



NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION

Meeting of the Directors

Tuesday

November 19, 2024 – 11:30 a.m.

AGENDA

CORPORATE ACTIONS

1. New York Energy Finance Development Corporation – Amendment to Banking Resolutions

FOR CONSIDERATION

2. New York Energy Finance Development Corporation – Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor; Authorization to Proceed with the Preparation of Documents and Actions Related to the NYPA Prepaid Energy Project; and Authorization to Take Related Actions
3. New York Energy Finance Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract for Co-Bond Counsel Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions
4. New York Energy Finance Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract for Co-Bond Counsel Services in Connection with the NYPA Prepaid Energy Project and Authorization to Take Related Actions
5. New York Energy Finance Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract for Issuer’s Counsel Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

Item 1



FOR CONSIDERATION

November 19, 2024

TO: The Directors
FROM: Hope Knight
SUBJECT: New York Energy Finance Development Corporation
REQUEST FOR: Amendment to Banking Resolutions

I. BACKGROUND

The New York Energy Finance Development Corporation (the "Corporation") is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law ("NYNPCL") and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYNPCL and Section 1411 of the NYNPCL. The Corporation was formed on August 8, 2024. The Corporation is now addressing certain obligations and taking necessary corporate actions.

II. REQUESTED ACTION

At the meeting held on August 15, 2024, the Board of Directors of the Corporation (the "Board of Directors") adopted banking resolutions ("Prior Resolutions") which authorize the proper officer of the corporation to, among other things, open one or more bank accounts in the name of the Corporation. The Board of Directors are being requested to amend the Prior Resolutions to authorize such proper officers to maintain, operate, and close bank account(s), and to designate and remove account signers.

III. ENVIRONMENTAL REVIEW

The request to amend the Prior Resolutions constitutes a Type II action as defined by the New York State Environmental Quality Review Act and therefore, no further environmental review is required in connection with this authorization.

IV. RECOMMENDATIONS

Based upon the foregoing, staff recommends approval of the requested action.

V. ATTACHMENTS

Resolution

November 19, 2024

NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION – Amendment of
Banking Resolutions; and Authorization to Take Related Actions

Banking Resolutions

RESOLVED, that the proper officers of the Corporation be, and each of them hereby is, authorized, empowered and directed to open one or more bank accounts in the name of the Corporation with such banks or trust companies as they, and each of them, may elect, provided that all checks, drafts and orders for the payment of money drawn against any such accounts shall require the signature of such proper officers and shall follow the New York State Urban Development Corporation, doing business as Empire State Development’s (“ESD”) signatory requirements, and such proper officers be, and each of them hereby is, authorized, empowered and directed to prepare, execute and deliver in the name and on behalf of the Corporation and under its corporate seal or otherwise, such designations, applications, certificates or other documents or instruments as may be necessary to open such bank account or accounts as well as to maintain, operate and to close such accounts, and to designate and remove account signers; and that the Board hereby adopts the form of any and all resolutions required by any such bank to be adopted in connection therewith if (a) in the opinion of the President or Treasurer of the Corporation, the adoption of such resolution is necessary or advisable and (b) the Secretary or the Assistant Secretary of the Corporation evidences such adoption by inserting in the minute book of the Corporation copies of such resolutions, which shall thereupon be deemed to be adopted by the Board and incorporated in the minutes of the Corporation with the same force and effect as if adopted by the Board at a meeting of the Board.

Miscellaneous

RESOLVED, that the “proper officers”, as used herein, shall mean and include the Chairperson of the Board, Chief Executive Officer, President, Chief Financial Officer, the Executive Vice President, the Secretary, the Assistant Secretary, the General Counsel, the Treasurer and the Deputy General Counsel of the Corporation, or any of them.

RESOLVED, that any and all actions taken by the proper officers of the Corporation, in connection with and in furtherance of the matters referred to in any of the foregoing resolutions be, and they hereby are, ratified, confirmed, approved and adopted in all respects.

RESOLVED, that the proper officers of the Corporation be, and each of them hereby is, authorized, empowered and directed to take all such further actions and to execute, deliver, certify and file all such further agreements, undertakings, certificates, instruments and documents, in the name and on behalf of the Corporation, under its corporate seal or otherwise, and to pay all such costs, fees and expenses as such officers shall approve as necessary or advisable to carry out the intent and accomplish the purpose of the foregoing resolutions and the transactions contemplated

thereby, the taking of such actions and the execution, delivery, certification and filing of such documents to be conclusive evidence of such approval.

