

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

**MEETING OF THE DIRECTORS**

**MONDAY**

**February 24, 2020**

**2:00 p.m.**



**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

Meeting of the Directors

Monday

February 24, 2020 – 2:00 p.m.

**PROPOSED AGENDA**

**CORPORATE ACTIONS**

1. Approval of the Minutes of the December 19, 2019 Meeting of the Directors

**FOR CONSIDERATION**

2. New York Transportation Development Corporation – Pre-Qualified List of Underwriters and Financial Advisors for Bond Issuance - Authorization to Adopt the Pre-Qualified Lists of the New York State Urban Development Corporation d/b/a Empire State Development of Underwriters and Financial Advisors; and Authorization to Take Related Actions
3. New York Transportation Development Corporation – Authorization to Perform Certain Acts in Connection with the Sale and Delivery of the New York Transportation Development Corporation Special Facility Revenue Bonds, Series 2020A (AMT) (Terminal 4 John F. Kennedy International Airport Project) and the Special Facility Revenue Bonds, Series 2020B (Non-AMT/Private Activity) (Terminal 4 John F. Kennedy International Airport Project) and to Take Related Actions
4. New York Transportation Development Corporation – Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) – Appointment of Underwriter; Appointment of Additional Underwriters; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take All Related Actions
5. Procurement of Legal Services – Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C. – Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions

6. Procurement of Legal Services – D. Seaton and Associates, P.A., P.C. – Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions
7. New York Transportation Development Corporation – New York State Thruway Service Area Redevelopment Project – Appointment of Senior Managing Underwriter; Authorization to Appoint Additional Underwriters; Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Authorization to Induce a Project for Private Activity Financing; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take All Related Actions
8. Procurement of Legal Services – Cozen O’Conner – Authorization to Enter into a Contract with Cozen O’Connor to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions
9. Procurement of Legal Services – Hardwick Law Firm LLC – Authorization to Enter into a Contract with Hardwick Law Firm LLC to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions
10. Procurement of Legal Services – Drohan Lee LLP – Authorization to Enter into a Contract with Drohan Lee LLP to Serve as Disclosure Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; 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 19, 2019

MINUTES

In Attendance

Directors: Mehul Patel, The Acting Chair  
George Haggerty  
Kathleen Mize

NYTDC Staff: Elaine A. Kloss – CFO  
Regina Stephens – Assistant Secretary

ESD Staff: Julene Beckford – Senior Counsel and Records  
Access Appeal Officer  
Jonathan Beyer – Senior Counsel  
Douglas Bressette –Treasurer  
Edward Espejo –Senior Director, Finance  
Elizabeth Fine – Executive Vice President, Legal and General Counsel  
Peter Heilbrunn – Assistant Treasurer, Debt Management

Others Attending: Brian Idehen – BurgherGray, LLP  
Rick Kolman – Academy Securities  
Jeffrey Perlman – D. Seaton & Associates  
Dara N. Smith – BurgherGray, LLP

The meeting of the New York Transportation Development Corporation (the “Corporation” or “TDC”), a Local Development Corporation created under New York State law, was called to order at approximately 11:30 a.m. It was noted for the record that notices to the public and news media of the time and place of the meeting had been given in compliance with

the New York State Open Meetings Law and that the meeting was being webcast. The Acting Chair also 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, the Acting Chair 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 Acting Chair called for a motion to approve the Minutes of the September 16, 2019 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 SEPTEMBER 16, 2019 MEETING OF THE DIRECTORS OF NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

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RESOLVED, that the Minutes of the meeting of the Corporation held on SEPTEMBER 16, 2019 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.

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Acting Chair Patel then advised that unless the Directors objected, Jonathan Beyer would make one presentation on the next four agenda items, requesting authorization to prepare documents for the issuance of bonds, take related actions, and to enter into contracts

for legal services, all for the JFK Airport Terminal One Project. Acting Chair Patel also advised that the Directors take one vote on all four items at the end of Mr. Beyer's presentation.

Mr. Beyer explained that the Governor's vision of a unified, interconnected world-class John F. Kennedy Airport ("JFK") is a new, approximately \$7.4 billion terminal. The new Terminal One on JFK's south side is to be developed by a consortium of airlines which include Air France, Japan Airlines, Korean Air, and Lufthansa, known as ("TOGA"). Also, certain development financial partners – Carlyle, JLC, LILCO, collectively the financial sponsors.

Mr. Beyer further explained that the existing plans call for the replacement of JFK's Terminal One, Terminal Two and the vacant area where Terminal Three was demolished in 2014, with a single new Terminal One. The new Terminal One will be a 2.8 million square-foot, three-level facility with 22 wide body gates and one narrow body gate.

Mr. Beyer stated that the Project will be funded through investments made by the TOGA, and financing provided by the financial sponsors through third-party debt to be issued by the Corporation. The third-party debt is expected to include: bank loans, letter of credit facilities and interest rate hedging contracts, collectively the bank loans; tax exempt and taxable bonds issuance by the Corporation. Also, Mr. Beyer stated that a commercial banking syndicate which does not include any of the financial sponsors, will commit to make the bank loans

which will be drawn down and loaned to the Corporation as needed-to-fund construction costs, reducing the carrying costs of the financing.

Mr. Beyer further stated that as capital market conditions warrant, bonds may be issued to pay for project cost and/or to refinance the bank loans. He explained that the interest rate hedging contracts, such as interest rate sways, will mitigate the risk of interest rate changes on the bank loans; and the Corporation's liabilities and obligations related to its participation in the Project will be limited to payments received from a newly formed project borrower.

Mr. Beyer informed the Directors that the Corporation has the authority to serve as a conduit issuer to incur the bank loans, to issue the bonds, and to provide an exemption from the mortgage recording tax on any mortgages securing both the bank loans and/or bonds.

Mr. Beyer explained to the Directors that to facilitate the Corporation's participation in the Project, the Board is being asked to authorize preliminary actions for the selection of underwriters, a financial advisor and take the necessary action pursuant to federal tax requirements. He continued stating that Citi Group Markets ("Citi") has been selected as senior managing underwriter for the Bonds and Citi is on the Corporation's prequalified list of underwriters and was selected with the support of the financial sponsors for its extensive experience in all aspects of municipal finance. Mr. Beyer explained that Public Resources Advisory Group ("PRAG") has been selected as the Corporation's financial advisor for the Project. He stated that the federal tax laws, specifically, the Tax Equity and Fiscal Responsibility Act, require certain actions by the Corporation of which the Directors are being requested to authorize. These actions include authorizing a public hearing, publication of prior notice of the hearing and the subsequent request to the Governor for approval of the Project. In addition,



Mr. Beyer explained that the inducement will enable proceeds of the bank loans and Bonds in an excepted maximum principal amount of up to \$8 billion, or such larger amount as needed to be used to reimburse expenditures made for the Project by TerminalCo, the new Project company, TOGA and/or the financial sponsors prior to the dates of the bank loan borrowings or the issuance of the Bonds. Mr. Beyer stated that the resolution attached to the board materials does not authorize or require the Corporation to enter into the bank loans or to issue the Bonds. Lastly, Mr. Beyer explained that staff is requesting the Board of Directors' consent to commence the review and drafting of preliminary documents.

Mr. Beyer added that the Board is being asked to approve the retention of three law firms to represent the Corporation on this transaction, two co-bond counsel and one disclosure counsel. Katten Muchin Rosenman LLP, would serve as co-bond counsel, together with the law firm of D. Seaton and Associates, a Minority and Women-Owned Business Enterprise ("MWBE"). Katten will also be authorized to subcontract other counsel, Bryan Cave Leighton and Paisner, for any necessary environmental matters. Lastly, BurgherGray, a MWBE firm, would serve as disclosure counsel to ensure compliance with federal securities laws.

Mr. Beyer advised that all of the firms have substantial tax-exempt bond experience and are on the Corporation's prequalified counsel list for bond counsel services. All counsel costs and expenses are expected to be paid by the financial sponsors and the borrower through the closing on the first financing and thereafter by the borrower from the financial proceeds or other sources. Additionally, counsel would work at an hourly rate, plus a discount, for a term expiring on December 31, 2025. Mr. Beyer added that counsel will acknowledge that the

Corporation will have no obligation to pay any legal fees except to the extent funds are received from the financial sponsors, the borrower or from any sources for that purpose.

Following the presentation of the items, the Acting Chair asked if the Directors had any questions or comments for Mr. Beyer.

The Acting Chair asked about the TEFRA hearing process, the time line of the hearing, who proposes the hearing, as well as the order of the hearing process.

Mr. Beyer explained that the first step in the TEFRA hearing process is to arrange to hold a public hearing which will most likely be scheduled for some time in January.

Mr. Beyer continued to explain that after the hearing, the Board approves the final documents. A request is submitted to the Governor's office based on TDC's Board approval and no negative testimony at the hearing.

The Acting Chair asked if the Board is required to meet again. Mr. Beyer responded affirmatively.

