact the decision by the lender.

Ms. Moore suggested voting on the six-month period and then add another three months at which time they would come back to the Board with more information.

Ms. Burns stated that the project is very close to completion and if its substantially complete within the six months there may not be a need for a construction manager.

Mr. Livingston stated that the development team is comfortable with the plan that was worked out with Ms. Leicht. He stated that they have three months of construction and three months of paperwork and barring any unforeseen circumstances, they should be able to meet that deadline.

Ms. Jackson asked if the nine months will be followed by another proposal.

Ms. Sutton-James stated that her proposal is to have the two periods, the first nine months and then six months and leaving the terms of the proposal with the construction manager as it is.

It was also decided that at the end of the nine months the matter would return to the Board for informational purposes only and not for a vote.

Ms. Sutton-James made a motion to authorize an amendment to extend the Lease for a period of nine months, instead of the proposed six months, and allow for an additional extension for up to six months if the project is not complete, contingent upon the developer agreeing to HCDC's option to bring in a third-party construction manager or additional development partner.

There being no further discussion, upon motion duly made and seconded the motion to authorization the amendment of the Lease for the Victoria Theatre Land Use Improvement and Civic Project was unanimously adopted.

Harlem Community Development Corporation: Authorization to Amend a Lease for the Victoria Theatre Land Use Improvement and Civic Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation is hereby authorized to amend the Ground Lease between Harlem Community Development Corporation and 233 West 125th Street Danforth, LLC substantially on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that the President, or his designee(s) 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 Resolutions.

The Chair asked Ms. Burns to present the next item on the agenda, a request to amend the contract for legal services with Phillip Lytle, LLP.

Ms. Burns stated that the Board is being asked to amend the contract with Phillips Lytle in connection with the Victoria Theater redevelopment project. She stated that that the firm has provided services to HCDC on various issues and there is a continuing need for legal representation on the project as it nears completion.

Ms. Burns continued that the developers have requested an extension to accommodate the proposed refinancing and allow enough time to navigate other issues while completing the project.

Ms. Burns explained that the initial contract term began in September of 2015 with a contract value of \$230,000. The contract has been amended three times and now has a value not

to exceed \$380,600, which expires on September 30, 2021. It is proposed that the term be extended to March 31, 2022, and the amount be increased by \$125,000 for an amount not to exceed \$505,600. Payment to Phillips Lytle will be made from the Imprest account funded by the developer.

In conclusion, Ms. Burns stated that the Directors are being asked to authorize the Corporation officers to enter into an amended contract with Phillips Lytle and to execute the actions necessary to perform the agreement.

Ms. Sutton-James asked if the MWBE subcontractor that previously worked with Phillips Lytle was the subcontractor.

Ms. Jackson responded that Phillips Lytle was primarily doing the work that's needed at this time. She further stated that Ms. Gibson, the previous MWBE subcontractor has been semi-retired for some time and that her level of expertise is not what is currently required.

Ms. Sutton-James asked if there would be any MWBE working on the project for the balance of the term.

Ms. Jackson replied no.

Ms. Reed stated that she would be able to find an MWBE if they needed someone.

Ms. Jackson explained it would be very costly and time consuming for the developer at this time to find another firm and then update them on the background and history of the project. She offered to reach out to the Phillips firm to confirm whether the Gibson firm is still active.

Ms. Reed stated that she herself is a MWBE and she knows something can be done to include a MWBE without costing the developers. Ms. Reed further stated that the Corporation should not have to ask Phillips Lytle how to include a minority firm; they should be told what percentage

participation is needed but that there should be some minority participation in a half million-dollar contract.

Ms. Burns clarified that the contract is being amended at this time to add \$125,000 over an 18-month period.

Ms. Reed acknowledged awareness and stated that she would like the Board to go on record saying there should be some minority representation and that the Corporation will endeavor to finding an MWBE law firm to assist Phillips Lytle in the completion of the project, without an extra cost to the developer.

Ms. Jackson stated that there are billing rights that the firms agree to but since the Gibson Firm was working as a subcontractor to Phillips Lytle Firm, the Corporation may still be covered under their professional liability firm. She said they can see if that arrangement can work again; they would be speaking with Phillips Lytle to work that out. She continued that if Ms. Gibson is not available it may be difficult figuring out how to get a new law firm in, but the Corporation is always working to meet the MWBE objective.

