



New York
Transportation
Development
Corporation

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Wednesday

July 25, 2018 – 1:00 p.m.

REVISED PROPOSED AGENDA

CORPORATE ACTIONS

1. Approval of the Minutes of the December 11, 2017 Meeting of the Directors
2. Procurement Guidelines – Authorization to Adopt Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts
3. Amended Corporation Conflict of Interest and Related Party Transaction Policy and Amendments to the By-Laws in Accordance with Amendments to the New York Not-For-Profit Corporation Law - Approval of an Amended Conflicts Policy; and Approval of Amendments to the By-Laws and Related Actions
4. New York Transportation Development Corporation – Adoption of the Annual Report; and Authorization to Take Related Actions

ITEM 1

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

December 11, 2017

MINUTES

In Attendance

Directors:

Howard Zemsky, Chairman (by Video Conference)
George Haggerty
Kathleen Mize

NYTDC Staff:

Elizabeth R. Fine – Executive Vice President - Legal
and General Counsel
Elaine A. Kloss – CFO
Regina Stephens – Assistant Secretary

ESD Staff:

Julene Beckford, Associate Counsel and Records
Access Appeal Officer
Jonathan Beyer – Senior Counsel
Ann Kenny, Treasurer
Benson Martin – Director of Compliance
Peter Heilburnn – Assistant Treasurer, Debt Management

Also Present:

Larry Belinsky – Frasca & Associates
Robert DeMichiel – Citi Bank
Katherine S. McManus – Hardwick Law Firm, LLC
Patricia Ornst – Delta Airlines, Inc.
Christopher Reitzel – Squire Patton Boggs
Douglas Seaton – D. Deaton & Associates

The meeting of the New York Transportation Development Corporation (the “Corporation”), a Local Development Corporation created under New York State law, was called to order at approximately 2:02 p.m. It was noted for the record that notices to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law and that the meeting was being webcast. Further, Chairman Howard Zemsky noted that the Directors had received relevant written materials in advance of the meeting and noted for the record that the Corporation’s policy welcomes public comments on the current Agenda items.

Before beginning with the substantive portion of the meeting, Chairman Zemsky asked the Directors whether anyone had any potential conflict of interest with respect to any of the items on the proposed Agenda. Hearing none, the Chair called for the approval of the Minutes of the July 20, 2017 Directors’ meeting.

There being no corrections or deletions, upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JULY 20, 2017 MEETING OF THE DIRECTORS OF NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on July 20, 2017 as presented to the Directors at this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respect ratified and approved as actions of the Corporation.

Chairman Zemsky then called on Elaine Kloss to present the next item on the Agenda, a request for authorization to perform certain acts in connection with the sale and delivery of New York Transportation Development Corporation Special Facility Revenue Bond, Series 2017, to finance the replacement of Delta terminals at LaGuardia Airport. Chairman Zemsky explained that following Ms. Kloss' presentation, representatives from Delta and Citi Bank will present background information on Delta's Construction Project and will be available to answer any questions from the Directors.

In her presentation, Ms. Kloss stated that the Series 2017 Bonds would be renamed Series 2018. She further explained that the board is being asked to delegate authority to authorize officers of the Corporation to approve the maturities, prices, yields as well as other terms of the bonds. Further, Ms. Kloss explained that the bonds would be issued for the benefit of Delta Airlines to fund construction at its LaGuardia Airport Terminals C and D, and that the bonds would be used to demolish and replace the existing Terminals C and D with new terminal facilities.

Ms. Kloss's presentation was briefly interrupted by technical difficulties with the audio of the video conference. Once the technical difficulties were resolved, Ms. Kloss continued her presentation by explaining the terms and conditions of the bonds issuance and sale. Ms. Kloss explained that Delta would pay, if Delta elects to, a portion of the interest on the bonds accruing during the terminal construction; and pay certain issuance costs related to the Series 2018 Bonds.

Ms. Kloss explained that the Corporation will enter into a Bond Purchase Agreement with Delta Airlines and Citigroup for the initial underwriting of the Series 2018 bonds and then the bond proceeds will be loaned to Delta. She continued referring to the board materials which indicate that (i) the senior manager and book runner to this bond transaction will be Citigroup Global Markets; (ii) the joint book runners will be Goldman Sachs, J.P. Morgan Securities, Bank of America, Merrill Lynch as well as Morgan Stanley, U.S. Bank Corp, Barclays Capital, Wells Fargo and Loop Capital, and (iii) Samuel A. Ramirez & Co. and Seibert Cisneros Shank & Co. will serve as co-managers. Ms. Kloss further explained that the last three firms are New York State Certified MWBE businesses; and that the Bank of New York Mellon will serve as the Trustee.

According to Ms. Kloss, the amount of principle on the Series 2018 bonds will not exceed \$4 billion; the final bond maturity will not extend beyond January 1, 2051; and the interest rates on the bonds will not exceed ten percent.

Ms. Kloss concluded by requesting that the Directors approve the terms of the Series 2018 bonds, authorize the sale of the bonds, confirm the appointment of certain professionals, approve the preliminary official statement and other bond documents; and authorize certain officers and employees of the Corporation to take all necessary actions to execute the final sale and delivery of the bonds.

Following her presentation, Ms. Kloss introduced Bob DeMichiel, Managing Director of Citigroup. Mr. DeMichiel gave a brief background summary on the bond financing. In his

summary, he explained that the Directors were being asked to approve this bond transaction today, as opposed to waiting until next year, because of the uncertainty of the new tax bill and the possibility that private activity bonds would be eliminated. He then went on to state that it looks fairly likely that private activity bonds will survive.

Mr. DeMichiel concluded by explaining that the plan is to sell the bonds in the early part of 2018. He explained that the expected amount is around \$1.3 and \$1.5 billion for this initial tranche of financing, with an expected credit rating of Baa3 from Moody's and BBB- from Fitch; with the expectation of the bond amortizing in 2028 and to conclude amortization in 2050.

Following Mr. DeMichiel's briefing, Ms. Kloss introduced Patricia Ornst, Managing Director of the New York State Local Government Affairs at Delta Airlines.

Ms. Ornst gave a brief overview of Delta's construction project at LaGuardia Airport. She mentioned, among other things, that on August 8th there was a ground breaking ceremony with the Governor and Executive Director, Rick Cotton and several Delta executives. She explained that similar to the construction project at JFK Airport, Delta is holding all of the major contracts for construction at LaGuardia Airport.

Ms. Ornst explained that the Delta Construction Project is a \$4 billion project and that the Central Terminal will include many improvements such as a check-in lobby, direct access to parking lots, increased space at the gates and improvements to the concession program.

Following Ms. Ornst presentation, Director Haggerty asked if the proceeds can be used to pay interest on the bonds even before any amortization begins.

Mr. DeMichiel responded affirmatively.

Director Haggerty also asked if it was common to pay interest on the same bonds before amortization.

Mr. DeMichiel responded that it is, but it's not contemplated in this transaction. He explained that it is called capitalized interest where the bond proceeds will pay interest on the bonds for some length of time. Mr. DeMichiel further explained that although they have the ability to capitalize interest on the bonds, Delta does not actually expect to exercise this option.

Lastly, Director Haggerty asked whether the entire \$4 billion project will be financed with the Series 2018 bonds.

Mr. DeMichiel responded that the total project cost is \$3.9 billion; and that the Port Authority is paying \$600 million and Delta is obligated to pay \$3.3 billion. Mr. DeMichiel explained that this financing is the first installment for about two years worth of construction, and that there could be a second financing in the future, although, no decision has been made regarding a second financing.

Next, Chairman Zemsky asked Mr. DeMichiel to clarify when the amortization on the bonds will start. Mr. DeMichiel responded that the amortization would start in 2028. The Chair then asked if only interest payments will be made for the first ten years.

Mr. DeMichiel responded affirmatively.

There being no other questions or comments from the Directors and no comments from the Public, Chairman Zemsky requested a motion for approval. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Issuance of bonds by New York Transportation Development Corporation for the benefit of Delta Air Lines, Inc. to finance certain costs of the LaGuardia Airport Terminals C&D Redevelopment Project – Board Authorization to Perform Certain Acts in Connection with the Sale and Delivery of the New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2017 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) and to Take Related Actions

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;

WHEREAS, on February 16, 2017, the Board of Directors of the Corporation (the "Board") adopted a resolution (the "Initial Resolution") in connection with the Project (defined below), which Initial Resolution addressed certain matters including, among others; the appointment of underwriters and a financial advisor, authorization of steps to be taken under the Tax Equity and Fiscal Responsibility Act ("TEFRA"), authorization to draft certain documents and related matters; and

WHEREAS, The Port Authority of New York and New Jersey (the "Port Authority") and Delta Air Lines, Inc., a Delaware Corporation, (the "Borrower") have entered into an Amended and Restated Agreement of Lease, dated as of September 13, 2017 (the "Lease Agreement"), pursuant to which, among other things, the Borrower is obligated to: (i) to operate and manage the existing Terminals C & D (the "Existing Terminal Facilities") pending their demolition, (ii) to demolish the Existing Terminal Facilities; (iii) to design and construct new terminal facilities (the "New Terminal Facilities") and certain facilities that will not be leased to the Borrower pursuant to the Lease (the "Off-Premises Facilities"), and (iv) to operate and maintain the New Terminal Facilities upon their completion (Items (i) through (iv) being the "Project"); and

WHEREAS, the Borrower has requested that the Corporation issue its Special Facilities Revenue Bonds, Series 2017 (Delta Air Lines, Inc.– LaGuardia Airport Terminals C&D Redevelopment Project) (the "Series 2017 Bonds"), the proceeds of which will be loaned to the Borrower to: (i) finance a portion of the cost of the Project; (ii) pay, if Borrower so elects, a portion of the interest on the Bonds accruing during construction of the Project and (iii) pay certain costs of issuance related to the Series 2017 Bonds; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Building Loan Agreement and a Project Loan Agreement (the "Loan Agreements") by and between the Corporation and the Borrower, copies of which are annexed to this Resolution as Exhibit A, pursuant to which the Corporation will loan the proceeds of the Series 2017 Bonds to the Borrower; and

WHEREAS, the Borrower will execute a Building Loan Note and the Project Loan Note in connection with the Loan Agreements (the "Notes"); and

WHEREAS, the Series 2017 Bonds will be issued and secured under a Master Indenture of Trust (the "Master Indenture"), as supplemented by a First Supplemental Indenture of Trust (the "First Supplemental Indenture" and together with the Master Indenture, the "Indenture"), each dated as of December 1, 2017 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 Exhibit "B"; and

WHEREAS, the Corporation will assign certain of its rights under the Loan Agreements and the Notes to the Trustee as security for the Series 2017 Bonds; and

WHEREAS, the Borrower will deliver a guaranty under which it unconditionally guarantees to the Trustee for the benefit of the owners of all Bonds payment of the principal, redemption price and purchase price of, and interest on, the Bonds when and as due and payable (the "Guaranty"); and

WHEREAS, as security for the payment of the Borrower's obligations under the Loan Agreements, the Notes and the Guaranty, the Borrower will grant to the Corporation and the Trustee (for the benefit of the bondholders) a leasehold mortgage in the Borrower's leasehold interest under the Lease Agreement pursuant to (i) a Building Loan Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the "Building Loan Mortgage")

and (ii) a Project Loan Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the "Project Loan Mortgage," and together with the Building Loan Mortgage, the "Leasehold Mortgages"); and

WHEREAS, the Existing Terminal Facilities and the New Terminal Facilities will constitute the premises under the Lease Agreement and will be subject to the lien of the Leasehold Mortgages and the portions of the Project constituting the Off-Premises Facilities will not be a part of the premises under the Lease Agreement and will not be subject to the lien of the Leasehold Mortgages; 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 Mortgage to the Trustee pursuant to the Assignments of Leasehold Mortgages, forms of which are annexed to this Resolution as Exhibit C; and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Preliminary Official Statement, a form of which is annexed to this Resolution as Exhibit D, and will cause to be prepared an Official Statement to be used in connection with the issuance and sale of the Series 2017 Bonds (collectively, the "Official Statement") and have negotiated a purchase contract for the Series 2017 Bonds (the "Bond Purchase Agreement") by and among the Corporation, Citigroup Global Markets Inc., as representative of the underwriters, and the Borrower, a copy of which is annexed to this Resolution as Exhibit E; and

WHEREAS, pursuant to the Initial Resolution, the Board previously appointed Citigroup Global Markets Inc. ("Citigroup") and Goldman Sachs & Co. ("Goldman") to be co-senior managing underwriters for the Series 2017 Bonds;

WHEREAS, Goldman subsequently withdrew from the Project in connection with certain changes made to the structure of the proposed financing; and,

WHEREAS, the Board now desires to confirm that Citigroup is the senior managing underwriter and to appoint additional underwriters for the Series 2017 Bonds.

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

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

RESOLVED, that based on the materials submitted to the Directors with respect to the Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and further

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

RESOLVED, that the Official Statement, in substantially the form of the Preliminary Official Statement presented to this meeting, is hereby approved, and the distribution of the Preliminary Official Statement and the Official Statement in connection with the sale of the Series 2017 Bonds, with such changes, supplements and amendments thereto as may be necessary or appropriate to reflect the documents and the matters described therein or as may be approved by an Authorized Officer, such approval to be conclusively evidenced by the execution of the final Official Statement, is hereby authorized, and any Authorized Officer is hereby authorized and directed to execute the same on behalf of the Corporation; and further

RESOLVED, that the amount, maturity or maturities, prices and yields, if any, and other terms of or relating to the Series 2017 Bonds (the "Terms") insofar as set forth in the Indenture, are hereby approved, with the understanding that such Terms will be finalized in connection with the sale of the Series 2017 Bonds, which is expected to occur in December of 2017, subject to the final approval of any Authorized Officer, such approval to be evidenced by such Authorized Officer's execution of each of the Indenture and the Bond Purchase Agreement and that all other documents relating to the Series 2017 Bonds shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Series 2017 Bonds shall not exceed \$4,000,000,000, the final maturity shall not extend beyond January 1, 2051 and the interest rates to be borne by the Series 2017 Bonds shall not exceed a net interest cost of 10%; and further

RESOLVED, that in connection with the issuance of the Series 2017 Bonds, the Corporation hereby appoints The Bank of New York Mellon as Trustee under the Indenture; and further

RESOLVED, that the Corporation, in addition to the appointment of Citigroup Global Markets, Inc. as the Senior Manager/Book Runner on February 16, 2017 hereby appoints Goldman Sachs & Co. LLC, J.P. Morgan Securities LLC, and Merrill Lynch, Pierce, Fenner & Smith (Bank of America/Merrill Lynch) as Joint-Bookrunners, Morgan Stanley & Co. LLC, US Bancorp Investments, Inc., Barclays Capital Inc., Wells Fargo Securities, Loop Capital Markets, LLC, Samuel A. Ramirez & Co., Inc., and Siebert Cisneros Shank & Co., L.L.C. (the last 3 firms being certified minority or women owned business enterprises) as Co-Managers for the Series 2017 Bonds and authorizes the appointment of such other underwriters from the Corporation's pre-approved list of underwriters (including, without limitation, additional Co-Senior Managers) as determined by an Authorized Officer of the Corporation (collectively, the "Underwriters"); and further

RESOLVED, that, subject to the conditions set forth in the Bond Purchase Agreement, the Corporation shall sell and award the aggregate principal amount of the Series 2017 Bonds to the Underwriters; and further

RESOLVED, that the Corporation shall offer for sale, sell, issue and deliver the Series 2017 Bonds pursuant to the Bond Purchase Agreement and the Indenture and shall apply the proceeds thereof in accordance with the Indenture and certain documents and certificates to be delivered upon the issuance of the Series 2017 Bonds; and further

RESOLVED, that each of the Chairperson, President, Chief Financial Officer, General Counsel and Treasurer of the Corporation, and any other person duly authorized to act in such capacity, is designated an "Authorized Officer"; and further

RESOLVED, that each of the Authorized Officers is hereby authorized and directed to approve and execute such documents, instruments and certificates, make any changes to the forms of the Loan Agreements (including any exhibits thereto), the Indenture, the Leasehold Mortgages, the Assignments of Leasehold Mortgages, the Bond Purchase Agreement, the Official Statement and all other related documents as he or she may reasonably deem necessary, desirable or appropriate to consummate the transactions authorized hereby and thereby including, without limitation, a tax compliance certificate relating to the Series 2017 Bonds (the "Tax Compliance Certificate"), 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 2017 Bonds, 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 2017 Bonds by any Authorized Officer or his or her designee are hereby ratified and approved.

