



NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION

Meeting of the Directors

Wednesday

August 28, 2024 – 11:00 a.m.

AGENDA

FOR CONSIDERATION

1. New York Transportation Development Corporation – Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport - Appointment of Co-Senior Managing Underwriters; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions.
2. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with Squire Patton Boggs (US) LLP for Co-Bond Counsel Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions.
3. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with Hardwick Law Firm, LLC for Co-Bond Counsel Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions.
4. New York Transportation Development Corporation – Procurement of Legal Services - Authorization to Enter into a Contract with BurgherGray LLP for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions.

Item 1



FOR CONSIDERATION

August 28, 2024

TO: The Directors

FROM: Matthew Bray

SUBJECT: Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport – Series 2024A Bonds

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

I. BACKGROUND

JFK Millennium Partners, LLC (the “Borrower”) has requested the New York Transportation Development Corporation (the “Corporation” or “TDC”) to issue its Special Facilities Bonds, in one or more series or subseries including, but not limited to (i) Special Facilities Bonds, Senior Series 2024A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”) and/or (ii) Special Facilities Bonds, Senior Series 2024B (Taxable) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds,” and together with the Series 2024A Bonds, the “Bonds”), which may be fully or partially supported by one or more bond insurance policy(ies) or a reserve fund surety(ies), the proceeds of which Bonds may be used by the Borrower to (a) refinance all or a portion of certain outstanding taxable term loans and Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (collectively, the “Prior Obligations”) which, in part, financed a portion of (1) the demolition of the existing terminal 7 at John F. Kennedy International Airport, located in Jamaica, New York 11430 (the “Airport”), (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at the Airport ((1)–(3), inclusive, collectively, the “Project”); (b) pay for additional costs of the Project; (c) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (d) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (e) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (f) pay certain interest rate swap termination fees; and (g) pay costs of issuance related to the Bonds.

II. SELECTION OF CO-SENIOR MANAGING UNDERWRITERS

The Borrower has selected Goldman Sachs & Co. LLC (“Goldman”) and Siebert Williams Shank & Co., LLC (“Siebert”) as the co-senior managing underwriters. Goldman and Siebert are on the pre-qualified list of underwriters of the Corporation (the “Pre-Qualified List of Underwriters”). The Pre-Qualified List of Underwriters was created after an RFP process by Empire State Development (“ESD”) and was adopted by the Corporation’s Board of Directors (the “Board of Directors”) on June 3, 2024. The Borrower selected Goldman and Siebert for their extensive experience in all aspects of municipal finance, extensive experience as underwriters on other TDC and ESD bond issuances, and responses and ratings in the pre-qualification process. The Corporation, in consultation with the Borrower, will have the option to select other underwriters from the Pre-Qualified List of Underwriters, including co-managers from the Pre-Qualified List of Underwriters to the extent necessary to satisfy the requirements in section IV below.

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

III. SELECTION OF FINANCIAL ADVISOR

The Corporation also may select a financial advisor from TDC’s Pre-Qualified List of Financial Advisors (“FAs”) (the “Pre-Qualified List of FAs”). The Pre-Qualified List of FAs was created after an RFP process by ESD and adopted by the Corporation on June 3, 2024.

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

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

IV. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

The Corporation’s Non-Discrimination and Contractor & Supplier Diversity policies will apply to these contracts. The Underwriter shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprise (MWBEs) and Service-Disabled Veteran-owned businesses (SDVOBs) for any contractual opportunities generated in connection with the project and shall be required to use

Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve MWBE and SDVOB Participation.

V. DOCUMENTS

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

VI. ENVIRONMENTAL REVIEW

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

VII. REQUESTED ACTION

Staff recommends that the Board of Directors take actions related to authorizing the selection of co-senior managing underwriters, authorizing the appointment of additional underwriters, authorizing the appointment of financial advisor(s), and authorizing the preparation of the required Bond documents and take any related actions.

VIII. RECOMMENDATION

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

IX. ATTACHMENT

Resolution

August 28, 2024

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION — Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport - Appointment of Co-Senior Managing Underwriters; Appointment of Additional Underwriters; Appointment of Financial Advisor(s); Authorization to Proceed with the Preparation of Related Documents; and Authorization to Take Related Actions

WHEREAS, JFK Millennium Partners, LLC (the “Borrower”) has requested the New York Transportation Development Corporation (the “Corporation” or “TDC”) to issue its Special Facilities Bonds, in one or more series or subseries including, but not limited to (i) Special Facilities Bonds, Senior Series 2024A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (the Series “2024A Bonds”) and/or (ii) Special Facilities Bonds, Senior Series 2024B (Taxable) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds,” and together with the Series 2024A Bonds, the “Bonds”), which may be fully or partially supported by one or more bond insurance policy(ies) or a reserve fund surety(ies), the proceeds of which Bonds may be used by the Borrower to (a) refinance all or a portion of certain outstanding taxable term loans and Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (collectively, the “Prior Obligations”) which, in part, financed a portion of (1) the demolition of the existing terminal 7 at John F. Kennedy International Airport, located in Jamaica, New York 11430 (the “Airport”), (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at the Airport ((1)–(3), inclusive, collectively, the “Project”); (b) pay for additional costs of the Project; (c) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (d) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (e) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (f) pay certain interest rate swap termination fees; and (g) pay costs of issuance related to the Bonds.