The Acting Chair asked if there are any comments from the public regarding these items. There being no other questions from the Directors and no comments from the public, the Acting Chair requested a motion for approval. Upon motion duly made and seconded, the following resolutions was unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – John F. Kennedy International Airport New Terminal One Project – Appointment of Underwriter; Appointment of Additional Underwriters; Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Appointment of Financial Advisors; Authorization to Induce a Project for Private Activity Financing; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take Related Actions

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WHEREAS, the New York Transportation Development Corporation (the “Corporation”) has been requested to borrow funds under loans (which may require interest hedging arrangements) and letter of credit facilities provided by commercial banks (collectively, the “Bank Loans”) and to issue bonds (“Bonds”) to finance the John F. Kennedy International Airport New Terminal One Project (the “Project”); and

WHEREAS, in order to facilitate entering into the Bank Loans and issuing the Bonds as requested, the officers of the Corporation propose to authorize selection of a senior managing underwriter and appointment of additional underwriters, take actions related to TEFRA, authorize the retention of a financial advisor, induce the Project, authorize the preparation of documents necessary or desirable in related to the forgoing and to take any related actions.

RESOLVED, in accordance with the materials presented to this meeting a copy of which is incorporated by reference and 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 Global Markets Inc. to be the senior managing underwriter for the Bonds, together with the right to appoint such co-managers, if any, as the Corporation, in consultation with the Financial Sponsors, shall select.

Selection of Financial Advisor

RESOLVED, that the Corporation hereby consents to Public Resources Advisors Group to be the financial advisor for the Project.

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

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

Inducement Resolution

RESOLVED, that the Corporation hereby declares its official intent, solely for purposes of United States Treasury Regulations §1.150-2, to incur the Bank Loans and to issue the Bonds and use the proceeds thereof to pay or reimburse TerminalCo, TOGA and/or the Financial Sponsors (collectively, "Project Participants") for costs of the Project. This declaration of official intent is subject to subsequent approval of the Project by the Corporation. The Corporation understands that the Project Participants have paid and will pay certain capital expenditures in connection with the Project prior to the borrowing of funds under the Bank Loans and the issuance of the Bonds for the Project. The Project Participants may use temporary funds that are or will be available on a short-term basis to pay for preliminary expenditures, construction costs and certain equipping costs for the Project. Said declaration is based upon the representations of one or more of the Project Participants that the Project Participant or Project Participants reasonably expect to be reimbursed for the use of such funds with the proceeds of the Bank Loans to be borrowed by the Corporations and/or of the Bonds to be issued by the Corporation or another authorized governmental issuer to finance the costs of the Project. The maximum principal amount of Bank Loans and/or Bonds (exclusive of refinancings) currently expected to be issued for the Project is \$8 Billion or such larger amount as may be needed to finance the costs of the Project.

Preparation of Bond Documents

RESOLVED, that the Corporation hereby authorizes the review and preparation of documents necessary or desirable in connection with the financing of the Project.

Miscellaneous

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

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION– Procurement of Legal Services –  
BurgherGray LLP - Authorization to Enter into a Contract to Provide Legal Services for the New  
York Transportation Development Corporation (the "Corporation") in Connection with  
Financings to Fund Construction of a New Terminal One at John F. Kennedy International  
Airport in Queens and to Take Related Actions

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

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services D. Seaton and Associates, P.A., P.C. - Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (the “Corporation”) in Connection with Financings to Fund Construction of a New Terminal One at John F. Kennedy International Airport and to Take Related Actions

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

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

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

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services Katten Muchin Rosenman LLP - Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (the “Corporation”) in Connection with Financings to Fund Construction of a New Terminal One at John F. Kennedy International Airport and to Take Related Actions

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

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

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

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The Acting Chair then called on Mr. Beyer to present the next four items on the Agenda.

The Acting Chair advised the Directors that unless there were any objections, as with the previous four items relating to the Terminal One Project, Mr. Beyer would make one presentation for the next four items on the Agenda relating to the JFK Terminal 8 Project. The presentation would include a request for Board authorization to prepare documents for the issuance of Bonds and to take related actions to enter into contracts for the legal services.

Mr. Beyer explained that the items relating to the JFK Airport Terminal 8 Project are very similar to the JFK Airport Terminal One Project because they are both at JFK airport terminals and are happening on a parallel timeline, as part of a whole unified plan for the development of JFK.

Mr. Beyer stated that the New York Transportation Development Corporation has been requested by American Airlines to issue up to approximately \$475 million of bonds to finance the renovation and expansion of Terminal 8 at John F. Kennedy International Airport, and to refund approximately \$45 million of outstanding bonds issued by the Corporation in 2016 that were used to refinance a portion of the cost of the original acquisition and construction of Terminal 8.

Mr. Beyer further stated that American Airlines operates Terminal 8, which consists of an approximately 1.5 million square foot building including a remote concourse, public concession space, and related service facilities, and a total of 35 aircraft gates.

Mr. Beyer further explained that the new facilities to be financed by the Bonds include the reconfiguration or elimination of certain existing gates and the construction of jumbo gates that will result in a total of 30 or 31 gates; plus new aircraft parking hard stands, the construction of approximately 51,000 square feet of new terminal building space, the refurbishment of 73,000 square feet of existing terminal space, the expansion of the baggage system capacity and various improvements to the premier passenger lounges, check-in and security access areas. The Corporation will be fully indemnified by American Airlines for all liabilities and obligations related to its participation in the project.

Mr. Beyer informed the Directors that to facilitate the Corporation's participation, the Board is being asked to authorize the following preliminary actions: Underwriters, Citi Group Global Markets, Inc. ("Citi") has been selected as the senior managing underwriter for the

bonds. Citi is on the Corporation's prequalified list of underwriters and has extensive experience in all aspects of municipal finance. The Corporation, in consultation with American Airlines will have the option to select additional co-managers to meet MWBE participation goals. Financial Advisors, Public Resources Advisory Group ("PRAG") has been selected as the Corporation's financial advisor for the project. PRAG is on the prequalified list of financial advisors and was selected based on its extensive experience with all aspects of municipal finance, particularly airport financing and its hourly rate proposal is subject to a cap or \$250,000. PRAG will subcontract to Mohanty, a MWBE firm, to address applicable participation goals. In accordance with the Tax Equity and Fiscal Responsibility Act, or TEFRA, the Board of Directors is requested to adhere to certain requirements. Inducement of the project will enable proceeds of the issuance and sale of the Bonds in an amount of up to \$475 million to be used to reimburse expenditures made for the Project by the company prior to the date of the issuance of the Bonds, thereby expediting the Project. ESD staff is requesting consent by the Board of Directors to commence the review and drafting of documents. An additional meeting of the Board will occur so that the Board of Directors can approve the form of final documents and authorize the transaction terms, including providing mortgage recording tax exemptions.

Mr. Beyer then stated that the Board is also being asked to approve the retention of three law firms to represent the Corporation on this transaction; two-co-bond counsel and one disclosure counsel. Katten Muchin would serve as co-bond counsel, together with the law firm of BurgherGray, an MWBE firm. Katten will also be authorized to subcontract other counsel, Bryan Cave, for any necessary environmental matters.



Lastly, Pearlman & Miranda, an MWBE firm, would serve as disclosure counsel to ensure compliance with federal securities laws. All the firms have substantial tax-exempt bond experience and are on the Corporation's prequalified counsel list for bond counsel services. Mr. Beyer explained that all counsel costs and expenses are expected to be paid by American from the financing proceeds or other sources. He stated that counsel would work at the hourly rate less a discount for a term expiring December 31, 2025. Additionally, counsel would acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from American or from any other source for that purpose.

Following the presentation of the items, the Acting Chair asked if the Directors had any questions for Mr. Beyer.

Director Kathleen Mize asked if the teams are essentially staying the same.

Mr. Beyer responded that is one of the primary reasons, but that one of the other reasons, particularly for Katten Muchin, is that there is a refunding involved to the bonds previously issued for American Airlines and they were the firm that did the refunding. In terms of efficiency, to have a new firm come on and start from scratch would not make sense.

The Acting Chair asked if the timing of this action is essentially like the last one.

Mr. Beyer replied that it is a little bit more in flux.

The Acting Chair asked if the Board will be required to meet again. Mr. Beyer responded yes, the Board will have to meet again.

The Acting Chair then asked if there were any comments from the public.

Hearing none, the Acting Chair requested a motion for approval on all four items. Upon motion duly made and seconded, the following resolutions were unanimously adopted:

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – John F. Kennedy International Airport Terminal Eight (American Airlines) Redevelopment Project - Appointment of Underwriter; Appointment of Additional Underwriters; Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Appointment of Financial Advisors; Authorization to Induce a Project for Private Activity Bond Financing; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take Related Actions

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WHEREAS, the New York Transportation Development Corporation (the “Corporation”) has been requested to issue bonds (“Bonds”) to finance the renovation and expansion of Terminal Eight at John F. Kennedy International Airport Redevelopment Project and to refund a portion of prior bonds issued by the Corporation in 2016 to refinance a portion of the cost of the acquisition and construction of Terminal Eight (the “Project”); and

WHEREAS, in order to facilitate the issuance of the Bonds as requested, the Corporation propose to authorize: selection of a senior managing underwriter and appointment of additional underwriters; actions related to TEFRA; retention of a financial advisor, inducement of the Project; preparation of documents necessary or desirable related to the forgoing; and taking any related actions.

