

FOR CONSIDERATION

September 14, 2010

To: The Directors

From: Dennis M. Mullen

Subject: The State of New York's Credit Enhancement of the Private Development at the World Trade Center

Request For: Authorization to Request Authorization from PACB to Release Funds from Assigned Port Authority Funds Held in Escrow by ESDC in order to be used to Fund Construction and a Contingency Fund for 3 World Trade Center LLC in Accordance with an Agreement between Silverstein Properties and the Port Authority

I. Background

On March 25, 2010 the Governor of New York State ("NYS"), Mayor of New York City ("NYC"), Port Authority of New York and New Jersey ("PA") and Silverstein Properties ("SPI") reached an agreement in principle (the "Tower 3 Agreement") to proceed with the planned development of Towers 3 and 4 at the World Trade Center ("WTC") site. The State, NYC, and PA each agreed to provide a total of \$600 million -- \$200 million each -- towards the construction of and credit enhancement/contingency fund for financing Tower 3. SPI set up a private subsidiary known as 3 World Trade Center LLC ("3 WTC LLC") to finance and construct Tower 3.

Although the Tower 3 Agreement provides that ESDC will provide the State's \$200 million portion of both the construction and contingency fund, ESDC will only pass through funds from other sources, primarily PA funds, as detailed below. Accordingly ESDC's finances, budget and bonds will not be impacted or put at risk by the Tower 3 Agreement. Although various other terms of the Tower 3 Agreement may change in no event will ESDC assume any financial or other obligation other than acting as the conduit for payment in accordance with the final Tower 3 Agreement. ESDC will cooperate with SPI and continue to act in partnership with the other public parties in effectuating this construction and financing assistance.

Of the \$600 million contribution from the public parties, \$210 million will be secured for up front equity and \$390 million will be provided for a contingency fund. With respect to the upfront equity contributions, NYS and NYC will provide \$80 million and \$130 million respectively. The \$390 million public contingency fund includes contributions from the PA, NYS and NYC as follows: \$200 million PA, \$120 million NYS and \$70 million NYC. The contingency fund would be drawn down if 3 WTC LLC fails to cover the debt service on the Liberty Bonds it used to finance the tower. The contingency fund would be drawn down sequentially in three tranches as follows: \$80 million from the PA; \$100 million split parri passu from the PA and NYS (\$50 million each); and a three-way split parri passu with \$210 million from the PA, NYS and NYC (\$70 million each).

These equity contributions and accompanying contingency fund are dependent upon benchmarks 3 WTC LLC must achieve in order to allow construction of the tower to continue past podium level. If 3WTC LLC does not achieve these benchmarks within six years following the completion of the transit hub

(approximately 2020), all public subsidies, equity and operating reserves, are to be returned to the public parties. There are two benchmarks 3 WTC LLC must achieve to proceed with the tower and activate the public subsidies: (1) 3 WTC LLC must secure lease commitments of 400,000 square feet, at \$60 psf; and (2) obtain \$300 million in private equity or third-part unaffiliated mezzanine debt.

II. Funding

On August 26, 2010 the PA Board approved the general terms of the Tower 3 Agreement and including the State's \$200 million obligation. The Governor intends to commit \$20 million in up front equity through the \$35 million New York State Economic and Community Development Program authorized in the 2008-09 Enacted Budget. The Governor and the Division of Budget have determined that funding for the remaining \$180 million equity and operating reserve obligations should come from the PA funds ("PA Funds") available to ESD pursuant to the agreement (the "PA Agreement") between the State, the State of New Jersey and PA, dated as of January 1, 1990, or alternative State funding determined by ESD in consultation with the Division of Budget.

III. Statutory Authority

The disbursement to the PA by ESD of the PA funds is within the statutory purposes and powers of ESDC and in accordance with the terms and conditions of the PA Agreement as assigned to ESDC, and the PACB Resolutions (as defined below).

IV. Source of Funds

The source of funds to be disbursed in accordance with these materials is \$145.0 million in future PA Funds and \$35 million in current PA Funds available to ESD pursuant to the PA Agreement. The payment of these PA Funds commenced when the State terminated its original World Trade Center leasehold in 1990. The Governor assigned NYS's portion of the PA Funds to ESD. ESD uses a substantial portion of these funds to pay debt service on ESD's Corporate Purpose Bonds and to fund the World Trade Center rent subsidy program. The balance of such payments and excess receipts are held in escrow by ESD, and, absent legislation, can be used for other purposes only with the authorization of the Directors and the approval of the Public Authorities Control Board ("PACB"), as required pursuant to Public Authorities Control Board resolutions 04-UD-838A and 06-UD900 (collectively the "Existing PACB Resolutions").

