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THE COUNCIL
REPORT OF THE FINANCE DIVISION
LARIAN ANGELO, DIRECTOR

COMMITTEE ON FINANCE
Hon. David Weprin, Chair
October 21, 2005

PRECONSIDERED RES. NO. : By the Speaker (Council Member Miller) and
Council Members, Weprin, Katz and Quinn

TITLE: Resolution approving the Agreement between the
Mayor and the Council, attached to this Resolution
as Appendix A, to spend payments in lieu of taxes
only for the purposes, and on the projects or items
listed on Exhibit 1 to such Agreement, pursuant to
Local Law 73 of 2005.

Today the Finance Committee will consider Preconsidered Res. No., a proposed resolution adopting the agreement between the Mayor and Council on the expenditure of payments in lieu of taxes ("PILOTS") pursuant to Local Law 73 of 2005. Local Law 73, adopted by the Council on June 30, 2005, provides that PILOTS may only be used for purposes agreed to by the Mayor and the City Council.

PILOTS:

New commercial developments are typically subject to full property taxes upon completion unless granted discretionary benefits by the City of New York (or agencies thereof) under its economic development authority, which can include tax exemptions. Oftentimes these tax exemptions involve an agreement for the beneficiary to make PILOT payments. Such payments are typically less than the amount of real property taxes that would otherwise be due. PILOTs reimburse the affected tax jurisdiction for revenue lost by virtue of a tax exemption and provide the public sector with a predictable revenue stream.

A major vehicle for granting tax exemptions for economic development is the New York City Industrial Development Authority (IDA). Property owned by or under the jurisdiction of the IDA is exempt from general real estate taxes. Notwithstanding such exemption, when the IDA leases property to a non-governmental entity, the lease agreement requires them to enter into a PILOT agreement, either separately or as part of the project documents.¹ The IDA is required to transmit PILOTs received by it to the City.²

Recent City Council hearings brought to light the fact that IDA PILOTs have been used to fund economic projects without Council authorization. In the wake of this, the Council sought to obtain information on the collection and use of PILOTs. The Council, however, found that this information is extremely difficult to obtain due to the fact that there is no centralized system to account for these payments. Government

¹ General Municipal Law §858(15).

² General Municipal Law § 874(3).

watchdogs and elected officials including the City's Comptroller, Public Advocate, and Independent Budget Office voiced concerns regarding the lack of transparency and legislative involvement in the PILOT process.

On May 11, 2005, the Council adopted Int. No. 584-A, codifying the prohibition against the unilateral use of PILOTs without an appropriation by the Council or other specific legal authorization in accordance with the City Charter. The proposed legislation also set forth a monthly reporting requirement on the collection and use of PILOTs.

On June 9, 2005 the Mayor vetoed Int. No. 584-A, disagreeing with both the Council's legal position for adopting the legislation, as well as with its policy objectives.

LOCAL LAW 73 OF 2005

Local Law 73 of 2005 embodies a compromise reached between the Council and the Mayor over the use of PILOTs. The local law ends unilateral use by the Mayor of PILOTs by providing that PILOTs "that have not been remitted to the general fund may only be spent pursuant to one or more agreements between the mayor and the council." Local Law 73 provides that such agreements to spend PILOTs must be approved by Council resolution. For purposes of the legislation, "payments in lieu of taxes" is defined as "all payments that are due pursuant to actions of the New York city industrial development agency or the New York city economic development corporation or any city agency with respect to any project when such payments are made in lieu of real property taxes or other taxes which would have been levied by or on behalf of the city if the project were not thereby exempted from the payment of such taxes."

Local Law 73 takes effect the earlier of (i) the date the council adopts a resolution approving the first agreement between the mayor and council pursuant to section one of this local law; or (ii) September 30, 2005.

THE PROPOSED AGREEMENT

The proposed agreement (attached to the Preconsidered Res.) effectuates the purposes of Local Law 73 by providing that PILOTs that have not been remitted to the general fund may only be spent pursuant to the agreement. The agreement defines PILOTs exactly as they are defined in Local Law 73 and provides that they may only be spent “in the manner described in the attached Exhibit 1, for the purposes and the projects, or on the items, listed on the Exhibit 1, as amended from time to time” pursuant to the agreement.

