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Gale A. Brewer, Borough President

**MANHATTAN BOROUGH BOARD
RESOLUTION APPROVING WITH CONDITIONS
ULURP Nos. C190357PQM and N190356ZRM**

**FOR ACQUISITIONS OF REAL PROPERTY AND A ZONING RESOLUTION TEXT
AMENDMENT TO FACILITATE THE EAST SIDE COASTAL RESILIENCY
PROJECT IN COMMUNITY BOARDS 3 AND 6**

WHEREAS, On June 26, 2019 ULURP applications #C190357PQM and N190356ZRM were referred to the Manhattan Borough Board for review;

WHEREAS, the Proposed Project is a multi-agency initiative that was selected by the Department of Housing and Urban Development (HUD) to receive disaster recovery grant funding through the Rebuild By Design competition, which was organized in response to the devastation of Hurricane Sandy in order to promote enhanced resiliency in impacted communities;

WHEREAS, The New York City Departments of Transportation (DOT), Citywide Administrative Services (DCAS), Environmental Protection (DEP), and Small Business Services (SBS) (collectively the "Applicants") are seeking two ULURP approvals for (1) the acquisition of real property and (2) a text amendment to the New York City Zoning Resolution ("ZR") § 62-50 "General Requirements for Visual Corridors and Waterfront Public Access Areas" and § 62-60 "Design Requirements for Waterfront Public Access Areas" to facilitate the East Side Coastal Resiliency (ESCR) Project (the "Proposed Project");

WHEREAS, The Proposed Project aims to address coastal flooding vulnerability in lower Manhattan by implementing a system that reduces flood risk, improves access to the waterfront, and enhances waterfront parkland;

WHEREAS, the Proposed Project is bounded by Montgomery Street on the south and continues north along parcels of Montgomery and South Streets, Avenue C, East 23rd Street, and the Franklin Delano Roosevelt East River Drive (the FDR Drive) right-of-way. The Proposed Project is also aligned with City parkland that includes John V. Lindsay East River Park, Murphy Brothers Playground, Stuyvesant Cove Park, and Asser Levy Playground, including a segment with the Consolidated Edison Company of New York (Con Edison) East River Generating Station. In the north, the Proposed Project will connect to the existing U.S. Veterans Administration (VA) Medical Center flood protection system. In total, the Proposed Project extends through the Lower East Side, East Village, Alphabet City, Stuyvesant Town, Peter

Cooper Village, and Kips Bay neighborhoods and is within the areas overseen by Manhattan Community Boards 3 and 6 (CB3 and CB6);

WHEREAS, Project Area One of the Proposed Project extends from Montgomery Street on the south to the north end of East River Park at approximately East 13th Street. The primary land use in Project Area One is the East River Park. This area contains existing pedestrian bridges across the FDR Drive to the East River Park including: the Corlears Hook, Delancey Street, East 6th Street, East 10th Street, and the East Houston Street overpass. On the south end of this area, the Proposed Project is in the street right of way of Montgomery and South Streets including land under an elevated segment of the FDR Drive. Project Area One includes residential and highway uses with Pier 42 to the east and along the East River. The proposed acquisitions are located within the residential areas of the Gouverneur Gardens Housing Corporation, the East River Housing Corporation, and the New York City Housing Authority (NYCHA)'s Baruch and Riis Houses;

WHEREAS, Project Area Two of the Proposed Project extends from approximately East 13th Street to East 25th Street, with uses that are primarily highway, street right of way, utility, parks and open space, and community facility. This area includes the Con Edison East River Generating Station (Con Edison Acquisitions) and the FDR Drive between East 13th Street and Murphy Brothers Playground. Inclusive of park use, land uses further north along the alignment include street right of way (Avenue C and land beneath the elevated FDR Drive) through to the waterfront open space at Stuyvesant Cove Park. North of this park, the Project Area Two alignment includes street right of way (e.g. East 23rd Street), parkland at Asser Levy Playground, and a community facility at the existing VA Medical Center;

WHEREAS, since January 5, 2015, the City has regularly engaged CB3 and CB6 on design proposals for the ESCR project;

WHEREAS, on March 27, 2018, CB3's Full Board voted to not support the ESCR project design that emerged from this process without revisions;

WHEREAS, on April 11, 2018, CB6's Full Board voted to not support the ESCR project design that emerged from this process without revisions;

