

Staff Summary



Subject WSY - MODIFICATION OF CONTRACTS
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature
Project Manager Name ROBERT PALEY/JEFFREY ROSEN

Date NOVEMBER 26, 2012
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	11/26/12	X		
2	Board	11/28/12	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal
3	Chief of Staff		
2	Chief Financial Officer		

PURPOSE: To obtain Board authorization of proposed modifications to contract terms governing development of the Long Island Rail Road's John D. Caemmerer West Side Yard (the "WSY"), as described below, which will establish a firm date by which Developer must close on its acquisition of a leasehold interest in the eastern portion of the WSY, and commit the Developer in the meanwhile to the performance of site preparation work at a cost of approximately \$50 million.

DISCUSSION:

A. Background

As authorized by the Board at its April 28, 2010 meeting, on May 26, 2010 the MTA entered into contracts with affiliates of a joint venture comprised of The Related Companies L.P. ("Related") and Oxford Properties Group, Inc. ("Oxford") that provide for the development by such entities (collectively "Developer") of air space and "terra firma" parcels located above and adjacent to the WSY. Such contracts (respectively, the "ERY Contract" and the "WRY Contract" and collectively the "Contracts") relate, respectively, to the eastern portion of the WSY (known as the "Eastern Rail Yard" and hereinafter referred to as the "ERY"), which is bounded by West 30th and 33rd Streets and 10th and 11th Avenues, and the western portion of the WSY (known as the "Western Rail Yard" and hereinafter referred to as the "WRY"), which is bounded by West 30th and 33rd Streets and 11th and 12th Avenues.

The terms and conditions that are set forth in the Contracts are summarized at length in the attached April 2010 staff summary (the "4/10 Staff Summary"). As described in the 4/10 Staff Summary:

- The Contracts provide for the execution and delivery in due course of long-term net leases (respectively, the "ERY Lease" and the "WRY Lease" and collectively the "Leases"), at closings that are to occur upon the satisfaction of certain conditions (respectively, the "ERY Closing" and the "WRY Closing" and collectively the "Closings");

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FINANCE COMMITTEE MEETING WSY Staff Summary (Cont'd.)



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- The compensation that is to be received by the MTA under the Contracts and the Leases at and following the Closings is based on land values that were established by means of a competitive RFP process prior to the onset of the financial crisis, and have a present value as of the ERY Closing of \$1,054,000,000, calculated using a discount rate of 6% and based on a pro-forma that assumes the exercise of purchase options under the Leases;
- In the meanwhile, as security for the performance of Developer's closing obligations under the Contracts, Developer has delivered to the MTA various contract deposits in the total amount of \$43.5 million (respectively, the "ERY Deposits" and the "WRY Deposits" and collectively the "Deposits");
- Unless the MTA is prepared to terminate the Contracts and refund all but \$10 million of the Deposits to Developer, Developer will not be obligated to close under the ERY Contract until three indicia of economic recovery (relating to office vacancy rates, architectural billings and residential condominium prices, and hereinafter referred to as the "Triggers") are satisfied; and
- Developer will not be obligated to close under the WRY Contract until the first anniversary of the ERY Closing.

The decision to enter into contracts that allowed Developer to defer the Closings pending satisfaction of the Triggers was predicated on the judgment that the MTA's interests would be better served by empowering and motivating Developer to pursue the design and marketing of the project during the economic downturn than by cancelling the 2008 conditional designation letters that were described in the 4/10 Staff Summary and awaiting the end of such downturn to issue a new RFP (the alternative that was then at hand). Following execution of the Contracts, Developer tirelessly marketed the project to prospective end users, and, having spent tens of millions of dollars developing detailed designs for the ERY, now stands on the threshold of closing on the construction financing it requires in order to develop the first phase of the project, including a 1.7 million square foot office tower on the "terra firma" portion of the ERY (the "South Tower"), which will in large part serve as the new world headquarters of Coach, Inc. ("Coach").

B. Proposed Modifications to Contracts

Developer is seeking to cause the ERY Closing to occur by December 31, 2012, but has advised the MTA that it may need until as late as June 1, 2013 to do so, depending on how quickly it is able to cause its lenders to close on its construction financing for the South Tower.