Paragraph 4 of the agreement provides that whenever PILOTs are proposed to be spent for purposes, projects or items not previously authorized by the agreement, or amendments are proposed to purposes, projects or items previously authorized by the Agreement, a proposal will be made to amend Exhibit 1 of the Agreement which shall include a description of the proposed purposes, projects or items or amendments to previously authorized purposes, projects or items, and upon adoption by resolution of the Council and approval of the Mayor, Exhibit 1 will be deemed amended to include such purposes, projects or items as added or amended.

The agreement also provides, pursuant to Local Law 73, for the issuance of quarterly reports by the Mayor or his or her designee, setting forth for each PILOT the amount of and entity making the PILOT, the difference between the amount of the real

property or other tax that would have been due but for the exemption and the PILOT, and the manner in which such PILOT is collected, held and expended.

Exhibit 1 to the agreement sets forth two purposes for which PILOTs may be spent, upon authorization of the agreement by the Council. Those purposes are:

Item 1. Hudson Yards Infrastructure Projects. PILOTs paid on account of development in the Hudson Yards Redevelopment Area would be authorized to be spent on Hudson Yards infrastructure projects as defined in Res. No. 760, adopted by the Council on January 19, 2005 and on the related costs of the Hudson Yards Infrastructure Corporation and the Hudson Yards Development Corporation.

Item 2. New York City Economic Development Corporation (EDC). The agreement authorizes PILOTs to be spent by EDC as follows: (i) in an annual amount not to exceed \$5 million for EDC's operations in accordance with its City contracts; (ii) in an annual amount not to exceed \$700,000 for the In-Place-Industrial Parks program; and (iii) in an annual amount not to exceed \$300,000 for the Mid-Town Community Courthouse. EDC would have to return any of these amounts remaining unspent at the end of a fiscal year to the general fund, consistent with the principle that PILOTs are revenues of the City.

PRECONSIDERED RES. NO.

This Preconsidered Resolution constitutes the Council's approval of the agreement between the Mayor and the Council to spend PILOTs only for the purposes, and on the projects or items listed on Exhibit 1 to such Agreement. The agreement would

become effective once the Council has adopted the resolution and the Mayor has signed the agreement.

PRECONSIDERED

RESOLUTION NO.

By the Speaker (Council Member Miller) and Council Members Weprin, Katz and Quinn

**RESOLUTION APPROVING THE AGREEMENT
BETWEEN THE MAYOR AND COUNCIL, ATTACHED TO
THIS RESOLUTION AS APPENDIX A, TO SPEND
PAYMENTS IN LIEU OF TAXES ONLY FOR THE
PURPOSES, AND ON THE PROJECTS OR ITEMS LISTED
ON EXHIBIT I TO SUCH AGREEMENT, PURSUANT TO
LOCAL LAW 73 OF 2005**

Whereas, On June 30, 2005 the Council adopted Int. No. 665, signed by the Mayor on July 20, 2005 (“Local Law 73 of 2005”); and

Whereas, Local Law 73 of 2005 provides that payments in lieu of taxes that have not been remitted to the general fund may only be spent pursuant to one or more agreements between the Mayor and the Council and that such agreement or agreements must be approved by resolution of the Council; and

Whereas, Local Law 73 of 2005 defines payments in lieu of taxes as “all payments that are due pursuant to actions of the New York City industrial development agency or the New York City economic development corporation or any city agency with respect to any project when such payments are made in lieu of real property taxes or other taxes which would have been levied by or on behalf of the city if the project were not thereby exempted from the payment of such taxes;” and

Whereas, The Mayor and Council have negotiated an agreement (the “Agreement” attached to this resolution as Appendix A) which provides that payments in lieu of taxes may only be spent in the manner described in Exhibit 1 to such Agreement, for the purposes and the projects, or on the items, listed on such Exhibit 1, as amended from time to time; and

Whereas, The Agreement provides that whenever payments in lieu of taxes are proposed to be spent for purposes, projects or items not previously authorized by the Agreement, or amendments are proposed to purposes, projects or items previously authorized by the Agreement, a proposal will be made to amend Exhibit 1 of the Agreement which shall include a description of the proposed purposes, projects or items or amendments to previously authorized purposes, projects or items, and upon adoption by resolution of the Council and approval of the Mayor, Exhibit 1 shall be deemed amended to include such purposes, projects or items as added or amended; now, therefore, be it

Resolved, That the Council of The City of New York hereby approves the Agreement between the Mayor and the Council, attached to this Resolution as Appendix A, to spend payments in lieu of taxes only for the purposes, and on the projects or items listed on Exhibit 1 to such Agreement, pursuant to Local Law 73 of 2005.