RESOLVED, in accordance with the materials presented to this meeting a copy of which is incorporated by reference and 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 Global Markets Inc. to be the senior managing underwriter for the Bonds, together with the right to appoint such co-managers, if any, as the Corporation, in consultation with the Company, shall select.

Selection of Financial Advisor

RESOLVED, that the Corporation hereby consents to Public Resources Advisors Group to be the financial advisor for the Project.

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

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

Inducement Resolution

RESOLVED, that the Corporation hereby declares its official intent, solely for purposes of United States Treasury Regulations §1.150-2, to issue the Bonds and use the proceeds thereof to pay or reimburse American Airlines, Inc. (the “Company”) for costs of the Project. This declaration of official intent is subject to subsequent approval of the Project by the Corporation. The Corporation understands that the Company has paid and will pay certain capital expenditures in connection with the Project prior to the issuance of the Bonds for the Project. The Company has or may use temporary funds that are or will be available on a short-term basis to pay for preliminary expenditures, construction and certain equipping costs for the Project. Said declaration is based upon the representations of the Company that the Company reasonably expects to be reimbursed for the use of such funds with the proceeds of Bonds to be issued by the Corporation or another authorized governmental issuer to finance the costs of the Project. The maximum amount of Bonds currently expected to be issued for the Project is Five Hundred Million Dollars (\$500,000.000).

Preparation of Bond Documents

RESOLVED, that the Corporation hereby authorizes the review and preparation of documents necessary or desirable in connection of the financing of the Project.

Miscellaneous

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

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services--  
BurgherGray LLP -- Authorization to Enter into a Contract to Provide Legal Services for the New  
York Transportation Development Corporation (the “Corporation”) in Connection with Issuing  
Bonds to Renovate, Expand, and Refund Bonds Previously Issued for, Terminal 8 at John F.  
Kennedy International Airport and to Take Related Actions

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

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

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

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services  
Katten Muchin Rosenman LLP - Authorization to Enter into a Contract to Provide Legal Services  
for the New York Transportation Development Corporation (the “Corporation”) in Connection  
with Issuing Bonds to Renovate, Expand, and Refund Bonds Previously Issued for, Terminal 8 at  
John F. Kennedy International Airport and to Take Related Actions

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

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

RESOLVED, that the President and his designee(s) be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all such actions as may be necessary or appropriate to

effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION– Procurement of Legal Services – Pearlman & Miranda, LLC - Authorization to Enter into a Contract to Provide Legal Services for the New York Transportation Development Corporation (the “Corporation”) in Connection with Issuing Bonds to Renovate, Expand, and Refund Bonds Previously Issued for, Terminal 8 at John F. Kennedy International Airport and to Take Related Actions

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

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There being no further business, the meeting was adjourned.

Respectfully submitted,

Regina Stephens  
Assistant Corporate Secretary

# ITEM 2



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Pre-Qualified Lists of Underwriters and Financial Advisors for Bond Issuance

REQUEST FOR: Authorization to Adopt the Pre-Qualified Lists of the New York State Urban Development Corporation d/b/a Empire State Development of Underwriters and Financial Advisors; and Authorization to Take Related Actions

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I. INTRODUCTION

At its February 16, 2017 Board of Directors Meeting, the New York Transportation Development Corporation (“TDC” or the “Corporation”) adopted the New York State Urban Development Corporation’s d/b/a Empire State Development (“ESD”) pre-qualified list of underwriters and financial advisors which would make these firms available for future recommendation to the Corporation’ board of directors for retention as the need may arise, without need to conduct a further solicitation.

At that time, a rotating team consisting of thirty-six underwriters and four financial advisors were approved.

The Directors are now being asked to adopt ESD’s new list of underwriters and financial advisors approved by ESD’s board of directors at its meeting on February 20, 2020.

II. BACKGROUND/CURRENT SELECTION

ESD placed an advertisement in the *New York State Contract Reporter* pursuant to which it solicited responses to its Request for Proposals (“RFP”) from firms interested in qualifying to serve as underwriters and as financial advisors on a rotating basis. In addition, ESD posted the RFP on its website. Further, ESD e-mailed the RFP to over 118 firms.

On December 20, 2019, forty-five firms responded to the RFP with several firms applying for more than one position. Forty-one firms requested to serve as underwriter, three requested

to serve as financial advisor, and one requested to be considered only as a member of the Selling Group.

A total of nine MWBE firms and seven Service-Disabled Veteran-Owned Business (“SDVOB”) firms responded to the RFP.

A. Underwriters

Treasury staff, the Office of Contractor & Supplier Diversity, and the Chief Financial Officer (“CFO”) reviewed and rated the firms requesting to serve as underwriters. Rating criteria included:

- Experience of firm and individuals
- Historic performance including competitive bond sales participation
- Innovations, ideas, analyses or work provided to ESD and NYS
- Bond sales; retail and institutional distribution
- Commitment to public finance; capital structure

On the basis of overall rankings of the proposals from the responding firms, ESD staff selected a list of underwriters and financial advisors to remain in effect for two years, with options to renew for two additional years. On February 20, 2020 a group of 34 underwriters and 3 financial advisors were approved by the ESD Board of Directors.

A group of eight firms make up the Selling Group, which may change from time to time. These firms will receive no designations, assume no liability for purchasing bonds and will only sell bonds of TDC as requested and as available.

On occasion ESD has invited selected MWBE firms and emerging or small regional firms in the Co-Manager category to serve as Co-Senior Managers. The staff proposes to continue and expand this practice to include SDVOB firms. This invitation will be based on the firm’s underwriting performance, including demonstrated support of ESD. As in the past, it is hoped that this practice will provide these firms an opportunity to gain experience and allow for greater participation and compensation.

Given the nature of the industry that has had certain firm mergers, acquisitions and consolidations, in the event that underwriting firms are acquired, merged or otherwise reconstituted, the new or reconstituted firm may be allowed to take the place held by the former firm. Throughout the term, staff will evaluate the performance of underwriters and, if necessary, will make suggestions to the Board concerning slate composition.

Based on the foregoing reviews and appraisals by ESD, it is recommended that the following firms be approved by the Corporation to serve as underwriters on a rotating basis effective until the termination or expiration of the pre-qualified ESD list of underwriters,



SENIOR MANAGERS:

Barclays Capital, Inc.  
BofA, Securities  
CitiGroup Global Markets, Inc.  
Goldman Sachs  
Jefferies LLC  
JP Morgan Securities, LLC  
Loop Capital Markets  
Morgan Stanley  
Ramirez & Co., Inc.  
Raymond James  
RBC Capital Markets, LLC  
Siebert Williams Shank & Co., LLC  
UBS  
Wells Fargo

CO-MANAGERS:

Academy Securities, Inc.  
Baird Public Finance  
Blaylock Van LLC  
BNY Mellon  
Cabrera Capital Markets, LLC  
Credit Agricole  
Drexel Hamilton, LLC  
Janney Montgomery Scott  
M & T Securities Inc.  
Mesirow Financial  
MUFG Securities Americas, Inc.  
Oppenheimer  
Piper Jaffray  
Rice Financial  
Roosevelt & Cross, Inc.  
SMBC NIKKO  
Stern Brothers & Co.  
Stifel Nicholas & Co.  
TD Securities USA, LLC  
US Bancorp

B. Financial Advisors

Three firms submitted proposals to serve as financial advisors. ESD Staff ranked the responding firms based on the following criteria:

- Experience of firms or individuals

- NYS or comparable bond issuance experience
- Recommendations / Innovations
- Additional factors

On the basis of the overall ranking by ESD staff of the proposals, it is recommended that the Corporation select the following three firms to be eligible to serve as financial advisors as needed, effective until the termination or expiration of the pre-qualified ESD list of Financial Advisors.

FINANCIAL ADVISORS:

Frasca & Associates, LLC

Hilltop Securities Inc.

Public Resources Advisory Group, Inc.

III. REQUESTED ACTION

At this time, the Directors are requested to approve the proposed list of underwriters and financial advisors.

IV. ATTACHMENTS

Resolution

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION - Pre-Qualified Lists of Underwriters and Financial Advisors - Authorization to Adopt the Pre-Qualified Lists of the New York State Urban Development Corporation d/b/a Empire State Development of Underwriters and Financial Advisors; and Authorization to Take Related Actions

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WHEREAS, the New York Transportation Development Corporation (the "Corporation") proposes to select a team of underwriters and financial advisors (the "Financial Firms"); and

WHEREAS, ESD issued a Request for Proposals to select a group of Financial Firms to serve ESD and on the basis of the overall ranking of the proposals by the responding Financial Firms, selected qualified Financial Firms, approved by the ESD Board of Directors at a meeting on February 20, 2020; and

WHEREAS, based on ESD's evaluation of such Financial Firms, the Corporation wishes to adopt the same list of Financial Firms adopted by ESD; and

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be files with the records of the Corporation, the Financial Firms, listed below be and each hereby is, approved in the various areas of expertise, such approval to remain in effect until the termination or expiration of the pre-qualified ESD list of Financial Firms:

**Senior Managers:**

Barclays Capital, Inc.  
BofA, Securities  
CitiGroup Global Markets, Inc.  
Goldman Sachs  
Jefferies LLC  
JP Morgan Securities, LLC  
Loop Capital Markets  
Morgan Stanley  
Ramirez & Co., Inc.  
Raymond James  
RBC Capital Markets, LLC  
Siebert Williams Shank & Co., LLC  
UBS  
Wells Fargo

**Co-Managers:**

Academy Securities, Inc.  
Baird Public Finance  
Blaylock Van LLC

BNY Mellon  
Cabrera Capital Markets, LLC  
Credit Agricole  
Drexel Hamilton, LLC  
Janney Montgomery Scott  
M & T Securities Inc.  
Mesirow Financial  
MUFG Securities Americas, Inc.  
Oppenheimer  
Piper Jaffray  
Rice Financial  
Roosevelt & Cross, Inc.  
SMBC NIKKO  
Stern Brothers & Co.  
Stifel Nicolaus & Co.  
TD Securities USA, LLC  
US Bancorp

**Financial Advisors:**

Frasca & Associates, LLC  
Hilltop Securities Inc.  
Public Resources Advisory Group, Inc.

