

FOR CONSIDERATION

June 24, 2010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: New York (New York) – Governors Island

REQUEST FOR: Determination of No Significant Effect on the Environment; Authorization to Transfer All or Substantially All of the Assets of Governors Island Preservation and Education Corporation (“GIPEC”) and to Take Related Actions, Including the Dissolution of GIPEC, the Winding Up of Its Affairs and the Assignment or Termination of Contracts; Finding Pursuant to the Public Authorities Accountability Act; Termination of the Harbor School General Project Plan; Assumption of Certain Liabilities; Delegation of Authority to Act on Behalf of ESDC as Sole Shareholder of GIPEC; and Authorization to Take Related Actions

I. **Background**

Governors Island Preservation and Education Corporation (“GIPEC”) was created in 2002 for the purpose of taking title to 150 acres (out of a total of 172 acres) of Governors Island (plus adjacent lands under water) (the “Island Property”) from the federal government. GIPEC received title to the Island Property from the federal government by quitclaim deed (the “federal deed”) in January 2003. GIPEC is charged with preserving, redeveloping and operating this property in accordance with, among other things, certain restrictions in the federal deed and a 2003 Memorandum of Understanding (“MOU”) between the City of New York (the “City”) and State of New York (the “State”).

GIPEC was organized under the Business Corporation Law with 100 percent of the shares owned by New York State Urban Development Corporation d/b/a Empire State Development Corporation (“ESDC”). GIPEC is managed by a 12-member Board of Directors, half of whom are nominated by and serve at the pleasure of the Governor and half of whom are nominated by and serve at the pleasure of the Mayor of the City. Under the MOU, the City and State equally provided funding for GIPEC’s annual operating and capital budgets through the expiration of GIPEC’s 2010 fiscal year on March 31, 2010.

Since taking title to the Island Property, GIPEC has made substantial investments in infrastructure stabilization, North Island historic building stabilization, demolition of certain

South Island structures, the promotion of summer season public visitation and preparation for initial Island Property tenancies. GIPEC has also undertaken substantial efforts toward development. In 2005, GIPEC issued a Request for Expressions of Interest and, in 2006, GIPEC conducted a broad solicitation for proposals for Island Property development. In connection with the 2006 Request for Proposals, ESDC adopted a generic General Project Plan for the Island property setting forth the broad development requirements and parameters contained in the transfer deeds and other guiding principles.

These efforts did not result in any viable master development proposal. Rather, one component development proposal, the adaptive reuse of Building 550 for use by the Harbor School, was pursued: in 2008, the generic, Island-wide GPP was terminated, a new, parcel- and development-specific GPP was adopted and a lease with the Harbor School was authorized.

II. Proposed Transfer and Related Transactions

GIPEC's efforts at development of the Island Property have made clear that additional public investment in infrastructure and planning is necessary to induce private sector commitments for development. In order to continue progress toward appropriate Island Property development at a time of increasing financial constraints upon the State, a non-binding Term Sheet was developed in April 2010 among the State, the City and ESDC. The Term Sheet, a copy of which is attached to this memorandum, broadly envisions the assumption by the City, through a new, City-controlled non-for-profit corporation ("Successor Entity") of ownership and control of the Island Property and the provision by the City of new funding therefor. This transfer of ownership, control and responsibility to the Successor Entity is to be accomplished through the structure described below.

a. Title Transfer

GIPEC will transfer to the Successor Entity, on an "as is/where is" basis by quitclaim deed, title to the Island Property, subject to all of the terms and conditions of the federal deed. GIPEC will also transfer to the Successor Entity, on an "as is/where is" basis, title to all GIPEC-owned personal property, including the two vessels (the *Coursen* and the *Swivel*) that provide access to the Island.

b. Financial Commitments: GIPEC and Successor Entity

In addition to the Island Property and related personalty as described above, GIPEC will also transfer to the Successor Entity all City and State funds held by GIPEC or in accounts at ESDC or the State Division of the Budget for the benefit of GIPEC except for a sum (the "Retained Sum"), not to exceed \$100,000 as reasonably determined by ESDC to be necessary to fund certain pension, social security and other GIPEC staff related expenses accrued up to the closing date but payable after closing (the "Transferred Funds"). Upon payment of all such GIPEC expenses, ESDC shall transfer any remaining Retained Sum funds to the Successor Entity.

