

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Thursday

September 14, 2023 – 1:00 p.m.

AGENDA

CORPORATE ACTION

1. Approval of the Minutes of March 21, 2023, Meeting of the Directors

FOR CONSIDERATION

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

Item 1

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

March 21, 2023

MINUTES

In Attendance

Directors:

George Haggerty – Acting Chair
Kathleen Mize
Elizabeth Lusskin

NYTDC Staff:

Matthew Bray, Treasurer
Peter Heilbrunn, Assistant Treasurer
Courtney Heed, Acting Secretary

ESD Staff:

Miyoko Okubo—Senior Counsel, Finance
Raymond Orlando—CFO
Debbie Royce, Corporate Secretary

Other Attending:

Jonathan A. Ballan - Partner, Harris Beach PLLC
Andrew Komaromi - Partner, Harris Beach PLLC
Katherine McManus - Principal, Hardwick Law Firm, LLC
Robert Drillings - Partner, BurgherGray, LLP
Tina Kassangana - Junior Associate, BurgherGray LLP

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

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

meeting of the New York Transportation Development Corporation (the “Corporation” or “TDC”), a Local Development Corporation created under New York State law, to order at approximately 11:30 a.m. He noted for the record that that this meeting was being webcast and that public comments were welcome on the items on the agenda.

Acting Chair Haggerty also noted for the record that the Directors had received the relevant written materials in advance of the meeting and that the public had been given the opportunity to comment on the meeting’s Agenda items by submitting their written comments to nytdc@esd.ny.gov by 5:00 p.m. on March 21, 2023, and no comments were received.

Acting Chair Haggerty then asked the Directors if anyone had any potential conflicts of interest with respect to the items on the Agenda. Hearing none, Acting Chair Haggerty stated that the first order of business would be approval of the Minutes for Directors’ meetings of June 3, 2022, and October 20, 2022. He asked if there were any questions, comments, additions, or deletions to the minutes. Hearing none, upon a motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JUNE 3, 2022 AND
October 20, 2022 MEETING OF THE DIRECTORS OF THE NEW YORK TRANSPORTATION
DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meetings of the Corporation held on June 3, 2022 and October 20, 2022 as presented to the Directors at the 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 respects ratified and approved as actions of the Corporation.

* * *

Acting Chair Haggerty then requested that Mioko Okubo, Senior Counsel at ESD, present the next Agenda item, requesting the appointment of the senior managing underwriter, and for authorization to proceed with the preparation of documents for the MTA-P3-ADA project at the New York City Transit Authority Subway Stations.

Ms. Okubo explained to the Directors that Elevated Accessibility Enhancements Operating Company LLC (the "Borrower" or "EAE"), has requested the New York Transportation Development Corporation to issue approximately 400 million dollars in New York Transportation Development Corporation special facilities revenue bonds, including Series 2023A (Short-Term Taxable) (MTA-ADA Upgrade Project) and series 2023B (Long-Term Taxable) (MTA-ADA Upgrades Project), collectively, the "Bonds", the proceed of which bonds will be used to finance improvements to the New York State Metropolitan Transportation Authority (the "MTA") subway system.

Ms. Okubo continued that following the procurement process, the MTA, acting through Metropolitan Transportation Authority Construction and Development Company ("MTA C&D"), selected EAE to design, build, finance, and maintain certain vertical accessibility improvements at 13 stations served by the New York City Transit Authority Subway system, including a procurement installation and long-term maintenance of 34 new elevators at the 13 stations.

In addition, Ms. Okubo explained that EAE is a special purpose vehicle, which, on December 28th, 2022, entered into the project agreement with MTA. EAE will facilitate, design, and construction work during a 42-month term through a Turnkey Design-Build Contract with Halmar International, LLC, and upon achievement of the projects substantial completion, procure maintenance services through a Turnkey maintenance subcontract with Halmar as

counterparty for the initial 15-year terms of subject to two optional five-year extension terms at the sole discretion of MTA.

