

## **NEW YORK JOB DEVELOPMENT AUTHORITY**

Meeting of the Members

Tuesday

September 18, 2012 – 3:00 p.m.

### **AGENDA**

#### **CORPORATE ACTIONS**

1. Approval of Minutes of the June 26, 2012 Members' Meeting
2. Officers of the Authority - Appointment of Officers – Executive Vice President and Chief Operating Officer and Deputy General Counsel
3. JDA 20 Year Loan Rates - Authorization to Establish a Loan Loss Reserve and Buy Down JDA Interest Rates
4. Slate of Underwriters, Financial Advisors and Financial Products (SWAP) Providers for Bond Issuance - Authorization to Approve a Rotating Team of Underwriters, Financial Advisors and Financial Product (SWAP) Providers

#### **FOR CONSIDERATION**

5. New York (New York City Region – New York County) - A.S. Diamonds, Inc. – JDA Real Estate Loan – Authorization to Make a Loan and to Take Related Actions – Determination of Eligibility for Loan Involving Company in Need of Special Assistance Pursuant to section §1823.7. (a) (ii) and §1823.7. (b) *et seq.* of the New York Job Development Authority Act (the “Act”); Determination of No Significant Effect on the Environment

#### **INFORMATION**

6. Investment Report for the New York Job Development Authority
7. JDA Application for Financial Assistance

**DRAFT – SUBJECT TO REVIEW AND REVISION**

**NEW YORK JOB DEVELOPMENT AUTHORITY**  
d/b/a Empire State Development Corporation  
Meeting of the Members  
Empire State Development Corporation  
30 South Pearl Street  
Albany, New York 12245

and

633 Third Avenue  
New York, New York 10017

June 26, 2012

MINUTES

**Members Present:**

Kenneth Adams, Commissioner of DED – Chairman  
Adam Barsky  
Andrew J. Maniglia  
Emily Youssouf  
Stephen McGrattan, Designee – NYS Superintendent of  
Agriculture and Markets  
Mario Musolino, Designee – NYS Department of Labor  
Anthony Albanese - Designee, Superintendent – NYS  
Department of Financial Services

**JDA Staff:**

Eileen McEvoy, Secretary  
Kathleen Mize, Controller  
Frances A. Walton, Senior Vice President and Chief  
Financial Officer

**Present for ESD:**

Maria Cassidy, Deputy General Counsel  
Justin Ginsburgh, Chief of Staff  
Antovk Pidedjian, Senior Counsel  
Ray Salaberrios, Senior Director – Economic Revitalization  
Susan Shaffer, Vice President – Loans and Grants

**Also Present:**

The Press  
The Public

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The meeting was called to order at 1:35 p.m. by Chairman Adams. It was noted for the record that notice 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.

Chairman Adams then set forth the guidelines regarding comments by the public on matters on the Agenda.

Chairman Adams then entertained a motion to approve the Minutes of the May 8, 2012 Members' meeting.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

**APPROVAL OF MINUTES AND RATIFICATIONS OF ACTIONS TAKEN AT MAY 8, 2012  
MEMBERS' MEETING OF THE NEW YORK JOB DEVELOPMENT AUTHORITY**

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RESOLVED, that the Minutes of the meeting of the Authority held on May 8, 2012 as presented to this meeting, are hereby approved and all actions taken by the Members present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Authority.

\* \* \*

Ms. Mize then asked the Members to approve JDA's Annual Financial Reports.

Among other things, Ms. Mize explained that the Public Authorities Law requires annual

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approval by the Members and certification by the Chief Executive and Chief Financial Officers of certain Financial Reports.

Ms. Mize outlined the contents of the Financial Reports and noted that the Audit Committee met earlier in the day and recommended approval of the auditor’s report of the Financial Statements. Ms. Mize also noted that the preparation of the audit report included 20 percent participation by an MWBE firm.

Following the full presentation, the Chair called for questions or comments. Chair Adams noted that he was present at the Audit meeting and that the presentation was very thorough and very impressive.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

**NEW YORK JOB DEVELOPMENT AUTHORITY – (the “Authority”) Approval of Certain Annual Financial Reports and Authorization to take Related Actions**

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WHEREAS, the Authority wishes to comply with §2800 of the Public Authorities Law (the Law) which mandates that public benefit corporations annually prepare certain financial reports (the Reports) which for the Authority consists of the independent audit;

WHEREAS, an independent audit is required by §2802 of the Law;

WHEREAS, §2800 of said Law also requires the annual approval by the Board and certifications by the Chief Executive Officer and Chief Financial Officer of the Report;

WHEREAS, an independent audit has been prepared for the fiscal year ended March 31, 2012;

**DRAFT – SUBJECT TO REVIEW AND REVISION**

WHEREAS, the Authority has reviewed said Reports and found them to be satisfactory; and

NOW, THEREFORE, based on the materials submitted herewith, IT IS HEREBY RESOLVED that the Reports are hereby approved; and it is further

RESOLVED, that the President and Chief Executive Officer, the Chief Financial and Administrative Officer, the Treasurer or their designees be, and each of them hereby is, authorized and empowered to submit said Reports, as required by law, and to take such action and execute such agreements and instruments as he or she may consider necessary or desirable or appropriate in connection with the implementation and approval of the Reports and to take related actions.

\* \* \*

Mr. Salaberrios then presented the Authority's Annual Performance Measurement Report for Fiscal Year 2011-2012 for acceptance.

Mr. Salaberrios explained that in May of 2012, the Members re-adopted the Mission Statement and related Performance Measurement to assist the authority in determining how well it carries out its mission.

Mr. Salaberrios then read the Mission Statement into the record and explained that the Performance Measurements adopted at that meeting included the annual number of transactions closed, the aggregate value of bonds issued, the number of jobs retained and created with each investment transaction, the amount of private capital investment leveraged, the number of transactions delinquent and the number of transactions still before the Authority.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

Mr. Salaberrios further noted that the 2011-2012 performance is as follows: one transaction was approved by the JDA Members; no bonds were issued and no aggregate bonds were issued in the prior year.

Mr. Salaberrios added that the number of jobs associated with the investment transaction is 13 retained jobs and seven created jobs. The amount of private capital investment, he continued, is \$2.6 million.

Mr. Salaberrios further explained that there are no delinquent transactions and that the number of transactions in default, are five of the closed 54 JDA loans.

Following the full presentation Member Youssouf asked for clarification with regard to the discrepancy between the amount of bonds issued and the outstanding loan balance. A brief discussion followed and Ms. Walton provided brief clarification with regard to these figures.

It was determined that going forward the materials providing this information will be formatted in a clearer and more direct fashion.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was adopted:

**DRAFT – SUBJECT TO REVIEW AND REVISION**

NEW YORK JOB DEVELOPMENT AUTHORITY - Acceptance of Annual Performance Measures Report for FY 2011 – 2012; Authorization to Take Related Actions

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BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is ordered filed with the records of the Corporation (the “Materials”), the annual performance measurement report for FY 2011 – 2012 be and it hereby is accepted; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized and directed to post all of the above referenced documents on the website of the Authority, to file all such documents with the Authorities Budget Office in accordance with the requirements of the Public Authorities Accountability Act, as amended, and to take any and all such other actions as may be necessary or proper in connection with the foregoing.