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

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

Selection of Underwriters

RESOLVED, that the Corporation hereby consents to Goldman Sachs & Co. LLC and Siebert Williams Shank & Co., LLC to be the co-senior managing underwriters for the Bonds, together

with the right to appoint other underwriters, including co-managers, if any, as the Corporation, in consultation with the Borrower, shall select.

Selection of Financial Advisors

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

Preparation of Bond Documents

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

Miscellaneous

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

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Item 2



FOR CONSIDERATION

August 28, 2024

TO: The Directors

FROM: Matthew Bray

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

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

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

Scope of Services: Counsel would serve as co-bond counsel together with Hardwick Law Firm, LLC (“Hardwick”) which the board of directors (the “Board of Directors”) of the New York Transportation Development Corporation (the “Corporation” or “TDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of Special Facilities Bonds, in one or more series or subseries including, but not limited to (i) Special Facilities Bonds, Senior Series 2024A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”) and/or (ii) Special Facilities Bonds, Senior Series 2024B (Taxable) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds,” and together with the Series 2024A Bonds, the “Bonds”), which may be fully or partially supported by one or more bond insurance policy(ies) or a reserve fund surety(ies), the proceeds of which Bonds may be used by the Borrower to (a) refinance all or a portion of certain outstanding taxable term loans and Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6

Redevelopment Project) (collectively, the “Prior Obligations”) which, in part, financed a portion of (1) the demolition of the existing terminal 7 at John F. Kennedy International Airport, located in Jamaica, New York 11430 (the “Airport”), (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at the Airport ((1)–(3), inclusive, collectively, the “Project”); (b) pay for additional costs of the Project; (c) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (d) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (e) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (f) pay certain interest rate swap termination fees; and (g) pay costs of issuance related to the Bonds.

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 the lesser of 2% of the (i) par amount of the Bonds or (ii) Issue Price of the Bonds. Counsel will be required to use Good Faith Efforts to allocate at least 30% participation on this matter to Hardwick.

Funding Source: JFK Millennium Partners, LLC (“JMP” or the “Borrower”) will fund the contract in its entirety on or about the closing date of the Bonds. Counsel will agree that the Corporation will not be obligated to pay any amounts for services described herein except to the extent, if any, that the Corporation receives funds from the Borrower for that purpose.

II. BACKGROUND

JMP has requested the Corporation serve as the issuer for the Bonds, the proceeds of which may be used by the Borrower to (i) refinance all or a portion of the Prior Obligations originally issued to pay costs of the Project; (ii) pay for additional costs of the Project; (iii) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (iv) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (v) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (vi) pay certain interest rate swap termination fees; and (vii) pay costs of issuance related to the Bonds.

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

III. COUNSEL SELECTION PROCESS

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

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

Corporation staff recommends that Squire serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was predicated on the experience of the attorneys from Squire who previously served as co-bond counsel for the Prior Obligations. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel’s specific and necessary expertise as bond counsel, (b) Counsel’s performance with distinction on other airport transactions, including for the Prior Obligations, (c) Counsel’s rate proposal, and (d) the ESD pre-qualification process.

IV. SCOPE OF WORK

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

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

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

B. CONTRACT PRICE AND FUNDING

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

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprises (MWBEs) and Service-Disabled Veteran-owned Businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30% related to the total amount of the Corporation's bond counsel fees.

Squire has agreed to use Good Faith Efforts to allocate work to Hardwick, a Minority-Owned Business Enterprise, to meet these requirements. The Board of Directors is simultaneously being asked to separately retain Hardwick as counsel for this bond transaction.