* * *

Jonathan Beyer presented the last Agenda item, a request to adopt the Corporation's Annual Report.

Mr. Beyer explained that pursuant to the Not-For-Profit Corporation Law, the Corporation is required to annually file a report of its financial status. He stated that this report basically consists of the section in JDA's financial report which specifically deals with the Corporation. Mr. Beyer further stated that a copy of JDA's financial report showing the financial status of the Corporation is attached to the board materials.

Chairman Zemsky asked if there were any questions or comments from the Directors or the public. Hearing none, he requested a motion for approval of this item. Upon motion duly made and seconded the following resolutions were unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Adoption of the Annual Report and Authorization to Take Related Actions

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, Section 519 of the of the New York Not-For-Profit Corporation Law requires that the board of a not-for-profit corporation present annually a financial report to the members; and

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:

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 adopts note 3(e) of the audited combined financial statements of the New York Job Development Authority ("NYJDA") as of March 31, 2017 and 2016 as the annual report of the Corporation and directs such annual report to be presented to the Members, a copy of which is attached to this Resolution as Exhibit A; and that the Board of Directors of the Corporation ratifies the adoption and presentation to the Members of the applicable note(s) of the audited financial statements of NYJDA as of each fiscal year as the respective annual report of the Corporation.

* * *

There being no further business, the meeting was adjourned at 2:26 p.m.

Respectfully submitted,

Regina Stephens
Assistant Corporate Secretary

ITEM 2



FOR CONSIDERATION

July 25, 2018

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: New York Transportation Development Corporation Procurement Guidelines

REQUEST FOR: Authorization to Adopt Revised Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

I. BACKGROUND

The New York Transportation Development Corporation (the "Corporation") is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law ("NYNPCL") and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYNPCL and Section 1411 of the NYNPCL. The Corporation was formed on November 2, 2015 and issued bonds for four airport financings and refinancings in 2015, 2016 and 2018. The Corporation is now addressing certain annual obligations and taking other necessary corporate actions.

The Corporation will enter into various contracts in the course of conducting its authorized purposes. In order to ensure the consistent, fair and competitive retention of goods and services staff recommends the voluntary adoption of procurement guidelines (the "proposed 2018 Guidelines") adopted by the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") Board of Directors at their March 29, 2018 meeting. The proposed 2018 Guidelines will replace the procurement guidelines previously adopted by the Corporation.

The proposed 2018 Guidelines attached to this memorandum set forth the policies and procedures to be followed by the Corporation when seeking to contract for goods or services. It should be noted that these Guidelines do not have the force of law; are only required of public authorities and public benefit corporations, not local development corporations such as the Corporation; and are proposed as a statement of best practices and procedures. No contract is invalid merely because these guidelines have not been followed.

The proposed 2018 Guidelines define the universe of procurement transactions which are subject to the policies and procedures. Generally, all procurements by the Corporation must be competitive, except where State law provides for non-competitive sourcing (e.g., goods

purchased from approved non-profit agencies for the blind and procurements from the Office of General Service's Centralized Contracts List). Based on the expected cost of procured goods and/or services, procurement contracts must be obtained after advertisement in the New York State Contract Reporter, except in limited instances where an exemption is obtained, generally reserved for sole or single source procurements (when only one vendor offers the desired goods or services or when a single vendor has unique qualities or experience that obviate a competitive process). The proposed 2018 Guidelines explain the various means of obtaining goods and services in an open, accountable and transparent manner, including incorporation of ESD's Bid Opening Guidelines and the compilation of a Procurements Record for every covered Procurement Contract.

For informational purposes, please note that the proposed 2018 Guidelines comply with the applicable provisions of the Public Authorities Law, the State Finance Law and the State Tax Law. They are consistent with the State Procurement Council's Guidelines and with the Governor's directive that all state agencies and public authorities make responsible spending decisions and that they be accountable for sufficient monitoring of their spending to ensure the highest level of fairness, non-discrimination, openness and transparency.

The proposed 2018 Guidelines are intended to be user-friendly and are set forth in a logical and coherent fashion that will assist staff in understanding the procedures to be followed and the substantive rules that govern procurements.

Sources of help to users and information are included as clickable links, and virtually all required forms and ESD policy and procedure documents can also be accessed from within the document by hyperlinks. The hard copy of the proposed 2018 Guidelines presented to the Directors for approval cannot contain these links, but they are shown in highlight form.

II. RECOMMENDATION AND REQUESTED ACTION

The Directors of the Corporation are being requested to adopt the proposed 2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, effective as of the date of approval.

III. ATTACHMENTS

Resolution

Exhibit A: Proposed 2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

July 25, 2018

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement Guidelines -
Adoption of Revised Guidelines for the Use, Awarding, Monitoring and Reporting of
Procurement Contracts

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the proposed 2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts, a copy of which is attached to the materials, be and hereby is approved and adopted as of the date hereof, as a statement of best practices and procedures, and the President or his/her designee is authorized to promulgate the said Guidelines in electronic form and other media for the use of the staff of the Corporation and to take such other and further action as may be deemed necessary or appropriate to effectuate the foregoing Resolution.

* * *

Exhibit A

2018 Guidelines for the Use, Awarding, Monitoring and Reporting of Procurement Contracts

Revised Procurement Guidelines 2018

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT
Guidelines Regarding the Use, Awarding, Monitoring
and Reporting of Procurement Contracts

Effective March 29, 2018

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NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A EMPIRE STATE DEVELOPMENT (“ESD”)

Guidelines Regarding the Use, Awarding, Monitoring and
Reporting of Procurement Contracts

Effective March 29, 2018

1. Overview and Requirements

The following guidelines (the “Guidelines”) are applicable to the use, awarding, monitoring and reporting of procurement contracts of the New York State Urban Development Corporation, d/b/a Empire State Development and its subsidiaries (collectively, “ESD”). ESD is required to adopt procurement guidelines by Article 9, Title 4 of the Public Authorities Law (“PAL”). The same law requires annual review and updating of the guidelines by the ESD Board of Directors (“Board”), including subsidiary Boards.

These Guidelines are modeled on the New York State Procurement Guidelines published by the State Procurement Council (the “SPC Guidelines”). The SPC Guidelines apply to all State agencies and thus provide useful guidance for procurement by ESD (which is not a State agency as that term is defined in the SPC Guidelines). The SPC Guidelines cover some issues and procedures rarely encountered by ESD, but should be consulted by staff if a situation arises that does not appear to be covered in these Guidelines, since useful guidance may thereby be obtained. View the SPC Guidelines.

In these ESD Guidelines, a person, firm or corporation who wishes to provide goods and/or services to ESD may be called a “**vendor**” or “**offerer**” or, when responding to a public solicitation for qualified vendors or expressions of interest in becoming an ESD vendor, a “**respondent**.”

1.1. Contracts covered, and not covered, by the Guidelines

Pursuant to PAL § 2879 (2), “**Procurement Contracts**” are any written agreements for the acquisition of goods or services of any kind in the actual or estimated amount of five thousand dollars (\$5,000) or more. For purposes of compliance with anti-lobbying laws contained in State Finance Law § 139-j and 139-k (see p. 12), Procurement Contracts also include the purchase, lease or grant of any other interest in real property which involves an estimated annualized expenditure by ESD in excess of fifteen thousand dollars (\$15,000).

Disposition of property (real or personal) by ESD is not a procurement covered by these Guidelines, but is instead subject to ESD's Property Disposition Guidelines. However, where a property disposition requires a competitive process, that process should be conducted in accordance with these Guidelines to the extent practicable.

Loans and grants made by ESD in furtherance of its economic development mission are not Procurement Contracts, but may be subject to certain provisions of these Guidelines, including Office of the State Comptroller ("OSC") review and approval for grants over \$1 million (see p. 23, Section 10.5).

A Contract or Memorandum of Understanding ("**MOU**") with a sister State agency or authority is not considered a Procurement Contract covered by these Guidelines. Note, however, that appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement, as well as OSC approval for binding agreements) may apply to MOUs.

In connection with certain of its projects, ESD may need to obtain a license from a governmental agency, authority, or company or a public utility in order to enter the licensor's premises and perform work. As a precondition to receiving the license, ESD can be required to enter into agreements with the licensor that prescribe conditions for work to be performed on the site, including work and/or oversight of work which must be performed by the licensor's personnel or contractors, as well as payment of licensor costs by ESD. Examples include licenses for work on rail and utility facilities. Agreements of this kind, often referred to as "**forced contracts**," are not covered by the competitive solicitation requirements of these Guidelines, because ESD has no discretion or authority with respect to the work to be performed by the licensor's personnel and contractors. However, appropriate approval(s) as set out in these Guidelines (including Board approval based on the amount and/or duration of the agreement) would apply.

Procurement Contracts **under \$50,000** may be handled by **Purchase Order** approved by Department Head, Procurement Department, Controller's Office and Contracts Administration. A formal competitive solicitation is not required, but these purchases should be made after obtaining three quotes whenever practicable. For further information, consult the Procurements Director.

1.2. Types of Procurement Contracts

The types of goods and services requiring Procurement Contracts include goods and services needed to proceed with an ESD project, or to support the administrative needs of ESD.

Procurements of goods cover the entire spectrum of goods, ranging from pens to motor vehicles.

Procurements of personal services include but are not limited to legal, accounting, auditing, management consulting, investment banking, underwriting, financial advice, temporary employees, planning, training, statistical analysis, research, public relations, architectural, engineering, construction, surveying, appraisal, or other services of a consulting, professional or technical nature for a fee, commission or other compensation by a person or persons who are not providing such services as officers or employees of ESD.

Reasons for procuring personal services include:

- a. Requirements of special expertise or unusual qualifications;
- b. Nature, magnitude or complexity of services required;
- c. Lack of sufficient in-house resources, support staff, specialized facilities or equipment;
- d. Short-term or infrequent need for the services; and
- e. Distance of the location(s) where the services must be performed from ESD offices or facilities.

1.3. General Procurement Principles

ESD's procurement process is designed to:

- Ensure fair and open competition;
- Guard against favoritism, improvidence, extravagance, fraud and corruption;
- Ensure that the results meet agency needs;
- Provide checks and balances to regulate agency procurement activities; and
- Protect the interests of ESD, the State and taxpayers.

Procurement Contracts are to be awarded on a **competitive basis** to the maximum extent practicable. Such awards are generally made after notice is published in the **New York State Contract Reporter** where the amount of the contract is **\$50,000 or more** and after the evaluation of proposals obtained, whenever practicable, from at least three qualified vendors or respondents, including where practicable at least one State-certified minority- or woman-owned business enterprise ("MWBE") and one service-disabled veteran-owned business ("SDVOB"). (See Section 7: Types of Solicitations). Monetary thresholds may not be avoided by artificially splitting or breaking up contracts into lesser agreements, or entering into a series of agreements, for sums below the dollar thresholds.

Competition in the procurement process serves both ESD and potential vendors by ensuring that the procurement process produces an optimal solution at a reasonable price; and allowing qualified vendors an opportunity to obtain ESD business, while the process guards against inflated pricing, favoritism, fraud and collusion; and allows all qualified vendors an opportunity to obtain ESD business.

2. Procurement: Overview and Requirements

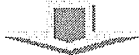
2.1. The Procurement Process Guide

I. Procurements \$5,000 to \$50,000

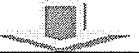
If ESD's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



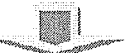
If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If ESD's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business. See Section 2.6.



If ESD's needs cannot be met by the above mentioned options, you may elect to use an informal solicitation. Contact the Procurement Unit for further assistance if needed.



If this is an emergency situation or only one vendor can meet the needs required for service, the initiating department head has to justify the need to Single Source or Sole Source this request in the justification memo.

II. Procurements \$50,000 +

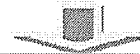
If ESD's procurement needs can be met by a preferred source vendor, you must use this option. See next page.



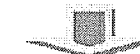
If ESD's needs cannot be met by a preferred source, you may elect to use an OGS Centralized contract. Wherever practicable, you should still solicit two other quotes if this option is selected.



If ESD's needs cannot be met by the above mentioned options, you may elect to use a discretionary purchase through the use of a NYS certified MWBE, SDVOB or a NYS Small Business up to \$200,000. See Section 2.6.



If ESD's needs cannot be met by the above mentioned, use a Request for Proposals ("RFP"), Request for Qualifications ("RFQ") or Request for Expressions of Interest (RFEI), and advertise in the Contract Reporter if this is not an emergency situation and ESD's needs can be met by more than one vendor.



If this is an emergency situation or only one vendor can meet the needs required, obtain a Contract Reporter Exemption from the Legal Department using Single Source or Sole Source exemption as appropriate.

2.2. NYS Preferred Sources

Goods and services needed by ESD may be available, without the need for competitive procurement, from New York State Preferred Sources. If a Preferred Source has goods or services available in the form, function and utility required by ESD, at a price not more than 15% above the prevailing market rate, the goods or services should be obtained through the Preferred Source in the following prioritized order: NYS Department of Correctional Services Correctional Industries Program (CORCRAFT); approved charitable non-profit agencies for the blind; and approved charitable non-profit agencies for the severely disabled, qualified programs for the mentally ill, and qualified veterans workshops. For information on these Preferred Sources, see State Finance Law §162 and the Office of General Services (“OGS”) Preferred Sources Guide. The Guide is exhaustive, but the main points are easy to follow.

2.3. OGS Centralized Contracts

Goods and services needed by ESD may be available, without the need for competitive procurement, through centralized contracts held by OGS. Information about centralized contract offerings can be obtained from the list of approved State contractors maintained by OGS.

