



Metropolitan Transportation Authority

MTA REAL ESTATE DEPARTMENT

POLICIES AND PROCEDURES

FOR THE

LEASING-OUT AND SALE

OF REAL PROPERTY

EFFECTIVE AS OF

March ~~25~~23, ~~2015~~2016

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INTRODUCTION

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INTRODUCTION

MTA Real Estate Department: The MTA Real Estate Department (“RED”)¹ handles real-estate-related transactions for the MTA and all of the MTA agencies, which include: MTA New York City Transit, Manhattan and Bronx Surface Transit Operating Authority, MTA Metro-North Railroad, MTA Long Island Rail Road, MTA Bridges and Tunnels, MTA Staten Island Railway, MTA Bus and MTA Capital Construction (each, an “MTA Agency”, and, collectively with the MTA, the “MTA Agencies”).

Scope of Policies and Procedures:

~~Except to the extent incorporated by reference in the “MTA Real Estate Department Policies and Procedures for the Licensing of Real Property dated November 29, 2011 (the “Licensing-Out Policies and Procedures”), these~~ These Policies and Procedures apply only to the leasing-out or sale of MTA real property (including interests in real property such as easements). Licensing-out (pursuant to licenses that MTA may terminate at will in the MTA’s sole and absolute discretion upon not more than 60 days’ notice without repayment of any unamortized tenant improvement costs) is not subject to the mandates of Section 2897 of the Public Authorities Law (“PAL”) because it does not constitute a disposition of an interest in real property. Such licensing-out is subject to the MTA Real Estate Department Policies and Procedures for the Licensing of Real Property dated November 29, 2011, as amended (the “Licensing-Out Policies and Procedures”). As a general rule, leases rather than licenses should be used for what are traditional retail uses to incentivize prospective tenants to make their strongest financial offers, knowing that they may be terminated only for specified reasons, and, if so terminated, may be compensated for the unamortized value of improvements they make as warranted. If a license agreement provides that the third party’s right of use and occupancy is subject to termination only for specified reasons or upon payment of compensation by the MTA, then it is not a license for purposes of these Policies and Procedures and the requirements of these Policies and Procedures for leasing-out must be satisfied.

Insofar as leases and sales of MTA property are concerned, these Policies and Procedures supersede the MTA Real Estate Department Policies and Procedures for the Leasing-Out and Sale of Real Property dated ~~March 28, 2012~~March 25, 2015. Insofar as licenses are concerned, all references in the Licensing-Out Policies and Procedures to ~~such 2012~~earlier iterations of these guidelines will now be deemed to refer to these Policies and Procedures.

Insofar as leases at Grand Central Terminal are concerned, these Policies and Procedures have been supplemented by the Guidelines for Selection of Tenants for Grand Central Terminal that were adopted by the MTA Board on November ~~14~~18, 2009, as amended (the “GCT Leasing Guidelines”). In the event of any inconsistency or conflict between these Policies and

¹ A glossary of defined terms used in these Policies and Procedures appears at the end of these Policies and Procedures.

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Procedures and the GCT Leasing Guidelines, the GCT Leasing Guidelines shall govern. [A copy of the current GCT Leasing Guidelines is attached hereto as Attachment 1.](#)

Section 2897 of the Public Authorities Law, as amended, stipulates that, as a general rule, any leasing-out or sale of real property can only be undertaken after public advertising for bids and for not less than fair market value. However, these limitations do not apply in certain circumstances, which are specified below. Accordingly, although most dispositions by sale or lease will be made pursuant to the request for proposals process that is described in Chapter III of these Policies and Procedures (the “Lease/Sale RFP Process”), others may be made pursuant to direct negotiations as described in Chapter IV of these Policies and Procedures (the “Lease/Sale Negotiation Process”).

These Policies and Procedures are intended only for the internal guidance of MTA staff, and are not intended to establish expressly or by implication any rights or privileges. Except to the extent prohibited by law, any provision of these Policies and Procedures may be waived by the MTA Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer.

Lease/Sale RFP Process: The Lease/Sale RFP Process is designed, among other things, to give effect to the following requirements under PAL Section 2897:

- the advertisement for bids must be made prior to the leasing-out or sale, through the methods authorized by these Policies and Procedures;
- all bids must be publicly disclosed at the time and place stated in the advertisement; and
- the award must be made with reasonable promptness by notice to the responsible bidder whose bid will be most advantageous to the State, price and other factors considered; provided, however that all bids may be rejected when it is in the public interest to do so.

The Lease/Sale RFP Process can be single-step or multi-step as described in Chapter III of these Policies and -Procedures.

Lease/Sale Negotiation Process:

PAL Section 2897 specifies that the Lease/Sale Negotiation Process can only be utilized under the following circumstances:

- (a) the estimated fair market value of the property to be leased-out or sold does not exceed \$15,000, or

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- (b) bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or
- (c) the disposition will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- (d) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
- (e) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
- (f) such action is otherwise authorized by law

In the case of (a), (b) or (c) above, the disposition must be for no less than fair market value. In the case of (d) or (e), it can be for less than fair market value.

An “explanatory statement” is required if a leasing-out or sale pursuant to the Lease/Sale Negotiation Process meets certain criteria, as described in Chapter IV of these Policies and Procedures. Each such explanatory statement must be transmitted to the New York State Comptroller, Director of the Budget, the Authorities Budget Office, the Commissioner of General Services and Legislature not less than 90 days in advance of such disposition, and a copy thereof must be kept in the project file.

Appraisal Requirement: PAL Section 2897 provides that any real property that is to be leased-out or sold must be independently appraised, regardless of whether the Lease/Sale RFP Process or the Lease/Sale Negotiation Process is used and regardless of the estimated fair market value of the property. Policies and procedures with respect to appraisals are set forth in Chapter V of these Policies and Procedures.

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CHAPTER I - INQUIRIES

Scope - This chapter establishes guidelines for responding to verbal and written inquiries made to the RED regarding the disposition of MTA property (“Inquiries”).

Responsibilities - The RED is responsible for coordinating all responses to Inquiries. The RED’s responsibilities include researching the ownership status of specific properties, contacting the applicable MTA Agencies to determine whether property is available and responding to inquirers.

Objective - To provide prompt, courteous and accurate responses to Inquiries.

Procedures – Except for Inquiries relating to the leasing of space at Grand Central Terminal, which should be referred to the Director, GCT Development, all Inquiries should be referred to the Director, Leasing & Acquisition, who should either respond directly or else charge an appropriate deputy with doing so. In the first instance, the Director, Leasing & Acquisition should ascertain:

- (1) precisely what property the inquirer is referring to, and which MTA Agency controls it;
- (2) whether the applicable MTA Agency owns such property or merely leases it and, in the case of leased property, to what extent subletting of such property is permissible;
- (3) what use the inquirer proposes to make of the property and whether such use would be compatible with MTA Agency use of any MTA facilities that adjoin such property;
- (4) whether the RED has already been authorized to dispose of such property or (if not) whether the applicable MTA Agency might be amenable to disposing of such property; and
- (5) what restrictions would need to apply to any such disposition.

If the Director, Leasing & Acquisition determines that the subject property is available for purchase or lease, he or she (or his or her deputy or deputy’s designee) should so inform the inquirer, taking care to stipulate that (except as otherwise herein described) any such sale or lease may be undertaken only in accordance with the Lease/Sale RFP Process, and should see to it that the inquirer is provided in due course with an opportunity to participate in the Lease/Sale RFP Process with respect to such property. If the Director, Leasing & Acquisition determines that the subject property is available for license but not for purchase or lease, he or she (or such deputy or deputy’s designee) should so explain to the inquirer, and in that case the Licensing-Out Policies

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and Procedures shall apply to such property. Otherwise, the Director, Leasing & Acquisition (or such deputy or designee) should inform the inquirer that the subject property is not available on any terms, but offer to add the inquirer's contact information to the RED's database for purposes of alerting the inquirer to other opportunities.

For templates for appropriate written responses, see Figures 1 – 6.

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CHAPTER II – ASSESSMENT OF OPPORTUNITIES

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CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Scope – This chapter establishes guidelines for the assessment of opportunities to sell or lease MTA-controlled property that is not needed for operational purposes.

Responsibilities – The RED is responsible for encouraging the MTA Agencies to identify MTA-controlled property that is either never going to be needed by the MTA for operational purposes or not expected to be needed for such purposes until some-time in the future; for assessing the marketability of such property for sale, lease or license, as appropriate (taking into account relevant legal constraints, physical conditions and real estate market conditions); and for coordinating with the MTA Agencies to facilitate the disposition of such property when and as feasible.

Objective – To generate revenues for the MTA, consistent with the fulfillment of the MTA's operating purposes.

Procedures – In response to Inquiries, on its own initiative and/or at the request of MTA Agencies, the RED should evaluate MTA-controlled properties for their revenue-generating potential. To the extent that MTA-controlled property holds such potential, whether best to realize that potential by sale, lease or license will depend on an assessment of (a) the desirability and feasibility of sub-dividing and physically separating such property from adjoining MTA-controlled property, (b) the extent, if any, to which any future operational MTA use of the property is or can be envisioned, (c) whether (in any case) it will be necessary or desirable for the MTA to maintain long-term control over the ownership and/or use of the property, (d) whether the MTA owns the property or merely leases it, and the extent, if any, to which disposition of the property is limited by reason of the terms of any lease pursuant to which the MTA controls the property or by reason of any other title encumbrances, and (e) the potential revenues to be realized. With respect to each property to be evaluated, the Director, Leasing & Acquisition should refer such property to the appropriate Deputy Director, who will designate a Project Manager to conduct the evaluation under his or her supervision. In certain cases the Director, Leasing and Acquisition, will consult with and in some cases refer the inquiry to the Director, Transit Oriented Development.

A. Site Analysis

The RE Manager should conduct a site inspection with a representative of Tenant Management (or Tenant's Management's contracted property management firm), and the appropriate personnel of the MTA Agency in order to evaluate the condition of the property and the surrounding area. As a part of this inspection, the RE Manager should assess the need for and extent to which improvements might be required, and consult with appropriate personnel of the applicable MTA Agency concerning the feasibility and potential costs of such improvements, and (assuming that the cost of such improvements would be justified by the revenue-generating

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potential of the property) whether it would be most efficient and cost-effective for the applicable MTA Agency to make such improvements (either in anticipation of rental or license fee income or at the direct cost of a lessee, licensee or purchaser) or for the making and/or cost of such improvements to be left to the purchaser, lessee or licensee. The RE Manager should also consult with Information Management and MTA Legal to ensure that the RE Manager is aware of any contractual or other legal limitations that would affect the MTA's ability to dispose of the subject property.

In order to determine the marketability of a property, the following (where applicable) should be considered:

- Present use/condition of site
- Accessibility
- Visibility
- Surrounding uses
- Size, shape and physical characteristics of site
- Condition of street and station improvements
- Impact of any MTA Agency restrictions
- Availability of utility services
- Extent to which improvements are needed and MTA Agency funds are available to pay for such improvements
- Easements or restrictive covenants
- Traffic patterns/passenger volume counts - peak and off peak
- Existing retail at station
- Consumer activity during rush and non-rush hour periods
- Condition of neighboring properties
- Existing vacancies in the area
- New/potential development nearby
- Any operating issues noted by Tenant Management
- Adequacy of storage space
- Environmental matters

Generally, the leasing-out or sale of MTA real property constitutes an “action” under the State Environmental Quality Review Act (SEQRA) and thus is subject to SEQRA's requirements. SEQRA requires review of actions to determine whether they may have a significant adverse environmental impact and, if so, preparation of an environmental impact statement before the action may be approved and undertaken. While most lease renewals will be Type II actions under SEQRA regulations – actions which the State Department of Environmental Conservation has found to have no significant adverse impacts – and thereby exempt from review, and some new leases may also fall within a Type II category, the RE Manager should consult with the MTA Legal Department's attorneys as early in the process as practical to determine what measures are necessary to insure SEQRA compliance. Further

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consultation may be necessary as a proposal develops or changes over time. Board approval of a lease or sale cannot occur unless SEQRA requirements have been met either through (a) the action being exempt as a Type II action or falling within the PAL § 1266(11) exemption from SEQRA; (b) issuance of a negative declaration, or (c) preparation of a final environmental impact statement. Each proposed lease or sale, whether via RFP or the Lease/Sale Negotiation Process, requires preparation of and sign-off on a Pre-RFP Authorization Memo (Figure 11), as further described in Chapters III and IV. Each Pre-RFP Authorization Memo should note the SEQRA type or NEPA status, and required actions, if any, to be taken before the transaction is presented to the MTA Board.

Additionally, MTA Bond Counsel must review the location(s) being offered in each RFP, with MTA Real Estate providing location-specific information as required, prior to the issuance of the RFP to determine whether there are any tax-exempt bond related tax issues that would arise from private use. Only when MTA Bond Counsel clears such location and use should it be advertised, unless circumstances require advertisement before clearance is given, in which case the RFP ~~is~~ must be subject to cancellation if clearance is not given prior to award. The Pre-RFP Authorization Memo contains two boxes which must be checked by the project manager indicating that MTA Bond Counsel reviewed the location and use and has given approval to proceed with the RFP. A copy of the MTA Bond Counsel determination should be kept in the RFP file.

Prior to issuing an RFP, the RE Manager should prepare a Parcel Information Sheet (Figure 7) for each property that he or she determines to be marketable. The purpose of the Parcel Information Sheet is to collect information and will ultimately be modified for use in the RFP.

Each Parcel Information Sheet should include information for all applicable fields. A form of Parcel Information Sheet applicable to all agencies -may be found in the RED shared folder at S:\RFP Documents and Forms\RFP Boilerplate Forms. The parcel information includes:

- Yardi property identification number and address
- Block and lot number, if applicable
- Site plan
- Site description, including approximate size and any unusual attributes
- Interest (i.e., lease, license, sale) being offered
- Preferred or required uses or any use restrictions
- Utility requirements and availability
- Improvement requirements and associated cost estimates
- Design guidelines (if any)
- RE Manager site visit date

The assessment of potential uses and restrictions on use (including any restrictions on items to be sold at the subject location) should take into account the following considerations, if applicable:

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- MTA Agency requirements
- Restrictions in existing MTA Agency licenses or leases at location
- Restrictions in MTA Agency's deed or chain of title
- Land use regulations and building, fire, health and other like codes, to the extent deemed by MTA Legal to be applicable to the subject facilities
- Environmental conditions

B. Preliminary Fair Market Value Analysis

Prior to ordering a formal appraisal or during the period that a formal appraisal is being prepared (see Chapter V), the Real Estate Manager should to the best of his or her ability seek to estimate the fair market value of the subject property. For such purpose, the Real Estate Manager may rely on his or her knowledge of market conditions, information in the Yardi database, the experience of RED colleagues, informal discussions with appraisers, posted broker listings for comparable properties and/or discussions with brokers; provided, however, that any brokers so contacted should be informed that the inquiry is for information purposes only and that the MTA is not (or is not yet) seeking the assistance of such brokers to locate prospective purchasers or tenants. If an estimate of fair market value has already been obtained, the Real Estate Manager should use the information in such report to help inform his or her analysis.

C. Conclusion of Site and Preliminary Fair Market Value Analysis

The RE Manager should prepare a Market Analysis Work Sheet (Figure 8 [for a general format](#)) describing his or her analysis of the property and conclusions regarding the marketability of the property. The RE Manager should use such Market Analysis Work Sheet to guide his or her discussions with his or her Deputy Director, and the discussion should encompass the following:

- Parcel Information Sheet
- Review of the Market Analysis Work Sheet and explanation of fair market value estimate
- Analysis of whether revenue-generating potential appears to justify cost and effort to make any required improvements to the property.
- Critical assumptions.

The Deputy Director should, upon conclusion of discussions with the project manager and resolution of any outstanding issues, then present the Pre-RFP Authorization Memo (with the Market Analysis Work Sheet attached) to the Director, Leasing & Acquisition, for approval. Both the Deputy Director and Director, Leasing & Acquisition should agree as to whether the property should be marketed for sale or lease or license. If they determine to move forward with marketing for sale or lease, the Director, Leasing & Acquisition should authorize the commissioning of an appraisal, if it has not already been commissioned, as provided in Chapter

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V of these Policies and Procedures. The Pre-RFP Authorization Memo is also approved by the Director of Operations.

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CHAPTER III –REQUESTS FOR PROPOSALS (RFPs)

Scope - This chapter describes the Lease/Sale RFP Process.

Responsibilities – Unless use of the Lease/Sale Negotiation Process is authorized, the RED is responsible for providing all qualified members of the general public with an opportunity to lease or purchase available properties from the MTA and for selecting tenants or purchasers based on predetermined priorities while ensuring the integrity of the selection process.

Objective - To maximize MTA revenues while choosing qualified tenants who will meet their obligations and improve the appearance of MTA facilities and the quality of the amenities offered to the public at such facilities.

Procedures - The Lease/Sale RFP Process is described in the following pages.

A. RFP PUBLICATION

1. The RE Manager is responsible for preparing the request for proposals (“RFP”). The RFP must include:

(a) an “RFP Cover Letter”, which highlights information about the offering, contains general instructions, and the following two PAL and Lobbying Law-required statements: (1) “**All bid proposals shall be publicly disclosed in the agenda for the meeting of the Finance Committee of the MTA Board at which the transaction will be considered for approval or disclosed to the members of the Finance Committee of the MTA Board and to members of the MTA Board in executive session and thereafter publicly disclosed prior to execution**”, and (2) “**All contacts with MTA relating to this RFP must be made through the designated Point(s) of Contact identified herein. Contacts with anyone else at MTA relating to this RFP may be a violation of law and may result in the disqualification of the proposer.**” The RFP Cover Letter should include the names and contact information for the designated Point(s) of Contact (a sample RFP Cover Letter is shown in Figure 9);

(b) the Parcel Information Sheet or Term Sheet (absent the Work Sheet – see Figure 7),

(c) a Proposer Information Form (“PIF” – See Figure 10) which includes a General Affidavit authorizing credit background and reference investigations,

(d) a Procurement Lobbying Law Certification form,

(e) An Iran Divestment Act Certification form,

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(f) a Proposed Rent, Compensation or Purchase Price Form,

(g) a form W-9.

(h) To the extent practicable, the RFP should also include (or provide a link to a page on the MTA website that includes) a proposed form of lease or contract of sale, or a summary of the principal terms of such lease or contract, and it may to the extent the Director, Leasing & Acquisition deems appropriate require proposers to state any objections that they may have with respect to such form or terms at the time they respond to the RFP.

When this package is complete, the RE Manager should forward the RFP package to his or her Deputy Director and the Director, Leasing & Acquisition for final approval via an appropriately titled Pre-RFP Authorization Memo (see Figure 11) before it is issued. An RFP should also be reviewed and approved by MTA Legal to the extent that (a) standard RFP provisions have been materially modified or changed, or (b) the contemplated transaction may present special legal issues.

2. Except as the Director, Leasing & Acquisition may otherwise determine, RFPs should generally not be printed and distributed by mail. Instead, emails, or, where emails are not possible, mailings should be used to advise prospective tenants or purchasers of the availability of RFPs on the MTA's website, typically using the Pre-RFP Letter format (see Figure 12). Under the direction of the Director, Leasing & Acquisition, the RED Executive Secretary responsible for RFP management should periodically update and seek to expand the RED's database of potentially interested parties who should receive such emails and/or mailings.
3. If the subject property is currently occupied by an incumbent lessee or licensee in good standing, the RE Manager should notify such incumbent by ~~an~~ **certified** Incumbent Letter **sent by certified and first class mail** and email that such property is going to be marketed in an upcoming RFP. The RE Manager must check that the address for the incumbent used in the letter is up to date and reflects any changes of address, change of business name, etc. (For an example of such a letter, see Figure 13.) A copy of such letter and the return receipt should be maintained in the incumbent's file. The letter should not mention any details of the RFP, as that might give the incumbent an unfair advantage over other proposers, nor should it state or imply that the incumbent will receive preferential consideration. The letter should be mailed to the incumbent's address as listed for notice in the incumbent's original agreement, as modified by any subsequent amendments. Any questions regarding the

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appropriate address for notice should be referred to Tenant Management (and MTA Legal, if necessary). Subsequently, when the RFP is placed on the MTA website, a hard copy should be sent to the incumbent by the Real Estate Manager, certified mail/return receipt requested and first class mail and by email, even if the incumbent does not request one.

4. After receiving approval of the Pre-RFP Authorization Memo from his or her Deputy Director and the Director, Leasing & Acquisition, the RE Manager should initiate the advertisement of the RFP. RED's advertisements for RFPs and any other opportunities will generally be advertised along with all other agency procurements in the classified section of the *New York Post*, the *Minority Commerce Weekly*, a Spanish language newspaper, currently *El Diario*, and the *Amsterdam News*. For each RFP, the advertisement should include a one-sentence description of the opportunity, including the RFP reference number (i.e., RFPBG0912), and a reference to and listing of the MTA website for Real Estate procurements (http://mta.info/mta/realestate/retail_leasing.html). For an example the RFP Advertisement, see Figure 14. The RFP website link should have the same language as the description in the advertisement. The advertisement will direct potential proposers to the “Retail + Leasing” page of the MTA website, from where they can access RFPs by signing in with a username and password. Point of Contact information will be included in the RFP Cover Letters that are included in the .PDFs of RFPs on the website.

Advertisements may also be placed in additional periodicals with the approval of the Director, Leasing & Acquisition, depending on the targeted market, size and location of the property, etc. (e.g. for a restaurant, trade journals targeted to franchisees might be included). A copy of all advertisements should be included in the RFP File. In addition to the information required for the *Post* listed above, these targeted advertisements should include a more expansive description of the opportunity, and a map, plan, or picture if appropriate. Also, these advertisements should include Point of Contact information and the Lobbying Law language shown above in 1.(a)(1) and 1.(a)(2). See Figure 15 for an example of such an advertisement.

Advertisement drafts must be submitted to Ambika Mohan at Miller Advertising (amohan@milleraa.com, tel. (212) 366-0901) by the Monday before the Thursday planned for the advertisement to have the RFP information placed in the next MTA advertisements for the four required periodicals. Joy Read, Manager of Production, MTA Marketing, and Rick Osborne, MTA Chief of Creative Services, should be cc'd on the email to Miller Advertising. The RE Manager should also ensure that the RED Executive Secretary responsible for RFP management timely posts the RFP on the MTA's website.

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5. At the same time, the RE Manager should call or send an email to the MTA press office, being sure to email the individual responsible for press for the relevant agency, advising that a RFP is forthcoming, indicating whether a purchaser or tenant is being sought and describing the property being offered. The RE Manager should discuss with the press office whether a press release is warranted for the RFP due to the special circumstances or locations being offered in the RFP, and if so, coordinate the drafting and review of the press release with the relevant Deputy Director and Director, Leasing & Acquisitions. If warranted, the government affairs office of the relevant agency should also be advised of the RFP.
6. On a case by case basis, the Director, Leasing & Acquisition may, with the concurrence of the Director of Real Estate, (a) elect to make RFPs available to brokers and undertake in such RFPs to pay brokerage commissions (at rates not to exceed industry standard rates) to any brokers that shall be the procuring cause of consummated sales or leases of properties that are the subject of such RFPs, and/or (b) procure (with MTA Board approval) the services of marketing consultants to identify prospective purchasers or tenants to which particular RFPs should be sent.
7. The RE Manager is responsible for seeing to it that each person that has made an Inquiry with respect to any particular property or type of property receives notice of the issuance of any RFP relating to such property or type of property.
8. A site inspection time is typically identified in the RFP. At the indicated inspection time, the RE Manager should be present at the site and available to answer any questions. The RE Manager should maintain a sign-in sheet for each location visited.
9. Addenda to RFPs can and should be issued as appropriate to apprise prospective purchasers or tenants of modified expectations or requirements and/or to provide them with other additional information. Care must be taken to ensure that in this way all interested parties are provided in writing with all material information that is provided (whether orally or in writing) to any one such party.
10. The Real Estate Manager must establish an RFP file which shall include all relevant documents for the RFP in question.