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 consistent with this authorization are hereby ratified and affirmed.

\* \* \*

# ITEM 3



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Issuance of Bonds by New York Transportation Development Corporation for the benefit of JFK International Air Terminal LLC to finance the redemption and defeasance of certain prior bonds issued by Port Authority of New York and New Jersey (the "Port Authority")

REQUEST FOR: Authorization to Perform Certain Acts in Connection with the Sale and Delivery of the New York Transportation Development Corporation Special Facility Revenue Bonds, Series 2020A (AMT) (Terminal 4 John F. Kennedy International Airport Project) and the Special Facility Revenue Bonds, Series 2020B (Non-AMT/Private Activity) (Terminal 4 John F. Kennedy International Airport Project) and to Take Related Actions

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I. INTRODUCTION

The Board is being asked to approve the operative provisions, sale terms, official statement, bond purchase agreement, related documents and related actions in connection with the sale and delivery of New York Transportation Development Corporation (the "Corporation") Special Facility Revenue Bonds, Series 2020A (AMT) (Terminal 4 John F. Kennedy International Airport Project) (the "Series 2020A Bonds") and Special Facility Revenue Bonds, Series 2020B (Non-AMT/Private Activity) (Terminal 4 John F. Kennedy International Airport Project) (the "Series 2020B Bonds" and together with the Series 2020A Bonds, the "Series 2020 Bonds"), to be issued for the benefit of JFK International Air Terminal LLC (the "Borrower"), a New York limited liability company.

II. BACKGROUND AND PURPOSE

The Borrower has requested that the Corporation issue the Series 2020 Bonds for the following purposes: to (i) provide funds to defease and redeem in full the outstanding, The Port Authority of New York and New Jersey Special Project Bonds, Series 6, JFK International Air Terminal LLC Project (the "Series 6 Bonds") and a portion of the outstanding The Port Authority of New York and New Jersey Special Project Bonds, Series 8, JFK International Air Terminal LLC Project (the "Series 8 Bonds," and together with the Series 6 Bonds, the "Prior Port Authority Bonds"), (ii) fund debt

service reserve funds for the Series 2020 Bonds, and (iii) pay costs associated with the issuance of the Series 2020 Bonds.

The Prior Port Authority Bonds were issued primarily to provide funds to finance the development, construction and expansion of a new passenger terminal at the John F. Kennedy International Airport (the "Airport"). The terminal, now designated as Terminal 4, opened for service in 2001 and was expanded during the 2010-2015 period.

The land on which the terminal is located, together with the buildings, structures, improvements and related facilities on such land (the "Premises"), are owned by The City of New York (the "City") and are leased by the City to the Port Authority pursuant to a lease agreement, entered into in 1947 and Restated Agreement of Lease of the Municipal Air Terminals dated November 24, 2004 (the "Basic Lease"). The Basic Lease is currently scheduled to expire on December 31, 2050, but is subject to earlier termination in certain circumstances. The Premises have been leased by the Port Authority to the Borrower pursuant to an Agreement of Lease entered into on May 13, 1997 (the "Lease Agreement"). The Lease Agreement is currently scheduled to expire on May 24, 2043, but is subject to earlier termination in certain circumstances.

### III. SECURITY

The Series 2020 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 March 1, 2020 by and between the Corporation and The Bank of New York Mellon, as trustee (the "Trustee").

The Series 2020 Bonds will be special limited revenue obligations of the Corporation, payable from: (i) certain payments to be made by the Borrower to the Corporation under the Loan Agreement (the "Loan Agreement") by and between the Corporation and the Borrower and the Promissory Note of the Borrower (the "Note"); and (ii) the unconditional guarantee from the Borrower to the Trustee (the "Guaranty"). The Guaranty will unconditionally guarantee to the Trustee, for the benefit of the owners of all Series 2020 Bonds, payment of the principal, redemption price and purchase price of, and interest on, the Series 2020 Bonds when and as due and payable.

As security for the payment of the Borrower's obligations under the Loan Agreement, the Note and the Guaranty, the Borrower will grant to the Corporation and the Trustee (for the benefit of the Bondholders) a leasehold mortgage on the Borrower's leasehold interest under the Lease Agreement pursuant to a Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the "TDC Leasehold Mortgage"). Terminal 4 will constitute the premises under the Lease Agreement and will be subject to the lien of the TDC Leasehold Mortgage. The Series 2020 Bonds will be further secured by certain moneys and securities held by the Trustee for the Series 2020 Bonds under the Indenture.

The Corporation will be a mortgagee to secure an exemption from the mortgage recording tax and pursuant to the Assignment of Leasehold Mortgage (the "Assignment of Leasehold Mortgage") will assign its interests in the TDC Leasehold Mortgage to the Trustee, for the benefit of the holders of the Series 2020 Bonds, except for certain reserved rights. The Corporation will also assign its right, title, and interest under the Loan Agreement (except for certain reserved rights) and the Note to the Trustee as security for the Series 2020 Bonds.

The Borrower, the Port Authority, the Trustee and the Corporation will consent to the TDC Leasehold Mortgage pursuant to the Consent to TDC Leasehold Mortgage and other TDC Financing Documents (the "Consent Agreement"), and to further secure its obligations with respect to the Series 2020 Bonds, the Borrower will execute a security agreement with the Corporation and the Trustee (the "Borrower Security Agreement").

The Series 2020 Bonds are special limited revenue obligations of the Corporation and are not payable from, or secured by, any property of the Corporation other than the trust estate pledged under the Indenture. The Series 2020 Bonds are not a debt of the State of New York ("State"), the New York Job Development Authority ("JDA"), the New York State Urban Development Corporation d/b/a Empire State Development ("ESD") or any other local development corporation, agency or authority of the State and none of these entities shall be liable on the Series 2020 Bonds.

As is customary in a conduit financing, the rights and responsibilities of the Corporation are limited under the Indenture and other financing documents described above. The Borrower has agreed to indemnify the Corporation, the State, JDA and ESD against certain liabilities or to contribute to any payments required to be made by the Corporation relating to such liabilities, including liabilities under the federal securities laws.

#### IV. OFFERING AND SALE

As part of the transaction, the Corporation will also enter into a Bond Purchase Agreement for the initial underwriting of the Series 2020 Bonds (the "Bond Purchase Agreement"). The Corporation is being asked to delegate authority to its officers to approve the maturities, prices, yields and other terms of the Series 2020 Bonds.

The Series 2020 Bonds are expected to be issued as fixed rate bonds. The Series 2020 Bonds will not be subject to optional redemption prior to maturity. The Series 2020 Bonds will be subject to mandatory redemption in whole or, under certain circumstances, in part, at the option of Borrower as permitted by the Indenture.

#### V. ENVIRONMENTAL REVIEW

The requested approval of the terms and authorization of the sale of the Series 2020 Bonds and related actions in connection with the Terminal 4 JFK International Airport Project,



which has already been completed, 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 this authorization.

VI. REQUESTED ACTION

In accordance with the attached resolution, you are hereby requested to: (1) approve the terms and authorize the sale of the Series 2020 Bonds on a negotiated basis; (2) confirm the appointment of certain professionals; (3) approve the form and content of the official statement and various other documents connected with the sale and delivery of the Series 2020 Bonds; and (4) authorize certain officers and employees of the Corporation to take all actions deemed necessary to accomplish the final sale and delivery of the Series 2020 Bonds.