\* \* \*

The Chairman then called upon Mr. Salaberrios to present the 121 Inflight Catering, LLC JDA loan item for the Members’ consideration.

Mr. Salaberrios explained that the Board is being asked to approve a \$1,000,000 JDA loan to assist in the expansion of the Company. Mr. Salaberrios noted that 121 Inflight was formed in 2007 as a specialty service provider to regional and private air caterers.

Mr. Salaberrios explained that the Company plans to lease a 20,000 square foot manufacturing and distribution facility at JFK International Airport. The new facility, he continued, will permit the Company to better service existing customers while at the same time put the Company in a better position to attract new customers.

Once the expansion is completed, Mr. Salaberrios added, the Company is expected to

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create 75 new jobs within three years.

Following the full presentation, the Chairman called for questions or comments.

Members Youssouf and Barsky asked for clarification regarding certain minor terms and both were provided with same.

Member Barsky then inquired with regard to job numbers – specifically, he asked if the creation of 75 jobs over the specified time period was merely a projection and not a condition of the loan.

In the brief discussion that followed, it was explained that should the Company fail to meet the job goal, the interest on the loan may be raised by two basis points at the discretion of the JDA Board.

Member Maniglia asked if JFK was their only location and Mr. Salaberrios explained that they also have a facility in Connecticut. Member Maniglia then asked if all of the jobs to be created as a result of this loan will be New York City based and Mr. Salaberrios said that they will be.

Chair Adams then asked Mr. Salaberrios how he found this Company and Mr. Salaberrios explained that it came through the New York City Regional Office.

**DRAFT – SUBJECT TO REVIEW AND REVISION**

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

Jamaica (New York City – Queens County) – 121 Inflight Catering LLC – New York Job Development Authority Special Purpose Fund Direct Loan Project – Machinery and Equipment Loan -- Authorization to Make a Loan and to Take Related Actions; Determination of No Significant Effect on the Environment

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RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Machinery and Equipment Loan to Statewide Local Development Corporation for the benefit of 121 Inflight Catering LLC for an amount not to exceed one million dollars (\$1,000,000) or forty percent (40%) of total Project costs, whichever is less, to be funded from the proceeds of New York State Guaranteed Special Purpose Fund bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chief Executive Officer of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chief Executive Officer of the Authority or his designee(s) be, subsequent to the making of the Loan, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loan as he or she may deem appropriate in the administration of the Loan; and be it further

RESOLVED, that the Chief Executive Officer of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals; and be it further.

RESOLVED, that based on the materials submitted to the Members with respect to the 121 Inflight Catering LLC Project, the Authority hereby determines that the proposed action will not have a significant effect on the environment.

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**DRAFT – SUBJECT TO REVIEW AND REVISION**

There being no further business, the meeting was adjourned at 2:01 p.m.

Respectfully submitted,

Eileen McEvoy  
Secretary

FOR CONSIDERATION

September 18, 2012

TO: Authority Members

FROM: Kenneth Adams

SUBJECT: Officers of the Authority

REQUEST FOR: Appointment of Officers

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BACKGROUND

In light of the increased activity of the Authority, it is proposed that Justin Ginsburgh be appointed Executive Vice President & Chief Operating Officer (“COO”) of the Authority. Mr. Ginsburgh has served as the Chief of Staff of ESD since August 15, 2011.

As stated in the By-laws, the Executive Vice President & Chief Operating Officer shall, subject to the policies established by the Authority and under the direction of the Chief Executive Officer, be generally in administrative charge of all internal activities of the Authority. The Executive Vice President & Chief Operating Officer shall possess the same powers as the Chairman and Chief Executive Officer to execute loan and loan guarantee agreements, mortgages, and other documents relating to loans, loan guarantees or mortgages, to execute agreements with banks, underwriters or others for the borrowing of money or raising funds for the Authority and other agreements as stated in any bond resolution. The Executive Vice President & Chief Operating Officer shall act as liaison officer between the Authority and his or her counterparts at all other governmental organizations, review applications for loans and loan guarantees submitted to the Authority for compliance with the rules and regulations of the Authority, make recommendations in respect thereof to the Authority, maintain current information on outstanding loans of the Authority, prepare as often as the Authority may require a report of the financial condition and operations of the Authority including the reports required by Section 1829 of the New York Job Development Authority Act, approve in the name of the Authority all purchase orders, payrolls and vouchers relating to the operations of the Authority, including travel and expense vouchers relating to the operations of the Authority, prepare in initial form the annual operating budget of the Authority, and have such powers and duties as may be assigned to the Executive Vice President & Chief Operating Officer by the Chief

Operating Officer. The Executive Vice President & Chief Operating Officer may delegate such of the foregoing powers and duties as in his or her discretion may seem appropriate.

It is further proposed that Maria Cassidy be appointed Deputy General Counsel of the Authority. Ms. Cassidy is Deputy General Counsel of ESD. The Deputy General Counsel shall oversee legal staff in connection with all legal affairs of the Authority including, the review of all applications for loans from the Authority for legal sufficiency and the drafting of all legal forms, contracts, mortgages and other documents necessary in connection with all phases of the Authority's work or purposes. In addition, the Deputy General Counsel shall perform all other work incidental to her office and such other duties as from time to time may be assigned to her by the Authority.

#### RECOMMENDATION

Based upon the foregoing, I recommend approval of the above requested actions.

#### ATTACHMENT

Resolution

September 18, 2012

Officers of the Authority - Appointment of Officers –Executive Vice President and Chief Operating Officer and Deputy General Counsel

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RESOLVED, that the following individuals be, and they hereby are appointed to the offices which appear opposite their respective names, effective September 18, 2012, until their earlier resignation or removal:

<u>NAME:</u>	<u>OFFICE:</u>
Justin Ginsburgh	Executive Vice President and Chief Operating Officer
Maria Cassidy	Deputy General Counsel

And be it further

RESOLVED, that in accordance with and for all the purposes of the JDA Act and the JDA By-Laws, the above-referenced individuals are “officers” for the Authority, with the duties and responsibilities substantially as set forth in the materials presented to this meeting, which materials are ordered filed with the records of the Authority.

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September 18, 2012

**TO:** The Members  
**FROM:** Kenneth Adams  
**SUBJECT:** JDA 20-year Loan Rates  
**REQUEST FOR:** Authorization to Establish a Loan Loss Reserve and Buy Down JDA Interest Rates

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## **I. Introduction**

On September 12, 2012, staff presented to the New York Job Development Authority (“JDA”) Finance Committee information regarding the JDA interest rates and how they compare to the Small Business Administration’s (SBA) 504 Program. The JDA loan rates have been consistently higher than the SBA 504 Program. These higher rates have left JDA at a disadvantage in attracting new JDA loan prospects, particularly those seeking 20-year loans. *A Comparison of JDA rates to the SBA program rates for March 2012 through August 2012* (Exhibit I hereto) was distributed to the Finance Committee to provide a more detailed comparison.