B. Determination of Whether to Utilize Single-Step or Multi-Step Lease/Sale RFP Process

In the first instance, the applicable Deputy Director and the Director, Leasing & Acquisition, should determine whether to utilize a single-step or a multi-step RFP process, based on the nature of the subject property, the complexity of the offering and prior experience with similar types of property.

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C. Single-Step Lease/Sale RFP Process

In a single-step Lease/Sale RFP Process, the RED's selection is based on the initial proposer submission (except that the RED may seek clarifications and/or completion of submissions as described below). Following review and consideration of the bids and the making of responsiveness and responsibility determinations, the RED determines which proposer's bid is most advantageous to the State, price and other factors considered. Unless it determines to reject all bids, the RED must then seek authorization from the MTA Board to enter into a lease or contract of sale, as applicable, with such proposer. All bids must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization.

D. Multi-Step Lease/Sale RFP Process

In a multi-step Lease/Sale RFP Process, the initial proposer submission is followed by one or more revised submissions. If the incumbent has submitted a proposal, all addendums to the RFP, requests for best and final offers, or other correspondence must be sent to the incumbent by the Real Estate Manager via certified mail, return receipt requested, first class mail, and by email. If the incumbent's proposal was prepared by an attorney or other agent or representative, all ~~addendums-addenda~~ should also be sent to such representative or agent certified mail, return receipt requested, first class mail, and by email. Following each submission, RED staff may communicate with proposers to clarify the bids or to obtain additional information. Following review and consideration of the bids and the making of responsiveness and responsibility determinations, the RED may decide to make a final determination based on such bids or it may request that proposers submit revised bids. At any point, the RED may eliminate from the next step those proposers determined to be unresponsive, not responsible or outside of the competitive range on the basis of the selection criteria specified in the RFP. When the RED decides that it is not going to seek any further submissions, it determines which bid is most advantageous to the State, price and other factors considered. Unless it determines to reject all bids, the RED must then seek authorization from the MTA Board to enter into a lease or contract of sale, as applicable, with such proposer. All bids must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization.

E. Earnest Money Deposits

Typically, the RED requires each proposer to deposit with the MTA, at the time of its initial submission (in the case of a single-step RFP), or best and final submission (in the case of a multi-step RFP), earnest money in the amount of the security deposit that will ultimately be required under the applicable lease or contract of sale, as the case may be. Except as the Director, Leasing & Acquisition may otherwise determine, such earnest money deposit should be in the amount of three times the proposed monthly rent in the fifth lease year, in the case of a lease, or ten percent of the purchase price, in the case of a sale.

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All earnest money checks and W-9 forms should be forwarded to Tenant Management, which should make a record of such checks and then transmit such checks to the MTA Comptroller's office. Once a proposer has been eliminated from further consideration, Tenant Management and the MTA Comptroller's office should be so notified by the RE Manager and (except as described in Chapter IX of these Policies and Procedures) such proposer's earnest money deposit should be returned to such proposer. If a proposer has been selected, its earnest money deposit may be held in a non-interest bearing commingled account, until such time as the lease or contract of sale is executed, at which time it will be applied toward the security deposit, in the case of a lease, or the down payment, in the case of a contract of sale. If the selected proposer fails to enter into a lease or contract of sale, as applicable, such proposer's earnest money deposit may be retained by MTA, in its discretion.

The submission of earnest money may be waived for a given RFP by the Director, Leasing & Acquisitions.

F. Opening Proposals

The receipt of proposals should be conducted with a high degree of confidentiality until the selection process is complete. Documentation such as proofs of receipt, and preliminary screening for completeness of RFP submissions, are critical in maintaining the integrity of the process. The Real Estate Manager responsible for the RFP should maintain a proposal log that includes the name, date and time of receipt of each RFP response (Figure 16~~5~~). All proposals should be opened at once, in the presence of two RED staff members, and in the meanwhile they should remain sealed and unopened. Subsequent to opening the proposals, each submission should be examined to ensure that all required items have been included. A checklist should be used for that purpose (Figure 17).

G. Evaluating Proposals

The following should serve as a guide for evaluating proposals, regardless of whether a single-step or multi-step Lease/Sale RFP Process is used. In the case of a single-step Lease/Sale RFP Process, a decision is made based on the initial proposer submission.

1. Responsiveness. The first threshold to further consideration of a proposal is its "responsiveness". The following are to be considered to determine whether a proposal is responsive:

- a. Required forms (including Procurement Lobbying Law and Iran Divestment Act forms) are completely filled out and executed by principals.
- b. Receipt of earnest money deposit, in the correct amount as specified in the RFP.

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- c. Appropriate conceptual plans for improvements have been submitted, if requested.
- d. Proposed use is acceptable in accordance with criteria stated in RFP.

Generally, a proposal must be complete to be considered, and an incomplete proposal should be disqualified if the deficiencies are material and allowing the proposer to correct the proposal would afford the proposer a significant unfair competitive advantage or would not be in the MTA's best interest. However, the MTA reserves the right to waive any non-conformity with an RFP's requirements and the RE Manager should afford a proposer an opportunity to rectify any such non-conformity if it is relatively minor or such proposer's proposal is the best or only viable one received. In all instances, the RE Manager must discuss any such non-conformity with his or her Deputy Director. If there is any doubt about the appropriate action to take, MTA Legal should be consulted, and all relevant decisions should be made by the Director, Leasing & Acquisition and/or the Director, Real Estate. If a decision is made to request action by the proposer to conform its submission with RFP requirements, an email or letter should be sent to the proposer requesting such action. Any such email or letter should state that the non-conformity must be rectified within five working days, except that a longer time may be allowed by the RE Manager, after consulting with his or her Deputy Director, if the nature of the non-conformity (e.g. missing architectural plans) warrants such longer period.

If an RFP identifies a preferred or mandatory use, it should make clear whether such use is mandatory or merely preferred. If an RFP identifies a disfavored or prohibited use, it should make clear whether such use is prohibited or merely disfavored. A proposal received in response to an RFP should be deemed to be "unresponsive" (and thus disqualified) if such proposal contemplates uses that such RFP identified as prohibited or fails to provide for uses that such RFP identified as mandatory. A proposer should not be disqualified by reason of such proposer having proposed uses that the RFP identified as merely disfavored or failed to propose uses that the RFP identified as merely preferred (although that may be taken into account in scoring proposals, as described below).

2. Responsibility. The second threshold to further consideration of a proposal is whether the proposer is "responsible". A proposer ~~may~~should be disqualified as "not responsible" if, among other things, such proposer or any Affiliate of such proposer:

- a. has been convicted of a felony or any misdemeanor involving moral turpitude;
- b. has been disqualified from contracting with the MTA, the City of New York, the State of New York, the Port Authority of New York and New Jersey or the federal government;

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- c. has violated the Procurement Lobbying Law (as more particularly described in Chapter XI of these Policies and Procedures); or
- d. owes, with respect to amounts due not more than five years prior to the date of the RFP, in excess of \$10,000 to the MTA; such amount is not (in the view of the MTA Legal Department) the subject of a bona fide dispute; and such amount has remained unpaid for more than 90 days; provided, however, that before disqualifying any proposer by reason of any such non-payment, the RED must provide written notice of such non-payment to such proposer and afford such proposer a period of not less than 30 days to pay the amount that remains unpaid. Late payment, as opposed to non-payment, shall not constitute grounds for disqualification of an otherwise responsible proposer (although it may be taken into account in scoring proposals, as described below).

If, after having been provided written notice and an opportunity to be heard, a If a proposer is deemed to be not responsible, no further consideration of such proposer's proposal should be undertaken.

For purposes of these Policies and Procedures, “Affiliate” of a proposer means any entity that (a) controls or owns more than a 30% equity interest in such proposer or (b) is controlled by, or more than a 30% equity interest in which is owned by or for the benefit of, either (i) such proposer or (ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister, children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such proposer.

3. Selection Criteria. Once a proposal has been determined to be responsive and the proposer responsible, the following evaluation and selection criteria should be considered to the extent relevant (recognizing that some of such criteria may in some instances not be relevant, as, for example, in the case of a sale):

- Present value of proposed compensation to the MTA, including the present value to the MTA (if any) of any improvements to be paid for by the proposer but net of the cost of any improvements to be paid for by the MTA (“Net Present Value” or “NPV”)
- Quality of proposed improvements
- Nature of proposed business and potential benefit to MTA customers
- Financial capability of proposer and adequacy of business plan
- Business/personal references
- Management and operational experience of proposer
- Compatibility and consistency of proposed use with MTA Agency operations

Rent proposals should be compared based on the present values of anticipated rental streams. Such present values should be calculated using appropriate risk-adjusted discount rates

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determined by the Director, Leasing & Acquisition and consistently applied. In calculating such present values, any percentage rent projected by the proposer should be included only to the extent that the RE Manager deems such projections to be reasonable and then should be afforded only half the weight that is afforded to guaranteed minimum rent.

In the case of any improvements that are to be made by a tenant and used by such tenant in its business (as opposed to any improvements to be made by a tenant or purchaser for the direct and immediate benefit of the MTA), the value of such improvements should be included in NPV only to the extent, if any, that such improvements are expected to have residual value to the MTA upon the scheduled expiration of the lease term; and then the NPV should include only the present value (as of the lease commencement date, calculated using the discount rate used to calculate the present value of the rents to be paid by such tenant) of the anticipated value of the MTA's reversionary interest in such improvements as of such scheduled expiration date, based on commercially recognized standards for depreciating the cost of improvements over their useful life. Typically, the installation of utility connections (conduit and lines for water, sewer, sprinkler, power, and telephone, for example) from some point outside of the leased premises to the premises, and roofs and windows, are improvements that will provide residual value to the MTA because the following tenant will not need to pay to make such installations, which should, all other things being equal, generate higher proposed rents in subsequent offers to lease the space. However, most pre-existing interior renovations will be demolished and replaced by a new tenant, and generally would therefore not have residual value for the purposes of calculating the NPV.

As part of the RFP evaluation process, the RE Manager should complete RED's NPV calculation Excel template (see Figure 18, which has been designed to facilitate the calculation of Net Present Value and its components for use in discussion and write-ups of RFP proposals.

These Policies and Procedures establish a rebuttable presumption that the responsive and responsible proposer whose proposal offers the highest guaranteed payments to the MTA (calculated on a present value basis) should be designated as the lessee or purchaser of the subject property. However, as appropriate (depending on whether a lease or sale is contemplated), the Real Estate Manager should assess, compare and take into account the respective proposers' business plans, business experience and financial capability, and may (with the concurrence of his or her Deputy Director, the Director, Leasing & Acquisition and the Director of Real Estate) determine that another proposer should be so designated because such other proposer would:

- (a) be materially more likely to meet its financial obligations to the MTA;
- (b) provide a substantially superior amenity to the MTA's customers, the benefit to the MTA of which would outweigh the financial benefit to the MTA of accepting the proposal that would provide the MTA with the highest guaranteed payments;

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- (c) make improvements to the MTA's property, the present value of which to the MTA would cause the NPV received by the MTA from such proposer to be higher than the NPV the MTA would receive from the proposer offering the highest guaranteed rent; and/or
- (d) very likely pay percentage rent such that (even discounting such anticipated percentage rent by at least half as described above) the NPV received by the MTA from such proposer would be higher than the NPV the MTA would receive from the proposer offering the highest guaranteed rent.

In all events, however, except as the MTA Board may otherwise decide in accordance with PAL Section 2897(7), the NPV offered by the designated proposer must equal or exceed fair market value determined in accordance with Chapter V of these Policies and Procedures.

H. Selection Process

1. Oral Presentations.

After reviewing credit background checks and completed Proposer Information Forms, the RE Manager should (except as described in the next paragraph) schedule an oral presentation with each responsive and responsible proposer. It is important that two staff persons attend each interview to maintain the integrity of the process. The oral presentation should focus on any aspects of the proposer's proposal that are not self-explanatory and any discrepancies in or questions concerning the proposer's Proposer Information Form or credit background report. If, as the result of an oral presentation there are changes to any of the terms or conditions theretofore proposed by a proposer, the RE Manager should secure written confirmation of such changes from such proposer.

If there are several qualified and responsible proposers, the RE Manager may choose to conduct oral presentations with the two or three proposers whose offers, over all, are most highly rated. In cases where there is only highly rated proposer, the RE Manager, consulting with his or her Deputy Director, may choose to schedule an oral presentation with that proposer only. An oral presentation may be waived if the proposer is an existing MTA tenant or licensee.

2. Short listing in Multi-Step RFP.

In the case of a multi-step RFP process, the RE Manager should determine (a) whether there will be any short listing of proposers before the revised offer stage and (b) whether oral presentations will be held before a revised offer stage. If there will be any short listing before the revised offer stage, the RE Manager should prepare an Authorization Memo recommending such short listing to his or her Deputy Director, the Director, Leasing & Acquisition, and the Director, Real Estate Operations. The purpose of such Authorization Memo is to provide support and justification for such short listing.

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3. Revised Offer Stage in Multi-Step RFP.

In the case of a multi-step RFP process, after oral presentations and short listing, if any, the RE Manager should prepare a letter instructing the remaining eligible proposers with respect to the process for the submission of revised proposals. Such letter, which should be emailed as a .PDF document and mailed via ~~First-first Class-class Mail~~mail, should set forth:

- The date, time and place for the submission of the revised proposals;
- The information that needs to be supplied in the revised proposals; and
- Any supplemental information, not previously supplied, of which the proposers ought to be aware.

There may be more than one call for revised proposals. When the RED decides that that it is not going to seek any further submissions, the RE Manager should proceed as if the last proposals received were the proposals received in a single-step RFP process.

4. Recommendation of Award

Single-Step RFP: In the case of a single-step RFP process, upon completion of all oral presentations, if any, the RE Manager should prepare a RFP Award Authorization Memo to his or her Deputy Director, the Director, Leasing & Acquisition, and Director, Real Estate Operations (Figure 19). The purpose of such RFP Award Authorization Memo is to provide support and justification for the rejection of all bids or the issuance of a Conditional Designation Letter. Each such RFP Award Authorization Memo must include a check in the applicable SEQRA/NEPA -check-box and any follow-up action required prior to the disposition. The Lobbying Law check box must also be completed as directed on the RFP Award Authorization Memo.

Multi-Step RFP: In the case of a multi-step RFP process, upon completion of all oral presentations, if any, and after the receipt of the final revised proposals, the RE Manager should prepare an RFP Award Authorization Memo to his or her Deputy Director, the Director, Leasing & Acquisition, and the Director, Real Estate Operations. Again, the purpose of such Authorization Memo is to provide support and justification for the rejection of all bids or the issuance of a Conditional Designation Letter (see Chapter VII.A).

It is the responsibility of the applicable Deputy Director and the Director, Leasing & Acquisition to verify the RE Manager's present value calculations and to assess the reasonableness of any determination by the RE Manager that the opportunity to lease or purchase the subject property should, for one or more of the reasons set forth above, be afforded to a proposer other than the proposer that offered the highest guaranteed compensation (as calculated on a present value basis). Any such determination should be highlighted and explained in the RE Manager's Authorization Memo, as well as in the applicable Staff Summary.

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CHAPTER IV – ENTERING INTO AGREEMENTS THROUGH THE LEASE/SALE NEGOTIATION PROCESS

Scope – This chapter establishes procedures for entering into lease or sale transactions based on negotiations where use of the Lease/Sale Negotiation Process is permitted by law and determined to be appropriate.

Applicability.

The Public Authorities Law allows the Lease/Sale Negotiation Process to be utilized only under the following circumstances:

- (a) the estimated fair market value of the property to be leased-out or sold does not exceed \$15,000, or
- (b) bid prices after advertising are not reasonable, either as to all or some part of the property, or have not been independently arrived at in open competition; or
- (c) the disposition will be to the State or any political subdivision, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation; or
- (d) the transferee is a government or other public entity, and the terms and conditions of the transfer require that the ownership and use of the asset will remain with the government or any other public entity;
- (e) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
- (f) such action is otherwise authorized by law.

In the case of (a), (b) or (c) above, the disposition must be for no less than fair market value. In the case of (d) or (e), it can be for less than fair market value.

Negotiations with responsible prospective tenants or purchasers may under the foregoing circumstances be undertaken without utilizing the Lease/Sale RFP Process, but only pursuant to a Lease/Sale Negotiation Authorization Memo signed by the appropriate Deputy Director, the Director, Leasing & Acquisition, Director of Operations for transactions to be entered into pursuant to Board-approved policy, and also by MTA Legal, and the Director of Real Estate for transactions that are not pursuant to policy. (See Figure 20). At the first instance that a RE Manager, prior to or after obtaining a signed Lease/Sale Negotiation Authorization Memo, solicits an offer from the potential lessor or purchaser (which should be in writing), the RE

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Manager should send a letter or email to such other party stating that the RE Manager is the Point of Contact for the transaction and include in the letter the language in A.1(a)(1) and A.2(a)(2) of Chapter III. If he or she deems such negotiations to be successful, then in due course the Director of Real Estate may on the basis of such negotiations enter into a Conditional Designation Letter or lease with respect to a proposed transaction and then submit such transaction to the MTA Board for approval as contemplated by Chapter VII of these Policies and Procedures.

Explanatory Statements.

An “explanatory statement” must be prepared in the case of any disposition pursuant to the Lease/Sale Negotiation Process that involves:

- (a) any sale of real property that has an estimated fair market value in excess of \$100,000;
- (b) any real property disposed of by lease if the estimated annual rent over the term of the lease is in excess of \$15,000 (if the base rent in any year of the initial term is over \$15,000, then the lease qualifies for an explanatory statement); or
- (c) any real property or real and related personal property disposed of by exchange, regardless of value, or any property any part of the consideration for which is real property.

Each such explanatory statement must be transmitted to the NYS Comptroller, the Director of the Budget, the Authorities Budget Office, the Commissioner of General Services and Legislature not less than 90 days in advance of the closing of such disposition, and a copy thereof must be preserved in the RED’s files.

The explanatory statement, which may be in the form of a staff summary, must include at a minimum:

- (a) Description of the parties involved in the property transaction;
- (b) Justification for disposing of property by negotiation;
- (c) Identification of property, including its location;
- (d) Estimated fair market value of the property;
- (e) Proposed sale price of the property;
- (f) Size of the property; and
- (g) Expected date of sale of property.

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The RE Manager is responsible for preparing any such transmittal, which should be reviewed and approved by his or her Deputy Director and the Director, Leasing & Acquisition before it is sent out.

State Comptroller Review & Approval

Contracts for the disposition of real property via the Lease/Sale Negotiation Process that are valued at \$1 million or more, and all amendments to such contracts, must be reported to the Office of the State Comptroller (“OSC”) and may be subject to review and approval by OSC.

All contracts entered into via the Lease/Sale Negotiation Process with a value of \$1 million or more (with value being determined as the sale value in the case of a sale or the Net Present Value of the rental payments under the full term of a lease, including all option periods), and all amendments to such contracts are “eligible contracts” for OSC review.

Each eligible contract that the MTA anticipates entering into in a given year must be reported to OSC in December of the prior year. The Real Estate Finance Manager, with the assistance of the Deputy Directors, Leasing & Acquisition, will prepare this list on an annual basis and update it quarterly. If an eligible contract that has not been previously reported arises after the December reporting period, then it must be reported to OSC. The Real Estate Finance Manager, with the assistance of the Deputy Directors, Leasing & Acquisition, will prepare this report. No eligible contract may be entered into less than ten days prior to the execution of the eligible contract.

OSC may designate specific eligible contracts that must be submitted automatically to OSC for prior review and approval, in the manner determined by OSC (various materials, including RFP or other solicitation materials, may need to be submitted). All eligible contracts submitted for review must contain a provision stating that such contracts are not valid until approved by OSC (unless OSC has not approved or disapproved a contract within ninety days, in which case such contract shall become valid and enforceable without such approval).

However, all eligible real-estate contracts that were not selected for review and approval by OSC, must be filed with OSC within 60 days of execution. **That means in ~~2015~~2016 that all agreements, or amendments to agreements, using the Lease/Sale Negotiation Process with a value of over \$1 million must be filed with the OSC within 60 days of execution.**

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CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

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CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

Scope – This chapter contains guidelines for estimating the “fair market value” of MTA real property to be offered for lease or sale.

Responsibilities – As required by PAL Section 2897(3), the RED must obtain an “independent appraisal” in connection with every sale or lease of MTA real property (including an interest in real property, such as an easement).

Objective – To aid the RED and MTA Board in their efforts to obtain appropriate compensation from lessees and purchasers and to ensure compliance with PAL Section 2897(3), which, except in limited specified circumstances, prohibits the sale or leasing out of MTA property for less than its “fair market value”.

Procedure – PAL Section 2897 does not define “fair market value”. However, such term is commonly understood in the real estate industry to mean the price (in the case of a sale) or rent (in the case of a lease) for which a typical owner of property comparable to the subject property would be willing to sell or lease such property and a typical prospective buyer or lessee would be willing to purchase or lease such property as of a specific date, assuming that neither party is specially motivated and that the property is sufficiently marketed so that its availability is reasonably well known.

In many cases, estimating fair market value, while inherently imprecise due to the uniqueness of property, is relatively straight-forward. Anyone with knowledge of the local real estate market can survey published data relating to recent transactions to find examples of sales or leases of comparable properties where the owner presumably solicited or could have solicited offers from any number of potential buyers or lessees. And, in such cases, one need then only make appropriate adjustments to per square foot prices or rents to account for variations among properties. In other cases, however, determining a “market” value is more difficult, as a property (or interest therein such as an easement) can be uniquely valuable to an adjoining property owner and (by virtue of such property’s size, shape or inaccessibility) have relatively little or no value at all to anyone else. In such cases, the fair market value of such property lies at an indeterminate point somewhere between the polar extremes of (a) One Dollar (the amount that the adjoining property owner would have to pay to win such property at an auction without any reserve price) and (b) the amount by which adding such property (or interest therein) to the adjoining property owner’s property would increase the fair market value of the adjoining owner’s property.

In these Policies and Procedures, the term “Type I Transactions” is used to refer to sales or leases of MTA property (such as stores or independently developable parcels) where the purchasers or lessees could be anyone; and the term “Type II Transactions” is used to refer to sales or leases of

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MTA property to adjoining property owners where such property has unique value to such adjoining property owners.

PAL Section 2897 does not distinguish between Type I Transactions and Type II Transactions; in either case, it requires that an independent appraisal of fair market value be obtained and retained in RED's records and (except in the special circumstances identified in Chapter IV of these Policies and Procedures) requires public advertising for bids. However, because many of the transactions that the RED handles are Type II transactions (given that MTA rights-of-way often have only one logical adjacent user), it is important, as a practical matter, to recognize that the RED will not in fact receive competitive offers in the case of Type II Transactions, and for RE Managers to give suitable instructions to appraisers to avoid confusion and ensure that in all cases the intentions of this chapter are properly served by the appraiser's work.

In the case of a Type I Transaction, the RE Manager should instruct the appraiser to prepare a typical assessment of the value of the subject MTA property assuming full and adequate competition among potential purchasers or lessees, as the case may be. In the case of a Type II Transaction, the RE Manager should instruct the appraiser to prepare an assessment of the incremental value to the adjoining property owner of adding the subject MTA property (or interest therein) to such adjoining property owner's interest. The RE Manager should instruct the appraiser to explicitly state in the appraisal the reasoning used in determining the estimated incremental value to the adjoining property owner.

