NEW YORK STATE OF OPPORTUNITY. | New York Transportation Development Corporation

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Tuesday

March 21, 2023 – 11:30 a.m.

AGENDA

CORPORATE ACTION

1. Approval of the Minutes of June 3, 2022, and October 20, 2022, Meetings of the Directors

FOR CONSIDERATION

2. New York Transportation Development Corporation – MTA P3 ADA Project at New York City Transit Authority Subway Stations – Series 2023 Bonds – Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Documents and Actions Related to the Project; and Authorization to Take Related Actions

3. New York Transportation Development Corporation – Procurement of Legal Services – Harris Beach PLLC – Authorization to Enter into a Contract for Co-Bond Counsel Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

4. New York Transportation Development Corporation – Procurement of Legal Services – Hardwick Law Firm, LLC – Authorization to Enter into a Contract for Co-Bond Counsel Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

5. New York Transportation Development Corporation – Procurement of Legal Services – BurgherGray LLP – Authorization to Enter into a Contract for Issuer's Counsel Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

Item 1

Minutes of June 3, 2022 Meeting

New York Transportation Development Corporation
Meeting of the Directors
Held Via Teleconference

June 3, 2022

MINUTES

In Attendance
Directors:

Andrew Kennedy
Kathleen Mize – Acting Chair
Pravina Raghavan

NYTDC Staff: Regina Stephens – Assistant Secretary

ESD Staff: Matthew Bray, Treasurer
Felisa Hochheiser - Director of Compliance
Miyoko Okubo, Senior Counsel
Debbie Royce, Corporate Secretary

Other Attending:

Douglas Seaton, D Seaton & Associates, P.A., P.C.
Jeffrey Pearlman, Pearlman & Miranda, LLC
Connie Fratianni, Katten Muchin Rosenman LLP
Patricia Mollica, Katten Muchin RosenmanLLP
Robert Drillings, BurgherGray, LLP

Before calling the meeting officially to order by the Acting Chair, the Assistant Secretary of the New York Transportation Development Corporation welcomed everyone to the meeting and conducted a roll call of the Directors to be sure a quorum was present on record.

Following the roll call and confirmation of a present quorum, Kathleen Mize noted for the record that she would serve as Acting Chair of this meeting. Acting Chair Mize called the

meeting of the New York Transportation Development Corporation (the "Corporation" or "TDC"), a Local Development Corporation created under New York State law, to order at approximately 4:30 p.m. She noted for the record that in accordance with recently passed legislation, this meeting would be conducted by teleconference.

Acting Chair Mize also noted for the record that the Directors had received the relevant written materials in advance of the meeting and that the public had been given the opportunity to comment on the meeting's Agenda item by submitting their written comments to nytdc@esd.ny.gov by 5:00 p.m. on June 2, 2022, and no comments were received.

Acting Chair Mize then asked the Directors if anyone had any potential conflicts of interest with respect to the item on the Agenda. Hearing none, she requested that Matthew Bray present the Agenda item, requesting authorization for the Corporation to perform certain actions with Senior Debt Financing of the construction of the New JFK Terminal One Project.

Mr. Bray explained to the Directors that he was asking for authorization to perform certain acts and take all related action in connection with the Senior Debt Financing for the Construction of the New Terminal One Project at John F. Kennedy International Airport. He stated that in 2019 the Corporation authorized an inducement of the financing of certain aspects of the redevelopment, construction, financing, operation, and maintenance of the New Terminal One passenger terminal facility at JFK Airport at terminal facilities known as Terminal One, Terminal Two and Terminal Three. He noted that the COVID-19 pandemic, as well as disruptions in the financial markets, resulted in the delay in finalizing the relevant Senior Debt documents. Mr. Bray further stated that the Senior Debt documents have now been drafted, reviewed and are ready to be finalized. He explained that the Directors are being asked to

approve the operative provisions, terms and transaction contemplated by such Senior Debt Financing documents consisting of the Credit Agreement, Common Terms Agreement, related documents, and related actions in connections with the Project.

Mr. Bray explained that based upon the most recent loan documentation, the Project is being developed by JFK INTO LLC (the "Lessee"). He further explained that the Lessee is a newly formed special purpose Delaware limited liability company, of which all interest on the closing date will be owned by Mars NTO LLC, JLC JFK Aggregator L.P. and Ullico Infrastructure JFK REIT, LLC, collectively referred to as the Financial Sponsors. Mr. Bray stated that the Lessee will be a tenant under a lease agreement between the Lessee and the Port Authority of New York and New Jersey.

Mr. Bray noted that the Project is expected to be completed in three phases. Phase A is expected to commence in June of 2022 and open in June of 2026; Phase B1 is expected to commence in June of 2026 and open in April of 2028; and Phase B2 is expected to commence in April 2028 and open in October 2029.

Mr. Bray explained that the Project will be funded with equity to be provided by the Financial Sponsors and through a third-party debt to be borrowed by or issued by the Corporation. He stated that the third-party debt is to include bank loan facilities and letter of credit facilities, collectively Bank Loan Facilities, and tax-exempt and taxable bonds issued by the Corporation. He further stated that a commercial banking syndicate has committed to make available the Bank Loan Facilities in the form of loans and letters of credit to the Corporation as needed from time to time to fund construction costs. Mr. Bray explained that the Corporation's liability to pay debt service on the Bonds and borrowings under the Bank Loan Facilities will be limited to payment received from the Lessee; and the Lessee will enter

interest rate hedging contracts to mitigate the risk of interest rates changes on the borrowings under the Bank Loan Facilities and the Bonds. He further stated that the Corporation will not be a party to the interest rate hedging contracts.

Mr. Bray noted that the obligations of the Lessee under the Loan Agreements will be secured under and pursuant to an all-assets collateral package provided by the Lessee. He further noted that the Lessee will enter into an Amended and Restated Common Terms Agreement with, among others, JFK NTO TRS, LLC (the "Taxable REIT Subsidiary"), MUFG Union Bank, N.A., as collateral agent (the "Collateral Agent"), on behalf of itself and the other secured parties, including the Corporation (the "Secured Parties").

Mr. Bray further noted that the Corporation will be the conduit issuer under the Credit Agreement and will transfer the borrowings under the Credit Agreement to the Lessee through a Building Loan Agreement and a Project Loan Agreement among the Corporation, the Lessee and MUFG Bank Limited, inter-creditor agent.

He explained that the Credit Agreement provided for a closing date term commitment of approximately $1.43 billion, a delayed draw term commitment of approximately 4.9 billion, a working capital facility commitment of approximately 50 million, a liquidity facility commitment of approximately $200 million, and the security deposit facility commitment of approximate 50 million.

Mr. Bray further explained that the Credit Agreement is a bank Credit Facility and does not require the Corporation to issue tax exempt or taxable bonds on behalf of the Lessee and does not govern the terms of the bonds.