Ms. Okubo continued that they were asking that the Directors authorize the following actions: (1) The selection of the senior managing underwriter and additional underwriters; (2) The appointment of financial advisors if utilized; (3) and the preparation of documents in connection with the bonds, and actions related to the project.

Ms. Okubo continued that in regard to the selection of underwriter, Citigroup has been selected as a senior managing underwriter for the bonds. Citigroup is on the Corporation's pre-qualified list of underwriters that was created after an RFP process by ESD and adopted by the Corporation on February 24th, 2020. Citigroup would be selected for its extensive experience in all aspects of municipal finance, its extensive experience as an underwriter on other corporation and ESD bond issuances, and its response and ratings in the pre-qualification process. The Corporation, in consultation with the Borrower, will have the option to select other underwriters from Corporation's pre-qualified list of underwriters.

Ms. Okubo explained that in relation to the selection of a financial advisor, the Corporation also may select the financial advisor from its pre-qualified list of financial advisors that was created after an RFP process by ESD and adopted by the Corporation on February 24th, 2020. In addition, A financial advisor may be selected based on its extensive experience in all aspects of Municipal Finance, hourly rate proposal, subject to a cap of \$250,000, extensive experience as a financial advisor on other bond issuances, and responses and ratings in the pre-qualification process. The selected firm will be paid by the Borrower pursuant to a pre-financing agreement.

Ms. Okubo continued that in relation to Bond documents on the project, it is intended that the bonds will be issued to finance a portion of the project. In order to do that, the related documents must be drafted and approved for the issuance of the bonds expeditiously.

Ms. Okubo then requested the Directors consent to the commencement of drafting documents and to proceed to do such things or perform such acts as may allow the Corporation to proceed to its final consideration of the project and issuance of the bonds. The attached resolution does not require the Corporation to issue the bonds. An additional TDC board meeting will occur so that the Directors can approve the form of final documents.

Ms. Okubo concluded by noting that staff ask that the Directors authorize the selection of Citigroup as the senior managing underwriter for the bonds and the ability to appoint additional underwriters as the deal progresses, appoint financial advisors if utilized, and the preparation of documents in connection with the bonds and actions related to the project.

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

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

WHEREAS, Elevated Accessibility Enhancements Operating Company, LLC (the “Borrower”) has requested the New York Transportation Development Corporation (the “Corporation” or “TDC”) to issue approximately \$400 million New York Transportation Development Corporation Special Facilities Revenue Bonds, including Series 2023A (Short-Term Taxable) (MTA ADA Upgrades Project) and Series 2023B (Long-Term Taxable) (MTA ADA Upgrades Project) (collectively, the “Bonds”).

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

RESOLVED, in accordance with the materials presented to this meeting a copy of which is hereby ordered to be filed with the records of the Corporation, the Corporation takes the following actions:

Selection of Underwriter

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

Selection of Financial Advisors

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

Bond Documents and Project

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

Miscellaneous

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

* * *

Acting Chair Haggerty then asked Ms. Okubo to present the next three items on the agenda, which included a request for authorization to enter into contracts for Co-bond counsel services in connection with the MTA-P3-ADA project at New York City Transit Authority subway stations and authorization to take related actions.

Ms. Okubo advised she was asking the Directors to authorize the Corporation to enter into legal services contracts for bonds and issuer counsel in connection with the issuance of the bonds for the MTA-P3-ADA project that she previously described.

Ms. Okubo continued to explain that Bond Counsel is needed to ensure the Corporation's compliance with applicable New York State laws, federal security laws, and market practices. It was recommended that Harris Beach, PLLC, and Hardwick Law Firm, LLC, an MWBE firm, served as a co-bond counsel on this transaction. Both firms were selected from the Corporation's pre-qualified counsel list.

Ms. Okubo further explained that Issuer's Counsel is needed to ensure the Corporation's compliance with applicable New York State laws, federal securities laws, and market practices.

It was recommended that BurgherGray LLP serve as issuer's counsel on this transaction.