The total of State funds allocable to Governors Island on account at ESDC and the State Division of the Budget as of the date of the Term Sheet was approximately \$26.2 million in capital funds

and approximately \$2.7 million in operating funds. All of the State capital funding has been appropriated but none is currently drawn down. With respect to these funds, the City, the State Division of the Budget, ESDC and the Successor Entity will cooperate to establish a process for the drawdown of such remaining funding by or for the benefit of the Successor Entity after closing. The Successor Entity will commit to using all Transferred Funds solely for the purposes of operating, maintaining, improving and/or planning for the redevelopment of the Island Property.

Consideration for the Island Property and related personalty shall be \$1.00 and the assumption of GIPEC liabilities as described below.

Upon closing, the Successor Entity shall assume all costs and expenses associated with the operation, maintenance and development of the Island Property. In addition to the transfer of operating funds and State capital funds described above, from and after closing, the City will provide (i) all funds necessary to maintain the operations of the Successor Entity and the Island Property, and (ii) all future capital funds needed by the Successor Entity in excess of the Transferred Funds and any funds generated by the Successor Entity. The City has committed to provide \$ 62 million in City capital funds to Governors Island, including \$41.5 million in unspent current and prior-year capital allocations, subject to appropriation and all applicable City approvals. From this funding, the Successor Entity will commit to do pre-development (schematic design) for the entire 40 acres of parkland required by the federal deed, build out the North Island portion of this open space and invest in critical Island infrastructure.

Upon closing, all existing GIPEC contracts will either be assigned to and assumed by the Successor Entity or will be terminated. All expenses incurred under these agreements (or by reason of their termination), whether by GIPEC before closing or by the Successor Entity from and after closing, will be borne by the Successor Entity and paid out of Transferred Funds or new funding provided by the City. Among the agreements to be assigned to the Successor Entity at closing is the Harbor School lease and the Successor Entity will become Landlord thereunder. In addition, the permits for Water Taxi Beach and with the Lower Manhattan Cultural Council for the artists' studios will be assigned to and assumed by the Successor Entity at closing.

c. Financial Commitments: Limited liability sharing by ESDC

GIPEC, ESDC and the Successor Entity will cooperate to identify any existing or potential claims against GIPEC and to wind up the affairs of GIPEC under the Business Corporation Law. This process will continue for a period of 12 months following the closing. It is expected that most if not all claims and liabilities of GIPEC that are identified through this process will be satisfied through the financial commitments described above or through insurance or third party indemnification; however, certain remaining liabilities will be shared equally between ESDC and the Successor Entity as discussed in this paragraph. Generally, claims against GIPEC which (1) are identified at or within 12 months of the closing of the title transfer; (2) are fully adjudicated within 3 years of closing; (3) relate to actions and events that occurred prior to closing; and (4) are not covered by insurance or a third party indemnification are to be equally shared liabilities of ESDC and the Successor Entity ("Shared Liabilities"). The following types of claims, for which the Successor Entity has assumed all responsibility, whenever arising, net

of any insurance recovery or third party indemnification, shall not be considered Shared Liabilities: (a) accounts payable of Seller and payment disputes of any type by any GIPEC contractor; (b) contract liabilities arising from the termination or assignment of contracts in connection with title transfer; (c) claims of any employment nature by current GIPEC staff who do not transfer to the Successor Entity or who leave the employ of the Successor Entity within one year of closing; and (d) environmental liabilities not relating to GIPEC's period of ownership.

d. Termination of General Project Plan for the Harbor School Civic Project

As noted above, the lease between GIPEC and the New York City Department of Education for the Harbor School will be assigned to Successor Entity which shall become the Landlord thereunder. Because the Harbor School is an as-of-right use under existing zoning and the General Project Plan does not provide for the exercise of any extraordinary powers under the New York State Urban Development Corporation Act with respect to this use, there is no need for the General Project Plan to remain in place once closing occurs and neither GIPEC nor ESDC has any further role or responsibility with respect thereto. Staff, therefore, recommends that the General Project Plan for the Harbor School Civic Project be terminated as of closing.