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Item 2



FOR CONSIDERATION

November 19, 2024

TO: The Directors

FROM: Hope Knight

SUBJECT: NYPA Prepaid Energy Project Bonds

REQUEST FOR: Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor; Authorization to Proceed with the Preparation of Documents and Actions Related to the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

I. BACKGROUND

New York Power Authority (“NYPA”) has requested the New York Energy Finance Development Corporation (the “Corporation” or “NYEFDC”) to issue, in one or more series or subseries, approximately \$800 million New York Energy Finance Development Corporation Revenue Bonds (NYPA Prepaid Energy Project) (collectively, the “Bonds”), proceeds of which Bonds will be used to finance the prepayment of electricity (the “Prepaid Energy Project”). The costs of the Prepaid Energy Project to be paid from the proceeds of the Bonds include all costs of planning, financing, refinancing, acquiring, transmitting, storing and implementing the Prepaid Energy Project, including, among other things: (a) the amount of the prepayment required to be made; (b) the amount for deposit into the Debt Service Account for capitalized interest on the Bonds; (c) the amounts for deposit into the Debt Service Reserve Account and the Commodity Reserve Account to meet the related requirements; (d) all other costs incurred in connection with and properly chargeable to, the acquisition or implementation of the Prepaid Energy Project; (e) the costs and expenses incurred in the issuance and sale of the Bonds including, without limitation, the execution and delivery of any Commodity Swaps.

II. SELECTION OF SENIOR MANAGING UNDERWRITER

NYPA has selected Goldman Sachs & Co. LLC (“Goldman”) as the senior managing underwriter. Goldman is on the pre-qualified list of underwriters of the Corporation (the “Pre-Qualified List of Underwriters”). The Pre-Qualified List of Underwriters was created after an RFP process by Empire State Development (“ESD”) and was adopted by the Corporation’s Board of Directors (the “Board of Directors”) on August 15, 2024. NYPA selected Goldman for its extensive experience in all aspects of municipal finance, extensive experience as an underwriter on other ESD bond issuances, its experience in prepaid energy projects, and its response and rating in the pre-qualification process. The Corporation, in consultation with NYPA, will have the option to select other underwriters from the Pre-Qualified List of Underwriters, including co-managers from the Pre-Qualified List of Underwriters to the extent necessary to satisfy the requirements in section IV below.

The Corporation staff now seeks the consent of the Board of Directors to adopt the selection of senior managing underwriter for the Bond issuance and to delegate to the Corporation, in consultation with NYPA, the ability to appoint additional underwriters as the deal progresses.

III. SELECTION OF FINANCIAL ADVISOR

PFM Financial Advisors LLC (“PFM”) has been selected as the Corporation’s financial advisor for the Prepaid Energy Project. PFM is on the NYEFDC’s Pre-Qualified List of Financial Advisors (“FAs”) (the “Pre-Qualified List of Fas”). The Pre-Qualified List of Fas was created after an RFP process by ESD and adopted by the Corporation on August 15, 2024.

PFM was selected based on its: (i) extensive experience in all aspects of municipal finance and on prepaid transactions, (ii) hourly rate proposal subject to a cap of \$250,000, (iii) extensive experience as a financial advisor on other bond issuances and (iv) responses and ratings in the pre-qualification process. Relative to section IV below, the financial advisor will sub-contract a portion of the work to a Minority and Women-Owned Business Enterprise (“MWBE”) to address applicable participation goals.

The Corporation staff now seeks the consent of the Board of Directors to adopt the selection of PFM as financial advisor for the Bonds issuance for the reasons and on the terms noted above. The firm will be paid by NYPA pursuant to a Pre-Financing Agreement with the Corporation.

IV. 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 New York State certified minority-and women-owned business enterprises (MWBEs) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE and SDVOB participation goals need not be applied to this project.

V. BOND DOCUMENTS AND PROJECT

It is intended that the Bonds will be issued to finance the Prepaid Energy Project. Accordingly, the related Bond documents must be drafted and approved for the issuance of the Bonds expeditiously. The Board of Directors is requested to consent to the commencement of drafting documents and to proceed to do such things or perform such acts as may allow the Corporation to proceed to its final consideration of the Prepaid Energy Project and the issuance of the Bonds. The attached Resolution does not require the Corporation to issue the Bonds. The Corporation is not obligated to issue the Bonds or to take any other actions related to the Prepaid Energy Project. An additional Board of Directors meeting will occur to approve the form of final documents.

