

January 28, 2014

**MEMORANDUM TO THE TRUSTEES**

**FROM THE PRESIDENT and CHIEF EXECUTIVE OFFICER**

**SUBJECT: Contribution of Funds to the State Treasury**

**SUMMARY**

The Trustees are requested to authorize the release of up to \$50 million in funds to the Empire State Development Corporation (“ESD”) in support of the New York State Open For Business economic development initiative and the New York State Innovation Venture Capital Fund, as authorized by legislation approving the 2013-14 Budget of the State of New York (Chapter 57 of the Laws of 2013).

**BACKGROUND**

The Authority is requested, from time to time, to make financial contributions and transfers of funds to the State or to otherwise provide financial support for various State programs. Any such contribution or transfer of funds must (1) be authorized by the law; (2) be approved by the Trustees ‘as feasible and advisable;’ and (3) satisfy the requirements of the Authority’s General Resolution Authorizing Revenue Obligations dated February 24, 1998, as amended and supplemented (“Bond Resolution”). In addition, as set forth in the Trustees’ Policy Statement dated May 24, 2011, a debt service coverage ratio of 2.0 is to be used as a reference point in considering any such payments or transfers.

The Bond Resolution’s requirements to withdraw monies “free and clear of the lien and pledge created by the [Bond] Resolution” are such that (a) withdrawals must be for a “lawful corporate purpose as determined by the Authority,” and (b) the Authority must determine, taking into account among other considerations anticipated future receipt of revenues or other moneys constituting part of the Trust Estate, that the funds to be so withdrawn are not needed for (i) payment of reasonable and necessary operating expenses, (ii) an Operating Fund reserve for working capital, emergency repairs or replacements, major renewals or for retirement from service, decommissioning or disposal of facilities, (iii) payment of, or accumulation of a reserve for payment of, interest and principal on senior debt or (iv) payment of interest and principal on subordinate debt.

The State’s fiscal year (“SFY”) 2013-14 Budget legislation authorizes the Authority as deemed “feasible and advisable by its trustees” to provide up to \$90 million in contributions to the State’s general fund, or as otherwise directed in writing by the State’s director of the budget, whereupon such funds “will be utilized to support energy-related initiatives of the state or for economic development purposes.” In addition, the Budget legislation specified that up to \$25 million is to be considered for payment by June 30, 2013 and with the remainder of any such contribution considered for payment by March 31, 2014.

At the request of the State's director of the budget, the Authority deferred its decision on the initial "up to \$25 million" amount until "on or before September 30, 2013" with \$20 million to be transferred to the State's General Fund and \$5 million transferred to ESD, in furtherance of ESD's statewide economic development initiatives. In July 2013, the Trustees approved, and the Authority subsequently transferred such amounts. With regard to the remaining amount contemplated in the SFY 2013-14 Budget (\$65 million), staff made no recommendation at the time, but indicated that it would return to the Board with a recommendation when such contribution is to be considered for payment.

## DISCUSSION

In accordance with Section 17 of Part HH of Chapter 57 of the Laws of 2013, the State's director of the budget has formally requested that the Authority transfer on or before January 31, 2014 the sum of \$50 million to the credit of ESD in furtherance of ESD's Statewide economic development initiatives. With regard to the remaining amount contemplated in the SFY 2013-14 Budget (\$15 million), staff is not recommending any action at this time, but will return to the Board by the end of the State's fiscal year on March 31, 2014 with a recommendation as to that amount based on the financial circumstances of the Authority at the time such contribution is to be considered for payment.