Following a full presentation of the item, Mr. Bray stated that the Directors were being requested to approve the following:

1. Approve the terms of the Credit Agreement and Related Financing document being entered into in connection with the disbursement of the bank loan facilities and authorize the incurrence of the Senior Secured Indebtedness under the Credit Agreement on the negotiated basis.
2. Authorize the execution of certificates identifying, solely for federal income tax compliance purposes, interest hedging contracts for the future at issuance of tax-exempt bonds by the Corporation; and
3. Authorize certain officers and employees of the Corporation to take all actions deemed necessary to consummate the transactions contemplated by the Credit Agreement and Related Financing documents being entered into in connection with a disbursement of the bank loan facilities.

Following Mr. Bray's presentation, Acting Chair Mize asked if there were any questions or comments from the Directors regarding the item. Hearing none, she noted for the record that there were no comments from the public regarding the item, and requested a motion to approve the item. Upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Authorization to Perform Certain Acts in Connection with the Senior Debt Financing of the Construction of the New Terminal One Project at John F. Kennedy International Airport and to Take All Related Actions

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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 assist in the financing of the costs of eligible facilities; and

WHEREAS, JFK Terminal One Co., LLC (the "Original Applicant") originally requested that the Corporation act as a conduit for the lending of funds to the Original Applicant pursuant to certain senior debt facilities (which may require interest hedging arrangements) and letter of credit facilities provided by commercial banks and to issue tax-exempt and or taxable bonds to partially finance certain aspects of the redevelopment, construction, financing, operation and maintenance of the Leased Premises (as defined below) at the John F. Kennedy International Airport New Terminal One Project (the "Project"); and

WHEREAS, Carlyle Global Infrastructure Opportunity Fund, L.P., a Cayman Islands exempted limited partnership, JLC Infrastructure Fund I, L.P., a Delaware limited partnership, and Ullico Infrastructure JFK Holdco, LLC, a Delaware limited liability company (collectively, the "Original Financial Sponsors") originally agreed to provide certain equity financing to fund the Project; and

WHEREAS, in December of 2019, the Corporation declared its official intent to assist in the financing of the Project including the redevelopment, construction, financing, operation and maintenance of the New Terminal One passenger terminal facility at John F. Kennedy International Airport in Queens, New York (the "Airport") at terminal facilities known as (a) Terminal Three (the "Initial Premises"), (b) Terminal Two (the "First Additional Premises") and (c) subject to certain traffic triggers and credit rating conditions, the existing Terminal One (the "Second Additional Premises" and together with the Initial Premises and the First Additional Premises, the "Leased Premises") and to incur loans and to issue bonds and use the proceeds thereof to pay or reimburse certain costs of the Project. This declaration of official intent was subject to subsequent approval of the Project by the Corporation and the Port Authority (hereinafter defined); and

WHEREAS, the Airport is owned by The City of New York (the "City") and is leased to The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the States of New York and New Jersey, and thereafter consented to by the Congress of the United States (the "Port Authority") pursuant to the terms and conditions of the Amended and Restated Agreement of Lease of the Municipal Air Terminals dated November 24, 2004, as amended, amended and restated, supplemented or otherwise modified from time to time (the "Basic Lease"); and

WHEREAS, the Original Applicant has assigned to JFK NTO LLC, a Delaware limited liability company (the "Lessee"), and the Lessee has assumed, the Original Applicant's rights, interests, and obligations with respect to the Project, pursuant to that certain Assignment Agreement, dated as of May 13, 2022, by and between the Original Applicant and the Lessee (the "Lessee Assignment"); and

WHEREAS, on or about May 13, 2022, the Original Financial Sponsors assigned their obligations in relation to the Project, including to provide equity financing to fund the Project, to Mars NTO LLC, a Delaware limited liability company, JLC JFK Aggregator L.P., a Delaware limited partnership, and Ullico Infrastructure JFK REIT, LLC, a Delaware limited liability company; and

WHEREAS, the Port Authority will enter into the Agreement of Lease (the "Lease"), with the Lessee, on or before the First Closing Date (as such term is defined in the "Common Terms Agreement", a draft of which is annexed to this Resolution as Exhibit A), pursuant to which, among other things, the Lessee will be obliged to consummate the Project; and

WHEREAS, the Lessee has requested that the Corporation (i) enter into to an Amended and Restated Credit Agreement among the Lessee, MUFG Bank, Ltd., as administrative agent (the "Administrative Agent") and the lenders and letter of credit issuing banks party thereto (the "Lenders") and the Corporation, referred to herein as the "Credit Agreement," a draft of which is annexed to this Resolution as Exhibit B), pursuant to which the Lenders, or certain Lenders, will make available to the Corporation a term loan facility, a liquidity facility, a working capital facility and a security deposit facility, (ii) at a later time, issue one or more series of senior secured bonds (the "Bonds") if requested by the Lessee, (iii) at a later time, issue one or more series of senior secured notes (the "Notes") if requested by the Lessee, and (iv) at a later time, incur other senior indebtedness, in each case for the purposes of funding, refinancing, or reimbursing the Project and associated costs, not including hedge obligations (collectively, the "Senior Debt") if requested by the Lessee and (v) enter into an Amended and Restated Common Terms Agreement by and among the Lessee, JFK NTO TRS LLC, a Delaware limited liability company (the "Taxable REIT Subsidiary"), MUFG Union Bank, N.A., as collateral agent (the "Collateral Agent"), on behalf of itself and the other secured parties (the "Secured Parties"), MUFG Union Bank, N.A., as the Account Bank, the Intercreditor Agent, the Administrative Agent, the Corporation and each other secured party that becomes a party thereto from time to time, pursuant to which, among other things, intercreditor terms between such creditors are included; and

WHEREAS, if and as issued, drawn or extended, the proceeds of the Senior Debt will be loaned to the Lessee (i) for purposes of funding Project Loan Costs (as defined in the Common Terms Agreement), pursuant to the project loan agreement (the "Project Loan Agreement," a draft of which is annexed to this Resolution as Exhibit C) with the Lessee and MUFG Bank, Ltd., as intercreditor agent (the "Intercreditor Agent") and (ii) for purposes of funding Building Loan Costs (as defined in the Common Terms Agreement), pursuant to the building loan agreement (the "Building Loan Agreement," a draft of which is annexed to this Resolution as Exhibit D, and together with the Project Loan Agreement, the "Loan Agreements") with the Lessee and the Intercreditor Agent; and

WHEREAS, on or before the First Closing Date, the Corporation will enter into the Common Terms Agreement and the Credit Agreement; and

WHEREAS, as security for its obligations under the Project Loan Agreement and the Building Loan Agreement, respectively, the Lessee will grant mortgage liens on and security

interests in the interests of the Lessee under the Lease to the Corporation pursuant to a project loan mortgage (the "Project Loan Mortgage," a draft of which is annexed to this Resolution as Exhibit E) and the building loan mortgage (the "Building Loan Mortgage," a draft of which is annexed to this Resolution as Exhibit F, and, together with the Project Loan Mortgage, the "Mortgages"), respectively, and the Lessee has requested that the Corporation assign all of its rights, title and interest as mortgagee (subject to certain reserved rights) under the Mortgages to the Collateral Agent for the benefit of the Secured Parties; and