III. Public Authorities Accountability Act Compliance

In accordance with the Public Authorities Accountability Act as most recently amended, appraisals of the property to be transferred have been prepared. Copies of those appraisals are attached to this memorandum for your information and review. Because the assets being transferred comprise different types of property, separate appraisals were prepared of (1) the Island Property; (2) the items of personal property to be transferred, exclusive of the two vessels owned by GIPEC; and (3) the two vessels.

The appraisal of the Island Property, prepared by Jerome Haims Realty, Inc. and dated as of May 26, 2010, assigns a value of negative Eighty Four Million Seven Hundred Twenty-Five Thousand Dollars (-\$84,725,000) to the Island Property. This negative value is attributable largely to the deed restrictions applicable to the Island and its development, the infrastructure expenditures that are expected to be needed for Island development and the lack of income producing uses currently on the Island.

The personal property appraisal (exclusive of the two vessels owned by GIPEC), which was performed by Cool Risk Management Service and dated as of May 21, 2010, assigns a value to this property of One Million Forty-One Thousand One Hundred Thirty-One Dollars (\$1,041,131).

Appraisals of the two vessels, the Coursen and the Swivel, were prepared by Castlerock Risk Services, LLC. The appraisal of the Coursen, dated May 27, 2010, assigns a value of Four Million Five Hundred Thousand Dollars (\$4.5 million). (It should be noted, however, that a substantial portion of this value of this vessel is associated with the particular route (between the Battery Maritime Building and Soissons Dock) for which the vessel was designed and

constructed and on which it is operated. As is true of most ferries, use of this vessel is specific to this route and a change in route, i.e., the sale of the vessel to be used on another route, would result in a substantially lesser value.) The appraisal of the Swivel, which is a tugboat, assigns a value of Two Hundred Fifty Thousand Dollars (\$250,000) to this vessel.

The Island Property is being transferred for the purpose of continued maintenance and operation by the Successor Entity substantially as it is being maintained and operated by GIPEC now, and for ultimate development in accordance with the same guidelines and restrictions observed by GIPEC today. For this to be reasonably possible, it is necessary to transfer along with the Island Property, the personalty owned by GIPEC - especially the vessels, which provide the sole means of access to Governors Island – as a whole. When valued as a whole, the negative value attributed to the Island Property is only partially offset by the positive value of the personalty and the funds on hand being transferred and, therefore, no below market value disposition is involved in the contemplated transfers.

If, however, the transfer of the personalty and remaining funding is viewed as a separate transaction without consideration being paid to GIPEC, the transfer of these assets is necessary to accomplish the purpose of the transfer, which is the continued and uninterrupted operation of the Island Property. Further, such a transfer will permit the City to provide the new funding described above and apply it to the pre-development planning activities, North Island open space construction and infrastructure improvements also described above.

No private parties are participating in or receiving any value from the proposed transfers. Although no jobs are anticipated to be created as a result of the transfers, the Successor Entity will continue to employ staff as necessary to assure the continued operation and maintenance of the Island and to plan for its ultimate redevelopment. The transfer will permit the continued operation of the Island, including the summer and fall program of public access and the continued operation of the Harbor School and the artist studio space. In light of the unsuccessful prior efforts at attracting private development without further substantial public investment, staff believes and recommends that the Directors determine that there exists no reasonable alternative to the proposed transfer that would result in the same benefits to the public or achieve the purpose of the proposed transfer.

IV. Governance Changes

a. GIPEC

As described above, GIPEC would transfer all of its assets and provide for the assumption of its liabilities as of the closing date. Thereafter, GIPEC would have no further rights or obligations with respect to the ownership, operation or development of the Island Property (except to enforce the post-closing provisions contained in the purchase agreement between GIPEC and the Successor Entity; all such rights and obligations would be assumed by the Successor Entity).

The Term Sheet contemplates that immediately after closing, GIPEC would proceed with dissolution and the winding up of its affairs. This process involves the filing of a certificate of dissolution, the giving of notice to known creditors and claimants against GIPEC and the

publication of notice requiring all such creditors and claimants to present their claims against GIPEC at a date and time specified in the notice.

