

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

**Meeting of the Directors**

Wednesday  
January 20, 2016 – 11:00 a.m.

**REVISED PROPOSED AGENDA**

**CORPORATE ACTION**

1. Approval of Minutes of the December 2, 2015 Directors' Meeting

**FOR CONSIDERATION**

2. Conflict of Interest and Related Party Transaction Policy Required Pursuant to Section 715-a of the New York Not-For-Profit Corporation Law ("NYNPCL") – Approval of a New Conflict of Interest and Related Party Transaction Policy ("Conflict Policy"); and Related Actions
3. Contract for Legal Services with Winston & Strawn, LLP in Connection with the Issuance of Bonds to Refund Bonds Issued to Construct Terminal One at JFK International Airport (the "Bonds") – Authorization to Amend the Contract for Legal Services with Winston & Strawn, LLP to Increase the Maximum Authorized Fee to \$375,000
4. Contract for Legal Services with the Hardwick Law Firm, LLC in Connection with the Issuance of Bonds to Refund Bonds Issued to Construct Terminal One at JFK International Airport (the "Bonds") – Authorization to Amend the Contract for Legal Services with the Hardwick Law Firm, LLC to Increase the Maximum Authorized Fee to \$225,000
5. Payment and Reimbursement of Legal Costs Associated with the Formation of the New York Transportation Development Corporation (the "Corporation") – Approval to Pay, and Allocate Reimbursement to Two or More Projects of, a Portion of the Legal Costs Associated with Formation of the Corporation
6. Procurement of Legal Services – Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (the "TDC") in Connection with Issuing Bonds to Refund Bonds Issued to Finance Construction of Terminal One at JFK International Airport and to Take Related Actions
7. Pre-Financing Agreement and Legal Retainer Agreements with Squire Patton Boggs, Dentons US LLP, Law Offices of Joseph C. Reid, P.A. and D. Seaton and Associates, P.A., P.C. (the "Firms") in Connection with Issuing Bonds to Fund a New Central Terminal at LaGuardia Airport – Amendment of Authorization Granted at Meeting Held November 3, 2015 in Order to Eliminate the Requirement of an Imprest Account and Authorization to Take Related Actions

**ITEM 1**

New York Transportation Development Corporation  
Meeting of the Directors  
Held at the NYC Offices of  
Empire State Development  
633 Third Avenue  
New York, New York 10017

December 2, 2015

MINUTES

In Attendance

Directors: Howard A. Zemsky, Chairman  
George Haggerty  
Kathleen Mize  
Mehul Patel

NYTDC Staff: Elizabeth R. Fine – Executive Vice President - Legal  
and General Counsel  
Robert M. Godley – Treasurer  
Debbie Royce – Secretary  
Rose-Marie Mahase – Assistant Secretary

ESD Staff: Jonathan Beyer – Senior Counsel  
Lindsey Boylan – Chief of Staff  
Peter Heilbrunn – Senior Director, Debt Management  
Steve Johs – Senior Director, Treasury Operations

Also Present: Alex Deland, Esq. – Winston & Strawn LLP  
Robert J. DeMichiel – Managing Director, Citigroup  
Katherine McManus, Esq. – The Hardwick Law Firm LLC  
Patricia Mollica, Esq. – Winston & Strawn LLP  
Arthur Molins, Esq. – General Counsel the Americas,  
Lufthansa Group  
Manoj Patel – Deputy Executive Director, Terminal One  
Management, Inc.  
Erick Rivero, Esq. – Winston & Strawn LLP  
Douglas M. Seaton, Esq. – D. Seaton & Associates

The meeting of the New York Transportation Development Corporation (the “Corporation”), a Local Development Corporation created under New York State law, was called to order at approximately 10:41 a.m. It was noted for the record that notices to the public and

news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law and that the meeting was being webcast. Further, Chairman Zemsky noted that the Directors had received relevant written materials in advance of the meeting and noted for the record the Corporation's policy which welcomes public comments on the items on the current Agenda.

Before beginning with the substantive portion of the meeting, Chairman Zemsky asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, he then called for the approval of the Minutes of the November 3, 2015 Directors' meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE NOVEMBER 3, 2015 MEETING OF THE DIRECTORS OF NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

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RESOLVED, that the Minutes of the meeting of the Corporation held on November 3, 2015 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respect ratified and approved as actions of the Corporation.

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Chairman Zemsky then called on Robert Godley to present the final Agenda item, a request for authorization to perform certain acts in connection with the sale and delivery of the New York Transportation Development Corporation's Special Facility Revenue Refunding Bonds, Series 2015.

Mr. Godley began by explaining that the purpose of the meeting was to take various actions that would authorize the sale and delivery of the New York Transportation Development Corporation Special Facility Revenue Refunding Bonds, Series 2015, to be issued for the benefit of Terminal One Group Association, L.P., who is the borrower. He further explained that the four limited partners of the borrower are Societe Air France, Japan Airlines Co., Ltd., Korean Airlines Company Ltd. and Deutsche Lufthansa AG; and the general partner of the borrower is Terminal One Management, a New York Corporation that is owned by the four signatory carriers.

Mr. Godley stated that the borrower has requested the corporation to issue the Series 2015 Bonds to refinance all of its outstanding Special Facility Revenue Bonds, Series 2005. He further went on to describe the facility and how the bonds will be issued and secured.

At the end of his presentation, Mr. Godley requested the Board to approve the terms and authorize the sale of the Series 2015 Bonds on a negotiated basis; confirm the appointment of certain professionals; approve the form and content of the official statement and various other documents connected with the sale and delivery of the Series 2015 Bonds; and authorize certain officers, employees of the Corporation to take all actions deemed necessary to accomplish the final sale and the delivery of the 2015 bonds.