The New York State Open for Business ("Open for Business") campaign was initiated to market New York State as an ideal place for businesses to invest and create jobs. A central component of this business development campaign is to promote the advantages of doing business in the State in order to retain and grow New York businesses as well as attract other businesses to New York from across the country and around the world. The New York State Innovation Venture Capital Fund ("IVCF") is a newly designed program to provide critical seed and early-stage funding to incentivize new business formation and growth in New York State and facilitate the transition from ideas and research to marketable products. The goal is to help nascent businesses develop to a stage where they can attract private sector financing. It is expected that \$45 million and \$5 million of the requested funding will be utilized for Open for Business and IVCF, respectively. Both the Open for Business and IVCF are being administered by ESD. The central tenet fits well with the Authority's Mission to promote economic development and job creation based directly on its legislatively authorized Expansion Power, Replacement Power, Preservation Power, and Recharge New York Power Programs, among the other economic development programs in which the Authority is authorized and directed to engage.

The low-cost power and other benefits the Authority makes available under its various programs are valuable economic development tools that the Authority desires to promote, and there exists significant amounts of unallocated power and other benefits available under these programs that can support economic development in the State. Accordingly, the Authority has an interest in promoting the effectiveness of ESD's Statewide economic development initiatives, thereby increasing the number and quality of businesses that apply for available benefits under the Authority's Programs.

Based on a recognition of the mutual goals of the Authority and ESD with respect to economic development and based on discussions with staff from ESD and the Division of Budget, it has been suggested that the Authority consider using a portion of the \$90 million authorized for a voluntary contribution to provide funding to directly support ESD's Statewide economic development initiatives. The Authority and ESD can work collaboratively to support the initiatives and the parties can also monitor and evaluate them to determine their impact on the Authority's low-cost power programs.

Staff has reviewed the effects of the release of \$50 million in State contributions at this time on the Authority's expected financial position and reserve requirements. In addition, in accordance with the Board's Policy Statement, staff calculated the impact of these transfer amounts on the Authority's debt service coverage ratio and determined it would not fall below the 2.0 reference point level. Given the current financial condition of the Authority, its estimated future revenues, operating expenses, debt service and reserve requirements, staff is of the view that it will be feasible for the Authority to release \$50 million at this time.

#### FISCAL INFORMATION

Staff has determined that sufficient funds are available in the Operating Fund to transfer \$50 million in contributions at this time and that such Authority funds are not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority's Bond Resolution. Such transfer pursuant to the SFY 2013-14 Budget legislation was anticipated and is within the amount reflected in the Power Authority's 2014 Operating Budget approved by the Trustees at their December 17, 2013 meeting.

#### RECOMMENDATION

The Treasurer recommends that the Trustees affirm that the transfer of \$50 million to the Empire State Development Corporation is feasible and advisable and authorize such payment.

For the reasons stated, I recommend the approval of the above-requested action by adoption of a resolution in the form of the attached draft resolution.

Gil C. Quiniones  
President and Chief Executive Officer

Att.  
State Treasury Contribution

## **RESOLUTION**

RESOLVED, That the Trustees hereby authorize a payment to the Empire State Development Corporation (“ESD”) in the amount of \$50 million from the Operating Fund as authorized by Chapter 57 of the Laws of 2013 as discussed in the attached memorandum of the President and Chief Executive Officer; and be it further

RESOLVED, That the amount of \$50 million to ESD described in the foregoing resolution is not needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That as a condition to making the payments specified in the foregoing resolution, on the day of such payments, the Treasurer or the Deputy Treasurer shall certify that such monies are not then needed for any of the purposes specified in Section 503(1)(a)-(c) of the Authority’s General Resolution Authorizing Revenue Obligations, as amended and supplemented; and be it further

RESOLVED, That the Chairman, the Vice Chair, the President and Chief Executive Officer, the Chief Operating Officer, the Executive Vice President and General Counsel, the Executive Vice President and Chief Financial Officer, the Corporate Secretary, the Treasurer and all other officers of the Authority be, and each of them hereby is, authorized and directed, for and in the name and on behalf of the Authority, to do any and all things and take any and all actions and execute and deliver any and all certificates, agreements and other documents that they, or any of them, may deem necessary or advisable to effectuate the foregoing resolution, subject to approval as to the form thereof by the Executive Vice President and General Counsel.