AGREEMENT

THIS AGREEMENT dated as of the 27th day of October, 2005, by and between the Mayor of The City of New York (the "Mayor") and the Council of The City of New York (the "Council").

WHEREAS, Local Law No. 73 (Intro. No. 665) authorizes this agreement to set forth the terms and procedures pursuant to which The City of New York (the "City") may direct the use and expenditure of payments in lieu of taxes ("PILOTS"), as defined herein; and

WHEREAS, the Mayor and the Council desire to effect the purposes of Local Law 73 in a manner that furthers the economic development of the City;

NOW, THEREFORE, the parties hereto agree as follows:

1. PILOTS that have not been remitted to the general fund may only be spent pursuant to this Agreement.
2. For purposes of this Agreement, "PILOTS" shall mean all payments that are due pursuant to actions of the New York City Industrial Development Agency or the New York City Economic Development Corporation or any City agency with respect to any project when such payments are made in lieu of real property taxes or other taxes which would have been levied by or on behalf of the City if the project were not thereby exempted from the payment of such taxes.

3. Pursuant to Paragraph 1 of this Agreement, PILOTs that are not remitted to the general fund may be expended only in the manner described in the attached Exhibit 1, for the purposes and the projects, or on the items, listed on the Exhibit 1, as amended from time to time pursuant to paragraph 4 below.

4. Whenever PILOTs are proposed to be spent pursuant to this Agreement for purposes, projects or items not previously authorized by this Agreement or amendments are proposed to purposes, projects or items previously authorized by this Agreement, a proposal will be made to amend Exhibit 1 of this Agreement. Such proposal shall include a description of the proposed purposes, projects or items or amendments to previously authorized purposes, projects or items. Upon the resolution of the Council and approval of the Mayor, Exhibit 1 shall be amended to reflect the addition or amendment of such purposes, projects or items, and this Agreement shall be deemed amended to include such purposes, projects or items as added or amended.

5. Pursuant to Local Law 73, commencing on January 1, 2006, and each quarter thereafter, the Mayor, or such person as the Mayor shall designate, shall issue a quarterly report to the Council, setting forth for each PILOT the amount of and entity making the PILOT, the difference between the amount of the real property or other tax that would have been due but for the exemption and such PILOT, and the manner in which such PILOT is collected, held and expended.

6. This Agreement shall become effective upon its execution by the Mayor and upon the adoption by the Council of a resolution approving this Agreement.

Mayor

Approved by the City Council by Resolution ____

EXHIBIT 1

1. Hudson Yards Infrastructure Project: Pursuant to Preconsidered Res. No. 760 adopted by the Council on January 19, 2005 ("Resolution No. 760"), PILOTs paid on account of development in the Hudson Yards Redevelopment Area may be spent on Hudson Yards infrastructure projects as defined in Resolution No. 760, and the related costs of the Hudson Yards Infrastructure Corporation ("HYIC") and the Hudson Yards Development Corporation. Such expenditure of PILOTs shall include the assignment, including the assignment and sale of the contract right to receive the payments of PILOTs, to a trustee to repay bonds issued by HYIC to fund Hudson Yards infrastructure projects.

2. New York City Economic Development Corporation: PILOTs collected by the PILOT Trustee, as defined in and pursuant to the Memorandum of Understanding ("MOU") dated as of the 1st day of July 1992 by and among the New York City Industrial Development Agency, New York City Economic Development Corporation ("EDC"), the New York City Office of Management and Budget, and the New York City Department of Finance, may be spent by EDC in accordance with the MOU, (i) in an annual amount that shall not exceed \$5,000,000, for the operations of EDC pursuant to the City's economic development and maritime contracts with EDC, (ii) in an annual amount that shall not exceed \$700,000, for the In-Place Industrial Parks (IPIP) program, and (iii) in an annual amount that shall not exceed \$300,000, for the Mid-Town Community Courthouse. Any amounts paid to EDC pursuant to this Paragraph 2 that remain unspent as of the end of a fiscal year shall be paid by EDC to the General Fund of the City.