NEW YORK STATE OF OPPORTUNITY. | New York State Department of Economic Development

October 25, 2022

Senator Leroy Comrie
Chair, Committee on Corporations, Authorities, and Commissions
14th Senate District

Senator Brad Hoylman
27th Senate District

Senator Liz Krueger
Chair, Finance Committee
28th Senate District

VIA EMAIL

Dear Senators,

Please find below answers to the questions posed by Reinvent Albany in its letter dated September 15, 2022 and addressed to you.

Thank you for the opportunity to address these questions and I look forward to our continued partnership as we pursue improvements both to Penn Station and the public realm that surrounds it.

Sincerely,

Hope Knight
President and CEO, Empire State Development
Commissioner, NYS Dept of Economic Development

Note: Quoted selections from the Reinvent Albany letter are in *italics*.

Overall Project Direction:

1. *When will the application for the first site go before the PACB? Is the ESD Board required to approve the site agreements first, before they are submitted to the PACB?*

A. ESD is in discussions with Vornado, which owns or has a controlling ground lease interest in Sites 4-8. ESD anticipates that Site 7 will be the first site to be developed within the next two years as shown in the FEIS construction schedule and as presented during multiple Community Advisory Committee Working Group ("CACWG") meetings.

Development in accordance with ESD's General Project Plan ("GPP") on any site cannot commence until ESD enters into a project development agreement with the developer of each site. Each project development agreement must first be approved by the ESD Directors and thereafter, by the Public Authorities Control Board ("PACB"). In addition, as ESD stated during its presentations to the CACWG on November 4, 2021 and November 9, 2021, each proposed development on Sites 4-8, prior to final approvals by ESD and PACB, will be presented to the CACWG and Community Boards 4 and/or 5 for advisory input. ESD will mandate the same for any future RFPs for Sites 1-3, should those sites go forward as the preferred alternative for Penn Expansion.

2. *Will there be a framework for Community Benefits Agreements at all sites?*

A. The GPP contains requirements and commitments to benefits to the community which will be incorporated into development agreements for each of the sites, including transit and public realm improvements as well as permanently affordable housing and funding for the railroad projects. Additionally, a series of commitments were laid out in a letter to the elected officials representing the area from both ESD and the Governor's office, which can be found here on the ESD website.

3. *Is there a final project cost assumptions document (which is currently only in draft form), or a more detailed financial document?*

A. The 07/24/2022 Project Cost Assumptions document (regarding projected construction costs for the Penn Reconstruction, Penn Expansion, public realm improvements, and transit improvements) is the latest version available. ESD is working with Amtrak, MTA and NJT (the "Railroads") on refining projections and cost estimates for the railroad and transit improvements and will incorporate any changes into an updated draft for review. As announced by the Governor on September 21, 2022, a design contract for Penn Reconstruction was approved by MTA and design work will begin in the coming months. Future project costs will be impacted by many factors such as inflation, supply chain issues and ongoing design and engineering studies. ESD will provide updated versions when available.

4. *When will there be a bond issuance?*

A. ESD and MTA are considering multiple potential financing programs typically used to finance large rail infrastructure projects, including credit assistance under the federal Transportation Infrastructure

Finance and Innovation Act ("TIFIA"), which was used for Moynihan Train Hall, federal Railroad Rehabilitation & Improvement Financing ("RRIF"), and tax-exempt bonds. It is also possible that more than one financing program will be used to finance the Penn Station projects. Many factors will determine the timing of any debt issuance including the timing for the construction of the Penn Station projects, the amount of financing needed, and the timing of the GPP developments.

5. *When will federal funding applications be filed and which specific funding programs will be used?*

A. The MTA is most focused on two US Department of Transportation grant programs that provide large grants for major transportation projects. Penn Expansion is eligible to apply for the Capital Investment Grants ("CIG") program administered by the Federal Transit Authority ("FTA"). The Gateway Hudson Tunnel Project will be funded in part by this program. Penn Reconstruction is not eligible for this program but is eligible for the Federal-State Partnership for Intercity Passenger Rail Program ("Federal-State Partnership") administered by the Federal Railroad Administration ("FRA").