Note that even if an OGS centralized contractor is available, it is required where feasible that staff obtain three price quotes from other OGS contractors or other vendors not on the OGS list, including at least one MWBE or SDVOB certified firm, unless a compelling justification exists (e.g., experience with a particular project). Staff should confirm that a firm is certified on either the MWBE directory (<https://ny.newnycontracts.com>) or SDVOB directory (http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf).

2.4. Commodities Contracts

The OGS Procurement Services Group (PSG) establishes centralized contracts for commodity contracts in the form, function and utility required by State agencies, for a wide range of items commonly acquired by agencies. If the commodity is available from a centralized contract in form, function and utility consistent with ESD’s need, such item may be purchased from the centralized contract. However, ESD may competitively procure items otherwise available on a centralized contract when the resultant price is less.

2.5. Service Contracts

ESD has discretion to use the OGS centralized service contracts list. A wide and diverse range of services from routine maintenance to complex technology-based acquisitions are available through these OGS contracts. Again, ESD may competitively procure items otherwise available on the OGS centralized contract list when the resultant price is less.

2.6. Discretionary Purchases

Pursuant to PAL § 2879(3)(b)(i), ESD may purchase services or commodities from small business concerns or those certified pursuant to Article 15-A of the Executive Law (MWBEs), or commodities or technology products that are recycled or remanufactured, in an amount up to two hundred thousand dollars (\$200,000) without a “formal competitive process.” In such a case, three quotes should be obtained wherever practicable, and Contract Reporter advertising is advisable when time permits. Recommended language for such advertisements can be found at <http://www.ogs.ny.gov/procurecounc/pdfdoc/DiscretionaryPurchasingGuidelines.pdf>. Staff should assess whether a formal competitive process, or one that is less formal but still competitive, may best meet ESD’s needs. The award of a discretionary purchase contract should be published in the Contract Reporter..

As with any other procurement, for discretionary purchases the initiator must:

- review the Preferred Source list and OGS Centralized Contracts to determine whether the desired goods or services are available to meet ESD’s needs;
- ensure that the commodities, services or technology acquired meet ESD’s form, function and utility needs;
- document and justify the selection of the vendor;
- document and justify the reasonableness of the price; and
- ensure that ESD buys from responsible vendors.

2.7. Piggyback Contracts

ESD may find it efficient to establish a contract based on another governmental entity’s contract. This is known as “piggybacking” and may be used in accordance with the criteria established by OGS in the Contract Piggybacking Guidelines under State Finance Law § 163(10)(e), available at https://nyspro.ogs.ny.gov/sites/default/files/uploaded/PSPiggybackGuide_2.2015.pdf. Note that a piggyback procurement requires approval by the OGS Procurement Services Group – this can be difficult and time-consuming to accomplish, as the OGS staff are not very familiar with public authority procurement policies and practices. For example, if the agency you wish to piggyback on is a State agency, it will have different contractual terms than those used by ESD. This may lead to delay, if OGS decides to seek approval of the proposed ESD contract terms from the Attorney General. Piggybacking is better accomplished when you wish to use a contract established by another public authority.

3. Contract Reporter Exemptions

3.1. Reasons for Exemptions

Advertising a procurement in the Contract Reporter is generally required unless specific grounds exist that constitute a reason for exemption. A Contract Reporter exemption may be granted by the Officer(s) specified in Attachment A to these Guidelines, only if any of the following circumstances can be demonstrated:

- (a) **Sole Source.** Only one source for the goods or services is available. Three examples of sole source procurements: (i) proprietary software compatible with ESD operating systems that no-one else offers; (ii) a printer's warranty requiring that only a toner cartridge supplied by the manufacturer could be used without voiding the warranty; (iii) a vendor has developed a proprietary system for remediating contaminated land, unavailable from anyone else.

- (b) **Single Source.** The required goods or services are available from two or more vendors, but a particular vendor is preferable because of specific factors such as, without limitation, past experience with a particular issue; familiarity with ESD's operations; experience with similar projects of ESD, other agencies or at other levels of government; demonstrated expertise; or capacity and willingness to respond to the situation. An example would be a competitively-procured environmental consultant who worked on an EIS for a project and now a Supplemental EIS is required for the same project; many consultants could do the work, but the original consultant's familiarity with the project justifies selection as a single source. Where a vendor's past experience or familiarity with ESD was gained through a non-competitively awarded contract, staff are strongly encouraged to conduct a competitive solicitation rather than pursue a single source exemption for that vendor to perform additional work. *In general, the Corporation's policy is to minimize the use of single source contracts and to maximize the use of competitive procurement methods.*

- (c) **Emergency Circumstances.** Emergency circumstances exist when an urgent and unexpected situation arises which places public health or safety or the use or conservation of resources at risk and requires immediate action. Poor or late planning does not constitute an emergency. Contracts entered into as a result of an emergency situation should only cover the goods or services reasonably necessary to stabilize, ameliorate or remedy the situation. An example is a hazardous condition at a building owned by ESD: a contractor can be hired immediately to deal with the situation.

NOTE: Notwithstanding any Contract Reporter exemption that may be granted for any of the reasons set forth above, a reasonable attempt should be made wherever practicable to solicit at least three competitive bids, with written confirmation of the bids furnished within a reasonable time and maintained in the contract file. Also, any sole or single source contract awarded in the amount of \$50,000 or more should be published in the Contract Reporter (Economic Development Law, §143(4)). This publication requirement does not apply to contract amendments.

3.2. Authorization for Exemptions

The initiator of the proposed contract must complete a Contract Reporter Exemption form, signed by the Officer(s) specified in Attachment A to these Guidelines.

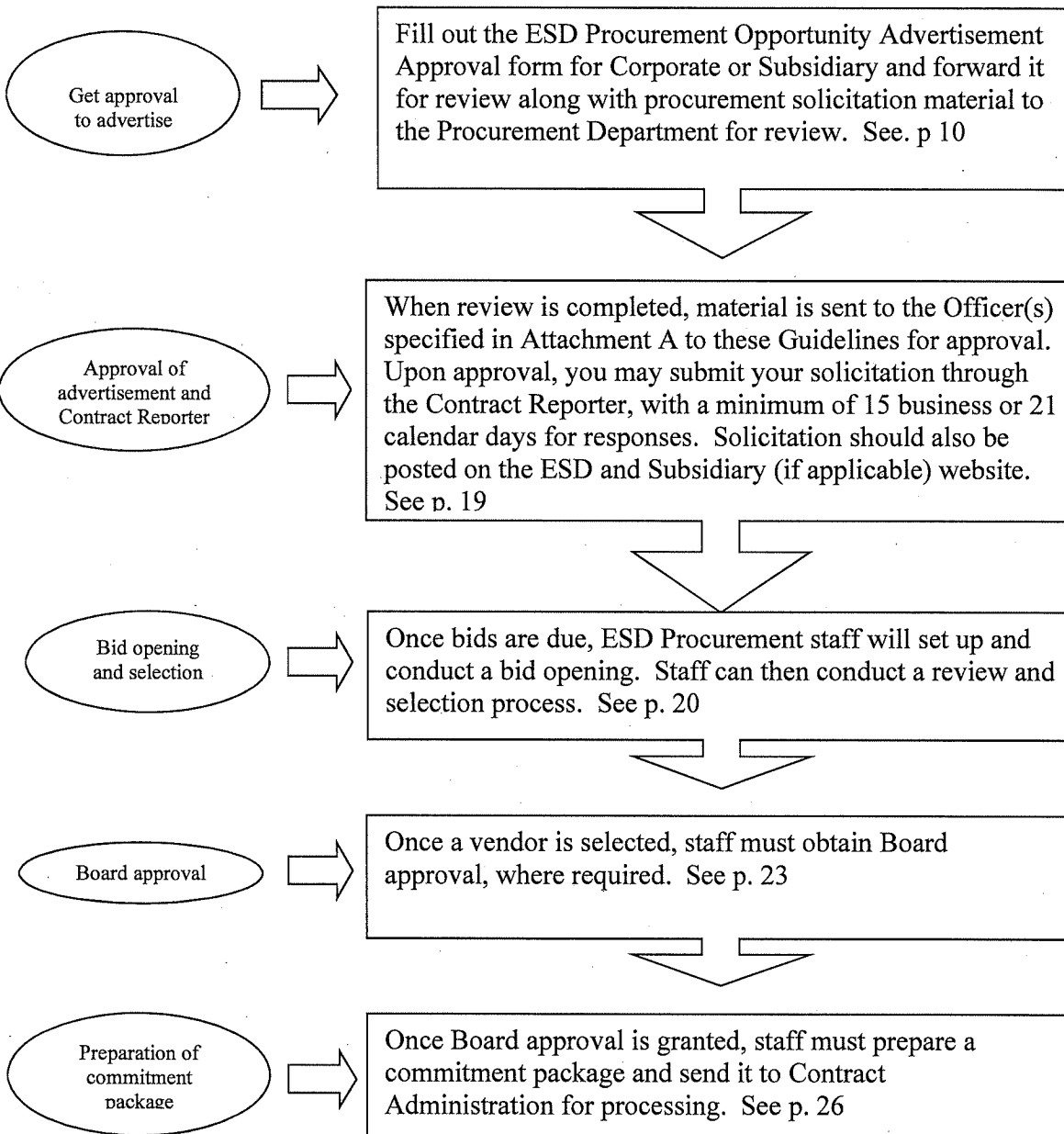
The memorandum requesting the exemption must document in reasonable detail: the circumstances establishing the exemption justification; a description of the goods or services to be acquired via the exemption; description of funding source; any alternatives considered; and the basis for determining that the cost of the proposed contract is reasonable under the circumstances. The Contract Reporter Exemption form can be found here.

If the proposed contract amount is over \$250,000, or is a personal services contract that will last more than one year, the exemption authorization should be obtained before ESD Board or President approval. If the proposed amount is \$250,000 or less, and the term of the contract is less than one year, the exemption authorization should be obtained from the Officer(s) specified in Attachment A to these Guidelines, prior to contract execution and the commencement of any services or delivery of any goods.

Note that even if a Contract Reporter exemption is granted, compliance with SFL § 139-j and 139-k (Lobbying Laws) and State Tax Law § 5-a must still be satisfied (see Section 8.1, p.12). Where appropriate, a statement from the staff initiator that the price obtained for the goods or service is compatible with market pricing must be presented with the exemption request.

At the time ESD enters into a contract with a single or sole source provider for an amount in \$50,000 or more, ESD should submit an announcement of the contract for publication in the NYS Contract Reporter, and must identify the recipient of the contract.

4. How to Conduct a Competitive Solicitation



5. Approval to Advertise

Prior written approval of the Officer(s) specified in Attachment A to these Guidelines is required when you need to advertise a procurement opportunity, including Requests for Proposals (“RFPs”), Requests for Statements of Qualifications (“RFQs”) and Requests For Expression of Interest (“RFEIs”) (See Section 7: Types of Solicitation).

Note also that other approvals may be required to comply with State Division of Budget procedures (see Section 11.4). Submit the ESD Procurement Opportunity Advertisement Approval form (select Corporate or Subsidiary) to the appropriate officer at least 10 business days in advance of the relevant New York State Contract Reporter publication submission date (the Contract Reporter is published daily).

6. Contents of ANY Procurement Solicitation

For all Procurement Contracts (see section 1.1), whether the procurement is formal (such as an RFP, RFQ or RFI) or informal (such as procurement for less than \$50,000, or a Discretionary Purchase from an MWBE for up to \$200,000, or procurement from a pre-qualified list) the same basic information should be included in the solicitation:

- (i) What goods are being sought or what scope of services is desired;
- (ii) What the projected length (“term”) of the resultant contract will be;
- (iii) What criteria will be used in evaluating bids, and how those criteria are weighted. For example, price, bidders’ expertise, the qualifications of the proposed staff; past history of government contracts, references/testimonials, understanding of ESD’s mission, and either diversity practices (commitment to sound diversity practices within the firm) or a firm’s status as a certified MWBE and/or SDVOB¹;
- (iv) A schedule of relevant dates (when bid is due, when questions may be asked or briefing meetings/interviews held, etc);
- (v) Contact information for a designated contact at ESD who is the only person at ESD to whom communications about the solicitation may be directed. Failure to abide by this requirement may result in disqualification of the bidder.

¹ Program regulations provide that ESD can either score a firm’s diversity practices or the firm’s status as a certified MWBE, but not both in the same procurement. So, if certified firms are likely to respond, then the solicitation should request proof of certified status. But if it is more likely that no MWBE will respond to a solicitation, the solicitation should request diversity practice information instead. In either event, this factor must not exceed 10% of the overall technical score.

(vi) ESD's insurance requirements (obtained from Contract Administration for all solicitations);

(vii) ESD's contractor and supplier diversity requirements: MWBE and SDVOB goals, if applicable (goals should be identified before seeking approval to advertise);

(viii) Disclosure to bidders that they must be able to demonstrate that they are responsible bidders, in good standing under the laws of New York and capable of fulfilling the requirements of the contract, and untainted by past non-performance or criminality;

(ix) A copy of the ESD standard terms and conditions to which the successful bidder will be expected to agree. This will generally be ESD's Schedule A - Standard Terms and Conditions (For Materials and Services or for Law Firms). IMPORTANT: ESD's standard terms and conditions must be sent to potential vendors as early in the process as possible, to avoid later disputes about terms.

(x) VENDREP Form where needed (See Section 8.13);

(xi) Proof that the vendor is authorized to do business in New York State, if services are to be performed in New York State. Generally, this will require NYS Department of State Registration, which can be checked here;

(xii) Encouragement of use of New York State businesses as sub-contractors or suppliers (See Section 8.6).

A template for informal solicitation language can be viewed here.

7. Types of Solicitations

7.1. General

There are a number of procurement techniques available, including Request for Proposals (RFP) and Request for Statements of Qualifications (RFQ) and, rarely, Requests for Expressions of Interest (RFEI). When selecting among these various approaches, the determining factors are:

- The importance of price or cost as a component in the review of incoming bids or proposals; and
- The ability to define specifications for goods or services being acquired, or to obtain those specifications from potential vendors (where the RFEI may be useful).

Generally, contracts for goods are to be awarded on the basis of "lowest price" and contracts for services are to be awarded on the basis of "best value" among responsive and responsible

vendors. “Best value” is the basis for awarding service and technology contracts to the vendor that optimizes quality, cost and efficiency, among responsive and responsible vendors. The basis for a “best value” contract award must be, wherever possible, quantifiable. However, all procurement solicitations issued by ESD are to be guided by the same basic principles:

Clarity: Procurement documents should clearly convey to vendors what ESD wants to buy;

Fairness: No vendor should be advantaged over another. All information concerning the solicitation shall be conveyed in writing to all vendors participating in the process, including but not limited to process rules and evaluation criteria;

Openness: All relevant vendors should have an equal opportunity to respond to the offering.

Disclosure of Selection Criteria: The criteria for awards should be developed before bids/proposals are received. Vendors should know generally the basis upon which their offers are being judged. Note that if cost is weighted below 20%, a written justification for such weighting should be prepared and included in the Procurement Record;

Efficiency: The process should be efficient, fair and able to withstand public scrutiny.

7.2. Requests for Proposals (“RFP”)

RFP solicitations may range from relatively uncomplicated procurements to highly complex, long term efforts involving the significant commitment of both ESD and vendor resources.