Hearing no further questions or comments and upon motion being duly made and seconded, the following resolutions were unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION - New York Transportation Development Corporation Special Facility Revenue Refunding Bonds, Series 2015 (Terminal One Group Association, L.P. Project) - Authorization to Perform Certain Acts in Connection with the Sale and Delivery of the New York Transportation Development Corporation Special Facility Revenue Refunding Bonds, Series 2015 (Terminal One Group Association, L.P. Project) and to Take Related

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WHEREAS, the New York Transportation Development Corporation (the "Corporation"), a local development corporation caused to be incorporated by the New York Job Development Authority pursuant to Section 1411 of the New York Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, and Section 1802, Subtitle I, Title 8, Article 8 of the New York Public Authorities Law (collectively, the "Act"), is authorized by the Act and its by-laws to issue special facility revenue bonds; and

WHEREAS, on December 6, 2005, the New York City Industrial Development Agency (the "Agency") issued its Special Facility Revenue Bonds, Series 2005 (Terminal One Group Association, L.P. Project) (the "Prior Bonds") in the aggregate principal amount of \$387,740,000, to provide funds for the refunding of the Agency's Special Facility Revenue Bonds, Series 1994 (Terminal One Group Association, L.P. Project) the proceeds of which were used to finance the demolition of an existing terminal and the construction of a passenger terminal facility at John F. Kennedy International Airport (the "Facility"), and (ii) the financing of certain capital improvements and the acquisition of certain equipment for the Facility; and

WHEREAS, Terminal One Group Association, L.P. (the "Borrower") has requested that the Corporation issue its Special Facility Revenue Refunding Bonds, Series 2015 (Terminal One Group Association, L.P. Project) (the "Series 2015 Bonds") to refinance all of the outstanding Prior Bonds and the proceeds of the Series 2015 Bonds will be loaned to the Borrower;

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a loan agreement (the "Loan Agreement") by and between the Corporation and the Borrower, a copy of which is annexed to this Resolution as Exhibit A, pursuant to which the Corporation will loan the proceeds of the Series 2015 Bonds to the Borrower; and

WHEREAS, the Borrower will execute a promissory note in connection with the Loan Agreements (the "Note"), a copy of which is attached to the Loan Agreement annexed to this Resolution as Exhibit A; and

WHEREAS, the Series 2015 Bonds will be issued and secured under an Indenture of Trust (the "Indenture") by and between the Corporation and The Bank of New York Mellon, as trustee (the "Trustee"), a copy of which is annexed to this Resolution as Exhibit B, and the Corporation will assign certain of its rights under the Loan Agreement and the Note to the Trustee as security for the Series 2015 Bonds; and

WHEREAS, in connection with the Prior Bonds, the Borrower entered into substantially similar Facility Use and Lease Agreements (collectively, the “Use Agreements”) with each of the limited partners of the Borrower (each, a “Signatory Carrier”), pursuant to which each Signatory Carrier absolutely, unconditionally and irrevocably agreed and promised to pay its pro-rata share of the Borrower’s debt service obligations on the Prior Bonds and, in connection with the issuance of the Series 2015 Bonds, the Borrower and the Signatory Carriers will enter into a Cost Sharing Agreement, a form of which is annexed to this Resolution as Exhibit F, incorporating by reference all covenants, representations and warranties of the Use Agreements, wherein each Signatory Carrier absolutely, unconditionally and irrevocably agrees and promises to pay its pro-rata share of the Borrower’s payments due under the Loan Agreement and the Note; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Preliminary Official Statement, a form of which is annexed to this Resolution as Exhibit C, and will cause to be prepared an Official Statement to be used in connection with the issuance and sale of the Series 2015 Bonds (collectively, the “Official Statement”) and have negotiated a purchase contract for the Series 2015 Bonds (the “Bond Purchase Agreement”) by and between the Corporation and Citigroup Global Markets Inc., as representative of the underwriters (collectively, the “Underwriters”), a copy of which is annexed to this Resolution as Exhibit D; and

WHEREAS, the duly authorized officers of the Corporation have negotiated letters of representation with each of the Borrower and the Signatory Carriers (the “Letters of Representation”), copies of which are annexed to this Resolution as Exhibit E.

NOW, therefore, the Board of Directors of the Corporation, in accordance with the materials presented at this meeting, including the Board Memorandum and the Exhibits annexed to this Resolution (other than the Exhibit attached to this Resolution for informational purposes only) (collectively, the “Materials”), upon motion duly made and seconded, duly adopts the following Resolution:

RESOLVED, that copies of the Materials are hereby ordered to be filed with the records of the Corporation and are deemed to be incorporated herein by reference; and further

RESOLVED, that the Loan Agreement, the Indenture, the Bond Purchase Agreement and the Letters of Representation, in substantially the forms presented to this meeting, are hereby approved, and any Authorized Officer (as hereinafter defined) is hereby authorized and directed to execute and deliver the same on behalf of the Corporation, in such forms as are approved with such changes, supplements and amendments thereto as any Authorized Officer executing the same may approve, such approval to be conclusively evidenced by such Authorized Officer’s execution thereof; and further

RESOLVED, that the Official Statement, in substantially the form presented to this meeting, is hereby approved, and the distribution of the Official Statement in connection with the sale of the Series 2015 Bonds, with such changes, supplements and amendments thereto as

may be necessary or appropriate to reflect the documents and the matters described therein or as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution of the final Official Statement, is hereby authorized, and any Authorized Officer is hereby authorized and directed to execute the same on behalf of the Corporation; and further

RESOLVED, that the amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Series 2015 Bonds (the “Terms”) insofar as set forth in the Indenture, are hereby approved, with the understanding that such Terms will be finalized in connection with the sale of the Series 2015 Bonds, which is expected to occur in December 2015, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer’s execution of each of the Indenture and the Bond Purchase Agreement and that all other documents relating to the Series 2015 Bonds shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Series 2015 Bonds shall not exceed \$230,000,000, the final maturity shall not extend past December 1, 2030 and the interest rates to be borne by the Series 2015 Bonds shall not exceed a net interest cost of 12%; and further

RESOLVED, that in connection with the issuance of the Series 2015 Bonds, the Corporation hereby appoints The Bank of New York Mellon as Trustee under the Indenture; and further

RESOLVED, that, subject to the conditions set forth in the Bond Purchase Agreement, the Corporation shall sell and award the aggregate principal amount of the Series 2015 Bonds to the Underwriters; and further

RESOLVED, that the Corporation shall offer for sale, sell, issue and deliver the Series 2015 Bonds pursuant to the Bond Purchase Agreement and the Indenture and shall apply the proceeds thereof in accordance with the Indenture and certain documents and certificates to be delivered upon the issuance of the Series 2015 Bonds; and further