IX. REQUESTED ACTION

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

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

August 28, 2024

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services Squire Patton Boggs (US) LLP - Authorization to Enter into a Contract for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions

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

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

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

* * *

Item 3



FOR CONSIDERATION

August 28, 2024

TO: The Directors

FROM: Matthew Bray

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

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions

CONTRACT NEED AND JUSTIFICATION

I. CONTRACT SUMMARY

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

Scope of Services: Counsel would serve as co-bond counsel together with Squire Patton Boggs (US) LLP (“Squire”) which the board of directors (the “Board of Directors”) of the New York Transportation Development Corporation (the “Corporation” or “TDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of Special Facilities Bonds, in one or more series or subseries including, but not limited to (i) Special Facilities Bonds, Senior Series 2024A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”) and/or (ii) Special Facilities Bonds, Senior Series 2024B (Taxable) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds,” and together with the Series 2024A Bonds, the “Bonds”) , which may be fully or partially supported by one or more bond insurance policy(ies) or a reserve fund surety(ies), the proceeds of which Bonds may be used by the Borrower to (a) refinance all or a portion of certain outstanding taxable term loans and Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6

Redevelopment Project) (collectively, the “Prior Obligations”) which, in part, financed a portion of (1) the demolition of the existing terminal 7 at John F. Kennedy International Airport, located in Jamaica, New York 11430 (the “Airport”), (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at the Airport ((1)–(3), inclusive, collectively, the “Project”); (b) pay for additional costs of the Project; (c) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (d) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (e) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (f) pay certain interest rate swap termination fees; and (g) pay costs of issuance related to the Bonds.

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 the lesser of 2% of the (i) par amount of the Bonds or (ii) Issue Price of the Bonds. Squire will be required to use good faith efforts to allocate at least 30% participation on this matter to Counsel.

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

II. BACKGROUND

JMP has requested the Corporation serve as the issuer for the Bonds, the proceeds of which may be used by the Borrower to (i) refinance all or a portion of the Prior Obligations originally issued to pay costs of the Project; (ii) pay for additional costs of the Project; (iii) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (iv) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (v) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (vi) pay certain interest rate swap termination fees; and (vii) pay costs of issuance related to the Bonds.

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

III. COUNSEL SELECTION PROCESS

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

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

Corporation staff recommends that Hardwick serve as co-bond counsel for this transaction. Selection of Counsel for this transaction was predicated on (i) the experience of the attorneys from Hardwick who previously served as co-bond counsel for the Prior Obligations; and (ii) the fact that Hardwick is a certified Minority-Owned Business Enterprise (“MBE”). 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 status as an MBE, (c) Counsel’s performance with distinction on other airport transactions, including the Prior Obligations, (d) Counsel’s rate proposal, and (e) the ESD pre-qualification process.

IV. SCOPE OF WORK

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

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

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

B. CONTRACT PRICE AND FUNDING

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

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

Pursuant to New York State Executive Law Articles 15-A and 17-B, ESD recognizes its obligation under the law to promote opportunities for maximum feasible participation of New York State certified minority- and women-owned business enterprises (MWBES) and service-disabled veteran-owned businesses (SDVOBs) in the performance of ESD projects. The Office of Contractor and Supplier Diversity has reviewed the project and has determined that MWBE and SDVOB participation goals need not be applied to this contract.

IX. REQUESTED ACTION

The Board of Directors is asked to authorize the retention of Hardwick as Counsel to the Corporation for such legal services as are described in these materials.

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

August 28, 2024

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services
Hardwick Law Firm, LLC - Authorization to Enter into a Contract for Legal Services in Connection
with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John
F. Kennedy International Airport; and Authorization to Take Related Actions

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

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

RESOLVED, that the President 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 Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

* * *

Item 4



FOR CONSIDERATION

August 28, 2024

TO: The Directors

FROM: Matthew Bray

SUBJECT: Procurement of Legal Services – BurgherGray LLP

REQUEST FOR: Authorization to Enter into a Contract for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions

I. CONTRACT SUMMARY

Counsel: BurgherGray LLP (“BurgherGray” or “Counsel”)

Scope of Services: Counsel would serve as issuer counsel which the board of directors (the “Board of Directors”) of the New York Transportation Development Corporation (the “Corporation” or “TDC”) will be requested to authorize under a separate resolution to provide legal services to the Corporation in connection with the issuance of Special Facilities Bonds, in one or more series or subseries including, but not limited to (i) Special Facilities Bonds, Senior Series 2024A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024A Bonds”) and/or (ii) Special Facilities Bonds, Senior Series 2024B (Taxable) (JFK Airport Terminal 6 Redevelopment Project) (the “Series 2024B Bonds,” and together with the Series 2024A Bonds, the “Bonds”), which may be fully or partially supported by one or more bond insurance policy(ies) or a reserve fund surety(ies), the proceeds of which Bonds may be used by the Borrower to (a) refinance all or a portion of certain outstanding taxable term loans and Special Facilities Bonds, Senior Series 2022A (Tax-Exempt) (AMT) (JFK Airport Terminal 6 Redevelopment Project) (collectively, the “Prior Obligations”) which, in part, financed a portion of (1) the demolition of the existing

terminal 7 at John F. Kennedy International Airport, located in Jamaica, New York 11430 (the “Airport”), (2) the design, construction, operation and equipping of a new terminal 6 headhouse and departure and arrivals area, and (3) the design and construction of other related facilities at the Airport ((1)–(3), inclusive, collectively, the “Project”); (b) pay for additional costs of the Project; (c) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (d) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (e) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (f) pay certain interest rate swap termination fees; and (g) pay costs of issuance related to the Bonds.

