



**Harlem Community
Development
Corporation**

**BOARD OF DIRECTORS' MEETING
Friday, February 9, 2024
11:00 A.M.**

AGENDA

CORPORATE ACTION:

Approval of minutes for the July 21, 2024 Board of Director's Meeting.

FOR CONSIDERATION:

Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP
and to Take Related Actions

FOR DISCUSSION:

Victoria Theater Committee (discussion only, no vote needed)

ADJOURNMENT



MEMORANDUM

TO: The Directors

FROM: Rose Jeffrey, Corporate Secretary

DATE: February 6, 2024

RE: **Board of Directors' Meeting – Friday, February 9, 2024**

CC: Curtis Archer
Carlyne Turner-Beverly

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 **February 9, 2024 at 11:00 A.M.** in the offices of the Corporation, located in the Adam Clayton Powell Jr. State Office Building at 163 West 125th Street, 17th Floor, New York, New York.

Audio Only Connectivity Information:

Join by phone, audio only:

- +1 646 931 3860 US
- +1 929 205 6099 US (New York)

Meeting ID: 816 7664 7914

Passcode: 392276

Please note that directors joining the meeting via telephone audio cannot be counted for establishing a meeting quorum or for voting.

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



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ADJOURNMENT

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

July 21, 2023

Minutes

In Attendance

Directors: Freida Foster, Acting Chair
Holley Drakeford
Senator Cordell Cleare

Designees: Earnestine Bell-Temple for NYS Assembly Member Al Taylor
Terell Brock for NYS Senator Jose M. Serrano
Deneane Brown for NYS/HCR Commissioner RuthAnne Visnauskas
Ethan Bentley for NYS Assembly Member Daniel O'Donnell
Yolanda Ford for Adrienne Harris, Superintendent DFS
Shana Marks for NYS Representative Adriano Espaillat
Lermond Mayes for NYS Assembly Member Inez E. Dickens
America Munoz for NYS Assembly Member Eddie Gibbs
Jalissa Quigley for NYC Council Member Shaun Abreu
Keisha Sutton-James for Manhattan Borough President Mark Levine

Harlem CDC

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

Harlem CDC

Counsel & Staff: Carlyne Turner-Beverly, Senior Counsel
Victoria Gordon, Weatherization Director
Arden Sokolow, EVP Real Estate, ESD
Terence Cho, AVP Real Estate, ESD

The July 21, 2023 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 11:20 A.M. by Acting Chair Freida Foster.

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

The Acting Chair noted that consistent with the policy of the parent corporation, Empire State Development, public comments were welcome on the items on the agenda. The Acting Chair also noted that the public was given the opportunity to comment on the agenda items by submitting their written comments by 5:30 p.m. on July 20, 2023, to hcdcboard@esd.ny.gov. The Acting Chair stated for the record that no comments were received from the public.

After a round table introduction of the Directors and guests at the meeting, and before beginning with the substantive portion of the meeting, the Acting Chair asked the Directors whether anyone had any potential conflict of interest with respect to the items on the agenda to make the appropriate disclosure for the record at this time.

The Acting Chair noted that no conflicts were raised.

The Chair then called for a motion on the minutes for the March 17, 2023 Board of Directors' meeting.

There being no questions or comments, upon motion duly made and seconded, the March 17, 2023 board meeting minutes were adopted.

The Acting Chair then called on Victoria Gordon to present the request for approval of the Bipartisan Infrastructure Law (BIL) Allocation of New Additional Funding to Harlem CDC's Weatherization Assistance Program.

Ms. Gordon stated that the Weatherization Division's 2023/2024 budget, which is funded through the US Department of Energy, was approved by the Board on March 17, 2023. Since that approval, the Weatherization Division has been allocated new funding under the BIL. The Directors were being asked to approve this additional funding.

Ms. Gordon further stated that BIL was enacted by Congress on November 15, 2021, with the U.S. Department of Energy releasing specific guidance to New York State Homes and Community Renewal, Weatherization Assistance Program to distribute \$289,714,086 of BIL funds Statewide to provide weatherization services and improvements to the homes of low-income families in the most disadvantaged communities, in all 62 counties of New York State, to improve health and safety, especially for low-income persons who are particularly vulnerable, such as the elderly, handicapped, and children.

