

Exhibit Book
MTA Board Meeting
3/30/2022

Table of Contents:

Real Property Disposition Guidelines - Page 2

Policy LIRR MED-005 Alcohol Substance Abuse - Page 172

Policy LIRR MED-005c Alcohol and Substance Abuse - Guidance for Regulated Service Employees - Page 198

Policy MNR21-012 Alcohol and Substance Abuse - Page 208

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES



MTA REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION
GUIDELINES EFFECTIVE AS OF
MARCH ~~17, 2021~~30, 2022

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

INTRODUCTION..... 1
MTA REAL ESTATE DEPARTMENT 1
RED STRUCTURE 1
RED GOVERNANCE 1
SCOPE OF GUIDELINES..... 1
LEASE/SALE RFP PROCESS 3
LEASE/SALE NEGOTIATION PROCESS 3

CHAPTER I - INQUIRIES..... 5

CHAPTER II – ASSESSMENT OF OPPORTUNITIES..... 6
SITE ANALYSIS 7
PRELIMINARY FAIR MARKET VALUE ANALYSIS 9
CONCLUSION OF SITE AND PRELIMINARY FAIR MARKET VALUE ANALYSIS 10

CHAPTER III – REQUESTS FOR PROPOSALS (RFPS)..... 11
RFP PUBLICATION 11
DETERMINATION OF WHETHER TO UTILIZE SINGLE-STEP OR MULTI-STEP LEASE/SALE RFP PROCESS 14
SINGLE-STEP LEASE/SALE RFP PROCESS 14
MULTI-STEP LEASE/SALE RFP PROCESS 14
EARNEST MONEY DEPOSITS 15
OPENING PROPOSALS 16
EVALUATING PROPOSALS 16
SELECTION CRITERIA 18
SELECTION PROCESS 20

**CHAPTER IV – ENTERING INTO AGREEMENTS THROUGH THE LEASE/SALE
NEGOTIATION PROCESS 22**

CHAPTER V – VALUATIONS AND FAIR MARKET VALUE 25

CHAPTER VI - ANALYSIS OF PROPOSER’S FINANCIAL CAPABILITY 28

CHAPTER VII – BOARD APPROVAL PROCESS..... 30
CONDITIONAL DESIGNATION LETTERS 30
STAFF SUMMARIES 31
BOARD APPROVAL 32
SEQRA COMPLIANCE..... 33

CHAPTER VIII - PREPARATION OF FORMAL AGREEMENTS 34
DRAFTING OF FORMAL AGREEMENT 34
INTERNAL REVIEW 34
DOCUMENT APPROVAL FORM 34
EXECUTION BY PURCHASER OR TENANT 35
EXECUTION BY DESIGNATED SIGNATORY 35
REQUIRED DELIVERIES 35
PROPOSER’S FAILURE TO EXECUTE 36

CHAPTER IX - TENANT INFORMATION TRANSFER 37
DOCUMENTATION 37
INSURANCE COORDINATION 38
PLANNING & CONSTRUCTION 38

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

TABLE OF CONTENTS

- ii -

CHAPTER X - CONSTRUCTION MANAGEMENT	39
PLAN SUBMISSION	39
CONSTRUCTION MONITORING	40
CONSTRUCTION COMPLETION	40
CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW	41
DEFINITIONS	41
APPLICABILITY	42
COMMUNICATIONS NOT PROHIBITED BY THE PROCUREMENT LOBBYING LAW	42
RECORDATION OF PERMISSIBLE AND IMPERMISSIBLE CONTACTS.....	43
CONTRACT REQUIREMENTS	44
RESPONSIBILITY DETERMINATION	45
TERMINATION	45
GLOSSARY.....	46
ATTACHMENT 1	
FIGURES	

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

INTRODUCTION

Page 1

INTRODUCTION

MTA Real Estate Department: The MTA Real Estate Department (“RED”)¹ handles real-estate-related matters and utility franchise agreements for the Metropolitan Transportation Authority (the “MTA”) and each of the MTA’s subsidiaries and affiliates, 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 Regional Bus Operations and MTA Design and Construction, ~~and Grand Central Madison Concourse Operating Company~~ (each, an “MTA Agency”, and, collectively with the MTA, the “MTA Agencies”). References in these Guidelines to the MTA or to MTA Agency are intended to refer to both MTA and the other MTA Agencies, individually and/or collectively, as the context may require.

