

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

MEETING OF THE DIRECTORS

TUESDAY

JULY 21, 2020

11:30 a.m.

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Tuesday

July 21, 2020 – 11:30 a.m.

AGENDA

FOR CONSIDERATION

1. New York Transportation Development Corporation - Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions
2. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with Squire Patton Boggs (US) LLP for Co-Bond Counsel Services in Connection with the LaGuardia Airport Terminals C & D Redevelopment Project; and Authorization to Take Related Actions
3. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with D. Seaton and Associates for Legal Services in Connection with the LaGuardia Airport Terminals C & D Redevelopment Project; and Authorization to Take Related Actions
4. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with BurgherGray LLP for Legal Services in Connection with the LaGuardia Airport Terminals C & D Redevelopment Project; and Authorization to Take Related Actions

ITEM 1

FOR CONSIDERATION

July 21, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: LaGuardia Airport Terminals C&D Redevelopment Project

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

I. BACKGROUND

As part of the redevelopment of La Guardia Airport (“LGA”), Delta Air Lines, Inc. (“Delta”) has requested that the New York Transportation Development Corporation (the “Corporation” or “TDC”) issue tax-exempt bonds (the “Bonds”) in the approximate amount of \$3.6 billion, inclusive of the \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”), the proceeds of which will be used by Delta (the “Borrower”) to complete the new Terminal C and make related improvements to the facilities at LGA (the “Project”).

II. SELECTION OF SENIOR MANAGING UNDERWRITER

Citigroup Global Markets, Inc. (“Citi”) has been selected as the senior managing underwriter. Citi is on the pre-qualified list of underwriters for 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. Citi was requested by the Borrower and then selected for its extensive experience in all aspects of municipal finance, its extensive experience as an underwriter on other TDC and ESD bond issuances, including the 2018 Bonds, 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.

Staff of the Corporation 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

Public Resources Advisory Group, Inc. ("PRAG") has been selected as the financial advisor representing the Corporation for the Project. The firm is on the pre-qualified list of financial advisors for the Corporation (the "Pre-Qualified List of FAs"). The Pre-Qualified List of FAs was created after an RFP process by ESD and was adopted by the Corporation on February 24, 2020.

The Directors are requested to authorize the selection of financial advisor for the Bond issuance.

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. Establishment of specific goals for Underwriters related to the total value of funding is still pending.

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. FEDERAL TAX LAW REQUIREMENTS

TEFRA approval was previously obtained on April 12, 2018 and is valid for any tax-exempt private activity bonds that NYTDC issues for the same plan of finance before May 3, 2021, up to the original not-to-exceed amount of \$3.6 billion.

VI. DOCUMENTS

It is intended that the Bonds will be issued to finance a portion of the Project. Accordingly, the related documents must be drafted and approved for the issuance of the Bonds expeditiously. The Directors are requested to consent to the commencement of drafting documents. An additional meeting of the Directors will occur to approve the form of final documents.

VII. ENVIRONMENTAL REVIEW

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

VIII. REQUESTED ACTION

Staff recommends that the Directors authorize the selection of a senior managing underwriter, the appointment of additional underwriters, the appointment of a financial advisor, the preparation of documents in connection with the Bonds and take any related actions.

IX. RECOMMENDATION

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

X. ATTACHMENT

Resolution

July 21, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION — LaGuardia Airport Terminals C&D Redevelopment Project - Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions

WHEREAS, the New York Transportation Development Corporation (the “Corporation”) has been requested by Delta Air Lines, Inc. (the “Borrower”) to issue bonds (the “Bonds”) to fund the Project; and

WHEREAS, in order to facilitate the issuance of the Bonds as requested, the officers of the Corporation propose to authorize selection of a senior managing underwriter and appointment of additional underwriters, authorize selection of a financial advisor, authorize the preparation of documents necessary or desirable in connection with the issuance of the Bonds 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 Underwriters

RESOLVED, that the Corporation hereby consents to Citigroup Global Markets, Inc. 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 Advisor

RESOLVED, that the Corporation hereby consents to Public Resources Advisory Group, Inc. to be the financial advisor for the Bonds.

Preparation of Bond Documents

RESOLVED, that the Corporation hereby authorizes the preparation of documents necessary or desirable in connection of the issuance of the Bonds.

Miscellaneous

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

this authorization are hereby ratified and affirmed.

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ITEM 2

FOR CONSIDERATION

July 21, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Procurement of Legal Services – Squire Patton Boggs (US) LLP

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the LaGuardia Airport Terminals C&D Redevelopment Project; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

Counsel: Squire Patton Boggs (US) LLP (“Squire” or “Counsel”)

Scope of Services: Counsel would serve as co-bond counsel together with the law firm of D. Seaton and Associates. P.A., P.C. (“Seaton”) for which the directors (the “Directors”) of the New York Transportation Development Corporation (the “Corporation”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of revenue bonds (the “Bonds”) for the purpose of funding a portion of the construction of a new Delta terminal at LaGuardia Airport.