VII. ATTACHMENTS

Resolution with the following Exhibits: (Exhibits to Directors only)

- A. TEFRA Material
- B. Loan Agreement
- C. Master Indenture
- D. First Supplemental Indenture
- E. TDC Leasehold Mortgage
- F. Assignment of Leasehold Mortgage
- G. Consent Agreement
- H. Borrower Security Agreement
- I. Preliminary Official Statement
- J. Bond Purchase Agreement

For information only:

- A. Guaranty
- B. Trust Administration Agreement

**NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION**

**RESOLUTION AUTHORIZING THE SALE AND ISSUANCE OF**

**Special Facility Revenue Bonds, Series 2020A  
(AMT)  
(Terminal 4 John F. Kennedy International Airport  
Project)**

**Special Facility Revenue Bonds, Series 2020B  
(Non-AMT/Private Activity)  
(Terminal 4 John F. Kennedy International Airport  
Project)**

**Adopted February 24, 2020**

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

WHEREAS, in connection with the anticipated issuance of certain tax-exempt obligations to be used to refinance the Series 6 Bonds (as defined below) and the Series 8 Bonds (as defined below), including the Series 2020 Bonds (as defined below), the Corporation took steps under the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") to provide for the approval of the plan of financing that includes the Series 2020 Bonds, and a copy of the certificate of publication of notice published on October 11, 2019, a copy of the information made available to the public pursuant to the TEFRA public hearing, and a copy of the TEFRA public hearing transcript are annexed to this Resolution as *Exhibit A*; and

WHEREAS, JFK International Air Terminal LLC (the "Borrower") has requested that the Corporation issue its Special Facility Revenue Bonds, Series 2020A (AMT) (Terminal 4 John F. Kennedy International Airport Project) (the "Series 2020A Bonds") and its Special Facility Revenue Bonds, Series 2020B (Non-AMT/Private Activity) (Terminal 4 John F. Kennedy International Airport Project) (the "Series 2020B Bonds" and together with the Series 2020A Bonds, the "Series 2020 Bonds") to (i) provide funds to defease and redeem in full the outstanding The Port Authority of New York and New Jersey Special Project Bonds, Series 6, JFK International Air Terminal LLC Project (the "Series 6 Bonds") and a portion of the outstanding The Port Authority of New York and New Jersey Special Project Bonds, Series 8, JFK International Air Terminal LLC Project (the "Series 8 Bonds," and together with the Series 6 Bonds, the "Prior Port Authority Bonds"), (ii) fund debt service reserve funds for the Series 2020 Bonds, and (iii) pay issuance costs associated with the Series 2020 Bonds; and

WHEREAS, the Prior Port Authority Bonds were issued primarily to provide funds to finance the development, construction and expansion of a new passenger terminal at the John F. Kennedy International Airport (the "Airport"), and the land on which the terminal is located, together with certain buildings, structures, improvements and related facilities on such land (the

“Premises”) have been leased to the Borrower by The Port Authority of New York and New Jersey, a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey (the “Port Authority”) pursuant to a Lease Agreement, dated as of May 13, 1997, as amended and supplemented (the “Lease Agreement”); and

WHEREAS, the duly authorized officers of the Corporation have caused to be prepared a Loan Agreement (the “Loan Agreement”) by and between the Corporation and the Borrower, a copy of which is annexed to this Resolution as *Exhibit B*, pursuant to which the Corporation will loan the proceeds of the Series 2020 Bonds to the Borrower; and

WHEREAS, the Borrower will execute a Series 2020 Note in connection with the Loan Agreement (the “Series 2020 Note”), a copy of which is attached to the Loan Agreement; and

WHEREAS, the Series 2020 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 March 1, 2020 by and between the Corporation and The Bank of New York Mellon (the “Trustee”), copies of which are annexed to this Resolution as *Exhibit C and Exhibit D*; and

WHEREAS, the Corporation will assign certain of its rights under the Loan Agreement and the Series 2020 Note to the Trustee as security for the Series 2020 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 the Series 2020 Bonds, payment of the principal, redemption price and purchase price of, and interest on the Series 2020 Bonds when and as the Series 2020 Bonds are due and payable (the “Guaranty”); and

WHEREAS, the Series 2020 Note and the Guaranty will secure the Borrower’s payment obligations under the Loan Agreement, 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 a Leasehold Mortgage, Assignment of Leases, Security Agreement and Fixture Filing (the “TDC Leasehold Mortgage”), a copy of which is annexed to this Resolution as *Exhibit E*; and

WHEREAS, the Corporation will be a mortgagee under the TDC Leasehold Mortgage to secure an exemption from the mortgage recording tax and then will assign its interest in the TDC Leasehold Mortgage to the Trustee pursuant to the Assignment of TDC Leasehold Mortgage (the “Assignment of Leasehold Mortgage”), a copy of which is annexed to this Resolution as *Exhibit F*; and

WHEREAS, the Borrower, the Port Authority, the Trustee and the Corporation consent to the TDC Leasehold Mortgage pursuant to the Consent to TDC Leasehold Mortgage and other TDC Financing Documents (the “Consent Agreement”), a copy of which is annexed to this Resolution as *Exhibit G*; and

WHEREAS, to further secure its obligations with respect to the Series 2020 Bonds, the Borrower will execute a security agreement with the Corporation and the Trustee (the "Borrower Security Agreement"), a copy of which is annexed to this Resolution as *Exhibit H*; and

WHEREAS, for the administration of certain funds and accounts, the Borrower will enter into a Trust Administration Agreement with The Bank of New York Mellon, as the Trust Agent and as the Securities Intermediary (the "Trust Administration Agreement"); 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 I*, and will cause to be prepared an Official Statement to be used in connection with the issuance and sale of the Series 2020 Bonds (collectively, the "Official Statement") and have negotiated a purchase contract for the Series 2020 Bonds (the "Bond Purchase Agreement") by and among the Corporation, J.P. Morgan Securities LLC (the "Underwriter"), and the Borrower, a copy of which is annexed to this Resolution as *Exhibit J*;

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

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

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

RESOLVED, that the 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 2020 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 2020 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 2020 Bonds, which is expected to occur in March 2020 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 2020 Bonds shall similarly, as appropriate, be conformed thereto; provided that the aggregate principal amount of the Series 2020 Bonds shall not exceed \$500 million, the final maturity shall not extend past March 30, 2050; and further

RESOLVED, that in connection with the issuance of the Series 2020 Bonds, the Corporation hereby appoints The Bank of New York Mellon, as Trustee and Paying Agent under the Indenture; and further

RESOLVED, that in connection with the issuance of the Series 2020 Bonds, the Corporation hereby appoints J.P. Morgan Securities LLC, as Underwriter, and authorizes the appointment of such other underwriters as determined by an Authorized Officer of the Corporation; 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 2020 Bonds to the Underwriter; and further

RESOLVED, that the Corporation shall offer for sale, sell, issue and deliver the Series 2020 Bonds pursuant to the Bond Purchase Agreement and the Indenture and shall apply the proceeds thereof in accordance with the Indenture, the Trust Administration Agreement and certain documents and certificates to be delivered upon the issuance of the Series 2020 Bonds; and further

RESOLVED, that each of the Chair, 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 Agreement (including any exhibits thereto), the Indenture, the TDC Leasehold Mortgage, the Assignment of Leasehold Mortgage, the Consent Agreement, the Borrower Security Agreement, 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 2020 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 2020 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 2020 Bonds by any Authorized Officer or his or her designee are hereby ratified and approved.

\* \* \*

# ITEM 4



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: New York Transportation Development Corporation – Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project)

REQUEST FOR: Appointment of Underwriter; Appointment of Additional Underwriters; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take All Related Actions

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I. BACKGROUND

Fuller Road Management Corporation (“FRMC”) has requested that the New York Transportation Development Corporation (the “Corporation”) issue its New York Transportation Development Corporation Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) (the “Series 2020 Bonds”), and loan the net proceeds thereof to FRMC as part of FRMC’s refinancing of its Debt (defined below). FRMC owns and operates a consortium of nanotechnology facilities that are primarily located on the SUNY Polytechnic campus in Albany, New York (the “Facilities”). FRMC has approximately \$350 million of outstanding debt consisting of bank loans, bonds and a bank line of credit. This debt was used to finance the construction of specific buildings on the Fuller Road campus (the “Debt”). Most of the Debt is either scheduled to mature or has a mandatory tender in early May 2020. The balance of the Debt is currently subject to optional redemption.

The Series 2020 Bonds will be issued under an Indenture of Trust and the proceeds of the Series 2020 Bonds will be loaned to FRMC pursuant to a Loan Agreement. FRMC’s obligation to repay the loan will be a limited obligation of FRMC, secured by an assignment of rental payments due with respect portions of the Facilities leased to the Research Foundation of State University of New York. The Series 2020 Bonds will be special obligations of the Corporation, payable only from amounts received from FRMC under the Loan Agreement.

II. SELECTION OF UNDERWRITERS

In 2019, a six-member FRMC Evaluation Committee unanimously, comprised of three FRMC representatives and one representative from each of Empire State Development (“ESD”),

the State University of New York ("SUNY") and the SUNY Research Foundation ("RF"), selected Goldman Sachs & Co. LLC ("Goldman") as the senior managing underwriter through an extensive procurement process.

Goldman was selected on the basis of cost, the analytical elements of its proposed long-term FRMC Debt refinancing proposal, and its extensive experience in municipal finance. Goldman 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 ESD and adopted by the Corporation on February 24, 2020.

The Corporation, in consultation with FRMC, has selected Loop Capital Markets and Siebert Williams Shank & Co., LLC as co-managers from the Pre-Qualified List of Underwriters.

Corporation staff now seeks the consent of the Corporation's Board of Directors (the "Board of Directors") to adopt the selection of underwriters for the Bond issuance.

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

The Corporation's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Bond transaction. The Corporation shall be required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this Bond transaction. The Corporation will use good faith efforts to achieve maximum possible MWBE participation related to the total amount of underwriting fees and services pertaining to the Bond transaction.

In accordance with Article 17-B of the Executive Law, Goldman 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.