The Chair stated that the Board would appreciate that the Corporation is making the effort to bring in an MWBE subcontractor.

There being no further questions or comments, upon motion duly made and seconded, the request for authorization to amend the legal services with Phillips Lytle, LLP was unanimously adopted.

Harlem Community Development Corporation – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP 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 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 March 31, 2023 and to increase the contract value by ONE HUNDRED TWENTY-FIVE THOUSAND dollars (\$125,000) for a total amount not to exceed FIVE HUNDRED FIVE THOUSAND SIX HUNDRED dollars (\$505,600), 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.

There being no further business, upon motion duly made and seconded, HCDC's Board of Directors meeting was adjourned at 12:54 P.M.

Respectfully Submitted by,

Rose Jeffrey
Corporate Secretary

DRAFT- SUBJECT TO REVIEW AND REVISION

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

October 29, 2021 (Via Teleconference)

Minutes

In Attendance

Directors: Keisha Sutton-James, Acting Chair
Holley Drakeford
Dana Reed
Maria Teresa Arce

Designees: 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 Adrienne Harris Acting Superintendent of NYS/DFS
Erica Gonzalez for NYS Assembly Member Robert Rodriguez
Gabriel Lewenstein for NYS Assembly Daniel O'Donnell
Shana Marks for Representative Adriano Espaillat
Lermond Mayes for NYS Assembly Member Inez E. Dickens
Arva Rice for Manhattan Borough President Gale Brewer

Harlem CDC

Officers: Rose Jeffrey, Corporate Secretary

Harlem CDC Staff: Destiny Burns, VP/Executive Director
Victoria Gordon, Director, Weatherization Assistance Program

ESDC Staff

& HCDC Counsel: Eunice Jackson, Esq., Senior Counsel (via Teleconference)

ESD Staff: Kathleen Mize

Stenographer: Marc Russo

Before the meeting was formally called to order by the Chair, the Corporate Secretary of the Harlem Community Development Corporation (“HCDC” or the “Corporation”) welcomed everyone to the meeting and conducted a roll call of the Directors to determine that a quorum was present.

Following the roll call and confirmation that a quorum was present, the meeting of the Directors of HCDC was called to order by Acting Chair Keisha Sutton-James. Acting Chair Sutton-James noted for the record that in accordance with recently passed legislation, this meeting will be conducted by teleconference.

Next, the Chair noted that the public had been given an opportunity to comment on the Agenda items by submitting their written comments by 5:30 p.m. on Thursday, October 28, 2021. She noted that no comments were received on any of the Agenda items. The Chair also asked the Directors to mute their phones and to unmute them only when they speak.

The Acting Chair then noted that the Directors have received all relevant written materials in advance of the meeting and are free to ask questions at any time.

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

Hearing none, the Acting Chair stated that the foregoing has been noted for the record.

Next, the Acting Chair introduced Ms. Destiny Burns to present the first item on the Agenda, approval of the amended weatherization Division Budget for Fiscal Year 2021.

Ms. Burns stated that the Directors are being requested to approve an amended budget for HCDC's Weatherization Assistance Program ("WAP") for the 2021 through 2022 Fiscal Year.

WAP reduces energy costs for low-income households by facilitating improvements and upgrades that increase energy efficiency and is funded by allocations from the U.S.

Department of Energy and Health and Human Services and administered through the New York State Homes and Community Renewal.

Ms. Burns continued that at the March 30th meeting, the Directors approved an amended WAP budget of \$1,394,074 but that allocation has been increased by \$138,398 for a total amended budget of \$1,532,472. The additional funding will be applied to the outside services and expenses line item.

Ms. Burns recommended that the Directors authorize the amended budget to enhance the program's ability to promote the health and safety of low-income Harlem residents.

There being no questions or comments, the following resolution to approve HCDC's amended Weatherization Division Budget for Fiscal Year 2021/2022 was unanimously approved.