RFPs follow a common format, focusing on a description of tasks including, but not limited to:

- Description of program objectives and background;
- Scope of services to be provided;
- Detailed requirements or specifications (required qualifications of vendors, “what” is needed and “how” services should be provided). Note that the terms of the RFP may not be knowingly tailored to favor a particular vendor.

Click here to view ESD’s standard RFP template.

7.3. Requests for Statements of Qualification (“RFQ”)

RFQs are appropriate for retention of qualified pools of contractors to provide defined types or scopes of services (and, rarely, goods) required by ESD on a regular or semi-regular basis as the need arises. Competitive establishment of a pool or list of pre-qualified vendors is appropriate, for example, in the case of contractors or property appraisers. If ESD has established a list of pre-qualified contractors, unless services will be rendered by all qualified vendors at rates not to exceed a pre-set maximum, three quotes should be obtained from vendors on the list, and/or from vendors known to ESD outside the list. Amendments to contracts with vendors selected from a pre-qualified list should also follow this mini-bid process (and comply with all requirements in Section 9.2).

Where a vendor’s eligibility to be on a pre-qualified list is contingent upon the vendor’s agreement that professional services will be rendered at pre-established rates, or will not exceed certain limits, this solicitation should be accomplished through an RFP.

After ESD has established a list of pre-qualified vendors, staff may enter into open retainer contracts with one or more vendors on the list, for no set dollar amount but in the case of personal services not to exceed a term of three years. This process facilitates the use of purchase orders against the contract, and Board or President/CEO approval, if required, can be obtained at such time as a scope of services and dollar amount are identified, or if the term will be extended beyond one year. Please consult with Procurement and Legal if you wish to enter into such an arrangement.

7.4. Requests for Expressions of Interest (“RFEI”)

RFEIs are generally appropriate when ESD does not know the precise scope of services or goods required, and wishes to obtain this information from prospective vendors. An example would be a proposal for adaptive re-use of ESD or other State surplus property, where the re-use is likely to be dependent on the prospective respondents’ needs or ideas.

8. Compliance with Other Laws

8.1. Compliance with State Finance Law § 139-j and 139-k (Lobbying)

State Finance Law (“SFL”) § 139-j and 139-k apply to all Procurement Contracts over \$15,000, regardless of whether the contract was competitively bid.

Among other things, SFL § 139-j and 139-k: (i) govern permissible communications between potential vendors, and staff of ESD, its subsidiaries, or other involved governmental entities during the procurement process; (ii) require the disclosure of such communications, as well as prior determinations of vendor non-responsibility; and (iii) establish sanctions for knowing and willful violations of such provisions, including disqualification from eligibility for an award of any contract.

Specifically, SFL § 139-j and 139-k require that only permitted ESD and subsidiary contact person(s) identified in solicitation materials may communicate with potential bidders regarding the solicitation, from the issuance of the earliest written notice of a Request for Proposal through the final award and approval of any resulting contract. This period is defined by law as the "Restricted Period."

SFL § 139-j (6)(b) also requires potential vendors to complete the Offerer's Affirmation of Understanding and Agreement to comply with ESD's procedures relating to permissible contacts. This written affirmation is deemed to apply to any amendments to a procurement submitted by ESD after an initial affirmation is received with an initial bid.

SFL § 139-k governs the disclosure of prior non-responsibility determinations by potential vendors. SFL § 139-k(5) requires potential vendors to certify that the information they provide to ESD for consideration in its determination of vendor responsibility is true and accurate. Therefore, all prospective vendors must complete and submit two forms mandated by SFL § 139-j and § 139-k as part of their proposals: 1) the Offerer's Affirmation of Understanding and Agreement; and 2) the Offerer's Disclosure of Prior Non-Responsibility Determinations.

When contacted during the Restricted Period, ESD staff must obtain the following information: the name, address, telephone number, place of principal employment and occupation of the person or organization making the contact. Further, ESD staff must inquire whether the person or organization making the contact was the offerer or retained, employed or designated by the offerer. All such recorded contacts must be included in the procurement record for the procurement contract.

In addition, ESD staff must record any contacts that reasonably appear to be an attempt to influence the procurement process as well as contacts with staff members other than the designated contact person(s) during the Restricted Period of procurement. However, SFL § 139-j and 139-k do not prohibit an offerer from communicating with a member of the State legislature or legislative staff about a government procurement, provided such member of the State legislature or legislative staff is acting in his or her official capacity. If a vendor is found to have knowingly and willfully violated the State Finance Law provisions, that prospective vendor and its subsidiaries, related or successor entities will be determined to be a non-responsible vendor, and will not be awarded any contract issued pursuant to the solicitation. Two such findings of non-responsibility within a four-year period can result in debarment from obtaining any New York State government procurement contract.

For further guidance, ESD staff engaged in the procurement process should review ESD's policy regarding permissible lobbying contacts, and the required language for solicitations by ESD and its subsidiaries to ensure compliance with SFL § 139-j and 139-k.

Note that, once a recommended vendor has been selected after compliance with the competitive bidding process, it may be necessary for staff members to negotiate contract terms, etc., with the designated vendor. Those negotiations are not prohibited, and need not be conducted only by the designated contact person, although it is good practice to have the contact person present.

However, any communication from a person other than the vendor that may reasonably be considered to be an effort to influence the negotiation of a contract (either positively or negatively) is an impermissible contact and must be reported as such. For example: an ESD employee who is in the process of negotiating the terms of a land development deal which the Board has not approved, receives a call from an outside person saying that the vendor should get more development land because the vendor has a wonderful track record. Such a call constitutes lobbying and must be reported as such. The caller should be informed that the call will be reported, and asked to communicate directly with the designated contact person in the future.

8.2. Compliance with State Tax Law § 5-a (Sales Tax Registration)

State Tax Law § 5-a prohibits ESD and its subsidiaries from approving any contract valued at more than \$100,000 with any entity if that entity or any of its affiliates, subcontractors or affiliates of any subcontractor makes sales within New York State of tangible personal property or taxable services having a value over \$300,000 during the four quarters preceding the proposed contract date, and is not registered with the Department of Taxation and Finance (“DTF”) for sales and compensating use tax purposes.

Accordingly, all respondents to a solicitation where the amount of the contract is expected to exceed \$100,000 must include in their responses a properly completed Form ST-220-CA. However, if a vendor is not registered with DTF because of a lack of sales of over \$300,000 within the relevant period, the vendor must submit an affidavit so certifying. Note also that § 5-a does not apply to contracts for architectural, engineering or surveying services. If in doubt, contact the ESD legal department after having reviewed DTF Publication 223.

Failure to include a properly completed form ST-220-CA or affidavit may be a basis for considering any such response incomplete. However, the vendor or respondent should be given an opportunity to cure such failure, because some agencies do not require the form until contract signing, and vendors may not realize that ESD practice is different. Only the primary respondent vendor completes Form ST-220-CA, but Schedule A to Form ST 220-CA requires detailed information from the vendor’s sub-contractors, such as tax ID number, etc. If applicable, certificates of authority evidencing registration with DTF for sales tax purposes must be attached by the prime vendor and all the sub-contractors.

Further in accordance with the requirements of § 5-a, any contract resulting from a solicitation will require periodic updating of the certifications contained in Form ST-220-CA.

8.3. Compliance with Executive Order 177 (Prohibiting Contracts with Entities that Fail to Address Discrimination)

EO 177, issued on February 3, 2018, directs all State agencies, including public authorities, to amend their procurement procedures to prevent contracting with entities that have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sexual orientation, gender identity, military status, sex, marital status, disability or other protected basis. As of June 1, 2018, all ESD

contracts must contain a representation that the vendor's policies or practices address harassment and discrimination.

8.4. Compliance with Executive Law Articles 15-A & 17-B: Contractor and Supplier Diversity

Background

All Procurement Contracts must comply with the requirements of Executive Law Article 15-A, which governs the New York State MWBE Program. The purpose of the MWBE Program is to eliminate historic barriers to participation by minority and women-owned business enterprises in State contracting. The MWBE Program contributes significantly to ESD's mission of promoting a growing State economy; encouraging business investment and job creation; and supporting diverse, prosperous local economies across the State. Staff should be familiar with the MWBE Operations Primer published by the Division of Minority and Women's Business Development to ensure compliance with MWBE-related laws and requirements.

All Procurement Contracts must also comply with the requirements of Executive Law Article 17-B, which acknowledges that SDVOBs strongly contribute to the economies of the State and the nation. Staff should familiarize themselves with the SDVOB Operations Guidance published by OGS to ensure compliance with SDVOB-related laws and requirements.

ESD staff are expected to encourage the use of MWBEs and SDVOBs in all procurements, including any amendments to existing contracts. Staff must reach out to the Office of Contractor and Supplier Diversity ("OCSD") as early as possible in the procurement process in order to facilitate goal-setting for each contract. Additionally, upon advertising a solicitation for a new opportunity, staff should consider publicly posting a list of State-certified MWBEs or SDVOBs who have expressed interest in subcontracting opportunities in connection with the solicitation. Click here for an example of how to advertise potential opportunities for MWBEs: <http://www.panynj.gov/business-opportunities/pdf/OBDCR-LGA-MWBE-Flyer-16-F4%20.pdf>.

Executive Order Number 162

Pursuant to Executive Order Number 162 ("EO 162"), all New York State contracts, agreements and procurements issued and executed on or after June 1, 2017 require contractors to submit detailed workforce utilization reports that include the job title and gross wages of each employee of a contractor and subcontractor performing work on a State contract either or each employee in the contractor's and subcontractor's entire workforce, if the individuals working directly on a State contract cannot be identified. A State contract includes all agreements in excess of \$25,000 for services and commodities, and all agreements in excess of \$100,000 for construction. Contractors and subcontractors performing work on construction contracts with a total value in excess of \$100,000 are required to submit workforce utilization reports to on a monthly basis, within ten (10) days of the end of that month. Contractors and subcontractors performing work on commodities and service contracts with a total value in excess of \$25,000 are required to submit workforce utilization reports to on a quarterly basis within ten (10) days of the end of that quarter.

Goal-setting

All State contracts exceeding \$25,000 for commodities or services and \$100,000 for construction must be assessed for MWBE & SDVOB goals. For ESD's purposes, a State contract includes commodities procurements, professional services contracts, loans, grants, and leases of real property involving construction, demolition, replacement, and major repairs or renovation.

OCSD is responsible for ensuring ESD's compliance with the MWBE and SDVOB Programs. OCSD works with ESD program staff (project managers, program directors, originators and procurement officers) to determine if a contract is eligible for MWBE and SDVOB goal setting, exempted² from goal setting, or excluded³ from goal setting.

It is important to note that whole projects cannot be assessed for goals; rather individual contracts must be assessed for goals.

OCSD may determine that an MWBE goal below the agency-specific goal of 30% is appropriate because there are limited or no subcontracting opportunities and/or limited or no availability of certified MWBEs to perform or provide specific goods or services. All goals of less than 30% MWBE participation, other than a zero goal determination, must be forwarded to the Executive Chamber for review and must include documentation to reflect the reason for goal reduction.

Waiver Requests

A firm responding to a solicitation or already engaged on an ESD contract, after making good faith efforts to achieve the maximum feasible portion of an MWBE and/or SDVOB participation goal, may submit an MWBE Waiver Request Form or SDVOB Waiver Request Form to OCSD with appropriate information documenting its "good faith efforts"⁴ to meet its goals. The waiver process includes reviews by: OCSD and the OCSD Counsel. The Executive Chamber must approve a waiver before it can be issued.

Waivers must be sought even if the overall MWBE goal is met but either the Minority-owned Business Enterprise or the Women-owned Business Enterprise component of the MWBE goal is not met in part or in full.

² "Exemptions" are defined contracts which are excluded from MWBE and SDVOB goal setting. Some examples of exemptions are wages, benefits, and other employee-expenditures; debt service; travel reimbursement; utilities; OGS centralized services; sole source contracts (subject to there being no MWBE or SDVOB available to participate as sub-contractor when subcontracting is appropriate); postage; telephones; operating transfers; certain rentals and repairs; and special departmental charges (i.e. unemployment insurance and tuition reimbursement).

³ "Exclusions" are contracts that either do not have subcontracting opportunities or no availability of certified MWBEs or SDVOBs to perform or provide specific goods or services. In cases where a contract is awarded by a means other than an RFP, including, but not limited to, discretionary purchases and single source contracts, DMWBD/OGS will only grant an exclusion if MWBEs or SDVOBs are solicited to participate as prime contractors or no MWBEs or SDVOBs are available to participate as prime contractors.

⁴ "Good Faith Efforts" are the actions that all contractors must demonstrate to certify they have performed their due diligence to solicit MWBE and SDVOB participation in support of their State contract goals. Good Faith Efforts requirements are outlined in 5 NYCRR §142.7 (MWBEs) and 9 NYCRR § 252.2(n) (SDVOBs).

A waiver of MWBE or SDVOB goals will not be granted unless the contractor has provided documentation of good faith efforts. In addition to completing a waiver request form, the contractor shall also provide OCSD with supporting information including, but not limited to:

- A statement setting forth the basis for the waiver request;
- The names of general circulation, and trade association publications in which certified MWBE/SDVOBs were solicited for the purposes of complying participation goals related to this contract;
- A list identifying the date(s) that all solicitations for certified MWBE/SDVOB participation were published in any of the above publications;
- A list of all certified MWBEs appearing in the NYS Directory of Certified Firms and all certified SDVOBs appearing in the OGS Directory that were solicited for purposes of complying with the participation goals;
- Copies of notices, dates of contact, letters, and other correspondence as proof that solicitations were made in writing and copies of such solicitations to all certified MWBEs/SDVOBs;
- Copies of responses to solicitations received from certified MWBEs/SDVOBs;
- Copies of bid prices from all respondents to a solicitation; and
- A description of any contract documents, plans, or specifications made available to certified MWBEs/SDVOBs for purposes of soliciting bids and the date and manner in which these documents were made available.

In the event that a waiver is not granted or approved by one or all of the above parties, OCSD may assess liquidated damages or seek settlement in accordance with the MWBE and/or SDVOB Regulations and the provisions of the contract language.

Where practical, feasible and appropriate, ESD shall promote and encourage participation by MWBEs and SDVOBs in the selection and award of all contracts. Such MWBE and SDVOB participation shall be documented in a regular supplement, prepared by OCSD, for inclusion in the quarterly and annual reports made by Contracts Administration to the Board. To assist in the gathering of this information, the originator must provide OCSD with a completed Utilization Plan of MWBE and, separately, SDVOB Participation, from the potential contract awardee, for OCSD's review and approval, prior to contract award. The required forms are accessible at <http://intranet.empire.internal/Resources/FinanceResources.html> (scroll down to "MWBE/SDVOB/DBE Non-Discrimination and Contractor & Supplier Diversity Forms").

8.5. Compliance with Iran Divestment Act of 2012

Every bid or proposal made to ESD pursuant to a competitive solicitation as provided in these Guidelines must contain the following statement, signed by the bidder or respondent and affirmed as true under penalty of perjury:

"By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that

each bidder is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State finance law."

