

RESOLUTION

BOARDS OF THE
METROPOLITAN TRANSPORTATION AUTHORITY
LONG ISLAND RAIL ROAD
AND NEW YORK CITY TRANSIT AUTHORITY

WHEREAS, the Vanderbilt Yard owned and operated by Long Island Rail Road is situated on portions of three city blocks (Block 1119, Lot 7, Block 1120, Lot 1 and Block 1121, Lot 1) in Brooklyn located between 5th Avenue to the west, Atlantic Avenue to the north, Pacific Street to the south and Vanderbilt Avenue to the east, close to the Atlantic Terminal, a major transportation hub next to the intersection of Flatbush and Atlantic Avenues, which provides direct access to service on the LIRR and 10 New York City Transit (“NYCT”) subway lines and is proximate to 11 bus lines and two additional subway lines; and

WHEREAS, the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation (“ESDC”) adopted a General Project Plan (“GPP”) for the Atlantic Yards Land Use Improvement and Civic Project (the “Atlantic Yards Project”) in accordance with the New York State Urban Development Corporation Act (the “UDC Act”), which Project comprises the construction of a major mixed-use development in the Atlantic Terminal area of Brooklyn, including in and over portions of the Vanderbilt Yard; and

WHEREAS, the Atlantic Yards Project is being undertaken by ESDC in conjunction with the City of New York and the New York City Economic Development Corporation (“EDC”) and calls for the development of a sports arena (“Arena”), 16 mixed-use buildings and a newly reconfigured LIRR train yard, all in close proximity to the Atlantic Terminal transportation hub; and

WHEREAS, the principal stated goal of the Atlantic Yards Project as stated in the GPP is to transform the area of the Project into a vibrant, mixed-use, mixed-income community that capitalizes on the tremendous mass transit service available at this unique location, and the Project’s stated aims include a number of significant public uses and purpose, including (a) creation of a publicly owned arena to accommodate the return of a major-league sports franchise to Brooklyn, while also providing a valuable athletic facility for the City’s colleges and local academic institutions and a new venue for a variety of musical, entertainment, educational, social and civic events; (b) the construction of thousands of rental housing units for low-, moderate- and middle-income New Yorkers, as well as market-rate rental and condominium units, in close proximity to mass transportation; (c) the erection of commercial office space to promote future economic growth and new jobs through sustainable, transit-oriented development; (d) publicly accessible open space that links together the surrounding neighborhoods; (e) new ground level retail spaces to activate the street frontages; (f) community facility spaces, programmed in coordination with local community groups, including a health care center and an intergenerational facility, offering child care as well as youth and senior center services; (g) sustainability and green design through the application of comprehensive sustainable design

goals that make efficient use of energy, building materials and water; and (h) environmental remediation of the site of the Project (“Project Site”); and

WHEREAS, the Project provides for important transportation improvements, namely, (a) the construction of an upgraded rail storage, cleaning and inspection facility at the Vanderbilt Yard for the LIRR (the “Upgraded Yard”) that would enable the LIRR to support service enhancements planned in connection with the MTA’s East Side Access project, and other transit improvements; and (b) the construction of a subway entrance on the south side of Atlantic Avenue at the intersection of Atlantic and Flatbush Avenues, eliminating the need for pedestrians approaching the transportation hub from the south to cross Atlantic Avenue to enter the subway, and thereby enhancing pedestrian safety, and with sufficient capacity to accommodate fans entering or leaving an event at the Arena as well as new residents and workers inhabiting the Project’s planned commercial and residential buildings; and

WHEREAS, pursuant to a Request for Proposals (“RFP”) dated May 24, 2005, the MTA solicited interest for the sale or lease of the air space and related real property interests in the Vanderbilt Yard (the “MTA Property”), thereafter receiving two proposals, one from Extell Development Company (“Extell”) and one from Forest City Ratner Companies (“FCR” or “Developer”), to purchase property interests in the Vanderbilt Yard; and

WHEREAS, at meetings of the Board on July 27, 2005 and September 14, 2005, the Board decided to take no further action with respect to the Extell proposal, and to authorize continued negotiations with FCR concerning the terms and conditions of FCR’s proposed purchase of property rights in the Vanderbilt Yard as part of the Atlantic Yards Project; and

WHEREAS, during the course of those further negotiations in 2005, FCR proposed (a) to purchase the MTA Property for One Hundred Million Dollars in cash; (b) to construct a temporary and replacement yard for the LIRR, and to be responsible for the planning, design, construction and incremental costs of operating in the temporary and new permanent yards, as well as environmental remediation and clean-up of the site; and (c) to construct a mass transit improvement to provide direct pedestrian access between the proposed development located over the Yard and the Atlantic Avenue/Pacific Street subway station complex, for which it would be responsible for the costs of planning, design, and construction.