There are numerous other smaller grant programs and the project sponsors will pursue other appropriate federal funding opportunities in an effort to obtain the maximum federal share. Programs under consideration include the Rebuilding American Infrastructure with Sustainability and Equity ("RAISE") and Consolidated Rail Infrastructure and Safety Improvements ("CRISI"). As mentioned above, the projects also are eligible for the TIFIA and RRIF financing programs.

It is important to note that the discretionary grant application process for federal funding programs can be long, and funding decisions are not made immediately. For example, the CIG program has design, engineering, and financial planning milestone requirements, and must include a viable financial plan for the required local share.

The FRA has not yet published guidance for the Federal/State Partnership program. Guidance and the grant solicitation is expected in December 2022. MTA anticipates that Penn Reconstruction will be eligible to apply for funding from the Federal/State Partnership program.

MTA has a short window of time between the opening of Grand Central Madison (LIRR service to Grand Central) and the start of Metro-North Penn Access service, when there be less activity in Penn Station and construction will be less disruptive.

6. *When will the Penn Station Area Development Corporation begin meeting?*

A. The formation of this ESD subsidiary must go through several administrative and statutorily required steps, including a 60-day notification period to the Governor, State Comptroller, State Senate, and State Assembly, and designation of Directors by the State and City. As the tentatively named Penn Station Area Development Corporation ("PSADC") will focus on the public realm, the PSADC will be established before the start of any public realm construction activity.

7. *When will the Public Realm Task Force be meeting, and will there be any public meetings and/or sharing of meeting materials with the public?*

A. The Public Realm Task Force ("PRTF") will commence meeting this quarter and will meet approximately monthly until the Concept Plan is completed, for what is estimated to take approximately one year. Materials produced by the PRTF will be shared on the ESD website.

The following questions are based on ESD's project cost assumptions document :

Revenue Projections – *How much revenue does ESD estimate this project will bring in based on historical data from named revenue sources? Specifically:*

8. *What methodology is ESD using to estimate revenue sources (including property taxes, development rights, land values, sales tax on construction materials, and mortgage recording taxes)? This includes time frame, price per sq foot, development scenarios, discount schedules, etc.*

A: Please see below for clarification and further background on the methodology that ESD used to estimate the GPP revenue sources.

- Development Scenario
  ESD assumed a mixed-use residential and commercial scenario as analyzed in the Final Environmental Impact Statement ("FEIS") and described in the GPP to estimate the revenues shown on the 07/24/2022 Sources & Uses table. Specifically, ESD assumed that Sites 1A, 1B, and 4 would be residential with affordable and supportive housing uses. In addition, ESD assumed that Site 4 would be developed under the "Residential/Hotel" scenario, as described in the GPP.

- PILOT Revenue
  Estimated PILOT revenues for office uses are based on property tax payments from comparable office buildings in the market similar to the method used by Cushman & Wakefield ("C&W") in its September 2021 report ("C&W Report") prepared for Hudson Yards Infrastructure Corporation ("HYIC"). C&W assumed $23 PSF for property tax payments using buildings built between 2002 and 2016. ESD included comparable buildings built more recently for its analysis and estimated a PSF tax payment comparable to C&W of $24 PSF. As per the City-State Letter of Mutual Agreement ("City-State LOMA"), ESD analyzed a 40-year PILOT term with abatement percentages and terms no deeper or more valuable than available under the Hudson Yards Uniform Tax Exemption Policy ("Hudson Yards UTEP") at the time of development for each site.

  Because of affordable housing uses on Sites 1A, 1B, and 4, those sites are assumed to generate $0 PILOT revenue for 35 years under a future 421-a equivalent program. For comparison, in its report, Reinvent Albany assumed commercial office use on Sites 1B and 4 and that those sites would generate PILOT revenue. Under ESD's analysis, only office, hotel and retail uses are assumed to pay PILOT. ESD further notes that Reinvent Albany, in its analysis, assumed that office, hotel, retail uses on all eight sites would receive an initial 20% abatement on the full assessed value ("AV") for the first 15 years followed by a 4-year phase-out with the properties paying full taxes in Year 20. In contrast, ESD assumed that hotel and retail uses would pay PILOT equivalent to full taxes, while office uses would receive an initial abatement benefit on only the incremental AV above the existing AV. As stated by ESD President and CEO Hope Knight during the June 24, 2022 Senate hearing, written in follow-up responses to the Senate's questions, communicated by ESD during CACWG meetings, and as provided in the ESD Board materials on page 246 for July 21, 2022 when the modified GPP was adopted, ESD intends to only give higher abatements to early developers (which may be less than 20%) to incentivize development, and provide later developers with a lower abatement.