To address this rate discrepancy, staff referenced the prospective use of Liberty Bond fees to buy down, in certain cases, the 20-year fixed-rate JDA interest rate. The Finance Committee endorsed the proposal and recommended its submission to the full JDA Board

JDA’s 20-year loan fixed rates are set using current market indexes (Bloomberg New York State G.O. rates index for tax-exempt rates and Bloomberg Muni Taxable AA rates index for taxable rates) plus an additional 1.85 % to offset JDA’s costs. A reduction of the rate would result in below market returns.

## **II. Buy Down of Interest Rate**

Lowering the current JDA 20-year rate by up to 100 basis points would make the JDA product much more competitive and expand lending volume. In the period from March 2012 through August 2012, JDA tax-exempt rates for 20-year loans \$1 million and above averaged .94% higher than the SBA 504 rate. The JDA 20-year taxable rate for loans \$1 million and above averaged 1.99% higher than the SBA 504 rate. The JDA rates are also higher than the SBA 504 rates for loans \$1 million and below by 0.50% and 1.5% respectively.

As a point of reference, a manufacturing company would ultimately pay \$114,740 more in principal and interest payments on a 20-year loan from JDA as compared with the SBA 504, based on the rates offered in August 2012 by the respective programs.

The buy down of rates would not be utilized for loan terms less than 20 years, as JDA rates for loan terms from 5 to 15 years are very competitive.

The Members are requested to authorize the use of \$2 million in Liberty Bond fees to buy down the 20-year interest rates on JDA loans by up to 100 basis points. The initiative would permit staff to utilize up to \$2 million in Liberty Bond fees to buy down the rate of up to \$10 million in 20-year JDA loans. New York Liberty Development Corporation approval of the transfer of Liberty Bond fees to JDA will be necessary.

### **III. Establishment of a Loan Loss Reserve**

The Members are also requested to authorize the establishment of a loan loss reserve account against potential future defaults in the repayment of loans made under the JDA program. Said loan loss reserve shall be established and funded with Liberty Bond fees, and shall in no event be funded in an amount greater than 25% of the total amount of outstanding loans. New York Liberty Development Corporation approval of the transfer of Liberty Bond fees in the amount of \$5 million to initially fund the loan loss reserve will be necessary.

### **IV. Recommendation**

Based upon the foregoing, I recommend authorization of the above-referenced actions.

### **V. Additional Submission to the Authority Members**

Resolution

Exhibit I: Comparison of JDA rates to the SBA program rates for March 2012 through August 2012

September 18, 2012

Authorization to Establish a Loan Loss Reserve and Buy Down JDA Interest Rates

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RESOLVED, that the Chairman of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the establishment of a loan loss reserve fund and buy down of JDA interest rates.

**Exhibit I**

**Comparison of JDA rates to the SBA 504 program rates for 6 months in 2012**

	JDA 20 year rates		SBA 20 year rates	
	<u>JDA Tax Exempt</u>	<u>JDA Taxable</u>	<u>SBA \$1 million or more</u>	<u>SBA less than \$1 million</u>
August	5.32%	6.14%	4.45%	4.91%
July	5.52%	6.43%	4.46%	4.92%
June	5.47%	6.50%	4.50%	4.96%
May	5.59%	6.78%	4.46%	4.92%
April	5.68%	6.14%	4.75%	5.21%
March	5.48%	7.17%	4.59%	5.05%



FOR CONSIDERATION

September 18, 2012

TO: Authority Members

FROM: Kenneth Adams

SUBJECT: New York (New York City Region - New York County) – A.S. Diamonds, Inc.  
– JDA Real Estate Loan

REQUEST FOR: Authorization to Make a Loan and to Take Related Actions; Determination of Eligibility for Loan Involving Company in Need of Special Assistance Pursuant to Section §1823. 7. (a) (ii) and §1823. 7. (b) *et seq.* of the New York Job Development Authority Act (the “Act”); Determination of No Significant Effect on the Environment

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I. Project Summary

Occupant: A.S. Diamonds, Inc. (“A.S. Diamonds” or the “Company”)

Owner: ASD Gem Realty, LLC

JDA Investment: Real Estate loan representing 50% of eligible project costs, not to exceed \$3,944,350. Interest will be at a fixed taxable rate, currently at 6.18% per annum, for a term of 20 years.

Project Location: 50 West 47th Street, Unit 18LMR, New York, NY 10036

Proposed Project: Purchase and fit-out of a 8,584-square-foot condominium unit at the International Gem Tower to be used for diamond manufacturing.

Project Completion: December 2012

Number of Employees at Company:

Initial employment at time of Application to ESD:	13
Current employment level:	13
Minimum employment on January 1, 2014:	22

Occupant Contact: Alain Spira, President  
15 West 47th Street, Suite 200  
New York, NY 10036  
Phone: (212) 221-9751

Local Dev. Corp.: Statewide Local Development Corporation  
633 Third Avenue  
New York, NY 10017

Anticipated Funding  
Source: JDA State Guaranteed Special Purpose Taxable Bonds

JDA Project Number: X402

Project Team: Origination: Rafael Salaberrios  
Project Management: Andrew Flamm  
Legal: Antovk Pidedjian  
Contractor & Supplier Diversity: Vikas Gera  
Finance: Jonevan Hornsby  
Environmental: Soo Kang

## II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>
Acquisition	\$7,249,800
Renovations	<u>638,900</u>

Total Project Costs \$7,888,700

<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>	<u>Rate/Term/Lien</u>
JDA	\$3,944,350	50%	6.18%/20 yr/1 <sup>st</sup> on RE
Equity	<u>3,944,350</u>	<u>50%</u>	

Total Project Financing \$7,888,700 100%

## III. Program Background

These materials refer to and include, in their entirety, the attached materials presented to the New York Job Development Authority on June 24, 2010.

The JDA International Gem Tower Condominium Units First Mortgage Loan Program (the "Program") provides first-mortgage loans to buyers of commercial condominium units (the "Unit") in the International Gem Tower (the "IGT"). The IGT, a 748,000-square-foot, 34-story

commercial building being constructed in the Diamond District in midtown Manhattan, will be a state-of-the-art center designed specifically to meet the needs of the diamond and precious gem industry. The IGT is being developed by Extell GT, LLC, an affiliate of Extell Development Company (“Extell”) whose projects include commercial, residential, retail, hospitality and mixed-use properties in various cities nationwide.

The Program was established because banks were not willing to provide long-term loan commitments to Unit purchasers prior to the completion of the IGT and the individual Units. The Program will provide loan commitments of up to two years. This has helped enable Extell to seek construction financing for the completion the IGT. The Program will offer direct loans of up to 50%, not to exceed \$5,000,000, of the purchase price of a Unit, plus JDA eligible fit-out and soft costs. Financing will be through a JDA fixed or variable taxable rate loan secured by a first mortgage on the Unit being purchased. The principal owners of the borrower will provide a personal guarantee of the loan, which will be self-amortizing for a term not to exceed twenty years.

#### IV. Company Background and Project Description

##### A. Background

A.S. Diamonds, Inc., specializes in the diamond jewelry industry and is a leading manufacturer and cutter of diamonds as well as a wholesaler of top quality diamonds. The Company currently maintains its headquarter operations at 15 West 47<sup>th</sup> Street and has auxiliary locations in Belgium, Hong Kong, Israel, China, and India. A.S. Diamonds is one of the few manufacturers in New York with a state-of-the art, in-house cutting facility and maintains expertise in gemology and diamond grading.