WHEREAS, the Corporation shall assign all of its rights, title and interest as mortgagee under the Mortgages to Collateral Agent for the benefit of the Secured Parties pursuant to a project loan collateral assignment (the "Project Loan Collateral Assignment," a draft of which is annexed to this Resolution as Exhibit G-1), an assignment of the Project Loan Mortgage (the "Project Loan Mortgage Assignment," a draft of which is annexed to this Resolution as Exhibit G-2), a building loan collateral assignment (the "Building Loan Collateral Assignment," a draft of which is annexed to this Resolution as Exhibit H-1) and an assignment of the Building Loan Mortgage (the "Building Loan Mortgage Assignment," a draft of which is annexed to this Resolution as Exhibit H-2, and, together with the Project Loan Collateral Assignment, the Project Loan Mortgage Assignment and the Building Loan Collateral Assignment, the "Collateral Assignments"); and

WHEREAS, as security for the payment and performance of the Secured Obligations (as defined in the Common Terms Agreement), (i) the Lessee will, pursuant to a security agreement, grant a security interest in and to the Collateral (as defined in the Common Terms Agreement), including but not limited to its contractual rights and its rights to receivables under the Lease and its Equity Interests (as defined in the Common Terms Agreement) in the Taxable REIT Subsidiary, to the Collateral Agent for the benefit of the Secured Parties, and (ii) the Taxable REIT Subsidiary will, pursuant to a security agreement, grant a security interest in and to the Collateral to the Collateral Agent, for the benefit of the Secured Parties; and

WHEREAS, as security for the payment and performance of the Secured Obligations, the equity interests of the Lessee will be pledged, pursuant to an equity pledge agreement, to the Collateral Agent, for the benefit of the Secured Parties; and

WHEREAS, (i) in order to manage the risk of interest rate changes with respect to the Bonds, the Lessee will enter into one or more contracts, including interest rate swap contracts and forward contracts with certain banks and financial institutions that will also be lenders (or affiliates of lenders) to the Corporation under the Credit Agreement, in advance of the issuance of the dates of issue of the Bonds (the "Anticipatory Hedge Contracts") which contracts the Lessee may terminate or about the dates of issue of the Bonds, (ii) the Lessee intends to finance its cost, if any, of terminating the Anticipatory Hedge Contracts with a portion of the proceeds of the Bonds, (iii) in order for the Lessee's termination cost of the Anticipatory Hedge Contracts to be financed by a portion of the proceeds of the Bonds, applicable Federal tax regulations require that the Corporation identify the Anticipatory Hedge Contracts on the books and records maintained for the Bonds (each such identification, a "Hedge Identification Certificate", a draft of which is annexed to this Resolution as Exhibit I) no later than 15 days after the date or

dates on which the Lessee and the Hedge Providers enter into the Anticipatory Hedge Contracts, (iv) applicable Federal tax regulations require that the Hedge Identification Certificate provide sufficient detail to establish that the Anticipatory Hedge Contract is a "qualified hedge" for purposes of the applicable Federal tax regulations and (v) the Corporation's identification of the Anticipatory Hedges is solely for purposes of Federal tax compliance and does not make the Corporation a party to, or create any obligation of the Corporation with respect to, the Anticipatory Hedge Contracts.

NOW, therefore, the Board, in accordance with the materials presented at this meeting, including the Board Memorandum and the Exhibits annexed to this Resolution (collectively, the "Materials"), upon motion duly made and seconded, duly adopts the following Resolution; and

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 Credit Agreement, Common Terms Agreement, Loan Agreements, Mortgages, Collateral Assignments, and the Hedge Identification Certificate (including in each case any exhibits and schedules thereto), 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 amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Senior Debt (the "Terms") insofar as set forth or to be set forth in the Senior Debt Documents (as defined in the Common Terms Agreement), are hereby approved, with the understanding that such Terms will be finalized in connection with the issuance of such Senior Debt, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer's execution of each of the Senior Debt Documents and that all other documents relating to such Senior Debt shall similarly, as appropriate, be conformed thereto; provided that: (A)(i) the aggregate principal amount of the term loan facility under the Credit Agreement shall be approximately $6,630,000,000.00 consisting of the Closing Date Term Commitment in an aggregate principal amount of approximately $1,430,000,000 and the Delayed Draw Term Commitment in an aggregate principal amount of approximately $4,900,000,000, (ii) the aggregate principal amount of the liquidity facility under the Credit Agreement shall be approximately $200,000,000, (iii) the aggregate principal amount of the working capital facility under the Credit Agreement shall be approximately $50,000,000, and (iv) the aggregate principal amount of the security deposit facility under the Credit Agreement shall be approximately $50,000,000; and (B) the final maturity of any Senior Debt shall not extend past the current expiration date of the Lease of December 30, 2060; and further

RESOLVED, that, if and as issued, drawn or extended, the Corporation shall apply the proceeds of the Senior Debt in accordance with Loan Agreements and the applicable Senior Debt Documents; and further

RESOLVED, that each of the Controller, Treasurer and Deputy General Counsel of the Corporation, and any other person duly authorized to act in such capacity from time to time, is hereby designated an Authorized Officer (each 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 Credit Agreement, Common Terms Agreement, Loan Agreements, Mortgages, Collateral Assignments, and the Hedge Identification Certificate (including in each case any exhibits and schedules thereto) 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 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 Senior Debt by any Authorized Officer or his or her designee are hereby ratified and approved; and further

RESOLVED, that each of the Authorized Officers 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 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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There being no further business, the meeting was adjourned.

Respectfully submitted,

Regina Stephens
Assistant Corporate Secretary

Minutes of October 20, 2022 Meeting

New York Transportation Development Corporation
Meeting of the Directors
At Empire State Development
633 Third Avenue, 36th Floor
New York, New York 10017

October 20, 2022

MINUTES

In Attendance
Directors:

George Haggerty – Acting Chair
Kathleen Mize

NYTDC Staff: Matthew Bray, Treasurer
Regina Stephens – Assistant Secretary

ESD Staff: Felisa Hochheiser—Director of Compliance, Legal Department
Miyoko Okubo—Senior Counsel, Finance
Raymond Orlando—CFO
Goldie Weixel—Acting General Counsel

Other Attending:

Alethia Nancoo, Squire Patton Boggs (US) LLP
Taylor Klavan, Squire Patton Boggs (US) LLP
Katherine McManus, Hardwick Law Firm, LLC
Robert Drillings, BurgherGray, LLP

Before calling the meeting officially to order by the Acting Chair, the Assistant Secretary of the New York Transportation Development Corporation welcomed everyone to the meeting and conducted a roll call of the Directors to be sure a quorum was present on record.