VI. ENVIRONMENTAL REVIEW

Staff has determined that the requested actions constitute a Type II action as defined by the New York State Environmental Quality Review Act 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. REQUESTED ACTION

Staff recommends that the Board of Directors take actions related to authorizing the selection of senior managing underwriter, authorizing the appointment of additional underwriters, the appointment of financial advisor, authorizing the preparation of the required Bond documents and actions related to the Prepaid Energy Project, and take any related actions.

VIII. RECOMMENDATION

Based on the foregoing, staff recommends approval of the requested actions.

IX. ATTACHMENT

Resolution

November 19, 2024

NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION — NYPA Prepaid Energy Project – Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor; Authorization to Proceed with the Preparation of Documents and Actions Related to the Prepaid Energy Project; and Authorization to Take Related Actions

WHEREAS, New York Power Authority (the “NYPA”) has requested the New York Energy Finance Development Corporation (the “Corporation” or “NYEFDC”) to issue approximately \$800 million New York Energy Finance Development Corporation Revenue Bonds, in one or more series or subseries (collectively, the “Bonds”).

WHEREAS, in order to facilitate the issuance of the Bonds as requested, the officers of the Corporation propose to authorize selection of senior managing underwriter and appointment of additional underwriters, retention of a financial advisor, authorize the preparation of required Bond documents in connection with the issuance of the Bonds and actions related to the Prepaid Energy Project, and to take any related actions.

RESOLVED, 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 Corporation takes the following actions:

Selection of Underwriter

RESOLVED, that the Corporation hereby consents to Goldman to be the senior managing underwriter for the Bonds, together with the right to appoint other underwriters, including co-managers, if any, as the Corporation, in consultation with NYPA, shall select.

Selection of Financial Advisors

RESOLVED, that the Corporation hereby consents to PFM Financial Advisors LLC to be the financial advisor for the Prepaid Energy Project.

Bond Documents and Project

RESOLVED, that the Corporation hereby authorizes the preparation of Bond documents necessary or desirable in connection of the issuance of the Bonds and actions related to the Prepaid Energy Project.

Miscellaneous

RESOLVED, that the President and his or her designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation consistent with this authorization are hereby ratified and affirmed.

Item 3



FOR CONSIDERATION

November 19, 2024

TO: The Directors

FROM: Hope Knight

SUBJECT: Procurement of Legal Services – Nixon Peabody LLP

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

Counsel: Nixon Peabody LLP (“Nixon” or “Counsel”)

Scope of Services: Counsel would serve as co-bond counsel together with Hardwick Law Firm, LLC (“Hardwick”) which the board of directors (the “Board of Directors”) of the New York Energy Finance Development Corporation (the “Corporation” or “NYEFDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately \$800 million New York Energy Finance Development Corporation Revenue Bonds, in one or more series or subseries (“Bonds”).

Contract Amount: All Counsel costs and expenses are expected to be paid by NYPA from Bond proceeds or other sources of funds on or about the closing of the Bonds. Counsel will be required to use good faith efforts to allocate at least 30% participation on this matter to Hardwick.

Funding Source: The contract will be funded in its entirety by New York Power Authority (“NYPA”) on or about the closing date of the Bonds. Counsel will agree that the Corporation will not be obligated to pay any amounts for services described herein except to the extent, if any, that the Corporation receives funds from NYPA for that purpose.

II. BACKGROUND

NYPA has requested the Corporation serve as the issuer of the Bonds, the proceeds of which will be used by NYPA to finance the prepayment of electricity.

The Corporation staff will seek the consent of the Board of Directors to the form of the Bond documents, as well as the approval by the Board of Directors of the terms of the transaction, at a subsequent Board meeting.

III. COUNSEL SELECTION PROCESS

On October 8, 2021, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following twelve (12) areas of law (including, in each instance, litigation capabilities): real estate and land use; construction; environmental; condemnation; taxation; bond financing; labor & employment; venture capital investments and other investments; bankruptcy/foreclosure/workout; governance and regulatory litigation; intellectual property; and landlord-tenant.

74 firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of nine ESD staff attorneys. The Review Committee’s recommendations then were discussed with the acting General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List, which ESD approved on March 24, 2022. Based on ESD’s review process and board approval, the Corporation’s Directors adopted the new ESD Pre-Qualified Counsel List on August 15, 2024. Counsel is on this Pre-Qualified Counsel List for bond counsel services.

Corporation staff recommends the retention of Counsel as co-bond counsel for the Financings based on: (a) knowledge and expertise of the firm; (b) prior satisfactory work which the firm has performed for ESD; (c) the rate proposal; and (d) the ESD pre-qualification process. For all the reasons stated above, staff is requesting that Counsel be retained for this transaction.