WEATHERIZATION DIVISION AMENDED BUDGET – Approval of Harlem CDC's Amended Weatherization Division Budget for Fiscal Year 2021/2022 (April 1, 2021 – March 31, 2022); Authorization to Take Related Actions

RESOLVED, that based upon the materials presented at this meeting (the 'Materials'), a copy of which is ordered filed with the records of the Corporation, the Board of Directors of the Corporation does hereby authorize, approve and adopt the Harlem Community Development Corporation's Amended Weatherization Division Budget for Fiscal Year 2021/2022, substantially in the form set forth in the materials and subject to the availability of funds; and be it further

RESOLVED, that the President of the Corporation and/or President's designee(s) be, and each of them, hereby is authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Amended Weatherization Division's FY 2021/2022 Budget; and be it further

RESOLVED, that the President of the Corporation and/or the President's

designee(s), and each of them, hereby is authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the forgoing.

The Acting Chair then called upon Ms. Burns to present the next item on the Agenda, a request for authorization to amend the ground lease for the Victoria Theater Land Use Improvement and Civic Redevelopment Project.

Ms. Burns stated that HCDC is requesting the Directors to authorize the agency to amend the ground lease with 233 Danforth, the developer of the Victoria Theater Project. Ms. Burns stated that HCDC is obligated under the terms of the lease to convey the completed building, except for the cultural unit, to the developer upon satisfaction of certain convenience conditions, including delivery of the certificate of occupancy for all the components of the project. The original lease was executed in 2015 and required the project to be substantially complete by August 4th, 2022.

Ms. Jackson interjected a correction for the year to 2020.

Ms. Burns explained there have been two lease extensions to date: the first was in August 2020, with a new expiration date of April 30th, 2021. It provided financial relief for the developer from some of the financial obligations in the lease as well as authorization to place the residential portion of the project in service prior to the completion of the rest of the project. The second extension, authorized on April 30, 2021, extended the lease expiration date to October 31, 2021.

Ms. Burns further explained that in July of 2021, the developers advised staff that the project would not be completed by the October 31st expiration date, and that a refinancing of their loan and additional capital was needed to complete the project. The developer requested a third extension of the lease to allow time to negotiate and close

refinancing with a new lender that they identified and to complete the project. Based upon the Developer's representations regarding the refinancing and the time required to complete the remaining construction and obtain governmental approvals, the Directors authorized a an amendment that permitted two potential extensions for a total of 15 months. However, these amendments were not executed because the refinancing did not occur.

Ms. Burns further stated that the status of the construction on the project remains unchanged and prior to the October 31st lease expiration date, the developer has requested additional time to close on the refinancing of the construction loan with a different lender. This loan would provide the additional capital needed to complete the project.

Ms. Burns concluded that ESD staff, on behalf of HCDC, recommends that the Directors authorize HCDC to amend the lease as necessary, until February 28, 2022, to allow the developer to negotiate and close on the proposed refinancing. She further recommended that the Directors authorize HCDC to provide an additional extension of the lease term to allow the developer enough time to complete the construction and obtain the governmental approvals necessary for the project as outlined in the materials.

Ms. Arce inquired whether there was an alternative to extending the lease since there have been a number of prior extensions to the lease.

Ms. Jackson responded that if the current lease is not extended, the lease will end and at that point notice would be sent to the developers that the lease has ended, and the bank currently holding their mortgage, would ask the Corporation to stand down from enforcing that until they've had a chance to step in and complete the project, using their abilities under the lease.

Ms. Jackson acknowledged that she did not have the lease in front of her and could not recite all the mortgage rights, and stated that the developer would technically have no legal right to occupy and control the site. She further stated that the Corporation has been working with the developer and is recommending that they are allowed additional time to get the additional financing, because they would like to see the project to succeed.

Ms. Arce requested clarity regarding language in the presentation that spoke about an opportunity to seek an alternative manager for the property, since they have not been able to meet the previous extensions.

Ms. Jackson explained that Ms. Arce was referring to the presentation in July where one of the options recommended that if certain milestones were not met within a certain timeframe, the developer could be asked to bring in another manager that would assist them in completing the project. The current request for authorization is to give the developer the four months they've requested and give the staff the flexibility to work with the developer with a clear understanding of the next steps for the development team. They would review what their refinancing would look like and their lender requirements, provide an update on their plans toward getting the project completed and to assess the steps that might be needed to complete the project. Ms. Jackson concluded that, at this point, the request is not for them to seek additional third-party input, but that result could possibly occur at a later point if the completion is further delayed.