WHEREAS, in October 2018, the City unveiled a significantly redesigned proposal for the ESCR project, identified in the DEIS as "Alternative 4" or the "Preferred Alternative";

WHEREAS, according to the City, a major reason for abandoning the original plan was that the Preferred Alternative 4's construction would not have to be staged, thus reducing the construction schedule from five to three and a half years;

WHEREAS, the Preferred Alternative features a number of new design elements in East River Park that differ from the previous design iteration, including:

- The raising of the majority of East River Park 8-9 feet above its current elevation and locating the flood protection systems below grade;

- The reconstruction of an additional overpass bridge at Corlears Hook Park;
- A flyover bridge to address the perennially dangerous conditions at the Consolidated Edison (ConEd) plant's waterfront "pinch point" between East 15th and East 13th Streets;
- The full reconstruction of the East River Esplanade, including the aging bulkhead, which would include the addition of direct waterfront access and step-downs to the East River;
- The rebuilding of all of the comfort stations;
- The renovation and expansion of the 10th Street Playground;
- The reconstruction of the East River Park amphitheater, which is a cultural institution for the Lower East Side;
- The re-introduction of basketball courts at the north end of East River Park that were lost in the previous design;
- The addition of a "nature play area" in East River Park near Delancey Street;
- The inclusion of additional barbecue pits at the south end of East River Park;
- The removal of approximately 981 trees, to be replaced by 1,442 new trees that are mature trees wherever feasible;
- Pile driving for the floodwall construction within the park and closer to the waterfront, and therefore further away from residential units than in the previous design iteration;
- The moving of the line of flood protection from the west side of East River Park, abutting the FDR Drive, further east toward the East River, located wholly within East River Park, in order to adhere to the City's primary objective to protect both the residential neighborhood, people, and the park itself to avoid having to repair the new park after flooding and storm events, as well as to account for the likelihood of increased tidal inundation from anticipated sea level rise; and
- Providing for barge delivery, water-side construction, and drainage and sewer construction to occur largely within East River Park, limiting construction traffic on the residential side of the park and minimizing the drainage repair work that would have to be done on active roadways that the previous design iteration would have required.

WHEREAS, many members of the community stated a preference for the previous design iteration with additional revisions, because it utilized a system of floodwalls and berms (where feasible) as defenses to protect neighborhoods;

WHEREAS, for many in the community, the ESCR process since Fall 2018 has frayed trust in

government and public agencies because of the drastic change in plan design done without community consultation;

WHEREAS, on June 28, 2019, CB3's Full Board voted in a revised resolution (with the original vote held on June 25, 2019) to support with conditions the ESCR project design that emerged from this process as the Preferred Alternative 4;

WHEREAS, on June 12, 2019, CB6's Full Board voted to support with conditions the ESCR project design that emerged from this process as the Preferred Alternative 4;

WHEREAS, many members of the community have also requested a study by outside, independent experts of the feasibility of all the alternatives that have been proposed, including the "Preferred Alternative" as well as recommendations to ensure that construction does not negatively impact the residents of NYCHA and the environment while meeting the federal spending deadline;

WHEREAS, there has not been consensus among the City, City Council and State Legislature on whether the Preferred Alternative triggers the necessity of the public trust doctrine on dedicated parkland approval via alienation for this preferred park plan, although on June 11, 2019, Parks provided CB3 with a letter clarifying their position on alienation, noting that the current plan, including construction within the park, will "further park purposes" and be consistent with New York State's public trust doctrine because it provides flood protection and integral infrastructure upgrades to the park itself, and therefore does not require alienation legislation. However, some view this lack of a consensus is an additional risk;

WHEREAS, ULURP #C190357PQM for the ESCR Project Preferred Alternative 4 only authorizes the City to acquire property and does not preclude or limit any negotiations with any specified property owner as stated in the CB3 resolution;

WHEREAS, this project will be subject to a rigorous permitting process that will involve consultation with many federal and state agencies and the project must secure permits from the US Army Corp of Engineers (USACE), the National Oceanic and Atmospheric Administration (NOAA), and the NYS Department of Environmental Conservation (NYS DEC) given the impact that such construction may have on the marine ecology, and the City has not fully discussed this process with the community or adequately advised them of steps and timeline involved in obtaining those permits and being able to commence construction or the possible seasonal restrictions that the permits will place on construction because of aquatic life;

WHEREAS, many years of stewardship and composting have ensured that native plants and habitat for birds, insects and fish were thriving in the park, habitats for wildlife will be lost during the duration of the closure and may now have to be moved in certain seasons, thereby affecting the homes and migration patterns for wildlife;

