Statement on the Empire State Development General Project Plan and Letter of Mutual Agreement with the City for the Penn Station Area Civic and Land Use Improvement Project

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New York, NY – July 26, 2022 - Citizens Budget Commission (CBC) President Andrew S. Rein released this statement on behalf of the CBC:

"Catalyzing development in the Penn Station district and renovating the station itself should help New York's competitiveness and enable future growth. Allowing additional density would increase economic activity, and improving Penn Station will enhance mobility, access to jobs, and quality of life for commuters and New York City residents alike.

To this end, Empire State Development (ESD) recently released a final General Project Plan (GPP) and supporting Letter of Mutual Agreement (LOMA) between the City and State for the Penn Station Area Civic and Land Use Improvement Project (Penn Station area plan). While there may well have been other, preferable approaches to facilitate the area's development and renovate the station, the GPP and the LOMA financing framework offer a possible way forward. Critically, many important decisions about the project and its financing remain and will be made in the months and years to come.

The GPP includes design guidelines for new private development projects and public realm improvements in the project area, while the LOMA establishes a framework for how the State may use revenue from payments in lieu of property taxes (PILOT) and other one-time funding sources to finance three categories of capital projects: street-level public realm improvements; transit improvements outside of Penn Station itself, including new subway entrances and below-grade passageways; and the renovation and potential expansion of Penn Station.

CBC previously raised questions about the Penn Station area plan's scope and financing. The GPP and LOMA provide some clarity in four key areas:

- **City authority/oversight:** The project's proposed governance structure provides the City with significant authority over public realm improvement projects; some, albeit limited, input on both non-Penn Station transit improvements and future borrowing; and visibility into–but no authority over–the cost of Penn Station renovation or expansion projects or their scope beyond the broad set of design concepts agreed to in the LOMA.

- **Fiscal guardrails:** The project will divert PILOT revenue that would otherwise flow to the City as property taxes, but the LOMA directs how and how long the State can use that PILOT revenue. Notably, the share of project costs that can be funded with PILOT revenue will be capped for each contract during the design phase, insulating the City from potential for cost overruns, but not from the risk that the project will have a high initial cost base. Also important, the State retains PILOT revenue in excess of what is needed to fund the project or retire project debt early.

- **City property tax diversion:** The City will receive "make-whole" payments based on a 10-year property tax lookback prior to construction, escalated at 3 percent annually. This structure protects the City's downside if the valuations of commercial properties decline in the future. However, it deprives the City of the upside of tax revenue from faster appreciation of existing property values, and looking back 10 years for the "make-whole" payment may make the base-year value artificially low. It also is possible that the underlying growth in property taxes absent this plan could be greater than 3 percent over time.

- **Aligned incentives and allocated risk:** The State's pledge to fund interest support payments and put guardrails on financing and the use of PILOT revenue mean that the State bears the risk of slower-than-expected commercial development and cost overruns on the renovation of Penn Station and other related transit improvements. Importantly, this should incentivize the State to maximize long-term revenue and keep capital projects on time and on budget. However, care needs to be taken to ensure that the State is not incentivized to make financing decisions that prioritize short-term revenue over long-term revenue or that defer financing costs for near-term savings.

The GPP and LOMA provide limited financing information beyond the discussion of the PILOTs. However, this morning, ESD released additional financial information. This is a welcome, positive development. These tables provide important information that CBC has said should be released, and which facilitate further evaluation of the Penn Station plan. The financing document includes estimated sources and uses of funds for the project as a whole and broken out by the three project categories. It provides estimates of the anticipated sources of the State's share for each category (for example, PILOTs, one-time development proceeds, and existing State appropriations).

Going forward, it would be beneficial if ESD provided additional details about the assumed timing of public capital projects, financing actions, and funding flows, as well as high level contingency plans given the project's uncertainties. This would better allow the public to understand project risks, identify whether parts of the project still would proceed if federal funding or other sources fail to materialize, and evaluate whether the State is appropriately balancing its short-term funding plans with the long-term interest of New Yorkers.

If the project is approved, many financing decisions and capital project choices will be made by New York State and its public and private partners in the years to come. Three critical considerations will help ensure the project delivers maximum value to New Yorkers.

- **The scope of Penn Station renovation should be tightly controlled and focused on efficient and safe passenger flow.** The State and City should resist calls to add purely cosmetic or non-essential project elements, lest an already costly project become unaffordable.

- **Abatements should be based primarily on promoting economic growth.** The agreement does not specify the level of abatements that may be provided to the developers of sites currently on the City's tax rolls, except to limit them to the level and term available to qualified developments in the Hudson Yards Uniform Tax Exemption Policy area at the time a development project commences. It is important to note that the East Midtown rezoning area has no abatements, and that the Hudson Yards area itself does not allow for discounts in the portion of the district that lies east of Eighth Avenue. It also is worth considering that the current economic situation is uncertain and has made the economics and financing of many projects more challenging. In the long run, ESD should scrutinize any possible abatements based on whether projects would not be feasible without a specific PILOT discount amount. This will help ensure that the primary impetus for approving new development projects is to support the economic growth of the New York region.

- **This plan should not set a precedent for future rezonings or financings.** Notwithstanding the potential beneficial outcomes, going forward, the City generally should lead rezonings, both within the central business district, as it did for East Midtown, and for station area plans, as is currently the case for the new Metro-North stations in the Bronx. These projects may include appropriately designed value capture components, but revenue generation should not be the only reason for a rezoning. Likewise, the State should continue to encourage denser development around station areas and consider intervening in local land use issues when local governments fail to enact appropriate transit-oriented development plans.

CBC will continue to monitor the project to ensure that the plan is implemented in the best interest of current and future New Yorkers."