WHEREAS, the FCR proposal was consistent with ESDC’s requirements for the Atlantic Yards Project that the Project Sponsors relocate and improve the Vanderbilt Yard, including by constructing a temporary yard and an Upgraded Yard (the “Rail Yard Improvements”) and to construct a new entrance to the Atlantic Avenue/Pacific Street subway station complex and related circulation improvements (the “Transit Improvements”); and

WHEREAS, ESDC, as lead agency for the Atlantic Yards Project, completed an extensive environmental review of the Atlantic Yards Project, pursuant to the State Environmental Quality Review Act (“SEQRA”) and MTA participated in that environmental review as an involved agency; and

WHEREAS, on November 27, 2006, ESDC accepted the corrected and amended Final Environmental Impact Statement (“FEIS”) for the Atlantic Yards Project, and on December 8, 2006, adopted detailed findings with respect to the Project’s environmental impacts in accordance with the requirements of SEQRA and its implementing regulations (the “Lead Agency SEQRA Findings”); and

WHEREAS, the Board, in December 2006, in its capacity as the Board of MTA, LIRR and NYCT, received and reviewed the FEIS, the Lead Agency SEQRA Findings, the staff summary prepared for the Board’s consideration and the MTA’s proposed SEQRA findings regarding the Atlantic Yard Project and contemplated actions of MTA with respect to the Project (the transfer of Vanderbilt Yard property rights from LIRR to MTA; the disposition by the MTA of a property interest in portions of the Vanderbilt Yard property rights to ESDC or the Project Sponsors; approval of the Rail Yard Improvements and the Transit Improvements; and any related real property acquisitions or dispositions by MTA, LIRR or NYCT, collectively referred to as the “MTA Transactions”) and approved and adopted the MTA proposed SEQRA findings and found and certified that the Project was one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the MTA Transactions those mitigation measures that were identified as practicable; and

WHEREAS, the Board, in December 2006, in its capacity as the Board of MTA, LIRR and NYCT, authorized the Chairman and the Executive Director and their respective designees to proceed with the negotiation of the MTA Transactions and to enter into agreements, leases, contracts and other documents, and to perform such further acts as necessary, desirable or convenient to effectuate MTA Transactions; and

WHEREAS, in February, 2007, MTA, LIRR and FCR entered into a license agreement with respect to the construction by FCR of a temporary yard for LIRR, pursuant to which FCR commenced the construction of the temporary yard in accordance with plans approved by LIRR;

WHEREAS, litigation has delayed the progress of the Atlantic Yards Project as a whole and economic circumstances have affected the capacity of developers, including FCR, to secure financing for large real estate development projects; and

WHEREAS, MTA, LIRR and NYCT staff have engaged in extensive discussions and negotiations with the Developer concerning possible modification of the proposed terms of the MTA Transactions, and those discussions and negotiations have resulted in proposed terms and conditions for the MTA Transactions, which have been summarized to the Board, as set forth in materials contained in and annexed to the staff summary, including the document annexed to the staff summary entitled “Major Atlantic Yard Transaction Points;” and

WHEREAS, FCR has constructed much of the temporary yard and plans to complete the construction of the temporary yard by the end of December, 2009, and if the temporary yard is not completed by the time that under the proposed terms LIRR would be anticipated to transfer

title to the portion of the Arena site located on LIRR property, FCR and ESDC would, under the proposed terms grant LIRR an easement that would permit LIRR to continue to operate the existing yard without interference and interruption until operations can be transferred to the temporary yard;

WHEREAS, ESDC has proposed modifications to the Atlantic Yards GPP in order to progress the Atlantic Yards Project, such proposed modifications to the GPP having been adopted by the Board of ESDC at its Directors' meeting on June 23, 2009, for purposes of further hearing and public comment pursuant to the UDC Act.

WHEREAS, in the GPP and proposed modified GPP, ESDC has set forth a number of understandings and requirements for the Project, including (i) Design Guidelines for the Atlantic Yards Project that provide an overall framework for creating a cohesive development with a distinct architectural language that modulates scale and materials while providing a variety of programmatic uses and open space, and that sets forth the height, setback, envelope, density, lot coverage, signage, and open space controls for the developable parcels, including for the properties owned by LIRR that are within the Project Site; (ii) an affordable housing commitment by the Developer; (iii) the requirement that before the Developer is permitted to open the Arena, it must complete the Transit Improvement; (iv) the obligation of the Developer, at the option of the New York School Construction Authority, the New York City Department of Education or other appropriate agency, to construct, at the expense of the Department of Education, a public school comprised of approximately 100,000 square feet; and (v) the City and State's commitment to financially support the Project, including, in the case of the City, through the provision of infrastructure improvements to the Project site; and