The list in question is maintained by OGS and is available here: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>. No bid that fails to certify compliance with this requirement may be accepted as responsive, unless the bidder includes a statement in compliance with the Iran Divestiture Act (contact the Legal Department for guidance in such a case).

8.6. Encouragement of use of New York Businesses as sub-contractors and suppliers.

The Secretary to the Governor has issued a directive that provides that all vendors who anticipate using sub-contractors or suppliers to fulfill procurement contracts must be encouraged (but not required) to use New York State businesses. All procurement solicitations of any kind must include specific language aimed at such encouragement. The model language can be found at http://intranet.empire.internal/Resources/Data/Procurement/03042014_NYS_SubcontractorsandSuppliers.pdf

8.7. Project Sunlight

Project Sunlight is an important component of the Public Integrity Reform Act of 2011. Under this law, State governmental entities specified in the law are required to cooperate with the Office of General Services (OGS) and identify in a database developed by OGS all individuals, firms or other entities (other than State or local governmental agencies) that appear before such entity on behalf of themselves or in a representative capacity on behalf of a client or customer for any of various specified purposes. This includes appearances related to (a) procurement, (b) ratemaking, (c) regulatory matters, (d) judicial or quasi-judicial proceedings, (e) adoption or repeal of a rule or regulation.

Project Sunlight's reporting requirement for procurement appearances applies to those appearances that are for the purpose of procuring a State contract, irrespective of whether there is a governmental procurement planned. Thus, reporting is required for appearances relating to State contracts for which a Restricted Period under the Procurement Lobbying Law has not been established and without regard to whether a governmental procurement is anticipated. Appearances during the Restricted Period—whether they are bid clarification meetings or bid interviews or any other permissible contact under the State Finance Law do not need to be reported. As well as, appearances following the award of a State contract do not need to be reported.

8.8. Publication on ESD Website

Competitive solicitations must be made available on the ESD (and subsidiary, if applicable) website after advertisement in the NYS Contract Reporter. This website is also the appropriate place to post Questions and Answers regarding the procurement.

8.9 Contract Reporter Advertising Process

As stated above, ESD must advertise in the New York State Contract Reporter all contracts for the acquisition of goods and services of \$50,000 or more, unless an exemption is granted. In order to access the online system and place the advertisement, the initiator should contact Contracts Administration.

The minimum time for vendors to respond to a Contract Reporter solicitation is 15 business days (i.e., Saturdays, Sundays and legal holidays are excluded). The Contract Reporter website provides authorized users with a publication calculator tool in order to calculate the earliest due date for a solicitation.

Where practicable, staff members responsible for a proposed Procurement Contract should make reasonable efforts to identify potential vendors in addition to those identified through the Contract Reporter. This may be done by obtaining referrals from other governmental entities that may have similar requirements, reviewing reference directories, mailing solicitation materials to industry associations and/or known vendors and mailing to lists of appropriate MWBEs maintained by OCSD, as well as any appropriate SDVOBs, listed at http://ogs.ny.gov/Core/Docs/CertifiedNYS_SDVOB.pdf.

8.10. Selection Criteria

Written selection criteria shall generally be established for each proposed Procurement Contract and shall be included in any written solicitation materials. The relative weighting of the selection criteria should be set out in the RFP wherever practicable and, in the absence of written weighting, each criterion shall be deemed to have the same weight.

The selection criteria shall generally include price as an important factor to be considered in the selection process; however many ESD procurements are based on "Best Value," which allows for factors other than price to be taken into account. Such factors commonly include the quality of goods and services, the experience of the vendor and specific expertise with respect to the goods or services to be supplied. See also Section 7.1 above if price is weighted at less than 20%.

8.11. Bid Opening Procedures

All proposals should be received by the Procurement Department (unless the Procurements Director directs otherwise), and immediately should be stamped with the date and time of receipt. **Do not open any bid packages for any reason before the formal bid opening.** ESD staff members representing Contracts Administration, Procurements, Legal and the initiating Department/Subsidiary should be present at bid openings in person or by teleconference. Bids shall be opened by the Procurement Director or his/her designee, and the time and date of receipt shall be entered into the Bid Log, which must be signed by all staff members present. Teleconference participants must confirm their presence by email to the Procurements Director. The Bid Log shall also record the presence of SFL 139j-k and ST-220 forms in the bid.

A **Public Bid Opening is required** for Public Works contract solicitations, pursuant to UDC Act § 11 (which incorporates by reference State Finance Law § 135). This section generally covers bids for construction work on public projects, and may include preparatory work such as demolition, asbestos abatement and the like. ESD or a subsidiary must be a party to the contract, which must involve the use of laborers, mechanics or workers (not, for example, architects and engineers). Construction contracts must be awarded to the lowest qualified and responsible bidder. See UDC Act § 11. The definition of a “Public Work” is more a matter of art than law: if in doubt as to whether the contract is for Public Work, contact the Legal Department for guidance.

8.12. Bid Evaluation and Vendor Selection

The initiating Department Head should establish, as early as practicable prior to bid opening, a team of at least three ESD staff members with relevant knowledge and experience of the goods and/or services being procured. One member should come from Contracts Administration or Finance. In some cases, one or more non-ESD team members may join the review team, where those persons have specific knowledge of the procurement subject, or a specific role to play in the administration of the contract with the successful bidder. This involvement of non-ESD persons is appropriate because § 2824 (1) of the Public Authorities Law permits authorities such as ESD to “take into consideration the views and policies of any elected official or body, or other person” in the exercise of its powers and duties, provided that ESD must “apply independent judgment in the best interest of the authority, its mission and the public.” If non-ESD staff is included in the review team, the team must be expanded in number such that a majority will always be ESD staff members.

Analysis of the proposals and/or bids submitted and the award of the contract shall be documented in reasonable detail. Award to anyone other than the low bidder must include in the documentation the reason the low bidder was not selected.

In reviewing bids, all members of the team must complete and sign scoring sheets that rate each bidder according to the selection criteria and weighting set out in the RFP. Scoring sheets must not include anything other than numerical ratings (i.e., no comments/opinions/notes, etc). Original scoring sheets must be signed and retained by the Procurements Director as part of the Procurement Record.

8.13. Determination of Responsibility – “CLIP Review” and the VendRep form

Pursuant to State Finance Law § 139-j(7), ESD or the Subsidiary Board must determine that a vendor or respondent is a responsible contractor, prior to approving the award of a contract. In any event, whether or not a formal Determination of Responsibility is sought from the relevant Board, the initiator should ensure that all vendors are “responsible.”

There are two methods of ascertaining vendor responsibility:

- “CLIP” review. This review involves an assessment of responsibility in four categories:

Category	Factors to be considered include, but not are limited to:
Financial and Organizational <u>C</u> apacity	Assets, liabilities, recent bankruptcies, equipment, facilities, personnel resources and expertise, and proper auditing and accounting controls.
<u>L</u> egal Authority	Authority to do business in New York State, licenses, and registrations.
<u>I</u> ntegrity	Criminal indictments or convictions, civil fines and injunctions imposed by other agencies, anti-trust investigations, ethical violations, tax delinquencies, or debarment by federal, State or local governments.
Previous Contract <u>P</u> erformance	Reports of less than satisfactory performances, early contract termination for cause, contract abandonment, court determinations of breach of contract.

For all procurements, the initiator must submit a memo to the Procurements Director attesting that the initiator conducted a CLIP review and finds the vendor to be responsible and indicating what steps were taken to make that determination. View Determination of Responsibility form. In addition to consulting the resources listed on the Determination of Responsibility form, staff may find it useful to consult OSC's list of suggested resources, at <http://www.osc.State.ny.us/vendrep/webresources.htm>, or review OGS's bulletin of best practices for determining vendor responsibility.

CLIP review is not needed for procurements from the OGS Centralized Contracts list.

- The OSC VendRep Questionnaire, which should be used wherever possible and is required for all purchases of \$100,000 or more. This form seeks information about the vendor, its affiliates and subsidiaries, officers and owners, past responsibility determinations by agencies and investigations/prosecutions. It must be notarized, and false statements may be actionable and in some cases may be criminal. The VendRep forms for different types of vendors can be accessed here: www.osc.state.ny.us/vendrep/webresources.htm.

If a vendor is considered to be non-responsible, steps must be taken to afford the vendor due process rights, including an opportunity to explain its position in writing and, in some cases, at a meeting. Consult the ESD Legal Department in such cases, after having reviewed the information at <https://nyspro.ogs.ny.gov/sites/default/files/uploaded/OSCBestPracticeforVendorResponsibility.pdf>.

8.13.1. Cancellation of a Solicitation

On occasion, the competitive solicitation process does not yield any satisfactory responses and ESD wishes to pursue other methods of procurement. To notify the public that ESD has cancelled a solicitation, the initiator should (1) inform all respondents via phone call (which

should be documented for the procurement record), letter or email of the cancellation and (2) publish or post notice of the cancellation in each place that the solicitation was published (usually the Contract Reporter and the ESD website) for no less than 2 weeks. If the decision is made to re-advertise the opportunity, the project team should scrutinize the initial solicitation document to determine whether any restrictions can be lifted or the document can otherwise be revised to produce better results.

8.14. Procurement Record

The initiator shall be responsible for creating and maintaining a record of the procurement process. Such record shall contain documentation related to the procurement process, any competitive solicitation exemption, proposals and/or bids received, scoring sheets, vendor responsibility documentation and other documents prepared or used by the bid reviewers in their vendor selection process. Note that final scoring sheets must be sent to the Procurements Director before a contract is executed.

9. Contract Approval

Procurement Contracts in amounts of **\$250,000 and under** that will be completed within one year (for services contracts) must be approved by the Officer(s) specified in Attachment A to these Guidelines. Board approval is not required for these contracts, but contracts **between \$50,000 and \$250,000** (or for subsidiaries, whatever the board approval threshold is) must be approved by the President of the ESD (or subsidiary) Board or his or her designee.

Procurement Contracts priced at **over \$250,000**, as well as contracts for any amount involving personal services to be rendered over a period in excess of one year, must be approved by the ESD (or subsidiary) Board.

Note that **warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases and software support services)** are not considered personal service contracts and do not require approval by the Board unless the amount of the contract is over \$250,000 in aggregate through its term. All contracts with a technology component must be approved by ESD's Information Security Officer or designee prior to execution or Board approval.

9.1. Board Materials

The initiator writes a memorandum from the respective Department Head to the Officer(s) specified in Attachment A to these Guidelines, explaining the need for the contract. View Model Directors' Materials for Procurement Contracts (these materials can also be used for obtaining approval of the President or his or her designee by adding a CEO/Designee Approval Cover Memo).

The Board materials must set out:

- a. the need for goods and services;
- b. a brief description of the goods or services needed;
- c. the expected maximum cost of the proposed goods or services;
- d. the selection process used to determine an award based on best value, or where not quantifiable, the justification which demonstrates the best value will be achieved; and
- e. the funding source.

9.2. ESD Contract and Amendment Approval

- a. If staff anticipates that a contract may need to be extended beyond one year, ensure that Board approval is requested and that the materials and resolution specifically permit an extension of the contract. Once Board approval is obtained, the contract with the vendor must contain a clause that specifically permits extension. If the contract does not contain such a clause, and the contract needs to be extended, Contract Reporter advertising is required unless an exemption is granted.
- b. Contracts for services to be rendered over a period in excess of one year, regardless of the amount of the contract, which must have been approved by the Board, must in addition be reviewed annually by the ESD (or subsidiary) Directors, pursuant to Public Authorities Law § 2879.3(b)(ii). The initiating Department Head must provide an annual report setting forth the status of all continuing services contracts, together with justification for the continuance of such contracts for the next year. This annual status report can be made to Contracts Administration by filling out a contract summary/contract status report. The annual status reports will thus serve to clarify the need to continue existing multi-year service provider contracts. Note also that warranty and product maintenance/support/lease contracts (including but not limited to auto and equipment leases) are not considered personal service contracts.
- c. Contract documents should be fully executed and delivered by both parties prior to the commencement of any work. However, if in the discretion of the initiating Department Head it is essential that work on the contract be commenced before the formal contract documents have been approved, and before Board or President approval if required, the officer named in Attachment A to these Guidelines may issue a letter authorizing a contractor

to commence work pending completion and execution of formal contract documents (“**Notice to Proceed**”), provided that:

- i. the contract is not subject to OSC approval (See Section 10.5); and
- ii. the authorization contained in the Notice to Proceed is (a) \$250,000 or less and (b) does not exceed 20% of the total contract value; and
- iii. the initiating Department Head seeking the Notice to Proceed obtains in advance, via memorandum (with copies sent to Contract Administration and Procurement) an explanation in reasonable detail the need for the immediate commencement of contract performance, and the written authorization of the Officer(s) specified in Attachment A to these Guidelines.

An NTP template is available [here](#).

d. Contract Amendments

- i. **Amendments to existing contracts** follow the same process as new contracts, i.e., any amendment over \$50,000 needs to be advertised in the Contract Reporter, exempted, or awarded to a firm on a pre-qualified list after soliciting bids from three other firms including at least one MWBE firm and one SDVOB firm. An Amendment Package must be sent to Contracts Administration for approval and processing (see Commitment Request Package on the next page for guidance). The same documents, such as justification memo/contract status report, commitment request form and/or standard amendment form must be generated. If the proposed amendment will involve a new Contract Reporter advertisement or other solicitation, the requirements of SFL §139-j and 139-k and State Tax Law § 5-a will apply, and in any case, new certifications may be required. Note that an amendment to an existing contract that causes the aggregate amount of the contract to exceed \$1 million may be subject to OSC approval, regardless of the amount of the amendment and source of funds.
- ii. Amendments that increase the **contract amount** to more than \$250,000 must be approved by the ESD (or subsidiary) Directors. Amendments for less than 10% of the original contract amount (or the contract amount as subsequently approved by the Board) may be executed by the ESD officer named in Attachment A to these Guidelines without further Board approval, unless the amendment increases the contract to an amount above \$250,000 and Directors’ approval has not been previously obtained.

- iii. If a proposed amendment to a contract for personal services will increase the **term** of the contract to more than one year, **Board approval is necessary, and Contract Reporter advertising is necessary** unless (i) as discussed in paragraph (a) above, the original contract contained a clause specifically permitting extension; or (ii) the amendment is awarded to a vendor on a pre-qualified list following wherever practicable the receipt of three quotes from other vendors on the list including at least one from a certified MWBE or SDVOB firm. If the amendment will increase the amount of time or other terms of the contract but **will not increase the contract amount**, the initiator need not submit a new Commitment Request Package.
- iv. In the case of contracts for more than \$1 million, where the initiator anticipates that unforeseen contingencies and changes of scope may arise and require changes in the contract amount, Board approval should be sought from the outset for amendment of the contract up to 10% of the amount approved, to be executed without further Board approval by the Chief Executive Officer and the Chief Financial Officer of the corporation. Note that such an amendment may require OSC review and approval (see section 10.5). If in doubt, consult the Legal Department.

