

**#1122-02: AUTHORIZATION FOR GDC TO ENTER INTO OPERATIONAL FUNDING AGREEMENTS AND TO RETAIN AN INDEPENDENT AUDITOR**

To help ensure the functionality of intercity and commuter rail infrastructure between New Jersey and New York and throughout the Northeast Corridor (the “NEC”), New Jersey and New York created the Gateway Development Commission (“GDC”) through the enactment of parallel legislation by each state codified as the Gateway Development Commission Act (2019 N.Y. Laws, Ch. 108 and N.J.S.A. 32:36-1, et seq.) (collectively, the “GDC Act”).

The GDC Act empowers the Commission to “enter into, execute and deliver contracts and agreements and other documents and instruments as may be necessary or appropriate to carry out any power of the Commission under this act and to otherwise accomplish any lawful purpose which the commissioners determine will Facilitate the Project, including, without limitation, with the federal government, the state of New Jersey, any local government thereof, the state of New York, with any local government thereof, with any agency, instrumentality, department, commission or authority of any one or more of the foregoing, any bi-state agency, Amtrak, any individual or private firm, entity or corporation, or with any one or more of them.” 2019 N.Y. Laws, Ch. 108, Section 2(7)(e); N.J.S.A. 32:36-8(e).

The HTP Project Development Agreement (the “PDA” or “Agreement”) is a foundational framework between the States of New Jersey and New York, Amtrak, and GDC for the procurement, construction, and delivery of the HTP.

Under the Agreement, GDC will be responsible for delivery of the HTP and will serve in a central role as project sponsor. On October 21, 2022, GDC assumed the role of NEPA project sponsor for the HTP.

Section 11.01 of the PDA provides that GDC will enter into funding agreements with each of the State of New York, State of New Jersey, and Amtrak (“GDC Operations Funding Agreements”) to fund one-third of the annual operating budget for the HTP upon presentation by GDC of its annual operating budget to each of the State of New York, State of New Jersey and Amtrak.

GDC also intends to enter into an initial GDC Operations Funding Agreement with the Port Authority of New York and New Jersey (“PANYNJ”) to fund a portion of the expenses reflected in GDC’s interim FY22 operating budget that was previously approved by the GDC Board of Commissioners, and GDC’s proposed FY23 operating budget (subject to final approval by the GDC Board of Commissioners), based on PANYNJ’s previous allocation of \$31.5 million to support GDC operations as memorialized in a February 15, 2018 Resolution approved by the PANYNJ Board of Commissioners.

The intent of this section of the PDA is that the GDC Operations Funding Agreements will ensure that GDC’s operations are continuously funded in accordance with the annual GDC operating budget.

Once GDC has executed these GDC Operations Funding Agreements with the State of New York, State of New Jersey, Amtrak, and PANYNJ then GDC will be able to prepare annual financial statements in accordance with the requirements of the GDC Act and GDC Bylaws. *See* 2019 N.Y. Laws, Ch. 108, Section 2(10)(a); N.J.S.A. 32:36-11(a).

Once these annual financial statements are prepared, the GDC Act and the GDC Bylaws hold that the GDC Board of Commissioners “shall arrange for an independent firm of certified public accountants to perform an audit of the financial statements of the Commission each year...” 2019 N.Y. Laws, Ch. 108, Section 2(10)(b); N.J.S.A. 32:36-11(b).

The GDC Board of Commissioners previously delegated certain authority regarding the procurement, authorization, approval and awarding of agreements and contracts to the GDC Chief Executive Officer (“CEO”) at its Board Meeting on September 13, 2022 via Resolution #0922-02, entitled “Delegation of Authority to Chief Executive Officer”.

Pursuant to the foregoing report, the following resolutions were adopted, with Commissioners [INSERT NAMES HERE] voting in favor, and Commissioners [INSERT NAMES HERE] against:

**RESOLVED**, that the GDC CEO is authorized to take any and all actions consistent with this Resolution and to make, execute and deliver in the name of and on behalf of GDC all instruments, agreements, certifications and all other documents as may be required or contemplated by the foregoing with respect to the GDC Operations Funding Agreements with the State of New York, State of New Jersey, Amtrak, and PANYNJ, containing such terms as the GDC CEO and applicable staff deems necessary and advisable in order to effectuate the foregoing transactions; and

**RESOLVED**, that GDC CEO and applicable staff will report back to the GDC Board of Commissioners once GDC and the State of New York, State of New Jersey, Amtrak, and PANYNJ have executed the respective GDC Operations Funding Agreements; and

**RESOLVED**, that the GDC CEO is authorized to take any and all actions consistent with the GDC Act, the GDC Bylaws, Resolution #0922-02, and this Resolution, to retain the services of an independent firm of certified public accountants to perform an audit of the financial statements of the Commission each year; and

**RESOLVED**, that the GDC CEO is authorized to take any and all actions consistent with the GDC Act, the GDC Bylaws, Resolution #0922-02, and this Resolution, to award and approve an agreement with an independent firm of certified public accountants, containing such terms as the GDC CEO and applicable staff deems necessary and advisable in order to effectuate the foregoing transaction; and

**RESOLVED**, that GDC CEO and applicable staff will report back to the GDC Board of Commissioners once the GDC CEO has executed an agreement with an independent firm of certified public accountants.