Ms. Gordon stated that New York's plan for the use of the BIL funds is consistent with the policies and strategies of the New York State Weatherization Assistance Program. HCDC's Weatherization Assistance Program, ("WAP") has been allocated this funding for five years. The allocation for the first two years, April 1, 2023, to March 30, 2025, is \$1,543,828. The Directors are being requested to approve Harlem CDC'S Weatherization Division BIL budget allocation in the amount of \$1,543,828 to complete 277 units. Such authorization will be subject to final approval from ESD's CFO and Controller.

There being no questions or comments, upon motion duly made and seconded, the following request for approval of the Bipartisan Infrastructure Law (BIL) allocation of new additional funding to Harlem CDC's Weatherization Assistance Program, was unanimously approved.

WEATHERIZATION ASSISTANCE PROGRAM BUDGET - Approval of Harlem CDC's Weatherization Program's allocation of new additional funding under the Bipartisan Infrastructure Law (BIL) Approval of Weatherization Division Additional Funding and 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 WAP/BIL Budget Allocation, 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 WAP/BIL Budget Allocation for April 1, 2023 to March 30, 2025; 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.

Next, the Chair asked Ms. Gordon to present the request for approval of the Pre-Qualified Weatherization Contractors/Vendors List and authorization to take related actions.

Ms. Gordon stated that the WAP is the largest residential energy conservation program in the country, which reduces energy usage costs for low-income families in single-family homes and multi-unit developments. The program aims to educate consumers about energy-efficient practices, to reduce heating and cooling costs for low to moderate-income families, and addresses health and safety issues in their homes, through energy-efficient measures such as the LED lighting, new boilers, windows, and energy-efficient appliances. The program benefits the larger community by creating local jobs within the clean energy sector. She noted that Harlem CDC has been providing weatherization services to the Harlem community since the inception of the program, over 40 years ago.

Ms. Gordon further stated that WAP is funded by the U.S. Department of Energy, ("DOE"), under the U.S. Department of Health and Human Services. The program is administered by New York State Division of Homes and Community Renewal.

The WAP program implements a number of measures each year, which include boiler replacement, window replacement, LED lighting, air ceiling, and installation of energy-efficient appliances. The size, timing, and complexity of these projects typically require

HCDC's WAP to solicit firms familiar with weatherization to perform various measures on the contracted projects for each program year.

Ms. Gordon explained that to permit Harlem CDC's Weatherization Program to respond to the needs of these projects expeditiously, while having available the benefits of a broad solicitation of weatherization contractors and vendors, HCDC solicited pre-qualified weatherization contractors in order to create a pre-qualified subcontracting list.

On May 15, 2023, ESD staff placed an advertisement in the New York State Contract Reporter requesting proposals from qualified contractors and vendors who wish to be included on the HCDC's Weatherization Assistance Program Prequalified Bidders List for the next three years. Proposals were due by June 7th, and a total of eight firms responded to the solicitation. Responses were then evaluated to determine which firms would be pre-qualified based on the following criteria: Previous relevant weatherization experience; qualifications and experience of the overall staff. Based on this review, HCDC staff recommended the approval of seven out of the eight firms listed on Attachment A in your materials as Pre-qualified Weatherization Assistance Program contractors or vendors.

Ms. Gordon stated that the requested authorization serves to make available to the Corporation a selection of firms that have been identified through a broad solicitation process. This Prequalification List would allow staff to select from the pre-qualified firms; and, following an evaluation of those firms for a particular project, to make a recommendation to the Directors, or to the president and his overall designee. This process would reduce the time needed for solicitation on future contracts. Additionally, HCDC's staff recommends that the attached pre-qualified list of contractors and vendors remain in effect until March 31, 2026.

Ms. Ford asked if the two asterisks are minority or women owned businesses. Ms. Gordon said yes.

MS. Sutton-James asked whether they are women, black or brown. Ms. Gordon said Maximum is a black male, and WMB is a black husband and wife.

Senator Cleare asked if any of the seven are Harlem-based and did any Harlem based firms apply. Ms. Gordon said no.