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 the lesser of 2% of the: (i) par amount of the Bonds or (ii) Issue Price of the Bonds.

Funding Source: The contract will be funded in its entirety by JFK Millennium Partners, LLC (“JMP” or the “Borrower”) on or about the Bond closing date. Counsel will agree that the Corporation will not be obligated to pay any amounts for services described herein except to the extent, if any, that the Corporation receives funds from the Borrower for that purpose.

II. BACKGROUND

JMP has requested the Corporation serve as the issuer for the Bonds, the proceeds of which may be used by the Borrower to (i) refinance all or a portion of the Prior Obligations originally issued to pay costs of the Project; (ii) pay for additional costs of the Project; (iii) pay interest on the Bonds and Prior Obligations, to the extent permitted by federal tax law; (iv) pay a premium for one or more bond insurance policies or reserve fund sureties, if any, for the Bonds; (v) fund one or more debt service reserve funds and other reserve funds, if any, for the Bonds; (vi) pay certain interest rate swap termination fees; and (vii) pay costs of issuance related to the Bonds.

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

III. COUNSEL SELECTION PROCESS

On October 8, 2021, New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) staff placed an advertisement in the New York State Contract Reporter requesting proposals from law firms in the following twelve (12) areas of law (including, in each

instance, litigation capabilities): real estate and land use; construction; environmental; condemnation; taxation; bond financing; labor & employment; venture capital investments and other investments; bankruptcy/foreclosure/workout; governance and regulatory litigation; intellectual property; and landlord-tenant.

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

It is recommended that BurgherGray serve as issuer counsel for this transaction. Selection of Counsel for this transaction was predicated on (i) the experience of the attorneys from BurgherGray who previously served as issuer counsel for the Prior Obligations; and (ii) the fact that BurgherGray is a certified Minority-Owned Business Enterprise ("MBE") and previously served as issuer counsel for several recent airport financings by the Corporation. Accordingly, staff recommends the retention of Counsel for the Bonds based on: (a) Counsel's specific and necessary expertise as issuer counsel, (b) Counsel's status as an MBE, (c) Counsel's performance with distinction on other airport transactions, including the Prior Obligations, (d) Counsel's rate proposal, and (e) the ESD pre-qualification process.

IV. SCOPE OF WORK

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

V. CONTRACT - NEED, PRICE AND FUNDING

A. NEED FOR CONTRACT

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

B. CONTRACT PRICE AND FUNDING

This is a conduit financing with no Corporation funds at risk. Accordingly, the Borrower will fully fund all Counsel costs and expenses. Counsel would work at their typical hourly rate less a small discount. All Counsel costs and expenses are expected to be paid by the Borrower from

Bond proceeds on or about the closing of the Bonds. All counsel fees on the Bonds, including BurgherGray and other affiliated eligible costs of the Bond transaction, shall be payable only up to an aggregate amount equal to the lesser of 2% of the (i) par amount of the Bonds or (ii) Issue Price of the Bonds. In addition, Counsel will acknowledge that the Corporation will have no obligation to pay any legal fees except to the extent funds are received from the Borrower for that purpose.

VI. RESPONSIBLE PARTY

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

VII. ENVIRONMENTAL REVIEW

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

VIII. NON-DISCRIMINATION AND CONTRACTOR & SUPPLIER DIVERSITY

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this contract. Counsel shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women-owned Business Enterprises (MWBEs) and Service-Disabled Veteran-owned businesses (SDVOBs) for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8 and 9 NYCRR § 252.2(m)) to achieve an overall MWBE Participation Goal of 30%.

BurgherGray is a Minority-Owned Business Enterprise certified by the State of New York and may utilize its certification to satisfy the above requirement.

IX. REQUESTED ACTION

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

X. RECOMMENDATION

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

XI. ATTACHMENT

Resolution

August 28, 2024

NEW YORK TRANSPORTATION DEVELOPMENT CORPORATION – Procurement of Legal Services BurgherGray LLP - Authorization to Enter into a Contract for Legal Services in Connection with the Financing and Refinancing of the JFK Airport Terminal 6 Redevelopment Project at John F. Kennedy International Airport; and Authorization to Take Related Actions

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

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

RESOLVED, that the President 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 Bond documents and to take all such actions as may be necessary or appropriate to effectuate the foregoing. Any actions previously taken by the Corporation or Counsel consistent with this authorization are hereby ratified and affirmed.

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