RESOLVED, that each of the Chairperson, President, Vice President and Treasurer of the Corporation, and any other person duly authorized to act in such capacity, is designated an “Authorized Officer;” and further

RESOLVED, that each of the Authorized Officers is hereby authorized and directed to approve and execute such documents, instruments and certificates, make any changes to the forms of the Loan Agreement (including any exhibits thereto), the Indenture, the Bond Purchase Agreement, the Letters of Representation, the Official Statement and all other related documents as he or she may reasonably deem necessary, desirable or appropriate to consummate the transactions authorized hereby and thereby, make such payments and take such other actions in the name of the Corporation and on its behalf, as he or she may reasonably deem necessary, desirable or appropriate to carry out the foregoing resolutions, including without limitation the execution, sale and delivery of the Series 2015 Bonds, the execution and delivery of the tax certificate relating to the Series 2015 Bonds and the negotiation and delivery of investment contracts, if any, relating to reinvestment of the

proceeds of the Series 2015 Bonds and related moneys, the execution and delivery of any and all papers, instruments, opinions, certificates, affidavits, agreements and other documents necessary, desirable or appropriate to carry out the foregoing resolutions and that all actions heretofore taken in connection with the offering, sale and issuance of the Series 2015 Bonds by any Authorized Officer or his or her designee are hereby ratified and approved.

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There being no further business, the meeting was adjourned at 10:50 a.m.

Respectfully submitted,

Rose-Marie Mahase  
Assistant Secretary

# ITEM 2



**New York  
Transportation  
Development  
Corporation**

**FOR CONSIDERATION**

January 20, 2016

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Conflict of Interest and Related Party Transaction Policy Required Pursuant to Section 715-a of the New York Not-For-Profit Corporation Law ("NYPNCL")

**REQUEST FOR:** Approval of a New Conflict of Interest and Related Party Transaction Policy ("Conflict Policy"); and Related Actions

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**I. BACKGROUND**

The New York Transportation Development Corporation ("Corporation") is a corporation as defined in subparagraph (a)(5) of Section 102 of the NYPNCL and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYPNCL and Section 1411 of the NYPNCL.

The Corporation is formed for the purpose and the public objective of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority. It will undertake its public purpose primarily by issuing tax exempt bonds for transportation and any other purpose or objective described above.

At its initial organizational meeting on November 3, 2015 the Corporation's Board of Directors adopted a corporate resolution approving the Certificate of Incorporation; adopting By-Laws; approving an Employee Services Agreement; approving a Corporation Conflict of Interest and Related Party Transaction Policy (the "Conflict Policy"); adopting a Whistleblower Policy; adopting Investment Guidelines; appointing corporate officers; electing a Chairperson; and transacting other necessary corporate business of the Corporation.

The statutory Section of the NYPNCL ("Section 715-a") requiring the adoption of the Conflict Policy was signed into law in 2013. Section 715-a works in coordination with multiple other provisions of the NYPNCL, including definitions of Related Policy Transactions, Relatives, Affiliates, and Key Employees. The Conflict Policy previously adopted by the Corporation was based on these statutory requirements, as well as policy models adopted by other not-for-profits, all with the intent of protecting the corporation from transactions that might create a

conflict. Staff has determined that the objectives and responsibilities set forth in the previous policy, along with the required questionnaire for directors, could be further clarified and enhanced, particularly in the explanations of the different responsibilities of Directors, Officers and Key Employees, the inclusion of additional definitions and the provision of additional examples of conduct and activities that could be deemed conflicts.

## II. REQUESTED ACTION

The Board of Directors is now being asked to approve the new Conflict of Interest and Related Party Transaction Policy attached hereto.

## III. ENVIRONMENTAL REVIEW

Staff has determined that the proposed 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 Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

## IV. ATTACHMENTS

Resolutions

Corporation Conflict of Interest and Related Party Transaction Policy

January 20, 2016

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Approval of Corporation Conflict of Interest and Related Party Transaction Policy; and Related Actions

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WHEREAS, New York Transportation Development Corporation (the “Corporation”) is required by Section 715-a of the New York Not for Profit Corporation Law to adopt a Conflict of Interest and Related Party Transaction Policy (“Conflicts Policy”); and

WHEREAS, a new Conflicts Policy has been prepared to more clearly define objectives and responsibilities, provide additional definitions and provide additional examples of conflicts.

RESOLVED, that the Conflict of Interest and Related Party Transaction Policy, in the form attached hereto, be, and it hereby is, in all respects ratified, confirmed and approved; and that said Conflict of Interest and Related Party Transaction Policy be, and it hereby is, adopted as the Conflict of Interest and Related Party Transaction Policy of the Corporation.

RESOLVED, that the “proper officers”, as used herein, shall mean and include the Chairperson of the Board, Chief Executive Officer, President, 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.

\* \* \*

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**  
**CONFLICT OF INTEREST AND RELATED PARTY TRANSACTION POLICY**

The board of directors (the "Board") of New York Transportation Development Corporation, a New York not-for-profit corporation (the "Corporation"), has adopted this Conflict of Interest and Related Party Transaction Policy (the "Policy"), dated January 20, 2016, to ensure that its directors, officers and Key Employees (if any) act in the Corporation's best interest and comply with applicable legal requirements, including but not limited to the requirements set forth in sections 715 and 715-a of the New York Not-for-Profit Corporation Law.

All directors, officers and Key Employees owe a duty of loyalty to the Corporation and must act in good faith in the Corporation's best interests, rather than the interests of another entity or person and must comply with all legal requirements, including this Policy.

Directors, officers and Key Employees shall not engage in any transaction or arrangement or undertake positions with other corporations or other organizations that involve a conflict of interest, or the appearance of a conflict, except in compliance with this Policy.

1. Definitions.

(a) "Affiliate" means any entity controlled by, in control of, or under common control with the Corporation.

(b) "Conflict of Interest" means: (i) a particular transaction or arrangement in which any Related Party, has, or in the near future will have, directly or indirectly, a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant; or (ii) or any other interest, financial or otherwise, direct or indirect, that is in substantial conflict with the proper discharge of the duties of the director, officer or Key Employee to the Corporation. Examples of circumstances that may give rise to conflicts of interest are set forth below but these examples are not exhaustive. Conflicts might arise in other circumstances or through other relationships. It shall be the continuing responsibility of each director, officer or Key Employee to scrutinize his or her transactions, outside businesses and personal relationships for potential conflicts and Related Party Transactions and to immediately report the same to the Board.