Senator Cleare stated that she would like to have a separate discussion on what qualifies a firm as MWBE. She asked about the Weatherization program in Harlem.

Ms. Gordon stated that the catchment area for HCDC's WAP is 98th Street up to 145th Street. Ms. Gordon also stated that it works according to Census Tract, which means that to be eligible, 66 percent of the residents of any project have to be lower than 60 percent of the AMI (average mean income).

A discussion ensued regarding getting more Harlem residents to participate in the program, going through the application process for WAP and getting Harlem-based firms involved in the solicitation for the prequalified list by conducting a more targeted outreach, using the Amsterdam News and outreach to more Harlem- based businesses.

Ms. Turner-Beverly stated that there are statutory provisions and guidelines in place that both ESD and HCDC are subject to around what can and cannot be part of an open and competitive procurement process, in terms of outreach. She stated that a review could be done to determine strategies that could be feasible under the statutory framework, but that is something that could be done internally.

Senator Cleare stated that her office is open for any internal discussions because she would like her constituents to know that these opportunities are available. She said she would be willing to host an educational forum to inform local businesses, which do not have the sophistication to track down these opportunities but can do the work.

A discussion followed about putting something in place to better inform local businesses about the opportunities and conduct the outreach necessary not only for WAP but other HCDC programs.

It was suggested that HCDC and the Senator's office meet to discuss what can be done to improve the overall process.

There being no further questions or comments, upon motion duly made and seconded, the following request for approval of the Pre-Qualified Weatherization Contractors/Vendors List, was unanimously approved.

Pre-Qualified Weatherization Contractors/Vendors List - Approval of the Harlem Community Development Corporation's Weatherization Assistance Program's Pre-Qualified Contractors/Vendors List; Authorizations to Take Related Actions

BE IT 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 the firms listed on Attachment A, as the "Pre-Qualified Weatherization Contractors/Vendors List" to be responsible; and be it further

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the firms listed on Attachment A to this Resolution be, and each hereby is, approved as pre-qualified to work as Weatherization Contractors for the Corporation and for such approval to remain in effect until March 31, 2026.

The Chair then called upon Mr. Archer to present a request for authorization to enter into a contract for a historic preservation owner's representative in connection with the Victoria Theater Redevelopment Project.

Mr. Archer stated that the Directors are being requested to authorize HCDC to enter into a new contract with Channing Redford Architect to continue to monitor historic preservation elements of the Victoria Theater Project.

Mr. Archer further stated that redevelopment of the Victoria Theater was determined by the New York State Office of Parks and Recreation and Historic Preservation, (“OPRHP”), to result in an adverse impact. ESD on behalf of HCDC was therefore required, under Section 14.09 of the State Historic Preservation Act, to consult with OPRHP to explore appropriate mitigation measures. This process resulted in the execution of a letter of resolution among ESD, HPD, OPRHP, and the project's developer, 233 Danforth, which stipulates certain measures to mitigate the identified adverse impacts.

Mr. Archer explained that Channing Redford Architect is a New York State-certified WBE established in 1992 with extensive experience, which includes the Victoria Project, and being ESD's Owner's Rep on several projects including the 42nd Street Redevelopment Project, restoration of the Selwyn Theater, and The Duke on 42nd Street. Channing Redford Architect currently provides services to the Victoria Theater Project on a prior contract approved by ESD's Board in 2015. Although the contract expired in 2019, they have continued work on the project. The Victoria Project is expected to be completed later this year, and these services continue to be needed until the project's completion.

Mr. Archer concluded that the proposed contract is for \$73,740 and covers a term of four years and six months with one option to renew. It extends from the expiration of the previous contract, March 2019 through September 2023. HCDC will have an option to renew for an additional six months through March 2024, if services are still required. The consultant will continue to provide ongoing monitoring services throughout the construction of the project to ensure the measures stipulated in the letter of resolution are met, which includes asbestos abatement, restoration and recreation of the marquee blade, blade sign and ticket booth, and installation of an education exhibit displaying artifacts from the original theater. The Directors are being requested to make a determination of responsibility with respect to Channing Redford Architect and authorize the Corporation to enter into a contract with

Channing Redford Architect for an amount not to exceed \$73,740 inclusive of fees, expenses, and contingency, substantially upon the terms set forth in the board materials.