Overall, all PILOTs will be structured to ensure the abatements provide exactly the amount of benefits required to complete our work at Penn Station and not a dollar more. The goal of any negotiated abatements is a balance between incentivizing development in an area that has not seen a new office building built since the 1970s and not providing more incentives than are needed to fulfill that immediate goal of incentivizing building and ultimately paying for the Penn projects and related transit and public realm improvements. As a comparison, Reinvent Albany assumed that all sites would receive the maximum abatement as allowed in the Hudson Yards UTEP, which ESD has stated many times that it does not intend to do. As a result, Reinvent Albany has estimated a much higher dollar amount for the value of abatements than the value estimated by ESD.

ESD further notes that Reinvent Albany assumed a 3.5% annual straight-line growth rate for property assessed values, which was taken from the C&W Report. ESD assumed a lower growth rate of 3% in assessed values and used the transitional assessed value method that is used by New York City Department of Finance, which is a more accurate away to estimate future property tax revenue.

- Land and Additional Development Rights ("ADR") Revenues
  Land and ADR revenues are based on 2020 appraised values with annual 3% growth. To be conservative and given the long development period, ESD applied a 30% discount to the appraised values for land value and ADR. At the time of the future sale of any land or ADR, ESD will obtain current appraised values to ensure that the maximum market value of any land or ADR is returned to the State.

- PILOMRT and PILOST Revenues
  ESD assumed that both PILOST and PILOMRT would equal normal sales tax and mortgage recording tax payments equal to 8.875% sales tax and 2.8% mortgage recording tax.

- Development Timeline
  ESD used a more conservative and longer development timeline than the timeline shown in the FEIS, which is the timeline that Reinvent Albany used. For its revenue projections from the GPP developments, ESD used office market absorption projections based on projected demand for office, historical data on demolitions and conversions of office buildings in New York City, vacancy and space measurement adjustments, and an estimate of construction time for underlying infrastructure and vertical construction in the Penn Station area. These assumptions result in a more conservative estimate of revenues, which ESD believes is more appropriate.

9. *Why is ESD using a high discount rate of 6.25%?*

A. The analysis assumes a 6.25% discount rate for all public fiscal impacts (development revenues and payments in lieu of taxes) as a component of the approach to estimating the present value of the GPP developments to the State.

The present value estimate is different from a bond underwriting that would project public financing revenues or a potential bond financing. When structuring revenues for the purpose of understanding net financing proceeds, analysts take into account not only an interest rate, but also required reserves, debt service coverage ratios, capitalized interest, financing fees, and other market considerations that may affect values.

ESD notes that Reinvent Albany used a less conservative discount rate of 4.5%, which was the rate used for the most recent bond offering by the Hudson Yards Infrastructure Corporation. ESD consulted with financial advisors and believes that 6.25% is not "high" and that a more conservative rate is appropriate to estimate potential development revenues as this is a revenue analysis and not an underwriting of a bond. Given the complexity of both the Penn Station projects and the GPP developments as well as the current environment of rising interest rates and inflation, ESD believes that a more conservative analysis is the correct approach.

Timeframe – *ESD's cost assumptions do not specify a timeframe, using only "early" and "longer-term" to differentiate between costs. This is a significant omission considering the City/State MOU, the basis for this cost analysis, states the financing mechanism for this project can exist for 80 years – the "Temporal Cap."*

10. *What specific years do these tables cover? What is the anticipated beginning and end of the financing mechanism this project creates? What years do the terms "early" and "longer-term" refer to?*

A. The illustrative Sources & Uses table posted by ESD does not cover specific years as the timing of Penn Reconstruction and Expansion and the GPP developments are still fluid and subject to future approvals and negotiations. The terms "early" and "longer-term" refer to those improvements expected to be constructed during the construction of Penn Reconstruction and Expansion respectively. As shown on the table, "early" costs are under the Penn Reconstruction heading and "longer-term" costs are under the Penn Expansion heading, which is still subject to the selection of Sites 1-3 through the federal NEPA process as the preferred location of Penn Expansion. As a rough guide, a projected construction schedule can be found on page 20-10 of the FEIS Construction Chapter.