WHEREAS, members of CB3 and CB6 have expressed concerns around preliminary construction staging plans, what DDC refers to as 'sequencing,' of sections of the East River Park, the Asser Levy Playground, the Murphy Brothers Playground, and Stuyvesant Cove Park

that has yet to be finalized in the Preferred Alternative;

WHEREAS, CB6 has the lowest amount of open space per capita of any community district in the City of New York, and of that open space a large portion, including Stuyvesant Cove Park, Murphy's Brother's Playground, and Asser Levy Park, will be closed by construction lasting between 6 months to 2 years;

WHEREAS, DDC plans to bisect Asser Levy Park with a flood-control wall and sliding gate, protecting the landmarked bath house, but leaving the playing fields and East 25th Street susceptible to tidal surging and flooding;

WHEREAS, on the East 20th Street median, between the easternmost end of the 20th Street Loop into Stuyvesant Town and Avenue C, DDC plans to build a 10' x 60' x 10' interceptor gate house, which will close storm drain pipes to reroute incoming waters during flooding into deeper culverts, and thereby mitigate flooding in areas behind the coastal protections; and

WHEREAS, the following are potential significant adverse impacts on the environment and residents of the surrounding neighborhood during the construction period for the Preferred Alternative 4:

- Urban Design and Visual Resources, as existing waterfront views from certain upland locations would be blocked;
- Natural Resources, as noted by the NOAA, the proposed project would destroy trees, plantings, insect habitats and adversely affect tidal wetlands which will have an adverse impact on several vulnerable aquatic species including winter herring and striped bass as well as birds' habitats and migrations;
- Hazardous Materials, contaminants could be disturbed during excavation as the proposed project would disturb the subsurface of hazardous materials, including at historical Manufactured Gas Plant sites;
- Transportation, as East 10th Street between the traffic circle and the FDR Drive service road would be converted from a two-way to a one-way eastbound road and the service road in front of the BP Gas Station would be closed to vehicular traffic at East 23rd Street;
- Noise and Vibration, noise and air pollutant emissions by the construction site could affect open public space and public health;
- Greenhouse Gas Emissions, Preferred Alternative 4 would result in up to approximately 48,889 metric tons of CO₂e emissions; and
- Open Space, as over 51 acres of combined open space of East River Park, Murphy Brothers Playground, Stuyvesant Cove Park, and Asser Levy Playground would be temporarily lost and displaced for 6 months to 2 years;

WHEREAS, these impacts will also be felt by all nearby CB3 and CB6 residents (including children, parents, elders, disabled persons, including sight and hearing impaired), youth sports groups, and all other sports groups;

WHEREAS, the youth of the Lower East Side and their parents rely on East River Park for activities to keep children safe and active and that Title 1 schools require additional resources to move children to other parts of the city to access open space resources;

WHEREAS, the adverse effects resulting from construction will be disproportionately felt by lower-income communities of color living in the 1/2-mile area adjacent to the proposed project, including:

- Approximately 28,000 residents living in neighboring NYCHA developments;
- Approximately 20% of all residents in the study area who live in poverty; and
- Approximately 51% of all residents that live in the study area who are minority residents (about 101,000 persons).

WHEREAS, the Proposed Project will create publicly accessible Americans with Disabilities Act (ADA) open spaces at Pier 42, Pier 35, and Phase IV of the East River Waterfront Esplanade project as mitigating factors to offset the temporary loss of open space;

WHEREAS, Parks has also promised a number of improvements to local parks and also proposes plans to mitigate temporary losses to open space assets and public facilities, all of which taken together still do not provide full compensation for the tremendous loss of open space; and

WHEREAS, a number of proposals for additional mitigation are currently described as being "explored," "investigated," or "assessed," by the City; concrete plans for many of these impacts have not been fully identified and committed to at this time.