Examples of potential conflicts of interest include, but are not limited to:

- (i) A compensation arrangement with an entity or individual with which the Corporation has entered into a transaction or arrangement, or with which the Corporation is negotiating, or contemplating negotiating, a transaction or arrangement;
- (ii) Subject to *de minimus* exception, any ownership or investment interest in, or other affiliation with, any entity or individual that has any transaction, arrangement or relationship with the Corporation, or with which the Corporation is negotiating, or contemplating negotiating, a transaction or arrangement;
- (iii) Acceptance of any gift, entertainment, or other favor where such acceptance might create the appearance of influence on the director, officer, Key Employee or Related Party (other than gifts of nominal value, which are clearly tokens of respect and friendship unrelated to any particular transaction);

- (iv) Acquisition of any real property, leaseholds, patents or other property or rights by the director, officer, Key Employee or Related Party in which the Corporation has, or the director, officer, Key Employee or Related Party knows or has reason to believe at the time of acquisition that the Corporation is likely to have an interest;
- (v) Incurrence of indebtedness to the Corporation, other than advances for amounts due for ordinary travel and expense advances;
- (vi) Use of his or her position, or confidential information or the assets of the Corporation, to his or her personal advantage or for an improper or illegal purpose;
- (vii) The existence of any other interest that may make it difficult for the director, officer, Key Employee or Related Party to exercise objective judgment or otherwise perform effectively; or
- (viii) The purchase or sale of securities issued by the Corporation or the utilization of material non-public information by the director, officer, Key Employee or Related Party in a manner that would constitute either a violation of federal securities law or otherwise give rise to a Conflict of Interest or the appearance of a Conflict of Interest.

(c) “Key Employee” means a person who is in a position to exercise substantial influence over the affairs of the Corporation.

(d) “Related Party” means (i) any director, officer or Key Employee of the Corporation or any Affiliate of the Corporation; (ii) any Relative of any director, officer or Key Employee of the Corporation or any Affiliate of the Corporation; or (iii) any entity in which any individual described in (i) and (ii) above has a 35% or greater interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

(e) “Related Party Transaction” means any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant.

(f) “Relative” means a (i) spouse, ancestor, child (whether natural or adopted), grandchild, great-grandchild, sibling (whether whole or half-blood), (ii) spouse of a child (whether natural or adopted), grandchild, great-grandchild or sibling (whether whole or half-blood), or (iii) a domestic partner.

## 2. Disclosure of Conflict.

At any time, any director, officer, Key Employee or any Related Party identifies a possible Conflict of Interest, a Conflict of Interest or an interest in a Related Party Transaction, the director, officer or Key Employee shall disclose in good faith to the Board the material facts concerning such interest.

## 3. Resolution.

(a) Any director, officer, Key Employee or any Related Party having a potential Conflict of Interest or an interest in a Related Party Transaction shall not (i) be present at or

participate in Board or committee deliberation or vote on the matter giving rise to such conflict or transaction (except that relevant information at a Board meeting prior to commencement of deliberations or voting thereon), or (ii) attempt to influence improperly the deliberation or voting on the matter giving rise to such conflict or transaction.

(b) With respect to any Related Party Transaction in which a Related Party has a substantial financial interest<sup>1</sup>, the Corporation may enter into a transaction or arrangement only if: (i) the Board has considered alternative transactions to the extent available; (ii) at a duly held meeting of the Board, a majority of those Board members who have no interest in the transaction or arrangement approve the transaction or arrangement after determining, in good faith and after reasonable inquiry, that the transaction is fair and reasonable to the Corporation and in its best interests; and (iii) the Board documents in writing the basis for the decision including its consideration of alternative transactions, if any.

(c) The existence and resolution of a potential Conflict of Interest shall be documented in the Corporation's records, including in the minutes of any meeting at which the conflict was discussed or voted upon.

#### 4. Compliance.

(a) Each director, prior to his or her initial election and annually thereafter, shall complete and sign a written statement (the "Questionnaire") identifying, to the best of the director's knowledge, any entity of which such director is an officer, director, trustee, member, owner (either as a sole proprietor or a partner), or employee and with which the Corporation has a relationship, and any transaction in which the Corporation is a participant and in which the director might have a conflicting interest. The Questionnaire shall be submitted to the secretary of the Corporation (the "Secretary"). The Secretary shall provide a copy of each completed Questionnaire, and any updates, to the General Counsel, who will evaluate the disclosures to determine whether they involve a Conflict of Interest.

(b) Each officer and Key Employee shall complete and sign an annual written statement (the "Acknowledgement") acknowledging that such officer or Key Employee has received, read and understood the Conflict of Interest and Related Party Transactions Policy of the Corporation and agree that such officer or Key Employee has and will continue to abide by such Policy. The Secretary shall maintain a copy of each completed Acknowledgement and any updates.

(c) If the Board has reasonable cause to believe that a director, officer or Key Employee has failed to comply with this Policy, the Board may make such further investigation as may be warranted in the circumstances and if the Board determines that the director, officer or Key Employee has in fact failed to comply with this Policy, it shall take appropriate action in accordance with law and the Corporation's certificate of incorporation and bylaws, which may include removal from office.

(d) No Director, officer, or Key Employee may solicit or accept any gift from any entity or lobbyist that has a matter before the Corporation, or who will likely have a matter before the Corporation without express approval from the General Counsel. The definition of

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<sup>1</sup> The New York Not-for-Profit Corporation Law does not define the term "financial interest" or "substantial financial interest." In determining whether a financial interest rises to the level of a "substantial financial interest," the General Counsel will consider the facts on a case-by-case basis.

“gift” includes but is not limited to money, objects, services, loans, travel, lodging, meals, refreshments, entertainment, and event/party invitation, worth \$15 or more.

(e) No Director, officer, or Key Employee, or firm or association of which the Director, officer or Key Employee is a part, or corporation, 10 percent or more of the stock of which is owned or controlled directly or indirectly by such Director, shall sell any goods or services having a value in excess of \$25 to the Corporation, or any Affiliate of the Corporation, unless such goods or services are provided pursuant to an award or contract let after public notice and competitive bidding.