Example A: Original contract for \$100,000 was awarded competitively. The initiator wishes to amend the contract for an additional \$5,000. Because the amendment is for less than \$50,000 it does not require advertisement/exemption, and because it will not increase the total contract amount to more than \$250,000* and is less than 10% of the original contract amount, it does not require Board approval. This example also assumes that the amendment will not extend personal services beyond one year, and so will not require Board approval.

*Some subsidiaries have lower monetary thresholds for board approval.

Example B: Original contract for \$40,000 was awarded via purchase order. Due to unforeseen circumstances, the initiator wishes to amend the contract for an additional \$20,000. Because the amendment is less than \$50,000, it too can be procured via purchase order. However, staff should carefully examine future needs to avoid repeated awards of small noncompetitive amendments.

Example C: Original contract for \$5 million was awarded competitively and approved by the Board. The initiator wishes to amend the contract for an additional \$300,000. Because the amendment is less than 10%, and the contract has previously been approved by the Board, no further Board approval is necessary, but Contract Reporter advertising (or exemption) is still necessary.

Example D: Original contract for \$100,000 was awarded to a firm on a Board-approved pre-qualified list. The initiator wishes to amend the contract for an additional \$50,000 and extend the term beyond one year. Because the amendment will extend the contract term beyond one year, Board approval is necessary. However, because the firm was pre-qualified through a competitive process, no further Contract Reporter advertising is necessary (but the initiator should solicit bids from three other firms on the list where practicable, including at least one MWBE and one SDVOB).

10. Steps After Contract Approval Is Obtained

10.1. Commitment Request Process (for contracts of \$50,000 or more)

- a. The contract initiator should assemble a Commitment Request Package containing the following documents:
 1. A completed Commitment Request Form.
 2. A Contract Summary/Justification Memorandum explaining the need for the procurement and the method of procurement used.
 3. One (1) completed original of the Standard Form Contract - Short Form for Goods/Services or Standard Form Amendment or Modification of Contract with: (i) Schedule A (conditions applicable to procurements of goods/services or legal services); (ii) Schedule B (Participation By Minority and Women-Owned Business Enterprises: Requirements and Procedures); (iv) Schedule B-1 (Participation by Service-Disabled Veteran-Owned Businesses with Respect to State Contracts); (v) Appendix A (ST-220 Contractor Certification Form pursuant to Tax Law § 5-a); (vi) Appendix B (Compliance with SFL § 139-j and 139-k, the Offerer's Affirmation of Understanding and Agreement pursuant to SFL §139-j; and (vii) Appendix C (Offerer Disclosure of Prior Non-Responsibility Determinations under SFL § 139-k).

Remember that the provisions and the requirements of the proposed contract must be specific and stated in clear and unambiguous terms so they are fully understood by the contracting parties. It is important that the contract clearly specify what is expected of both the contractor and ESD, and the method of payment to the contractor. The more clear and specific the contract, the easier it will be to monitor.

The terms of the contract should include, but not be limited to:

- the scope and purpose of the contract;

- the description of the services to be performed;
 - the location where the work is to be performed;
 - the standards to be used to measure performance (e.g. units of services, number and nature of clients served, target dates, etc.);
 - the level of expertise that is required to perform the tasks, the cost and the method payment of the contract;
 - the projected starting date and the contract period;
 - the finished product or the services to be delivered;
 - record-keeping and reporting requirements, including a statement that ESD and any relevant State agency has the right to audit the contractor's records;
4. Written explanation of the responsibility determination/CLIP review. View Determination of Responsibility form. For contracts valued at \$100,000 or more, staff must also submit a VendRep Form completed by the vendor.
 5. ESD/Subsidiary Board of Directors or CEO/designee approval, if applicable. View sample Board materials and CEO/Designee Approval Cover Memo.
 6. Depending on the procurement method used: (i) the Contract Reporter advertisement and posting of bid results and internal approval to advertise and the scoring sheet/bid opening log; or (ii) an approved exemption letter; or (iii) the OGS Centralized Contract; or (iv) a copy of the relevant Board-approved prequalified list.
 7. All appropriate insurance certificates, as approved by the ESD Insurance Administrator, a copy of the appropriate officer's approval and a copy of the RFP, if applicable. Note that all contractors must have evidence of Workers' Compensation and Disability Insurance coverage.
 8. A completed Commitment Package Checklist.
 - b. The initiator signs and obtains the Department Head approval on the Commitment Request form and forwards the commitment package (all documents listed above) to Procurement for compliance review and approval. When approved, Procurement will route the commitment package to Contract Administration.
 - c. Contract Administration routes and tracks the commitment package and obtains necessary approvals from various ESD departments.

- d. Upon obtaining in-house approvals, Contract Administration sends all three (3) sets of the contract or amendment package to the vendor for signature(s).
- e. After receiving three (3) signed sets from the vendor, Contract Administration sends all three sets to the Officer(s) specified in Attachment A to these Guidelines for signature.
- f. One original copy of the fully-executed contract or amendment is sent by Contract Administration to the vendor.

10.2. Contract Reporter Award Notification

A contract is considered awarded when it is executed (signed) by all parties. If a contract is awarded after a Contract Reporter Solicitation, the award, along with the Schedule of MWBE and SDVOB Participation (and/or Disadvantaged Business Enterprise Participation, where applicable), must be posted on the Contract Reporter system. This posting will be done by Contracts Administration.

10.3. [INTENTIONALLY OMITTED]

10.4. Department of Budget (“DoB”) Approval

Under DOB Bulletin B-1184, approval for certain procurements over \$500 is required. In general, if a State or legislative appropriation is the source of funds, approval is needed. A web-based application known as the “Agency Spending Controls Application” process is used to obtain prior approval. DOB approval is not required when the funding source for the procurement comes from a non-State source (e.g., a developer of an ESD project), where at least 75% of the procurement cost will be reimbursed by federal funds, or when the procurement is needed to address an immediate threat to public health and/or safety. DOB mandated forms are used in cases where approval is required. ESD has implemented the cost control measures described in Bulletin B-1184. All spending not involving Federal reimbursement of at least 75 percent, presenting an immediate threat to public health and/or safety or whose funding source is from a Third Party is subject to the preapproval process specified in the Budget Bulletin utilizing forms established by DOB known as Attachment A. An Attachment B form was also created for spending involving Federal reimbursement of at least 75% or presenting a public health and/or safety issue.

For instructions and forms, see the ESD Employee Intranet: Financial Resources. If in doubt, contact the ESD Controller’s Department for guidance.

10.5. OSC Jurisdiction Over Contracts in Excess of \$1 Million

Under Public Authorities Law § 2879-a (effective March 1, 2010), ESD must make certain communications to OSC about certain types of contracts valued at more than one million dollars. OSC has issued final regulations implementing this law, and OSC approval shall be deemed part

of these Guidelines. A memorandum explaining the application and procedures involved in OSC approval has been circulated to all relevant staff and may be viewed here.

“Eligible Contracts” are contracts in excess of one million dollars that are either: (i) to be paid for in whole or in part by State appropriations; or (ii) noncompetitively awarded (regardless of the funding source).

“Eligible Contract Amendment” is any modification to (A) an Eligible Contract; or (B) a contract executed after March 1, 2010 where the value as amended is in excess of \$1 million where (i) the contract as amended will be funded in whole or in part by State appropriations; or (ii) the contract was originally awarded noncompetitively; or (iii) the contract was originally awarded competitively but the modification was “neither contemplated nor provided for” in the original solicitation (i.e., new scope).

- ESD must annually report to OSC all Eligible Contracts/Amendments that it anticipates in the next fiscal year, and revise such report within 30 days of learning of any significant changes to the annual report.
- ESD must give OSC 10 days’ notice before (i) publishing a solicitation that ESD expects will result in an Eligible Contract/Amendment that was not previously reported to OSC or (ii) executing a noncompetitive Eligible Contract/Amendment that was not previously reported to OSC.
- ESD must file all Eligible Contracts/Amendments that are not subject to OSC approval (see following paragraph) with OSC within 60 days of execution.

Certain Eligible Contracts/Amendments that are the subject of a written notice must also be approved by OSC within 90 days after the contract is signed. A list of active written notices can be viewed here. If approval by OSC has not been obtained, the signed contract “shall not be a valid enforceable contract.”

All submissions to and communications with OSC are to be handled by Contracts Administration only. Submit nothing to OSC directly.

OSC has confirmed that contracts for the sale of real property for an amount over \$1 million are covered by the Property Disposition Guidelines and are not subject to OSC review and approval under PAL § 2879-a.

12. Monitoring of Procurement Contracts

Performance of Procurement Contracts must be monitored by the initiating Department to ensure that the scope of work or services to be provided are being/have been performed; that use of ESD personnel, supplies and facilities is documented; that the MWBE and SDVOB requirements, as provided by OCSD, are being met; and that the established starting and completion dates for major components of the contract are being/have been met.

ESD employees assigned the responsibility of monitoring the work should be familiar with the type of work being performed and with the specific terms of the contract, including MWBE and SDVOB participation goals.

The frequency and manner in which the vendor's performance will be monitored should be clearly stated to the vendor and directly related to the terms of the contract.

Written documentation pertaining to vendor performance, such as progress reports, site visit reports, payment and expenditure data, memoranda of verbal discussions, MWBE and SDVOB utilization plans and written correspondence should be maintained and reviewed by the initiating Department.

Periodic visits to the work sites should be made where appropriate to review work in progress and work completed. Site visit reports should be completed and include the observations of pertinent matters, such as the number and type of persons employed by the vendor, adequacy of the facilities and equipment, and quality of performance, including any deficiencies in the performance of the work, which may have an impact on satisfactory completion of the project.

The evaluation of the vendor's performance should take into consideration the quantity and quality of the work performed; the timeliness of submission of contract deliverables; the adequacy of cost and performance records and other supporting documentation; the ability of the vendor to meet MWBE and SDVOB participation goals; and whether the extent of performance, to date, is commensurate with the amount the contractor has been paid.

All MWBE and SDVOB performance should be reported to OCSD.

Performance that is below expectations or established standards should be reported to ESD management immediately. All deficiency reports should be specific and in writing. Management should review deficiency reports and take appropriate action, which may include termination of a contract.

All invoices presented for payment should be reviewed by the person who is monitoring the contract and approved by the respective Department Head. No payment should be made unless the work is satisfactory and in accordance with the terms of the contract. Approval on the Payment Authorization form attests to this. ESD's prompt payment procedures can be found at 21 NYCRR 4214.3, available [here](#).

13. Ethical Considerations

13.1 Procurement Contracts Involving Former Employees of ESD

Public Officers Law § 73 and ESD's Ethics Policies impose restrictions on former ESD officers and employees deriving compensation from ESD contracts or appearing before ESD. Accordingly, evaluation team members should carefully review lists of all proposed staff

submitted by vendors to identify any former ESD employees. If a former ESD employee is identified, review his/her employment history to ensure it is appropriate and allowable. Direct any questions to the ESD Ethics Officer.

13.2 Conflicts of Interest

All actions of ESD staff, including but not limited to procurement, are subject to ESD's Ethics Policies and the provisions of Public Officers Law §§ 73 and 74. Evaluation team members should ensure that they do not have any conflict of interest with respect to any bidder, and should alert the ESD Ethics Officer immediately upon identifying any potential conflict. For particularly large or complex solicitations, especially where outside consultants are assisting with the evaluation process, the project team should consider having each member of the evaluation team complete an Evaluation Conflict Disclosure Statement. Procurement counsel can advise on how to use this form.

13.3 Unfair Advantage Prohibited

Firms that develop or draft specifications, requirements, statements of work, or requests for bids or proposals for a procurement must be excluded from competing in any resulting procurement.

14. Implementation of These Guidelines

ESD's Legal Department, in conjunction with the Procurement/Contract Administration Department, shall be responsible for:

- a. Preparing for approval by the CEO such supplemental procedures as may be required to effectively implement these Guidelines.
- b. Preparing proposed amendments to the Guidelines for approval by the CEO and the ESD Directors when and as required.

15. Reporting

15.1. Annual Reports

Annually, ESD's VP/Contract Administration shall prepare for the Directors' review a report on Procurement Contracts as of the end of each fiscal year, summarizing procurement activity by ESD for the period of the report, including a listing of all contracts entered into, the selection process used to select vendors, the status of existing Procurement Contracts and required Schedules of MWBE Participation. ESD's VP/Contract Administration shall also prepare, on an annual basis, a report for submission to:

- a. The Division of Budget;
- b. The Department of Audit and Control;

- c. The Senate Finance Committee;
- d. The Assembly Ways and Means Committee;
- e. Members of the public (upon receipt of reasonable requests therefor); and
- f. The Commissioner of Economic Development.

The reports shall include these Guidelines, any amendments thereto, and an explanation of the amendments.

16. Effect on Awarded Contracts

Nothing contained in these Guidelines shall be deemed to alter, affect the validity of, modify the terms of, or impair any contract or agreement made or entered into in violation of, or without compliance with, these Guidelines. These Guidelines reflect best and customary practice, but are not intended to be rules of law. Note, however, that certain contracts may not be “valid or enforceable” without OSC approval. (See Section 10.5)

ITEM 3



FOR CONSIDERATION

July 25, 2018

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Amended Corporation Conflict of Interest and Related Party Transaction Policy and Amendments to the By-Laws in Accordance with Amendments to the New York Not-For-Profit Corporation Law

REQUEST FOR: Approval of an Amended Conflicts Policy and Approval of Amendments to the By-Laws and Related Actions

I. BACKGROUND

The New York Transportation Development Corporation (the "Corporation") is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law ("NYNPCL") and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYNPCL and Section 1411 of the NYNPCL. The Corporation was formed on November 2, 2015 and issued bonds for four airport financings and refinancings in 2015, 2016 and 2018. The Corporation is now addressing certain annual obligations and taking other necessary corporate actions.

Certain statutory sections of the NYNPCL have been amended on separate occasions necessitating the changes to the By-Laws and the Corporation Conflicts of Interest and Related Party Transaction Policy ("Conflicts Policy") proposed below.

II. PROPOSED AMENDMENTS

The Conflicts Policy will be amended to: (i) revise the definition of Related Party Transactions to permit certain de minimus or beneficial transactions; (ii) change the defined term Key Employees to Key Persons and expand the scope of Key Persons to include persons other than employees of the Corporation; and (iii) revise the definition of Relatives to include domestic partners, in compliance with the NYNPCL including but not limited to Sections 102 (22), (24), and (25).

Article III Section 1(b) of the By-Laws will be amended to include the defined term "JDA."

Article III of the By-Laws will be amended to include Section 4(c) that prohibits Directors who are employees of the Corporation from participating in any Board of Directors or committee deliberations or voting relating to administration of the Whistleblower Policy, in compliance with the NYNPCL including but not limited to Section 715-b(b)(3).

Article VI Section 2 of the By-Laws will be amended to authorize employees of the Corporation to serve a chairperson of the board of directors of the Corporation, in compliance with the NYNPCL including but not limited to Section 713(f).

Article XIII of the By-Laws will be added to provide for a seal for the Corporation.

III. REQUESTED ACTION

The Board of Directors is now being asked to approve the amended Conflicts of Interest and Related Party Transaction Policy attached hereto and to approve the amended By-Laws attached hereto.