A.S. Diamonds, Inc., is seeking to concentrate and grow its business in New York City by purchasing a Unit at the IGT. The Unit in the IGT will increase its space by 27% and enable the Company to increase operational efficiencies by using the shared services located at the IGT. The Company’s expansion is expected to create nine jobs over the next two years. The availability of the JDA loan was a critical factor in the Company’s decision to undertake its expansion plans at the IGT and establish a permanent presence in New York City.

##### B. Project Description

On October 28, 2011 the JDA board, utilizing the International Gem Tower First Mortgage program, approved a loan to A.S. Diamonds, Inc in the amount of \$2.6 million. The JDA investment represented 50% of eligible project costs, not to exceed \$2,622,112. The Term of the loan was 20 years at the fixed taxable rate at time of closing. The purpose of the loan was the purchase and fit-out of a 5,663 sq ft condominium unit at the International Gem tower to be used for diamond manufacturing.

A.S. Diamond subsequently approached JDA staff with a request to increase the amount the

JDA Board approved in October 2011, as the initial loan had not closed. The request is for a \$3,944,350 taxable JDA loan. The funds would be utilized to purchase and fit out an 8,584 sq ft condominium at the International Gem Tower, 2,921 sq ft more than previously arranged. The new project would create nine new full time permanent jobs within two years. The total project cost is estimated to be \$7,888,700.

Project activities include the acquisition of the core and shell and requisite improvements to facilitate its business operations. The project is expected to be completed by December 2012.

A.S. Diamonds, Inc., will create nine new jobs consisting of two/three diamond cutters to manufacture polished diamonds; two/three sales staff to focus on the U.S. market; one/two marketing person(s) to increase the Company's domestic and international visibility; accounting/inventory management staff to assist with receivables, payables and inventory; and a jewelry designer to assist in creating a jewelry line.

#### V. Basis for Recommendation

1. Financial analysis indicates that, as of the close of the last fiscal year, the Company would be able to support the debt service on this project.
2. The Company anticipates the addition of nine new jobs within two years after completion of the project.
3. The Company has warranted that it complies and will comply with Federal and State legal requirements as to non-discrimination and equal opportunity in hiring and operational practices.
4. Pursuant to 1823.7 (a) (ii) and 1823.7 (b) *et seq.* of the New York Job Development Authority Act, regarding loans in excess of forty percent of the cost of a project, the Members of the Authority have taken into consideration:
  - a) the applicant's potential for creating jobs in New York State;
  - b) the benefits derived from the project in the community in which the project is or will be located;
  - c) the interaction of the project with economic development programs administered by the Department of Economic Development, the New York State Urban Development Corporation and the New York State Science and Technology Foundation; New York State Foundation for Science for Technology and Innovation;
  - d) the meaningful participation of minority and women-owned business enterprises and minority group members and women in a project;

- e) the degree to which the project will support apprenticeship training;
  - f) compliance with the provisions of section eighteen hundred twenty-six of the Act with regard to the Project Occupant and;
  - g) in consultation with the Department of Economic Development, the eligibility of the applicant for assistance under the Industrial Effectiveness Program pursuant to article seven of the Economic Development Law.
5. The project has the support of local officials as evidenced by the participation of the New York County IDA.
  6. The project would not proceed without the participation of JDA.

If approved, this loan shall be subject to the usual JDA conditions, to the special conditions listed on Schedule A attached, and to such other conditions as counsel may determine are in the best interest of JDA.

#### VI. Financial Terms and Conditions

1. Receipt of the personal guarantee of Alain Spira in form and substance satisfactory to JDA.
2. Receipt of the corporate guarantee of A.S. Diamonds, Inc. in form and substance satisfactory to JDA.
3. Collateralization of the JDA loan with insurance on the life of Alain Spira in an amount sufficient to pay the outstanding principal balance of the JDA loan at any time.
4. Receipt of an appraisal, to be done by a New York State Certified Real Estate Appraiser acceptable to JDA and paid for by the Company, which indicates a fair market value of the realty project of at least \$7,249,800. If the project is valued to be less, the JDA loan may be reduced proportionately.
5. Collateral assignment to JDA of the lease between A.S. Diamonds, Inc., and ASD Gem Realty, LLC, of the property located at 50 West 47th Street, Unit 18M, New York, NY 10036, New York.
6. Compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended, and regulations issued by the U.S. Treasury Department to insure the tax exemptability of the obligations to be issued by JDA.
7. All certifications and permits for the operating purposes of this facility to be in full force and effect prior to closing of JDA loan.

8. The Company shall pay a 1% commitment fee upon acceptance of the Loan Authorization. In addition, at the time of closing, the Company will reimburse JDA for all out-of-pocket expenses incurred in connection with the Project.
9. The Company will demonstrate no material adverse change in its financial condition prior to closing.
10. The Company or the Company's owners will contribute at least 10% in equity to the Project. Equity is defined as any non-debt source of capital, and should be auditable through Company financial statements or Company accounts, if so requested by JDA.
11. JDA will only disburse funds after the Project is completed.
12. Commitments and financing documents of any other lender(s) to be satisfactory to JDA.
14. Intercreditor agreement with any other co-lender in form satisfactory to JDA, regarding JDA's first lien on the Unit.
15. First lien on the Unit.

#### VII. Environmental Review

Pursuant to the State Environmental Quality Review Act (SEQRA), Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the purchase and fit-out of another unit at the International Gem Tower, the JDA made a Determination of No Significant Effect on the Environment at their meeting of August 18, 2011. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

#### VIII. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The borrower, A.S. Diamonds, shall be required to: (i) include minorities and women in any job opportunities created, (ii) solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and (iii) use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve an overall Minority and Women Business Enterprise ("MWBE") Participation Goal of 15% related to the total value of ESD's funding. The borrower may utilize any combination of certified Minority and/or Women Owned Business Enterprises to meet this requirement.

IX. Additional Submissions to Members

Resolutions

September 18, 2012

New York (New York City Region - New York County) – A.S. Diamonds, Inc. – New York Job Development Authority Special Purpose Fund Direct Loan Project – Real Estate Loan – Authorization to Make a Loan and to Take Related Actions; Determination of No Significant Effect on the Environment

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RESOLVED, that the Chairman of the Authority or his designee(s) be, and each of them hereby is, authorized to make a Special Purpose Fund Real Estate Loan to the Statewide Local Development Corporation for the benefit of the following Project Owner(s) for the amount(s) not to exceed, and the respective percent(s) of total Real Estate Project cost(s), whichever is less, set forth for each:

<b>Condo Unit #</b>	<b>Project Owner</b>	<b>Project Occupant</b>	<b>JDA Investment</b>	<b>% of Project Cost</b>
18LMR	A.S. Diamonds, Inc.	ASD Gem Realty, LLC	\$3,944,350	50%

to be funded from the proceeds of New York State Guaranteed Special Purpose Fund taxable bonds or notes, for the purposes and substantially on the terms and conditions set forth in the materials presented at this meeting, with such changes as the Chairman of the Authority or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Chairman of the Authority or his designee(s) be, subsequent to the making of the Loan(s), and each of them hereby is, authorized to take such actions and make such modifications to the terms of the Loan(s) as he or she may deem appropriate in the administration of the Loan(s); and be it further

RESOLVED, that the Chairman of the Authority, or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Authority to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions; and be it further

RESOLVED, that the provision of financial assistance by the Authority is expressly contingent upon: (1) the approval of the Public Authorities Control Board, as applicable, and (2) the receipt of all other necessary approvals; and be it further

RESOLVED, that based on the materials submitted to the Members with respect to the Project Owner(s) and/or Project Occupant(s) listed above, the Authority hereby determines that the proposed action(s) will not have a significant effect on the environment.