RED Structure: RED comprises two core groups – (i) Transactions & Operations (including, Facilities Management) (“TOM”) and (ii) Transit-Oriented Development (“TOD”). The TOM group is responsible for all real estate-related transactional matters (other than development and major capital projects) for the MTA Agencies (including acquisitions, dispositions and leasing of MTA Property), tenant management, and management and operations of MTA Facilities. The TOD group is responsible for all real estate-related development matters, whether by an MTA Agency, a government or other public or quasi-public entity and/or a private entity, which affects or involves any existing or to-be acquired MTA Property and/or any existing or proposed transit-related facility or amenity, including acquisitions and dispositions of real property or interests in real property for long-term revenue generation and transportation facilities; major capital projects in conjunction with or enhanced by real estate development; other co-development arrangements with private and public entities including public-private partnerships; and other opportunities for realizing revenue from real estate opportunities and strategic planning.

RED Governance: The MTA’s Chief ~~Development~~Administrative Officer (the “~~CDO~~CAO”) oversees the ~~RED~~RED’s Real Estate Transactions and Operations and works with a team of senior officers, ~~including a Deputy Chief Development Officer, Planning (the “Deputy CDO, Planning”).~~ The Director, Real Estate Transactions and Operations (“Managing Director, TOM”)—reporting to the ~~CDO, through the Deputy CDO, Planning—CAO~~, has primary day-to-day responsibility for managing all TOM functions, with direct oversight for, among others, the Director, Transaction Management (“First Deputy, TOM”), Director, Grand Central Retail Leasing and Management Associate Director, Tenant Management, Associate Director, Operations and Deputy Director, Project Management.

The Director, Transit-Oriented Development (“Managing Director, TOD”)—reporting to the Chief Development Officer (the “CDO) through the Deputy CDO, Planning—has primary day-to-day responsibility for managing all TOD functions with direct oversight for, among others, the Director, Real Estate Development, the Director, TOD Transactions and the Deputy Director, Value Capture. (See Figures 25 and 26 for TOM/TOD organizational charts as of the Effective Date of these Guidelines.)

The Chief ~~Development~~Administrative Officer is responsible for the MTA’s and the MTA Agencies’ compliance with and enforcement of these Guidelines, as the Board-designated Real Property Disposition Contracting Officer for the MTA and MTA Agencies.

Scope of Guidelines: These Guidelines apply only to dispositions of real property under Sections 2895-

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

2897 of the Public Authorities Law (“PAL”), including leasing-out or sale of real property and grants of

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022¹

INTRODUCTION

Page 2

interests in real property such as easements and leasehold interests, owned or leased and controlled by the MTA or other MTA Agency. The licensing-out of real property pursuant to licenses that the MTA or other MTA Agency may terminate at will in its sole and absolute discretion upon not more than 60 days' notice without compensation by the MTA or other MTA Agency including repayment of any unamortized tenant improvement costs—is not subject to PAL Section 2897 because it is not a disposition of an interest in real property. Such licensing-out is subject to the RED Policies and Procedures for the Licensing of Real Property dated November 29, 2011, as amended. If a license agreement provides that the licensee's right of use and occupancy is subject to termination only for specified reasons or upon payment of compensation by the MTA or other MTA Agency, however, then these Guidelines will apply. Similarly, the transfer of MTA Property or an interest in MTA Property to an entity or joint venture or other undertaking with another person or entity by contract, lease or other arrangement that involves MTA Property, and through which the MTA or MTA Agency will continue to own an indirect interest in the property, may be considered a mere change of identity in the form of ownership only—from a direct ownership interest to an indirect one—and thus not a disposal of such property subject to PAL Section 2897 and these Guidelines.