BurgherGray, a certified MWBE firm, was selected from the Corporation's pre-qualified counsel list as having bond financing expertise and experience working on variety of transactions. The appointments of these law firms would represent an equitable distribution of work among the Corporation's rotating slate of bond law firms and MWBE law firms to handle the Corporation's transactions, fees received, and length of time since their last engagement with the Corporation.

Ms. Okubo stated that the contracts will be funded in their entirety by the Borrower from the bond proceeds or equity, on or about the closing on the bonds as agreed upon by the Corporation and the Borrower in the pre-financing agreement.

Ms. Okubo concluded that Counsel agreed to work at a small discount from their typical hourly billing rate. Counsel will agree that the Corporation will not be obligated to pay any

amount for services described except to the extent, if any, that the Corporation received funds from the Borrower for that purpose.

Following Ms. Okubo’s presentation, Acting Chair Haggerty asked if there were any question or comments from the Directors regarding the item.

Acting Chair Haggerty noted for the record that there were no comments from the public regarding the item, and upon motion duly made and seconded, the three following resolutions was unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services Harris Beach PLLC - Authorization to Enter into a Contract for Legal Services in Connection with MTA P3 ADA Project at New York City Transit Authority Subway Stations; and Authorization to Take Related Actions

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

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

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

* * *

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

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

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

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

* * *

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

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

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

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

* * *

There being no further business, the meeting was adjourned.

Respectfully submitted,

Courtney Heed
Acting Secretary

Item 2

FOR CONSIDERATION

September 14, 2023

TO: The Directors

FROM: Matthew Bray

SUBJECT: LaGuardia Airport Terminals C&D Redevelopment Project

REQUEST FOR: Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions

I. BACKGROUND

As part of the redevelopment of La Guardia Airport (“LGA”), Delta Air Lines, Inc., (“Delta”) has requested that the New York Transportation Development Corporation (the “Corporation” or “TDC”) issue tax-exempt bonds (the “Bonds”) in the approximate amount of \$900 million, the proceeds of which, together with the \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2018 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”) and the \$1,511,015,000 Transportation Development Corporation Special Facilities Revenue Bonds, Series 2020 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2020 (the “2020 Bonds”), will be used by Delta (the “Borrower”) to fund: the demolition of existing Terminals C and D; the construction of a new terminal, which Borrower leases from the Port Authority of New York and New Jersey; and other related improvements to the facilities at LGA (the “Project”).

II. SELECTION OF SENIOR MANAGING UNDERWRITER

Citigroup Global Markets Inc. (“Citi”) has been selected as the senior managing underwriter. Citi is on the pre-qualified list of underwriters for the Corporation (the “Pre-Qualified List of Underwriters”). The Pre-Qualified List of Underwriters was created after an RFP process by Empire State Development (“ESD”) and was adopted by the Corporation’s Board of Directors (the “Board of Directors”) on February 24, 2020. Citi was requested by the Borrower and then selected for its extensive experience in all aspects of municipal finance, its extensive experience as an underwriter on other TDC and ESD bond issuances, including the 2020 Bonds, 2018 Bonds, and its response and rating in the pre-qualification process. The Corporation, in consultation with the Borrower, will have the option to select other underwriters from the Pre-Qualified List of Underwriters including co-managers from the Pre-Qualified List of Underwriters

to the extent necessary to satisfy the requirements in section IV below.

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

III. SELECTION OF FINANCIAL ADVISOR

The Corporation also may select a financial advisor from TDC's Pre-Qualified List of Financial Advisors ("FAs") (the "Pre-Qualified List of FAs"). The Pre-Qualified List of FAs was created after an RFP process by ESD and adopted by the Corporation on February 24, 2020.

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

The Corporation staff now seeks the consent of the Board of Directors to adopt the selection of a financial advisor, if one is utilized, for the Bond issuance for the reasons and on the terms noted above. The firm will be paid by the Borrower pursuant to a Pre-Financing Agreement.