**Job Development Authority**

FOR INFORMATION

September 18, 2012

TO: The Members

FROM: Kenneth Adams

SUBJECT: Investment Report for the New York Job Development Authority

---

Generally the boards of public authorities are required to annually approve an Investment Report (which includes investment guidelines, annual audit results, portfolio performance and other items related to investment management). However, the funds of the New York Job Development Authority (the "JDA") are not managed by the JDA. Section 1810 of the Public Authorities Law mandates that funds of the JDA be managed by the New York State Department of Taxation and Finance (the "DTF"). Because such funds are being managed externally, in accordance with State finance law (including Section 98-a), no such board approval is required.

In order to keep the JDA Board apprised of the status of JDA's investments, we have obtained related data from DTF, drafted summaries and consolidated this information into the attached JDA Investment Report (the "Report") for informational purposes only. The attached Report, for the Fiscal Year ended March 31, 2012, includes (1) DTF Investment Guidelines; (2) Results of the Annual Independent Audit; (3) Investment Position by Fund and Income Records; (4) Statement of Fees, Commissions and Related Service Charges; and (5) the Investment Portfolio by Instrument Type with Market Value as of March 31, 2012.

With respect to the JDA Investment Portfolio, as of fiscal year end March 31, 2012 investments totaled approximately \$50 million (as of 3/31/11 was \$44 million), the yield was 0.18% (as of 3/31/11 was 0.23%), the average maturity was 58 days (as of 3/31/11 was 164 days). The total investment earnings for the fiscal year were \$109 thousand (for the prior fiscal year was \$59 thousand). The portfolio's short-term investments reflect the need for highly liquid instruments which are used to accommodate debt service payment requirements and loan closings.

Attachments

Investment Report

NEW YORK JOB DEVELOPMENT AUTHORITY

INVESTMENT REPORT FOR FISCAL  
YEAR ENDED MARCH 31, 2012

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2. Results of the Annual Independent Audit	3 - 8
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Exhibit I (Investment Policy and Appendices)

DEPARTMENT OF TAXATION & FINANCE  
DIVISION OF THE TREASURY

GUIDELINES BY INVESTMENT CATEGORY

- a. Federal Obligations. The Division of the Treasury shall invest in U.S. Treasury bills, notes, bonds, strips, and U.S. agency obligations which have a maturity of twelve years or less.
- b. Repurchase Agreements. In accordance with an existing Departmental legal opinion (LBW-4440 dated June 17, 1997 and LBW-5496 dated March 17, 1999), it is the Treasury's policy to view a Repurchase Agreement as an actual purchase and sale of U.S. Treasury obligations. The term and yield of the Repurchase Agreement is fixed at the time that quotes are being sought from qualified primary government securities dealers and with major banks defined as those with capital equal to or greater than \$100 million. Treasury concurs with the recommendations of the Federal Reserve Bank of New York and the Bond Market Association (formerly Public Securities Association (PSA)) to mark-to-market the securities purchased under Repurchase Agreements as often as required based on market movement and at least monthly.

A properly executed Master Repurchase Agreement must be on file with the Division of the Treasury prior to transacting a Repurchase Agreement. See Appendix H for a copy of the Master Repurchase Agreement.

1) Constraints

- a) Total repurchase agreements outstanding with any one bank or primary dealer shall not exceed 10% of the Treasury's total portfolio at the time of purchase unless waived in writing.
- b) Total certificates of deposit outstanding with any one bank shall not exceed 10% of the Treasury's total portfolio at the time of purchase unless waived in writing.
- c) Securities purchased and held as collateral for repurchase agreements shall be U.S. Treasuries maturing in twelve years or less. If U.S. Treasuries have a maturity of seven years or less, market value together with accrued interest must equal or exceed 101% of the par value of the repurchase agreement. If U.S. Treasuries have a maturity greater than seven years, market value together with accrued interest must equal or exceed 102% of the par value of the repurchase agreement.
- d) Collateral must be delivered to the Treasury's book-entry account at Treasury's custodial bank.

DEPARTMENT OF TAXATION & FINANCE  
DIVISION OF THE TREASURY

- e) Maximum term for any repurchase agreement will be 60 days or less.
  - f) Treasury shall not enter into reverse repurchase agreements.
- 2) Definitions. For the purposes of this policy, repurchase agreement and qualified primary government securities dealer are defined as follows.
- a) Repurchase Agreement. An agreement by the Division of the Treasury to purchase U.S. Treasuries on a certain date from a primary government securities dealer. The agreement states that the Division of the Treasury shall sell the same U.S. Treasuries back on a specific date in the future at the same price, plus an additional amount as agreed to by Treasury and the primary government securities dealer.
  - b) Qualified Primary Government Securities Dealer. A primary government securities dealer with net liquid capital of not less than \$100 million and with total assets of not less than \$1 billion in assets and has signed Treasury's Master Repurchase Agreement. (See Appendix H)
- c. Debt Instruments Issued by Banks. A number of agencies/authorities are authorized to purchase various debt instruments issued by banks including certificates of deposit, and bankers acceptances.
- 1) Certificates of Deposit. New York State statutes require that certificates of deposit be purchased from banks or trust companies located within New York State. All certificates of deposit must be fully collateralized to the extent that they are not otherwise covered by Federal Deposit Insurance. Each bank or trust company must be willing and able to meet the collateral requirement.
  - 2) Bankers' Acceptances. Currently, there are three statutes which govern the investment in bankers' acceptances (BA's). Appendix I indicates the laws, the agency/authority impacted, and the limitations established by these statutes. Investment transactions will be executed on the secondary market with a primary government dealer or directly with an accepting bank subject to statutory constraints.
- d. Commercial Paper. There are three statutes which govern the investment in short-term, corporate obligations (Commercial Paper). Appendix J indicates the law, the agency/authority impacted and the limitations established by these statutes.
- e. Municipal Securities. The Division of the Treasury shall invest in N.Y.S. obligations which have a maturity of twelve years or less.

## INDEPENDENT AUDITORS' REPORT

The Authority Members  
New York Job Development Authority:

We have audited the accompanying combined balance sheets of New York Job Development Authority (a component unit of the State of New York) as of March 31, 2012 and 2011, and the related combined statements of revenue, expenses and changes in net assets and cash flows for the years then ended. These combined financial statements are the responsibility of the Authority's management. Our responsibility is to express an opinion on these combined financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the combined financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the combined financial statements. An audit also includes assessing the accounting principles used and the significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the combined financial statements referred to above present fairly, in all material respects, the financial position of New York Job Development Authority as of March 31, 2012 and 2011, and the changes in financial position and cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

In accordance with Government Auditing Standards, we have also issued our report dated June 8, 2012, on our consideration of New York Job Development Authority's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with Government Auditing Standards and should be considered in assessing the results of our audit.