IV. SCOPE OF WORK

Counsel will advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the Bond sale contracts, the Prepaid Energy Project Indenture and other contracts customary to this type of transaction, disclosure documents and tax opinions. Counsel also would coordinate documentation with other involved agencies.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

Bond counsel expertise is necessary to ensure compliance with applicable New York State Laws, federal securities laws and market practices. The Corporation has used experienced bond counsel on every issuance of its bonds.

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, NYPA will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. NYPA will pay all Counsel costs and expenses from Bond proceeds or other sources of funds on or about the Bond closing. In addition, Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from NYPA for that purpose.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, Corporation staff has: (a) considered Counsel's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. 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. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30%.

Nixon has agreed to use good faith efforts to allocate work to Hardwick, a certified Minority-Owned Business Enterprise. The Board of Directors is simultaneously being asked to separately retain Hardwick as counsel for this bond transaction to meet these requirements.

IX. REQUESTED ACTION

The Board of Directors is asked to authorize the retention of Nixon as counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

November 19, 2024

NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION – Procurement of Legal Services Nixon Peabody LLP - Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

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

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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Item 4



FOR CONSIDERATION

November 19, 2024

TO: The Directors

FROM: Hope Knight

SUBJECT: Procurement of Legal Services – Hardwick Law Firm, LLC

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

Counsel: Hardwick Law Firm, LLC (“Hardwick” or “Counsel”)

Scope of Services: Counsel would serve as co-bond counsel together with Nixon Peabody LLP (“Nixon”) which the board of directors (the “Board of Directors”) of the New York Energy Finance Development Corporation (the “Corporation” or “NYEFDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately \$800 million New York Energy Finance Development Corporation Revenue Bonds, in one or more series or subseries (“Bonds”).

Contract Amount: All Counsel costs and expenses are expected to be paid by NYPA from Bond proceeds or other sources of funds on or about the closing of the Bonds. Nixon will be required to use good faith efforts to allocate at least 30% participation on this matter to Counsel.

Funding Source: The contract will be funded in its entirety by New York Power Authority (“NYPA”) on or about the closing date of the Bonds. Counsel will agree that the Corporation will not be obligated to pay any amounts for services described herein except to the extent, if any, that the Corporation receives funds from NYPA for that purpose.

II. BACKGROUND

NYPA has requested the Corporation serve as the issuer of the Bonds, the proceeds of which will be used by NYPA to finance the prepayment of electricity.

The Corporation staff will seek the consent of the Board of Directors to the form of the Bond documents, as well as the approval by the Board of Directors of the terms of the transaction, at a subsequent Board meeting.

III. COUNSEL SELECTION PROCESS

On October 8, 2021, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following twelve (12) areas of law (including, in each instance, litigation capabilities): real estate and land use; construction; environmental; condemnation; taxation; bond financing; labor & employment; venture capital investments and other investments; bankruptcy/foreclosure/workout; governance and regulatory litigation; intellectual property; and landlord-tenant.

74 firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of nine ESD staff attorneys. The Review Committee’s recommendations then were discussed with the acting General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List, which ESD approved on March 24, 2022. Based on ESD’s review process and board approval, the Corporation’s Directors adopted the new ESD Pre-Qualified Counsel List on August 15, 2024. Counsel is on this Pre-Qualified Counsel List for bond counsel services.

Corporation staff recommends the retention of Counsel as co-bond counsel for the Financings based on: (a) knowledge and expertise of the firm; (b) prior satisfactory work which the firm has performed for ESD; (c) the rate proposal; and (d) the ESD pre-qualification process. Hardwick is also a certified Minority-Owned Business Enterprise (“MBE”). For all the reasons stated above, staff is requesting that Counsel be retained for this transaction.

IV. SCOPE OF WORK

Counsel will advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the Bond sale contracts, the Prepaid Energy Project Indenture and other contracts customary to this type of transaction, disclosure documents and tax opinions. Counsel also would coordinate documentation with other involved agencies.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

Bond counsel expertise is necessary to ensure compliance with applicable New York State Laws, federal securities laws and market practices. The Corporation has used experienced bond counsel on every issuance of its bonds.

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, NYPA will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. NYPA will pay all Counsel costs and expenses from Bond proceeds or other sources of funds on or about the Bond closing. Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from NYPA for that purpose.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, Corporation staff has: (a) considered Counsel's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. 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 New York State certified minority- and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE and SDVOB participation goals need not be applied to this contract.