Staff is now requesting the Director's approval to submit a new PACB resolution (the "New PACB Resolution" and collectively with the Existing PACB Resolutions the "PACB Resolutions") authorizing the release of the excess receipts from the escrow account. Staff is also requesting the Director's approval to disburse the funds in accordance with the Tower 3 Agreement.

At the request of the State of New York ESDC has submitted the New PACB Resolution to authorize the excess receipts assigned to the ESDC escrow account - "lock box" – be allocated in accordance with the Tower 3 Agreement which includes the following terms and requires written notification from the executive director of the PA that the following PA obligations are met:

- (1) To the extent ESDC prospectively accumulates excess receipts in the current escrow account , \$60 million shall be reserved for and applied to the State's equity position in 3 World Trade Center LLC after meeting commitments set forth in the Existing PACB Resolutions and on the following terms. The \$60 million will NOT be made available for tower construction until 3 World Trade Center LLC: (a) preleases 400,000 square feet of commercial space at \$60 per square foot; (b) secures \$300 million in private equity or unaffiliated third party mezzanine debt; and (c) construction commences on the tower. ESDC will establish a payment schedule with the Port Authority to fund the equity position that comports with the payment schedule expressed in the 1990 Agreement.
- (2) If 3 World Trade Center LLC fails to begin tower construction 6 years after completion of the World Trade Center Transit Hub ESDC will automatically be released from the reservation of the \$60 million for equity and the funds will again be considered excess receipts pursuant to provisions of the Existing PACB Resolutions...
- (3) The ESDC "lock box" will also continue to capture funds up to \$85 million in future State excess receipts, and retain the current balance of \$35 million in excess receipts under the 1990 agreement. To the extent received by ESDC, these funds (the "120 Million") will continue be held in escrow but, after meeting commitments set forth in the Existing PACB Resolutions, will be reserved as a contingency fund for the Tower 3 financing until one of the following conditions is met: (a) 3 World Trade Center LLC demonstrates an operating shortfall and draws upon the 120 Million to cover debt service on Liberty Bonds consistent with the Tower 3 Agreement or (b) the State of New York is released from its contingency funding obligation.
- (4) The obligation to reserve the 120 Million as a contingency fund will be released if: (a) 3 World Trade Center LLC fails to begin tower construction 6 years after completion of the World Trade Center Transit Hub; or (b) 3 World Trade Center LLC refinances its Liberty Bonds whereupon all public parties would be released from contingency funding commitments.
- (5) Upon release of the contingency fund the 120 Million will again be considered excess receipts pursuant to provisions of the Existing PACB Resolutions.

V. Additional Submissions to the Directors

Resolution

September 14, 2010

CITY OF NEW YORK – 3 WORLD TRADE CENTER PROJECT – AUTHORIZATION TO REQUEST AUTHORIZATION FROM PACB TO RELEASE FUNDS FROM ASSIGNED PORT AUTHORITY FUNDS HELD IN ESCROW BY ESDC IN ORDER TO BE USED TO FUND CONSTRUCTION AND A CONTINGENCY FUND FOR 3 WORLD TRADE CENTER LLC IN ACCORDANCE WITH AN AGREEMENT BETWEEN SILVERSTEIN PROPERTIES AND THE PORT AUTHORITY AND TAKE ALL RELATED ACTIONS

RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the New York State Urban Development Corporation, relating to 3 World Trade Center Project, the Corporation be and hereby is authorized to submit a resolution to PACB authorizing the release of escrowed funds received from the Port Authority and disburse such funds to assist the financing and construction of 3 World Trade Center in accordance with these materials and the Tower Three Agreement, and take all related actions; and be it further

RESOLVED, that the Officers of the Corporation, be, and each of them hereby is, authorized and directed to take any and all action necessary to carry out the foregoing resolution and to carry out any authority or delegation granted to the Corporation in conjunction with such authorizations, including, but not limited to, the preparation and execution of any agreements, instrumentation and/or documents as such authorized officer may deem necessary or appropriate.