Senator Cleare stated that this is an old project, and preservation was always her issue with this project. She wanted to know if there's a way to connect with community activists around that issue so that they're talking and understanding what people in the community wanted to see preserved.

Mr. Cho stated that there will be an educational exhibit, which will be located in the back of the lobby, and it will have preserved artifacts from the original theater. Channing is in the process of inventorying all the artifacts that are still left, and which will not be used in the current project, they will try to find new homes for them. The preference would be to give them to institutions where they could be displayed. The artifacts from previous theater projects, such as were mentioned in the presentation, were given to some educational institutions like Columbia and CUNY for their respective historic preservation departments. Mr. Cho stated that once the inventory is available, he would be happy to share it with the Board, to collaborate on finding new locations for the artifacts.

Senator Cleare stated that the Board should also be included in selecting which artifacts are placed in the Victoria.

Mr. Cho stated that everything is still in storage, but he will coordinate with Mr. Archer when he receives the list. He stated that some of the larger pieces which will not be reused are a large mural from the original theater that needs quite a bit of restoration work on it; some stained glass, which the developer has been interested in reusing; and, some seating from the original theater. He stated that most of the plaster artifacts will be displayed in the educational exhibit, which will also have a video screen showing the history of the original theater as well.

Ms. Ford asked what percentage of the project has been completed.

Mr. Cho stated that all four components of the project – the theater, the cultural units, the hotel and residential tower, and the retail spaces – are all moving along and are about 80 to 85 percent completed.

Ms. Sutton-James stated that she would also like Harlem-based institutions to be considered when giving away the artifacts, depending on the sizes. She also asked if the gallery in the lobby, will be a permanent installation.

Mr. Cho stated that it will be a permanent installation, but they will not be in the gallery space but posted in the portal. He stated that the initial plan is for the Apollo to use the gallery space for patrons, queuing, security, etc.

Ms. Sutton-James said that there's a space where there were supposed to be art installations.

Mr. Cho said it's the same space before the gallery, which is called The Portal.

Ms. Sutton-James stated that she would like to do a walkthrough whenever one can be scheduled.

Mr. Cho said he will coordinate a tour with Mr. Archer.

Mr. Drakeford asked when will the project be self-sustainable.

Mr. Cho stated that the Apollo has been identifying performers but has not been able to secure an opening date, or when the spaces will be ready from the contractor. Mr. Cho also stated that the hotel is hoping to open in August; both theaters should be ready by September; and, the Apollo could also begin moving into the office spaces in September.

Senator Cleare stated that she is a member of the Arts and Cultural Committee for the State Senate, and they are very interested in the cultural spaces because those spaces are needed in the community for performers and plays. She stated that she also heard that there was a fire at the Victoria, which caused a delay.

Mr. Cho said there was a fire that happened around Christmastime, which was caused by a security guard who was concerned about freezing pipes. He turned on a space heater which caused the fire and ultimately the delay.

Senator Cleare stated that she would also like to send a strong message to the developer regarding the job fair that was held without informing HCDC or the Board. She would like them to know that that is not acceptable, because the Board should have had an opportunity to tell the community about what jobs were available. She stated that the project sits in the heart of Harlem, where Blacks have the number one unemployment rate.

It was decided after discussion about the job fair and training available for the hospitality staff, that Mr. Cho would contact Mr. Archer and arrange for a meeting between the developer as well as Marriott, the hotel operator.

Mr. Cho stated that he will follow up as requested by the Board on arranging for a meeting with the hotel developer and the operator; follow up regarding the gallery space; coordinate with Mr. Archer regarding a walkthrough; share with the Board the inventory or status of the historic artifacts; share information regarding who will be selecting the groups, who will be performing in the theater, and what will be the process.

Mr. Drakeford asked if this hotel would have the same wage scales as the other Marriott hotels. Mr. Cho said he did not know.

There being no further questions or comments, upon motion duly made and seconded, the following request for authorization to enter into contract for a historic preservation owner's representative in connection with the Victoria Theater Redevelopment Project was approved.

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Enter into a Contract for a Historic Preservation Owner's Representative in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the "Materials") a copy of which is hereby ordered filed with the records of the corporation, the Corporation hereby finds WPA to be responsible; and be it further.