In the meanwhile, however, Developer is under deadlines from Coach and other prospective occupants to commence construction of the South Tower in December 2012, so as to be able to deliver the South Tower for occupancy by mid-2015. Accordingly, in consideration of the MTA allowing Developer to perform certain site preparation work in advance of the ERY Closing, Developer is prepared to commit to an unconditional June 1, 2013 deadline for the ERY Closing -- notwithstanding that the Triggers currently remain unsatisfied (and, depending on events beyond the control of the parties, could remain unsatisfied indefinitely) -- and to provide the MTA with additional financial benefits as described below.

Consequently, authorization is hereby requested to modify the Contracts to reflect the following understandings:

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1. Developer will be obligated to close under the ERY Contract by no later than June 1, 2013, time being of the essence and without regard to the Triggers.
2. Developer will be granted access to the terra firma portion of the ERY pursuant to a temporary entry permit, for the sole purpose of performing site preparation work, to consist of excavation, dewatering and the installation of caissons, piles, foundations and site utilities (collectively, the "Early Work").
3. The Early Work, estimated to cost approximately \$50 million, will be performed such that the resulting improvements to the ERY would have utility to any successor developer the MTA might ultimately designate if the ERY Contract were to terminate prior to the ERY Closing. It will be performed pursuant to fixed or guaranteed maximum price contracts that will be assignable to the MTA at the MTA's option; and the lien-free completion of the entirety of the Early Work, in accordance with plans approved by the MTA, will be jointly and severally guaranteed to the MTA by Related and a single-purpose entity capitalized for such purpose by Oxford.
4. Simultaneously with the execution of the temporary entry permit authorizing the Early Work, the existing ERY Deposits (in the aggregate amount of \$17,520,941) will be converted by Developer to cash and delivered to the MTA. The MTA will be entitled to use and apply such payment without restriction, such payment will be non-refundable to Developer and Developer will waive all claims with respect thereto, except in the event that the MTA breaches its obligation to close under the ERY Contract, and except such payment will be credited to Developer at the ERY Closing, as an early payment of the "ERY Closing Payment" that would otherwise be due at the ERY Closing.
5. Between commencement of the Early Work ("EW Commencement") and the date of the ERY Closing, Developer will pay to the MTA, in advance on a monthly basis, a pro-ratable monthly permit fee of \$227,908, which amount equals the partially abated monthly "Base Rent" that would be payable with respect to the South Tower had the ERY Closing occurred on the date of EW Commencement.
6. If the ERY Closing has not taken place by February 1, 2013, Developer will pay to MTA an additional permit fee with respect to the Early Work that will be computed by multiplying \$200,000 by the number of full or partial months after February 1, 2013 during which the ERY Closing has not occurred, which additional fee will become due and payable to MTA upon substantial completion of the South Tower, except as otherwise provided in paragraph 8 below.
7. When the ERY Closing occurs, the ERY Lease will be deemed to have commenced on the date of EW Commencement such that (i) all rent abatement periods under the ERY Lease will run from the date of EW Commencement as if such date had been the date of the ERY Closing, (ii) the \$9.4 million "First Post-Closing Payment" for the ERY that would otherwise be due under the ERY Lease on the first anniversary of the ERY Closing will instead be due on the first anniversary of EW Commencement and (iii) the \$9.4 million "Second Post-Closing Payment" for the ERY will likewise be due on the second anniversary of EW Commencement rather than on the second anniversary of the ERY Closing.

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FINANCE COMMITTEE MEETING WSY Staff Summary (Cont'd.)