Contract Amount: All counsel fees for the Bonds, including Counsel’s fee and all affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the of the par amount of the Bonds. Counsel will be required to use good faith efforts to allocate at least 40% participation on this matter to Seaton.

Funding Source: The contract will be funded in its entirety by Delta Air Lines, Inc. (“Delta” 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

Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$3.6 billion, inclusive of \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds (Delta Air Lines, Inc. – LaGuardia Airport Terminals C & D Redevelopment Project) issued in 2018 (the “2018 Bonds”), which will fund: the demolition of existing Terminals C and D, the construction of a new terminal, which Borrower will lease from the Port Authority of New York and New Jersey, and other related improvements at LaGuardia Airport.

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

III. COUNSEL SELECTION PROCESS

On June 27, 2016 the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff reached out to multiple firms, including firms on the existing Pre-Qualified Counsel List and placed an advertisement in the *New York State Contract Reporter* requesting proposals from law firms to create a new Pre-Qualified Counsel List in the following practice areas (including, in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments; and (11) regulatory litigation.

Seventy-eight Firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of seven ESD attorneys, including the Senior Counsels responsible for environmental, litigation, contractor and supplier diversity and employment matters and the Deputy General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List which ESD approved on February 16, 2017. Based on ESD’s review process and board approval, the Corporation’s Directors adopted the ESD Pre-Qualified Counsel List on February 16, 2017. Counsel is on this Pre-Qualified Counsel List for bond counsel services.

It is recommended that Squire serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was predicated on the experience of the attorneys from Squire that previously served as co-bond counsel for the 2018 Bonds and for the 2016 issuance of bonds to finance the redevelopment of Terminal B and the Central Hall at LaGuardia Airport that closed in 2016. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel, (b) Counsel’s performance with distinction on other airport transactions, including for the 2018 Bonds, (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 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 following types of documents: 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

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition, bond counsel expertise is necessary to ensure compliance with applicable 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 on or about the closing on the Bonds. All counsel fees on the Bonds, including Seaton and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. 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, 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 proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

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 40% related to the total amount of ESD's bond counsel fees. Squire has agreed to use good faith efforts to allocate work to Seaton. The Directors are simultaneously being asked to separately retain Seaton as MWBE counsel for this bond transaction to meet these requirements.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Squire 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 action.

XI. ATTACHMENT

Resolution

July 21, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services
Squire Patton Boggs (US) LLP - Authorization to Enter into a Contract for Legal Services in
Connection with the LaGuardia Airport Terminals C&D Redevelopment Project; and
Authorization to Take Related Actions

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

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

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

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ITEM 3

FOR CONSIDERATION

July 21, 2020

TO: The Directors

FROM: Howard A. Zemsky

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

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the LaGuardia Airport Terminals C&D Redevelopment Project; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

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

Scope of Services: Counsel would serve as co-bond counsel together with the law firm of Squire Patton Boggs (US) LLP (“Squire”) for which the directors (the “Directors”) of the New York Transportation Development Corporation (the “Corporation”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of revenue bonds (the “Bonds”) for the purpose of funding a portion of the construction of a new Delta terminal at LaGuardia Airport.

Contract Amount: All counsel fees for the Bonds, including Counsel’s fee and all affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the of the par amount of the Bonds. Squire will be required to use good faith efforts to allocate at least 40% participation on this matter to Counsel.

Funding Source: The contract will be funded in its entirety by Delta Air Lines, Inc. (“Delta” 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

Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$3.6 billion, inclusive of \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”), which will fund: the demolition of existing Terminals C and D, the construction of a new terminal, which Borrower will lease from the Port Authority of New York and New Jersey, and other related improvements at LaGuardia Airport.

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

III. COUNSEL SELECTION PROCESS

On June 27, 2016 the New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff reached out to multiple firms, including firms on the existing Pre-Qualified Counsel List and placed an advertisement in the *New York State Contract Reporter* requesting proposals from law firms to create a new Pre-Qualified Counsel List in the following practice areas (including, in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments; and (11) regulatory litigation.

Seventy-eight Firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of seven ESD attorneys, including the Senior Counsels responsible for environmental, litigation, contractor and supplier diversity and employment matters and the Deputy General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List which ESD approved on February 16, 2017. Based on ESD’s review process and board approval, the Corporation’s Directors adopted the ESD Pre-Qualified Counsel List on February 16, 2017. Counsel is on this Pre-Qualified Counsel List for bond counsel services.