It is important to note that in either case, the value determined by the appraiser will not necessarily equate with "fair market value". Appraisers can only estimate value, and indeed appraisers commonly disagree when more than one is asked to value any given property. And, in the case of a Type I Transaction to be entered into after the Lease/Sale RFP Process has in fact resulted in competition between two or more typically motivated potential purchasers or lessees, the actual results of such Lease/Sale RFP Process constitute more concrete evidence of fair market value than an appraiser's estimate does. However, the estimate of value determined by an independent appraiser does nonetheless constitute rebuttable evidence of fair market value, and a tool for assessing the efficacy of the RED's efforts to maximize income from the disposition of MTA property (regardless of whether the Lease/Sale RFP Process of the Lease/Sale Negotiation Process is used). Accordingly, each Staff Summary presented for MTA Board approval should include a statement ~~of~~ as to whether the proposed transaction would yield to the MTA the appraiser's estimate of value, and, if the proposed transaction would yield to the MTA less than such estimate of value, either (a) an explanation as to (i) why the RED does not believe such estimate of value coincides with fair market value and (ii) why the compensation to the MTA that is being recommended in the Staff Summary represents at least fair market value or (b) information and proposed MTA Board findings of the kind required by PAL Section 2897(7)(b) and (c), which read as follows:

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CHAPTER V – APPRAISALS AND FAIR MARKET VALUE

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“b. In the event a below fair market value asset transfer is proposed, the following information must be provided to the authority board and the public:

- (i) a full description of the asset;
 - (ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value sought by the board;
 - (iii) a description of the purpose of the transfer, and a reasonable statement of the kind and amount of the benefit to the public resulting from the transfer, including but not limited to the kind, number, location, wages or salaries of jobs created or preserved as required by the transfer, the benefits, if any, to the communities in which the asset is situated as are required by the transfer;
 - (iv) a statement of the value to be received compared to the fair market value;
 - (v) the names of any private parties participating in the transfer, and if different than the statement required by subparagraph (iv) of this paragraph, a statement of the value to the private party; and
 - (vi) the names of other private parties who have made an offer for such asset, the value offered, and the purpose for which the asset was sought to be used.
- (c) Before approving the disposal of any property for less than fair market value, the board of any authority shall consider the information described in paragraph b of this subdivision and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of such transfer.”

Each appraisal commissioned by the RED pursuant to these Policies and Procedures should be prepared by a member of the Appraisal Institute, or the equivalent, except that in the case of a proposed space lease such appraisal may be prepared by a licensed real estate broker experienced in the leasing of space in the area where the subject property is located.

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CHAPTER VI - ANALYSIS OF PROPOSER’S FINANCIAL CAPABILITY

Scope - This chapter outlines the procedures to be utilized to evaluate a proposer’s financial ability to comply with the terms of a lease or contract of sale.

Responsibilities - The RE Manager is responsible for receiving and taking into account the information reported on Proposer Information Forms and for ordering and taking into account the results of independent credit and background reports.

Objective - To evaluate the creditworthiness of a prospective tenant or purchaser.

Procedures - The necessary procedure for conducting the credit and background check begins with the RE Manager obtaining a completed Proposer Information Form from each proposer in order to gather reference and credit and background information for such proposer. The Proposer Information Form includes an authorization to order a credit background report and check financial references. The RE Manager should provide the requisite information to the RED’s credit reference service, currently LIDA Credit Agency, Inc., 450 Sunrise Highway, Suite 201, Rockville Center, NY 11570 (phone: 516-678-4600; fax: 516-678-4611), and order a credit background report from such service— (See Figure 21). Typically this process takes two to three weeks.

In the case of a proposed sale, the primary evidence of a prospective purchaser’s financial capability is such prospective purchaser’s ability and willingness to put at risk a substantial down payment (typically equal to 10% of the purchase price). However, the RE Manager should nonetheless seek evidence of each prospective purchaser’s ability to finance the balance of the purchase price, recognizing that such evidence is likely to take the form of expressions of interest and indicative terms from prospective equity owners and lenders, as opposed to definitive commitments.

In the case of a lease:

- (a) except in special circumstances with the approval of the Director, Leasing & Acquisition (as, for example, where the tenant makes a substantial pre-payment of rent or funds a substantial improvement of substantial value to the MTA), the prospective tenant should be required to demonstrate that it is ready and able to post cash or a letter of credit as a security deposit in the amount of three times the projected monthly rent for the fifth year of the lease term;
- (b) the prospective tenant should be required to furnish a business plan, including pro forma projections of income and expense, that demonstrates that the tenant will be able to afford to pay the proposed rent from its operating revenues;

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- (c) if the proposed rent is substantially higher than the RED’s estimate of fair market value, then (unless the tenant is itself a creditworthy entity or will make improvements that would have substantial residual value to the MTA if the lease were to be terminated for non-payment of rent) the tenant’s obligation to pay such rent should be personally guaranteed by a creditworthy principal of the tenant;
- (d) alternatively, if the projected rent is not substantially higher than the RED’s estimate of fair market value, it will suffice for a creditworthy principal of the tenant to provide a so-called “good guy” guaranty, pursuant to which the guarantor guarantees the payment of rent through the date that is six months after the date on which the tenant surrenders the premises (or such guaranty may be dispensed with entirely if the tenant itself is creditworthy); and
- (e) if the tenant is to be required to undertake and pay for substantial capital improvements, the tenant should be required to post security for the completion (and payment of the costs) of such improvements, which security may take the form of (i) a personal guaranty from a creditworthy principal of the tenant, or (ii) a letter of credit (the amount of which may be periodically reduced as construction costs are paid by the tenant).

It is in light of the foregoing requirements that the financial information provided by proposers should be evaluated by RED staff.

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CHAPTER VII – BOARD APPROVAL PROCESS

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CHAPTER VII – BOARD APPROVAL PROCESS

Scope – This chapter reviews the process for the preparation of Conditional Designation Letters and Finance Committee Staff Summaries and for the obtaining of MTA Board approval of sale and leasing-out transactions recommended by the RED. All proposals to sell or lease out MTA property must be reviewed by the Finance Committee, and no such sale or lease can become effective until and unless the MTA Board (acting upon the recommendation of the Finance Committee) has specifically authorized such sale or lease, except as permitted in Policy 33 adopted by the MTA Board in November, 2013, which allows the RED to award a standard retail lease where there are at least three proposers to the proposer who offered the highest guaranteed rent without a Finance Committee Staff Summary or MTA Board Approval provided that it is later listed in a chart in the Finance Committee book.

A. Conditional Designation Letters

When the RED has determined that it wishes to accept the proposal of a prospective tenant to lease MTA property or of a prospective purchaser to purchase MTA property (whether pursuant to the Lease/Sale RFP Process or pursuant to the Lease/Sale Negotiation Process), the RE Manager should prepare a conditional designation letter for execution by the Director of Real Estate and counter-signature by such prospective tenant or purchaser (a “Conditional Designation Letter”). See Figure 22 for an example. Such letter should spell out the terms of the proposed transaction with as much specificity as possible under the circumstances, not in the body of the letter itself but by incorporating by reference the most recent written materials (typically a signed Parcel Information Sheet or Term Sheet and signed Rent Proposal) that have been updated if required to embody the agreements that the RED believes have been reached to date with respect to such transaction. Each Conditional Designation Letter must stipulate that it does not constitute a legally binding agreement insofar as the MTA is concerned and that it is subject to MTA Board approval.

Once an Authorization Memo approving a proposed disposition has been signed, a lease or contract of sale executed by the prospective tenant may serve in place of the Conditional Designation Letter. Each such lease (other than a standard retail lease that is governed by Policy 33) or contract must stipulate that it is not a legally binding agreement insofar as the MTA is concerned and that it is subject to MTA Board approval.

B. Staff Summaries

After the prospective purchaser or tenant counter-signs the Conditional Designation Letter or returns a signed lease or contract of sale, the RE Manager should prepare a Staff Summary (unless not required pursuant to MTA Board-approved policy including Policy 33) for Finance Committee approval. The following is the sequence of steps for preparation of the Staff Summary. This process typically takes approximately five weeks and results in a presentation to

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and discussion with the Finance Committee. A detailed description of the Staff Summary process is contained in the Staff Summary Procedure available in the “Staff Summaries” folder in RED’s shared drive.

1. The assigned Executive Secretary distributes a schedule of Finance Committee and MTA Board meeting dates to all RED staff. This schedule includes deadlines for the submission of Staff Summaries.
2. The RE Manager submits a project title to his/her Deputy Director for review, and then to the assigned Executive Secretary who is responsible for RED’s Finance Committee agenda.
3. The RE Manager prepares a first draft of the Staff Summary, using the RED’s standard form (Figure 23). Details such as the following should be included as appropriate:
 - Finance Committee meeting date
 - MTA Agency involved
 - Purchaser or tenant
 - Location (street address and block and lot)
 - Activity (use)
 - Action requested (approval, extension of term, etc.)
 - Term (years)
 - Renewal options (if any)
 - Space (square feet)
 - Rent or compensation, (annually, by term and by square foot, if appropriate) or sales price
 - Termination rights
 - Security deposit (if any)
 - Guarantor (if any)
 - Insurance (if any)
 - Required improvements (if any)
 - Comments

The comments section should review the justification for the selection of the proposed tenant or purchaser, and should include the number of proposals received (if the purchaser or tenant was selected via an RFP), the names of any proposers that were disqualified and the reasons why, the present values of the guaranteed compensation offered by each responsive and responsible proposer, the discount rate used to calculate such present values, and, if the responsible and responsive proposer

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with the highest such present value was not selected, an explanation as to why a different proposer was selected.

4. The applicable Deputy Director, the Director, Leasing & Acquisition, and the Director of Real Estate review the draft with the RE Manager and make changes as they see fit.
5. MTA executive staff (General Counsel, Chief of Staff and Chief Financial Officer) review and (following implementation of any changes they may require) initial the Staff Summary.
6. The Director of Real Estate signs the Staff Summary.
7. The completed Staff Summary is submitted along with the remainder of the RED's Finance Committee agenda package for printing.

C. Board Approval

The RE Manager and his or her Deputy Director should be present during the Finance Committee discussion in order to help answer questions as needed. The Finance Committee may instruct the RED staff to make changes in the Staff Summary as reflected in the minutes of the Finance Committee meeting. Any such changes must be made to the Staff Summary prior to submission to the full MTA Board. If the transaction is recommended by the Finance Committee, the RE Manager should update Yardi with the Finance Committee approval date and the transaction is included in the Finance Committee's report to the MTA Board. Once the MTA Board has approved the transaction, the RE Manager should enter the MTA Board approval date (or in the case of a standard retail lease governed by Policy 33, the date listed in the MTA Finance Committee Book pursuant to such policy) into Yardi.

D. SEQRA Compliance

As indicated above, RED staff must consult and coordinate with MTA Legal to ensure that, before the MTA Board takes action to approve any sale or leasing-out transaction, the requirements of SEQRA have been satisfied to the extent such requirements are applicable to such transaction. Depending on the circumstances, the MTA Board may need to make certain SEQRA-related determinations before it takes such action. Prior to submitting an Authorization Memo for any transaction, the RE Manager should, in consultation with MTA Legal, determine what, if any, SEQRA requirements must be satisfied and whether and how such requirements need to be addressed in the applicable Staff Summary.

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CHAPTER VIII – PREPARATION OF FORMAL AGREEMENTS

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CHAPTER VIII - PREPARATION OF FORMAL AGREEMENTS

Scope - This chapter reviews procedures relating to the preparation of definitive legally-binding agreements.

Objective - To develop a fully executable agreement as well as provide documentation of the approval and revision of such agreement.

Responsibilities - The RE Manager has primary responsibility for the preparation of the draft agreement, preparing the Document Approval Form (“DAF”) and soliciting input from the applicable Deputy Director, the Director, Leasing & Acquisition and MTA Legal.

Procedures - The necessary procedures for preparing the lease or sale agreement include drafting the agreement and obtaining Legal Department approval and tenant concurrence with the written agreement.

A. Drafting of Formal Agreement

Prior to or following the acceptance of the terms of the agreement by the MTA Board, the RE Manager should in consultation with MTA Legal prepare a first draft of a formal agreement based on the Conditional Designation Letter, form of lease provided with the RFP (if applicable), and Staff Summary, accompanied by the Authorization Memo, Document Approval Form, and draft or Board-approved staff summary. To the fullest extent possible and appropriate, such draft should be based on a form previously approved by MTA Legal.

B. Internal Review

Once the RE Manager has prepared such draft, it should be forwarded to the applicable Deputy Director for review. Depending on the Deputy Director's comments, the RE Manager may need to make additional modifications. The agreement should then be forwarded to either the Director of Operations or Senior Director, Tenant Management Unit (depending on the nature of the agreement), and then to the Director, Leasing & Acquisition and the assigned attorney at MTA Legal for their review and comment. As changes are made to the draft agreement, the RE Manager should highlight the changed text with each revision and have his or her Deputy Director, the Director, Real Estate Operations and the assigned attorney review and approve the changes. A draft agreement may not be sent to the prospective purchaser or tenant until such internal review has been completed.

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C. Document Approval Form

The Document Approval Form is to be used for documenting revisions and approvals. (See Figure 24). The Document Approval Form, along with supporting documentation, should be routed with the draft agreement for all internal RED reviews, comments and approvals. The Document Approval Form itself does not travel to the Law Department during the review process. However, the date of sending the agreement to the Legal Department is to be noted on the form and resides in the tenant file. The Tenant ID # from Yardi should be included on the Document Approval Form.

D. Execution By Purchaser or Tenant

Once the required internal review has been completed, the RE Manager should send the proposed documentation to the prospective purchaser or tenant for execution. Should the prospective purchaser or tenant request changes, the RE Manager should present such requested changes to his or her Deputy Director, the Director, Leasing & Acquisition and/or MTA Legal for discussion as needed. Once the agreement is finalized, the prospective purchaser or tenant should be directed to execute five original counterparts of the agreement and return them to the RE Manager.

E. Execution By Director of Real Estate

Once the agreed-upon documentation has been executed by the tenant or purchaser, the RE Manager should use the Document Approval Form to send it (by way of his or her Deputy Director, the Director, Leasing & Acquisition and MTA Legal) to the Director of Real Estate for execution on behalf of the applicable MTA Agency.

F. Required Deliveries

In addition to executed copies of the agreement, the RE Manager should obtain the following from the purchaser or tenant:

1. Any required security deposit, to the extent, if any, not already deposited with the MTA, and any required personal guarantees of payment and/or performance, including any required guaranty of completion with respect to required improvements.
2. In the case of a lease, the first month's rent.
3. In the case of a lease, an insurance certificate evidencing coverage as required by the lease. This item must be delivered to the RE Manager prior to possession being

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granted. The RE Manager should make an initial inspection of the certificate to verify that the amounts specified match those in the agreement, and that all the additional insured's as required under the agreement are named on the certificate, that the address of the concession is correct and that the named insured is correct as per the lease. (After the file is conveyed to Tenant Management, Tenant Management will be responsible for forwarding the insurance certificate to MTA Risk Management for further review.)

Note: Insurance for construction is due upon approval of plans and prior to commencement of any work.

All checks should be forwarded to Tenant Management immediately upon receipt. Copies of all the items referred to in this chapter should be maintained in the Tenant File.

G. Proposer's Failure to Execute

If a proposer has held a proposed agreement for more than two weeks, the RE Manager should send a letter to the proposer, UPS Next Day Air, stating that if the agreement is not executed within two weeks the subject property may be offered to another proposer.

Every effort should be made to contact the proposer to identify and resolve any open issues; and if the RE Manager judges the proposed tenant's reasons for failure to execute to be valid, an adequate time period should be granted for finalizing and executing the agreement. In no event, however, should the proposed tenant be allowed an inordinate amount of time to complete contract negotiations and satisfy any pre-conditions to contract execution or be allowed to renege on understandings that were reflected in the proposer's proposal or Conditional Designation Letter.

If a proposer purports to withdraw such proposer's proposal or refuses to execute definitive documentation reflecting the terms of the proposal or Conditional Designation Letter, the RE Manager, after consulting with his or her Deputy Director and MTA Legal, should instruct Tenant Management to ~~seize-retain~~ such proposer's earnest money deposit, and in such event Tenant Management should notify the MTA Comptroller's office that it should transfer such deposit to the applicable MTA Agency's operating account; provided, however, that the Director, Leasing & Acquisition may in any event elect to return any earnest money deposit received from any governmental agency or not-for-profit agency. Alternatively, if negotiations have terminated by reason of an impasse over contract terms that were not addressed in the proposal or Conditional Designation Letter, and if the RE Manager and his or her Deputy Director and MTA Legal concur that the proposer has been dealing in good faith, the MTA Comptroller's office should be directed to return the proposer's deposit with interest, if any.

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The RE Manager should take care to maintain contemporaneous notes of all communications that could have a bearing on the determinations that are described in the preceding paragraph.

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CHAPTER IX – TENANT INFORMATION TRANSFER

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CHAPTER IX - TENANT INFORMATION TRANSFER

Scope - This chapter is designed to assist in preparing lease-related documentation to be forwarded to Information Management and Tenant Management.

Objective - To assist in the accurate transfer of pertinent information to Information Management and Tenant Management.

Responsibilities - The RE Manager prepares the necessary documentation and communicates the information to Tenant Management and Information Management.

Procedures - The necessary procedures for conveying the information are as follows:

A. Documentation

1. If the Director, Leasing & Acquisition approves the selection, the RE Manager with the assistance of Information Management (which advises the Real Estate Manager of the correct property and unit descriptions) should enter basic proposer information (name, address, property unit) into Yardi. The RE Manager notifies Information Management via email to change status of tenant to “future”.
2. Once a tenant has been selected, approved and entered into Yardi with “future” status, this tenant will now show up on Yardi’s Lease Tracking Report. This report may be printed and reviewed at monthly staff meetings between the applicable leasing team and the Director, Real Estate Operations -(Figure 25)
3. The Director of Real Estate signs all of the copies of the final lease agreement and these are returned to the RE Manager who distributes the signed copies of the agreement as follows:
 - The tenant (1 copy)
 - Tenant File - (2 copies)
 - One copy to MTA Agency legal department (if applicable)
4. The RE Manager assembles or updates the RFP File to include all proposals, rejection letters, copies of interview notes and memos pertaining to the project and forwards to the Information Center. The RE Manager assembles or prepares the Tenant File, which includes the original proposal, all correspondence with the tenant, confirmation letter, two copies of the agreement, Staff Summary, insurance certificate, W-9 form, construction security, Document Approval Form and the Routing Execution Form, and attaches the Tenant Control Checklist (Figure 26), which is affixed to the

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respective project file before forwarding to Tenant Management. Tenant Management is responsible for forwarding this to the Information Center.

The completed file for all new agreements or amendments and changes to existing agreements should immediately be handed over to Tenant Management staff. Within 24 hours of when a RE manager plans to mail a tenant a copy of an executed lease agreement, the RE Manager should e-mail Tenant Management staff for a meeting. At the meeting, Tenant Management staff will verify:

- All items on the tenant file check list are in the file.
- That the key qualitative tenant management elements (insurance, rent and security checks, executed routing form and lease) are in the correct amounts, received from the correct party.

If all is in order, Tenant Management staff will enter the “hand-off” date into Yardi. If qualitative elements are not in order, the Real Estate Manager and Tenant Management staff will work together to remedy the matter, and once remedied, the “hand-off” date will be entered by the Tenant Management staff into Yardi.

NOTE: It is the responsibility of the RE Manager to ensure that no agreement is executed by the Director of Real Estate unless checks are received in the appropriate amounts, and from the appropriate corporate entity, and that initial insurance certificates are received in the limits and coverages contemplated by the lease.

5. For the Lease/Sale Negotiation Process, the Authorization Memo plus all correspondence, maps and the agreement serves as the Tenant File and is forwarded to Tenant Management.

B. Insurance Coordination

Note: If a tenant’s insurance forms are incomplete at the time the Tenant File is forwarded to Tenant Management, a notation as to the status of insurance should be made. Valid reasons for uninsured status typically include the tenant not being in possession or not being required to maintain insurance during the design and construction process. However, during construction, the tenant’s contractor is required to maintain adequate insurance. The tenant may not be in possession of the facility until active coverage is in place.

C. Planning & Construction

Tenant Management is responsible for the coordination of the construction process from plan submission and approval through completion. Tenant Management should copy the RE Manager

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on all correspondence and include Tenant Management in all meetings relating to the construction process. Tenant Management is responsible for updating Yardi with respect to all construction activity.

D. Maintenance of Marketable Property List

The Deputy Directors are responsible for maintaining the Marketable Property List for their respective areas of responsibility. Tenant Management is responsible for notifying the appropriate Deputy Directors of previously leased or licensed property that is due to become available.

CHAPTER X - CONSTRUCTION MANAGEMENT

Scope - This chapter provides guidelines for standardized monitoring of the tenant improvement construction process from design through construction completion and the commencement of operation.

Objective - To ensure that tenant improvements are efficiently and appropriately completed in compliance with lease terms and with the applicable MTA Agency's architectural, engineering and code compliance department.

Responsibilities - The applicable MTA Agency is responsible for approving plans and monitoring and approving the construction of the proposed facilities.

Procedures - The necessary procedures for coordinating the construction process include the following:

A. Plan Submission

The tenant submits construction plans for approval by the MTA Agency through the RED.

1. Tenant Management, with the assistance of the leasing RE Manager, is generally responsible for coordinating the approval of design and plans for proposed improvements. After the lease is fully executed, the tenant has a prescribed number of days to submit plans to Tenant Management or its designated receiver. Tenant Management then forwards the plans to the appropriate MTA Agency for review. Subsequent to A&E review, the plans are forwarded to the applicable MTA Agency. If changes need to be made after the MTA Agency review, the tenant should be so notified in writing. The leasing RE Manager should be copied on all correspondence relating to plan submission and approval meetings on tenant plans should include the leasing RE Manager only if necessary.
2. Once plans are approved, a letter should be sent by Tenant Management to the tenant indicating that the plans have been approved and requesting evidence of contractor's insurance (if not already sent) so that construction may commence.
3. Each MTA Agency deals with tenant construction differently. Tenant Management tracks the MTA Agency process. As a general rule, the following paragraphs describe how the MTA Agencies manage tenant construction. Appropriate exceptions to these general rules can be made with the approval of the Director, Leasing & Acquisition in consultation with the Sr. Deputy Director, Tenant Management.

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MTA NYCT: The Maintenance of Way Department approves plans. Tenant Management arranges a construction kick-off meeting. Attendees include: the tenant, its contractors, licensed subcontractors, architect and engineer, the RE Manager, Tenant Management, and Maintenance of Way. Maintenance of Way is responsible for all inspections and for Approval to Open (oral or written) and Final Approval (written). The Final Approval concludes the process for NYCT. Tenant Management communicates this information to the tenant.

MTA LIRR:

1. **For Penn Station Tenants:** The Capital Program Management (CPM) staff assigned to Penn Station approve the plans. CPM arranges a construction kick-off meeting. Attendees include Tenant Management, the Station Manager, the RE Manager, LIRR Engineering, CPM and the tenant and its contractors, architect and engineers. CPM is responsible for issuing a Construction Permit and for all inspections. After satisfactory construction completion, CPM issues a Certificate of Occupancy to the tenant with a copy to the RE Manager, who then forwards a copy to Tenant Management.
2. **For Tenants in Space Other Than Penn Station:** CPM staff approve the plans. CPM staff, together with LIRR Engineering Department personnel, are responsible for inspections and CPM issues the certificate of occupancy/construction approval. Tenant Management communicates the approval to the tenant.

MTA METRO-NORTH: Capital Programs (CP) approves the plans. CP is responsible for issuing a Building Permit and for inspections. Tenant Management coordinates the construction kick-off meeting. In attendance are: CP (including the Chief Architect, Engineers and Code Compliance) the RE Manager, Tenant Management, the tenant and its architect, engineers and contractors. CP issues a Certificate of Occupancy upon satisfactory completion of construction. The Certificate of Occupancy is forwarded to Tenant Management.

B. Construction Monitoring

1. Tenant Management communicates with the Engineering Department/Maintenance of Way on the status of the improvements. In some cases, Tenant Management will find it necessary to physically inspect the premises. Accordingly, Tenant Management essentially monitors the construction process endeavoring to ensure that construction proceeds according to schedule and that all inspections by the appropriate technical personnel occur. Tenant Management is responsible for documenting any delays and

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the reasons for such delays. Once the construction is completed, the applicable MTA Agency is notified that construction is complete and a final inspection is requested.

C. Construction Completion

1. Upon construction completion and approval, Tenant Management arranges the return of the construction security, if applicable.
2. Where an agreement indicates that rent commences upon completion of construction, Tenant Management sends the tenant a rent start notice and provides a copy to the RE Manager and Information Management.