GIPEC's corporate existence will survive the filing of the certificate of dissolution to the extent necessary to prosecute or satisfy all claims against the corporation. ESDC will be responsible for the costs of dissolving and winding up the affairs of GIPEC, including publication and notice costs, filing fees and possibly litigation expenses. These will be paid out of available ESDC corporate resources.

Because the City will have no further interest in GIPEC after closing (except for the financial commitments described herein) it is proposed that the GIPEC organizational documents be amended as of closing to reconstitute the GIPEC board of directors to consist entirely of one or more ESDC senior staff members and to appoint one or more ESDC senior staff members as GIPEC's officers. This will facilitate the conduct of business necessary to accomplish the winding up of GIPEC's affairs.

b. Successor Entity

The Successor Entity shall qualify as, and upon closing shall succeed to all of the rights, obligations and restrictions of a "Permitted Island Operator," as defined by the federal deed. If the status of the Successor Entity as a Permitted Island Operator is challenged, the City will at its cost defend itself, the Successor Entity, GIPEC and ESDC against such challenge and shall indemnify and hold ESDC harmless from any reasonable third-party costs or liability incurred by ESDC resulting from such challenge. In addition, if the Successor Entity is deemed not to be a Permitted Island Operator pursuant to a non-appealable final court decision, the City shall undertake all reasonable steps necessary to cure the deficiency and ensure that a City-controlled Permitted Island Operator operates the Island.

The Successor Entity shall be governed by a 13-member board of directors which shall be comprised of individuals as set forth in paragraph 2(c) of the Term Sheet attached to these materials. The Successor entity will not be an ESDC subsidiary.

V. GIPEC Approval

The proposed transfer and related actions as described in these materials was approved by the Board of Directors of GIPEC at a meeting held yesterday and the GIPEC Directors ordered the submission of these transactions, including the transfer of all or substantially all of GIPEC's assets to the Successor Entity, to ESDC, as sole shareholder of GIPEC, for ESDC's approval.

VI. Delegation of Authority

It may be necessary for ESDC to execute certain documents and take certain actions as the sole shareholder of GIPEC to accomplish the corporate governance changes and other transactions described in these materials. The Directors are being requested to delegate authority to the

Chairman and Chief Executive Officer, the Executive Director, the Executive Vice President – Strategy, Policy and Public Affairs and/or the Senior Vice President, Legal and General Counsel, or their designees, to execute all documents and take all actions necessary or convenient for ESDC as sole shareholder of GIPEC to accomplish the actions described in these materials.

VII. Environmental Review

The Office of the Mayor, as lead agency, has completed a coordinated environmental review of the proposed transfer, pursuant to the requirements of the City Environmental Quality Review (CEQR) procedures and the State Environmental Quality Review Act (SEQRA). This review found the proposed transfer would not have a significant effect on the environment. ESDC participated as an involved agency and concurs. It is recommended that the Directors make a Determination of No Significant Effect on the Environment.

VIII. Requested Actions

The Directors are requested to make a finding pursuant to the Public Authorities Accountability Act and to authorize the transactions described in these materials and the Term Sheet, including without limitation: (1) the transfer of all or substantially all of the assets of GIPEC, including funds on hand or to be drawn down, to the Successor Entity; (2) the assignment and/or termination of all GIPEC contracts; (3) the termination of the General Project Plan for the Harbor School Civic Project; (4) the dissolution and winding up of the business affairs of GIPEC, including the payment by ESDC of expenses associated therewith; (5) the limited sharing of certain liabilities by ESDC; (6) the changes to the governance documents of GIPEC with respect to the composition of the board of directors of GIPEC and to the individuals serving as officers of GIPEC; (7) the termination of all ESDC employees serving as GIPEC staff; (8) the delegation of authority to senior ESDC officers to act on behalf of ESDC as sole shareholder of GIPEC to accomplish the transactions contemplated by these materials; (9) the taking of related actions.