Ms. Arce inquired whether approval of the item trigger an opportunity to bring in a third-party to help them manage the project if they are not able to meet this deadline.

Ms. Sutton-James explained that potentially, that could happen, but right now the request is for the four months to secure the refinancing. After the financing is secure, the additional terms in the lease will be negotiated and further extensions may be requested.

Ms. Jackson stated that some of the negotiations are happening simultaneous with them securing the financing, but that it's premature right now because they want the flexibility to work out those terms.

There being no further questions or comments, upon motion duly made and seconded, the following resolution to authorize HCDC to amend the ground lease for the Victoria Theater Land Use Improvement and Civic Redevelopment Project was unanimously approved.

HARLEM COMMUNITY DEVELOPMENT CORPORATION: Authorization to Amend a Lease for the Victoria Theatre Land Use Improvement and Civic Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation is hereby authorized to amend the Ground Lease between Harlem Community Development Corporation and 233 West 125th Street Danforth, LLC substantially on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that the President, or his designee(s) 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 Resolutions.

There being no further business, upon motion duly made and seconded, HCDC's Board of Directors meeting was adjourned at 11:20 A.M.

Respectfully Submitted by,

Rose Jeffrey
Corporate Secretary



FOR CONSIDERATION

February 11, 2022

TO: The Directors

FROM: Curtis L. Archer

REQUEST FOR: Weatherization Assistance Program — Authorization to Enter into a Contract with Luxintec Inc for a Window Replacement at 428 East 117th Street.; and Authorization to Take Related Actions

Contract Need And Justification

I. Contract Summary

Contractor: Luxintec Inc.
64-13 Grand Avenue
Maspeth, New York 11378

Scope of Services: Window replacement for 35 residential units at 428 East 117th Street

Building Owners: MHANY 2004 HDFC

Contact: Arunabha Chakravarty

Contract Term: February 11, 2022 to March 31, 2022

Contract Amount: Not to exceed \$355,421 (\$323,110.00 and contingency of \$32,311)

Funding Sources: New York State Homes & Community Renewal Weatherization Assistance Program contract funding of up to \$210,000 and up to \$145,421 of owner’s contribution which includes \$12,321.00 of construction management fees.

II. Background

Program

The Weatherization Assistance Program (“WAP”) is a nation-wide program, funded by the US Department of Energy and the US Department of Health and Human Services. Its mission is to

reduce heating and cooling costs for low-income families by improving the energy efficiency of their homes and ensuring their health and safety. Harlem CDC (and HUDC before it) has participated in the program since its inception.

The WAP is a need-based program that provides assistance to single and multi-family building owners with tenants that meet certain income-eligibility requirements. The services provided are based on energy audits of project sites conducted by WAP staff to determine specific needs and projected energy savings. The property owners are required to make investments towards the cost of improvements, unless financial hardship is determined. WAP is administered in New York State by the NYS Homes and Community Renewal (HCR). Harlem CDC's WAP is a subgrantee of HCR and facilitates the program within its catchment area.

Harlem CDC Weatherization budget for the current 2021/2022 program year is set at **\$1,532,472.00**. Harlem CDC subcontracts to perform the work required to fulfill Harlem's CDC's obligation to provide the improvements funded by the program.

Project

Harlem CDC will enter into a sub-contract to replace a total of 284 windows for 35 residential units at 428 East 117th Street. The property was acquired by owner MHANY 2004 HDPC in 2005. The building's tenants meet WAP income guidelines.

HCDC's WAP staff completed an energy audit and an initial work-scope which was reviewed and accepted by the owner of the project site.

III. Contractor Selection Process

Bid packages were sent to nine contractors included on Harlem CDC WAP's 2021/2022 Window Replacement Bidder's list. Contractors must send a written request to Harlem CDC for inclusion on the list. All contractors on Harlem CDC's list are sent information about each bidding opportunity and invited to bid. Three contractors attended the mandatory pre-bid conference held on Wednesday, October 6, 2021. The bid opening was held on Monday, October 18, 2021 and all three contractors submitted bids.