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CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW

Scope - This chapter establishes policies and procedures for the implementation of the requirements relating to lobbying with respect to real estate transactions as provided in the State Finance Law and Legislative Law and as amended by Chapter 1 of the Laws of New York of 2005, as amended (the “Procurement Lobbying Law”). The applicable provisions of the Procurement Lobbying Law took effect on January 1, 2006. The Procurement Lobbying Law is a statute enacted by the New York State Legislature and the MTA is obligated to comply with its requirements.

Objective - To enhance the public’s confidence in State procurement processes by increasing disclosure requirements for persons attempting to influence a procurement or Real Estate transaction.

Responsibilities – Proposers must not make “Contact” during the Restricted Period with anyone other than the Designated Point(s) of Contact.

Procedures - The Procurement Lobbying Law applies to “the purchase, sale or lease of real property or an acquisition or granting of other interest in real property.” Among other things, it restricts certain contacts during the procurement process and requires the MTA to record all such “Contacts” and include them in the transaction record. Violations of the policy regarding permissible contacts must be reported to the appropriate MTA officer and investigated accordingly.

A. Definitions:

As used in this chapter and as provided in the Procurement Lobbying Law, the following terms have the following meanings:

1. Contact: any oral, written or electronic communication with a governmental entity under circumstances where a reasonable person would infer that the communication is *intended to influence* an MTA real estate transaction.
2. Offerer: an individual or entity, or any employee, agent or consultant or person acting on behalf of such individual or entity, that contacts the MTA about a real estate transaction during the Restricted Period or that bids, proposes or enters into negotiations with respect to an MTA real estate transaction.
3. Restricted Period: the period of time commencing with the earliest written notice, advertisement or solicitation of an RFP or, in the case of a Lease/Sale Negotiation

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Process transaction, when the RE Manager first solicits a response from a potential lessor or purchaser intending to result in contract of sale or lease, which solicitation should be in writing, and ending with the final closing of the transaction.

B. Applicability:

1. The Procurement Lobbying Law applies to *all contracts* with an estimated annual expenditure in excess of \$15,000, including, but not limited to, RFPs and agreements entered into via the Lease/Sale Negotiation Process.
2. A transaction is not subject to the provisions of this section if the commencement of the Restricted Period occurred prior to the effective date of the Procurement Lobbying Law, even if the contract is awarded after the effective date.
3. During the Restricted Period, bidders/proposers, or those acting on their behalf, may make only Permissible Contacts with the MTA with regard to a real estate transaction. In addition, bidders/proposers may not attempt to influence a real estate transaction in a way that violates or attempts to violate the ethics provisions of the Public Officers Law Section 73(5), relating to the receipt of gifts intended to influence; and Section 74, which addresses the ethical standards of employees of state agencies (including public benefit corporations), members of the New York State Legislature and Legislative employees.

C. Communications Not Prohibited by the Procurement Lobbying Law (“Permissible Contacts”):

1. A “Contact” (i.e., a communicatoin *intended to* influence a real estate transaction) that is made with a Designated Point of Contact, whether such contact is one of the types of “Contacts” listed in C.2 below or not, or
2. One of the following communications, (all considered “Contacts”), with the Designated Point(s) of Contact OR another agency representative (i.e., an employee of the Real Estate Department) who is NOT a Designated Point of Contact:
 - a. Proposals: Submission of written proposals in response to an RFP or other solicitation, pursuant to the submission requirements set forth in the solicitation.
 - b. Written Questons: The submission of written questions by a method set forth in the solicitation, advertisement and/or real estate transaction package, when all such questions and responses are to be disseminated

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to all Offerers who have expressed an interest in the RFP or other solicitation.

- c. Pre-Proposal Conference: Participation in a pre-proposal conference, oral presentation or interview provided for in an RFP.
- d. Complaints: Complaints by an Offerer regarding the failure of a Designated Contact to reply in a timely fashion.
- e. Negotiations: Communications by Offerors, who have been tentatively designated as the prospective tenant or purchaser, provided that such communications are solely for the purpose of negotiating the terms of such designation and/or negotiating the terms of the lease or contract of sale after being notified of such designation.
- f. Review of award: Contacts regarding protests, appeals or other review proceedings before the MTA.
- g. Protests or complaints: Complaints of alleged improper conduct.
- h. Communications between offerers and governmental entities (i.e., state legislature, public authorities, courts) that solely address the determination of responsibility by the MTA of an Offeror.
- i. Contact by a member of the New York State Legislature or legislative staff, when acting in their official capacity, regarding a particular real estate transaction.

In addition and in the absence of the Point of Contact, the Director of Real Estate may authorize another contact within the Real Estate Department to receive communications on behalf of the Point(s) of Contact.

D. Communications Prohibited by the Lobbying Law (“Impermissible Contacts”): Any CONTACT that is not a PERMISSIBLE CONTACT as defined above is an “Impermissible Contact” and a violation of the Lobbying Law. To clarify, a communication is an “Impermissible Contact” if *all* of the following are true:

- i. An Offeror makes an oral, written or electronic communication with a person in an MTA Agency;
- ii. who is not a designated point of contact for the solicitation;

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- iii. during the solicitation's RESTRICTED PERIOD;
- iv. under circumstances that a reasonable person would infer was an attempt to influence that solicitation; and
- v. in a manner that does not fall under any of the areas considered a PERMISSIBLE CONTACT.

E. Recordation of Permissible and Impermissible Contacts:

1. Permissible Contacts: Upon any Permissible Contact during the Restricted Period, the employee being contacted must obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Contact and whether or not such person (if such person is not the Offeror) or organization was retained, employed or designated by or on behalf of the Offeror to contact the MTA regarding the procurement. Such Permissible Contacts must be recorded on the Report of Contact form (see Figure 27), with the appropriate "Permissible Contact" box checked. The person recording the information makes a copy of the form for themselves, and sends an additional copy to the Director, Real Estate who maintains a central repository of the forms as well as the original to the RE Manager for placement in the Project file.
2. Impermissible Contacts: Any employee of the MTA, including employees outside of the RED, who becomes aware that anyone has violated the Procurement Lobbying Law by making an Impermissible Contact must obtain the name, address, telephone number, place of employment and occupation of the person or organization making the Impermissible Contact and whether or not such person or organization was retained, employed or designated by or on behalf of the Offeror to contact the MTA regarding the procurement and inform the Director of Real Estate immediately, using the Report of Contact form, checking the "Impermissible Contact" box. (Figure 27).
3. The person recording the information makes a copy of the form for themselves, and sends an additional copy to the Director who maintains a central repository of the forms as well as the original to the RE Manager for placement in the Project file. In addition, the Director of Real Estate will investigate the allegations. If there is reasonable cause to believe that the allegations are true, the Offeror must be notified of the investigation and given an opportunity to respond to the allegations in accordance with the MTA's procedure regarding responsibility determinations.
4. The MTA Director of Real Estate must report knowing and willful violations of the Procurement Lobbying Law to the Executive Director of the MTA and the Office of General Services ("OGS").

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F. Contract Requirements:

1. All RFP or Lease/Sale Negotiation offering documents must contain the name of the designated contact(s) (the Point(s) of Contact) for that particular procurement.
2. All RFP or Lease/Sale Negotiation offering documents must contain a summary of the requirements of the Procurement Lobbying Law. This summary is contained within Schedule W.
3. Schedule W, the Procurement Lobbying Law Disclosure Statement, -(Figure 28) must be made a part of, and returned with, the bid/solicitation documents for each real estate transaction covered under the Procurement Lobbying Law. *Failure of a bidder/proposer to return a completed Schedule W will deem such bidder/proposer as ineligible for award.* Schedule W consists of the following, which satisfy the submission requirements of the Procurement Lobbying Law:
 - a. Affirmation of the Offerer's understanding of, and agreement to comply with, the Procurement Lobbying Law.
 - b. Certification that the information the Offerer has provided the MTA with is complete, true and accurate.
 - c. Disclosure of any findings of non-responsibility made within the previous four years that were due to a violation of the Lobbying Law or as a result of intentionally providing false or incomplete information to a government entity (as defined in the Procurement Lobbying Law). Failure to disclose such prior determinations of non-responsibility will be considered in the determination of responsibility.
 - d. The MTA may confirm the accuracy of the information provided in this disclosure by accessing the list of all Offerers who have been determined to be non-responsible or debarred due to violations of this section, maintained by the OGS.

G. Responsibility Determination:

1. A finding that an Offerer has knowingly and willfully violated the Procurement Lobbying Law may result in a determination of non-responsibility and the Offerer may not be awarded the lease or sale.
2. The lease or sale may be awarded to an Offerer found non-responsible as a result of a violation of the requirements of this section, if the MTA determines that the award of the license or sale to the Offerer is necessary to protect public property, health or safety, and that the Offerer is the only source capable of fulfilling the contract within the required timeframe. Such finding must be documented in the transaction file.
3. Any subsequent determination of non-responsibility due to a violation of this section within four years of a determination of non-responsibility will result in the

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Offerer being debarred from submitting a bid/proposal on or be awarded any real estate contract for four years from the date of the second determination.

4. Compliance with the requirements of the Procurement Lobbying Law and this Procedure will be considered in the overall responsibility determination of the Offerer.

J.H. **Termination**

1. Each lease or sale contract covered by the Procurement Lobbying Law must contain a provision that authorizes the MTA to terminate any such transaction if any of the certifications provided by the Offerer pursuant to the Procurement Lobbying Law is found to be “intentionally false or intentionally incomplete”.
2. The MTA must include the basis for any action taken pursuant to such termination provision in the transaction record.

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Authorization Memo: A memorandum prepared by a RE Manager seeking authorization as required by these Policies and Procedures.

Authorization Memos recommending award pursuant to an RFP require SEQRA check off and signature of the appropriate Deputy Director, Director, Leasing & Acquisition, and Director, Real Estate Operations.

Authorization Memos recommending award pursuant to the Lease/Sale Negotiation Process require SEQRA check off and the signatures of the appropriate Deputy Director, the Director, Leasing & Acquisition, the Director, Real Estate Operations, MTA Legal, and the Director, Real Estate.

Lease/Sale Negotiation Process File: This file results from the Proposer File and includes the Authorization Memo, the Proposer Information Form, the Conditional Designation Letter, the Staff Summary, the Document Approval Form, two copies of the definitive agreement(s), the insurance certificate and the W-9 form. This file is assembled by the RE Manager and resides in the Information Center.

Conditional Designation Letter: As described in Chapter VII.

Contact: As defined in Chapter XI.

Deputy Director: The Deputy Director of the RED who has primary responsibility for RED leasing & acquisition activities relating to property of a particular MTA Agency.

Document Approval Form: As described in Chapter VIII.

Finance Committee: The Finance Committee of the MTA Board (or any other committee of the MTA Board that may assume responsibility for oversight of the RED).

GCT Leasing Guidelines: As defined in the Introduction.

Information Center: The area of the RED office devoted to maintaining central files, Val maps, Sanborn maps, Tax maps, Station Diagrams and other documents that are regularly needed and must be permanently retained.

Information Management or IMU: The information management unit of the RED.

Inquiries: As defined in Chapter I.

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IPIS: IPIS is a database that contains a list of properties owned by the City of New York. Information concerning tax status, descriptive property history and any *in rem* action is also available. Access to this information is provided via CityNet Computer Hook-up. Certain items from this information can also be found in Yardi for each City-owned property.

Iran Divestment Act: The New York State Office of General Services maintains a list of persons who have been determined to engage in investment activities in Iran (“the List”), as defined in the act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, public benefit authorities may not enter into or award a contract, including a real estate contract, unless it obtains a certification from a proposer that it is not on the list.

Lease/Sale RFP Process: The leasing-out or selling of real property of the MTA pursuant to an RFP.

Lease/Sale Negotiation Process: The leasing-out or selling real property of the MTA other than pursuant to an RFP.

Licensing-Out Policies and Procedures: As defined in the Introduction.

Marketable Property List: A list of all properties available for marketing by the RED. This list should be updated and reviewed regularly to determine the marketability of properties.

MTA: The Metropolitan Transportation Authority.

MTA Agency: As defined in the Introduction.

Net Present Value or NPV: As defined in Chapter III.

New York City Department of Finance Data: The Department of Finance maintains all ownership records for the five boroughs. The records include information relating to current ownership, mortgages, zoning, location, age of improvements and assessed real property value. The data are accessed via select personal computers within the RED.

Parcel Information Sheet: As described in Chapter II.

Procurement Lobbying Law: As defined in Chapter XI.

Proposer File: The Proposer File is assembled by the RE Manager and contains the original signed proposal, all relevant correspondence with the selected proposer, the Conditional Designation Letter, the Staff Summary, the Document Approval Form, , two copies of the definitive agreement(s), the insurance certificate and the W-9 form. This file resides in the Information Center.

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Proposer Information Form (PIF): The Proposer Information Form provides detailed information with respect to proposers and their principals and Affiliates, including addresses, past dealings with state and municipal agencies, business history and experience, references, available lines of credit and assets and liabilities, and includes a business plan with financial projections and a credit check authorization. The PIF is used for both the Lease/Sale RFP Process and the Lease/Sale Negotiation Process.

Real Estate Data, Inc. (REDI): REDI is a resource of property ownership, tax maps and tax status on microfilm and land books, organized by block and lot and cross-referenced by name and address. REDI is available through the RED library. Any of the Metro-North lines outside of the five boroughs are available only in book form.

Recordation of Contact: As defined in Chapter XI

RED: The MTA real estate department.

RE Manager: A RED staffer who reports to a Deputy Director.

Restricted Period: As defined in Chapter XI.

RFP or Request for Proposals: A request for proposals issued in accordance with these Policies and Procedures.

RFP File: The RFP file results from the Project File after the Tenant File is assembled, and contains all relevant information regarding the RFP, including all proposals and correspondence with proposers and the RE Manager notes regarding the project. This file resides in the Information Center.

RFP Mailing List: The mail log is maintained in Yardi by an assigned executive secretary and is comprised of a list of persons who have expressed an interest in leasing property from the MTA.

Sanborn and Land Maps: Sanborn and Land Maps are organized by county and municipality; parcels may be identified by location. Sanborn is available for the five boroughs only. In addition to the type of information that REDI provides, the Sanborn provides brief building improvement information, subway stations, utility/municipality easements, condominiums and any air rights.

SEQRA: As defined in Chapter II.

Staff Summary: The document by which the RED summarizes a transaction for the purpose of obtaining MTA Board authorization to enter into such transaction.

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Tenant File: The Tenant File contains all documentation relating to a given tenant, including correspondence, agreements and plans. The files for current tenants and recently (within the past two years) terminated tenants are maintained in the Information Center. All other terminated files are maintained at MTA's offsite storage facility and are subject to MTA's document retention policy.

Tenant Management or TMU: The tenant management unit of the RED.

Term Sheet: A sheet or sheets listing the terms of the agreement, requirement improvements, and other information about the transaction.

Type I Transaction: As defined in Chapter V.

Type II Transaction: As defined in Chapter V.

Valuation (VAL) Maps: The VAL Maps indicate Metro-North and LIRR ownership right of way and indicate property rights along the railroad lines. They also contain limited historical information and identify current tenancies. The RE Manager should check the VAL Maps to verify that property is owned by the MTA and update the maps as new leases are consummated. These maps are located in the Information Center.

W-9 Form: Federal tax form W-9.

Work Sheet: As described in Chapter II.

Yardi: Yardi Systems Inc. is a Santa Barbara, CA based computer-systems and data-processing company that provides property management/ accounting software and maintenance services to the RED. In this document "Yardi" refers to the PC based program developed and customized specifically for the MTA.

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GCT LEASING GUIDELINES

March, 2016

(As Originally Adopted November 18, 2009, and as Revised by Modifications approved by the MTA Board on November 13, 2013 and March 26, 2014)

GUIDELINES FOR SELECTION OF TENANTS FOR GRAND
CENTRAL TERMINAL

Application

These guidelines (“Guidelines”) apply to the selection of lessees for leases of commercial, retail spaces at Grand Central Terminal (“GCT”). They do not apply to the selection of licensees at GCT, which is governed by policies adopted by the Board in November, 2009. (The principal difference between a lease and license for these purposes is that a license is terminable at the discretion of the licensor for any reason upon short notice, typically 60 days.) These Guidelines supplement the MTA Real Estate Department Policies and Procedures For the Leasing-Out and Sale of Real Property, adopted by the Board on March 23, 2016 as such policies and procedures may be amended from time to time (the “General Policies and Procedures”). In the event of any conflict between these Guidelines and the General Policies and Procedures, these Guidelines will govern for GCT commercial retail leases.

Purpose and Objective

The purpose of these Guidelines is to provide the MTA Real Estate Department (the “RED”) with standards and procedures for issuing requests for proposals (“RFPs”) and for choosing tenants to recommend for selection for leases of commercial space at GCT. They are intended to further the MTA’s objective of maximizing the long-term aggregate revenues that the MTA derives from the leasing of the commercial space at GCT (taken as a whole), while making available to commuters and others an appropriate mix of goods and services and maintaining a level of quality commensurate with GCT’s status as an historic landmark and one of New York City’s greatest public spaces (the “Objective”). While the Objective is broader than maximizing guaranteed minimum rent for any particular space, these Guidelines establish a rebuttable presumption that the Objective will be furthered by the proposal that is “responsive” and “responsible” (as determined by the procedure described below) and offers the highest Unadjusted Guaranteed Rent Amount (as such term is defined below). Therefore, any staff recommendation to award a lease to a responsive and responsible proposer other than the responsive and responsible proposer that has offered the highest Unadjusted Guaranteed Rent Amount must be made by a selection committee and supported by a rationale that is articulated in the Staff Summary presented to the Board in connection with such recommendation.

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These Guidelines are intended only for the guidance of officers and employees of the MTA. Nothing contained in these Guidelines is intended, or shall be construed, to confer upon any person or entity any right, remedy, claim or benefit under, or by reason of, any requirement or provision of these Guidelines. Except to the extent prohibited by law, any provision of these Guidelines may be waived by the Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer.

Requests For Proposals

All opportunities to lease commercial space at GCT (except spaces that have monetary values below the legal threshold requiring a competitive disposition process) must be offered pursuant to competitive RFPs prepared by the Director of GCT Development, approved by the Director of Real Estate, and advertised in accordance with the General Policies and Procedures. More than one space may be offered pursuant to a single RFP.

For each space being offered, an RFP may identify preferred, mandatory, disfavored and/or prohibited uses, as and where appropriate, to encourage and/or ensure an appropriate mix of merchandise and services in various sections of GCT or to otherwise further the Objective. If an RFP identifies a preferred or mandatory use, it shall make clear whether such use is mandatory or merely preferred; if an RFP identifies a disfavored or prohibited use, it shall make clear whether such use is prohibited or merely disfavored.

Without limiting the generality of the foregoing, each RFP must reference (and each prospective tenant must be provided with access to) the generally-applicable design criteria and rules and regulations for commercial spaces at GCT, and state that compliance with such design criteria and rules and regulations is mandatory.

The Director of GCT Development, with the concurrence of the Director of Real Estate, may elect to exclude national chains and/or discount merchandisers from specified areas of GCT, such as the Dining Concourse, the Lexington Passage and/or the Grand Central Market, or GCT as a whole, provided that they reasonably determine that doing so will further the Objective. If required, Each Staff Summary presented to the Board when the award of the proposed lease for a space is submitted in due course for Board approval shall set forth any preferred, mandatory, disfavored, or prohibited uses applicable to such space; provided, however, that the aforementioned design criteria and rules and regulations need only be referenced, not set forth in full, in such Staff Summaries.

Selection Criteria

The following are the selection criteria (the “Selection Criteria”) that shall be used to evaluate proposals:

Selection Criterion A: Direct Economic Benefit to the MTA (Maximum 70 Points).

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Each evaluator shall:

First: Start with the Unadjusted Guaranteed Rent Amount for each proposal, as determined by the Technical Consultants as described below. The “Unadjusted Guaranteed Rent Amount” for any proposal is the present value of the guaranteed minimum rent set forth in such proposal, discounted to the first day of the lease term using a discount rate of 6%.

Second: Determine the Guaranteed Rent Adjustment Factor for each proposal and multiply it by the Unadjusted Guaranteed Rent Amount for such proposal, to determine the “Adjusted Guaranteed Rent Amount” for such proposal. The “Guaranteed Rent Adjustment Factor” is an adjustment factor intended to reflect any concerns that the evaluator may have with respect to the certainty of payment of the Unadjusted Guaranteed Rent Amount, taking into account (1) the evaluator’s assessment of the viability of the prospective tenant’s business plan, (2) the evaluator’s assessment of the creditworthiness of the prospective tenant (or any proposed guarantor) and (3) any security deposits and/or letters of credit that will be required (as set forth in the applicable RFP). The Guaranteed Rent Adjustment Factor may be as high as 1.00 (which means the evaluator has no uncertainty about the Unadjusted Guaranteed Rent Amount being received by MTA) and as low as 0.50 (which means the evaluator has great uncertainty about the Unadjusted Guaranteed Rent Amount being received by MTA), provided that if a proposal includes commercially unreasonable backloading of rent then the adjustment factor may be as low as zero to protect MTA’s interests.

Third. Take the Unadjusted Percentage Rent Amount for each proposal, as determined by the Technical Consultants. The “Unadjusted Percentage Rent Amount” for any proposal is the present value of the projected percentage rent as set forth in the proposal, discounted to the first day of the lease term using a discount rate of 6%.

Fourth. Determine the Percentage Rent Adjustment Factor for each proposal and multiply it by the Unadjusted Percentage Rent Amount for such proposal to determine the “Adjusted Percentage Rent Amount” for such proposal. The “Percentage Rent Adjustment Factor” is an adjustment factor intended to reflect the evaluator’s assessment of the likelihood of percentage rent being received. The Percentage Rent Adjustment Factor may be as high as 0.50 (which means the evaluator has no uncertainty about the Unadjusted Percentage Rent Amount being received by MTA) and as low as zero (which means the evaluator has great uncertainty about the Unadjusted Percentage Rent Amount being received by MTA).

Fifth. Add the Adjusted Guaranteed Rent Amount for each proposal to the Adjusted Percentage Rent Amount for such proposal to determine the “Adjusted Total Rent Amount” for such proposal.

Sixth. Award the proposal with the highest Adjusted Total Rent Amount (the “Highest Adjusted Total Rent Amount”) seventy (70) points for the Selection Criterion A score.

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Seventh. Calculate the Selection Criterion A score for each of the other proposals by multiplying 70 times a fraction, the numerator of which is such proposal's Adjusted Total Rent Amount and the denominator of which is the Highest Adjusted Total Rent Amount.

Selection Criterion B: Indirect Benefit to the MTA (Maximum 30 Points).

Each evaluator shall determine the likelihood that each prospective tenant will support the elements of the Objective not directly reflected in Selection Criteria A by attracting other desirable prospective tenants to GCT, and/or customers for other current or prospective tenants at GCT. The Selection Criterion B score shall range from 30 (which means that the evaluator believes that the prospective tenant will have an extremely significant positive effect on the elements of the Objective not directly reflected in Selection Criterion A) to zero (which means that the evaluator believes that the prospective tenant will have no positive effect on the elements of the Objective that are not directly reflected in Selection Criterion A).

Total Selection Criterion Score.

The total Selection Criteria score (the "Total Selection Criteria Score") for each proposal shall be the sum of that proposal's Selection Criterion A score plus that proposal's Selection Criterion B score.

Procedures for Evaluation of Proposals

Step 1: Technical Evaluation by Consultants:

All proposals received from prospective tenants shall will be independently evaluated by MTA's Leasing Agent (currently Newmark Grubb Knight and Frank) and MTA's Retail Property Manager for GCT (currently, Jones Lang LaSalle LaSalle) or such other outside consultants as may from time to time be retained by the MTA to provide leasing and retail property management services at GCT (individually, the "Technical Consultant" or collectively, the "Technical Consultants").

Each Technical Consultant shall provide the Director of GCT Development with an independent technical evaluation (a "Technical Evaluation") of each such proposal.