8. If Developer fails to close under the ERY Contract by June 1, 2013, (a) all amounts described in paragraph 6 above will be immediately due and payable to MTA; and (b) Developer will pay to the MTA an additional \$5 million. The payment of such amounts, as well as payment of the fee described in paragraph 6 above, will be guaranteed by Related, as a pre-condition to EW Commencement.
9. At the ERY Closing, Developer will make both the "ERY Shea Facility Contribution" that is due under the ERY Contract at ERY Closing and the "WRY Shea Facility Contribution" that would otherwise not be due under the WRY Contract until the WRY Closing (i.e. a total of \$9.23 million, as increased by an amount equal to the percentage increase in CPI from February 2008 to the month that is three months prior to the month in which the ERY Closing occurs). This will enable the MTA to commence and prosecute with continuity the construction of certain improvements to the rail yard adjacent to the former Shea Stadium that will allow MTA to provide continuous four-track outages to Developer on the ERY and WRY. (As previously agreed, the MTA will be required to provide such track outages starting no later than 18 months after the date on which the full Shea Facility Contribution is made).
10. Upon EW Commencement, (i) the existing promissory note from Related to the MTA in the original principal amount of \$20,652,051.56 (the "Mortgage Note"), which is secured by a mortgage encumbering Related's interest in a property known as the "Veneto" property, will be increased to an amount equal to 80% of the current value of such Veneto property as determined by the MTA, and will remain in place to serve as partial security for the \$24.7 million WRY Deposit that is required under the WRY Contract, and (ii) the letter of credit that is currently posted as security for the WRY Deposit will be amended such that it will cover the difference between the required WRY Deposit and the amount of the Veneto Note as so increased.
11. As currently provided in the WRY Contract, Developer will be required to close under the WRY Contract by no later than the first anniversary of the ERY Closing. However, when the WRY Closing occurs, (a) all rent abatement periods under the WRY Lease will run from the first anniversary of EW Commencement as if such date were the WRY Closing Date and (b) the WRY Closing Payment, as well as the \$12.35 million "First Post-Closing Payment" and \$12.35 million "Second Post-Closing Payment" that are provided for in the WRY Contract will each bear interest at the rate of 6% per annum from the first anniversary of EW Commencement to the date of the WRY Closing. Thus, the present value of the WRY transaction to the MTA will remain unchanged, as if the ERY Closing were occurring as of EW Commencement.
12. As additional consideration for the foregoing accommodations by the MTA, Developer will provide the following improvements (not currently required under the existing agreements) with respect to elements of LIRR's infrastructure that are near the ends of their useful lives, thereby providing the MTA with new facilities that will improve the reliability and safety and the overall operations of the LIRR system:
 - a. Under the existing agreements, Developer is responsible for relocating the second floor of LIRR's control tower (including the supervisory controls) but is not obligated to upgrade the existing relay based signal system for operating signals and signal appliances. Developer and LIRR believe that it will be beneficial and more efficient to install a new microprocessor based system concurrently with the control tower relocation. As such, Developer will relocate the

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control tower and supervisory controls pay for the cost of the new microprocessor based signal system, at an incremental cost to Developer of approximately \$1 million. The parties have

estimated that the cost of a new signaling system would be approximately \$4 million if LIRR were to undertake to install one separately.

- b. Under the existing agreements, Developer would install standard metal halide fixtures under the platforms it will be building over the ERY and WRY. In lieu thereof, Developer will pay for and install LED lighting under each such platform, at an incremental cost to Developer of approximately \$1 million. The resulting LIRR operating expense savings will amount to millions of dollars over the life cycle of the lighting installation.

The combined effect of the foregoing contract modifications will be to

- facilitate the consummation of leasing and financing arrangements that will enable Developer to proceed expeditiously with the WSY project;
- substantially reduce the risk to the MTA that the Closings will not occur at all, and increase the compensation to which the MTA would be entitled in that unlikely event; and
- when the ERY Closing does occur, leave the MTA
 - no worse – and, to the extent described in paragraphs 6 and 12 above, better – off than it would be under the existing Contracts if the ERY Closing occurred next month, and
 - by virtue of the conditions described in paragraphs 4-7, 9, 11 and 12 above, far better off than it would be under the existing Contracts if the ERY Closing did not occur until sometime next year.

C. WRY Staging Area

In addition, authorization is hereby requested to grant revocable licenses to Developer from time to time between the ERY Closing and the WRY Closing so as to allow Developer to use portions of the terra firma portion of the WRY to stage construction on the ERY, thereby accelerating ERY construction and associated rent and payments in lieu of sales taxes to the MTA. In consideration of such licenses, Developer would pay to the MTA a monthly license fee at the rate of \$19.50 per annum for each square foot of space it so utilizes, exclusive of the area to be occupied by the aforementioned relocated LIRR control tower. (After the WRY Closing, such license fee will no longer be payable, as the WRY Lease will then be in place). Such consideration is considered to be fair and reasonable, in light of amounts previously paid by other licensees in the area and the incremental operating expenses the MTA has been avoiding in parking buses on the WRY.