Following the roll call and confirmation of a present quorum, George Haggerty noted for the record that he would serve as Acting Chair of this meeting. Acting Chair Haggerty called the meeting of the New York Transportation Development Corporation (the "Corporation" or

"TDC"), a Local Development Corporation created under New York State law, to order at approximately 12:00 p.m. He noted for the record that that this meeting was being webcast and that public comments were welcome on the items on the agenda.

Acting Chair Haggerty also noted for the record that the Directors had received the relevant written materials in advance of the meeting and that the public had been given the opportunity to comment on the meeting's Agenda items by submitting their written comments to nytdc@esd.ny.gov by 12:00 p.m. on October 19, 2022, and no comments were received.

Acting Chair Haggerty then asked the Directors if anyone had any potential conflicts of interest with respect to the items on the Agenda. Hearing none, Acting Chair Haggerty stated that the first order of business would be approval of the Minutes for Director's meetings of February 24, 2022, and April 11, 2022. He asked if there were any questions, comments, additions, or deletions to the minutes. Hearing none, he requested a motion for approval of the meeting minutes.

Upon a motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE FEBRUARY 24, 2022 AND APRIL 11, 2022 MEETING OF THE DIRECTORS OF THE NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meetings of the Corporation held on February 24, 2022 and April 11, 2022 as presented to the Directors at the meeting, are herby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are herby in all respects ratified and approved as actions of the Corporation.

* * *

Acting Chair Haggerty then requested that Mioko Okubo present the next Agenda item, requesting an appointment of an officer of the Corporation.

Ms. Okubo explained to the Directors that she was asking for the appointment of Ray Orlando as the Corporation's Chief Financial Officer as a matter of corporate housekeeping and to ensure that the Corporation has a complement of officers at any given time who can execute required documentation on the Corporation's behalf.

Acting Chair Haggerty asked if there were any comments from the public with regard to this item. Hearing none, he initiated a motion for approval of the item. Upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Appointment of Officer; and Authorization to Take Related Actions

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WHEREAS, the Certificate of Incorporation of the Corporation was duly filed in the office of the Secretary of State of the State of New York on October 30, 2015; and

WHEREAS, it is now appropriate for the Board of Directors of the Corporation to Appoint an Officer and transact such other business as may be necessary or advisable; and

Appointment of Officer

RESOLVED, that the following individual be, and hereby is, appointed to the office which appears opposite his name, until earlier resignation or removal, his appointment being effective as set forth below:

Chief Financial Officer – Raymond Orlando, effective as of October 1, 2022

and be it further

RESOLVED, that within the meaning of the New York Not-for-Profit Corporation Law and in accordance with and for all purposes of the Corporation's By-Laws, including but not limited to the indemnification provisions thereof, the above-referenced individual is "officer" of the Corporation.

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.

* * *

Acting Chair Haggerty then asked Matthew Bray to present the next item on the agenda, which was a request for authorization to perform certain acts in connection with the sale delivery of the Corporations' special facilities bonds, senior series 2022-A tax exempt ATM, and take other related actions related to JFK Airport Terminal 6-7 redevelopment project.

Mr. Bray explained to the Directors that he was asking the Board to approve the operative provisions, sale terms, bond purchase agreement, related documents, and related actions in connection with the sale and delivery of the New York Transportation Development Corporation special facilities bonds, senior series 2022-A tax exempt AMT, JFK Airport Terminal 6-7 redevelopment project or the bonds, the operative provisions, terms, related documents, and related actions in connection with the occurrence of senior secured taxable term loans and security deposit loans.

Mr. Bray continued that the loan facility – the senior loans and the bonds – would be issued for the benefit of JFK, Millennium Partners LLC, or the borrower. At the April 11 meeting, the board took certain actions relating to the project, including the adoption of a

resolution providing for the preparation of documents related to the issuance of one or more series of tax-exempt bonds.

Mr. Bray explained it has been determined that the Corporation will issue one series of tax-exempt variable rate draw-down bonds in an amount not to exceed $435 million. The bonds will be issued in a private placement pursuant to the bond purchase agreement between the Corporation, the underwriter, and the purchaser, all as described in the authorizing resolution to be adopted today.

Mr. Bray noted that the transaction has evolved to include $3 billion in taxable senior term loans and security deposit loans referred to collectively as the senior loans. The senior loans will be loaned to the Corporation by the lenders pursuant to the Credit Agreement. The Corporation will then loan the proceeds of the senior loans to the borrower pursuant to the TDC loan agreements, all as indicated in the authorizing resolution.

Mr. Bray continued that the borrower has entered into certain swap agreements with respect to the bond and senior loans. However, the Corporation will not be a party to any swap agreements. The borrower has requested that the Corporation issue the loan facilities to provide funds for the following:

1) To pay costs and reimburse the borrower for costs paid pre-issuance relating to the demolition of the existing terminal seven, the design construction operation and equipping of a new terminal six, head house and departure and arrivals area, and the design and construction-related facilities.
2) To pay a portion of the interest on the loan facility.
3) To pay a premium for one or more bond insurance policies or reserve funds sureties for the loan facility.

4) To fund one or more debt service reserve funds, and other reserve funds for the loan facility; and

5) To pay costs of issuance related to the loan facility.

Mr. Bray explained the bonds will be issued and secured under the TDC Master Bond Indenture of Trust as supplemented by the TDC first supplemental bond and indenture of trust by and between the Corporation and the Bank of New York Mellon as trustee, pursuant to the Credit Agreement between the Corporation, the borrower, ING Capital LLC as administrative agent, Key Bank, MUFG Bank, ING Capital, Standard Chartered Bank, Sumitomo Mitsui Banking Corporation, and the Bank of Nova Scotia as lenders, and MUFG Bank as the security deposit issuing bank. Together, the bank lenders will agree upon the execution thereof to make the senior loans.

Mr. Bray further explained that for the administration of certain funds and accounts, the Corporation will enter into a collateral agency and accounts agreement with the borrower, the Bank of New York Mellon as the senior collateral agent, the trustee, the administrative agent, the Bank of New York Mellon as inter-creditor agent, the Bank of New York Mellon as securities intermediary, and the Bank of New York Mellon as the deposit account bank. The Corporation will execute and deliver a common terms agreement among the Corporation, the borrower, the administrative agent, the inter-creditor agent, the senior collateral agent, Royal Bank of Canada, as the Series 2022-A bondholder and the bank lenders, pursuant to which the parties have agreed to the terms and conditions for the issuance of the loan facility.

Mr. Bray noted that as security for the payment of the borrower's obligations under the loan agreements in 2022 TDC notes, the borrower will grant to the Corporation and the senior

collateral agent, a leasehold mortgage on the borrower's leasehold interest. The bonds will be further secured by certain monies and securities held by the trustee under the indenture.