If either Technical Consultant considers that a proposal is non-responsive, such Technical Consultant shall promptly raise that issue with the Director of GCT Development and the Director of GCT Development shall undertake the responsiveness review in Step 2 for such proposal. If after such responsiveness review (and any corrective steps permitted in Step 2) the Director of GCT Development determines that such proposal is not responsive, such proposal shall be disqualified and no further technical evaluation shall be performed.

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Each Technical Evaluation of each proposal shall include:

(i) responsiveness to the RFP;

(ii) a calculation of the Unadjusted Guaranteed Rent Amount;

(iii) a calculation of the Unadjusted Percentage Rent Amount;

(iv) a description of any known adverse prior experience (such as arrears, delinquent payments, and failure to comply with lease or license terms) pertaining to business relationships of the prospective tenant or any Affiliate of the prospective tenant (as such term is described below), after due inquiry into the GCT leasing records and the records of the RED's Tenant Management Unit;

(v) any other matters relating to the responsibility of the proposer;

(vi) an assessment of the viability of the prospective tenant's business plan (taking into account, as appropriate, the prospective tenant's concept, capabilities and past experience), the creditworthiness of the prospective tenant (or any proposed guarantor) and any security deposits and/or letters of credit that will be required (as set forth in the applicable RFP);

(vii) an assessment of the likelihood of receiving any proposed percentage rent; and

(viii) an assessment of the likelihood that the prospective tenant will indirectly further the Objective, by attracting other desirable prospective tenants to GCT, and/or customers for other current or prospective tenants at GCT.

Step 2: Determination of Responsiveness:

The second step after receipt of proposals shall be a determination of responsiveness by the Director of GCT Development using the standard criteria set forth in the General Policies and Procedures (including such prospective tenant's failure to provide all completed forms, supplemental information and signatures required by the applicable RFP). A proposal received in response to an RFP should be deemed to be "not responsive" (and thus disqualified and eliminated from further consideration by the Director of GCT Development) if such proposal (a) contemplates uses that such RFP identified as prohibited uses or (b) fails to provide for uses that such RFP identified as mandatory uses. A prospective tenant may not be disqualified by reason of such prospective tenant having proposed uses that the RFP identified as merely "disfavored" or by reason of having failed to propose uses that the RFP identified as merely "preferred" (although that may properly be taken into account in scoring proposals, as described above under the heading "Selection Criterion B"). If the Director of GCT Development determines that it is in MTA's best interests to permit a proposer to modify its proposal after the due date to correct

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deficiencies that would otherwise cause it to be determined to be non-responsive, such proposer shall be afforded such opportunity.

In making the foregoing determination, the Director of GCT Development may rely on the Technical Evaluations.

Step 3: Initial Determination of Responsibility:

The third step is an initial determination of responsibility by the Director of GCT Development. The Director of GCT Development may determine that a prospective tenant is not responsible for any reason contemplated by the General Policies and Procedures (including unsuitability due to a record of criminality, lack of integrity, violations of the Procurement Lobbying Law (State Finance Law §§ 139-j and 139-k)).

A prospective tenant shall be deemed “not responsible” (and thus disqualified and eliminated from consideration by the Director of GCT Development) if (a) such prospective tenant, or any Affiliate of such prospective tenant, owes, by reason of an amount due not more than five years prior to the date of the RFP, in excess of \$10,000 to the MTA, (b) such amount is not (in the view of the MTA Legal Department) the subject of a bona fide dispute and (c) such amount has remained unpaid for more than 90 days; provided, however, that before disqualifying any prospective tenant by reason of any such non-payment, the Director of GCT Development must provide written notice of such non-payment to such prospective tenant and afford such prospective tenant a period of not less than 30 days to pay the amount that remains unpaid. Late payment, as opposed to non-payment, shall not constitute grounds for disqualification of an otherwise responsible prospective tenant (although it may be taken into account in scoring proposals, as described above under the heading “Selection Criterion A”). A prospective tenant may be deemed “not responsible” (and thus may be disqualified and eliminated from consideration by the Director of GCT Development) if such prospective tenant, or an Affiliate of such prospective tenant, (a) is the current tenant in the space being offered by the RFP or any other retail space at GCT, and (b) refuses to agree to amend its current lease for such space to include security provisions identical to those in the draft lease issued as part of the RFP.

If a proposer is deemed to be not responsible, no further consideration of that proposal will be undertaken.

“Affiliate” of a prospective tenant means any entity that (a) controls or owns more than a 30% equity interest in such prospective tenant or (b) is controlled by, or more than a 30% equity interest in which is owned by or for the benefit of, either (i) such prospective tenant or (ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister, children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such prospective tenant.

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In making the foregoing determination, the Director of GCT Development may rely on the Technical Evaluations.

Step 4: Evaluation by the Director of GCT Development:

The Director of GCT Development shall thereafter complete his/her written evaluation of all responsive proposals received from responsible prospective tenants based on the Selection Criteria, using both the numerical scoring and comment sections of an evaluation and scoring form substantially in the form attached hereto as Appendix A (the "Evaluation Form"). In completing such Evaluation Form, the Director of GCT Development must exercise his/her own best independent judgment taking into account the Technical Evaluations.

If the proposal with the highest Total Selection Criteria Score is also the proposal with the highest Unadjusted Guaranteed Rent Amount, then, without convening a selection committee, the Director of Real Estate may (i) provided at least three proposals were received, award the lease to the proposer who offered the highest Unadjusted Guaranteed Rent Amount without a Finance Committee Staff Summary or MTA Board Approval provided that it is later listed in a chart in the Finance Committee book consistent with Policy 33 adopted by the MTA Board in November, 2013, applicable to the award of leases generally under the General Policies and Procedures or (ii) submit to the MTA Board Finance Committee a Staff Summary recommending award of the lease to such proposer and seeking authorization of the MTA Board for such action. However, if the proposal with the highest Total Selection Criteria Score is not the proposal with the highest Unadjusted Guaranteed Rent Amount or if two proposals provide for the same highest Unadjusted Guaranteed Rent Amount, then the Director of GCT Development must convene a selection committee (the "Selection Committee") consisting of the Director of GCT Development, the Director of Real Estate Operations or his or her designee and a representative of Metro-North Commuter Railroad Company appointed by the Executive Vice President or his or her designee.

Step 5: Evaluation by Selection Committee, If Necessary

If a Selection Committee is required, the members of the Selection Committee shall be furnished with the Technical Evaluations. Each Selection Committee member other than the Director of GCT Development shall complete his/her written evaluation of all responsive proposals received from responsible prospective tenants based on the Selection Criteria, using both the numerical scoring and comment sections of the Evaluation Form. In completing such Evaluation Form, each such Selection Committee member must exercise his/her own best independent judgment taking into account the Technical Evaluation.

A meeting of the Selection Committee shall thereafter convene. At such meeting, the members of the Selection Committee may properly discuss the applicable proposals among themselves and/or with the Consultants. After such discussion is completed, each of the three members may prepare supplemental Evaluation Forms taking into account any such consultation and

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discussion. Each supplemental Evaluation Form shall include a narrative explanation for the basis of any scoring changes from the scoring in that Selection Committee member's original Evaluation Form. The Total Selection Criteria Score on the three final Evaluation Forms (which will be the original Evaluation Form for each Selection Committee member who does not submit a supplemental Evaluation Form; and shall be the supplemental Evaluation Forms for the other Selection Committee members) shall be added together and the proposals ranked based on such aggregate scoring.

Step 6: Determination of Whether to Present Recommendation to the Board

The Director of Real Estate may (at any time after an RFP is issued) determine, in consultation with the General Counsel of MTA, that it is in the best interest of the MTA to reject all proposals because the process did not yield sufficiently advantageous proposals, if the Director of Real Estate believes that issuing a new RFP would materially further the Objective, or because it has been determined, since the applicable RFP was issued, that the applicable space is better utilized for a non-commercial purpose, in which case the Director of Real Estate shall so report to the Board's Finance Committee. Otherwise, the Director of GCT Development shall make a final determination of responsibility with respect to the prospective tenant with the highest Total Selection Criteria Score, based on any new information received after the initial determination of responsibility, and if such prospective tenant continues to be responsible the Director of Real Estate shall (i) provided at least three proposals were received, award the lease to the proposer who offered pursuant to Policy 33 of the General Policies and Procedures adopted by the MTA Board in November, 2013, or (ii) submit to the MTA Board Finance Committee a Staff Summary requesting authorization to enter into a lease with the prospective tenant who did not offer the highest Unadjusted Guaranteed Rent Amount, but had the highest Total Selection Criteria Score as determined by a Selection Committee. If such recommended prospective tenant is not the proposer with the highest Unadjusted Guaranteed Rent Amount, then such Staff Summary must include a reasonably detailed explanation of the factors that the Selection Committee took into account in recommending such proposal.

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Figure 1 – Request to be on RFP Mailing List

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Metropolitan Transportation Authority

MTA Real Estate Department

Request to be Included on the RFP (Request for Proposal) Mailing List

To be on the MTA mailing list, you must complete the following information, print the form, and mail it to:

RFP Mailing List
MTA Real Estate Department
347 Madison Ave., 8th Floor
New York, NY 10017

Location (Check the agency or location(s) that are of interest to you by clicking in the box)

- ☐ **New York City Transit**
Five Boroughs of New York
- ☐ **Long Island Rail Road Company**
Manhattan, Brooklyn, Queens, Nassau & Suffolk Counties
- ☐ **Metro-North Commuter Railroad Company**
Manhattan, Bronx, Westchester, Putnam,
Rockland, Orange and Dutchess Counties
- ☐ **MTA Bridges & Tunnels**
Five boroughs of New York

Concession Type (Check the type of concessions of interest to you by clicking in the box)

- | | |
|---|---|
| <input type="checkbox"/> Retail | <input type="checkbox"/> Vacant Lot |
| <input type="checkbox"/> Newsstand | <input type="checkbox"/> Mobile Food Service |
| <input type="checkbox"/> Parking Lot | <input type="checkbox"/> Vending Machines |
| <input type="checkbox"/> Taxi Stand | |

Applicant Information (enter the information by typing in the boxes).

Last Name First Name

Address

City

State Zip Code

Telephone No.

Date

Please notify this office when you change your address
(212) 878-7049

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Figure 2 – Property Subject to RFP

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EXAMPLE OF A PROPERTY SUBJECT TO RFP LETTER

(DATE)

(NAME)

(STREET ADDRESS)

(CITY), (STATE) (ZIP CODE)

Dear (NAME):

Thank you for the interest you expressed in leasing property owned or managed by the Metropolitan Transportation Authority (MTA). Please be advised that it is the policy of the MTA to offer lease opportunities through a request for proposals (RFP) process.

If you would like to be on our RFP mailing list, please complete the enclosed mailing list form and return it to my attention at your earliest convenience.

If you have further questions, you may reach me at (212) (878- ____). Again, thank you for your interest in MTA property.

Sincerely,

(STAFF NAME)

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)
(Deputy Director, Leasing & Acquisition)
File
Chron

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Figure 3 – Acknowledgement Letter

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EXAMPLE OF ACKNOWLEDGEMENT LETTER

(When substantial research and/or agency review must take place, if Real Estate Manager in his/her judgment believes a research or agency review is forthcoming, this acknowledgement can be foregone. Telephone contact is then deemed appropriate.)

(DATE)

(NAME)
(STREET ADDRESS)
(CITY), (STATE) (ZIP CODE)

Re: LIRR Property West of Centerport Road, Huntington, New York (PROPERTY
CODE) (UNIT CODE)

Dear (NAME):

The Real Estate Department of the Metropolitan Transportation Authority (MTA) is in receipt of your request for an agreement to use Long Island Rail Road (LIRR) property at the referenced location, for the receipt, storage and sale of masonry supplies.

Please be advised that this request has been forwarded to the LIRR for review. Upon receipt of its comments, you will be notified accordingly.

Should you have any questions, I can be reached at (212) (878-____).

Sincerely,

(NAME)
Real Estate Manager
Real Estate Department

cc: (Director of Real Estate Operations)
(Deputy Director, Leasing & Acquisition)
File
Chron

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Figure 4 – Property Not Owned/Managed by MTA

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EXAMPLE OF PROPERTY UNAVAILABLE FOR LEASE LETTER

(DATE)

(NAME)

(STREET ADDRESS)

(CITY), (STATE) (ZIP CODE)

Re: LIRR Property – Block 6499, Lot 22, Brooklyn, New York (PROPERTY CODE,
UNIT CODE)

Dear (NAME):

With reference to your letter dated January 7, 2008, regarding the use of LIRR property,
it appears that the LIRR is not the owner of the property you wish to use.

If I can be of further assistance to you, please call me at (212) (878- ____).

Sincerely,

(NAME)

Real Estate Manager
Real Estate Department

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)
(Deputy Director, Leasing & Acquisition)
Chron

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Figure 5 – Property Unavailable for Lease

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EXAMPLE OF PROPERTY UNAVAILABLE FOR LEASE LETTER

(DATE)

(NAME)

(STREET ADDRESS)

(CITY), (STATE) (ZIP CODE)

Re: LIRR Property – Flatbush Avenue, Brooklyn, New York (Block 11216499, Lot 1)
(PROPERTY CODE, UNIT CODE)

Dear (NAME):

Thank you for the interest you expressed in leasing property owned or managed by the Metropolitan Transportation Authority (MTA). As a follow-up to our phone conversation, please be advised that the referenced site is currently under rehabilitation and will not be available until winter 2010.

If I can be of further assistance to you, please call me at (212) (878-____). Again, thank you for your interest in MTA property.

Sincerely,

(NAME)

Senior Real Estate Manager
Real Estate Department

Enclosure (RFP Brochure and Figure2)

cc: (Director of Real Estate Operations)
(Deputy Director, Leasing & Acquisition)
Chron

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Figure 6 – Letter Denying Request

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EXAMPLE OF LETTER DENYING REQUEST

(DATE)

(NAME)

(STREET ADDRESS)

(CITY), (STATE) (ZIP CODE)

Re: Parking Request – West of Endo Boulevard, Garden City, New York
Property Code _____ Unit Code _____

Dear (NAME):

Thank you for the interest you expressed in leasing Long Island Rail Road (LIRR) property at the above-referenced location. I regret to inform you that your request has been denied at this time, as this property is being retained for future freight operations..

If I can be of further assistance to you, please contact me at (212) (878-____).

Sincerely,

(NAME)

Real Estate Manager
Real Estate Department

cc: (Director of Real Estate Operations)
(Deputy Director, Leasing & Acquisition)
File
Chron

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Figure 7 – Parcel Information Sheet

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MTA Parcel Information Sheet

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

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Location:	[enter location description. If a station, enter complete and correct station name]
Property Code / Unit Code:	[enter Yardi property code/unit number]
[Landlord OR Licenser]:	[MTA New York City Transit ("NYCT") or MTA Long Island Rail Road ("LIRR") or MTA Metro-North Railroad ("Metro-North") or MTA Bridges & Tunnels or Metropolitan Transportation Authority ("MTA")]
Site Description:	[describe space, e.g., "Ground floor lobby newsstand (inside security checkpoints) at 2 Broadway."]
Station Ridership:	["N/A" or enter: Average weekday ridership: [enter number] Average Saturday ridership: [enter number or "N/A"] Average Sunday ridership: [enter number or "N/A"]
Size:	[enter size of retail or other area in square feet, and separately show the size of any storage areas] [Add if applicable: "A [plan or drawing] of the space is attached hereto as Exhibit A."]
Term:	[enter number of years of initial or total term, if no option] years
Options:	[enter option(s) and number of years and "at [licensee/lessee] OR landlord's discretion" or put "N/A"] [years]
Termination:	[Put "N/A" if purchase] Landlord may terminate [lease/license] upon [enter number of days] days' notice to tenant [enter "at will" or for "corporate or transportation purposes"]. [Use the following if an amortization provision is being provided, otherwise delete: "If the lease is terminated by landlord within [enter number] years after the commencement date, landlord will reimburse tenant for the documented unamortized reasonable costs of its permanent improvements, amortized on a straight line basis over [enter number of years] years.
Suggested Annual [Rent or Compensation or Purchase Price]:	[enter annual rent or compensation] and add "for Year 1 of the term, or enter purchase price]
Suggested Average Annual Rate of Increase:	[enter percentage, i.e., "3%" or "5%" or "N/A"]
Additional Rent:	
Electricity fee	["N/A" or "Tenant shall pay a fee of \$[number] per [month or year] for electricity as additional rent. This amount shall increase annually by 3%."]

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Trash collection fee	["N/A" or "Tenant shall pay a fee of \$(number) per [month OR year] as a trash collection fee. This amount shall increase annually by 3%."]
[Security Deposit or Down Payment]:	Upon signing of [lease/license], three months' [rent or compensation] based on the fifth year's [rent or compensation].
Limited Personal Guarantee:	[Landlord/Licensor] reserves the right to require [tenant/licensee] to provide a personal guarantor with sufficient financial resources, in [landlord/licensor's] opinion, to guarantee payment of [rent/compensation] through [tenant's/licensee's] surrender of premises in case of default, plus an additional six months of rent from the date of surrender.
Limited Corporate Guarantee:	If in [landlord's/licensor's] opinion the tenant has insufficient financial resources, [landlord/licensor] reserves the right to require the parent company of [tenant/licensee] to provide a corporate guarantee of payment of [rent/compensation] through [tenant's/licensee's] surrender of premises in case of default, plus an additional six months of rent from the date of surrender.
Completion Guarantee:	[Landlord/Licensor] reserves the right to require [tenant/licensee] to provide a personal or corporate guarantor, with sufficient financial resources, in [landlord's/licensor's] opinion, to guarantee the complete performance of the required improvements and other improvements that [tenant/licensee] has proposed and [landlord/licensor] has approved
[Required OR Permitted] Use[s]:	[enter required or permitted uses – match what is in form of lease or license, if a form is being used – DO NOT put in an exhaustive list of items, like exist in newsstand agreements]
Prohibited Items and Uses:	[enter prohibited items and uses – match what is in form of lease or license, if a form is being used]
Minimum Hours:	[enter minimum hours for weekdays and add "except for weekends and MTA holidays", or whatever required operating days and times are.] [Tenant/Licensee] may remain open at other times subject to [landlord's/licensor's] approval.
Sales Reporting [optional]:	[Tenant/Licensee] shall provide Landlord with gross sales figures on a monthly or annual basis, if required by landlord.
Condition of Premises:	Premises will be delivered "as is." [Landlord/Licensor/Grantor] anticipates making no improvements to the premises or the systems serving the premises.
Utilities:	
Electrical	The space is served by a [enter size, e.g., "60 amp single phase" or 100 amp three-phase, etc.] electrical service and [is/is not] sub-metered or separately metered.
Fire Alarm	["N/A" or describe the fire alarm situation and what if anything will need

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MTA Parcel Information Sheet

[enter location, e.g., 2 Broadway Newsstand]

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	to be done, i.e., "connection to a central station located at [location] via rigid conduit is required"]
Sprinkler	["N/A" or describe sprinkler situation and what if anything will need to be done with it]
Plumbing	["N/A" or describe plumbing situation and what if anything will need to be done with it]
Natural Gas	["N/A" or describe natural gas situation and what if anything will need to be done with it]
Domestic Water	["N/A" or describe water situation and what if anything will need to be done with it]
Sanitary Service	["N/A" or describe the sanitary service (i.e., "3" sanitary line with ½ hp 120v 1ph ejector pump"), and what if anything will need to be done with it]
HVAC	["N/A" or describe HVAC situation and what if anything will need to be done with it]
Telecommunications	["N/A" or describe the telephone and/or other telecommunications (i.e., cable or other data lines) situation and what if anything will need to be done with it; also, if applicable, indicate the designated provider such as "Telephone service is available through Verizon"]]
Condition of Existing Equipment and Utilities:	Tenant is responsible for repair, maintenance, and replacement of all equipment located in or exclusively serving the Premises. No warranties or representations are made regarding the condition of existing equipment or utilities, or the suitability of existing equipment and utilities for [licensee's or tenant's] proposed use.
Required Improvements:	<p>[Tenant/Licensee] shall be responsible, at its sole cost and expense, for the completion of all improvements required for [tenant's or licensee's] use and as required by [landlord or licensor]</p> <p>The minimum improvements required by [landlord/licensor] are as follows:</p> <ol style="list-style-type: none">1. [enter required improvement]2. [enter required improvement]3. [enter required improvement]4. [enter required improvement]5. [enter required improvement]6. [add additional numbers to list if necessary to describe additional discrete improvement items] <p>Improvements must meet the requirements of the New York State Uniform Fire Safety and Building Code. [Landlord/Licensor] or its</p>

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MTA Parcel Information Sheet

[enter location, e.g., 2 Broadway Newsstand]

[enter the RFP #, e.g., RFP BG0912]

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	designee shall review all proposed improvements or later alterations for compliance with aforementioned code.
Compliance with Codes and Ordinances:	In addition to compliance with the New York State Fire Safety and Building Code, [tenant/licensee] shall comply with all other applicable codes and ordinances, including health regulations, and obtain all required permits.
Estimated Cost of Improvements:	<p>Each proposer should take into consideration the requirements for high quality design, materials and workmanship, as well as compliance with all applicable regulations and codes when preparing plans and estimating construction costs.</p> <p>We strongly encourage each proposer to obtain professional construction estimates before submitting his or her proposal. If actual construction costs exceed estimated costs, the [tenant/licensee] should not anticipate any relief from [landlord/licensor]. The [tenant/licensee] will, in any event, be responsible for completing all required improvements.</p>
Insurance:	<p>The lease agreement will specify the insurance requirements and will generally include, at a minimum: Commercial general liability insurance in an amount not less than [\$1,000,000 or \$2,000,000 or \$3,000,000], workers' compensation insurance, and all-risk property insurance policy.</p> <p>[Enter if applicable or delete: "Railroad protective liability insurance in the amount of [enter amount] will be required of [tenant's/licensee's] contractor"]</p>
Assignment & subletting:	[enter "N/A" or "Subject to [landlord's/licensor's] approval, in its sole discretion. However, [landlord/licensor] will not be unreasonable in approving an assignment to an individual or corporation with similar or superior financial position to [tenant's/licensee's] position at the time of award of this lease, in real terms, so long as such individual or corporation demonstrates it has the resources and capability of maintaining the [enter kind of space, i.e., "retail space"] to the standard the [landlord/licensor] requires.
Broker:	Any tenant broker is to be paid by the tenant.
Site Visit:	[enter time], [enter day of week], [enter date including year]

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MTA Parcel Information Sheet

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This Parcel Information Sheet must be signed by an officer of the prospective [tenant/licensee].

Prospective [tenant/licensee]: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

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Metropolitan Transportation Authority

[Rent or Compensation Proposal Form]

[RFP number]

[RFP name]

Shown below is the suggested annual [rent or compensation]. Proposers must specify their proposed annual rent for each year of the [lease or license]. Proposed [rent or compensation] should include a minimum [3% or 5% or other] annual escalation over the term of the agreement.

**Suggested Annual [Rent or Compensation]
for Year 1:**

\$

**Proposed Annual [Rent or
Compensation]:**

Year 1

\$

Year 2

\$

Year 3

\$

Year 4

\$

Year 5

\$

Year 6

\$

Year 7

\$

Year 8

\$

Year 9

\$

Year 10

\$

Option Term[s]

Year 11

\$

To add additional option years, place cursor in "Option Term" box above, click the "Layout" tab on the toolbar, and click the "Insert Below" icon to add a line below. Enter "\$" signs as necessary.

To delete the "Option Term[s]" line and additional lines, if necessary, place cursor in the "Option Term[s]" box above, click the "Layout" tab, and click the "Delete" icon, then the

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Metropolitan Transportation Authority

"Delete rows" line:

This [Rent or Compensation] Proposal must be signed by an officer of the prospective [tenant or licensee]:

Prospective [Tenant or Licensee]: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

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Metropolitan Transportation Authority

Purchase Price Proposal Form

[RFP number]

[RFP name]

Shown below is the suggested purchase price for the property interest[s] offered for sale in this RFP. Proposers must specify their proposed purchase price and amount of proposal deposit where indicated below.