Based on their bid price, Harlem's CDC staff's review of Luxintec Inc.'s "responsibility" as described below in Section VII of these materials and receipt of satisfactory references provided by the contractor, Luxintec Inc. was deemed to be the lowest responsible bidder.

IV. Scope of Work

Under the supervision of Harlem CDC's WAP staff, Luxintec Inc. will replace 284 windows servicing 35 residential units at the project site.

V. Contract Term, Price and Funding

The estimated cost of the scope of work for the window replacement is \$323,110.00 plus a 10% contingency of \$32,311.00 for a total contract amount not to exceed \$355,421.00. WAP funds will be used to cover \$210,000.00 of the project costs and the owners will be required to pay the balance of up to \$ 145,421.00 which includes a construction management fee of \$12,321.00. Work is expected to be completed within 2 months of contract execution.

V. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority- and Women-owned Business Enterprises (“MWBEs”) and Service Disabled Veteran-Owned Businesses (“SDVOBs”) in the performance of ESD projects and procurements. ESD Office of Contractor and Supplier Diversity have reviewed the project and have determined that there exists no potential for MWBE and SDVOB participation. As such, participation goals will not be established or required for this project.

VI. Environmental Review

ESD staff on behalf of the HCDC has determined that the authorization to enter into a subcontract for window replacement services constitutes a Type II 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.

VII. Responsible Party

Harlem CDC’s staff has reviewed Luxintec Inc. “responsibility” as defined in State Finance Law §163, and as provided in Harlem CDC’s Procurement Guidelines, Article 8.13, the financial and organization capacity, legal authority to do business in New York, integrity of principals and performance and compliance on other weatherization jobs. Based on this analysis, Luxintec, Inc. is a responsible bidder.

VIII. Requested Actions

The Directors are requested to make a determination of responsibility with respect to Luxintec Inc. and to authorize the Corporation to enter into a sub-contract with Luxintec Inc. substantially in accordance with the terms and conditions set forth in these materials for an amount not to exceed \$355,421, and to authorize related actions.

IX. Recommendation

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

X. Attachments

Resolution



**Harlem Community
Development
Corporation**

A Subsidiary of Empire State Development

February 11, 2022

Weatherization Assistance Program - Authorization to Enter into a Contract with Luxintec Inc for Window Replacement at 428 East 117th Street.; and 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 Luxintec Inc. to be responsible; and be it further

RESOLVED, that the Corporation hereby authorizes the President to enter into a contract with Luxintec Inc., in an amount not to exceed \$355,421 (Three Hundred and Fifty-five Thousand Four Hundred and Twenty-one Dollars), for the window replacement (the "Work") at 428 East 117th 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.



FOR CONSIDERATION

February 11, 2022

TO: The Directors

FROM: Curtis L. Archer

REQUEST FOR: Weatherization Assistance Program — Authorization to Enter into a Contract with Luxintec Inc. for Window Replacement at 222-238 East 119th Street; and Authorization to Take Related Actions

Contract Need And Justification

I. Contract Summary

Contractor: Luxintec Inc.
64-13 Grand Avenue
Maspeth, New York 11378

Scope of Services: Window replacement for 60 residential units at 222-238 East 119th Street

Building Owners: MHANY 2004 HDFC

Contact: Arunabha Chakravarty

Contract Term: February 11, 2022 to March 31, 2022

Contract Amount: Not to exceed \$558,536.00 (\$507,760 and 10% contingency of \$50,776)

Funding Sources: New York State Homes & Community Renewal Weatherization Assistance Program contract funding of up to \$360,000 and up to \$198,536 of owner’s contribution which includes \$18,189.00 of construction management fees.

II. Background

Program

The Weatherization Assistance Program (“WAP”) is a nation-wide program, funded by the US Department of Energy and the US Department of Health and Human Services. Its mission is to

reduce heating and cooling costs for low-income families by improving the energy efficiency of their homes and ensuring their health and safety. Harlem CDC (and HUDC before it) has participated in the program since its inception.