Mr. Bray further explained the Corporation is the mortgagee to secure an exemption from the mortgage recording tax, and pursuant to the issuer assignment agreements, will assign an interest in leasehold mortgages to the senior collateral agent. The Corporation will assign its right title and interest under the loan agreements and the 2022 TDC notes to the senior collateral agent as security for the loan facility. In order to further secure its obligations under the loan agreements and leasehold mortgages, the borrower will grant an assignment of tenant leases and rents to the Corporation and the senior collateral agent.

Mr. Bray stated that the bonds and the senior loans are special limited revenue obligations of the Corporation and are not payable from or secured by any property of the Corporation other than the trust estate pledged under the indenture. The bonds and senior loans are not a debt of the State of New York, the New York Job Development Authority (the JDA), the New York State Urban Development Corporation, or ESD, or any other local Development Corporation, agency, or authority of the State, and none of these entities shall be liable on the bonds or the senior loans.

Mr. Bray further explained that the borrower has agreed to indemnify the Corporation, the State, JDA, and ESD against certain liabilities or to contribute to any payments required to be made by the Corporation relating to such liabilities. The Corporation has completed an environmental review of the project in conjunction with the other components of the JFK Redevelopment Program. Based on the review, staff recommends that the Corporation make a determination of no significant effect on the environment with respect to the project.

Mr. Bray explained that as part of the transaction, the Corporation will enter into the RBC bond purchase agreement by and between the Corporation, RBC Capital Markets as the underwriter, Royal Bank of Canada as purchaser, and the borrower for the sale by the Corporation and purchased by the underwriter of the bonds on a draw-down basis. Upon each purchase of bonds, the underwriter shall transfer the bonds to the purchaser.

Mr. Bray stated that the Corporation is being asked to delegate authority to its officers to approve the maturities, prices, yields, and other terms of the bonds. The bonds are expected to be issued as tax-exempt variable-rate draw-down bonds and will be subject to optional and mandatory redemption in whole or in part at the option of the borrower. In order to finance certain project costs, the borrower has requested the bank lenders and the Corporation enter into the credit agreement providing for the senior loans, the proceeds of which will be loaned by the Corporation to the borrower in accordance with the loan agreements.

Mr. Bray explained to the Board that in accordance with the attached resolution, you are hereby requested to:

1) Make a determination of no significant effect on the environment;
2) Authorize the inducement of the project and declaration of the official intent of the Corporation to provide funds for the reimbursement of pre-issuance expenditures for the project;
3) Approve the terms and authorize the sale of bonds;
4) Approve the terms and authorize the incurrence by the Corporation of the senior loans;

5) Approve the form and contents of the RBC Bond Purchase Agreement and various other documents connected with the sale and delivery of the bonds and senior loans; and

6) Authorize certain officers and employees of the Corporation to take all actions deemed necessary to accomplish the final sale and delivery of the bonds and incur the senior loans.

Following Mr. Bray's presentation, Acting Chair Haggerty asked if there were any question or comments from the Directors regarding the item. Director Kathleen Mize asked if this was now a combination of loans and bonds due to the economic environment and economic climate. Mr. Bray explained that due to the bond market experiencing rising interest rates, it has become harder to sell bonds in a public offering and therefore there will be a private placement and bank facility.

Acting Chair Haggerty asked Mr. Bray to clarify what the $435 million and $3 billion, mentioned during his presentation, will be used for. Mr. Bray explained the $435 million are the bonds that are going to be purchased by RBC in a private placement whereas the $3 billion is the bank loan facility of which there are six banks participating.

Acting Chair Haggerty noted for the record that there were no comments from the public regarding the item, and requested a motion to approve the item. Upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF

Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project)

TDC Senior Loans as provided for in the Credit Agreement by and among JFK Millennium Partners, LLC, New York Transportation Development Corporation, ING Capital LLC as Administrative Agent and the Lenders and Security Deposit Facility LC Issuing Bank named therein

Adopted October 20, 2022

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 other obligations; and

WHEREAS, in connection with the anticipated issuance of certain taxable and tax-exempt obligations to be used to pay costs, and to reimburse JFK Millennium Partners, LLC (the "Borrower") for costs paid pre-issuance, relating to (i) the demolition of the existing terminal 7 at the John F. Kennedy International Airport, located in Jamaica, New York 11430 (the "Airport"), (ii) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (iii) the design and construction of other related facilities at the Airport, the Corporation took steps under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") to provide for the approval of the plan of financing that includes the Series 2022A Bonds and the Senior Loans (each as defined below), and a copy of the certificate of publication of notice published on April 26, 2022, a copy of the information made available to the public pursuant to the TEFRA public hearing, and a copy of the TEFRA public hearing transcript are annexed to this Resolution as *Exhibit A*; and

WHEREAS, the Borrower has requested that the Corporation issue its obligations consisting of but not limited to (i) Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6-7 Redevelopment Project) (the "Series 2022A Bonds") and (ii) certain senior secured taxable term loans (the "Senior Term Loans") and certain security deposit loans (the "Security Deposit Loans" together with the Senior Term Loans, the "Senior Loans" and together with the Series 2022A Bonds, the "Loan Facility") to provide funds to (a) pay costs and reimburse the Borrower for costs paid pre-issuance (or refund financing incurred to initially finance such costs), relating to (1) the demolition of the existing terminal 7 at the Airport, (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at

the Airport ((1) –(3), inclusive, collectively, the "Project"); (b) pay a portion of the interest on the Loan Facility; (c) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Loan Facility; (d) fund one or more debt service reserve funds and other reserve funds, if any, for the Loan Facility; and (e) pay costs of issuance related to the Loan Facility; and

WHEREAS, the Series 2022A Bonds will be issued and secured under the TDC Master Bond Indenture of Trust (the "Master Indenture"), as supplemented by the TDC First Supplemental Bond Indenture of Trust (the "First Supplemental Indenture" and together with the Master Indenture, the "Indenture"), each dated as of October 1, 2022 by and between the Corporation and The Bank of New York Mellon, as trustee (the "Trustee"), copies of which are annexed to this Resolution as *Exhibits B-1 and B-2*; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared (i) the TDC Building Loan Agreement, dated as of October 1, 2022 (the "TDC Building Loan Agreement") and (ii) the TDC Project Loan Agreement, dated as of October 1, 2022 (the "TDC Project Loan Agreement" and together with the TDC Building Loan Agreement, the "Loan Agreements"), copies of which are annexed to this Resolution as *Exhibits C-1 and C-2* and pursuant to which the Corporation will loan the proceeds of the Series 2022A Bonds and the Senior Loans to the Borrower; and

WHEREAS, to secure the Borrower's payment obligations under the Loan Agreements, the Borrower will execute the Series 2022A Building Note and TDC Bank Debt Building Note in connection with the TDC Building Loan Agreement (collectively, the "2022 TDC Building Notes") and (ii) the Series 2022A Project Note, TDC Bank Debt Project Note and TDC Security Deposit Project Note in connection with the TDC Project Loan Agreement (collectively, the "2022 TDC Project Notes" and together with the 2022 TDC Building Notes, the "2022 TDC Notes"), form copies of which are attached to the TDC Building Loan Agreement and TDC Project Loan Agreement, respectively, each evidencing the respective loans by the Issuer to the Borrower of the proceeds of the Series 2022A Bonds and the Senior Loans; and