Accounting principles generally accepted in the United States of America require that the management's discussion and analysis on pages 3 through 8 be presented to supplement the basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board, who considers it to be an essential part of the financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Toski & Co., CPAs, P.C.

Williamsville, New York  
June 8, 2012

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING  
AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT  
OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE  
WITH GOVERNMENT AUDITING STANDARDS

The Authority Members  
New York Job Development Authority:

We have audited the combined financial statements of New York Job Development Authority (the "Authority"), a component unit of the State of New York, as of and for the year ended March 31, 2012, and have issued our report thereon dated June 8, 2012. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

Internal Control over Financial Reporting

Management of the Authority is responsible for establishing and maintaining effective internal control over financial reporting. In planning and performing our audit, we considered the Authority's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinion on the combined financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Authority's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Authority's internal control over financial reporting.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct misstatements on a timely basis. A material weakness is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected on a timely basis.

Our consideration of internal control over financial reporting was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control over financial reporting that might be deficiencies, significant deficiencies or material weaknesses. We did not identify any deficiencies in internal control over financial reporting that we consider to be material weaknesses, as defined above.

### Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Authority's combined financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statements amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of the Authority members, management, the New York State Legislature, the New York State Office of the State Comptroller, the New York State Senate, the New York State Division of the Budget, and the New York State Authorities Budget Office and is not intended to be and should not be used by anyone other than those specified parties.

Toski & Co., CPAs, P.C.

Williamsville, New York  
June 8, 2012

## INDEPENDENT AUDITORS' REPORT ON INVESTMENT COMPLIANCE

The Authority Members  
New York Job Development Authority:

We have examined the New York Job Development Authority (the "Authority") a component unit of the State of New York, compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York during the year ended March 31, 2012. Management is responsible for the Authority's compliance with those requirements. Our responsibility is to express an opinion on the Authority's compliance based on our examination.

Our examination was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants and the standards applicable to attestation engagements contained in Government Auditing Standards, issued by the Comptroller General of the United States and, accordingly, included examining, on a test basis, evidence supporting the Authority's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. We believe that our examination provides a reasonable basis for our opinion. Our examination does not provide a legal determination on the Authority's compliance with specified requirements.

In our opinion, the Authority complied, in all material respects, with the aforementioned requirements during the year ended March 31, 2012.

In accordance with Government Auditing Standards, we are required to report findings of deficiencies in internal control, violations of provisions of contracts or grants, and abuse that are material to the Authority's compliance with Section 201.3 of Title Two of the Official Compilation of Codes, Rules, and Regulations of the State of New York and any fraud and illegal acts that are more than inconsequential that come to our attention during our examination. We are also required to obtain the views of management on those matters. We performed our examination to express an opinion on whether the Authority complied with the aforementioned requirements and not for the purpose of expressing an opinion on internal control over compliance with those requirements or other matters; accordingly, we express no such opinion. The results of our tests disclosed no matters that are required to be reported under Government Auditing Standards.

This report is intended solely for the information and use of the Authority members, management, the New York State Legislature, the New York State Office of the State Comptroller, the New York State Senate, the New York State Division of the Budget, and the New York State Authorities Budget Office and is not intended to be and should not be used by anyone other than those specified parties.

Toski & Co., CPAs, P.C.

Williamsville, New York  
June 8, 2012

New York Job Development Authority  
Investment Position Report  
As of 3/31/12

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<u>FUNDS/PROGRAMS</u>	<u>PAR AMOUNT (in \$'s)</u>	<u>AVERAGE WEIGHTED YIELD (%)</u>	<u>AVERAGE WEIGHTED MATURITY (DAYS)</u>
JDA General Purpose Fund (BAC 036J)	29,160,000.00	0.26	93
CP Series "H" (BAC 371J)	19,000,000.00	0.07	5
1992 Bond Series A, B (BAC 389J)	1,500,000.00	0.08	41
Total	49,660,000.00		

NEW YORK JOB DEVELOPMENT AUTHORITY  
SUMMARY OF INVESTMENT EARNINGS  
FOR FISCAL YEAR ENDED 3/31/12

<u>FUND TYPE</u>	<u>EARNINGS (\$'s)</u>
- JDA General Purpose Fund (BAC 036J)	88,998
- CP Series "H" (BAC 371J)	18,897
- 1992 Bond Series A, B (BAC 389J)	<u>1,446</u>
<b>TOTAL</b>	<b><u>109,342</u></b>

NEW YORK JOB DEVELOPMENT AUTHORITY

Statement of Fees, Commissions and Related Service Charges for  
The Period of April 1, 2011 through March 31, 2012

For FY 2011/2012, fees totaling \$91,838.72 were paid to the NYS Department of Taxation and Finance (the "DTF"). Section 170.6 of the Tax Law states that such fees must be remitted to them for financial services performed. Section 1810 of the Public Authorities Law mandates that JDA funds be managed by the DTF.

New York Job Development Authority  
Investment Position Report  
As of 3/31/12

<u>BAC</u>	<u>Instrument Type</u>	<u>Rate (%)</u>	<u>Settle Date</u>	<u>Maturity Date</u>	<u>Market Price</u> <u>a/o 3/31/12</u>	<u>Market</u> <u>Value (\$'s)</u>	<u>Par</u> <u>Amount (\$'s)</u>	<u>Cost (Incl Purch.</u> <u>Interest) (\$'s)</u>
036J	NYC TFA Revenue	2.50	1/20/2011	11/1/2012	101.266	10,987,361.00	10,850,000.00	11,231,160.50
036J	NYS Dorm Authority	5.00	1/11/2011	2/15/2013	104.119	999,542.40	960,000.00	1,065,137.07
036J	Repurchase Agreement	0.07	3/29/2012	4/5/2012		17,350,000.00	17,350,000.00	17,350,000.00
371J	Repurchase Agreement	0.07	3/29/2012	4/5/2012		19,000,000.00	19,000,000.00	19,000,000.00
389J	US Treasury Bill		3/29/2012	4/19/2012	99.997	199,994.00	200,000.00	199,997.67
389J	US Treasury Strip		10/27/2011	5/15/2012	99.990	1,299,870.00	1,300,000.00	1,299,324.00
<b>Total</b>						<b>49,836,767.40</b>	<b>49,660,000.00</b>	<b>50,145,619.24</b>