RECOMMENDATION:

That the Boards of MTA, LIRR, and NYCT authorize the Chairman and Chief Executive Officer of MTA, LIRR and NYCT and his designees, including the MTA Director of Real Estate, to negotiate, finalize, execute and deliver any and all contracts and other necessary, desirable or appropriate agreements, leases, deeds, permits, documents, writings and other instruments, including modification of such contracts, and any other necessary, desirable or appropriate agreements, leases, deeds, permits, documents, writings and other instruments, as deemed necessary, desirable or appropriate by the Chairman and Chief Executive Officer of

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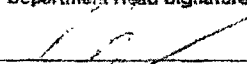
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MTA, LIRR and NYCT, and his designees, including the MTA Director of Real Estate, to implement the changes in terms as described in this staff summary for the disposition of the developable property rights in the Eastern Rail Yard and the Western Rail Yard and the construction of the improvements thereon as part of the development thereof, and to take any other actions and steps as he may deem necessary, desirable or appropriate to implement the disposition of the developable property rights in the Eastern Rail Yard and the Western Rail Yard and the construction of the improvements thereon as part of the development thereof.

Subject	WEST SIDE YARD DEVELOPMENT
Department	REAL ESTATE
Department Head Name	JEFFREY B. ROSEN
Department Head Signature	
Project Manager Name	JEFFREY B. ROSEN

Date	April 28, 2010
Vendor Name	
Contract Number	
Contract Manager Name	
Table of Contents Ref	

FOR REFERENCE
PURPOSES
ONLY

Board Action						Internal Approvals			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	Finance Comm.	4/28/2010	X					1	Legal
2	Board	4/28/2010	X					2	Chief Financial Officer
								3	Chief of Staff

Narrative	
AGENCY:	Metropolitan Transportation Authority ("MTA") / Long Island Rail Road Company ("LIRR")
DEVELOPER:	The Related Companies, L.P. (together with its affiliates, the "Developer")
LOCATION:	The Eastern Rail Yard ("ERY") and Western Rail Yard ("WRY") portions of the John D. Caemmerer West Side Yard ("WSY"), located between 10 th and 12 th Avenues and West 30 th and 33 rd Streets.
ACTIVITY:	Mixed-use development.
ACTIONS REQUESTED:	<ol style="list-style-type: none"> 1. Adoption of State Environmental Quality Review Act ("SEQRA") findings relating to proposed actions intended to facilitate development of the WRY. 2. Authorize the Chairman and Chief Executive Officer of MTA, LIRR, Triborough Bridge and Tunnel Authority ("TBTA") and New York City Transit Authority ("NYCT") and his designees to execute and deliver contracts and other documents and take other actions to implement the proposed disposition and development of certain developable property rights in the ERY and the WRY.
TERM:	99-year ground leases, severable, with options to purchase fee interests in severed parcels.
SPACE:	Land and air-rights parcels containing approximately 1.14 million sq. feet of site area and 11.97 million sq. feet of zoning floor area.
COMPENSATION:	The ERY and WRY leases will provide MTA with revenues having a present value of \$1,054,000,000, calculated using a discount rate of 6%, based on a pro-forma that assumes the exercise of purchase options.

BACKGROUND:

At its regular meetings on May 22, 2008, the MTA Board adopted resolutions which, among other things, authorized (1) the MTA Chief Executive Officer to execute Conditional Designation Letters ("CDLs") naming a joint venture of The Related Companies, L.P. and Goldman Sachs Group Inc. ("Related/Goldman") as the conditionally designated developer for the proposed disposition of certain developable property rights in the WRY (conditioned on SEQRA review and approval) and the ERY; (2) the MTA to serve as co-lead agency with the New York City Planning Commission ("CPC") for the environmental review of the proposed mixed-use development over the WRY and associated actions pursuant to applicable State and local environmental laws and regulations; and (3) the MTA Chief Executive Officer to enter into contracts and other project documents with Related/Goldman negotiated pursuant to the CDLs. A copy of the May 22, 2008 Staff Summary associated with those actions (the "May 22, 2008 Staff Summary") is attached hereto as Attachment A.