THEREFORE BE IT RESOLVED that the City must to commit to the following before final approval:

- The City must work with concerned community organizations to identify a mutually agreed upon independent non-City based environmental consultant to expeditiously review and evaluate the alternatives in the DEIS and describe reasonable interim measures that could be taken to minimize any adverse impacts on the community until the project is implemented. As such, the DEIS must not be finalized until such recommendations and review are presented;
- The City must make a definitive commitment to a phased timetable of construction within the East River Park, as well as completion of Asser Levy Playground, the Murphy Brothers Playground, and Stuyvesant Cove Park, in a manner that does not impact the

overall timeline for project competition with necessary permit applications. This phased timetable shall be disclosed and the final plan decided on through engagement consultation with the community, CB3 and CB6;

- The City must commit to and release a new plan to replace the inadequate and dangerous re-routing of bike and pedestrian lanes on East 20th Street, First and Second Avenue; and
- The City must provide temporary space for the LES Ecology Center to continue all environmental education and composting programming during construction, integrate the LES Ecology Center's long-delayed Compost Yard upgrades into the ESCR project and create a sustainable, resilient building in East River Park so that the Ecology Center can continue to offer education and stewardship programming.

THEREFORE BE IT FURTHER RESOLVED that the following additional mitigations must be included in the East Side Coastal Resiliency project:

- Where the City is working with other entities to identify recreational resources that may be opened to the community during construction, these entities must disclose all locations and capacities of these other resources;
- The City must inform and consult the community about the likely effects of seasonal work restrictions and the approval timeline of permits by USACE, NOAA, and NYC DEC, and communicate these permit's impacts upon the construction timeline and mitigate accordingly;
- Where the impact of the ESCR Preferred Alternative 4 on wildlife has not been studied adequately, the City must release further impact construction studies upon marine ecology and wildlife in consultation with USACE, NOAA, and NYC DEC standards and mitigate for the return of birds, insects, and fish that would lose their habitat in the park during construction as well as mitigate the migration of rodents into residential areas during the period of construction;
- Where NYC Parks is exploring providing alternative recreational opportunities throughout the Lower East Side neighborhoods, the locations and funding for such programs must be disclosed and discussed with the nearby residents prior to enacting them;
- Where the City is assessing opportunities for improvements to parks and playgrounds in the vicinity, it must explicitly identify which projects are new and not necessarily already in the capital projects pipeline, and disclose the timeline for said improvements;
- The City must improve activation of Waterside Pier with active and passive recreational spaces and explore the creation of temporary spaces for active uses in CB3 and CB6 such as: Basketball City, a temporary space on the top level of the Skyport Marina parking garage, the possible use of temporary barges, anchored off existing park areas, or green decking underused lots such as the Allen Street Malls, the vacant Allen Street building

and the space underneath the Williamsburg Bridge;

- Provide local residents with access to other open areas, sports fields and city parks, in the form of Metrocards, shuttle buses, free ferry service or other types of transportation or financial support;
- Commit to prioritizing permits for local neighborhood youth groups both during construction (except where that would conflict with other local park youth groups) and into the future of the East River Park;
- Where Parks has committed to a Lower East Side Greening program and the separate opportunity to plant up to 1,000 trees beginning in Fall 2019 and create up to 40 bioswales, it must work with local community organizations to spearhead such a program and update CB3 and CB6 as soon as possible regarding the proposed schedule and locations. In addition, tree guards and plans for the care of the trees must be included as part of the tree planting operation;
- Where the City is exploring purchasing lighting to be used at several Lower East Side parks to extend playing time at fields for permitted use during construction of the proposed project, the City must evaluate the impact of new lighting and playing on any surrounding residential buildings and consult with those local communities, and guarantee field priority for local youth leagues;
- Where the City is also assessing the feasibility of utilizing quieter construction methods and considering selecting quieter equipment models for cranes, generators, compressors, and lifts, it must guarantee the equipment would be available for the duration of the construction period prior to application approvals, make these methods a condition of any bids or Request for Proposals (RFPs) for ESCR construction, and work towards not necessitating night time construction; and
- Where mitigations are "under consideration" in order to achieve "cost effective reduction of greenhouse gas emissions from the construction of the proposed project, it must be committed to prior to project approvals that when the construction contracts are put out for bid and/or RFPs are issued, they must require the use of biodiesel fuel on-site, require targets be met for the volume of recycled steel and aluminum generated on-site, meet sustainability requirements by seeking an Envision certification, and commit contractors to divert as much construction waste as possible for recycling;
- The City must present a comprehensive plan on emergent and non-emergent access to Waterside Plaza and adjacent schools when ESCR barriers are fully deployed;
- The City must conduct additional traffic studies regarding expansion of the NYC Summer Streets program;
- Where NYC DOT is investigating supporting bicycle infrastructure upgrades along the alternate route, including new markings and signage, it must specify where this re-

rerouting and signage would be located and consider additional solutions including more dedicated bicycle lanes on additional routes in consultation with CB3 and CB6;