IV. 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.

V. ATTACHMENTS

Resolution

Exhibit A: Amended Conflict of Interest and Related Party Transaction Policy

Exhibit B: Questionnaire Concerning Conflicts of Interest

Exhibit C: Affirmation Re: Conflict of Interest and Related Party Transaction Policy

Exhibit D: Amended By-Laws

July 25, 2018

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Amended Corporation Conflict of Interest and Related Party Transaction Policy (“Conflicts Policy”) and Amendments to the By-Laws (“By-Laws”) in Accordance with Amendments to the New York Not-For-Profit Corporation Law (“NYNPCL”) - Approval of an Amended Conflicts Policy and Approval of Amendments to the By-Laws and Related Actions

WHEREAS, several sections of the NYNPCL have been amended necessitating amendments to the Conflicts Policy and the By-Laws of the New York Transportation Development Corporation (the “Corporation”);

WHEREAS, an amended Conflicts Policy has been prepared to comply with the statutory amendments; and

WHEREAS, amendments to the By-Laws have been prepared to comply with the statutory amendments.

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, that the Conflicts Policy, in the form attached hereto, be, and it hereby is, in all respects ratified, confirmed and approved; and that said amended Conflict of Interest and Related Party Transaction Policy be, and it hereby is, adopted by the Corporation.

RESOLVED, that the By-Laws in the form attached hereto, be, and hereby are, in all respects ratified, confirmed and approved; and that said amended By-Laws of the New York Transportation Development Corporation be, and it hereby is, adopted by the Corporation.

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

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

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

necessary or advisable to carry out the intent and accomplish the purpose of the foregoing resolutions and the transactions contemplated thereby, the taking of such actions and the execution, delivery, certification and filing of such documents to be conclusive evidence of such approval.

* * *

EXHIBIT A

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

CONFLICT OF INTEREST AND RELATED PARTY TRANSACTION POLICY

AS AMENDED

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

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

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

1. Definitions.

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

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

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

- (i) A compensation arrangement with an entity or individual with which the Corporation has entered into a transaction or arrangement, or with which the Corporation is negotiating, or contemplating negotiating, a transaction or arrangement;

- (ii) Subject to *de minimus* exception, any ownership or investment interest in, or other affiliation with, any entity or individual that has any transaction, arrangement or relationship with the Corporation, or with which the Corporation is negotiating, or contemplating negotiating, a transaction or arrangement;
- (iii) Acceptance of any gift, entertainment, or other favor where such acceptance might create the appearance of influence on the director, officer, Key Person or Related Party (other than gifts of nominal value, which are clearly tokens of respect and friendship unrelated to any particular transaction);
- (iv) Acquisition of any real property, leaseholds, patents or other property or rights by the director, officer, Key Person or Related Party in which the Corporation has, or the director, officer, Key Person or Related Party knows or has reason to believe at the time of acquisition that the Corporation is likely to have an interest;
- (v) Incurrence of indebtedness to the Corporation, other than advances for amounts due for ordinary travel and expense advances;
- (vi) Use of his or her position, or confidential information or the assets of the Corporation, to his or her personal advantage or for an improper or illegal purpose;
- (vii) The existence of any other interest that may make it difficult for the director, officer, Key Person or Related Party to exercise objective judgment or otherwise perform effectively; or
- (viii) The purchase or sale of securities issued by the Corporation or the utilization of material non-public information by the director, officer, Key Person or Related Party in a manner that would constitute either a violation of federal securities law or otherwise give rise to a Conflict of Interest or the appearance of a Conflict of Interest.

(c) "Key Person" means any person, other than a director or officer, whether or not an employee of the corporation, who (i) has responsibilities, or exercises powers or influence over the corporation as a whole similar to the responsibilities, powers, or influence of directors and officers; (ii) manages the corporation, or a segment of the corporation that represents a substantial portion of the activities, assets, income or expenses of the corporation; or (iii) alone or with others controls or determines a substantial portion of the corporation's capital expenditures or operating budget.

(d) "Related Party" means (i) any director, officer or Key Person of the Corporation or any Affiliate of the Corporation; (ii) any Relative of any director, officer or Key Person of

the Corporation or any Affiliate of the Corporation; or (iii) any entity in which any individual described in (i) and (ii) above has a 35% or greater interest or, in the case of a partnership or professional corporation, a direct or indirect ownership interest in excess of 5%.

(e) "Related Party Transaction" means any transaction, agreement or any other arrangement in which a Related Party has a financial interest and in which the Corporation or any Affiliate of the Corporation is a participant except that a transaction shall not be a related party transaction if: (i) the transaction or the related party's financial interest in the transaction is de minimis, (ii) the transaction would not customarily be reviewed by the board or boards of similar organizations in the ordinary course of business and is available to others on the same or similar terms, or (iii) the transaction constitutes a benefit provided to a related party solely as a member of a class of the beneficiaries that the corporation intends to benefit as part of the accomplishment of its mission which benefit is available to all similarly situated members of the same class on the same terms.

(f) "Relative" means a "Relative" of an individual means (i) his or her spouse or domestic partner as defined in section twenty-nine hundred ninety-four-a of the public health law; (ii) his or her ancestors, brothers and sisters (whether whole or half blood), children (whether natural or adopted), grandchildren, great-grandchildren; or (iii) the spouse or domestic partner of his or her brothers, sisters, children, grandchildren, and great-grandchildren.

2. Disclosure of Conflict.

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

3. Resolution.

(a) Any director, officer, Key Person or any Related Party having a potential Conflict of Interest or an interest in a Related Party Transaction shall not (i) be present at or participate in Board or committee deliberation or vote on the matter giving rise to such conflict or transaction (except that relevant information at a Board meeting prior to commencement of deliberations or voting thereon), or (ii) attempt to influence improperly the deliberation or voting on the matter giving rise to such conflict or transaction.

(b) With respect to any Related Party Transaction in which a Related Party has a substantial financial interest¹, the Corporation may enter into a transaction or

¹ The New York Not-for-Profit Corporation Law does not define the term "financial interest" or "substantial

arrangement only if: (i) the Board has considered alternative transactions to the extent available; (ii) at a duly held meeting of the Board, a majority of those Board members who have no interest in the transaction or arrangement approve the transaction or arrangement after determining, in good faith and after reasonable inquiry, that the transaction is fair and reasonable to the Corporation and in its best interests; and (iii) the Board documents in writing the basis for the decision including its consideration of alternative transactions, if any.

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

4. Compliance.

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

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

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

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

financial interest." In determining whether a financial interest rises to the level of a "substantial financial interest," the General Counsel will consider the facts on a case-by-case basis.

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

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

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

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

Policy Dated: July 25, 2018

EXHIBIT B

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

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION
(To be Completed by Directors and Director Nominees on an Annual Basis)

1. Please list any entity of which you serve as an officer, director, trustee, member, owner (either as sole proprietor or a partner), or employee.

2. Please identify any transaction in which the Corporation is a participant and in which you may have a conflicting interest.

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

Date

Name:

EXHIBIT C

Affirmation re: Conflict of Interest and Related Party Transactions Policy

New York Transportation Development Corporation

(To be completed by Officers and Key Persons on an Annual Basis)

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

Date

Name:

EXHIBIT D
BY-LAWS
of
NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

ARTICLE I

The Corporation

Section 1. Name.

The name of this corporation is "New York Transportation Development Corporation." It shall hereinafter be referred to throughout these By-Laws as the "Corporation."

Section 2. Purpose; Powers.

The Corporation is not formed for pecuniary profit or financial gain. The Corporation is formed for the public purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority (the "JDA"). It will undertake its public purpose by issuing tax exempt bonds for transportation and other purposes described above (the "Bonds") and in the case of certain tax-exempt bonds, shall obtain the approval of the Governor of the State of New York to the extent required by applicable federal tax laws; by issuing such other non-federally tax-exempt obligations as may be appropriate (the "Obligations"); and by exercising all or any part of such public functions and doing any work related to or in connection with the issuance of the Bonds or Obligations, and engaging in all other lawful business purposes. The Corporation shall have all powers conferred upon a not-for-profit corporation by the New York Not-for-Profit Corporation Law (the "NYPCL"). However, in fulfilling its purpose, the Corporation shall not impose any liabilities or obligations upon the JDA, the New York State Urban Development Corporation doing business as Empire State Development ("ESD"), the Governor of the State of New York, or the State of New York (singularly "State Party" or collectively the "State Parties") and none of the State Parties shall assume any liability or responsibility thereunder except with respect to any State Party that specifically agrees to assume the same.

Section 3. Certificate of Incorporation.

These By-Laws, the powers of the Corporation and its directors, and all matters concerning the conduct and regulation of the business of the Corporation shall be subject to the provisions of the Corporation's certificate of incorporation (the "Certificate of Incorporation") adopted and filed with the Secretary of the State of New York, as the same may be amended for time to time.

ARTICLE II

Location of Offices of Corporation

The principal office of the Corporation shall be located in the City, County and State of New York.

ARTICLE III

Members and Board of Directors

Section 1. Enumeration.

(a) The Corporation shall have a membership body of two members which shall be divided into two classes, the Class A Member and the Class B Member (the Class A Member and the Class B Member are collectively referred to as the "Members"). Each of said classes shall represent one unit of membership interests in the Corporation. The Corporation shall not issue any additional membership interests, or any options, warrant or other securities exercisable therefor or convertible there into, except as may be approved by unanimous vote of all of the Members.

(b) The Class A Member of the Corporation shall be the Governor of the State of New York, and the Class B Member of the Corporation shall be the JDA. Any purported assignment, transfer, mortgage, pledge or hypothecation by any Member of its membership interests in the Corporation without the prior written consent of all other Members shall be void *ab initio*.

(c) The Corporation shall have a board of directors (the "Board of Directors") which shall be appointed by the Members as set forth in Section 3 of this Article III. The Board of Directors shall initially be comprised of five directors (the "Directors"). The Class B Member shall have the right to increase the number of Directors from five to six by appointing an additional member, and that notwithstanding all of the foregoing, the Board of Directors shall be comprised of such other number of directors as is unanimously approved by all of the Members. Each Director shall be entitled to one vote on each matter submitted to the Board of Directors.

Section 2. Terms of Directors. The Directors appointed by the Class A Member shall be classified, with respect to the time for which they severally hold office, into three categories; one category to be originally appointed for a term expiring at the annual meeting of Members to be held in 2016, another category to be originally appointed for a term expiring at the annual meeting of the Members to be held in 2017, and another category to be originally appointed for a term expiring at the annual meeting of Members to be held in 2018, with each category to hold office until its successor is duly appointed and qualified. The Directors appointed by the

Class B Member shall be classified, with respect to the time for which they severally hold office, into two categories; one category to be originally appointed for a term expiring at the annual meeting of Members to be held in 2016, another category to be originally appointed for a term expiring at the annual meeting of the Members to be held in 2017; however, if the Class B Member increases the number of directors from five to six pursuant to Section 1(c), the additional director appointed by the Class B Member shall be classified in a third category, with respect to the time such category of director holds office, originally appointed for a term expiring at the annual meeting of Members to be held in 2018, with each category of Class B members to hold office until its successor is duly appointed and qualified.

Section 3. Appointment or Election of Directors.

(a) Three members of the Board of Directors shall be elected or appointed by the Class A Member voting as a single class.

(b) Two members of the Board of Directors shall be elected or appointed by the Class B Member voting as a single class except that if the Class B member increases the number of directors from five to six pursuant to Section 1(c), three members of the Board of Directors shall be elected or appointed by the Class B member voting as a single class.

(c) Each election of Directors shall be pursuant to the Certificate of Incorporation, these By-Laws and applicable law. The election of Directors need not be by written ballot.

Section 4. Powers of the Members and the Board of Directors.

(a) The Members shall have and may exercise all powers, rights and privileges afforded to "members" of a Corporation organized under the NYNPCL, including without limitation, the power to adopt By-Laws providing for the indemnification of Directors, officers, employees and other agents of the Corporation or of persons who serve other organizations in such capacities at the request of the Corporation, and the power to amend the Certificate of Incorporation of the Corporation.

(b) The Board of Directors shall manage and control the affairs and property of the Corporation, and may exercise on behalf of the Corporation all lawful powers of the Corporation under the NYNPCL. If a quorum is present, as set forth in Section 4 of Article IV of these By-Laws, a majority of the Directors present must give their approval to take any actions authorized by the Certificate of Incorporation, these By-Laws or law except to the extent that a greater number is required by law or the Certificate of Incorporation, these By-Laws or law. The Board of Directors shall choose and appoint all the agents and officers of the Corporation and shall determine the compensation, if any, of such agents and officers and such fees, if any, for themselves as they deem reasonable. The Directors shall be reimbursed for all expenses reasonably incurred by them in the performance of their duties. The Board of Directors may, from time to time, to the extent permitted by law, delegate any of its powers to committees,

officers, boards of advisors, attorneys or agents of the Corporation, subject to such limitations as the Board of Directors may impose.

(c) Directors who are employees of the Corporation may not participate in any Board of Directors or committee deliberations or voting relating to administration of the New York State Urban Development Corporation, doing business as Empire State Development Whistleblower Policy previously adopted by the Corporation.

Section 5. Special Approval Rights of the Board of Directors.

The affirmative vote of majority of the Board of Directors, including at least two Directors appointed by the Class A Member and at least two Directors appointed by the Class B Member, shall be necessary for the transaction of the following specified items of business:

(a) Elections of the Corporation’s Chairperson, Vice Chairperson (if any), President and Vice President;

(b) Adoption of the Corporation’s annual budget and amendments or revisions thereto;

(c) Dissolution, liquidation, termination or winding-up of the Corporation;

(d) (i) Consent of the institution of bankruptcy or insolvency proceedings against the Corporation, (ii) the filing of a petitions seeking or consent to reorganization or relief under any applicable federal or state law relating to bankruptcy or insolvency, (iii) consent to the appointment of a receiver, liquidator, assignee, trustee, sequester or other similar official for the Corporation or a substantial part of its property, (iv) the making of a general assignment for the benefit of creditors, or (v) admission in writing of the Corporation’s inability to pay its debts generally as they become due; or

(e) Merger or consolidation of the Corporation with any other entity, or the sale of all or substantially all of the Corporation’s assets or the acquisition by the Corporation of all or substantially all of the assets or capital stock or other ownership interest of or in any other entity.

ARTICLE IV

Meetings of the Board of Directors and the Members

Section 1. Place.

(a) The annual meeting of the Members for the appointment of Directors, and for the transaction of such other business as may properly come before the meeting, shall be held at such place, date and hour as shall be fixed by the Board of Directors and designated in the notice thereof, except that no annual meeting need to be held if all actions, including the appointment of Directors, required by the NYNPCL to be taken at the Members' annual meeting are taken by written consent in lieu of meeting pursuant to Section 5 of this Article IV.

(b) Meetings of the Board of Directors shall be held at such place within the State of New York as may be named in the notice of such meeting. Regular meetings may be held in such place and at such times as the Directors may fix by vote.

Section 2. Special Meetings.

(a) Special meetings of the Members for any authorized purpose or purposes may be called by the Board of Directors, the Chairperson, the President or any Member of the Corporation, to be held at such place, date and hour as shall be designated in the notice.