The franchise licensing of utilities is also not subject to PAL Section 2987 but rather is authorized under PAL Section 1266(2) and approved by MTA Board action dated February 17, 2021 except to the extent the franchise license does not comply with all conditions for such exception as set forth in the Board approval.

These Guidelines are supplemented by the Guidelines for Selection of Tenants for Grand Central Terminal that were adopted by the MTA Board on November 18, 2009, as amended (the "GCT Leasing Guidelines"). In the event of any inconsistency or conflict between these Guidelines and the GCT Leasing Guidelines, with respect to a lease at Grand Central Terminal, the GCT Leasing Guidelines shall govern. A copy of the current GCT Leasing Guidelines is attached hereto as Attachment 1.

PAL Section 2897 provides 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 Guidelines (the "Lease/Sale RFP Process"), others may be made pursuant to direct negotiations as described in Chapter IV of these Guidelines (the "Lease/Sale Negotiation Process").

These Guidelines are intended only for the internal guidance of officers and employees of the MTA. Nothing contained in these Guidelines is intended, and the same shall not be construed, to establish expressly or by implication, or confer upon any person or entity (including any prospective proposers or awardees) any right, privilege, remedy, claim, reliance upon or benefit under, or by reason of, any requirement or provision of these Guidelines for third parties. Except to the extent prohibited by law, any provision of these Guidelines may be waived by the MTA Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer of the MTA.

¹ A glossary of defined terms used in these Guidelines appears at the end of these Guidelines at Page 47.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

INTRODUCTION

Page 3

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 proposals must be made prior to the leasing-out or sale, through the methods authorized by these Guidelines;
- all proposals 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 proposer whose proposal will be most advantageous to the State, price and other factors considered; provided, however that all proposals 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 Guidelines.

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

- (a) the fair market value of the property to be leased-out is no greater than an average of \$15,000.00 annually over the term or the sale price does not exceed \$15,000, as applicable or
- (b) proposal 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 (even if the fair market value, as applicable in (a) above, exceeds \$15,000); 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 (even if the fair market value, as applicable in (a) above, exceeds \$15,000); or
- (d) under those circumstances permitted by subdivision seven of PAL Section 2897, which include the following:
 - (i) 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;
 - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
 - (iii) such action is otherwise authorized by law.

Formatted: Indent: Left: 0.58", Hanging: 0.42"

In the case of (a), (b) or (c) above, the disposition must be for no less than the applicable fair market value. In the case of (d) above, it can, but does not have to, be for less than fair market value. However, if the disposition in the case of (d) is for less than fair market value, then the following information must be provided to the relevant MTA Agency Board (which must make a written determination based upon such information, that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer) and the public

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~

INTRODUCTION

Page 4

- (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.

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 Guidelines. 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 the Legislature not less than ninety days in advance of such disposition, and a copy thereof must be kept in the project file.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER I - INQUIRIES

Page 5

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 - RED is responsible for coordinating all responses to Inquiries. 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, Grand Central Retail Leasing and Management, all Inquiries should be referred to the First Deputy ~~Managing Director, TOM~~, who should either respond directly or else charge an appropriate deputy with doing so. In the first instance, the First Deputy ~~Managing Director~~TOM should ascertain:

- (1) precisely what property the inquirer is referring to, and which MTA Agency controls it; (2) whether the relevant 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 Managing Director, TOM and/or the First Deputy ~~Managing Director~~TOM determines that the subject property is available for purchase or lease, he or she (or their deputy or deputy’s designee) should so inform the inquirer, taking care to stipulate that (except as otherwise described in these Guidelines) 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 First Deputy ~~Managing Director~~TOM determines that the subject property is not available for sale or lease but may be available under a license arrangement that may be revoked by the MTA at will, without cost, on not more than 60 days’ notice, he or she (or such deputy or deputy’s designee) should so explain to the inquirer, and in that case the Licensing-Out Guidelines shall apply to such property. Otherwise, the First Deputy ~~Managing Director~~TOM (or such deputy or designee) should inform the inquirer that the subject property is not available on any terms and invite the inquirer to register their interest on RED’s website for purposes of alerting the inquirer to other opportunities.