Suggested Purchase Price: \$ _____

In the space below write in the amount of your proposal to purchase the property interest[s] offered for sale in this RFP:

Proposed Purchase Price: \$ _____

A proposal deposit of []% of the proposed purchase price must be submitted along with this proposal. If selected, this deposit will become your down payment.

Amount of proposal deposit: \$ _____

This Purchase Price Proposal must be signed by an officer of the prospective Purchaser:

Prospective Purchaser: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

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Metropolitan Transportation Authority

[Rent or Compensation Proposal Form]

[RFP number]

[RFP name]

Shown below is the suggested annual [rent or compensation]. Proposers must specify their proposed annual rent for each year of the [lease or license]. Proposed [rent or compensation] should include a minimum [3% or 5% or other] annual escalation of Base Rent over the term of the agreement.

Suggested Annual Base Rent for Year 1: \$ _____

Proposed Annual Rent:

	Base Rent	Percentage Rent
Year 1	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 2	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 3	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 4	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 5	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 6	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 7	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 8	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 9	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____
Year 10	\$ _____	Plus _____% of gross sales over breakpoint of \$ _____

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Option Term[s]

Year 11

\$

Plus _____% of gross sales over
breakpoint of \$ _____

To add additional option years, place cursor in "Option Term" box above, click the "Layout" tab on the toolbar, and click the "Insert Below" icon to add a line below. Enter "\$" signs as necessary.

To delete the "Option Term[s]" line and additional lines, if necessary, place cursor in the "Option Term[s]" box above, click the "Layout" tab, and click the "Delete" icon, then the "Delete rows" line.

This [Rent or Compensation] Proposal must be signed by an officer of the prospective [tenant or licensee]:

Prospective [Tenant or Licensee]: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

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Figure 8 – Market Analysis Work Sheet

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FACT SHEET
Parcel # 1
Market Analysis Work Sheet
RFP #

--

Property Description
Property Code _____ Unit Code _____ Parcel# _____
Address:
Brooklyn, New York

Comparables – For rental of vacant land

Source	Location	\$/SF
	Bushwick/Brooklyn	\$1.18
	Bushwick/Brooklyn	\$0.80- \$1.20
	Bushwick/Brooklyn	\$1.38

Comments: As mentioned above, there are approximately three buildings situated on this site which appear to be structurally unsound, and therefore would require a major capital investment to either refurbish or demolish. As such, the recommended asking compensation for this site is \$1.00 per square foot.

Asking Compensation or Comparable Value: \$1.00 per square foot (\$100,000.000 annually)

Recommended Term: Five (5) years

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Figure 9 – RFP Cover Letter

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347 Madison Avenue
New York, NY 10017-3739
212 878-7000 Tel



Metropolitan Transportation Authority

State of New York

[enter date]

Re: Request For Proposals: [enter RFP number] - [enter RFP name]

Dear Prospective [Tenant or Licensee or Purchaser]:

Thank you for your interest in this offering of [MTA New York City Transit or MTA Long Island Rail Road or MTA Metro-North or MTA Bridges and Tunnels] property for [lease or license or sale] at [enter description of property].

Attached is the entire Request for Proposals ("RFP") package, also available on the internet at:

http://mta.info/mta/realestate/retail_leasing.html

DEADLINE: Proposals must be received by 5:00 p.m. on [enter day of week, day of month, month name, and year]. Proposals submitted after such deadline will, at the MTA's sole discretion, only be considered if the MTA determines that such consideration is in the public interest. Each proposal must include the items listed in the "Submission Requirements" section below. Proposals not including all requested items may be rejected.

In addition to this letter, the RFP package includes the following components:

1. *Parcel Information Sheet[s]*. This section provides information about [each of] the location[s] offered and the date and time that the location[s] may be viewed.
2. *Request for Proposals—Rules and Regulations*. This section contains regulations, information and instructions that relate to the submission of proposals. Please take the time to read this section carefully and refer to it as you fill out the Proposer Information Form.
3. *[Rent or Compensation or Purchase Price] Proposal Form*. This form is to be used to specify the [rent or compensation or purchase price] that the prospective [tenant or licensee or purchaser] proposes to pay to the MTA for the applicable space.
4. *The Proposer Information Form*. Please take the time to read the instructions carefully and ensure that all questions are answered completely. Also, note that the last page must be notarized. [Edit PIF by crossing out irrelevant sections not applicable to the parcel that would only confuse bidders]
5. *U.S. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification*.
6. *New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") Disclosure Statement*.

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7. Iran Divestment Act Certification.

8. ~~[Delete the following if N/A]~~ *Standard Format for Architectural Drawing Submissions.* These guidelines are for the tenant and tenant's architect and contractor to use in preparing design plans following ~~[lease or license]~~ execution.

9. ~~[Delete the following if N/A]~~ *Form of [Lease or License or Contract of Sale].*

SUBMISSION REQUIREMENTS: Please provide the following information with your submission (all forms are available for download from the MTA's website listed above):

- Fully completed and signed *Parcel Information Sheet*
- Fully completed and signed ~~[Rent or Compensation or Purchase Price]~~ *Proposal Form.*
- Fully completed and signed *Proposer Information Form.* Notarize the last page of where indicated.
- Fully completed and signed *U.S. Internal Revenue Service Form W-9, Request for Taxpayer Identification Number and Certification.*
- Fully completed and signed *NYS Finance Law Sections 139-j and 139-k Certification.*
- Fully completed and signed *Iran Divestment Act Certification.*
- *Proposal Deposit* in the amount [of three months' of Year 5 ~~[Rent or compensation, (i.e., three times the amount proposed for Year 5) OR [enter]% of the proposed purchase price]~~]. Proposals submitted with multiple checks drawn on different accounts may be rejected. You should enclose money orders or checks drawn on a single account.
- ~~[Include the following only if applicable]~~ Please list material objections, if any, to the *Form of [Lease or License or Contract]* in a cover letter or on a separate sheet of paper. If you do not list any objections, MTA will proceed on the basis that you have no objections to the *Form of [Lease or License or Contract]* and will reserve the right to award the ~~[lease or license or contract]~~ to another bidder, should you later raise such objections.

Four hard copies of submissions should be delivered in sealed envelopes by the date listed above to:

Ms. Odette Berg
Executive Secretary
Metropolitan Transportation Authority
347 Madison Avenue, 8th Floor
New York, NY 10017
RFP Number: ~~[enter RFP number]~~
Parcel Number[s]: ~~[enter number(s) or delete line if none]~~
Location: ~~[enter location(s) or delete line if none]~~

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All bid proposals shall be publicly disclosed in the agenda for the meeting of the Finance Committee of the MTA Board at which the transaction will be considered for approval.

The MTA reserves the right, at any time, to modify or waive requirements of this RFP.

Please be aware that there are rules regarding permissible contact (oral, written, and electronic communications) with the MTA during a public procurement process. Effective January 1, 2006, New York State Lobbying Law requires that all contact with the MTA relating to this RFP must be made through the following persons/designated Points of Contact. Contact with anyone else at the MTA regarding this RFP may result in ineligibility to participate in the RFP.

The designated Points of Contact are:

Odette Berg
Tel. (212) 878-1043
Email: oforesti@mtahq.org
(for general inquiries regarding the administrative aspects of the RFP only)

[enter project manager information]
(for questions regarding the specific content of the RFP or RFP procedures and rules)

Sincerely,

[enter project manager name]
MTA Real Estate Department

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Figure 10 – Form of Proposer Information Form

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Proposer Information Form

The following information is provided to the Metropolitan Transportation Authority ("MTA") Real Estate Department in connection with the submittal of a proposal to lease or license space. The acceptance by MTA of this Proposer Information Form does not constitute an offer by the MTA or any affiliate or subsidiary thereof. Please attach additional sheets as necessary. **Please print or type.**

MTA Property	Parcel Number (if applicable) _____	Proposed Use _____
	Property Address _____	

Proposer Information (if a sole proprietor)	Name _____	Social Security No.	—	—
	Street _____			
	City _____	State _____	Zip _____	
	Telephone _____	Telephone (alternate) _____		

Proposed Business	Name of Business _____			
	Street _____			
	City _____	State _____	Zip _____	
	Telephone _____	Telephone (alternate) _____		

Type of business:

☐ Corporation ☐ Joint Venture ☐ Partnership ☐ Limited Liability Corporation ☐ Sole Proprietor

Year Formed _____

Federal Tax ID No. _____ State of Formation _____

Name of the business's president or most senior executive _____

Name of the business's chief financial officer or treasurer _____

**Information
Relating to
Affiliates**

Below, list all Affiliates of the proposer and provide the requested information for each Affiliate. Add additional pages if necessary. An "Affiliate" of a proposer is any entity that

- (a) directly or indirectly owns more than a 30% equity interest in such proposer, or
- (b) otherwise directly controls proposer, or
- (c) is controlled by, or has more than a 30% equity interest which is owned by or for the benefit of either
 - (i) such proposer, or
 - (ii) any person (or any member of the immediate family (i.e., spouse, father, mother, brother, sister, children, and stepchildren) of any person) or entity that controls, or owns more than a 30% equity interest in, such proposer.

1	Name _____	% of Ownership _____
	Street _____	
	City _____	State _____ Zip _____
	Telephone _____	Telephone (alternate) _____

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Proposer Information Form

Information
Relating to
Affiliates
(cont'd.)

2 Name _____ % of Ownership _____
Street _____
City _____ State _____ Zip _____
Telephone _____ e-mail _____

3 Name _____ % of Ownership _____
Street _____
City _____ State _____ Zip _____
Telephone _____ e-mail _____

If, applicable, list below the name(s) of principal(s) who will provide any guaranty or guaranties to the proposed lease or license

1 Name _____
Street _____
City _____ State _____ Zip _____
Telephone _____ e-mail _____

2 Name _____
Street _____
City _____ State _____ Zip _____
Telephone _____ e-mail _____

3 Name _____
Street _____
City _____ State _____ Zip _____
Telephone _____ e-mail _____

Has the proposer or any of its principals done business under any other name within the past three years? ☐ Yes ☐ No

Is the proposer owned or controlled by any other organization or business entity? ☐ Yes ☐ No

Does the proposer own more than 30% of any other organization or business entity? ☐ Yes ☐ No

If yes was checked for any of the above, provide the following information for each organization, corporation, or business. Add additional pages if necessary.

1 Name of Business _____
Federal Tax ID No. _____ Owner/Manager Name _____
Street _____
City _____ State _____ Zip _____
Telephone _____ Owner/Manager e-mail _____

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**Information
Relating to
Affiliates
(cont'd.)**

2	Name of Business		
	Federal Tax No.	Owner/Manager Name	
	Street		
	City	State	Zip
	Telephone	Owner/Manager e-mail	

List gross receipts of each business for the past three years. Attach copies of Federal Income Tax returns.

1	Name of Business	Gross Receipts \$	Year
		Gross Receipts \$	Year
		Gross Receipts \$	Year
2	Name of Business	Gross Receipts \$	Year
		Gross Receipts \$	Year
		Gross Receipts \$	Year
3	Name of Business	Gross Receipts \$	Year
		Gross Receipts \$	Year
		Gross Receipts \$	Year

**Other Leases
or Licenses
with MTA and
its Subsidiaries
and Affiliates**

List all leases or licenses during the last 5 years between the MTA (and its subsidiaries and affiliates) and the proposer and any Affiliate of the proposer.

1	Name of lessee or licensee	
	Location	
	MTA Agency	
2	Name of lessee or licensee	
	Location	
	MTA Agency	

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**Other Leases
or Licenses
with MTA and
its Subsidiaries
and Affiliates
(cont'd.)**

3 Name of lessee or licensee

Location

MTA Agency

Describe any lessee or licensee defaults under such lease(s) or license(s).

**Business
History and
Experience**

List all relevant business experience

1 Name of Company

From

To

Type of Business

Your Title

Street

City

State

Zip

2 Name of Company

From

To

Type of Business

Your Title

Street

City

State

Zip

3 Name of Company

From

To

Type of Business

Your Title

Street

City

State

Zip

**Business
References**

Provide at least three references from companies with which the proposer, or one or more of its Principals, does business (include at least one vendor).

1 Name of Company

From

To

Street

City

State

Zip

Contact

Title

Telephone

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**Business
References
(cont'd.)**

2	Name of Company	From	To
	Street		
	City	State	Zip
	Contact	Title	Telephone
<hr/>			
3	Name of Company	From	To
	Street		
	City	State	Zip
	Contact	Title	Telephone

**Bank
References**

Provide at least one reference from a bank with which the proposer (or a Principal) has an account and regularly does business. List all other bank account information that represents the means of financial support for the proposed business.

1	Bank Name	Branch Number or Location	
	Street		
	City	State	Zip
	Name of Bank Officer	Title	
	Telephone No.	Account No.	
	Name on Account		
<hr/>			
2	Bank Name	Branch or Location	
	Street		
	City	State	Zip
	Name of Bank Officer	Title	
	Telephone No.	Account No.	
	Name on Account		
<hr/>			
3	Bank Name	Branch or Location	
	Street		
	City	State	Zip
	Name of Bank Officer	Title	
	Telephone No.	Account No.	
	Name on Account		

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Proposer Information Form

**Bank
References
(cont'd.)**

Provide at least one bank reference for each guarantor identified on page 2 of this Proposer Information Statement.

1	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	
2	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	
3	Bank Name	Branch or Location
	Street	
	City	State Zip
	Name of Bank Officer	Title
	Telephone No.	Account No.
	Name on Account	

**Available
Financing**

Provide information about lines of credit, or other sources of financing, available to undertake required improvements and fulfill annual rental obligations.

1	Name of Source
	Street
	City State Zip
	Available Amount of Financing \$ Interest Rate
	Telephone No. Account No.
	Letter Attached? <input type="checkbox"/> Yes <input type="checkbox"/> No

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Proposer Information Form

**Projected
Startup Costs**

Improvements

1 – Architectural Fees \$ _____

2 – Construction Costs \$ _____

3 – Trade Fixtures \$ _____

4 – **TOTAL IMPROVEMENTS** \$ _____ add lines 1 to 3

Other Costs

5 – Legal Costs \$ _____

6 – Incorporation Fees \$ _____

7 – Licensing Fees \$ _____

8 – Franchise Fees \$ _____

9 – Consulting Fees \$ _____

10 – Merchandise Inventory \$ _____

11 – Rent During Construction \$ _____

12 – Miscellaneous \$ _____

13 – **TOTAL STARTUP COSTS** \$ _____ add lines 4 to 12

**Scope of
Work and
Improvements**

Describe the proposed improvements. Add additional pages if necessary.

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Proposer Information Form

Financial Statements: Provide financial statements (audited, if available) for the prospective business entity and each guarantor for the past two full fiscal years. If financial statement are not otherwise available, please provide the following information.

Assets

Funds

1 – Cash	\$	
2 – Checking	\$	
3 – Savings	\$	
4 – Other	\$	
5 – Subtotal–Funds	\$	add lines 1 to 4

Receivables

6 – Trade or Business	\$	
7 – Other	\$	
8 – Subtotal–Receivables	\$	add lines 6 and 7

Securities

9 – Stocks	\$	
10 – Bonds	\$	
11 – Other (Pensions, Annuities)	\$	
12 – Subtotal–Securities	\$	add lines 9 to 11

Fixed Assets

13 – Equipment	\$	
14 – Other	\$	
15 – Subtotal–Fixed Assets	\$	add lines 13 and 14

Other Assets

16 – Trade, Auto	\$	
17 – Life Insurance	\$	
18 – Subtotal–Other Assets	\$	add line 16 and 17
19 – Inventory	\$	
20 – Miscellaneous	\$	
21 – Land and Buildings	\$	
22 – GRAND TOTAL ASSETS	\$	add lines 5,8,12,15, 18-21

Liabilities

23 – Payables	\$	
24 – Notes Payable	\$	
25 – Mortgages	\$	
26 – Deferred	\$	
27 – Miscellaneous	\$	
28 – GRAND TOTAL LIABILITIES	\$	add lines 23-27
29 – CAPITAL/NET WORTH	\$	line 22 minus line 28

☐ If the business entity is in the process of being organized and does not yet have assets or liabilities, check here and complete the financial statement on the basis of the personal assets and liabilities of the principal(s) who will provide a guaranty(ies). Clearly indicate all sources of capitalization.

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**Income:
One-year
Projection**

Proposed First Year Business Plan: Provide projected income and expenses for the first year of the lease or license term.

1 – Estimated Sales/Revenue	\$	
2 – Cost of Goods Sold	\$	
3 – GROSS PROFIT	\$	subtract line 2 from line 1

**Expenses:
One-year
Projection**

4 – Wages, Salaries	\$	
5 – Rent	\$	
6 – Telephone	\$	
7 – Gas	\$	
8 – Electricity	\$	
9 – Interest on Loan	\$	
10 – Advertising	\$	
11 – Postage	\$	
12 – Travel	\$	
13 – Vehicle Expense	\$	
14 – Payroll Taxes	\$	
15 – Other Taxes	\$	
16 – Supplies	\$	
17 – Legal Fees	\$	
18 – Accounting Fees	\$	
19 – Insurance	\$	
20 – Repairs	\$	
21 – Equipment Rental	\$	
22 – Depreciation	\$	
23 – Other	\$	
24 – TOTAL EXPENSES	\$	add lines 4 through 23
25 – ESTIMATED PROFIT (LOSS)	\$	subtract line 24 from line 3

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Proposer Information Form

**Projected Sales
for Lease or
License Term**

Provide projected sales for the lease or license term *after* the first year (include only those years during the proposed lease or license term).

Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$
Year 6	\$
Year 7	\$
Year 8	\$
Year 9	\$
Year 10	\$

**Responsibility
Related Questions**

Has the proposer or any Affiliate thereof ever been barred from bidding on contracts, or declared not responsible by any city, town, village, county, state, or federal public entity? ☐ Yes ☐ No

Are any outstanding liens pending against the proposer or any Affiliate thereof? ☐ Yes ☐ No

Are any judgments outstanding against the proposer or any Affiliate thereof? ☐ Yes ☐ No

Is any suit or other legal action pending against the proposer or any Affiliate thereof? ☐ Yes ☐ No

Has the proposer or any Affiliate thereof been adjudged bankrupt, voluntarily or involuntarily, under any provision of the Bankruptcy Law, executed an assignment for the benefit of creditors, or abandoned a business without satisfying its outstanding debts? ☐ Yes ☐ No

Has the proposer or any Affiliate thereof ever been convicted of a felony? ☐ Yes ☐ No

If yes to any of the above, please provide all details below. Add additional pages if necessary.

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Proposer Information Form

General Affidavit

Representations, Warranties, Covenants, and Consent to a Credit Review

By executing this Proposer Information Form, the undersigned represents and warrants the following.

- A. The undersigned has received and read the entire Request for Proposals, has acquainted itself/himself/herself with all matters therein referred to in connection with this proposal, will accept the premises "as-is" and will secure any necessary permits and licenses pertaining to the operation of, or the making of any improvements to, the site. The undersigned acknowledges that the MTA makes no representation or warranties as to the information supplied herein or the type of use or development permitted at each location.
- B. The undersigned acknowledges that improvements and other work (1) may not be carried out without the prior approval of the MTA, (2) will become the property of the MTA, and (3) must conform to appropriate health, safety, fire, and building codes, as required.
- C. Neither the undersigned nor any Affiliate of the undersigned is in arrears in the payment of amounts due to the MTA or any of its affiliated agencies or the State of New York or the City of New York or any instrumentality thereof.
- D. The undersigned is of lawful age.
- E. No person, firm, or corporation other than herein above named has any interest in this proposed lease or license agreement.
- F. By executing this Proposer Information Form, the undersigned represents and warrants that:
 - (i) The compensation and other terms of this proposal have been arrived at independently without any agreement, collusion, consultation, or communications intended to restrict competition.
 - (ii) Unless otherwise required by law, the compensation and other terms quoted in this proposal have not been knowingly disclosed by the undersigned or any other individual and, before the proposal is opened, shall not knowingly be directly or indirectly disclosed by the prospective tenant or licensee or any other individual or by or on behalf of the proposer to any other proposer or to any competitor; and
 - (iii) No attempt has been made or will be made by the undersigned or by any other individual or by or on behalf of the prospective tenant or licensee to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal, for the purpose of restricting competition.
- G. The undersigned represents and warrants that no elected representative or other officer or employee or person whose salary is payable in whole or in part from the Federal Government or State or City of New York, and no member officer or employee of the Metropolitan Transportation Authority or any affiliate or subsidiary thereof is directly or indirectly interested in this proposal or in the proposed lease or license agreement to which it relates or will have an interest in any of the profits thereof.
- H. The undersigned declares under the penalties of perjury provided for by Article 210 of the New York Penal Law that the undersigned has read fully and understands all of the terms and conditions of this Request for Proposals and all of the foregoing questions in the Proposer Information Form and the Rent Proposal Form or Proposed Compensation Form. The answers and statements herein including, without limitation, the Proposer Information Statement and the Credit Authorization, are to the best of the undersigned's knowledge and belief true, correct, and complete. The undersigned agrees that in the event that circumstances reflected by the answers herein change, the undersigned will promptly notify the Real Estate Department of the Metropolitan Transportation Authority in writing by certified mail. The undersigned also understands that a misstatement, omission, or failure to update information may be cause for the Metropolitan Transportation Authority not to award to the proposer, or its current principals, the proposed lease or license, and may have the effect of precluding persons or entities from doing business with the Metropolitan Transportation Authority or its affiliates or subsidiaries in the future.

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Proposer Information Form

By executing this Proposer Information Form, the undersigned authorizes the Metropolitan Transportation Authority or its designated agent or contractor to conduct a credit and reference investigation of the proposer and its Affiliates. This authorization includes commercial and financial institutions, credit reporting agencies and present and former customers, including without limitation the entities described in this Proposer Information Statement.

This Proposer Information Form must be signed below.

Proposer _____

Authorized Signature _____

Date _____

Print Name and Title _____

Sworn to me this _____ day of _____, 20____

Notary Public's Signature _____

Notary Seal

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Figure 11 – Pre-RFP Authorization Memo

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Metropolitan Transportation Authority

Real Estate Department

Authorization Memorandum—General

Date: [Month [DD], [YYYY]]

To: [Deputy Director], [Director, L&A], [Director RE Operations]

From: [Project Manager Name]

Re: [If RFP, list reference number, agency, description (i.e., retail, vending, etc.)]

AGENCY:

[LESSEE/LICENSEE/GRANTEE or N/A]:

LOCATION[S]:

ACTIVITY: Approval of RFP

SEQRA/NEPA:

Type 1	✓	EIS	✓
Type 2		NEPA	
Unlisted		N/A	

Actions Required

BOND REVIEW: (Y/N/NA)

Bond counsel consulted?	
OK to proceed?	

COMMENTS:

[Very briefly summarize RFP and list EVERY location and use (i.e, DeKalb Av – Newsstand) in the RFP]

Comments: _____

Recommended: _____ Date _____

[NAME], Deputy Director

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Comments: _____

Recommended: _____ Date _____

David Bosch, Director, Leasing & Acquisition

Comments: _____

Recommended: _____ Date _____

Michael Bader, Director, Real Estate Operations

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Figure 12 – Pre-RFP Letter

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347 Madison Avenue
New York, NY 10017-3739
212 878-7000 Tel



Metropolitan Transportation Authority

State of New York

«FName» «LName»
«Addr1»
«Addr2»
«City», «State» «Zip»

Date:
RFP Number:

«hMy» - «sCode»
«PreRFPDate»
«RFPNum»

Dear Mr. /Ms. /Mrs. «LName»:

The Metropolitan Transportation Authority ("MTA") intends to issue a request for proposals ("RFP") in [month, YYYY] for the [lease/net lease/sale/license] of the location[s] listed below:

Location

1. [Retail Store/Newsstand/etc.] at [station name or other location], [county or borough], [town or village or hamlet], NY.
2. [if required for additional sites, same info. as above]

The RFP (including detailed property information, site visit times if applicable, proposal guidelines, and necessary application forms) is available on the MTA website for viewing, downloading, and printing at http://mta.info/mta/realestate/retail_leasing.html.