RESOLVED, the Corporation is hereby authorized to enter into a contract in accordance with the Materials with Channing Redford Architect to provide Historic Preservation Owner's Representative Services, in an amount not to exceed SEVENTY-THREE THOUSAND AND SEVEN HUNDRED FORTY DOLLARS (\$73,740) (inclusive of fees, expenses and contingency); and be it further.

RESOLVED, that the President, or his or her 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 Mr. Archer to present the next agenda item, a request for authorization to amend the contract for construction administration services in connection with the Victoria Theater.

Mr. Archer stated that Kostow Greenwood Architects, ("KGA") has been tasked with overseeing the construction of the Victoria Theater project, specifically the build-out and the integration of the cultural unit. He stated that KGA works directly with the project manager, Works-in-Progress Associates, ("WPA") and the developer to ensure the project is completed per architectural drawings and agreed upon specifications. These services will be needed through construction completion and the punch list stage.

Mr. Archer stated that the Board authorized an extension at the March meeting, to March 2024. HCDC's initial engagement with KGA was for a discretionary purchase of \$200,000 from an MWBE. The contract has been amended several times due to project delays and has a current value not to exceed \$849,000.

The directors are being requested to make a determination of responsibility with respect to KGA and authorize HCDC to amend the contract once again, to increase the

contract value by \$160,000 for a total not to exceed \$1,009,000. The contract will continue to be funded by rent revenue from the Victoria Theater development lease. Authorization provided will be subject to final approval of a Contract Reporter exemption from the offices of the CFO and Controller.

Senator Cleare asked if it's possible to do more than a good-faith goal of 30 percent to solicit MWBEs under this contract.

Ms. Turner-Beverly stated that the materials were reviewed by ESD staff, affiliated with the Office of Contract and Supplier Diversity, ("OCSD") and the language is informed, based on their vantage point of what was feasible. Going forward, feedback can be brought back from the Directors indicating that they would like to explore whether or not a bi-language is feasible. But this does represent review and feedback internally from that office.

A discussion followed about OCSD, their requirements and how they are carried out.

Mr. Cho stated that OCSD is the office for diversity hiring at ESD and there are forms that are required from KGA to monitor participation for this particular contract.

Ms. Sutton-James requested that a report from OCSD be provided so Directors can understand the status of what's happening with every element of the project.

There being no further comments, upon motion duly made and seconded, the following request for authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project was approved, on condition that matters brought up at the table to be considered.

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend a Contract for Construction Administration Services in Connection with the Victoria Theater Redevelopment Project; Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the "Materials") a copy of which is hereby ordered filed with the records of the

corporation, the Corporation hereby finds KGA to be responsible; and be it further.

RESOLVED, the Corporation is hereby authorized to enter into an amendment to the agreement with KGA to provide Construction Administration Services, to increase the contract value by ONE HUNDRED SIXTY THOUSAND DOLLARS (\$160,000), for a total amount not to exceed ONE MILLION NINE THOUSAND DOLLARS (\$1,009,000), on the terms set forth in the Materials with such amendments and modifications as the President, or his designee(s) shall deem necessary and appropriate; and be it further

RESOLVED, that the President, or his or her 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 Resolution.

The Chair asked Ms. Turner-Beverly to present the next item on the agenda, a request for the Corporation to enter into lease operating agreements with the Apollo.

Ms. Turner-Beverly stated that this is a proposed lease/operating agreement between HCDC and the Apollo Theater Foundation, in connection with the Victoria Theater Project. She stated that the project will ultimately be operated as a condominium, including a cultural unit consisting of 25,000 square feet of cultural art space, and HCDC will be the owner of the cultural unit's condominium unit.

The project has a long history dating back to 2012 when the General Project Plan ("GPP") was initially adopted. On July 19, 2019, the HCDC Directors authorized the Corporation to officially designate Apollo as the operator/manager of the cultural unit at the Victoria Project and also to enter into a lease and operating agreement with Apollo. The Victoria Project was originally scheduled for completion in 2019, but because of construction delays and related hardships, the Apollo has incurred expenses significantly above and beyond original financial projections. These expenses include furniture and storage costs, cancellation of programs and useful additional architectural monitoring and construction progress. To address these circumstances, the Directors are being asked to review certain

modified proposals regarding essential terms and conditions for the lease operating agreement.