With regard to the "Temporal Cap", it is important to note that the Temporal Cap begins 80 years after the first date a property in the Penn Station Area GPP is rendered tax exempt and not 80 years from now. In addition, the Temporal Cap does not refer to the existence of financing mechanisms, but instead states that PILOT revenue shall revert to the City of New York after 80 years. Furthermore, the City-State LOMA also limits the maximum financing term length to 40 or 45 years depending on bond or federal financing. Given the commitment to complete the Penn Station projects as quickly as possible and the funding and construction timing constraints described above as well as the maximum financing term length, ESD and MTA believe that 80 years will be enough time to finance the Penn Station projects.

11. *When is the debt issued to cover the costs expected to be fully paid?*

A. As noted above in our answer to Question 4, ESD and the MTA will consider multiple potential financing programs typically used to finance large rail infrastructure projects, including credit assistance under TIFIA, RRIF, and tax-exempt bonds. ESD will provide updates as to the timing of any financing and as mentioned above, any financing taken on by the State will be subject to PACB approval.

"Sources" of Revenue from Development

Revenues grouped under "other" development revenues total $2.5 billion, approximately $500 million more than expected PILOT revenues from property taxes (totaling $2.1 billion). Given that property taxes are the largest recurring revenue source, it is important to understand how other revenues are projected to bring in such a large sum.

For example, PILOST and PILOTMRT are likely to be small; in the Hudson Yards project, for example, PILOTMRT were estimated to bring in only 1% of the project's total development revenues. Similarly, transfer development rights and density improvements bonuses represented less than 3% of total estimated revenues in Hudson Yards (Cushman &Wakefield, 2006).

12. *What is the breakdown of revenues listed as "Other Development-generated Revenues by development rights, land value, PILOST, and PILOTMRT?"*

A. At this time, ESD cannot break down Other Development-generated Revenues further as it would impair ESD's negotiating position with future developers to maximize value for the State. As noted above in our answer to Question 8, each of these revenue sources will reflect current market values at the time ESD enters into development agreements with future developers.

13. *Why is there a $350 million difference between the City-State PILOT Cap of $3.75 billion and the total from PILOTs listed under "Sources," which is $3.4 billion? How were the PILOT sources calculated?*

A. The City-State PILOT Cap $3.75 billion figure refers to the maximum dollar amount of project costs that can be funded by PILOT revenues as per the percentage caps outlined in the City-State LOMA. It is an allowance of how much PILOT can fund according to the City-State LOMA and not a revenue projection. The $3.4 billion figure, on the other hand, is ESD's projection of PILOT revenue that the GPP developments will generate based on current market and financing assumptions.

See answer to Question 8 above for the basis for PILOT source projections.

14. *Does land value refer to the state's sale of Sites 1-3 after ESD acquires them by eminent domain? If so, what is the projected land value of each site?*

A. Yes, land value refers to the revenues from the disposition of Sites 1-3 should those sites be selected by the federal government as the preferred alternative for Penn Expansion. However, ESD and MTA believe that the land value revenues will roughly equal the cost to acquire the sites and will therefore likely be a wash. The costs to acquire Sites 1-3 are part of the Penn Expansion estimated costs shown on the Project Costs Assumptions document. It is also important to note that ESD has not sought nor received authority to acquire these sites through eminent domain and it has not yet been determined among MTA, Amtrak, ESD or another public entity who would exercise any eminent domain. In any case, eminent domain cannot be initiated until Sites 1-3 are selected as the preferred alternative for Penn Expansion; the federal environmental review process has been completed; and additional approvals and procedures under applicable eminent domain laws have been completed.

At this time, ESD cannot share the projected land value on a site-by-site basis as it would impair ESD's negotiating position with future developers of Sites 1-3. As noted above in our answer to Question 8, land value revenues will reflect current market values at the time of sale.

15. *Are the PILOT sources based on the FEIS' majority commercial development scenario, which would represent the most lucrative development scenario? If so, how would these sources change under alternate development scenarios that include more residential space?*

A. No. See above answer to Question 8 for the basis for PILOT source projections.