PLEASE NOTE: A PAPER COPY OF THE RFP WILL NOT BE MAILED TO YOU.

Proposals in response to this RFP will be due on [month dd, YYYY].

Sincerely,

MTA Real Estate Department

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

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Figure 13 – Incumbent Letter

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347 Madison Avenue
New York, NY 10017-3739
212 878-7000 Tel



Metropolitan Transportation Authority

State of New York

**CERTIFIED MAIL # [enter number] —RETURN RECEIPT REQUESTED
and First Class Mail**

[DATE]

[NAME]

[ADDRESS]

[CITY, STATE ZIP]

Re: {LOCATION DESCRIPTION, e.g.: Newsstand at 96th Street Subway Station, Manhattan}

Tenant ID: [YARDI TENANT NUMBER]

Property ID: [YARDI PROPERTY NUMBER]

Dear [MR./MS NAME]:

As you know, your [lease/license/permit] for the above location [has expired/will expire soon]. It is the Metropolitan Transportation Authority's (MTA's) policy to offer lease and license opportunities through a Request for Proposals ("RFP") process. This is to inform you that the MTA will shortly be issuing an RFP to [LEASE/LICENCE] the above location, and you are invited to submit a proposal. The RFP due date is [MM/DD/YYYY]. To view and download a copy of the RFP, go to the MTA website at:

http://mta.info/mta/realestate/retail_leasing.html.

Please note that all contacts with the MTA relating to this RFP must be made through the designated Points of Contact. Contact with anyone else at the MTA relating to this RFP may be a violation of the law and may result in the disqualification of the proposer. The Points of Contact for this RFP will be myself, [PROJECT MANAGER'S NAME], at 212-878-[XXXX] (for questions regarding the specific content of the RFP or RFP procedures and rules), and Odette Berg at 212-878-1043 (for general inquiries regarding the administrative aspects of the RFP only).

If you have any questions regarding the RFP, please call one of the Points of Contact listed above.

Sincerely,

[PROJECT MANAGER'S NAME]

MTA Real Estate Department

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

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Figure 14 – RFP Advertisement

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MTA REAL ESTATE

Request for Proposals—[Describe RFP, e.g., "Lease of 8 Newsstands in the MTA New York City Transit subway system"], [brief description of location, i.e., at various subway stations in Brooklyn, Queens, and the Bronx]. Proposals must be received by 5:00 p.m. on [day of week], [day of month], [YYYY].

For information on this Request for Proposals, please go to http://mta.info/mta/realestate/retail_leasing.html

[MTA log here for Amsterdam News only] Metropolitan Transportation Authority

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Figure 15 – Sample Advertisements

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REQUEST FOR PROPOSALS

Newsstand/Coffee Concession Opportunities

MTA/Metro-North Railroad is seeking proposals from experienced professionals to lease, operate and maintain newsstands and coffee concessions at the White Plains, North White Plains, Bronxville and Mt. Vernon East stations in New York.

More information on these properties and an explanation of the Request for Proposals ("RFP") process by which these concessions will be offered to the public are available from the persons listed below as Points of Contact. All contacts with the MTA relating to this RFP must be made through these designated Points of Contact. Contact with anyone else at MTA related to this RFP may be a violation of the law & may result in the disqualification of the proposer.

To receive a copy of the RFP and for administrative questions only, please contact:
METROPOLITAN TRANSPORTATION AUTHORITY
Real Estate Department, 347 Madison Avenue, New York, New York 10017-3739
Point of Contact: Odette Forestier -
Tel: (212) 878-1043 or email MTARE@MTAHQ.ORG
Reference No. RFP AB0113

For further information regarding the specific contents of the RFP, please contact:
Point of Contact: Alicia Biggs -
Tel: (212) 878-7148 or email ABIGGS@MTAHQ.ORG

This information is also available on the Internet at:
http://mta.info/mta/realestate/retail_leasing.html

 **Metropolitan Transportation Authority**

MTA 54271
MTA
NY Post
3c
4.125" x nec 1/4"
1.28.13

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Figure 16 – Proposal Receipt Log

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[illegible]

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Figure 17 – Proposal Checklist

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 **Metropolitan Transportation Authority**

Proposal Checklist

If an item is missing, please indicate if the proposal will be rejected or if the missing item or items will be sent. Please indicate in the space provided why the project manager has determined that the proposal should not be rejected on the basis of an incomplete proposal.

Project Manager: _____ Verifier: _____
Parcel No: _____ Location: _____
Proposer's Name: _____ Business Name: _____

RFP Received	Included	Signed	Notarized	Rejected
Applicant Information Statement	<input type="checkbox"/>			<input type="checkbox"/>
Business Profile	<input type="checkbox"/>			<input type="checkbox"/>
Financial Profile	<input type="checkbox"/>			<input type="checkbox"/>
Cred. Authorization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
One-year Business Plan	<input type="checkbox"/>			<input type="checkbox"/>
Background	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
General Affidavit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
NYS Fin. Law 139-j, 139-k (Lobby Law) Disclosure Stmt.	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Proposed Compensation Form	<input type="checkbox"/>			<input type="checkbox"/>
W-9	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>
Preliminary Plans	<input type="checkbox"/>			<input type="checkbox"/>
Deposit	<input type="checkbox"/>			<input type="checkbox"/>
No Deposit	<input type="checkbox"/>			<input type="checkbox"/>

Check No: _____ \$ _____
Amount: _____ \$ _____

Project Manager's Signature: _____ Date: _____
Verifier's Signature: _____ Date: _____

Follow Up
Letter Sent: ☐
Response Due: _____
Reason: _____

MTA RED 006-21-04

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Figure 18 – RFP Evaluation Form

[illegible]

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Figure 19 – RFP Award Authorization Memo

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Metropolitan Transportation Authority

Real Estate Department

Authorization Memorandum—General

Date: [Month [DD], [YYYY]]
To: [Deputy Director], Director, L&A, Director RE Operations
From: [Project Manager Name]
Re: [RFP reference number, agency, description (i.e., retail, vending, etc.)]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

SEQRA/NEPA:

	✓		✓	Actions Required
Type 1		EIS		
Type 2		NEPA		
Unlisted		N/A		

LOBBYING LAW: (Y/N)

Have there been Contacts?		
Were Contacts permissible?		

COMMENTS:

Paragraph 1: Introduction

- a) Summarize in a couple of sentences why property is being disposed of, licensed, or acquired.
- b) Summarize recommendation as to method of disposition/acquisition and price.

Paragraph 2: Discuss property

- a) Location – Municipality, closest MTA operation, any other noteworthy items.
- b) Nature of MTA or agency ownership.
- c) Physical attributes (improved, vacant, structures, fencing, etc.)
- d) Current use
- e) Possible uses
- f) Restrictions placed by MTA agency (i.e., use; disposition method (license only, etc); time limitations; termination rights.)

Paragraph 3: Nature of interest being disposed of or acquired

- a) Describe interest: Fee/permanent easement/temporary easement/net lease/lease/license/permit/other)

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- b) Describe circumstances that may impact value; describe any unusual or unique circumstances.
- c) Describe WHY that interest is being offered or purchased (i.e., if a lease, was a sale considered? If a license, could it be leased? Did the agency restrict the interest, and why?)

Paragraph 4: Method of disposition or acquisition

- a) RFP (obviously N/A for acquisitions)
- b) If not RFP, why not?
 - i. Pursuant to policy
 - ii. Pursuant to special circumstances noted in Licensing Procedures when competition is not feasible (Board approval still required)
 - iii. Other reasons

Paragraph 5: Discussion of Proposals

- a) How many proposals received? Refer to spreadsheet if applicable.
- b) Discussion of top proposers:
 - i. Creditworthiness
 - ii. Financial wherewithal to start up and make improvements.
 - iii. Experience applicable to proposed operation; note if prior or current experience with MTA and if so, licensee/tenant history.
 - iv. Discussion of proposals in comparison to appraised value or market value.
 - v. If proposals are below appraised or estimated fair market value, discuss the reasons therefor.

Paragraph 6: Negotiations

- a) What items were negotiated (note: if sole bidder, MUST negotiate; if many responses to RFP, usually take high bid, unless extenuating circumstances).
- b) Result of negotiations

Paragraph 7: Recommendation

- a) Recommend course of action, citing reasons.

Comments: _____

Recommended: _____ Date _____

[NAME], Deputy Director

Comments: _____

Recommended: _____ Date _____

David Bosch, Director, Leasing & Acquisition

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Comments: _____

Recommended: _____ Date _____

Michael Bader, Director, Real Estate Operations

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Figure 20 – Lease Sale Negotiation Authorization Memo

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Metropolitan Transportation Authority

Real Estate Department

Authorization Memorandum—General

Date: [Month [DD], [YYYY]]

To: [Deputy Director], Director, L&A, Director RE Operations

From: [Project Manager Name]

Re: Authorization Memo – Lease/Sale Negotiation Process Award [agency, description (i.e., retail, vending, etc.)]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

SEQRA/NEPA:

	✓		✓	Actions Required
Type 1		EIS		
Type 2		NEPA		
Unlisted		N/A		

LOBBYING LAW:

(Y/N)

Have there been Contacts?		
Were Contacts permissible?		

BOND REVIEW:

(Y/N/NA)

Bond counsel consulted?
OK to proceed?

COMMENTS:

Paragraph 1: Introduction

- a) Summarize in a couple of sentences why property is being disposed of, licensed, or acquired.
- b) Summarize recommendation as to method of disposition and price.

Paragraph 2: Discuss property

- a) Location – Municipality, closest MTA operation, any other noteworthy items.
- b) Nature of MTA or agency ownership.
- c) Physical attributes (improved, vacant, structures, fencing, etc.)
- d) Current use
- e) Possible uses
- f) Restrictions placed by MTA agency (i.e., use; disposition method (license only, etc); time limitations; termination rights.)

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Paragraph 3: Nature of interest being disposed of or acquired

- a) Describe interest: Fee/permanent easement/temporary easement/net lease/lease/license/permit/other)
- b) Describe circumstances that may impact value; describe any unusual or unique circumstances.
- c) Describe WHY that interest is being offered or purchased (i.e., if a lease, was a sale considered? If a license, could it be leased? Did the agency restrict the interest, and why?)

Paragraph 4: Why no RFP

- a) Describe why the Lease/Sale negotiation process is being used:
 - i. Pursuant to policy
 - ii. Pursuant to special circumstances noted in Licensing Procedures when competition is not feasible (Board approval still required)
 - iii. Other reasons

Paragraph 5: Discussion of Proposals

- a) Discussion of proposed lessee/grantee:
 - i. Creditworthiness
 - ii. Financial wherewithal to start up and make improvements.
 - iii. Experience applicable to proposed operation; note if prior or current experience with MTA and if so, licensee/tenant history.
 - iv. Discussion of proposal in comparison to appraised value or market value.
 - v. If proposal is below appraised or estimated fair market value, discuss the reason(s) therefor.

Paragraph 6: Negotiations

- a) What items were negotiated?
- b) Result of negotiations

Paragraph 7: Recommendation

- a) Recommend course of action, citing reasons.

Comments: _____

Recommended: _____ Date _____

[NAME], Deputy Director

Comments: _____

Recommended: _____ Date _____

David Bosch, Director, Leasing & Acquisition

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Comments: _____

Recommended: _____ Date _____

Michael Bader, Director, Real Estate Operations

[delete two signature lines below if transaction is pursuant to Board-approved policy]

Comments: _____

Recommended: _____ Date _____

[enter name], Deputy General Counsel

Comments: _____

Recommended: _____ Date _____

Jeffrey B. Rosen, Director, Real Estate

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Figure 21 – Letter to Credit Agency

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March 13, 2001

Mr. Jim Farrell
LIDA Credit Agency, Inc.
330 Sunrise Highway
Rockville Center, NY 11570

Re: Credit Checks: MTA/New York City Transit Vending Machine RFP "DB1200"

Dear Mr. Farrell:

Enclosed please find copies of the MTA's Prospective Information Statements for the following potential MTA-NY City Transit vending machine service providers. Please perform the noted investigation on each of the respective candidates and their corporations:

1. (Name)
Full Credit Background Check
2.
Full Credit Background Check
3.
Full Credit Background Check
4.
Full Credit Background Check

If you have any questions or comments, please contact me at (212) 878-0118. I would appreciate receiving the results of your investigation at your earliest convenience.

Sincerely,

David Bosch
Real Estate Manager

cc: R. Krsulic
M. McElroy
Chron

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Figure 22 – Conditional Designation Letter

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100 West Avenue
P.O. Box 100
Poughkeepsie, NY 12603

 **Metropolitan Transportation Authority**
State of New York

December 13, 2012

Susan Wysocki
President
Babycakes Café
1-3 Collegeview Avenue
Poughkeepsie, NY 12603

Re: Conditional Designation Letter for the Lease of Retail Space at the Poughkeepsie Train Station

Dear Ms. Wysocki:

We have recently completed our analysis of your best and final offer for the above-referenced Request for Proposals. I am pleased to inform you that Babycakes Café has been conditionally designated as the successful proposer, subject your acceptance of the terms herein and MTA Board approval.

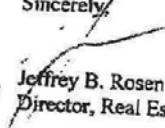
Attached is a term sheet based on the terms included in your best and final offer, along with other standard provisions that will be part of the lease agreement between Babycakes Café and the MTA. We have attached both a clean version of the term sheet and a version that shows our changes.

As you had previously discussed with our Broker, Royal Properties, an 8% natural breakpoint provision will be part of the lease. Under this provision, the MTA will receive 8% of all sales over the natural breakpoint pertaining to that year, beginning with year four of the lease (see attached modified rent proposal).

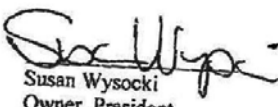
Kindly review the attached term sheet and modified rent proposal sheet. Please sign both sheets and this letter and forward all three signed documents back to me. Upon receipt of the signed documents, MTA Real Estate will present this proposal for approval at an upcoming meeting of the MTA Board.

Please contact Daniel Levine, project manager, at 212-878-4631 if you have any questions.

Sincerely,


Jeffrey B. Rosen
Director, Real Estate

Enclosures
cc: D. Bosch
N. Mastropietro
D. Levine
Jeff Kintzer
J. Rosen Chron


Susan Wysocki
Owner, President
Rent-A-Chef Inc. dba Babycakes Café

Date 1/10/2013

S:\DL\Levine\NET LEASING\Poughkeepsie\CDL\FINAL Babycakes CDL.docx

File: 1/10/2013 10:00 AM
MTA Real Estate
MTA Real Estate
MTA Real Estate
MTA Real Estate

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Figure 23 – Staff Summary

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Staff Summary



Metropolitan Transportation Authority

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Subject LEASE
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature
Project Manager Name DORRIS MASSARIA ROBERTS

Date NOVEMBER 9, 2009
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	CCFWE Committee	11/9/09	X		
2	Board				

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	2	Civil Rights
	Chief of Staff	1	Legal
	Director of BAFM		
3	Dep Exec Dir of Admin		

Narrative

AGENCY: MTA Long Island Rail Road ("LIRR")

LESSEE: JJ Penn Station LLC d/b/a Jamba Juice

LOCATION: Level A, Penn Station, New York

ACTIVITY: Retail sale of food and non-alcoholic beverages

ACTION REQUESTED: Approval of terms

TERM: Ten (10) Years

SPACE: Approximately 1600 square feet of Retail Space 9A, and approximately 100 square feet of Storage Space D

COMPENSATION Retail

Year	Annual	PSF	% Increase
1	\$200,000.00	\$125.00	
2	\$210,000.00	\$131.25	5
3	\$220,500.00	\$137.81	5
4	\$231,525.00	\$144.70	5
5	\$243,101.00	\$151.84	5
6	\$255,256.00	\$159.54	5
7	\$268,019.00	\$167.51	5
8	\$281,420.00	\$175.89	5
9	\$295,491.00	\$184.68	5
10	\$310,265.00	\$193.92	5

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CAPITAL CONSTRUCTION/PLANNING/REAL ESTATE COMMITTEE MEETING

JJ Penn Station LLC d/b/a Jamba Juice (Cont'd)

Storage

<u>Year</u>	<u>Annual</u>	<u>PSF</u>	<u>% Increase</u>
1	\$4,000.00	\$40.00	
2	\$4,200.00	\$42.00	5
3	\$4,410.00	\$44.10	5
4	\$4,630.50	\$46.31	5
5	\$4,862.03	\$48.62	5
6	\$5,105.13	\$51.05	5
7	\$5,360.38	\$53.60	5
8	\$5,628.40	\$56.28	5
9	\$5,909.82	\$59.10	5
10	\$6,205.31	\$62.05	5

COMMENTS:

In response to a recent Request for Proposals (RFP) for Retail Space 9A at Penn Station, seven (7) proposals were received to occupy the space, including one that did not include a proposed rent schedule.

The rental payments proposed (calculated on a present value basis, using a discount rate of 9%) ranged from \$88,708 to \$1,590,879. The highest proposal was received from Healthy Food Concepts at \$1,590,879. The remaining proposals were made by Sarah's Kitchen at \$1,386,792; Dunkin Donuts at \$1,207,196; Michael Chung at \$1,154,168; Safar Ali at \$729,931 and Subway Restaurants at \$88,708. Randy Page submitted a proposal, but neglected to submit a proposed rent schedule.

Healthy Food Concepts proposes to operate a Jamba Juice store under a franchise from Jamba Juice Company ("Jamba Juice"). Jamba Juice stores feature blended-to-order fruit smoothies, squeezed-to-order juices, blended beverages and snacks. As of December 30, 2008, Jamba Juice had a total of 729 stores, including 511 company-owned stores and 218 franchisee-owned stores in the United States and the Bahamas. As the Lessee is to be single-purpose LLC, the Lessee's principal, Mr. Altaf Isani, has agreed to provide a personal guarantee as part of the lease agreement. Mr. Isani is known to the MTA through his ownership interest in Rosen's Café at 347 Madison Avenue, New York.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease agreement with JJ Penn Station LLC on the above-described terms and conditions.

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Figure 24 – Document Approval Form

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Document Approval Form



Metropolitan Transportation Authority
Real Estate Department

Transaction Type:

Lessee / Licensee / Permittee / Grantee		Yardi Account #	
Use & Location		Yardi Property # / Unit #	
Project Manager	Attachments <div style="display: flex; justify-content: space-between;"> Yes N/A </div> Proposer Info. Form..... <input type="checkbox"/> <input type="checkbox"/> ATN / Selection Memo..... <input type="checkbox"/> <input type="checkbox"/> Credit Report..... <input type="checkbox"/> <input type="checkbox"/> Good Standing Opinion..... <input type="checkbox"/> <input type="checkbox"/> NPV Analysis..... <input type="checkbox"/> <input type="checkbox"/>	SEORA / NEPA <div style="display: flex; justify-content: space-between;"> Action Required </div> Type 1 <input type="checkbox"/> _____ Type 2 <input type="checkbox"/> _____ Unlisted <input type="checkbox"/> _____ NEPA <input type="checkbox"/> _____	
Deputy Director			

DOCUMENT REVIEW

I. Deputy Director		II. Tenant Management		III. L & A Supervisor	
Date Submitted	Approved and Date	Date Submitted	Approved and Date	Date Submitted	Approved and Date
Comments / Date		Comments / Date		Comments / Date	
IV. Legal Review		V. Final Review (if required)		VI. External Execution	
Date Submitted	Approved and Date	Deputy Director Signature and Date		Date Sent	Via:
Comments and Date		L & A Supervisor Signature and Date		Date Returned	<input type="checkbox"/> Overnight <input type="checkbox"/> Certified <input type="checkbox"/> Hand

DOCUMENT EXECUTION

Real Estate Department Staff

_____, Deputy Director, Leasing & Acquisition _____, David Bosch, Leasing & Acquisitions Supervisor	_____ Date	<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">Date Returned to RED</div> <div style="border: 1px solid black; padding: 2px;">Date Returned to Project Manager</div>
--	---------------	---

Legal Department Staff

_____ Executed by Agency Officer _____, Jeffrey B. Rosen, Director, Real Estate	_____ Date	<div style="border: 1px solid black; padding: 2px; margin-bottom: 5px;">Finance Committee Approval Date</div> <div style="border: 1px solid black; padding: 2px;">MTA Board Approval Date</div>
---	---------------	---

Filed with the office of the New York State Controller Date _____ or N/A _____

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Figure 25 – Yardi Lease Tracking Report

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Lease Tracking										
Agency=NYCT										
Property=tel16300, tax25900, tbw30300, tby00500, t#40900, t										
Report Date=10/16/2000										
Agency Code	Prop Name Tenant Code Tenant Name RE Manager	Unit Code Status Sqft	Tenant Use Location	Date Method	REC	Brd Appr	Les Exnc	Hand Off	OforB	Rent Com
NYCT tbw30300	42 ST-TIMES SQ 10000098	02 Current 0	Pay Phone				05/01/1999			03/01/2000
tbw40900	42 ST-TIMES SQ 10000093	01 Current 0					05/01/1998			02/01/2000
tel16300	42 ST 10000107	01 Current 0					06/27/1989			03/01/2000
	42 ST 10000108	02 Current 0	Barber				11/01/1995			03/01/2000
	42 ST 10000109	03 Current 0	HlvBeauty				11/01/1995			03/01/2000
	42 ST 10000110	04 Current 0	Fiorist				03/15/1997			02/28/2000
	42 ST 10000111	05 Current 0	Other Retail				06/02/1994			03/01/2000
	42 ST 10000112	06 Current 0	Newsstand				03/04/1994			03/01/2000
	42 ST 10000113	07 Current 0	Other Retail				11/01/1995			03/01/2000
	42 ST 10000114	08 Current 0					03/04/1994			03/01/2000
	42 ST 10000115	09 Current 0					03/01/1996			03/01/2000
	42 ST 10000116	10 Current	Newsstand				03/04/1994			
	42 ST 10000117	11 Current 0					06/02/1994			03/01/2000
	42 ST 10000118	12 Current 0	Newsstand				03/01/1996			03/01/2000

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Figure 26 – Tenant Control Checklist

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<u>TENANT CONTROL LOG</u>		
TENANT NAME: _____		ACCOUNT No.: _____
AGENCY: <input type="checkbox"/> LIRR <input type="checkbox"/> LIB <input type="checkbox"/> MN <input type="checkbox"/> B&T <input type="checkbox"/> MTA HQ <input type="checkbox"/> NYCT <input type="checkbox"/> SIRTOA <input type="checkbox"/> SBK		
PROPERTY: _____		UNIT: _____
LOCATION: _____		
<u>REQUIRED:</u>	<u>INITIALS</u>	<u>COMMENT</u>
1. 2 executed original counterparts of Agreement	_____	_____
2. Staff Summary <u>or</u> Information Item	_____	_____
3. RFP Site Data Sheet <u>or</u> RTN	_____	_____
4. Routing Form for Execution	_____	_____
5. Document Preparation History Form	_____	_____
6. Determination of Responsibility [*]	_____	_____
<u>IF APPLICABLE:</u>		
• IRS Form W-9	_____	_____
• Security Deposit	_____	_____
• Record of Contact(s)	_____	_____
• Certificate of Insurance	_____	_____
• D/B/A Certificate	_____	_____
• 1 st Month Rent	_____	_____
• Master/Sub Report	_____	_____
• Applicant Information Statement [**]	_____	_____
• Credit Report	_____	_____
• Proof of Incorporation	_____	_____
• Copy of Advertisement	_____	_____
• RFP Proposal Analysis	_____	_____
• Agreement Transmittal Letter	_____	_____
• Other: _____	_____	_____
L&A PROJECT MANAGER NAME: _____		
NEW TENANT ACCEPTED FOR MANAGEMENT:		
By: _____		Date: _____
[*] Only required if value of agreement is over \$15,000 in any year during term. [**] Verify completeness of Lobbying Law Disclosure Statement pages		

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Figure 27 – Record of Contact Form

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 Metropolitan Transportation Authority
Real Estate Department

**RECORD OF CONTACT
UNDER THE NEW YORK PROCUREMENT LOBBYING LAW
(State Finance Law §139-j and §139-k)**

If you receive a Contact in connection with a real estate transaction you must complete this form and submit it to the Director of Real Estate. If you believe that the Contact was an Impermissible Contact or you are not sure whether it was an Impermissible Contact, then you must also submit a copy to MTA Corporate Compliance - see below.