WHEREAS, concurrently with the issuance of the Series 2022A Bonds the Corporation will enter into a Credit Agreement (the "Credit Agreement") with the Borrower, ING Capital LLC, as administrative agent (the "Administrative Agent"), Keybank National Association, MUFG Bank Ltd., ING Capital LLC, Standard Chartered Bank, Sumitomo Mitsui Banking Corporation, and The Bank of Nova Scotia, as lenders (the "Lenders") and MUFG Bank, Ltd, as the security deposit issuing bank (the "Security Deposit Facility LC Issuing Bank" and together with the Lenders, the "Bank Lenders"), dated as of October 1, 2022, a copy of which is annexed to this Resolution as *Exhibit D*, pursuant to which, and upon execution thereof, (i) the Lenders will agree to make the Senior Term Loans to the Corporation and (ii) the Security Deposit Facility LC Issuing Bank will agree to make the Security Deposit Loans to the Corporation, each on the terms and subject to the conditions set forth therein, the proceeds of which shall be loaned by the Corporation to the Borrower, and the Borrower will use the proceeds of which to finance a portion of the costs of the Project; and

WHEREAS, for the administration of certain funds and accounts, the Corporation will enter into a Collateral Agency and Accounts Agreement, dated as of October 1, 2022 (the "Collateral Agency and Accounts Agreement") with the Borrower, The Bank of New York Mellon, as the Senior Collateral Agent (the "Senior Collateral Agent"), the Trustee, the Administrative Agent, The Bank of New York Mellon, as Intercreditor Agent (the "Intercreditor Agent"), The Bank of New York Mellon, as Securities Intermediary (the "Securities Intermediary") and The Bank of New York Mellon, as Deposit Account Bank (the "Deposit Account Bank"), a copy of which is annexed to this Resolution as *Exhibit E*; and

WHEREAS, the Corporation will execute and deliver a Common Terms Agreement, dated as of October 1, 2022 (the "Common Terms Agreement"), between the Corporation, the Borrower, the Administrative Agent, the Intercreditor Agent, the Senior Collateral Agent, Royal Bank of Canada, in its capacity as Series 2022A Bondholder and the Bank Lenders, pursuant to which the parties have agreed to the terms and conditions for the issuance of the Loan Facility, a copy of which is annexed to this Resolution as *Exhibit F*; and

WHEREAS, the Corporation will assign certain of its rights under the TDC Building Loan Agreement and the 2022 TDC Building Notes to the Senior Collateral Agent as security for the Loan Facility pursuant to the Assignment Agreement (Building Loan) (the "Issuer Assignment Agreement (Building Loan)") dated as of October 1, 2022, a copy of which is annexed to this Resolution as *Exhibit G-1*; and

WHEREAS, the Corporation will assign certain of its rights under the TDC Project Loan Agreement and the 2022 TDC Project Notes to the Senior Collateral Agent as security for the Loan Facility pursuant to the Assignment Agreement (Project Loan) (the "Issuer Assignment Agreement (Project Loan)" and together with the Issuer Assignment Agreement (Building Loan), the "Issuer Assignment Agreements") dated as of October 1, 2022, a copy of which is annexed to this Resolution as *Exhibit G-2*; and

WHEREAS, in order to secure, *inter alia,* its obligations under the Loan Agreements, the Borrower will grant to the Corporation and the Collateral Agent a leasehold mortgage in the Borrower's leasehold interest under the Agreement of Lease to be entered into on or about the Closing Date (as defined in Exhibit A to the Collateral Agency and Accounts Agreement) (the "Lease Agreement") pursuant to the TDC Building Loan Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 1, 2022 (the "Building Leasehold Mortgage") and the TDC Project Loan Leasehold Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of October 1, 2022 (the "Project Leasehold Mortgage" and together with the Building Leasehold Mortgage, the "Leasehold Mortgages"), copies of which are annexed to this Resolution as *Exhibits H-1 and H-2*; and

WHEREAS, the Corporation will be a mortgagee under the Leasehold Mortgages to secure an exemption from the mortgage recording tax and then will assign its interest in the Leasehold Mortgages to the Senior Collateral Agent pursuant to the Issuer Assignment Agreements; and

WHEREAS, in order to further secure its obligations under the Loan Agreements and Leasehold Mortgages, the Borrower will grant an assignment of tenant leases and rents to the Corporation and the Senior Collateral Agent pursuant to the Assignment of Leases and Rents (Building Loan) (the "Assignment of Leases and Rents (Building Loan)") and the Assignment of Leases and Rents (Project Loan) (the "Assignment of Leases and Rents (Project Loan)" and together with the Assignment of Leases and Rents (Building Loan), the "Assignment of Lease and Rents"), each dated as of October 1, 2022, copies of which are annexed to this Resolution as *Exhibits I-1 and I-2*; and

WHEREAS, in connection with the Series 2022A Bonds, the duly authorized officers of the Corporation have negotiated a purchase contract (the "RBC Bond Purchase Agreement") by and between the Corporation, RBC Capital Markets, LLC, as underwriter (the "Underwriter"), Royal Bank of Canada, as purchaser (the "Purchaser") and the Borrower for the sale by the Corporation and purchase by the Underwriter on a draw down basis of the Series 2022A Bonds, who shall, upon each such purchase of Series 2022A Bonds, transfer the Series 2022A Bonds so purchased to the Purchaser, a copy of which is annexed to this Resolution as *Exhibit J*; and

WHEREAS, the Corporation has considered the potential environmental impacts of the JFK Airport Terminal 6-7 Redevelopment Project in conjunction with the other components of the JFK International Airport Redevelopment Program and finds that such project would have no significant adverse impacts on the environment and that a Negative Declaration should be issued for the project pursuant to the New York State Environmental Quality Review Act; and

WHEREAS, the Corporation hereby declares its official intent, solely for purposes of United States Treasury Regulations §1.150-2, to issue the Loan Facility and use the proceeds thereof to pay or reimburse the Borrower for eligible Project costs. This declaration of official intent is made concurrent with the approval of the Project by the Corporation pursuant to the Resolution. The Corporation understands that the Borrower has paid and will pay certain capital expenditures in connection with the Project prior to the issuance of the Loan Facility for the Project. The Borrower may use temporary funds that are or will be available on a short-term basis to pay for preliminary expenditures, construction costs and certain equipping costs for the Project. Said declaration is based upon the representations of the Borrower that the Borrower reasonably expects to be reimbursed for the use of such funds with the proceeds of the Loan Facility to be issued by the Corporation or another authorized governmental issuer to finance the Project costs. The maximum principal amount of the Loan Facility currently expected to be issued for the Project is $4 billion.