For templates for appropriate written responses, see Figures 1–5.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 6

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 – RED is responsible for encouraging the MTA Agencies to identify MTA-controlled property that is either never going to be needed by the MTA Agency for operational purposes or not expected to be needed for such purposes until sometime 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 or the licensing of such property subject to revocation 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 the 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, grant of easement rights 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 MTA Agency may have future operational needs for use of the property is or can be envisioned, (c) whether (in any case) it will be necessary or desirable for the MTA Agency to maintain long-term control over the ownership and/or use of the property, (d) whether the MTA Agency 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 Agency 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 Managing Director, ~~TOM~~ and/or the First Deputy ~~Managing Director TOM~~ should refer such property to the appropriate Deputy Director, who will designate a Transaction Manager to conduct the evaluation under their supervision.

In all cases where an inquiry may have potential for development as a future or existing Transit-Oriented Development matter, the Managing Director, ~~TOM~~ and/or the First Deputy ~~Managing Director, TOM~~, will direct such inquiry to the Managing Director, ~~TOD~~ and/or First Deputy ~~Managing Director, TOD~~, to afford him or her the opportunity to explore the development potential.

Maintenance of Marketable Property List

With respect to ~~TOM~~ matters, the Deputy Directors are responsible for maintaining and regularly updating the marketable property list for their respective areas of responsibility. They are also responsible for using RED's Yardi database to run reports and periodically check active accounts for expiring terms of leased or licensed property to ensure timely marketing of those opportunities is initiated.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 7

A. Site Analysis

The Transaction Manager shall conduct a site inspection with a representative of Tenant Management (or RED's Tenant Management Vendor) and the appropriate personnel of the MTA Agency in order to evaluate the condition of the property, the surrounding area, ascertain what utility services may be available for the site and identify what code compliance concerns may need to be addressed. As a part of this inspection, the Transaction 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 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. After the site inspection, a site assessment report will be completed, with input from all agency personnel and TMU/Tenant Management Vendor. The Transaction Manager should also consult with Information Management and MTA Legal to ensure that the Transaction Manager is aware of any contractual or other legal limitations that would affect the MTA Agency'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
- Any Federal Funding Requirements

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 8

Generally, the leasing-out or sale of MTA 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 Transaction Manager should consult with MTA Legal, Deputy General Counsel, Unit Chief – Environmental (the “DGC Environmental”) as early in the process as practical to determine what measures are necessary to ensure SEQRA compliance. Further consultation may be necessary as a proposal develops or changes over time. Board approval of a lease or sale or grant of easement rights in MTA Property cannot occur unless SEQRA requirements have been met either through (a) the action being exempt as a Type II action under SEQRA 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. If the leasing-out or sale of MTA Property involves any federal action, which is rare, the leasing-out or sale would be subject to National Environmental Policy Act (“NEPA”) in addition to SEQRA.

Each proposed lease or sale, whether via the RFP Process or the Lease/Sale Negotiation Process, requires preparation of and sign-off on a Pre-RFP Authorization Memo (Figure 9), 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 for approval.

Additionally, MTA Legal’s Deputy General Counsel, Unit Chief – Finance (the “DGC-Finance”) must review the location(s) being offered in each RFP, with the RED 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 Legal’s ~~Deputy General Counsel, DGC-~~ Finance clears such location and use should it be advertised, unless circumstances require advertisement before clearance is given, in which case the RFP must be subject to cancellation if clearance is not given prior to award. The Pre-RFP Authorization Memo contains two (2) boxes which must be checked by the Transaction Manager completing that form indicating that MTA Legal’s ~~Deputy General Counsel, DGC-~~ Finance reviewed the location and use and has given approval to proceed with the RFP. A copy of the MTA ~~Legal’s Deputy General Counsel, Legal’s DGC-~~ Finance determination should be kept in the RFP file.