### IV. DOCUMENTS

It is intended that the Series 2020 Bonds will be issued to loan the proceeds to refinance FRMC's Debt. Accordingly, the documents must be drafted and approved for the issuance of the Series 2020 Bonds expeditiously. Staff is requesting consent by the Board of Directors to commence drafting documents. An additional meeting of the Board will occur so that the Board of Directors can approve the form of final documents.

### V. ENVIRONMENTAL REVIEW

The requested authorization to appoint underwriters and to proceed with the review and preparation of related documents does not constitute an action as defined by the State Environmental Quality Review Act ("SEQRA"), and therefore, no environmental review is required



in connection with this authorization. Prior to the authorization of issuance of bonds, any applicable environmental review requirements pursuant to SEQRA will have been completed.

VI. REQUESTED ACTION

Staff recommends that the Board of Director's authorize TDC to select a senior managing underwriter and co-managing underwriters and to authorize the preparation of documents in connection with the Series 2020 Bonds and to take any related actions.

VII. RECOMMENDATION

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

VIII. ATTACHMENT

Resolution

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) – Appointment of Underwriter; Appointment of Additional Underwriters; Authorization to Proceed with the Preparation of Documents for the Issuance of Series 2020 Bonds; and Take Related Actions

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WHEREAS, the New York Transportation Development Corporation has been requested to issue its Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) (the “Series 2020 Bonds”) to refinance FRMC’s Debt; and

WHEREAS, to facilitate the issuance of the Series 2020 Bonds as requested, the officers of the Corporation propose to authorize selection of a senior managing underwriter and co-managing underwriters, authorize the preparation of documents necessary or desirable in connection with the issuance of the Series 2020 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:

Actions Related to Selection of Underwriter

RESOLVED, that the Corporation hereby authorizes the selection of a senior managing underwriter and co-managers and the appointment of additional underwriters.

Preparation of Bond Documents

RESOLVED, that the Corporation hereby authorizes the preparation of documents necessary or desirable in connection of the issuance of the Series 2020 Bonds.

Miscellaneous

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

\* \* \*

# ITEM 5



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: Procurement of Legal Services – Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C.

REQUEST FOR: Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions

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I. CONTRACT SUMMARY

Counsel: Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C. (“Counsel” or “Mintz”)

Scope of Services: Counsel would serve as co-bond counsel together with the 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 Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) (the “Series 2020 Bonds”).

Contract Amount: All counsel fees for the Series 2020 Bonds, including Counsel’s fee and all affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the of the par amount of the Series 2020 Bonds including amounts paid, if any, pursuant to a Notice to Proceed dated January 21, 2020. Counsel will be required to use good faith efforts to allocate 30% participation on this matter to Seaton.

Funding Source: The contract will be funded in its entirety by Fuller Road Management Corporation (“FRMC”) on or about the closing on the Series 2020 Bonds in tranches or as otherwise agreed upon by FRMC and the Corporation in a pre-financing agreement.

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 FRMC for that purpose.

## II. BACKGROUND

FRMC has requested that the Corporation issue its New York Transportation Development Corporation Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and loan the net proceeds thereof to FRMC as part of FRMC's refinancing of its Debt (defined below). FRMC owns and operates a consortium of nanotechnology facilities that are primarily located on the SUNY Polytechnic campus in Albany, New York (the "Facilities"). FRMC has approximately \$350 million of outstanding debt consisting of bank loans, bonds and a bank line of credit. This debt was used to finance the construction of specific buildings on the Fuller Road campus (the "Debt"). Most of the Debt is either scheduled to mature or has a mandatory tender in early May 2020. The balance of the Debt is currently subject to optional redemption.

The Series 2020 Bonds will be issued under an Indenture of Trust and the proceeds of the Series 2020 Bonds will be loaned to FRMC pursuant to a Loan Agreement. FRMC's obligation to repay the loan will be a limited obligation of FRMC, secured by an assignment of rental payments due with respect portions of the Facilities leased to the Research Foundation of State University of New York. The Series 2020 Bonds will be special obligations of the Corporation, payable only from amounts received from FRMC under the Loan Agreement.

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

## III. COUNSEL SELECTION PROCESS

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

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

Counsel List for bond counsel services.

It is recommended that Mintz serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was based on the fact that Counsel has experience serving as bond counsel for the Corporation and its affiliates as well as other significant and applicable work. Staff recommends the retention of Mintz for the Series 2020 Bonds based on: (a) Counsel's specific and necessary expertise as bond counsel; (b) Counsel's performance with distinction on other transactions (c) Counsel's rate proposal; and (d) the ESD pre-qualification process.

IV. SCOPE OF WORK

Counsel would advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Series 2020 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

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, FRMC 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 FRMC from Bond proceeds on or about the closing on the Series 2020 Bonds. All counsel fees on the Series 2020 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 Series 2020 Bonds including any amounts paid, if any pursuant to a Notice to Proceed dated February 21, 2020. 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 offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of ESD's bond counsel fees. A separate retainer with an MWBE, Seaton, to act as counsel will be entered to meet these requirements. The Directors are simultaneously being asked to retain Seaton as co-bond counsel for this bond transaction.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Mintz as co-bond 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

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services of Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C. - Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions

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RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation (the "Materials"), the Corporation hereby finds the law firm of Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C. ("Counsel") to be responsible; and be it further

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

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

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# ITEM 6



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

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

REQUEST FOR: Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions

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I. CONTRACT SUMMARY

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

Scope of Services: Counsel would serve as co-bond counsel together with Mintz, Levin, Cohn, Ferris, Glovsky and Pompeo, P.C. (“Mintz”), 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 Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) (the “Series 2020 Bonds”).

Contract Amount: All counsel fees for the Series 2020 Bonds, including Counsel’s fee and all affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to 2% of the of the par amount of the Series 2020 Bonds including amounts paid, if any, pursuant to a Notice to Proceed dated February 21, 2020. Mintz and Counsel will be required to use good faith efforts to have a division of labor such that Counsel, as a certified Minority-Owned Business Enterprise (“MBE”), will be allocated at least 30% participation on this matter.

Funding Source: The contract will be funded in its entirety by Fuller Road Management Corporation (“FRMC”) on or about the closing on the Series 2020 Bonds in tranches or as otherwise agreed upon by FRMC and the Corporation in a pre-financing agreement.

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 FRMC for that purpose.

## II. BACKGROUND

FRMC has requested that the Corporation issue its New York Transportation Development Corporation Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and loan the net proceeds thereof to FRMC as part of FRMC's refinancing of its Debt (defined below). FRMC owns and operates a consortium of nanotechnology facilities that are primarily located on the SUNY Polytechnic campus in Albany, New York (the "Facilities"). FRMC has approximately \$350 million of outstanding debt consisting of bank loans, bonds and a bank line of credit. This debt was used to finance the construction of specific buildings on the Fuller Road campus (the "Debt"). Most of the Debt is either scheduled to mature or has a mandatory tender in early May 2020. The balance of the Debt is currently subject to optional redemption.

The Series 2020 Bonds will be issued under an Indenture of Trust and the proceeds of the Series 2020 Bonds will be loaned to FRMC pursuant to a Loan Agreement. FRMC's obligation to repay the loan will be a limited obligation of FRMC, secured by an assignment of rental payments due with respect portions of the Facilities leased to the Research Foundation of State University of New York. The Series 2020 Bonds will be special obligations of the Corporation, payable only from amounts received from FRMC under the Loan Agreement.

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

## III. COUNSEL SELECTION PROCESS

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

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

ESD list of pre-qualified counsel on September 16, 2017. Counsel is on the new Pre-Qualified Counsel List for bond counsel services.

It is recommended that Seaton serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was based on the fact that Counsel has experience serving as bond counsel for the Corporation as well as other significant and applicable work. Staff recommends the retention of Seaton for the Series 2020 Bonds based on: (a) Counsel's specific and necessary expertise as bond counsel; (b) Counsel's performance with distinction on other transactions, including a prior transaction for the Corporation; (c) Counsel's rate proposal; and (d) the ESD pre-qualification process.

IV. SCOPE OF WORK

Counsel would advise the Corporation in securities, bonds, taxes and other related legal matters in connection with the issuance and sale of the Series 2020 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

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, FRMC 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 FRMC from Bond proceeds on or about the closing on the Series 2020 Bonds. All counsel fees on the Series 2020 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 Series 2020 Bonds including any amounts paid, if any pursuant to a Notice to Proceed dated February 21, 2020. 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 offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services.

Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of ESD's bond counsel fees. Counsel is a certified MBE and will utilize its certification to satisfy the above requirement. Mintz has agreed to use good faith efforts to achieve this participation goal.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Seaton as co-bond 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

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services of D. Seaton and Associates, P.A., P.C. - Authorization to Enter into a Contract to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the Lease Revenue Refunding Bonds, Series 2020 (Fuller Road Management Corporation - Nanotechnology Facilities Project) and Authorization to Take Related Actions

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

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

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

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**ITEM 7**



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

SUBJECT: New York Transportation Development Corporation – New York State Thruway Service Area Redevelopment Project

REQUEST FOR: Appointment of Senior Managing Underwriter; Authorization to Appoint Additional Underwriters; Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Authorization to Induce a Project for Private Activity Financing; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take All Related Actions

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I. BACKGROUND

Empire State Thruway Partners LLC (“ESTP”) has requested that the New York Transportation Development Corporation (the “Corporation”) issue certain of its New York Transportation Development Corporation Bonds (the “Bonds”) and loan the net proceeds thereof to ESTP to finance the Project (defined below). Following a procurement process, the New York State Thruway Authority (“NYSTA”) selected ESTP to redevelop, including the design, construction and financing the improvements, of 27 food/fuel service facilities (each, a “Service Area”) located along the 570-mile superhighway system known as the Governor Thomas E. Dewey Thruway (the “Project”).