(f) Directors, officers, and Key Employees are prohibited from discussing possible future employment which any entity that has had a specific matter pending before them unless 30 days or more has passed since the matter closed. Directors should recuse themselves from all matters related to entities with which they are engaged in employment negotiations.

(g) This Policy shall not supersede any requirement which may be applicable to any director, officer or Key Employee by virtue of such individual’s status as a state officer or employees as defined in section 73 of the Public Officers Law.

**Questionnaire Concerning Conflicts of Interest  
and Affirmation re: Conflict of Interest and Related Party Transactions Policy**

To be Completed by Directors and Director Nominees on an Annual Basis

1. Please list any entity of which you serve as an officer, director, trustee, member, owner (either as sole proprietor or a partner), or employee.
2. Please identify any transaction in which the Corporation is a participant and in which you may have a conflicting interest.

The answers to the foregoing questions are stated to the best of my knowledge and belief. I also acknowledge that I have received, read and understood the attached Conflict of Interest and Related Party Transactions Policy of the Corporation and agree that I have and will continue to abide by such Policy.

\_\_\_\_\_

Date

\_\_\_\_\_

Name:

**Affirmation re: Conflict of Interest and Related Party Transactions Policy**

**To be Completed by Officers and Key Employees on an Annual Basis**

I acknowledge that I have received, read and understood the attached Conflict of Interest and Related Party Transactions Policy of the Corporation and agree that I have and will continue to abide by such Policy.

\_\_\_\_\_

Date

\_\_\_\_\_

Name:

# **ITEM 3**



**FOR CONSIDERATION**

January 20, 2016

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Contract for Legal Services with Winston & Strawn, LLP in Connection with the Bonds Issued to Refund Bonds Issued to Construct Terminal One at JFK International Airport (the "Bonds")

**REQUEST FOR:** Authorization to Amend the Contract for Legal Services with Winston & Strawn, LLP to Increase the Maximum Authorized Fee to \$375,000.

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**I. INTRODUCTION/BACKGROUND**

Winston & Strawn, LLP ("Winston") was retained as counsel, and the Hardwick Law Firm, LLC ("Hardwick") as co-counsel (collectively, "Counsel"), for a combined sum not to exceed \$350,000 pursuant to an authorization by the New York Job Development Authority (the "JDA") dated September 28, 2015. Counsel were to provide services in connection with the issuance of the Bonds, the proceeds of which were lent to Terminal One Group Association, L.P. (the "Borrower") to refinance a portion of the costs of the construction, equipping and installation of a passenger terminal facility known as Terminal One at JFK International Airport. At the initial meeting of the Board of Directors (the "Board") for the New York Transportation Development Corporation (the "Corporation") on November 03, 2015, the Board authorized the Corporation to accept an assignment of the JDA retainers with Winston and Hardwick.

Counsel provided legal services related to the Bonds and also provided substantial services related to the organization and formation of the Corporation pursuant to the Not-for-Profit Corporation Law ("NYPCL"). Compliance with recent changes to the NYPCL, the Borrower's determination to utilize a loan structure and security structure different from the prior bonds, and providing tax advice to accommodate the Borrower's interest in preserving the existing high interest rate reserve fund, caused legal fees to exceed the original cap. Both Counsels have agreed to a total cap of \$600,000 representing a discount from the actual amounts billed. The total fee for Winston will be \$375,000.

**II. AUTHORIZATION TO AMEND THE TOTAL CONTRACT VALUE**

In order to compensate Counsel for their services in furtherance of the issuance of the Bonds, the Directors are requested to authorize the Corporation to amend the retainer with

Winston to provide for total compensation of Winston not to exceed \$375,000. Similar materials relating to Hardwick's legal fees are being provided to the Board.

### III. SCOPE OF WORK

Counsel assisted in the formation of the Corporation and advised the Corporation on securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds.

#### A. CONTRACT - NEED, PRICE AND FUNDING

##### 1. NEED FOR AMENDED CONTRACT

Recent amendments to the NYNPCL and requests from the Borrower caused projected legal fees to exceed the initial cap.

##### 2. CONTRACT PRICE AND FUNDING

The action requested of the Board in these materials would result in the maximum allowable fees payable to Winston in connection with the issuance of the Bonds to be amended from the \$245,000 reflected in the retainer agreement between Winston and the JDA, to \$375,000. This revised cap reflects a discount from the actual fees Winston would charge based on hours worked at the rates established in the JDA retainer. On November 03, 2015, the Board authorized the Corporation to accept an assignment of the retainer from JDA. Fees of Counsel are paid by the Borrower pursuant to a Pre-Financing Agreement.

#### B. ENVIRONMENTAL REVIEW

Staff has determined that the proposed 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 Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

#### C. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies applied to the work performed under the abovementioned contracts. Counsel were required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement. The Corporation achieved 37.5% MWBE participation relative to the cost of work performed by

Counsel through the allocation of work to Hardwick, which is a certified Minority-owned Business Enterprise.

IV. REQUESTED ACTION

The Directors are asked to authorize the Corporation to amend the retainer with Winston to reflect a revised total maximum contract value of \$375,000.

V. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Winston'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 Winston to be responsible.

VI. RECOMMENDATION

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

VII. ATTACHMENT

Resolution

January 20, 2016

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – AUTHORIZATION TO AMEND  
THE CONTRACT FOR LEGAL SERVICES WITH WINSTON & STRAWN, LLP TO INCREASE THE  
MAXIMUM AUTHORIZED FEE TO \$375,000

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WHEREAS, the Board of Directors (the “Board”) for the New York State Transportation Development Corporation (the “Corporation”) authorized the Corporation to accept from the New York State Job Development Authority (the “JDA”) the assignment of a retainer for legal services for Winston & Strawn, LLP (“Winston”) at the November 3, 2015 meeting of the Corporation;

WHEREAS, the retainer assigned to the Corporation from the JDA authorized compensation to Winston not to exceed \$245,000 in total for services in connection with the issuance of bonds to refund Bonds issued to construct Terminal One at JFK International Airport (the “Bonds”);

WHEREAS, unanticipated legal services related to the formation of the Corporation and the structuring of the transaction resulted in Winston exceeding the \$245,000 in fees authorized for services in connection with the issuance of the Bonds; and

WHEREAS, in order to compensate Winston for its services, additional fees must be authorized to be paid by the Corporation.