Formatted: Expanded by 0.25 pt

Prior to issuing an RFP, the Transaction Manager should prepare a Parcel Information Sheet (Figure 6) for each property that he or she determines to be marketable. The purpose of the Parcel Information Sheet is to collect information that will ultimately be used to describe the property being disposed of in the RFP.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 9

Each Parcel Information Sheet should include information for all applicable fields. A form of Parcel Information Sheet applicable to all MTA 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
- Any desired reservation of rights
- Utility requirements and availability
- Improvement requirements and associated cost estimates
- Design guidelines (if any)
- Transaction 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:

- 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 an appraisal or while one is being prepared (see Chapter V), the Transaction 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 Transaction 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 Transaction Manager should use it to help inform their analysis.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER II – ASSESSMENT OF OPPORTUNITIES

Page 10

C. Conclusion of Site and Preliminary Fair Market Value Analysis

The Transaction Manager should prepare a market analysis work sheet describing their analysis of the property and conclusions regarding the marketability of the property. The Transaction Manager should use such market analysis work sheet to guide their discussions with their 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 applicable Deputy Director should, upon conclusion of discussions with the Transaction Manager and resolution of any outstanding issues, then present the Pre-RFP Authorization Memo (with the market analysis work sheet attached) to the First ~~Deputy Managing Director~~ Deputy TOM, for approval. Both the applicable Deputy Director and First Deputy ~~Managing Director~~ TOM 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 First Deputy ~~Managing Director~~ TOM should authorize the commissioning of valuation of the fair market value of MTA Property or the interest therein being disposed of, if it has not already been commissioned, as provided in Chapter V of these Guidelines. The Pre-RFP Authorization Memo is also approved by the Managing Director-

Formatted: Condensed by 0.1 pt

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

TOM.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 11

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 MTA or the MTA Agencies 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 or purchasers 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 Transaction 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 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 7);
 - b. the Parcel Information Sheet (see Figure 6);
 - c. Term Sheet;
 - d. a Proposer Information Form (“PIF” – See Figure 8) which includes a General Affidavit authorizing credit background and reference investigations;
 - e. a Procurement Lobbying Law Certification form (also known as the NYS Finance Law Sections 139-j & 139-k (“Lobbying Law”) Disclosure Statement);
 - f. an Iran Divestment Act Certification form;
 - g. a Proposed Rent, Compensation or Purchase Price Form; and
 - h. an IRS Form W-9.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁴

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 12

To the extent practicable, the RFP should also include (or provide a link to a page on the RED 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 First Deputy ~~Managing Director~~ TOM 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 Transaction Manager should forward the RFP package to their applicable Deputy Director and the First Deputy ~~Managing Director~~ TOM for final approval via an appropriately titled Pre-RFP Authorization Memo (see Figure 9) before it is issued. An RFP should also be reviewed and approved by MTA Legal, Deputy General Counsel, Unit Chief – Transactions and Operations (the “DGC – T&O”), or his or her designee, 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. RFPs are not printed and distributed by mail. RED maintains a database for prospective tenants to register on the MTA’s website and access all RFPs online. RED’s online service includes automated electronic mailings to registered prospects announcing RFPs for available opportunities.

3. If the subject property is currently occupied by an incumbent lessee or licensee in good standing, the Transaction Manager should notify such incumbent by an Incumbent Letter sent by certified and first class mail and email that such property is going to be marketed in an upcoming RFP. The Transaction Manager must check that the address for the incumbent used in the Incumbent Letter is up to date and reflects any change of address, change of business name, etc. (For an example of an Incumbent Letter, see Figure 10). A copy of the Incumbent Letter and the return receipt should be maintained in the incumbent’s file. The Incumbent 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 or notices of change of address. Any questions regarding the appropriate address for notice should be referred to Tenant Management (and MTA Legal, DGC – T&O, if necessary). The Incumbent Letter should include a link to the website address where the RFP will be posted in order for the incumbent lessee or licensee to access the RFP.

4. After receiving approval of the Pre-RFP Authorization Memo from their applicable Deputy Director and the First Deputy ~~Managing Director~~ TOM, the Transaction 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 (e.g., RFPBG0912), and a reference to and listing of the MTA website for RED RFPs (http://enterprise.nymta.info/MTA_Real_Estate_RFP/). For an example of the RFP Advertisement, see Figure 11. 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.