IX. REQUESTED ACTION

The Board of Directors is asked to authorize the retention of Hardwick as Counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

November 19, 2024

NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION – Procurement of Legal Services Hardwick Law Firm, LLC - Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

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 Hardwick Law Firm, LLC (“Counsel”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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Item 5



FOR CONSIDERATION

November 19, 2024

TO: The Directors

FROM: Hope Knight

SUBJECT: Procurement of Legal Services – D. Seaton and Associates, P.A., P.C.

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

Counsel: D. Seaton and Associates, P.A., P.C. (“D. Seaton” or “Counsel”)

Scope of Services: Counsel would serve as issuer’s counsel for which the board of directors (the “Board of Directors”) of the New York Energy Finance Development Corporation (the “Corporation” or “NYEFDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately \$800 million New York Energy Finance Development Corporation Revenue Bonds, in one or more series or subseries (“Bonds”).

Contract Amount: All Counsel costs and expenses are expected to be paid by NYPA from Bond proceeds or other sources of funds on or about the closing of the Bonds.

Funding Source: The contract will be funded in its entirety by New York Power Authority (“NYPA”) on or about the closing date of the Bonds. Counsel will agree that the Corporation will not be obligated to pay any amounts for services described herein except to the extent, if any, that the Corporation receives funds from NYPA for that purpose.

II. BACKGROUND

NYPA has requested the Corporation serve as the issuer of the Bonds, the proceeds of which will be used by NYPA to finance the prepayment of electricity.

The Corporation staff will seek the consent of the Board of Directors to the form of the Bond documents, as well as the approval by the Board of Directors of the terms of the transaction, at a subsequent Board meeting.

III. COUNSEL SELECTION PROCESS

On October 8, 2021, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following twelve (12) areas of law (including, in each instance, litigation capabilities): real estate and land use; construction; environmental; condemnation; taxation; bond financing; labor & employment; venture capital investments and other investments; bankruptcy/foreclosure/workout; governance and regulatory litigation; intellectual property; and landlord-tenant.

74 firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of nine ESD staff attorneys. The Review Committee’s recommendations then were discussed with the acting General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List, which ESD approved on March 24, 2022. Based on ESD’s review process and board approval, the Corporation’s Directors adopted the new ESD Pre-Qualified Counsel List on August 15, 2024. Counsel is on this Pre-Qualified Counsel List for bond counsel services.

Corporation staff recommends the retention of Counsel as issuer’s counsel for the Financings based on: (a) knowledge and expertise of the firm, (b) prior satisfactory work which the firm has performed for ESD, (c) Counsel’s rate proposal, and (d) the ESD pre-qualification process. D. Seaton is also a certified Minority-Owned Business Enterprise (“MBE”). For all the reasons stated above, staff is requesting that Counsel be retained for this transaction.

IV. SCOPE OF WORK

Counsel will advise the Corporation in securities, bonds, taxes and other related disclosure matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the Bond sale contracts, resolution amendments, and disclosure documents.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

As a result of recent changes to federal securities laws, in particular the Dodd-Frank Act, there are an increasing number of rules and an increasing amount of oversight with respect to disclosure and continuing disclosure for issuers of municipal bonds. In order to fully address these requirements many issuers are retaining separate issuer’s counsel. This additional expertise will help ensure compliance with applicable securities laws and market practices. Issuer’s counsel expertise is necessary to ensure compliance with applicable New York State Laws, federal securities laws and market practices. The Corporation has used experienced issuer’s counsel on every issuance of its bonds.

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, NYPA will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. NYPA will pay all Counsel costs and expenses from Bond proceeds or other sources of funds on or about the Bond closing. Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from NYPA for that purpose.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, Corporation staff has: (a) considered Counsel's ability to perform the services provided for in the proposed contract; and (b) consulted the list of offerors determined to be non-responsible bidders and debarred offerors maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the requested authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. 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. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30%.

D. Seaton is a Minority-Owned Business Enterprise certified by the State of New York and may utilize its certification to satisfy the above requirement.

IX. REQUESTED ACTION

The Board of Directors is requested to authorize the retention of D. Seaton as Counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

November 19, 2024

NEW YORK ENERGY FINANCE DEVELOPMENT CORPORATION – Procurement of Legal Services D. Seaton and Associates, P.A., P.C. - Authorization to Enter into a Contract for Legal Services in Connection with the NYPA Prepaid Energy Project; and Authorization to Take Related Actions

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 D. Seaton and Associates, P.A., P.C. (“Counsel”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into a contract with Counsel for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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