BE IT RESOLVED, that the Corporation is authorized to amend the retainer with Winston & Strawn, LLC to provide for compensation in an amount not to exceed \$375,000 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”); and be it further

RESOLVED, that in accordance with the Materials, the Corporation hereby finds Winston to be responsible; 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 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.

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# ITEM 4



**New York  
Transportation  
Development  
Corporation**

**FOR CONSIDERATION**

January 20, 2016

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Contract for Legal Services with the Hardwick Law Firm, LLC in Connection with the Bonds Issued to Refund Bonds Issued to Construct Terminal One at JFK International Airport (the "Bonds").

**REQUEST FOR:** Authorization to Amend the Contract for Legal Services with the Hardwick Law Firm, LLC to Increase the Maximum Authorized Fee to \$225,000.

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**I. INTRODUCTION/BACKGROUND**

Winston & Strawn, LLP ("Winston") was retained as counsel, and the Hardwick Law Firm, LLC ("Hardwick") as co-counsel (collectively, "Counsel"), for a combined sum not to exceed \$350,000 pursuant to an authorization by the New York Job Development Authority (the "JDA") dated September 28, 2015. Counsel were to provide services in connection with the issuance of the Bonds, the proceeds of which were lent to Terminal One Group Association, L.P. (the "Borrower") to refinance a portion of the costs of the construction, equipping and installation of a passenger terminal facility known as Terminal One at JFK International Airport. At the initial meeting of the Board of Directors (the "Board") for the New York Transportation Development Corporation (the "Corporation") on November 03, 2015, the Board authorized the Corporation to accept the assignment of the JDA retainers with Winston and Hardwick.

Counsel provided legal services related to the Bonds and also provided substantial services related to the organization and formation of the Corporation pursuant to the Not-for-Profit Corporation Law ("NYPCL"). Compliance with recent changes to the NYPCL, the Borrower's determination to utilize a loan structure and security structure different from the prior bonds, and providing tax advice to accommodate the Borrower's interest in preserving the existing high interest rate reserve fund, caused legal fees to exceed the original cap. Both Counsels have agreed to a total cap of \$600,000 representing a discount from actual amounts billed. The total fee for Hardwick will be \$225,000.

## II. AUTHORIZATION TO AMEND THE TOTAL CONTRACT VALUE

In order to compensate Counsel for their services in furtherance of the issuance of the Bonds, the Directors are requested to authorize the Corporation to amend the retainer with Hardwick to provide for total compensation of Hardwick not to exceed \$225,000. Similar materials relating to Winston's legal fees will be provided to the Board.

## III. SCOPE OF WORK

Counsel assisted in the formation of the Corporation and advised the Corporation on securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds.

### A. CONTRACT - NEED, PRICE AND FUNDING

#### 1. NEED FOR AMENDED CONTRACT

Recent amendments to the NYNPCL and requests from the Borrower caused projected legal fees to exceed the initial cap.

#### 2. CONTRACT PRICE AND FUNDING

The action requested of the Board in these materials would result in the maximum allowable fees payable to Hardwick in connection with the issuance of the Bonds to be amended from the \$105,000, reflected in the retainer agreement between Hardwick and the JDA, to \$225,000. This revised cap reflects a discount from the actual fees Hardwick would charge based on hours worked at the rates established in the retainer. On November 03, 2015, the Board authorized the Corporation to accept an assignment of the retainer from JDA.

Fees of Counsel are paid by the Borrower pursuant to a Pre-Financing Agreement. However, of this additionally authorized payment described above, \$87,000 is proposed to be paid directly by the Corporation utilizing a portion of the Corporation's financing fee received from the Borrower. Authorization for this payment and reimbursement to the Corporation are described in accompanying materials submitted to the Board for consideration at this meeting.

### B. ENVIRONMENTAL REVIEW

Staff has determined that the proposed 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 Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

C. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies applied to the work performed under the abovementioned contracts. Counsel were required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement. The Corporation achieved 37.5% MWBE participation relative to the cost of work performed by Counsel through the allocation of work to Hardwick, which is a certified Minority-owned Business Enterprise.

IV. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Hardwick'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 Hardwick to be responsible.

V. REQUESTED ACTION

The Directors are asked to authorize the Corporation to amend the retainer with Hardwick to reflect a revised total maximum contract value of \$225,000.

VI. RECOMMENDATION

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

VII. ATTACHMENT

Resolution

January 20, 2016

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Authorization to Amend the Contract for Legal Services with the Hardwick Law Firm, LLC to Increase the Maximum Authorized Fee to \$225,000.

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WHEREAS, the Board of Directors (the “Board”) for the New York State Transportation Development Corporation (the “Corporation”) authorized the Corporation to accept from the New York State Job Development Authority (the “JDA”) the assignment of a retainer for legal services with the Hardwick Law Firm, LLC (“Hardwick”) at the November 3, 2015 meeting of the Corporation;

WHEREAS, the retainer assigned to the Corporation from the JDA authorized compensation to Hardwick not to exceed \$105,000 in total for services in connection with the issuance of bonds to refund bonds issued to construct Terminal One at JFK International Airport (the “Bonds”);

WHEREAS, unanticipated legal services related to the formation of the Corporation and the structuring of the transaction resulted in Hardwick exceeding the \$105,000 in fees authorized for services in connection with the issuance of the Bonds; and

WHEREAS, in order to compensate Hardwick for its services, additional fees must be authorized to be paid by the Corporation.

BE IT RESOLVED, that the Corporation is authorized to amend the retainer with the Hardwick Law Firm, LLC to provide for compensation in an amount not to exceed \$225,000 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”); and be it further

RESOLVED, that in accordance with the Materials, the Corporation hereby finds Hardwick to be responsible; 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 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.

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# ITEM 5



**FOR CONSIDERATION**

January 20, 2016

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Payment and Reimbursement of Legal Costs Associated with the Formation of the New York Transportation Development Corporation (the "Corporation").

**REQUEST FOR:** Approval to Pay, and Allocate Reimbursement to Two or More Projects of, a Portion of the Legal Costs Associated with Formation of the Corporation.

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**I. BACKGROUND**

The Corporation is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law ("NYPCL") and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYPCL and Section 1411 of the NYPCL.