## EXHIBIT I

### DEPARTMENT OF TAXATION & FINANCE DIVISION OF THE TREASURY

#### INVESTMENT POLICY

#### 1. INTRODUCTION

- a. Section 170 of the Tax Law establishes the Division of the Treasury within the Department of Taxation and Finance. By statute, the head of the Division of the Treasury shall be the Deputy Commissioner and Treasurer and shall be appointed by the Commissioner of Taxation and Finance.
- b. The Commissioner of the Department of Taxation and Finance is the designated sole custodian or fiscal agent for various State agencies and public authorities. The Commissioner empowers the Treasurer to act on the Commissioner's behalf with all powers and duties vested in the Commissioner.
- c. The Treasurer is responsible for the management of monies of the agencies and authorities, as provided by law, with due diligence to ensure safety of the monies and to provide the necessary liquidity at the highest possible yield. As such, the Treasurer is authorized and empowered to purchase, sell, assign, and transfer any stocks, bonds, or other securities of which the Commissioner, per New York State Law, is the sole custodian or fiscal agent.
- d. The criteria in this policy are intended to guide investment decisions so they are consistent with the Treasurer's responsibilities for cash management. The Treasurer and Deputy Treasurer shall have the discretion to waive any of the provisions of this policy provided that the waiver shall not result in an investment prohibited by statute. Should this occur, a written waiver shall be executed. The Treasurer, as fiscal agent, trustee, or sole custodian of various agencies, authorities, and other public entities, also provides financial services to these organizations. These services include: cash management, investment, accounting, and financial reporting services
- e. Appendix A graphically depicts the portfolio compositions and Appendix B outlines the agencies/authorities and cites the sections of the laws that establish the Commissioner as custodian or agent of the monies for these agencies and authorities.
- f. See Appendix F and G for samples of possible waivers.

DEPARTMENT OF TAXATION & FINANCE  
DIVISION OF THE TREASURY

2. INVESTMENT OBJECTIVES. The general investment objectives are as follows.

- a. To meet statutory requirements as they relate to agency objectives and their investment guidelines.
- b. To ensure safety of investments
- c. To allocate assets where possible, based on liquidity, diversity, and marketability
- d. To maximize earnings subject to safety of investments

3. GENERAL INVESTMENT POLICY. The following criteria shall serve as the general investment policy for all investments made by Treasury.

- a. Monies held in the custody of the Division of the Treasury shall be invested according to the "prudent person rule" as defined in Section 117.7(b)(I) of the Retirement and Social Security Law. This section provides that a fiduciary "shall make investments with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."
- b. All investment transactions shall be executed on a basis of competitive quotes from banks or primary government securities dealer. (See Appendices C through E for "List of the Primary Government Securities Dealers Reporting to the Market Reports Division of the Federal Reserve Bank of New York" and criteria for selecting financial services firms.)
- c. If quotes received are tied with no broker/dealer or bank willing to break the tie, and, if the firms cannot be distinguished by their service provided or by the competitiveness of their historical quotes, then investments in or through New York corporations, or New York financial institutions or the New York offices of financial institutions are to be given preference.

APPENDIX B

DEPARTMENT OF TAXATION AND FINANCE

DIVISION OF THE TREASURY

ALLOWABLE INVESTMENTS

Agency:	Legal Auth.	U.S. Oblig.	NYS Oblig.	CDs	Federal Agencies	Public Benefit Corp.	Mortg.	Equities	Law 235	Types of Investments Allowed Under'			G.O. Banks & Notes Other States	Bas	Commercial Paper
										Bank	State Fin. 98	State Fin. 98-a			
Community College	(A)	X	X	X											
Convention Center	(B)	X	X												
Dormitory Auth. (1)	(B & E)	X	X	X	X	X*				X			X*	X*	
Job Develop. Auth.	(C)	X	X	X											
Insurance Dept.	(D)	X	X	X			X						X*	X*	
Housing Finance	(E)	X	X		X	X*					X		X	X	
Energy Research	(G)	X	X	X			X								
Project Finance	(H)	X	X	X	X										
State Univ Construc	(B)	X	X						X					X	
Workers' Comp	(F)	X	X	X	X								X*	X*	
Affordable Housing	(E)	X	X		X					X			X*	X*	
Housing Trust Fund	(E)	X	X		X								X*	X*	
Homeless Housing	(E)	X	X		X								X*	X*	
Performing Arts	(I)	X	X	X										X	
Teachers' Retirement	(J)														
State Insurance Fund	(J)														

FOOTNOTES:

- (A) - (H) See Attached Sheet for Legal Authority
- (I) Perf. Arts' Investment Guidelines 10/27/89
- (J) Investment Responsibility Delegated to Authority
- (1) FDC (B) And MCFFA (E) Merged with Dormitory Authority

\*See Section 98 of State Finance Law for Additional Limitations

APPENDIX C

LIST OF AUTHORIZED PRIMARY DEALERS  
FOR REPURCHASE AGREEMENTS (REPOs)

BANC OF AMERICA SECURITIES LLC.

CITIGROUP GLOBAL MARKETS INC.

DEUTSCHE BANK SECURITIES INC.

DRESDNER KLEINWORT WASSERSTEIN SECURITIES LLC

HSBC SECURITIES (USA), INC.

MIZUHO SECURITIES USA, INC.

MORGAN STANLEY & CO. INC.

## APPENDIX D

### List of Authorized Banks and Brokers For Other Than Repurchase Agreements

#### U. S. Government Securities

Same as Appendix C (which comes from the current "List of the Primary Government Securities Dealers Reporting to the Market Division of the Federal Reserve Bank of New York).

#### Certificates of Deposit:

Adirondack Trust Co.  
Alliance Bank, N.A.  
Asia Bank  
Ballston Spa National Bank  
Bank of Akron  
Bank of America, N.A.  
Bank of Castile  
Bank of Leumi, USA  
Bank of Utica  
Broadway National  
Capital Bank & Trust  
Chemung Canal Trust Co.  
Citibank, N.A.  
Citizens Bank, N.A.  
Commerce Bank, N.A.  
Community Bank, N.A.  
Elmira Savings and Loan, F.A.  
Elmira Savings Bank FSB  
Evans National Bank of Angola  
First National Bank of Lisbon  
First National Bank of Long Island  
First Niagara Bank  
First State Bank, Canisteo  
Five Star Bank  
Genesee Regional Bank  
Glens Falls National Bank & Trust Co.  
HSBC Bank USA  
JP Morgan Chase  
Key Bank National Association  
Lyons National Bank  
Manufacturers & Traders Trust Co.  
NBT Bank, N.A.  
Northwest Savings Bank

APPENDIX D

Oswego County National Bank  
Partners Trust Bank  
Rome Savings Bank  
Solvay Bank  
Steuben Trust Co.  
TD Banknorth, N.A.  
The Delaware National Bank of Delhi  
Tioga State Bank  
Tompkins County Trust Co.  
Union State Bank  
Valley National Bank  
Washington Mutual  
Wilber National Bank

Savings Banks obtain public funds via the Linked Deposit Program Only.

## APPENDIX E

### CRITERIA AND STANDARDS FOR SELECTING FINANCIAL SERVICES FIRMS

#### INTRODUCTION

The Division of the Treasury invests in various money market instruments using two types of financial services firms. The financial services firms are banks and securities dealers (also known as brokerage firms or broker/dealers). These entities can be further subdivided; for example, there are the large money center banks (Citicorp, Chemical, etc.), regional banks (Key Corp) and local banks (Schenectady Trust).