ESTP or its assignee will be a special purpose vehicle organized for the sole purpose of entering into a Lease Agreement with NYSTA. ESTP will control the Service Areas for a period of up to 33 years through its leasehold interest in the sites and will enter into a sublease with an affiliated operating company charged with managing the food and beverage operations and related traveler services at the Service Areas. It is contemplated that the revenues generated from the food and beverage operations and related traveler services at the Service Areas and payments under the sublease will be pledged as security for the debt service and repayment of the Bonds.



## II. SELECTION OF UNDERWRITER

ESTP has selected CitiGroup Global Markets Inc. ("Citi") to serve as the senior managing underwriter for the Bonds. Citi is on the Corporation's pre-qualified list of underwriters (the "Pre-Qualified List of Underwriters"). The Pre-Qualified List of Underwriters was created after an RFP process by Empire State Development ("ESD") and adopted by the Corporation on February 24, 2020. Citi was selected for its extensive experience in all aspects of municipal finance, its extensive experience as underwriter on other Corporation bond issuances and their responses and ratings in the pre-qualification process.

The Corporation, in consultation with ESTP, will have the option to select additional co-managers from the Pre-Qualified List of Underwriters to the extent necessary to satisfy the requirements of Section IV below.

Corporation staff now seeks the consent of the Corporation's Board of Directors (the "Board of Directors") to authorize the selection of Citi as senior managing underwriter for the issuance of the Bonds and to delegate to the Corporation, in consultation with ESTP, the ability to appoint additional underwriters as the deal progresses.

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

The Corporation's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Bond transaction. The Corporation shall be required to include minorities and women in any job opportunities created, and to undertake Good Faith Efforts (pursuant to 5 NYCRR Section 142.8) to solicit and utilize Minority and Women-owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this Bond transaction. The Corporation will use Good Faith Efforts to achieve maximum possible MWBE participation related to the total amount of underwriting fees and services pertaining to the Bond transaction.

In accordance with Article 17-B of the Executive Law, Citi 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.

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

V. INDUCEMENT

Inducement of the Project will allow the Bond proceeds of an expected maximum principal amount of up to approximately \$400 million to be used, among other things, to reimburse for Project expenditures made by ESTP or its assignee prior to the date or dates of the issuance of the Bonds, thereby expediting the Project. Prior to the issuance of the Bonds, the form of financing documents must be fully and formally confirmed including, without limitation, the New York State Environmental Quality Review Act ("SEQRA"). The Corporation is not obligated to approve the Project, to issue the Bonds, or take any other actions related to the Project.

The attached Resolution does not authorize or require the Corporation to issue the Bonds. Without the inducement, only limited types of Project expenditures made by ESTP more than 60 days prior to the issuance of the Bonds could be reimbursed with tax-exempt bond proceeds.

VI. DOCUMENTS

It is intended that the Bonds will be issued to finance the Project. Accordingly, the documents relating to such financing must be reviewed and drafted expeditiously. Staff is requesting the Board of Directors' consent to commence review and drafting of documents. An additional Board meeting will occur so that the Board of Directors can approve the nearly final form of the documents and authorize transaction terms.

VII. ENVIRONMENTAL REVIEW

The requested authorization to appoint underwriters and financial advisors, to take actions related to TEFRA, to induce a Project, and to review and prepare related documents does not constitute an action as defined by SEQRA. Therefore, no environmental review is required in connection with this authorization. Prior to the authorization of issuance of bonds, any applicable environmental review requirements pursuant to SEQRA will have been completed.

VIII. REQUESTED ACTION

Corporation Staff recommends that the Board of Directors take actions related to TEFRA, authorize the selection of the senior managing underwriter, the appointment of additional underwriters, the appointment of financial advisors, authorize the inducement of the Project, authorize the preparation of documents in connection with the Bonds and to take any related actions.

IX. RECOMMENDATION

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

X. ATTACHMENT  
Resolution

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – New York State Thruway Service Area Redevelopment Project – Appointment of Senior Managing Underwriter; Authorization to Appoint Additional Underwriters; Authorization to Take Actions Related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”); Authorization to Induce a Project for Private Activity Financing; Authorization to Proceed with the Review and Preparation of Related Documents; and Authorization to Take All Related Actions

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WHEREAS, the New York Transportation Development Corporation (the “Corporation”) has been requested to issue bonds (“Bonds”) to finance the New York State Thruway Service Area Redevelopment Project; and

WHEREAS, in order to facilitate the issuance of the Bonds as requested, the officers of the Corporation propose to authorize selection of a senior managing underwriter and appointment of additional underwriters, take actions related to the Tax Equity and Fiscal Responsibility Act (“TEFRA”) induce the Project, 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 authorizes the selection of Citigroup Global Markets Inc. as senior managing underwriter for the Bonds together with the right to appoint additional underwriters, if any, as the Corporation shall select.

Actions Related to 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 requests for approval following such TEFRA Hearing, all in accordance with and as required by the Internal Revenue Code of 1986, as amended.

Actions Related to the Inducement

RESOLVED, that the Corporation hereby declares its official intent, for the purposes of United States Treasury Regulations §1.150-2, to issue the Bonds and use the proceeds to reimburse the Applicant for the costs of the Project. This declaration of official intent is subject to subsequent approval of the Project by the Corporation. The Corporation understands that the Applicant has paid and will pay certain expenditures in connection with the Project prior to the

issuance of the Bonds for the Project. The Applicant may use temporary funds that are or will be available on a short-term basis to pay for preliminary expenditures, construction and equipping costs for the Project. Said declaration is based upon the representation of the Applicant that it reasonably expects that it will reimburse itself for the use of such funds with the proceeds of Bonds to be issued by the Corporation or other authorized governmental issuer to finance the costs of the Project. The maximum amount of Bonds currently expected to be issued for the Project is approximately \$400 million.

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

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# ITEM 8



**FOR CONSIDERATION**

February 24, 2020

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Procurement of Legal Services – Cozen O’Connor

**REQUEST FOR:** Authorization to Enter into a Contract with Cozen O’Connor to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions

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**I. CONTRACT SUMMARY**

**Counsel:** Cozen O’Connor (“Counsel” or “Cozen”)

**Scope of Services:** Counsel would serve as co-bond counsel together with Hardwick Law Firm, LLC (“Hardwick”), 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 New York State Thruway Service Area Redevelopment Project.

**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 including amounts paid, if any, pursuant to a Notice to Proceed dated February 21, 2020.

**Funding Source:** The contract will be funded in its entirety by Empire State Thruway Partners LLC (“ESTP”) on or about the closing on the Bonds in tranches or as otherwise agreed upon by ESTP and the Corporation in a pre-financing agreement.

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 ESTP for that purpose.

## II. BACKGROUND

ESTP has requested that the Corporation issue certain of its New York Transportation Development Corporation Bonds (the "Bonds") and loan the net proceeds thereof to ESTP to finance the Project (defined below). Following a procurement process, ESTP was selected by the New York State Thruway Authority ("NYSTA") to redevelop (design, construct and finance improvements) to the 27 food/fuel facilities (each, a "Service Area") located along the 570-mile superhighway system known as the Governor Thomas E. Dewey Thruway (the "Project").

ESTP or its assignee will be a special purpose vehicle organized for the sole purpose of entering into a Lease Agreement with NYSTA. ESTP will control the Service Areas for a period of up to 33-years through its leasehold interest in the sites and will enter into a sublease with an affiliated operating company charged with managing the food and beverage operations and related traveler services at the Service Areas. It is contemplated that the revenues generated from the food and beverage operations and related traveler services at the Service Areas and payments under the sublease will be pledged as security for the repayment of the Bonds.

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. Staff will also obtain the approval of the Governor and conduct a hearing as required by Federal tax law.

## III. COUNSEL SELECTION PROCESS

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

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

Dentons US LLP ("Dentons") was selected to the Senior Tier of the Pre-Qualified Counsel List for bond counsel services in 2017. The March 24, 2017 board memo in support of the Pre-Qualified Counsel List provided that in the event that the principal partners and attorneys from a firm identified as being responsible for a particular area, such as the Corporation's bond



financing matters, leave the firm, the pre-qualification would “follow” these key law firm member(s) to the new firm. The principal bond financing partner, Jonathan A. Ballan, and his small group of attorneys moved from Dentons to Cozen O’Connor (“Cozen”) in April 2018. Accordingly, this group of Cozen attorneys is eligible to work on the Corporation’s bond matters, including the proposed issuance of the Bonds.