Staff recommended 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 or disclosure counsel on five other Corporation airport financings; (c) 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 following types of documents: 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

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition, bond counsel expertise is necessary to ensure compliance with applicable 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 on or about the closing on the Bonds. All counsel fees on the Bonds, including Squire and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. 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, 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 proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

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 40% 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. Squire has agreed in a separate retainer to use good faith efforts to achieve this participation goal.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of D. Seaton Associates 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 action.

XI. ATTACHMENT

Resolution

July 21, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services
D. Seaton and Associates, P.A., P.C. - Authorization to Enter into a Contract for Legal Services in
Connection with the LaGuardia Airport Terminals C&D Redevelopment Project; and
Authorization to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation hereby finds the law firm of D. Seaton and Associates, P.A., P.C. (“Counsel”) to be responsible; and be it further

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

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

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ITEM 4



FOR CONSIDERATION

July 21, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Procurement of Legal Services – BurgherGray LLP

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the LaGuardia Airport Terminals C&D Redevelopment Project; and Authorization to Take Related Actions

I. CONTRACT SUMMARY

Counsel: BurgherGray LLP (“Counsel”)

Scope of Services: Counsel would serve as bond disclosure counsel for which the directors (the “Directors”) of the New York Transportation Development Corporation (the “Corporation”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of revenue bonds (the “Bonds”) for the purpose of funding a portion of the construction of a new Delta terminal at LaGuardia Airport.

Contract Amount: All counsel fees for the Bonds, including Counsel’s fee and all affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the of the par amount of the Bonds.

Funding Source: The contract will be funded in its entirety by Delta Air Lines, Inc. (“Delta” 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

Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$3.6 billion, inclusive of \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”), which will fund: the demolition of existing Terminals C and D, the construction of a new terminal, which

Borrower will lease from the Port Authority of New York and New Jersey, and other related improvements at LaGuardia Airport.

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

III. COUNSEL SELECTION PROCESS

On June 27, 2016 staff of New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) reached out to multiple firms, including firms on the existing Pre-Qualified Counsel List and placed an advertisement in the New York State Contract Reporter requesting proposals from law firms to create a new Pre-Qualified Counsel List in the following practice areas (including, in each instance, litigation capabilities): (1) real estate and land use; (2) construction; (3) environmental; (4) condemnation; (5) bankruptcy; (6) taxation; (7) bond financing; (8) foreclosure; (9) employment; (10) transactional direct and indirect investments; and (11) regulatory litigation.

Seventy-eight Firms responded to the solicitation. The responses were evaluated by a Review Committee consisting of seven ESD attorneys, including the Senior Counsels responsible for environmental, litigation, contractor and supplier diversity and employment matters and the Deputy General Counsel. The Review Committee recommended a new Pre-Qualified Counsel List which ESD approved on February 16, 2017. Based on ESD’s review process and board approval, the Corporation’s Directors adopted ESD’s Pre-Qualified Counsel List on February 16, 2017. BurgherGray LLP (“BurgherGray”) is on this Pre-Qualified Counsel List for bond counsel services.

It is recommended that BurgherGray serve as disclosure 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 two recent airport financings by the Corporation. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel, (b) Counsel’s performance with distinction on other airport 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 following types of documents: sale contracts, resolution amendments, disclosure documents and tax opinions.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

As a result of recent changes to Federal securities laws, in particular the Dodd-Frank Act, there are an increasing number of rules and an increasing amount of oversight with respect to disclosure and continuing disclosure for issuers of tax-exempt bonds. In order to fully address these requirements many issuers are retaining separate disclosure counsel. This additional expertise will help ensure compliance with applicable securities laws and market practices.

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 on or about the closing on the Bonds. All counsel fees on the Bonds, including BurgherGray and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. 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, 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 proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act and the implementing regulations for the New York Department of Environmental Conservation. No further environmental review is required in connection with this authorization.

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 an MWBE.

The Corporation recognizes its obligations under New York State Executive Law Article 17-B to promote opportunities for maximum feasible participation of certified Service-Disabled Veteran Owned Businesses (“SDVOB”) in the performance of the Corporation’s contracts. OCSD has reviewed this contract and determined that SDVOB goals are impractical and will not be applied.

IX. REQUESTED ACTION

The Directors are requested to authorize the retention of BurgherGray LLP 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 action.

XI. ATTACHMENT

Resolution

July 21, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services
BurgherGray LLP - Authorization to Enter into a Contract for Legal Services in Connection with
the LaGuardia Airport Terminals C&D Redevelopment Project; and Authorization to Take
Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the “Materials”), the Corporation hereby finds the law firm of 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 and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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