Ms. Turner-Beverly stated that the first modification is that the landlord, HCDC, will provide a supplemental rent credit for tenants' common charges for the first six years of the proposed lease to be applied against financial obligations for costs relating to operating expenses, repairs, and other amounts due and owing from tenant, Apollo, to landlord. The supplemental rent credit for the first year would be equal to tenant's actual common charges. For each subsequent year, the supplemental rent credit would escalate by three percent compounding annually.

Following the first six years of the lease, commencing with the seventh year, Apollo, would be responsible for a hundred percent of the common charges allocated to the cultural unit.

Senator Cleare asked what's the dollar amount.

Ms. Turner-Beverly stated that it could vary based on the final terms and conditions that are negotiated.

Mr. Cho stated that the current estimate for the cultural unit's responsibility is \$130,000 a year.

Senator Cleare asked if they will be credited that \$130,000.

Ms. Turner Beverly said yes, each year for six years. She said that negotiations are still being finalized.

Senator Cleare asked why six years and not 10 years.

Ms. Turner-Beverly stated that the time period specified is informed by what Apollo has shared regarding some of the financial hardships that they've incurred.

Senator Cleare asked if there's room for that to change.

Ms. Turner-Beverly said yes. She added that it's currently anticipated that the cultural partners will include Harlem Arts Alliance and Jazzmobile, which are to be offered performing and rehearsal space at cost.

Ms. Turner-Beverly continued that additional modification to the lease is authorization for the Landlord (HCDC) to pay for the services of a third-party advisor and mediator, a signage consultant to work with, and mediate among the cultural hotel and retail users for the sharing of time on the digital one key, the historic ticket booth, and the exterior digital side under the digital one key. The Directors are being requested to authorize the Corporation to enter into a lease and operating agreement with Apollo on terms of conditions substantially in accordance with those described in the materials. The Directors are further requested to authorize the president, Mr. Archer, or his designee, to take such related actions as necessary or required in connection with the lease and operating agreement.

Ms. Sutton-James said that the materials reflect that the Apollo is putting in \$2 million and she wanted to know if that is two million on top of what they've already put in.

Ms. Turner-Beverly said two million minimum, according to a provision that the Board had previously approved back in 2019. She stated that the Apollo has stated that they're already over that amount.

Ms. Sutton-James asked what they will be investing annually.

Mr. Cho said that that has been left up to the Apollo.

Ms. Sutton-James stated that HCDC will pay for the taxes and pay for repairs while the Apollo will get money for signage. HCDC will also pay for the consultants that helps them negotiate with the developer on signage, but signage seems like a huge revenue stream.

Mr. Cho stated that it is not intended to be primarily used for the cultural units. Because it's a marquee, it's only zoned for use for the performing art spaces. He asked if she meant revenue for the developer or for potential retailers.

Ms. Sutton-James said that in the materials it says that the Apollo shall have the right to name the cultural unit, including without limitation of theaters and lobby, stages, ticket booth or kiosk gallery, concession area, and all elements of the office space subject to approval of HCDC, such approval not to be unreasonably withheld, conditioned or delayed. Ms. Sutton-James asked if the lease gives the Apollo provision or permission to sponsor any of the entities.

Ms. Turner-Beverly stated that the lease has not been officially finalized.

Ms. Sutton-James asked if the Apollo will have the ability to sell sponsorships.

Mr. Cho stated that that is not in the current draft of the lease and that everything is subject to approval of a third-party.

Ms. Sutton-James stated that her concern and the concern that the senator raised is an ongoing conversation whether the Apollo was assigning downtown costs for an uptown facility and that it would be pricing out uptown productions. She stated that her concern is that as they bring in productions with Harlem Arts Alliance and Jazzmobile, they may have a smaller space and they will be getting the space at cost, which will be high for them. She stated that the Apollo is already perceived by the community not to be accessible at all right now, and if they are making another space that would be inaccessible to community organizations and the community, that would be problematic.