(b) Special meetings of the Board of Directors for any authorized purpose or purposes may be called by any Director, the Chairperson or the President.

(c) At any special meeting of the Members or the Board of Directors, the person calling such special meeting shall have the right to put any matter to vote of the Members or the Directors, as the case may be, at such special meeting, regardless of whether such person is authorized to vote on such matter.

Section 3. Notice.

(a) Upon the calling of a special meeting of the Members, pursuant to Section 2 of this Article IV, a written notice of the date, place, time and purposes of the meeting shall be given by the Chairperson or the President (or in both of their absences or refusal by any Member) at least 10 days before the meeting to each Member by leaving such notice with the Member or at the Member's residence or usual place of business, or by mailing it, by first-class mail with postage prepaid, to the address of the Member as it appears in the records of the Corporation, by facsimile telecommunication or by electronic mail. Any Member may waive notice of any meeting either before or after such meeting and attendance at any meeting for which notice was not properly served shall constitute a waiver of such notice.

(b) Upon the calling of a special meeting of the Board of Directors pursuant to Section 2 of this Article IV, a notice of the date, place, time and purposes of the meeting shall be given by the Chairperson or the President (or in both of their absences or refusal by any Director) at least 3 days before the meeting to each Director by telephone, by electronic mail or by leaving a written notice with the Director or at the Director's resident or usual place of business, or by mailing a written notice, by first-class mail with postage prepaid, to the address of the Director as it appears in the records of the Corporation. Any Director may waive notice

of any meeting either before or after such meeting and attendance at any meeting for which notice was not properly served shall constitute a waiver of such notice.

Section 4. Quorum.

(a) At each meeting of the Members, both the Class A Member and the Class B Member must be present, in person or represented by proxy, to constitute a quorum for the transaction of business. Any authorized action to be taken at such meeting must be approved by both the Class A Member and the Class B Member.

(b) At each meeting of the Board of Directors, a majority of the Directors entitled to vote at such meeting, including at least one Director appointed by the Class A Member and at least one Director appointed by the Class B Member, shall constitute a quorum at any meeting of Directors; a smaller number may adjourn finally or from time to time without further notice until a quorum is secured. If a quorum is present, a majority of the Directors present, including at least one Director appointed by the Class A Member and at least one Director appointed by the Class B Member, must give their approval to take any actions authorized by the Certificate of Incorporation, these By-Laws or law, except to the extent that a larger number is required by the Certificate of Incorporation, these By-Laws or law. Each Director shall have one vote, and there shall be no voting by proxy.

Section 5. Action by Consent.

(a) Subject to applicable law, any action required or permitted to be taken at any meeting of the Members may be taken without a meeting if either Members (or their respective proxies) consent to the action in writing or by electronic mail and the written or electronic consents are filed with the records of the meetings of the Members. Such consents shall be treated for all purposes as a vote at a meeting.

(b) Subject to applicable law, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee designated by the Directors thereby, as the case may be, may be taken without a meeting if all the Directors or committee members consent to the action in writing or by electronic mail and the written or electronic consents are filed with the records of the meetings of the Directors or of the committee. Such consents shall be treated for all purposes as a vote at a meeting.

Section 6. Telephonic Meetings.

(a) Subject to applicable law, the Members may participate in a meeting of the Members by means of a conference telephone call or through use of similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

(b) Subject to applicable law, the Directors of the Corporation or the members of any committee designated thereby, as the case may be, may participate in a meeting of the Board of Directors or of such committee by means of a conference telephone call or through use of a similar communications equipment which allows all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

ARTICLE V

Committees of the Board of Directors and Advisory Board

Section 1. Committee Composition.

The Board of Directors, by adopted resolution, may establish and appoint standing committees. The creation of an executive committee must be approved by the Board of Directors. Each committee so appointed, to the extent provided in the resolution establishing it and subject to these By-Laws, shall have all the authority of the Board of Directors.

ARTICLE VI

Officers and Chairperson

Section 1. Executive Officers.

The executive officers of the Corporation shall be a President, Vice President, Treasurer and Secretary, each of whom shall be elected by the Board of Directors. The Board of Directors may elect or appoint such other officers (including one or more Assistant Treasurers and Assistant Secretaries) as it may deem necessary or desirable. Each officer shall hold office for such term as may be prescribed by the Board of Directors from time to time. Any person may hold at one time two or more offices.

Section 2. Chairperson; Vice Chairperson.

The Chairperson of the Board of Directors shall be elected by the Board of Directors. The Board of Directors may also elect a Vice Chairperson. The Chairperson and the Vice Chairperson (if any) shall serve a one-year term. The Chairperson shall preside at all meetings of the Board of Directors, except that the Vice Chairperson (if one is elected) shall preside at all meetings at which the Chairperson is not present. The Chairperson and the Vice Chairperson (if any) shall have such other powers and perform such other duties as may be prescribed from time to time by the Board of Directors, including, without limitation, determining the order of business and all matters of procedure at meetings of the Board of Directors.

Employees of the Corporation may serve as Chairperson of the Board of Directors or hold any other title with similar responsibilities, provided that the Board of Directors approves the

election of such employment in writing by a two-thirds vote of the entire Board of Directors and contemporaneously documents in writing the basis for such Board of Directors approval. The Chairperson or any other individual holding any other title with similar responsibilities shall not receive any compensation from the Corporation.

Section 3. Powers and Duties.

The President shall be the chief executive officer of the Corporation. In the absence of the President, a Vice President appointed by a majority of the Board of Directors, shall perform all the duties of the President. Subject to the Board of Directors, the officers and agents of the Corporation shall each have such powers and authority and shall perform such duties in the management of the business, property and affairs of the Corporation as generally pertain to the their respective offices, as well as such powers and authorities and such duties as from time to time may be prescribed by the Board of Directors.

ARTICLE VII

Removals, Resignations and Vacancies

Section 1. Removal of Officers.

The Board of Directors, by a unanimous vote, at any meeting called for such purpose may remove from office, with or without cause, any officer of the Corporation.

Section 2. Removal of Directors.

Each Member may remove from office, with or without cause, any Director of the Corporation appointed by such Member, upon at least 10 days' prior written notice to the other Member and the Board of Directors.

Section 3. Resignations.

Any Director or officer may resign by filing with the President or the Chairperson or with the Board of Directors a written resignation, which shall take effect on being so filed or at such other time as may be specified therein.

Section 4. Vacancies.

(a) Upon any vacancy in the Board of Directors caused by the death, resignation or removal of a Director appointed by a Member, such Member shall appoint a Director to fill such vacancy, and any Director so chosen shall hold office until the next annual meeting of the Members, and until his or her successor is duly appointed and qualified or his or her earlier death, incapacity, resignation or removal from office in accordance with these By-Laws or applicable law or pursuant to an order of a court of competent jurisdiction.

(b) Any vacancy resulting from any increase in the authorized number of Directors shall be filled in accordance with the unanimous vote of the Members, and any Director chosen in accordance therewith shall hold office until the next annual meeting of the Members and until his or her successor is duly appointed and qualified or his or her earlier death, incapacity, resignation or removal from office in accordance with the By-Laws or applicable law or pursuant to an order of a court competent jurisdiction.

ARTICLE VIII

Fiscal Year

The fiscal year of the Corporation shall commence on April 1 and end on the last day of March.

ARTICLE IX

Amendment

These By-Laws may be altered, amended or repealed, in whole or in part, by a majority of the Board of Directors, including at least two Directors appointed by the Class A Member and at least two Directors appointed by the Class B Member, except Article VII, which may only be amended upon a unanimous vote of all of the Members.

ARTICLE X

Indemnification

The Corporation shall indemnify each Member, each Director and each officer and, to the extent authorized by the Board of Directors, each other person authorized to act for or on behalf of the Corporation, to the full extent to which indemnification is permitted under the NYPCL.

ARTICLE XI

Statutes

This Corporation has been caused to be created by the JDA under and pursuant to the New York Public Authorities Law and the NYPCL. The Corporation shall not be a subsidiary or agent of the JDA under the laws of the State of New York.

ARTICLE XII

Dissolution

The Corporation may be dissolved only by a unanimous vote of the Members of the Corporation in the manner provided by the NYNPCL; provided, however, the Members shall take no action to dissolve, liquidate or wind-up the Corporation until a date after which all original or refunding Bonds and any and all other Obligations issued by the Corporation are no longer outstanding.

ARTICLE XIII

Seal

The corporate seal shall be circular in form with the name of the Corporation around the periphery and the year and the state of incorporation within. Said seal may be facsimile, engraved or printed.

Adopted as of July 25, 2018

ITEM 4



**New York
Transportation
Development
Corporation**

FOR CONSIDERATION

July 25, 2018

TO: The Directors
FROM: Howard A. Zemsky
SUBJECT: New York Transportation Development Corporation
REQUEST FOR: Adoption of the Annual Report; and Authorization to Take Related Actions

I. BACKGROUND

The New York Transportation Development Corporation (the "Corporation") is a corporation as defined in subparagraph (a)(5) of Section 102 of the New York Not-For-Profit Corporation Law ("NYNPCL") and is a charitable not-for-profit corporation as defined under Section 201 (b) of the NYNPCL and Section 1411 of the NYNPCL. The Corporation was formed on October 30, 2015 and issued bonds for three airport financings and refinancings in 2015 and 2016. The Corporation is now addressing certain annual obligations and taking other necessary corporate actions.

II. REQUESTED ACTIONS

The Board of Directors of the Corporation (the "Board of Directors") is being requested to adopt a Corporate Resolution for Adoption of the Annual Report.

III. ADOPTION OF ANNUAL REPORT

Section 519 of the NYNPCL requires that the board of a not-for-profit corporation present annually a report to the members showing in appropriate detail the assets and liabilities; the principal changes in the assets and liabilities as of the end of a twelve month fiscal period; the revenues and receipts, restricted and unrestricted; the expenses or disbursements, general or restricted; and the number of members of the Corporation (the "Members"); and a statement of the place where the names and places of the Members may be found. The statute also requires that the Board ratify the adoption and presentation of the annual report to the Members.

Staff recommends that the Board of Directors adopt the portion of note 3(e), dedicated to the Corporation, of the audited combined financial statements of the New York Job Development Authority ("NYJDA") as of March 31, 2018 and 2017 as the annual report of the Corporation and

directs such annual report to be presented to the Members; and that the Board of Directors authorizes the presentation to the Members of the applicable note(s) of the audited financial statements of NYJDA as of each subsequent fiscal year as the respective annual report of the Corporation. The names of the Members can be found at the offices of ESD, Corporate Secretary, 633 Third Avenue, New York, New York 10007.

IV. 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.

V. RECOMMENDATIONS

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

VI. ATTACHMENTS

Resolution
Exhibit A: Annual Report

July 25, 2018

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Adoption of the Annual Report
and Authorization to Take Related Actions

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, Section 519 of the of the New York Not-For-Profit Corporation Law requires that the board of a not-for-profit corporation present annually a financial report to the members; and

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:

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 adopts note 3(e) of the audited combined financial statements of the New York Job Development Authority ("NYJDA") as of March 31, 2018 and 2017 as the annual report of the Corporation and directs such annual report to be presented to the Members, a copy of which is attached to this Resolution as Exhibit A; and that the Board of Directors of the Corporation ratifies the adoption and presentation to the Members of the applicable note(s) of the audited financial statements of NYJDA as of each fiscal year as the respective annual report of the Corporation.

* * *

EXHIBIT A

Excerpt from

NEW YORK JOB DEVELOPMENT AUTHORITY

Combined Financial Statement and Independent Auditors' Report

March 31, 2018 and 2017

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation

In August 2015, the Authority authorized the creation of New York Transportation Development Corporation ("NYTDC") and the certificate of incorporation was filed in October 2015. NYTDC was formed for the public purpose of relieving and reducing unemployment, promoting and providing for additional and maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State of New York and the New York Job Development Authority. It will undertake its public purpose by issuing tax exempt bonds for transportation and any other purposes or objective described above (the "Bonds") and in the case of certain tax exempt bonds, shall obtain the approval of the Governor of the State of New York to the extent required by applicable federal tax law; by issuing such other non-federally tax-exempt obligations as may be appropriate (the "Obligations"); and by exercising all or any part of such public functions and doing any work related to or in connection with the issuance of the Bonds or Obligations, and engaging in all other lawful business purposes.

The summarized statements of net position of NYTDC at March 31, 2018 and 2017 is as follows:

	<u>2018</u>	<u>2017</u>
Cash and equivalents	\$ 29,791	1,377,803
Temporary investments in marketable securities	8,601,224	7,017,829
Accounts payable and accrued expenses	<u>-</u>	<u>(205)</u>
Net position	\$ <u>8,631,015</u>	<u>8,395,427</u>

The summarized statements of revenue, expenses and changes in net position of NYTDC for the years ended March 31, 2018 and 2017 is as follows:

	<u>2018</u>	<u>2017</u>
Bond and note fee income	\$ -	7,482,630
Interest income	87,430	22,030
Other revenue	150,500	-
Operating expenses	<u>(2,342)</u>	<u>(20,273)</u>
Change in net position	\$ <u>235,588</u>	<u>7,484,387</u>

NEW YORK JOB DEVELOPMENT AUTHORITY
Notes to Combined Financial Statements, Continued

Note 3 - Local Development Corporations, Continued

(e) New York Transportation Development Corporation, Continued

NYTDC did not issue bonds during the year ended March 31, 2018.

On June 1, 2016, NYTDC issued Special Facilities Bonds, Series 2016A and 2016B (LaGuardia Airport Terminal B Redevelopment Project) (the "Series 2016 Bonds") in the aggregate face amount of \$2,410,380,000 (at an issue price of \$2,644,634,342) to be used (i) to finance a portion of the costs relating to the design and construction of the Construction Project, which includes a new Terminal B and certain related facilities to be constructed by LaGuardia Gateway Partners, LLC (the "Borrower") at LaGuardia Airport in Queens, New York, (ii) to partially fund a capitalized interest account during construction, (iii) to fund the working capital reserve account, and (iv) pay certain costs of issuance related to the Series 2016 Bonds. The proceeds of the Series 2016 Bonds were loaned to the Borrower pursuant to a Building Loan Agreement and a Project Loan Agreement.

On June 16, 2016, NYTDC issued Special Facility Revenue Refunding Bonds, Series 2016 (American Airlines, Inc. John F. Kennedy International Airport Project) in the aggregate face amount of \$844,210,000 (at an issue price of \$906,626,356) for the purpose of providing a portion of the funds to defease and redeem in full the outstanding (i) New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2002B (American Airlines, Inc. John F. Kennedy International Airport Project) (the "Prior Series 2002B Bonds"), and (ii) New York City Industrial Development Agency Special Facility Revenue Bonds, Series 2005 (American Airlines, Inc. John F. Kennedy International Airport Project) (the "Prior Series 2005 Bonds," and together with the Prior Series 2002B Bonds, the "Prior Bonds").

As of March 31, 2018, the total outstanding conduit debt is \$3,349,000,000. NYTDC bonds are not the obligation of NYTDC, the Authority or the State. Repayment of the bonds is the obligation of the respective project borrower.