IV. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

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

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

V. FEDERAL TAX LAW REQUIREMENTS

Federal tax law, specifically the Tax Equity and Fiscal Responsibility Act ("TEFRA"), requires a hearing prior to the issuance of qualified private activity bonds in certain circumstances. The Corporation has been requested to act as issuer of qualified private activity bonds for the Project. Consequently, a TEFRA hearing is required and the applicable notice period for the TEFRA hearing is seven days.

TEFRA also requires an approval from an applicable elected representative of the issuer of qualified private activity bonds (in this case the Governor) to approve the transaction. The Governor's approval is intended to be obtained immediately following the TEFRA hearing.

Accordingly, the Board of Directors is requested to authorize the holding of a public TEFRA hearing for the Bonds, the publication of the prior notice of the TEFRA hearing and the subsequent request to the Governor for approval of the Bonds.

VI. DOCUMENTS

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

VII. ENVIRONMENTAL REVIEW

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

VIII. REQUESTED ACTION

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

IX. RECOMMENDATION

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

X. ATTACHMENT

Resolution

September 14, 2023

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – LaGuardia Airport Terminals C&D Redevelopment Project - Appointment of Senior Managing Underwriter; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions

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

WHEREAS, in order to facilitate the issuance of the Bonds as requested, the officers of the Corporation propose to authorize the selection of a senior managing underwriter and appointment of additional underwriters, authorize the selection of financial advisor(s), authorize the taking of actions related to the TEFRA hearing, authorize the preparation of documents necessary or desirable in connection with the issuance of the Bonds and to take any related actions.

RESOLVED, in accordance with the materials presented to this meeting a copy of which is hereby ordered to be filed with the records of the Corporation, the Corporation takes the following actions:

Selection of Underwriters

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

Selection of Financial Advisor

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

Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”)

RESOLVED, that the Corporation hereby authorizes the holding of a public hearing (“TEFRA Hearing”), the publication of prior notice of the TEFRA Hearing and the submission to the Governor of request for approval following such TEFRA Hearing, all in accordance with and as may be required by the Internal Revenue Code of 1986, as amended.

Preparation of Bond Documents

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

Miscellaneous

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

* * *

Item 3

FOR CONSIDERATION

September 14, 2023

TO: The Directors

FROM: Matthew Bray

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

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

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

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

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

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

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

II. BACKGROUND

As part of the redevelopment of La Guardia Airport (“LGA”), Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$900 million, the proceeds of which, together with the \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2018 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”) and the \$1,511,015,000 Transportation Development Corporation Special Facilities Revenue Bonds, Series 2020 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2020 (the “2020 Bonds”), will be used by Delta to fund: the demolition of existing Terminals C and D; the construction of a new terminal, which Borrower leases from the Port Authority of New York and New Jersey; and other related improvements to the facilities at LGA.

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

III. COUNSEL SELECTION PROCESS

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

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

It is recommended that Squire serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was predicated on the experience of the attorneys from Squire that previously served as co-bond counsel for the 2020 Bonds, 2018 Bonds and for the 2016 issuance of bonds to finance the redevelopment of Terminal B and the Central Hall at LaGuardia Airport that closed in 2016. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel, (b) Counsel’s performance with distinction on other airport transactions, including for the 2020 and 2018 Bonds, (c) Counsel’s rate proposal; and (d) the ESD pre-qualification process.

IV. SCOPE OF WORK

Counsel will advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolution amendments, disclosure documents and tax opinions. Counsel also would coordinate documentation with other involved agencies.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition, bond counsel expertise is necessary to ensure compliance with applicable securities laws and market practices. The Corporation has used experienced bond counsel on every issuance of its bonds.

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, the Borrower will fully fund all counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including Seaton and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. In addition, Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower for that purpose.

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of at least 40% related to the total amount of ESD's bond counsel fees. Squire has agreed to use good faith efforts to allocate work to Seaton. The Directors are simultaneously being asked to separately retain Seaton as MWBE counsel for this bond transaction to meet these requirements.