WHEREAS, ESDC, as lead agency for the Atlantic Yards Project under SEQRA, has reviewed the potential environmental impacts of the proposed General Project Plan modifications for the Atlantic Yards Project, together with proposed design changes, schedule changes and other changes in circumstances relating to the Atlantic Yards Project, and at its Directors' meeting on June 23, 2009 determined, based on a Technical Memorandum prepared by ESDC and its consultants and reviewed by MTA staff, that (a) such modifications and changes would not result, either individually or collectively, in any new or substantially different significant adverse environmental impacts not previously addressed in ESDC's FEIS for the Project; and (b) if such modifications to the General Project Plan are affirmed substantially as proposed and adopted by ESDC at such meeting, there is no need for a supplemental environmental impact statement under SEQRA in connection with such modifications or changes; and

WHEREAS, in accordance with SEQRA and its implementing regulations, such lead agency determination by ESDC is binding on MTA and other involved agencies; and

WHEREAS, the proposed terms and conditions do not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of any party, and if the Chairman and/or Chief Executive Officer determine MTA cannot successfully conclude contract negotiations with the Developer, MTA may terminate such negotiations and may choose

to have discussions with other proposers or other potential developers, or to begin a new selection process for the disposition of the MTA Property; and

WHEREAS, the Boards of the MTA, LIRR and NYCT find the proposed terms offered by the Developer to be advantageous to the MTA, price and other factors having been considered; and

WHEREAS, the Boards of the MTA, LIRR and NYCT further find that an appraisal of the value of such MTA Property was previously made by an independent appraiser and is included in the record of the transaction; and

WHEREAS, the Boards of the MTA, LIRR and NYCT further find that the proposed disposition of the MTA Property in question is intended to further the public welfare and to advance the economic development interests of the MTA by, inter alia, enhancing subway and rail commuter transportation and other services related thereto within the metropolitan commuter transportation district; promoting transit-oriented economic development by spurring the construction of commercial and residential and cultural facilities in close proximity to a major transportation hub; and creating substantial sources of revenue to MTA to help finance its capital programs; and that, in addition, the disposal of the MTA Property is intended to advance the economic development interests of the City and State of New York by facilitating the achievement of the above-noted goals and public purposes and uses of the Atlantic Yards Project, which is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues to the City, State, and MTA; and

WHEREAS, the Boards of the MTA, LIRR and NYCT find that the terms and conditions of the proposed disposition will provide for safe, continuous, and uninterrupted LIRR service, while enhancing the operations of the LIRR and the work environment of its employees by providing for the Developer's construction of an Upgraded Yard as well as a roof structure, or platform, over such Upgraded Yard and will provide for significant transit improvements to customers of NYCT by virtue of the Developer's construction of a subway connection on the south side of Atlantic Avenue at the intersection of Atlantic and Flatbush Avenues, eliminating the need for pedestrians approaching the transportation hub from the south to cross Atlantic Avenue to enter the subway, and thereby enhancing pedestrian safety, and with sufficient capacity to accommodate fans entering or leaving an event at the Arena as well as new residents and workers inhabiting the Project's planned commercial and residential buildings;

NOW THEREFORE, upon the recommendation of MTA's Interim Executive Director and Chief Executive Officer, the Boards of the MTA, LIRR and NYCT resolve as follows:

1. The Chairman or the Executive Director and their designees, acting singly, are hereby authorized to negotiate, execute and deliver contracts and any other necessary or appropriate agreements, leases, deeds, documents, and other instruments, and to take any other necessary or appropriate steps, to implement the Atlantic Yards Project as proposed to be modified in the modified Atlantic Yards General Project Plan, including but not limited to: (i) the transfer of the ownership of the Vanderbilt Yard, including the MTA Property, from LIRR to MTA; (ii)

effectuation of the terms and conditions described in the annexed Staff Summary and materials annexed thereto, and/or such other terms and conditions as MTA and Developer may negotiate, such terms to be acceptable to the Chief Executive Officer of the MTA, *provided*, that no such contract or other project documents shall be executed on behalf of the MTA, LIRR or NYCT unless the Empire State Development Corporation shall have previously affirmed its proposed modifications to the Atlantic Yards General Project Plan, substantially as proposed and approved at its Directors' meeting on June 23, 2009 in accordance with the requirements of the UDC Act.

2. The Chairman or the Executive Director and their designees, acting singly, and his or her respective designees are hereby authorized to take any and all actions as may be necessary, desirable or convenient to satisfy applicable legal or regulatory requirements in connection with the foregoing actions.

Dated: June 24, 2009