The WAP is a need-based program that provides assistance to single and multi-family building owners with tenants that meet certain income-eligibility requirements. The services provided are based on energy audits of project sites conducted by WAP staff to determine specific needs and projected energy savings. The property owners are required to make investments towards the cost of improvements, unless financial hardship is determined. WAP is administered in New York State by the NYS Homes and Community Renewal (HCR). Harlem CDC's WAP is a subgrantee of HCR and facilitates the program within its catchment area.

Harlem CDC Weatherization budget for the current 2021/2022 program year is set at \$1,532,472. Harlem CDC subcontracts to perform the work required to fulfill Harlem's CDC's obligation to provide the improvements funded by the program.

Project

Harlem CDC will enter into a sub-contract to replace a total of 448 windows for 60 residential units at 222-238 East 119th Street. The properties were acquired by owner MHANY 2004 HDFC in 2005. The buildings' tenants meet WAP income guidelines.

Harlem CDC's WAP staff completed an energy audit and an initial work-scope which was reviewed and accepted by the owner.

III. Contractor Selection Process

Bid packages were sent to nine contractors included on Harlem CDC WAP's 2021/2022 Window Replacement Bidder's list. Contractors must send a written request to Harlem CDC for inclusion on the list. All Contractors on Harlem CDC's list are all sent information about each bidding opportunity and invited to bid. Three contractors attended the mandatory pre-bid conference held on Wednesday, October 6, 2021. All three contractors submitted bids and the bid opening was held on Monday, October 18, 2021.

Based on their bid price, Harlem's CDC staff's review of Luxintec Inc.'s "responsibility" as described below in Section VII of these materials and receipt of satisfactory references provided by the contractor, Luxintec Inc. was deemed to be the lowest responsible bidder.

IV. Scope of Work

Under the supervision of Harlem CDC's WAP staff, Luxintec Inc. will replace 448 windows servicing 60 residential units at the project site.

V. Contract Term, Price and Funding

The estimated cost of the scope of work for the window replacement is \$507,760 plus a 10% contingency of \$50,776 for a total contract amount not to exceed \$558,536. WAP funds will be used to cover \$360,000 of the project costs and the owners will be required to pay the balance of up to \$198,536 which includes \$18,189.00 of construction management fees. Work is expected to be completed within 2 months of contract execution.

V. Non-Discrimination and Contractor & Supplier Diversity

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority- and Women-owned Business Enterprises (“MWBEs”) and Service Disabled Veteran-Owned Businesses (“SDVOBs”) in the performance of ESD projects and procurements. ESD Office of Contractor and Supplier Diversity have reviewed the project and have determined that there exists no potential for MWBE and SDVOB participation. As such, participation goals will not be established or required for this project.

VI. Environmental Review

ESD staff on behalf of the HCDC has determined that the authorization to enter into a subcontract for window replacement services constitutes a Type II 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.

VII. Responsible Party

Harlem CDC’s staff has reviewed Luxintec Inc. “responsibility” as defined in State Finance Law §163, and as provided in Harlem CDC’s Procurement Guidelines, Article 8.13, the financial and organization capacity, legal authority to do business in New York, integrity of principals and performance and compliance on other weatherization jobs. Based on this analysis, Luxintec, Inc. is a responsible bidder.

VIII. Requested Actions

The Directors are requested to make a determination of responsibility with respect to Luxintec Inc. and to authorize the Corporation to enter into a sub-contract with Luxintec Inc. substantially in accordance with the terms and conditions set forth in these materials for an amount not to exceed \$558,536, and to authorize related actions.

IX. Recommendation

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

X. Attachments

Resolution



**Harlem Community
Development
Corporation**

A Subsidiary of Empire State Development

February 11, 2022

Weatherization Assistance Program - Authorization to Enter into a Contract with Luxintec Inc. for Window Replacement at 222-238 East 119th Street; and 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 Luxintec Inc. to be responsible; and be it further

RESOLVED, that the Corporation hereby authorizes the President to enter into a contract with Luxintec Inc., in an amount not to exceed \$558,536.00 (Five Hundred and Fifth-Eight Thousand Five Hundred and Thirty-Six Dollars), for the window replacement (the “Work”) at 222-238 East 119th 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.