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 Exhibits 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 Corporation hereby makes a Determination of No Significant Effect on the Environment with respect to the JFK Airport Terminal 6-7 Redevelopment Project; and further

RESOLVED, that the Master Indenture, the First Supplemental Indenture, the TDC Building Loan Agreement, the TDC Project Loan Agreement, the Credit Agreement, the Collateral Agency and Accounts Agreement, the Common Terms Agreement, the Issuer Assignment Agreement (Building), the Issuer Assignment Agreement (Project), the Building Leasehold Mortgage, the Project Leasehold Mortgage, the Assignment of Leases and Rents (Building), the Assignment of Leases and Rents (Project) and the RBC Bond Purchase Agreement in substantially the forms presented to this meeting, are hereby approved, and any Authorized Officer (as defined below) 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 amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Series 2022A Bonds (the "Bond Terms") insofar as set forth in the Indenture, are hereby approved, with the understanding that such Bond Terms will be finalized in connection with the sale and issuance of the Series 2022A Bonds, 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, the Collateral Agency and Accounts Agreement and the RBC Bond Purchase Agreement and that all other documents relating to the Series 2022A Bonds shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Series 2022A Bonds shall not exceed $435,000,000 and the final maturity shall not extend past 2060; and further

RESOLVED, that the amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Senior Loans (the "Bank Terms") insofar as set forth in the Credit Agreement, are hereby approved, with the understanding that such Bank Terms will be finalized in connection with the issuance of the Senior Loans, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer's execution of each of the Credit Agreement and the Collateral Agency and Accounts Agreement, and that all other documents relating to the Senior Loans shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Senior Loans under the Credit Agreement shall be approximately $3,400,000,000 and the final maturity shall not extend past 2060; and further

RESOLVED, that, subject to the conditions set forth in the RBC Bond Purchase Agreement, the Corporation shall sell and award the aggregate principal amount of the Series 2022A Bonds to the Underwriter and the Underwriter will assign the Series 2022A Bonds so purchased by the Underwriter to the Purchaser and the Corporation shall issue and deliver the Series 2022A Bonds pursuant to the RBC Bond Purchase Agreement, the Collateral Agency and Accounts Agreement and the Indenture and shall apply the proceeds thereof in accordance

with the Collateral Agency and Accounts Agreement and the Indenture and certain documents and certificates to be delivered upon the issuance of the Series 2022A Bonds; and further

RESOLVED, that each of the Chair, President, Chief Financial Officer, Deputy General Counsel, Controller, 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 Master Indenture, the First Supplemental Indenture, the TDC Building Loan Agreement, the TDC Project Loan Agreement, the Credit Agreement, the Collateral Agency and Accounts Agreement, the Common Terms Agreement, the Issuer Assignment Agreement (Building), the Issuer Assignment Agreement (Project), the Building Leasehold Mortgage, the Project Leasehold Mortgage, the Assignment of Leases and Rents (Building), the Assignment of Leases and Rents (Project) and the RBC Bond Purchase Agreement and all other related documents as he or she may reasonably deem necessary, desirable or appropriate to consummate the transactions, or any refinancing thereof, authorized hereby and thereby including, without limitation, one or more tax compliance certificates relating to the Loan Facility (collectively, the "Tax Compliance Certificate") and hedge identification certificates relating to any component of the Loan Facility or any short or long term bonds to refinance the Loan Facility, 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 2022A Bonds, and the loan of the proceeds of the Series 2022A Bonds to the Borrower, the incurrence of the Senior Loans, and the loan of the proceeds of the Senior Loans to the Borrower, the execution and delivery of the Tax Compliance Certificate, 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 2022A Bonds, the incurrence of the Senior Loans and the loan of the proceeds of the Series 2002A Bonds and Senior Loans to the Borrower by any Authorized Officer or his or her designee are hereby ratified and approved.

* * *

There being no further business, the meeting was adjourned.

Respectfully submitted,

Regina Stephens
Assistant Corporate Secretary

Item 2

NEW YORK STATE OF OPPORTUNITY. | New York Transportation Development Corporation

FOR CONSIDERATION
March 21, 2023

TO: The Directors

FROM: Matthew Bray

SUBJECT: MTA P3 ADA Project at New York City Transit Authority Subway Stations – Series 2023 Bonds

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

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I. BACKGROUND

Elevated Accessibility Enhancements Operating Company LLC (the "Borrower" or "EAE") has requested the New York Transportation Development Corporation (the "Corporation" or "TDC") to issue approximately $400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) (collectively, the "Bonds"), proceeds of which Bonds will be used to finance improvements to the New York State Metropolitan Transportation Authority (the MTA subway system. Following a procurement process, the MTA") acting through Metropolitan Transportation Authority Construction & Development Company ("MTA C&D") selected EAE to design, build, finance and maintain certain vertical accessibility improvements at 13 stations served by the New York City Transit Authority subway system, including the procurement, installation and long-term maintenance of 34 new elevators at the 13 stations (the "Project").

EAE is a special purpose vehicle, which on December 28th, 2022, entered into the Project Agreement with MTA (the "Project Agreement"). EAE will facilitate design and construction works during a 42-month term through a turnkey design-build contract with Halmar International, LLC ("Halmar") and upon achievement of project substantial completion, procure maintenance services through a turnkey maintenance subcontract with Halmar as counter-party for an initial 15-year term subject to two (2) optional, five (5) year extension terms at the sole discretion of the MTA. In consideration for the turnkey services, EAE is entitled to receipt from the MTA payable under the Project Agreement (1) periodic progress payments during construction, (2) substantial completion and final completion payments upon satisfactory completion of the Project, (items (1) and (2) constituting

unsecured contractual obligation of the MTA), (3) maintenance availability payments through the maintenance term and (4) capital availability payments throughout the financing term, (items (3) and (4) being secured by a subordinate lien on the MTA's transportation revenues under the MTA transportation revenue bond resolution) (collectively, the "Payment Mechanism"). Proceeds from the Payment Mechanism after operations and maintenance expenditures will be pledged as security for the debt service and repayment of the Bonds.

II. SELECTION OF SENIOR MANAGING UNDERWRITER

The Borrower has selected Citigroup ("Citigroup") as the senior managing underwriter. Citigroup 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 February 24, 2020. The Borrower selected Citigroup for its extensive experience in all aspects of municipal finance, extensive experience as an underwriter on other TDC and ESD bond issuances, and its response and rating in the pre-qualification process. The Corporation, in consultation with the Borrower, 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 the Borrower, the ability to appoint additional underwriters as the deal progresses.

III. SELECTION OF FINANCIAL ADVISOR

The Corporation also may select a financial advisor from TDC'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 February 24, 2020.

A financial advisor may be selected based on its: (i) extensive experience in all aspects of municipal finance, particularly transportation financing, (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 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 a financial advisor, if one is utilized, for the Bond issuance for the reasons and on the terms noted above. The firm will be paid by the Borrower pursuant to a Pre-Financing Agreement.