The Corporation was formed for the purpose and the public objective of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority. The Corporation undertakes its public purpose primarily by issuing tax exempt bonds for transportation and any other purpose or objective described above.

The formation of the Corporation required substantial legal research, review of recent statutory changes, various filings, legal findings and preparation of the Certificate of Incorporation, By-Laws, the Employee Services Agreement and the Corporation Conflict of Interest and Related Party Transaction Policy. The Hardwick Law Firm LLC ("Hardwick") was retained, and incurred substantial related costs ("Incorporation Costs"), to assist the Corporation with these incorporation requirements as part of its representation of the Corporation as co-bond counsel for the JFK Airport, Terminal One refinancing (the "JFK Project"). The bond closing for the JFK Project took place on December 23, 2015.

The Corporation is also serving as the issuer of bonds for the funding of construction of a new terminal at LaGuardia Airport (the "LaGuardia Transaction") and that transaction is anticipated to close in the summer of 2016. In addition, the Corporation is authorized to serve as an issuer on future projects, particularly transportation projects.

Bond counsel fees, including the Incorporation Costs incurred by the Hardwick Firm, were intended to be paid promptly after closing by the borrower/developer of the JFK Project, the first project undertaken by the Corporation. In view of the substantial amount of Incorporation Costs and that the JFK Project is the first of what may be a series of such projects this year and in the coming years, allocating the obligation to pay a portion of the Incorporation Costs among these future projects will equitably distribute this payment obligation.

Incorporation costs totaled \$105,000. Of this amount, \$20,000 will be paid by borrower of the JFK Project; \$40,000 will be paid by the borrower of the LaGuardia Transaction and \$47,000 will be paid by the borrowers of one or more future projects. In order to pay Hardwick currently, staff proposes that the Corporation use a portion of its financing fee received from the JFK Project (\$836,360) to pay Hardwick \$87,000, which represents the portion of Hardwick's legal fee allocable to Incorporation Costs that will be required to be paid by borrowers of the LaGuardia Transaction and future transactions. Reimbursement to the Corporation of the \$87,000 will be as follows: \$40,000 will be paid by the borrower of the LaGuardia Transaction to reimburse the Corporation, and \$47,000 will be paid by the borrowers of one or more future projects to reimburse the Corporation.

The payment and reimbursement amounts set forth above were calculated based on the total amount of Incorporation Costs and the relative size of the current and expected transactions. This procedure will permit Hardwick to be promptly paid in full for its services, allocate Incorporation Costs equitably to multiple transactions and provide reimbursement for the Corporation from borrowers of future projects.

## II. REQUESTED ACTION

The Board of Directors is being requested to authorize payment from Corporation revenue to Hardwick in the amount of \$87,000 and obtain reimbursement from borrowers of the LaGuardia Transaction and future projects.

## III. ENVIRONMENTAL REVIEW

Staff has determined that the proposed 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 Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

## IV. ATTACHMENTS

Resolution

January 20, 2016

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Approval to Pay, and Allocate Reimbursement to Two or More Projects of, a Portion of the Legal Costs Associated with Formation of the New York Transportation Development Corporation (the “Corporation”)

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WHEREAS, The Hardwick Law Firm LLC (“Hardwick”) was retained as bond counsel for the Corporation’s first issuance of bonds that closed on December 23, 2015, and incurred fees (“Incorporation Costs”) to form the Corporation; and

WHEREAS, the Corporation is currently acting as a bond issuer on a new project and is anticipated to serve as an issuer on future projects.

WHEREAS, allocating the Incorporation Costs among multiple projects would be more equitable than requiring the borrower/developer of the Corporation’s first project to pay the entire amount of Incorporation Costs.

RESOLVED, that on the basis of the materials presented to the Directors at this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation is authorized to pay Hardwick \$87,000 of its legal fees and seek reimbursement from borrowers on future Corporation bond financings as set forth in the Materials.

RESOLVED, that the “proper officers”, as used herein, shall mean and include the Chairperson of the Board, Chief Executive Officer, President, 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 6



**FOR CONSIDERATION**

January 20, 2016

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Procurement of Legal Services

**REQUEST FOR:** Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (the "TDC") in Connection with Issuing Bonds to Refund Bonds Issued to Finance Construction of Terminal One at JFK International Airport and to Take Related Actions

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**I. CONTRACT SUMMARY**

**Counsel:** D. Seaton and Associates, P.A., P.C. ("Counsel")

**Scope of Services:** Counsel would serve as disclosure counsel to provide legal services to the New York Transportation Development Corporation in connection with the issuance of revenue bonds ("Bonds") for the purpose of facilitating the refunding of bonds used for the construction of Terminal One at JFK International Airport.

**Contract Amount:** Sixty-five thousand (\$65,000)

**Funding Source:** The contract will be funded in its entirety by Terminal One Group Association, L.P. (the "Borrower").

**II. BACKGROUND**

The TDC has issued approximately \$168,000,000 of Bonds. The Bond proceeds have been lent to the Borrower to refinance bonds previously issued by the NYC Industrial Development Agency to fund construction of Terminal One at JFK International Airport.

Staff of the TDC obtained the consent of the TDC directors to the form of Bond documents and the terms of the transaction. Staff also obtained the approval of the Governor and conducted a hearing as required by Federal tax law.

### III. COUNSEL SELECTION PROCESS

In April 2012, staff of New York State Urban Development Corporation d/b/a Empire State Development ("ESD") advertised for legal counsel in the following areas: real estate and land use, environmental, construction, condemnation, bankruptcy, labor, taxation, bond financing, foreclosure and, in each case, related litigation. Sixty-six firms responded (including Counsel), the responses were evaluated, and in September 2012 the ESD directors approved a Pre-Qualified Counsel List. Counsel was pre-qualified in the area of bond financing. On November 3, 2015, the TDC adopted the ESD slate of pre-qualified counsel.

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

### IV. SCOPE OF WORK

Counsel advised the TDC regarding securities laws, bonds, taxes and the required disclosure of these related legal matters in connection with the issuance and sale of the Bonds. Such work included, but was not limited to, drafting, reviewing, negotiating, and finalizing the following types of documents: sale contracts, resolution amendments, disclosure documents and tax opinions. Counsel also reviewed documentation with other involved agencies.