Senator Cleare said she would like to know what people were going to be charged because she would like the savings to be passed on. She continued that she would like not to be creating a situation where everything is okay now, then changes after 10 years. She said that nothing is more iconic of Harlem than the Apollo and it should be preserved in a different way, in the use of it and access to it. She stated that other entities are desperate for cultural space, and the Apollo should not be the only one who benefits from this.

Ms. Turner-Beverly stated that the negotiations are still ongoing, and the points are well taken for the need for assuring greater confidence in perpetual interest and preserving accessibility.

Mr. Cho explained that the six-year credit will be capped at a certain amount. The first-year credit will be \$130,000. For years two through six, the only credit that would be given would be \$130,000 plus the three percent. If the common charges are more than that amount, Apollo would be responsible for that on their own. Mr. Cho stated that this will be funded by HCDC and there are accounts with revenues from the ground rent from the developer, as well as other closing costs revenues that are expected.

Mr. Cho explained that the other obligation as landlord would be covering the repairs for the entire lease term of 99 years. He also stated that the cultural partners like Jazzmobile and Harlem Arts Alliance will only be occupying the theaters, not the office space. Through their own decisions, those organizations have identified other office space. He also stated that the Apollo is preparing an order to promote locally for the use of the two theaters and will be providing a subsidy to local theater groups to have access to those theater spaces.

Mr. Cho stated that there is a mandate for the Apollo that the cultural units be used by local groups within this neighborhood and community.

Ms. Sutton-James requested that the Apollo report to the Board on the degree to which they're meeting that objective of supporting homegrown local theater groups. She also asked if all the office spaces will be in house.

Mr. Cho answered yes.

Senator Cleare stated that it was her understanding that they would make some of the spaces available.

Mr. Cho stated that the office space is under Apollo's tenancy, and they have been thinking about bringing in a subtenant for some of the space. He stated that the rules for sub-tenancy would be outlined in the forthcoming lease.

Ms. Sutton-James asked at what cost because that is what the problem was with CTH; they were planning on taking office space, but the rate was very high.

Ms. Turner-Beverly said that there's language in the skeletal framework that Apollo may offer other cultural organizations use of the office space at below market rates subject to HCDC's approval.

Mr. Drakeford asked if there is a sublease agreement.

Mr. Cho stated that the potential subtenants would be subject to the Landlord's, (HCDC) approval and that the lease agreement would need to come back to the Board for final approval. The Board would need to authorize to enter negotiations according to ESD's property disposition guidelines.

Ms. Sutton-James asked how long the negotiations will take and when does the corporation anticipating coming back to the Board.

Mr. Cho stated that it would depend on various scheduling issues but probably four to six weeks.

Senator Cleare said she would like to have a conversation with the developers regarding the available job opportunities and their Victoria community space.

There being no further questions or comments, upon motion duly made and seconded, the following request for authorization to enter into Lease Operating Agreement with the Apollo Theater Foundation, Inc., was approved.

Victoria Theater Redevelopment Project – Authorization to Enter into Lease/Operating Agreement with the Apollo Theater Foundation, Inc.; and Authorization to Take Related Actions

RESOLVED, that based on the materials presented at this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Apollo Theater Foundation, Inc. to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a lease/operating agreement with Apollo Theater Foundation, Inc. on terms and conditions substantially in accordance with those described in the Materials; and be it further

RESOLVED, that the President, or his or her 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 Resolution.

There being no further business, upon motion duly made and seconded, HCDC's Board of Directors meeting was adjourned at 1.00 P.M.

Respectfully Submitted by,

Rose Jeffrey
Corporate Secretary



Harlem Community Development Corporation

FOR CONSIDERATION

February 9, 2024

TO: The Directors

FROM: Curtis Archer

SUBJECT: Victoria Theater Redevelopment – Real Estate Legal Counsel

REQUEST FOR: Harlem Community Development Corporation – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLP and to Take Related Actions

I. Contract Summary

Contractor:	Phillips Lytle LLP 620 Eighth Avenue, 38 th Floor New York, NY 10018
Scope of Services:	Legal Services
Contract Term:	Expiration date of 3/31/2024
Proposed Term Extension:	Expiration date of 9/30/2024
Contract Amount:	\$705,600
Proposed Amendment Amount:	\$160,000
New Proposed Total Contract Amount:	\$865,600
Funding Source(s):	Imprest account funded by the redevelopment project’s private developer (primary); and the Victoria Rent Account (secondary)