The type of financial services firm selected depends on the investment instrument chosen. If the Division of the Treasury chooses repurchase agreements (repos), then only a large money center bank or securities dealer, who is a primary dealer, can be used. The following matrix indicates the investment and corresponding type of financial services firm which can be used:

<u>Investment</u>	<u>Financial Services Firm(s)</u>
Repurchase Agreement	Large money center bank or securities dealer on the Fed Reserve's Primary Dealer List
U.S. Treasury Obligations	Large money center bank or securities dealer
Bankers Acceptances/Commercial Paper	Large money center bank or securities dealer reporting to the Federal Reserve's Primary Dealer List
Certificates of Deposit	Banks

#### CRITERIA AND STANDARDS

When selecting the specific financial services firm, the following criteria and standards are used to evaluate the firm:

<u>Criteria</u>	<u>Investment of Type Firm</u>	<u>Standard</u>
- Financial		
• Financial Trends	All	Stable or Increasing*
• Liquid Capital	Repos (Securities Dealers)	Not less than \$75 million
• Total Assets	Non CD's (Securities Dealers)	Not less than \$1 billion

APPENDIX E

<u>Criteria</u>	<u>Investment of Type Firm</u>	<u>Standard</u>
• Shareholders' Equity	CD's (Banks)	Not less than \$100 million except minority banks**
	Non CD's (Securities Dealers)	Not less than \$100 million
	Non CD's (Banks)	Not less than \$100 million
	CD's (Banks)	Not less than \$10 million except minority banks**
- Non-Financial		NYS Office
• Location	All	
• Age of Firm/Experience	All	At least 20 years in financial services business
• Primary Dealer	Repos	On FRBNY's list of Government Primary Securities Dealers
• Contract	Repos	Willing to Sign Treasury's Master Repurchase Agreement
• Securities Fraud/ Insider Trading	All	Must not be convicted of securities fraud, insider trading; or undergoing major security investigation for above
• Tax Fraud/ Delinquency	All	Must not be convicted of tax fraud or be tax delinquent
• Service	All	Provides good service <ul style="list-style-type: none"> <li>• Returns phone calls promptly</li> <li>• Gives competitive quotes</li> </ul>

Footnotes:

\* Can be decreasing if firm meets all other criteria and trend has not continued for more than 5 consecutive years.

\*\* CD's must be fully collateralized or be fully covered by FDIC.



**MEMORANDUM**

AD-53 (1/80)

TO: Investment Officer  
FROM: Deputy Treasurer  
SUBJECT: Waiver of Qualifying Investment Banker/Broker

OFFICE: Treasury

DATE:

You are hereby authorized to transact an investment with (name of banker/broker) for the purchase/sale of (type and amount of investment) even though such banker/broker is currently not on the list of authorized banks and brokers.

This authorization is limited to (type and amount of investment) on (date), and any future investments with (name of banker/broker) will require a new authorization.

\_\_\_\_\_  
Deputy Treasurer



# MEMORANDUM

AD-53 (1/80)

TO: Investment Officer  
FROM: Deputy Treasurer  
SUBJECT: Waiver of Dealer Limitation

OFFICE: Treasury

DATE:

You are hereby authorized to exceed the general safety rule which limits (general safety rule) with (name of banker/broker) for the purchase of (amount and type of investment) for (Agency - MAC #) on (date).

This authorization is limited to (amount and type of investment), and any future investments with (name of banker/broker), which exceeds the general safety rules, will require a new authorization.

\_\_\_\_\_  
Deputy Treasurer

APPENDIX H

PSA MASTER REPURCHASE AGREEMENT

APPENDIX I

BANKERS ACCEPTANCES

	Sec. 235 of the Banking Law <u>Workers Compensation &amp; ERDA (1)</u>	Sec. 98 of the State Finance Law <u>HFA, MCFFA, AHC, HFIC</u>	Sec. 98-a of the State Finance Law <u>JDA</u>
Eligible for Purchase in the Open Market by Federal Reserve Banks and accepted by:	- a bank - trust company - private banker - investment company - banking corporation	- a bank - trust company	- a bank - trust company
Maturity limit of investment	No statutory limit	90 days	90 days
Dollar limit	No statutory limit	No more than \$250 million may be invested in bankers' acceptances of any one bank or trust company	No more than \$250 million may be invested in bankers' acceptances of any one bank or trust company
Purchase date limitation	No statutory limit	No statutory limit	No statutory limit
Other limitations	Aggregate liability of any bank, trust company, private banker, investment company or banking corporation to any savings bank for acceptances shall not exceed 25% of the capital and surplus of such bank, trust company, private banker, investment company or banking corporation or 5% of the aggregate amount credited to the depositors of such savings bank, whichever is less.	Short-term obligation of bank or trust company must receive the highest rating of two independent rating services for preceding six months.	Short-term obligation of bank or trust company must receive the highest rating of two independent rating services for preceding six months.

(1) Section 1859 of the Public Authorities Law governs investment for ERDA and allows securities in which the trustees of any public retirement system or pension fund may invest pursuant to Article 4-a of the Retirement and Social Security Law.

APPENDIX J

COMMERCIAL PAPER

	Sec. 235 of the Banking Law <u>Workers Compensation &amp; ERDA (1)</u>	Sec. 98 of the State Finance Law <u>HFA, MCFFA, AHC, HFIC</u>	Sec. 98-a of the State Finance Law <u>JDA</u>
Maturity Limit	270 days	90 days	90 days
Dollar Limit	No statutory limit	No more than \$250 million may be invested in any one corporation	No more than \$250 million may be invested in any one corporation
Purchase date limitation	No statutory limit	No statutory limit	No statutory limit
Rating limitation	Highest rating of an independent rating service designated by the banking board.	Highest rating of two independent rating services designated by the Comptroller and issuer has maintained such ratings or similar obligations during preceding year.	Highest rating independent rating services designated by the Comptroller and issuer has maintained such ratings or similar obligations during preceding year.

(1) Section 1859 of the Public Authorities Law governs investment for ERDA and allows securities in which the trustees of any public retirement system or pension fund may invest pursuant to Article 4-a of the Retirement and Social Security Law.



**FOR INFORMATION**

September 18, 2012

**TO:** The Members  
**FROM:** Kenneth Adams  
**SUBJECT:** JDA Application for Financial Assistance

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**I. Introduction**

On September 12, 2012, staff presented to the New York Job Development Authority (“JDA”) Finance Committee information regarding the JDA Application for Financial Assistance. To generate greater awareness of JDA as a stand-alone financing program, staff developed a new *JDA Application for Financial Assistance (Exhibit I)*, which was distributed to the Finance Committee. This document substantially follows the ESD Application for Financial Assistance format, and includes a distinct JDA logo.

The Finance Committee supported the use of this new application, and recommended this item be presented for informational purposes to the full JDA Board.

**II. Background**

Since being formulated brought under the ESD umbrella in 1995, all JDA applications and correspondence were under the banner of ESD. This was primarily due to the financial difficulties JDA experienced in the mid-1990s.

The new JDA Application for Financial Assistance was developed to better market this program to a wide range of business organizations and business owners throughout New York State, prospective partner financial institutions, and ESD’s regional offices. Staff has worked with the legal and finance divisions to make sure that all relevant requirements were met.

**III. Additional Submission to the Authority Members**

Exhibit I: JDA Application for Financial Assistance