### 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 tax exempt bonds. In order to fully address these requirements many issuers are retaining separate disclosure counsel in addition to bond counsel. This additional expertise helps ensure compliance with applicable securities laws, and market practices.

#### B. CONTRACT PRICE AND FUNDING

This was a conduit financing with no ESD or TDC funds at risk. Accordingly the Borrower fully funded all counsel costs and expenses. Counsel worked at their typical hourly rates. As noted above, the source of funding was funds provided by the Borrower at Closing pursuant to a Pre-Financing Agreement. The TDC had no obligation to pay any legal fees except to the extent it received funds from the Borrower.

VI. RESPONSIBLE PARTY

Pursuant to State Finance Law Section 139-j and 139-k and the Authority's policy related thereto, staff has: (a) considered Counsel'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 Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization 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 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 applied to this contract. Generally Counsel are required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and are required to use Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of ESD's legal fees. However, by virtue of Counsel's status as an MWBE, Counsel satisfies the MWBE requirement without the need for additional MWBE participation.

IX. REQUESTED ACTION

The directors are asked to authorize the retention of D. Seaton and Associates, P.A., P.C. as disclosure counsel to the TDC for such legal services as are described in these materials in an amount not to exceed \$65,000.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

January 20, 2016

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services - Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (“TDC”) in Connection with Issuing Bonds to Refund Bonds Issued to Finance Construction of Terminal One at JFK International Airport and to Take Related Actions**

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

RESOLVED, that the TDC 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 TDC to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the TDC or Counsel consistent with this authorization are hereby ratified and affirmed.

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# ITEM 7



FOR CONSIDERATION

January 20, 2016

TO: The Members

FROM: Howard A. Zemsky

SUBJECT: Pre-Financing Agreement and Legal Retainer Agreements with Squire Patton Boggs, Dentons US LLP, Law Offices of Joseph C. Reid, P.A. and D. Seaton and Associates, P.A., P.C. (the "Firms") in Connection with issuing Bonds to Fund a New Central Terminal at LaGuardia Airport

REQUEST FOR: Amendment of Authorization Granted at Meeting Held November 3, 2015 in Order to Eliminate the Requirement of an Imprest Account and Authorization to Take Related Actions

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I. BACKGROUND

On August 18, 2015 the New York Job Development Authority (the "Authority") authorized the retention of the Firms to provide legal services to the Authority in anticipation of the formation of a local development corporation issuer and in connection with the issuance of revenue bonds (the "Bonds") for the purpose of facilitating the funding of the construction of a new central terminal ("Terminal B") at LaGuardia Airport.

It was expected that the respective retainers for the Firms would be funded from an imprest account to be funded by the LaGuardia Gateway Partners (the "Borrower"), which is borrowing the Bond proceeds to construct Terminal B.

The Authority authorized the retention of the Firms because the issuer, a to be formed local development corporation, had not been formed at that time and could not yet hire counsel to commence work within the requested timeframe. Once the local development corporation issuer was formed the retainer would be deemed to have been assigned to that entity.

On October 30, 2015 that entity; the New York Transportation Development Corporation (the "Corporation") was formed. At its initial meeting on November 3, 2015 the Corporation obtained the consent of the Directors to assume the four contracts with the Firms to provide legal services, deemed assigned from the Authority, and to assume a Pre-Financing Agreement, also deemed assigned from the Authority. The Pre-Financing Agreement provides for the Borrower to pay all the Corporation's transaction costs, including the counsel fees and the Corporation's fee for serving as the issuer. The Pre-Financing Agreement also referenced an expectation that an imprest account would be used to pay these costs.

## II. CURRENT STATUS

The overall redevelopment of the LaGuardia Airport is a public private partnership ("P3") which includes different elements and protocols than projects which only involve traditional tax exempt financing. The private parties constituting the Borrower have asserted that cost mechanisms such as an imprest account or uncapped legal fees are atypical for P3 transactions and it would prefer fixed caps and a bonus structure for timely closing. As a result, the Borrower and the Firms have been engaged in ongoing discussions of the terms of the Pre-Financing Agreement. Although the related retainer agreements for the Firms all explicitly provide the Corporation would be liable for the payment of counsel fees only to the extent of funds received from the Borrower, the retainer agreements for the Firms have been held pending the execution of the Pre-Financing Agreement.

## III. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization 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 Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

## IV. RECOMMENDED ACTION

The Corporation previously authorized the acceptance of the deemed assignments of the Authority retainers for the Firms and the Pre-Financing Agreement. The Corporation will now be authorized to immediately accept the assignments of the retainers with the Firms and directly enter into a Pre-Financing Agreement as described below.

The Borrower has requested and staff recommends that, in lieu of the Imprest Account, the Pre-Financing Agreement be structured to provide for costs to be paid by the Borrower, upon the terms and in the amounts agreed upon by the Borrower, the Firms and the Corporation. Such terms and the Borrower's obligation to pay the Firms (and all other costs associated with the issuance) will be reflected in the terms of the Pre-Financing Agreement entered into directly with the Corporation without assignment. In addition, the Firms will confirm in the retainer agreements to look to the Corporation for payment only to the extent funds are received from the Borrower. Staff believes that with this structure, and the concurrence by the Firms that are at the most risk of loss, the establishment of an Imprest Account is unnecessary and requests, therefore, that the prior authorization be amended to eliminate that requirement.

## V. Attachment

Resolution

January 20, 2016

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Pre-Financing Agreement and Legal Retainer Agreements with Squire Patton Boggs, Dentons US LLP, Law Offices of Joseph C. Reid, P.A. and D. Seaton and Associates, P.A., P.C. (the “Firms”) in Connection with issuing Bonds to Fund a New Central Terminal at LaGuardia Airport– Amendment of Authorization Granted at Meeting Held November 3, 2015 in Order to Eliminate the Requirement of an Imprest Account and Authorization to Take Related Actions

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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 amends, as set forth in the Materials, the authorization, granted at the meeting of the Directors held November 3, 2015, to accept assignments of contracts with the Firms and a Pre-Financing Agreement, hereby affirms that authorization as so amended; 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 documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing; and be it further

RESOLVED, that any actions previously taken by the Corporation or the Firms consistent with this authorization, as amended, are hereby ratified and affirmed.

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