II. Background

Harlem Community Development Corporation (“Harlem CDC” or the “Corporation”) previously engaged Phillips Lytle (“Firm”) to perform legal services in connection with the Victoria Theater redevelopment project (the “Project”). The contract had an initial term that began September 9, 2015, with a contract value of \$230,000. Four contract amendments have been authorized as

follows: (1) effective September 2016, an increase in contract value not to exceed \$246,000 and an extension of the expiration date to July 31, 2020; (2) effective June 2020, an increase in contract value not to exceed \$346,000 and an extension of the expiration date to September 30, 2021; (3) effective July 2021, an increase in contract value not to exceed \$505,600 and an extension of the expiration date to March 31, 2023; and (4) effective March 2023, an increase in contract value not to exceed \$705,600 and an extension of the expiration date to March 31, 2024.

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, representation of the Corporation vis-à-vis the designated developer, 233 West 125th Street Danforth, LLC, in connection with construction financing closing proceedings, drafting of lease amendments, implementing a commercial condominium regime for the Project, 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 closing date approaches, in particular: advising on Harlem CDC'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; managing legal documents and processes associated with the closing; assisting with post-closing needs and related matters that may arise such as closeout of the punch list(s), signage issues, amendments to the condominium documents, amendments to the relevant lease, and other operational issues. Previous extensions of the scheduled construction completion date have been authorized to accommodate proposed refinancing of the developer's construction loan, and to allow sufficient time to complete Project construction and navigate the governmental administrative processes for obtaining certificates of occupancy for portions of the Project, implementation of the commercial condominium, as well as other factors. The proposed contract term would allow the Firm to assist with post-transfer issues, including assistance with enforcing any punch list items, etc.

III. Contractor Selection Process

The Corporation has 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"), the most recent version of which was approved by ESD's Board of Directors on March 24, 2022. Phillips Lytle LLP appears on the list of pre-qualified counsel as it has since 2015.

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 for an additional six-month period, i.e., from March 31, 2023 to September 30, 2024; and that the contract amount of \$705,600 be increased by \$160,000 for a total contract value of \$865,600.

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 contract scope of work includes 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, including the implementation of a condominium ownership regime for the Project's component entities. The scope of work further includes legal assistance with post-closing issues and needs pertaining to the Project which may arise, to ensure a legally sufficient and successful transfer.

V. Contract Term, Price and Funding

The current contract, as amended, has a contract value of \$705,600 and expires March 31, 2024. It is proposed that the expiration date be extended to September 30, 2024. It is also proposed that the contract amount be increased by \$160,000 to an amount not to exceed \$865,600 plus reimbursement of the Firm's out-of-pocket expenses for the work. 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 (primary funding source); or the Victoria Rent Account managed by the Corporation and its parent entity (secondary funding source).

VI. Non-Discrimination/Affirmative Action

Pursuant to New York State Executive Law Articles 15-A and 17-B, Harlem CDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of projects and procurements. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that

there exists no potential for MWBE and SDVOB participation. As such, participation goals will not be established or required for this amendment.

VII. Environmental Review

On behalf of Harlem CDC, 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 LLC, 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.

X. Attachments

Resolution



Harlem Community Development Corporation

February 9, 2024

HARLEM COMMUNITY DEVELOPMENT CORPORATION – Authorization to Amend the Agreement for Legal Services with Phillips Lytle LLC and to Take Related Actions

BE IT RESOLVED, that based on the materials presented at 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 September 30, 2024 and to increase the contract value by ONE HUNDRED SIXTY THOUSAND dollars (\$160,000) for a total amount not to exceed EIGHT HUNDRED SIXTY-FIVE THOUSAND SIX HUNDRED dollars (\$865,600) plus the cost of the firm’s out-of-pocket expenses for the contract work, on the terms and conditions set forth in the Materials with such amendments and modifications as the President of the Corporation, or his or her designee(s) shall deem necessary and appropriate; and be it further

RESOLVED, that the President of the Corporation, or his or her 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 Resolution.

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