IX. Recommendation

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

X. Attachments

- a. Resolutions
- b. Appraisal of Island Property
- c. Appraisal of Related Personalty
- d. Appraisal of the vessel *Coursen*
- e. Appraisal of the vessel *Swivel*
- f. Term Sheet dated April 9, 2010 among the City of New York, The State of New York and the New York State Urban Development Corporation d/b/a Empire State Development Corporation

June 24, 2010

New York City (New York County) – Governors Island –Determination of No Significant Effect on the Environment; Authorization to Transfer All or Substantially All of the Assets of Governors Island Preservation and Education Corporation (“GIPEC”) and to Take Related Action Including the Dissolution of GIPEC, the Winding Up of Its Affairs and the Assignment or Termination of Contracts; Finding Pursuant to the Public Authorities Accountability Act; Termination of the Harbor School General Project Plan; Assumption of Certain Liabilities; Delegation of Authority to Act on Behalf of ESDC as Sole Shareholder of GIPEC; and Authorization to Take Related Actions

WHEREAS, the City of New York (the “City”), the State of New York (the “State”) and this Corporation have entered into a non-binding term sheet which contemplates the transfer of that portion of Governors Island (the “Island Property”) that is owned by GIPEC, this Corporation’s wholly-owned subsidiary, and substantially all of GIPEC’s other assets, to a new, City-controlled entity (the “Successor Entity”); and

WHEREAS, the Successor Entity will assume, and GIPEC will be relieved of, all right and responsibility for the further maintenance, operation, preservation and development of the Island and the City will provide new funding therefor; now, therefore

BE IT RESOLVED, that on the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby determines that the proposed action will not have a significant effect on the environment; and be it further

RESOLVED, that the Corporation in its corporate capacity and as sole shareholder of GIPEC, hereby approves the transfer by GIPEC to the Successor Entity of all or substantially all of GIPEC’s assets, including the Island Property, and including all or substantially all of GIPEC’s personal property, including the two vessels currently servicing the Island and substantially all City and State funds held in accounts by this Corporation for the benefit of GIPEC as well as the right to draw down previously appropriated funding that has not yet been drawn down, all as set forth in the Materials; and be it further

RESOLVED, that, to the extent that the transfer of assets authorized hereby might constitute the disposal by GIPEC of property for less than fair market value, the Corporation hereby determines, after giving due consideration to the appraisals and other information presented to this meeting and forming part of the Materials, that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer; and be it further

RESOLVED, that the Corporation hereby authorizes the voluntary dissolution of GIPEC and the winding up of GIPEC's affairs pursuant to the applicable provisions of the Business Corporation Law, including the giving and publication of notice to creditors and claimants and potential creditors and claimants, and the payment by the Corporation out of its funds on hand of all costs and expenses related thereto; and be it further

RESOLVED, that the Corporation hereby authorizes the assignment and/or termination by GIPEC of each of its contracts as may be necessary or advisable to accomplish the transactions described in the Materials and authorized hereby; and be it further

RESOLVED, that the Corporation hereby authorizes the assumption of liabilities by the Corporation in connection with the transactions described herein to the extent described in these Materials; and be it further

RESOLVED, that the Corporation hereby authorizes the changes to the governance documents of GIPEC with respect to the composition of the Board of Directors and the individuals serving as officers of GIPEC, such changes to be substantially as described in these Materials and effective as of the closing date of the transfer; and be it further

RESOLVED, that the Corporation hereby delegates to the Chairman and Chief Executive Officer, the Executive Director, the Executive Vice President – Strategy, Policy and Public Affairs and/or the Senior Vice President, Legal and General Counsel,, and/or their designees, to execute all documents and take all actions necessary or convenient for this Corporation, as sole shareholder of GIPEC, to accomplish the actions authorized herein; and be it further

RESOLVED, that the termination of all ESDC employees serving as GIPEC staff as described in the Materials be and hereby is authorized and approved; and be it further

RESOLVED, that as of the closing date of the asset transfer authorized herein, the General Project Plan for the Harbor School Civic Project shall be terminated and shall have no further force or effect; and be it further

RESOLVED that the Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized and empowered, in the name and on behalf of the Corporation, to execute such documents, including, without limitation, an Asset Purchase Agreement, a Liability Sharing Agreement and/or a Permitted Island Operator Agreement, and to take all such other action as may be necessary or advisable to effectuate the foregoing resolutions and the transactions contemplated thereby; and be it further

RESOLVED, that all actions heretofore and hereafter taken in furtherance of the foregoing be and they hereby are ratified, confirmed and approved as the acts and deeds of the Corporation.