IX. REQUESTED ACTION

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

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

September 14, 2023

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

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

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

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

* * *

Item 4



FOR CONSIDERATION

September 14, 2023

TO: The Directors

FROM: Matthew Bray

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

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

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

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

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

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

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

II. BACKGROUND

As part of the redevelopment of La Guardia Airport (“LGA”), Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$900 million, the proceeds of which, together with the \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2018 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”) and the \$1,511,015,000 Transportation Development Corporation Special Facilities Revenue Bonds, Series 2020 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) issued in 2020 (the “2020 Bonds”), will be used by Delta to fund: the demolition of existing Terminals C and D; the construction of a new terminal, which Borrower leases from the Port Authority of New York and New Jersey; and other related improvements to the facilities at LGA.

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

III. COUNSEL SELECTION PROCESS

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

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

It is recommended that D. Seaton and Associates serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was predicated on the experience of the attorneys from D. Seaton and Associates that previously served as co-bond counsel for the 2020 Bonds, 2018 Bonds and for the 2016 issuance of bonds to finance the redevelopment of Terminal B and the Central Hall at LaGuardia Airport that closed in 2016. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel, (b) Counsel’s performance with distinction on other airport transactions, including for the 2020 and 2018 Bonds, (c) Counsel’s rate proposal; and (d) the ESD pre-qualification process.

IV. SCOPE OF WORK

Counsel will advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Bonds. Such work may include, but not be limited to, drafting, negotiating, and finalizing the following types of documents: sale contracts, resolution amendments, disclosure documents and tax opinions. Counsel also would coordinate documentation with other involved agencies.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

In accordance with Federal tax law an opinion from bond counsel is required to opine upon tax exempt bonds. In addition, bond counsel expertise is necessary to ensure compliance with applicable securities laws and market practices. The Corporation has used experienced bond counsel on every issuance of its bonds.

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, the Borrower will fully fund all counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including Squire and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. In addition, Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower for that purpose.

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of at least 40% related to the total amount of the Corporation's bond counsel fees. However, by virtue of Counsel's status as an MWBE, Counsel satisfies the MWBE requirement without the need for additional MWBE participation. Squire has agreed in a separate retainer to use good faith efforts to achieve this participation goal.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of D. Seaton Associates as counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

September 14, 2023

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

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

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

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

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Item 5

FOR CONSIDERATION

September 14, 2023

TO: The Directors

FROM: Matthew Bray

SUBJECT: Procurement of Legal Services – BurgherGray LLP

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

I. CONTRACT SUMMARY

Counsel: BurgherGray LLP (“Counsel”)

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

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

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

II. BACKGROUND

As part of the redevelopment of La Guardia Airport (“LGA”), Delta has requested the Corporation serve as the issuer for the Bonds in the approximate amount of \$900 million, the proceeds of which, together with the \$1,383,495,000 of New York Transportation Development Corporation Special Facilities Revenue Bonds, Series 2018 (Delta Air Lines, Inc. – LaGuardia

Airport Terminals C&D Redevelopment Project) issued in 2018 (the “2018 Bonds”) and the \$1,511,015,000 Transportation Development Corporation Special Facilities Revenue Bonds, Series 2020 issued in 2020 (Delta Air Lines, Inc. – LaGuardia Airport Terminals C&D Redevelopment Project) (the “2020 Bonds”), will be used by Delta to fund: the demolition of existing Terminals C and D; the construction of a new terminal, which Borrower leases from the Port Authority of New York and New Jersey; and other related improvements to the facilities at LGA.

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

III. COUNSEL SELECTION PROCESS

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

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

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

IV. SCOPE OF WORK

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

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

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

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, the Borrower will fully fund all counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All counsel costs and expenses are expected to be paid by the Borrower from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including BurgherGray and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the par amount of the Bonds. In addition, Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower for that purpose.

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve MWBE participation. Counsel is a Minority-owned Business Enterprise certified by the State of New York and may utilize its certification to satisfy the above requirement.

IX. REQUESTED ACTION

The Directors are requested to authorize the retention of BurgherGray LLP as counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

September 14, 2023

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

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

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

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

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