In connection with the execution of the CDLs, Related/Goldman paid MTA non-refundable participation fees of \$6 million and made an additional deposit of \$5 million into an expenses fund to cover pre-development expenses associated with the projects. As the Board has previously been apprised (see Memorandum dated February 3, 2009 attached as Attachment G), the severe downturn in both the commercial and residential real estate markets since May, 2008 resulted in January 31, 2009 CDL modifications that extended the conditional designation periods under the CDLs for ERY and WRY through January 31, 2010, in connection with which Related/Goldman paid MTA additional amounts totaling \$8,600,000 (\$4,300,000 for each of the WRY and ERY), half of which constituted non-refundable fees and half of which was paid into the aforementioned expenses fund. In the meanwhile, the parties continued to work with the City of New York to achieve the anticipated re-zoning of the WRY, which was successfully concluded in December, 2009, when the New York City Council approved new zoning enabling mixed-use development of the WRY.

MTA and LIRR were advised in late January, 2010 that Goldman Sachs Group Inc. no longer intended to play an active role in these development projects, while The Related Companies, L.P. remained committed to proceeding to contract with or without a new partner.

Negotiation and drafting proceeded with Related in an effort to finalize the project documents. This has been a particularly complex undertaking given the size of the project, its numerous components, the need to accommodate various project phasing scenarios and the intricacy of building and operating over a critical transportation facility. The CDLs have been further extended given the progress in negotiations. The parties have now completed negotiations on the essential deal terms and expect to be in a position to sign final contracts in May, 2010.

ADOPTION OF EIS FINDINGS

As authorized by the Board, MTA served as co-lead agency with the CPC for the environmental review of the proposed mixed-use development over the WRY and associated actions pursuant to applicable State and local environmental laws and regulations. That environmental review has been completed. Environmental findings based upon the review must be considered and adopted by the Board prior to MTA's entry into a binding contract and other project documents with respect to the development of the WRY.

A proposed Findings Statement has been distributed to Board members, together with copies of the Final Environmental Impact Statement (FEIS) issued by MTA and the City Planning Commission as co-lead agencies and technical memoranda, dated October 19, 2009, and December 14, 2009, addressing certain changes to the proposals analyzed in the FEIS that were adopted by the City Planning Commission and City Council.

The Findings Statement, attached to this Staff Summary as Attachment E, describes MTA's role as a co-lead agency for the environmental review of the several actions ("Proposed Actions") intended to facilitate development at the WRY, as well as permanently affordable residential development at the sites at 54th St. and 9th Avenue and 48th St. and 10th Avenue, and sets forth proposed findings of the MTA Board in connection with such Proposed Actions. As analyzed by the FEIS, and summarized in the Findings Statement, the rezoning and proposed subsequent redevelopment of the WRY by a developer selected by the MTA (and the creation of additional affordable housing) will avoid or minimize adverse environmental impacts to the maximum extent practicable. Accordingly, the Board is being requested to adopt the Findings Statement.

CHANGES TO ERY AND WRY TRANSACTION TERMS

The major transaction terms for the ERY and WRY transactions were originally described, respectively, in Attachments A and B to the May 22, 2008 Staff Summary (Attachment A hereto).

The central economic terms remain as previously described at the time of the Board's original May 22, 2008 authorization: as before, each contract will provide for the parties to enter at closing into a single 99-year lease that can be "severed" in due course into separate leases for separate development parcels, with options to purchase the fee interests in severed parcels (in each case for a price equal to the present value of the remaining base rent under the applicable severance lease). Annual base rent remains at 6.5% of "Initial Land Value" (with ILV, as before, reduced by lump sum closing and post-closing payments to be made by the Developer). Rent remains subject to fixed escalations of 10% every 5 years plus fair market value resets at years 30, 55 and 80. Based on unchanged pro-forma assumptions with respect to the exercising of such purchase options, the ERY and WRY ground leases continue to have a combined present value of \$1.054 billion, calculated at a discount rate of 6%, which present value remains subject to potential reduction to \$1.011 billion depending on the timing of construction.