Check One: This Contact is: ☐ Permissible ☐ Impermissible ☐ I'm not sure*

To: **MTA Director of Real Estate, 347 Madison Avenue, 8th Floor, Fax: (212) 878-0162**

*If this is an Impermissible Contact or you are not sure whether it is an Impermissible Contact, you must also send a copy to the **Chief Compliance Officer, MTA Corporate Compliance, 2 Broadway, 16th Floor, Fax: (646) 252-1401**, together with an Impermissible Contact Referral Form.

From: _____
(Your Name, Title and Department)

Date: _____

* * * * *

I was contacted by the individual named below regarding the real estate transaction identified below. It reasonably appears that this was a Contact as defined in State Finance Law §139-k(1)(c) because I infer that the communication was intended to influence the real estate transaction. In accordance with State Finance Law §139-k(4), the following information was obtained. The Contact was made by means of:

☐ correspondence ☐ telephone ☐ email ☐ in person ☐ other _____

Real Estate Transaction No. (if known): _____

Description of the Real Estate Transaction: _____

Contact's Name: _____

Contact's Address: _____

Contact's Telephone Number: _____

Contact's Place of Principal Employment: _____

Contact's Occupation/Title: _____

Is the above named person or organization the other party to this real estate transaction? ☐ Yes ☐ No

If No, was the above named person or organization retained, employed or designated by or on behalf of the other party to this real estate transaction to appear before or contact MTA about this real estate transaction? ☐ Yes ☐ No

Date(s) Contact was made: _____

FOI/ICIS Form & Instructions by Law/Record/Contact/RE/LE/LE
Rev. 7-07

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Figure 28 – Procurement Lobbying Law Disclosure Statement

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 Metropolitan Transportation Authority	
New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement	
General Information	<p>As procurements (which are defined to include essentially all real estate transactions) by the MTA in excess of \$15,000 annually, are subject to New York State's State Finance Law Sections 139-j and 139-k effective January 1, 2006 ("Lobbying Law").</p> <p>Pursuant to the Lobbying Law, all "contacts" (defined as oral, written or electronic communications with the MTA intended to influence a procurement) during a procurement must be made with one or more designated Point(s) of Contact only. Exceptions to this rule include written questions during the bid/proposal process, communications with regard to protests, contract negotiations and RFP conference participation. Nothing in the Lobbying Law inhibits any rights to make an appeal, protest or complaint under existing administrative or judicial procedures.</p> <p>Violations of the policy regarding permissible contacts must be reported to the appropriate MTA officer and investigated accordingly. The first violation may result in a determination of non-responsibility and ineligibility for award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The MTA will notify the New York State Office of General Services ("OGS") of any determinations of non-responsibility or determinations due to violations of the Lobbying Law. Violations found to be "knowing and willful" must be reported to the MTA Executive Director and OGS.</p> <p>Moreover, the statutes require the MTA to obtain certain affirmations and certifications from bidders and proposers. This Disclosure Statement contains the forms with which to comply, together with additional information and instructions.</p>
Instructions	<p>New York State Finance Law §139-k(2) obligates the MTA to obtain specific information regarding prior non-responsibility determinations. This information must be collected in addition to the information that is separately obtained pursuant to New York State Finance Law §163(5). In accordance with New York State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.</p> <p>As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.</p>
Disclosure of Prior Non-responsibility Determinations	
Name of Bidder/Proposer: _____	
Address: _____	
Name and Title of Person Submitting this Form: _____	
Has any governmental entity ¹ made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, Was the basis for the finding of the Bidder's/Proposer's non-responsibility due to a violation of State Finance Law §139-j? <input type="checkbox"/> Yes <input type="checkbox"/> No	
<small>¹ A "governmental entity" is: (1) any department, board, bureau, commission, division, office, council, committee or officer of New York State, whether permanent or temporary; (2) each house of the New York State Legislature; (3) the unified court system; (4) any public authority, public benefit corporation or commission created by or existing pursuant to the public authorities law; (5) any public authority or public benefit corporation, at least one of whose members is appointed by the governor or who serves as a member by virtue of holding a civil office of the state; (6) a municipal agency as that term is defined in paragraph (b) of subsection (c) of section one-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)</small>	
<small>MTA Fin. Law 139-j, 139-k; rev. 10-06a; Page 1</small>	

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 Metropolitan Transportation Authority	
New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement	
Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? <input type="checkbox"/> Yes <input type="checkbox"/> No	
If yes, please provide details regarding the finding of non-responsibility below.	
Governmental Entity: _____	
Year of Finding of Non-responsibility: _____	
Basis of Finding of Non-Responsibility: _____	

(Add additional pages as necessary)	
Has any governmental entity terminated a procurement contract with the Bidder/Proposer due to the intentional provision of false or incomplete information? <input type="checkbox"/> Yes <input type="checkbox"/> No	
Bidder's/Proposer's Affirmation and Certification	
By signing below, the Bidder/Proposer:	
a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.	
b) Certifies that all information provided to the MTA with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.	
By _____ Date: _____	
(Signature of Person Certifying)	
Print Name and Title: _____ Title: _____	
Bidder/Proposer or Contractor/Consultant (Full Legal Name): _____	
Address of Bidder/Proposer or Contractor/Consultant: _____	

Business Telephone Number: _____	
MTA's Right to Terminate	The MTA reserves the right to terminate a Contract (including any lease, license, entry permit, or sale documents) in the event it is found that the certification filed by the Bidder/Proposer, in accordance with New York State Finance Law §139-k, was intentionally false or intentionally incomplete. Upon such finding, the MTA may exercise its termination right by providing written notification to the Bidder/Proposer in accordance with the written notification terms of the Contract.
<small>MTA F-13 139-j, 139-k (rev. 10-06a)-Page 2</small>	

Attachment B – 20165

Personal Property Disposition Guidelines



METROPOLITAN TRANSPORTATION AUTHORITY

ALL-AGENCY GUIDELINES FOR THE DISPOSAL OF PERSONAL PROPERTY

Adopted by the Board on March 23~~5~~, 2016~~5~~

These guidelines, which have been adopted by the Board of the Metropolitan Transportation Authority (“MTA”), address the disposal of personal property, including obsolete, unneeded, and outdated personal property, by the MTA and its subsidiary and affiliated agencies in accordance with Public Authorities Law (“PAL”) §§ 2895–2897 and other applicable provisions of law. These guidelines shall **not** apply to the disposition of real property which is governed by the MTA Real Estate Department Policies and Procedures for the Leasing-out and Sale of Real Property.

The purpose of these guidelines is to:

1. Ensure that disposal of MTA personal property is undertaken in compliance with governing laws;
2. Define the means for identifying obsolete, unneeded, or otherwise outdated personal property, including but not limited to furniture, equipment, computer equipment, and automobiles;
3. Provide cost-savings to the MTA by outlining a procedure for the transfer of surplus personal property;
4. Recover value from surplus personal property through its sale, either for reuse or for scrap; and
5. Minimize disposal and storage costs by providing means for the donation of surplus personal property with negligible resale value.

These guidelines apply to the MTA and current and future affiliated and subsidiary agencies of the MTA (each, an “MTA Agency”). The MTA subsidiary and affiliated agencies consist of:

Triborough Bridge and Tunnel Authority
New York City Transit Authority
Manhattan and Bronx Surface Transit Operating Authority
The Long Island Rail Road Company
Metro-North Commuter Railroad Company
Staten Island Rapid Transit Operating Authority
MTA Bus Company
MTA Capital Construction Company

For purposes of these guidelines, the terms below are defined as follows:

Contracting Officer(s): The Contracting Officer is the officer or employee of each MTA Agency who is designated by resolution to be responsible for the supervision and direction of the disposition of such MTA Agency’s Surplus Property.

Dispose or disposal: Transfer of title or any other beneficial interest in Surplus Property in

accordance with the methods of disposition described herein. The act of disposition may include the acts of transferring, trading-in, selling, donating or destroying goods that are of no further use to the MTA.

Fair Market Value: The price at which the item of Surplus Property would change hands in a competitive and open market under conditions requisite to a fair sale between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both acting prudently and having reasonable knowledge of the relevant facts.

Furniture: Office furnishings and fixtures including but not limited to desks, tables, chairs, lamps, modular wall units, and partitions.

Metropolitan Transportation Authority or “MTA” or “MTA Agency”: For purposes of this Policy, the terms “MTA” and “MTA Agency” include the Metropolitan Transportation Authority and/or its current and future subsidiaries and affiliates.

MTAHQ: MTA Headquarters.

Not-For-Profit Organization: An organization incorporated for educational, charitable, or cultural purposes and recognized as tax-exempt under article 501(c) (3) of the Internal Revenue Code.

Personal Property: Tangible property, other than real property. Personal Property is physical and movable, subject to ownership, with exchangeable value. Examples of tangible personal property include, but are not limited to, furniture, supplies, automobiles or other vehicles, computer equipment, and commercial “off-the-shelf” software that is transferable pursuant to the software’s licensing agreement.

Qualifying Surplus Property: Surplus Property with a value in excess of \$5,000, and any inchoate or other interest in such Surplus Property, to the extent that such interest may be conveyed to another person, other than an MTA Agency, for any purpose, excluding an interest securing a loan or other financial obligation of another party.

Surplus Property: Personal Property (i) that does not have a useful purpose for a particular department of the MTA or has been deemed to be no longer useful to the MTA; or (ii) the disposition of which has been determined by the Agency’s Contracting Officer to be in the best interest of the MTA or the MTA Agency.

Surplus Property Officers: Regular employees to whom an MTA Agency or Agency department or division head has delegated responsibility for the identification and release of Surplus Property within that agency and/or department or division.

Section 1: General Provisions

1.1 Compliance with Laws and Guidelines.

- a. Disposals of Qualifying Surplus Property (i.e. Surplus Property with a Fair Market Value in excess of \$5,000) shall comply with applicable provisions of PAL §§ 2895 - 2897, the MTA’s enabling legislation, any other applicable law for the disposal of Personal Property, and the provisions of these guidelines.
- b. Disposals of Surplus Property having a Fair Market Value equal to or less than \$5,000 and disposals of Surplus Property, regardless of Fair Market Value, to an MTA Agency are not subject to the disposition requirements set forth in PAL §§

2895 – 2897. Disposition of such Surplus Property should be undertaken in compliance with the provisions of these Guidelines, other than Section 2 (addressing the requirements of PAL §§ 2895 – 2897).

- 1.2 Responsibility for Compliance. The Contracting Officer(s), MTA Procurement Departments, and MTA Corporate Compliance are responsible for ensuring MTA's compliance with and enforcement of these Guidelines.
- 1.3 Surplus Property. Surplus Property shall be disposed of as promptly as possible in a manner that returns as much value as possible to the MTA. Value may be returned through internal transfer of items, thereby reducing expenditures; through sale of items to outside buyers, thereby producing revenue; or through donation or other disposal without direct income, thereby avoiding the costs associated with carrying excess inventories or disposal costs of items of negligible value.
- 1.4 Responsibilities of Surplus Property Officers. Surplus Property Officers shall be responsible for periodically identifying Surplus Property as defined above.

User departments will periodically review their inventory of Personal Property such as furniture, office equipment, computer equipment, and security equipment and determine whether such Personal Property is Surplus Property that should be disposed of.
- 1.5 Computer Equipment/ Telecommunications Equipment. The Information Technology Departments for each MTA Agency will be responsible for the review of the continued usefulness of computer equipment and telecommunications communications equipment in their agency and may, in conjunction with the department or division to which such equipment is assigned, identify such equipment as Surplus Property.
- 1.6 Automobiles. Each MTA Agency shall review the continued usefulness of that MTA Agency's automobiles, and may, when appropriate, identify automobiles as Surplus Property and shall dispose of such vehicles in compliance with these guidelines, the All Agency Vehicle Usage Policy Directive, and their agency's vehicle usage policies and procedures.
- 1.7 Estimation of Value.
 - a. If the method of disposal of Surplus Property is not planned to be by publicly advertised bid (see Section 5.1), the user department responsible for such Surplus Property shall estimate the Fair Market Value of such Surplus Property. In estimating the Fair Market Value of such Surplus Property, reference shall be made to identifiable active markets for such property and information concerning additional factors may also be considered, which may include but are not necessarily limited to:
 - Original purchase cost;
 - Depreciation;
 - Residual Value;
 - Estimated Replacement Value; and/or
 - Current condition of the item.
 - b. If the estimated Fair Market Value of such Surplus Property is in excess of \$15,000, it must be disposed of by publicly advertised bid unless it is otherwise eligible for

disposition through negotiation or public auction (PAL § 2897(6)(c); see Section 2.1(b)).

- c. If because of its unique nature or the unique circumstances of the proposed transaction, Qualifying Surplus Property is not readily valued by reference to an active market for similar property, an independent appraisal must be performed prior to disposing of such Qualifying Surplus Property (except in circumstances in which the Surplus Property is being designated for transfer to another MTA Agency user).

Section 2: Compliance with Public Authorities Law §§ 2895 - 2897

2.1 Permitted Methods of Surplus Property Disposal: Publicly Advertised Bid or Negotiation. Under the Public Authorities Law, Surplus Property valued in excess of \$5,000 and being disposed of to other than an MTA Agency (“Qualifying Surplus Property”) either must be disposed of

- a. in accordance with publicly advertised bid procedures (as set forth in Section 5.1 below), or
- b. through negotiation or by public auction, subject to obtaining such competition as is feasible. Disposal by negotiation or by public auction may be used only when at least one of the following conditions is satisfied:
 - (i) the Qualifying Surplus Property involved has qualities separate from the utilitarian purpose of such property, such as artistic quality, antiquity, historical significance, rarity, or other quality of similar effect, that would tend to increase its value, or the Qualifying Surplus Property is to be sold in such quantity that, if it were disposed of by publicly advertising for bids, would adversely affect the state or local market for such property, and the estimated Fair Market Value of such property and other satisfactory terms of disposal can be obtained by negotiation;
 - (ii) the Fair Market Value of the Qualifying Surplus Property does not exceed fifteen thousand dollars;
 - (iii) bid prices after advertising therefore are not reasonable, either as to all or some part of the Qualifying Surplus Property, or have not been independently arrived at in open competition;
 - (iv) the disposal will be to the state or any political subdivision, and the estimated Fair Market Value of the Qualifying Surplus Property and other satisfactory terms of disposal are obtained by negotiation;
 - (v) under those circumstances described in Section 2.3 below; or
 - (vi) such action is otherwise authorized by law.

2.2 Advance Explanatory Statement Requirement for Certain Qualifying Surplus Property Disposals. PAL § 2897(6)(d) requires that MTA Agencies prepare and disseminate to certain public officials ninety days in advance of a Qualifying Surplus Property disposal,

an explanatory statement for (i) disposals by negotiation of any Qualifying Surplus Property with an estimated Fair Market Value in excess of \$15,000; or (ii) a disposal of Qualifying Surplus Property by exchange, where the exchange involves disposal of real property together with related Surplus Property (regardless of value). The explanatory statement shall be sent by the MTA Agency preparing it to the comptroller, the director of the budget, the commissioner of general services, the legislature and the independent authorities budget office at least 90 days before making the disposal.

The explanatory statement shall include:

- a. description of the parties involved in the property transaction;
- b. justification for disposing of property by negotiation;
- c. identification of property, including its location;
- d. estimated fair market value of the property;
- e. proposed sale price of the property;
- f. size of the property; and
- g. expected date of sale of property.

A copy of the statement shall be preserved in the MTA Agency's files.

2.3 Less than Fair Market Value Disposals. The MTA may dispose of Qualifying Surplus Property for less than Fair Market Value, pursuant to PAL § 2897(7), if:

- a. The transferee is a governmental or other public entity and the transfer terms require that ownership of the asset will remain with the governmental entity, or
- b. The transfer is within the purpose, mission or governing statute of the MTA.

Where a proposed transfer of Qualifying Surplus Property is for less than Fair Market Value but does not satisfy either of the above two criteria, the proposed transfer may not proceed without the MTA Agency first providing written notice to the Governor, the Speaker of the Assembly and the Temporary President of the Senate. Such proposed transfer shall be subject to denial by the Governor, the Senate or the Assembly. The Governor, Senate or Assembly has 60 days from receipt of the notice to act if the notice is received between January and June; if the notice is received between July and December, the Senate or Assembly has 60 days from the following January in which to act on the notice.

2.4 Board Information and Approval Requirements: Proposed Less than Fair Market Value Disposal. If a below Fair Market Value Qualifying Surplus Property transfer is proposed, the following information must be provided to the MTA Board and to the public, in accordance with PAL § 2897(7)(b):

- a. a full description of the Qualifying Surplus Property;

- b. an appraisal of the Fair Market Value of the Qualifying Property and any information establishing the Fair Market Value;
- c. a description of the purpose of the transfer and a statement of the kind and amount of the benefit to the public resulting from the transfer;
- d. a statement of the value received compared to the Fair Market Value;
- e. the names of any private parties participating in the transfer; and
- f. the names of other private parties who made an offer for the asset, the amount offered, and the purpose for which the asset was sought.

Before proceeding with such a proposed disposal, the MTA Board shall consider the information required to be provided and make a written determination that there is no reasonable alternative to the proposed below market transfer that would achieve the same purpose of the transfer.

Section 3: Compliance with Federal Transit Administration Circular 5010.1D – Federally Funded Property

In addition to complying with PAL §§ 2895 - 2897, the MTA must also comply with Federal Transit Administration (“FTA”) Circular 5010.1D which governs the disposal of Federally-funded Property with an acquisition value in excess of \$5,000. That Circular requires grantee agencies such as the MTA to obtain FTA approval prior to disposing of such property if the disposition occurs before the end of the asset’s useful life, as determined under the Circular. In addition, upon disposition, the MTA must reimburse the FTA its share of any remaining Federal interest in the asset, as calculated pursuant to Circular 5010.1D.

Section 4: Reassignment or Transfer of Surplus Property to Other MTA Agencies

Prior to disposing of Surplus Property, the MTA Agencies should attempt to reassign it to other departments/divisions within that MTA Agency and/or transfer the Surplus Property to another MTA Agency.

- 4.1 **Reassignment.** The Surplus Property Officer for each MTA Agency will notify its departments/ divisions of the availability of Surplus Property and will facilitate the transfer of same among departments/divisions if such transfer will result in a cost savings to the MTA. Such notification shall take place at least once per year, by publication of an inventory of Surplus Property, and may be supplemented by informal notification of departments on an ad hoc basis. In the event that more than one department or division expresses interest in the reassignment of Surplus Property, the MTA Agency’s Surplus Property Officer and Contracting Officer shall determine the recipient, based on their judgment of which reassignment would be most beneficial to the MTA. Whenever possible, reassignment of Surplus Property shall be accomplished directly, minimizing the number of times an item must be moved.
- 4.2 **Transfer to a Constituent Agency.** Each Surplus Property Officer will circulate to the MTA Agencies on a periodic or ad hoc basis as appropriate, notice of the availability of

Surplus Property. The inspection and, upon acceptance, physical transfer of such property shall be the responsibility of the MTA Agency accepting it.

In the event that more than one MTA Agency expresses interest in the same Surplus Property, the Surplus Property Officer and Contracting Officer shall determine the recipient, based on his judgment of which reassignment would be most beneficial to the MTA. Whenever possible, reassignment of Surplus Property shall be accomplished directly, minimizing the number of times an item must be moved.

Section 5: Disposal of Surplus Property with Estimated Fair Market Value in Excess of \$5,000

- 5.1 Sale by Publicly Advertised Bid. Qualifying Surplus Property (i.e. valued in excess of \$5,000) should periodically be offered by MTA for sale by the competitive process of publicly advertised bid, which is the preferred method of disposal.

The following requirements of PAL § 2897(6)(b) must be observed:

- a. The advertisement for bids shall be made at such time prior to the disposal through such methods and on such terms and conditions as shall permit full and free competition consistent with the value and nature of the Qualifying Surplus Property;
- b. All bids shall be publicly disclosed at the time and place stated in the advertisement; and
- c. The award shall be made with reasonable promptness by notice to the responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous to the MTA, price and other factors considered; provided, that all bids may be rejected when it is in the public interest to do so.

- 5.2 Disposal of Property by Negotiation or Public Auction. Surplus Property may be disposed of by negotiation or public auction when (i) the Fair Market Value of such Surplus Property does not exceed \$15,000 or (ii) where any of the other criteria listed in Section 2.1(b) above for such disposal is satisfied.

Section 6: Disposal of Surplus Property With a Fair Market Value of \$5,000 or Less

- 6.1 Sale. The preference is to sell property having an estimated or appraised Fair Market Value of \$5,000 or less, in an effort to recover value from Surplus Property for MTA.
- 6.2 Contribution. Items with an estimated or appraised value of \$5,000 or less may be offered to a not-for-profit organization if, in the judgment of the MTA Agency's Surplus Property Officer and Contracting Officer, such property may have value if returned to use in such an organization, such a disposal by contribution will minimize disposal and storage costs to MTA, and the Surplus Property either has negligible resale value or the costs of MTA conducting a sale of such Surplus Property relative to the resale value that could likely be obtained are such that proceeding by contribution is deemed warranted. In such circumstances, physical transfer of the property will be the responsibility of the receiving organization. Such an offering shall be conducted at the convenience of the MTA, and at minimal expense to the MTA.

Section 7: Disposal as Waste

Surplus Property that the Surplus Property Officer determines has no net monetary value (taking into account costs of storage) and has been unable to dispose of through reassignment, transfer, sale, or donation as outlined above should be disposed of as waste in the most cost-effective means consistent with all relevant laws and regulations.

Section 8: Inventory Management/Internal Controls

Each MTA Agency shall maintain adequate inventory controls and accountability systems for all individual items of Personal Property.

Section 9: Regulatory Disclosure

- 9.1 MTA Agency Reporting. Each MTA Agency's Contracting Officer shall annually provide a report to MTAHQ of all Surplus Property under its custody and control as well as a list and full description of all Surplus Property disposed of during the previous calendar year with the price received and the name of the purchaser.
- 9.2 Format and Timing. The report shall be provided in a format and at such time as requested by the MTA Corporate Compliance to facilitate required reporting of sale information.
- 9.3 Annual Report. MTAHQ shall annually publish, in accordance with PAL § 2896(3), a report with a full description of all Qualifying Surplus Property disposed of during the previous calendar year by all of the MTA agencies with the price received and the name of the purchaser. MTAHQ shall send copies of such report to the comptroller, the director of the budget, the commissioner of general services, the legislature, and the independent authorities budget office.

Section 10: Procedures

Each MTA Agency shall create written policies and procedures as needed for the implementation of these guidelines. Such written policies and procedures, once executed, shall be filed with MTA Corporate Compliance.

Attachment C – 20165

Personal Property Disposition Contacting Officers

ATTACHMENT C
PERSONAL PROPERTY DISPOSITION
CONTRACTING OFFICERS

Agency	Contact	Phone	E-mail
MTA All-Agency	Angel Barbosa	646-376-0091	abarbosa@mtabsc.org
MTA Headquarters Business Services Center	Clifford Shockley	646-376-0098	CSHOCKLEY@mtabsc.org
Bridges and Tunnels	Gavin Masterson	646-252-7080	GMasterson@mtabt.org
Capital Construction	David K. Cannon	646-252-2321	DCannon@mtacc.info
Long Island Rail Road	Dennis L. Mahon	718-725-2620	dlmahon@lirr.org
Metro-North Railroad	Alfred Muir	212-340-2348	Muir@mnr.org
MTA Bus	James Curry	718-927-7766	James.Curry@nyct.com
New York City Transit	Stephen M. Plochochi	646-252-6050	Stephen.Plochochi@nyct.com