It is recommended that Cozen serve as bond disclosure counsel for this transaction. Selection of Counsel for this transaction was based on the fact that the group of attorneys that moved from Dentons to Cozen previously served as bond or disclosure counsel on transactions for the Corporation and its affiliates (ESD, the New York Liberty Development Corporation and Brooklyn Arena Development Corporation). Accordingly, staff recommends the retention of Cozen for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel; (b) Counsel’s performance on prior bond transactions for the Corporation and its affiliates; and (c) the ESD pre-qualification process.

#### IV. SCOPE OF WORK

Counsel would 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, resolutions, 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, ESTP 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 ESTP from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including bond counsels 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 including any amounts paid, if any pursuant to a Notice to Proceed dated February 21, 2020. 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 offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-Owned Business Enterprises ("MWBEs") for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of ESD's bond counsel fees. A separate retainer with an MWBE, Hardwick, to act as counsel will be entered to meet these requirements. The Directors are simultaneously being asked to retain Hardwick as MWBE counsel for this bond transaction

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Cozen as co-bond 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. ATTACHMENTS

Resolution

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION ("the Corporation") –  
Procurement of Legal Services – Cozen O'Connor - Authorization to Enter into a Contract  
with Cozen O'Connor to Serve as Co-Bond Counsel for the New York Transportation  
Development Corporation in Connection with the New York State Thruway Service Area  
Redevelopment Project; and Authorization to Take Related Actions

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RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered to be filed with the record of the Corporation (the "Materials"), the Corporation hereby finds Cozen O'Connor ("Counsel") to be responsible; and be it further

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

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

\* \* \*

# ITEM 9



FOR CONSIDERATION

February 24, 2020

TO: The Directors

FROM: Howard A. Zemsky

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

REQUEST FOR: Authorization to Enter into a Contract with Hardwick Law Firm LLC to Serve as Co-Bond Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions

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I. CONTRACT SUMMARY

Counsel: Hardwick Law Firm, LLC (“Counsel” or “Hardwick”)

Scope of Services: Counsel would serve as co-bond counsel together with the Cozen O’Conner (“Cozen”), 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 New York State Thruway Service Area Redevelopment Project.

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 including amounts paid, if any, pursuant to a Notice to Proceed dated February 21, 2020.

Funding Source: The contract will be funded in its entirety by Empire State Thruway Partners LLC (“ESTP”) on or about the closing on the Bonds in tranches or as otherwise agreed upon by ESTP and the Corporation in a pre-financing agreement.

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 ESTP for that purpose.

## II. BACKGROUND

ESTP has requested that the Corporation issue certain of its New York Transportation Development Corporation Bonds (the "Bonds") and loan the net proceeds thereof to ESTP to finance the Project (defined below). Following a procurement process, ESTP was selected by the New York State Thruway Authority ("NYSTA") to redevelop (design, construct and finance improvements) to the 27 food/fuel facilities (each, a "Service Area") located along the 570-mile superhighway system known as the Governor Thomas E. Dewey Thruway (the "Project").

ESTP or its assignee will be a special purpose vehicle organized for the sole purpose of entering into a Lease Agreement with NYSTA. ESTP will control the Service Areas for a period of up to 33-years through its leasehold interest in the sites and will enter into a sublease with an affiliated operating company charged with managing the food and beverage operations and related traveler services at the Service Areas. It is contemplated that the revenues generated from the food and beverage operations and related traveler services at the Service Areas and payments under the sublease will be pledged as security for the repayment of the Bonds.

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. Staff will also obtain the approval of the Governor and conduct a hearing as required by Federal tax law.

## III. COUNSEL SELECTION PROCESS

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

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

It is recommended that Hardwick serve as bond disclosure counsel for this transaction. Selection of Counsel for this transaction is based on the fact that Hardwick is a certified Minority and Women-Owned Business Enterprise ("MWBE") and previously served as co-bond counsel on two airport refundings by the Corporation, as co-bond counsel on a refunding of Barclay's Arena

bonds, and as co-disclosure counsel for the financing of the Delta Terminal at LaGuardia Airport. 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 transactions, (c) Counsel's rate proposal, and (d) the ESD pre-qualification process.

The appointment of this firm also represents an equitable distribution of work among ESD's rotating slate of Senior and Junior Tier law firms and MWBE firms to handle ESD's and the Corporation's debt in terms of size of transaction, fees received, and total number of transactions.

#### IV. SCOPE OF WORK

Counsel would 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, resolutions, 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, ESTP 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 ESTP from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including bond counsels 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 including any amounts paid, if any pursuant to a Notice to Proceed dated February 21, 2020. 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 offerers determined to be non-responsible

bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act 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 MWBE's for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of the Corporation's disclosure counsel fees.

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 asked to authorize the retention of Hardwick as co-bond 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. ATTACHMENTS

Resolution



February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION ("the Corporation") –  
Procurement of Legal Services – Hardwick Law Firm, LLC - Authorization to Enter into a  
Contract with Hardwick Law Firm LLC to Serve as Co-Bond Counsel for the New York  
Transportation Development Corporation in Connection with the New York State  
Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions

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

\* \* \*

# ITEM 10



**FOR CONSIDERATION**

February 24, 2020

**TO:** The Directors

**FROM:** Howard A. Zemsky

**SUBJECT:** Procurement of Legal Services – Drohan Lee LLP

**REQUEST FOR:** Authorization to Enter into a Contract with Drohan Lee LLP to Serve as Disclosure Counsel for the New York Transportation Development Corporation in Connection with the New York State Thruway Service Area Redevelopment Project; and Authorization to Take Related Actions

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**I. CONTRACT SUMMARY**

**Counsel:** Drohan Lee LLP (“Counsel” or “Drohan”)

**Scope of Services:** Counsel would serve as bond disclosure counsel to provide legal services to the New York Transportation Development Corporation (“the Corporation”) in connection with the New York State Thruway Service Area Redevelopment Project.

**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 including amounts paid, if any, pursuant to a Notice to Proceed dated February 21, 2020.

**Funding Source:** The contract will be funded in its entirety by Empire State Thruway Partners LLC (“ESTP”) on or about the closing on the Bonds in tranches or as otherwise agreed upon by ESTP and the Corporation in a pre-financing agreement.

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 ESTP for that purpose.

## II. BACKGROUND

ESTP has requested that the Corporation issue certain of its New York Transportation Development Corporation Bonds (the "Bonds") and loan the net proceeds thereof to ESTP to finance the Project (defined below). Following a procurement process, ESTP was selected by the New York State Thruway Authority ("NYSTA") to redevelop (design, construct and finance improvements) to the 27 food/fuel facilities (each, a "Service Area") located along the 570-mile superhighway system known as the Governor Thomas E. Dewey Thruway (the "Project").

ESTP or its assignee will be a special purpose vehicle organized for the sole purpose of entering into a Lease Agreement with NYSTA. ESTP will control the Service Areas for a period of up to 33-years through its leasehold interest in the sites and will enter into a sublease with an affiliated operating company charged with managing the food and beverage operations and related traveler services at the Service Areas. It is contemplated that the revenues generated from the food and beverage operations and related traveler services at the Service Areas and payments under the sublease will be pledged as security for the repayment of the Bonds.

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. Staff will also obtain the approval of the Governor and conduct a hearing as required by Federal tax law.

## III. COUNSEL SELECTION PROCESS

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

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

It is recommended that Drohan serve as bond disclosure counsel for this transaction. Selection of Counsel for this transaction is based on the fact that Drohan is a certified Minority and Women-Owned Business Enterprise ("MWBE") and has previously worked on bond transactions for other New York government entities. Accordingly, staff recommends the

retention of Counsel for the Bonds based on: (a) Counsel's specific and necessary expertise with bond transactions, (b) Counsel's rate proposal, and (c) the ESD pre-qualification process.

The appointment of this firm also represents an equitable distribution of work among ESD's rotating slate of Senior and Junior Tier law firms and MWBE firms to handle ESD's and the Corporation's debt in terms of size of transaction, fees received, and total number of transactions.

IV. SCOPE OF WORK

Counsel would 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, resolutions, amendments, disclosure documents and tax opinions.

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

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

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, ESTP will fully fund all counsel costs and expenses. All counsel costs and expenses are expected to be paid by ESTP from Bond proceeds on or about the closing on the Bonds. All counsel fees on the Bonds, including bond counsels 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 including any amounts paid, if any pursuant to a Notice to Proceed dated February 21, 2020. 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 offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Counsel to be responsible.

VII. ENVIRONMENTAL REVIEW

Staff has determined that the proposed authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act 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 MWBE's for any contractual opportunities generated in connection with this procurement, and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR § 142.8) to achieve an overall MWBE participation goal of 30% related to the total amount of the Corporation's disclosure counsel fees.

Counsel is a Minority Owned Business Enterprises, certified by the State of New York, and may utilize its certification to satisfy the above requirement.

IX. REQUESTED ACTION

The Directors are asked to authorize the retention of Drohan as disclosure 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. ATTACHMENTS

Resolution

February 24, 2020

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION ("the Corporation") –  
Procurement of Legal Services – Drohan Lee LLP - Authorization to Enter into a Contract  
with Drohan Lee LLP to Serve as Disclosure Counsel for the New York Transportation  
Development Corporation in Connection with the New York State Thruway Service Area  
Redevelopment Project; and Authorization to Take Related Actions

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

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

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

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