- The City must develop alternative routes deemed safe for all, including pedestrians, runners, and recreational cyclists of all ages by curbing or prohibiting micro mobility (i.e. electric scooters) usage in the East River Park, in collaboration with CB3 and CB6 and institute them before the Greenway is closed;
- A comprehensive redesign of the East 20th Street bike lane, which was originally designed around a now-obsolete L train mitigation plan, to facilitate faster construction of the interceptor gate house there, unless an alternative site is found;
- The City must provide a legal left turn onto Avenue C at the East 18th Street traffic signal; with appropriate signage and signaling to improve alignment with the flood barrier and allow for a less circuitous route for westbound and southbound exiting traffic;
- DOT must develop a plan addressing the recently narrowed traffic lanes on East 20th Street that allows for passage along East 20th Street during the construction of the interceptor gate house and an operational plan for ambulance access to the First Avenue “hospital row” corridor when barriers are deployed;
- Design the East 20th Street interceptor gate house with contextually appropriate materials to reflect the historical significance of Peter Cooper Village/Stuyvesant Town, and the previous Gas House District;
- An installation of a comfort station at Murphy’s Brothers’ Playground;
- Ensure that all existing art pieces in the project area that would be affected by ESCR’s construction will not be demolished and will be included as permanent installations in ESCR’s new landscaping. Should their work not be included, they must be returned to each artist and the artist must be generously compensated for the removal of their invaluable pieces. All artists must be immediately contacted about the future of their work related to the construction of ESCR;
- Incorporate public art installations and signage with multiple language translations at various points to provide differentiation, historical context and maintain neighborhood identity along the waterfront;
- Provide a more comprehensive and robust explanation of the schedule advantages of the Preferred Alternative 4 over Alternative 3 given that the possible seasonal construction restrictions were not factored into the timeline advantages and provide a cost-benefit analysis for the Preferred Alternative 4 construction plan with the aim of expedient construction that does not include a full closure of the East River Park;
- Minimize dust and noise throughout the construction area;

- Consider topsoil and salt resistant indigenous plants for reuse to re-establish natural passive areas in park;
- Ensure ADA compliant access to and within the park including braille signage, adequate water fountains and adequate lighting for safety and accessibility;
- Work with park stewards to identify and protect biodiversity, identify alternative habitat areas, transfer usable park materials and plants rescued from East River Park to other alternative open spaces, and create new open green spaces near East River Park to help offset the loss of carbon sinks in CB3;
- Make available temporary water parks or water play features that are available before the first summer season of the Park's closure;
- Continue to work with the Amphitheater Task Force to create a design that is consistent with local needs such as materials that further noise mitigation for the surrounding community;
- Provide timely updates to CB3 about any resolutions and continue discussions with Gouvernuer Gardens;
- Immediately inform individual residents whose views to the waterfront would be blocked in certain upland locations;
- Include social resiliency and community preparedness programming and funding in schools and community groups and provide a weekly update email on construction process, alternative spaces and recreation opportunities;
- A construction hotline must be created and operated 24/7 during demolition and construction in order for community members to report unsafe conditions, activities, or other concerns. The hotline should be staffed during all hours of construction. The number for this hotline should be posted prominently on the construction site and on social media on the websites of all involved agencies;
- The Parks Department, DDC and all involved agencies must agree to issue social media updates and regular updates with CB3 and CB6 to report on progress, setbacks and any changes to agreements or park plans;
- Establish a Community Advisory Group of stakeholders in the affected project area that will meet regularly with agencies from design and construction until project completion, with regular reports and meetings made available to community at-large; and
- Establish a protocol before work begins to allow City agency oversight over decision making for contractors during the construction period, with clear avenues for community input established, in order to mitigate against contractor decision making that disregards

the quality of life of area residents, and this must be a condition of any bids or RFPs for ESCR construction.

THEREFORE BE IT FURTHER RESOLVED, that the Manhattan Borough Board approves with conditions ULURP #N190357PQM, and #N190356ZRM for the Acquisitions of Real Property and a Zoning Resolution Text Amendment to Waterfront Regulations to Facilitate the East Side Coastal Resiliency Project in Community Boards Three and Six.

Adopted by the Manhattan Borough Board on the 23rd day of July 2019.

Gale A. Brewer
Manhattan Borough President
Chair of the Manhattan Borough Board