Modifications to certain of the original WRY and ERY deal terms (outlined in the May 22, 2008 Staff Summary) have been made as a result of negotiations and are described in Attachments B and C. The most significant changes pertain to the timing of the required contract deposits and closings.

As set forth in the January 31, 2009 CDL extensions, the contract deposit terms have been modified to permit the Developer to make the 5% deposits in installments, as follows: 2.5% of the Initial Land Value ("ILV") of each of the ERY and WRY at contract execution and the remainder in two installments: 1.25% of ILV in escrow 180 days after contract execution and an additional 1.25% of ILV in escrow 360 days after contract execution. The contract would permit the Developer to provide promissory notes of The Related Companies, L.P. to satisfy the two 1.25% deposit requirements, provided that the financial condition of the Related Companies does not materially worsen and such notes are secured by pledges of collateral reasonably acceptable to MTA.

As also contemplated by the January 31, 2009 CDL extension for the ERY, the parties have agreed that the Developer will be obligated to close under the ERY contract within 90 days after certain "triggers" (i.e. market indicia relating to commercial office availability, residential condominium pricing and architectural activity as described in greater detail in Attachment C) are satisfied. Nonetheless, at any time before such triggers are satisfied, MTA will be entitled to give notice to the Developer that it has 90 days to close under the ERY contract, failing which MTA may terminate the ERY and WRY contracts. If MTA were to terminate the contracts prior to January 1, 2011, the Developer would be entitled to a refund of the contract deposits made to date, together with specified unexpended Developer-funded expense deposits (but not the above-referenced CDL-period fees). If MTA exercised such termination right after January 1, 2011, MTA would be entitled to retain \$10,000,000 in the aggregate of contract deposits made under the ERY and WRY contracts, with the balance to be refunded to Developer. The deadline for closing on the WRY lease remains as before -- i.e. one year after the ERY closing date. Closing under the ERY contract is a pre-condition to the closing under the WRY contract.

In addition, modifications to certain of the Construction Agreement terms (outlined in the March 26, 2008 Staff Summary and cross-referenced in the May 22, 2008 Staff Summary) are described in Attachment D. These include modifications to the plan review process, compensable LIRR delays, and the allocation of responsibility for code review as between LIRR and the New York City Department of Buildings.

MTA and the City have also negotiated terms to address the City's ownership of a volume of space above a limiting plane over the demapped 32nd Street ERY, which was discovered in the course of the WSY title analysis process. The proposed terms for conveyance of this space, which is needed for the ERY mixed-use development, are outlined in Attachment E. In summary, MTA would accept the transfer of the City's retained air space parcel above 32nd Street, together with the reduction by 50% of the amount of zoning floor area MTA has agreed with the City to reserve for cultural facility uses (which reduction will provide MTA with an additional 100,000 sq. feet of zoning floor area that can be sold to the Developer or conveyed offsite as transferable development rights), in satisfaction of the City's \$15 million payment obligation to MTA for such cultural facility space reservation. In addition, the parties would extend by 7 years the time period during which the City is permitted to sell ERY transferable development rights under the existing September 2006 Rail Yards Agreement at pricing equal to or exceeding the agreed upon minimum (escalated by CPI) set forth in that Agreement.

AUTHORIZATION TO ENTER INTO ERY AND WRY CONTRACTS

Consistent with the terms set forth herein (as further described in Attachments B, C and D), Board authorization is sought for the MTA, LIRR, TBTA and NYCT to enter into contracts and other project documents to implement the proposed disposition of the developable property rights in the ERY and WRY.

RECOMMENDED ACTIONS:

It is recommended that the Boards of MTA, LIRR, TBTA and NYCT adopt the attached resolutions which, among other things:

1. Adopt the Findings set forth in the Findings Statement that is attached to this Staff Summary.
2. Authorize the Chairman and Chief Executive Officer of MTA, TBTA, LIRR and NYCT and his designees, including the MTA Director of Real Estate and the President of LIRR, to execute and deliver any and all contracts and other necessary or appropriate agreements, leases, deeds, documents, writings and other instruments and to take any other necessary or appropriate steps as he may deem necessary, desirable or appropriate to implement the proposed disposition of certain developable property rights in the Eastern Rail Yard and the Western Rail Yard and the construction of improvements thereon.

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