IV. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

The Corporation's Non-Discrimination and Contractor & Supplier Diversity policies will apply to these contracts. The Underwriter shall be required to include minorities and women in any job opportunities created, to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve MWBE participation.

In accordance with Article 17-B of the Executive Law, vendors will be strongly encouraged to the maximum extent practical and consistent with legal requirements to use responsible and responsive Service-Disabled Veteran-Owned Businesses in the fulfillment of the requirements of this contract.

V. BOND DOCUMENTS AND PROJECT

It is intended that the Bonds will be issued to finance a portion of the 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 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 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 ("SEQRA") and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with the authorization.

VII. 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, authorizing the appointment of financial advisor(s), authorizing the preparation of the required Bond documents and actions related to the Project, and take any related actions.

VIII. RECOMMENDATION

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

IX. ATTACHMENT

Resolution

March 21, 2023

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION — MTA P3 ADA Project at New York City Transit Authority Subways Stations - Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Documents and Actions Related to the Project; and Authorization to Take Related Actions

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WHEREAS, Elevated Accessibility Enhancements Operating Company, LLC (the "Borrower") has requested the New York Transportation Development Corporation (the "Corporation" or "TDC") to issue approximately $400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) (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, authorize selection of financial advisor(s), authorize the preparation of required Bond documents in connection with the issuance of the Bonds and actions related to the 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 Citigroup 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 the Borrower, shall select.

Selection of Financial Advisors

RESOLVED, that the Corporation hereby consents to the right to appoint financial advisor(s) for the 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 Project.

Miscellaneous

RESOLVED, that the President or other Officer and their 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

New York Transportation Development Corporation

FOR CONSIDERATION
March 21, 2023

TO: The Directors

FROM: Matthew Bray

SUBJECT: Procurement of Legal Services – Harris Beach PLLC

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

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CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

Counsel: Harris Beach PLLC ("Harris Beach" 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 Transportation Development Corporation (the "Corporation" or "TDC") will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately $400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) (collectively, the "Bonds").

Contract Amount: All Counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds or equity 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: Elevated Accessibility Enhancements Operating Company, LLC ("EAE" or the "Borrower") will fund the contract in its entirety 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 the Borrower for that purpose.

II. BACKGROUND

EAE has requested the Corporation serve as the issuer for the Bonds, the proceeds of which will be used by the Borrower to design, build, finance and maintain certain vertical accessibility improvements at 13 stations served by the New York City Transit Authority subway system, including the procurement, installation and long-term maintenance of 34 new elevators at the 13 stations.

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. Counsel is on this new 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 and the Corporation including serving as co-bond counsel on several other Corporation transportation financings; (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, resolution amendments, 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, the Borrower will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. The Borrower will pay all Counsel costs and expenses from Bond proceeds or equity 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 the Borrower 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 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 contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of at least 30% related to the total amount of the Corporation's bond counsel fees. Harris Beach has agreed to use good faith efforts to allocate work to Hardwick. The Board of Directors is simultaneously being asked to separately retain Hardwick as MWBE counsel for this bond transaction to meet these requirements.

IX. REQUESTED ACTION

The Board of Directors is asked to authorize the retention of Harris Beach 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

March 21, 2023

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services Harris Beach PLLC - Authorization to Enter into a Contract for Legal Services in Connection with MTA P3 ADA Project at New York City Transit Authority Subway Stations; 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 finds Harris Beach PLLC ("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 or other Officer and their 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.

* * *

Item 4

New York Transportation Development Corporation

FOR CONSIDERATION
March 21, 2023

TO: The Directors

FROM: Matthew Bray

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

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

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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 Harris Beach PLLC ("Harris Beach") which the board of directors (the "Board of Directors") of the New York Transportation Development Corporation (the "Corporation" or "TDC") will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately $400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) ("Bonds").

Contract Amount: All Counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds or equity on or about the closing of the Bonds. Harris Beach 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 Elevated Accessibility Enhancements Operating Company, LLC ("EAE" or the "Borrower") 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 the Borrower for that purpose.

II. BACKGROUND

EAE has requested the Corporation serve as the issuer of the Bonds, the proceeds of which will be used by the Borrower to design, build, finance and maintain certain vertical accessibility improvements at 13 stations served by the New York City Transit Authority subway system, including the procurement, installation and long-term maintenance of 34 new elevators at the 13 stations.

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. Counsel is on this new 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 and the Corporation including serving as co-bond counsel on several other Corporation transportation financings; (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, resolution amendments, 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, the Borrower will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All Counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds or equity on or about the closing of the Bonds. Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower 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 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 contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of the Corporation's bond counsel fees. However, by virtue of Counsel's status as an MWBE, Counsel satisfies the MWBE requirement without the need for additional MWBE participation. Harris Beach has agreed in a separate retainer to use good faith efforts to achieve this participation goal.

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

March 21, 2023

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services Hardwick Law Firm, LLC - Authorization to Enter into a Contract for Legal Services in Connection with MTA P3 ADA Project at New York City Transit Authority Subway Stations; 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 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 or other Officer and their 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.

* * *

Item 5

New York Transportation Development Corporation

FOR CONSIDERATION
March 21, 2023

TO: The Directors

FROM: Matthew Bray

SUBJECT: Procurement of Legal Services – BurgherGray LLP

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

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I. CONTRACT SUMMARY

Counsel: BurgherGray LLP ("BurgherGray" 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 Transportation Development Corporation (the "Corporation" or "TDC") will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of approximately $400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) (collectively, the "Bonds").

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

Funding Source: The contract will be funded in its entirety by Elevated Accessibility Enhancements Operating Company, LLC ("EAE" or the "Borrower") on or about the Bond closing date. 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 the Borrower for that purpose.

II. BACKGROUND

EAE has requested the Corporation serve as the issuer of the Bonds, the proceeds of which will be used by the Borrower to design, build, finance and maintain certain vertical accessibility

improvements at 13 stations served by the New York City Transit Authority subway system, including the procurement, installation and long-term maintenance of 34 new elevators at the 13 stations.

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. Counsel is on this new Pre-Qualified Counsel List for bond counsel services.

It is recommended that BurgherGray serve as issuer's counsel for this transaction. Selection of Counsel for this transaction was predicated on the fact that BurgherGray is a certified Minority and Women-Owned Business Enterprise ("MWBE") and previously served as co-bond counsel and disclosure counsel for several recent transportation financings by the Corporation. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel's specific and necessary expertise as counsel to the Corporation, (b) Counsel's performance with distinction on other transportation transactions, (c) Counsel's rate proposal, and (d) the ESD pre-qualification process.

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, the Borrower will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All Counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds or equity on or about the closing of the Bonds. Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower 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 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 contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve MWBE participation. Counsel 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 BurgherGray 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

March 21, 2023

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services BurgherGray LLP - Authorization to Enter into a Contract for Legal Services in Connection with MTA P3 ADA Project at New York City Transit Authority Subway Stations; 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 finds BurgherGray 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 or other Officer and their 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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