Formatted: Condensed by 0.05 pt

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 13

Advertisements may also be placed in additional periodicals with the approval of the First Deputy ~~Managing Director~~TOM, 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. 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 11 for an example of such an advertisement.

Subject to Senior Vice-president/Chief Customer Officer approval, advertisement drafts must be submitted to Miller Advertising on Tuesday before the Thursday planned for the advertisement to have the RFP information placed in the next MTA advertisements for the four required periodicals. The Manager of Production, in MTA's Marketing & Communications Department, should be copied on the email to Miller Advertising. The Transaction Manager should also ensure that the RFP is timely posted onto MTA's website.

5. At the same time, the Transaction Manager will call or send an email to the MTA press office, as well as the agency's public affairs office, being sure to email the individual responsible for press for the relevant MTA Agency, advising that an RFP is forthcoming, indicating whether a purchaser or tenant is being sought and describing the property being offered. The Transaction 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 First ~~Deputy Managing Director~~Deputy TOM. If warranted, the Government Affairs office of the relevant MTA Agency should also be advised of the RFP.

6. On a case by case basis, the First Deputy ~~Managing Director~~TOM may, with the concurrence of the Managing Director, (a) elect to make RFPs available to our on-call brokers and undertake in such RFPs to pay brokerage commissions (at the rates previously negotiated in our on-call contract) to any brokers that represented the MTA on the consummated sales or leases of MTA Properties that are the subject of such RFPs.

7. The Transaction Manager is responsible for seeing to it that each person or entity 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 visit time for prospective proposers is typically identified in the RFP. At the indicated time of the site visit, the Transaction Manager should be present at the site and available to answer any questions. The Transaction 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, to provide them with other additional information and/or to respond to any questions that arise during the RFP process. 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 Transaction Manager must establish an RFP file which shall include all relevant documents for the RFP in question.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 14

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 First Deputy ~~Managing Director~~ TOM 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.

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 proposal bids and the making of responsiveness and responsibility determinations, the RED determines which proposal is most advantageous to the State, price and other factors considered. Unless it determines to reject all proposal 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 proposal bids must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization or disclosed to the members of the Finance Committee of the MTA Board and to the members of the MTA Board in executive session and thereafter publicly disclosed prior to execution.

D. Multi-Step Lease/Sale RFP Process

In a multi-step Lease/Sale RFP Process, the initial proposer submission is followed by one (1) 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 Transaction 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 addenda should also be sent to such representative or agent certified mail, return receipt requested, first class mail, and by email. Following each submission, the RED staff may communicate with proposers to clarify the proposal bids or to obtain additional information. Following review and consideration of the proposal bids and the making of responsiveness and responsibility determinations, the RED may decide to make a final determination based on such proposals or it may request that proposers submit revised proposals. 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 proposal bid is most advantageous to the State, price and other factors considered. Unless it determines to reject all proposals, 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 proposal bids must be publicly disclosed in the agenda for the Finance Committee meeting at which the RED seeks such authorization or disclosed to the members of the Finance Committee of the MTA Board and to the members of the MTA Board in executive session and thereafter publicly disclosed prior to execution.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 15

E. Proposal Submissions

Proposals may be submitted as follows:

One hard copy of the complete proposal submission should be MAILED, or sent via UPS, FEDEX, or other parcel or post carrier in sealed envelopes and must arrive by the date and time required in the RFP (unless initially emailed, as described below) and must be sent to:

MTA Real Estate
Attention: Senior Transaction Manager
Metropolitan Transportation Authority
2 Broadway, 4th Floor
New York, NY 10004
MTA Real Estate RFP Number:

In lieu of mailing or hand-delivering by the required date and time, submissions of proposals may initially be made via electronic mail provided that the same is sent by the date and time required in the RFP and the designated Point of Contact confirms receipt, and an original hard copy is received no later than seven (7) days after the date and time required in the RFP.

If a proposal is submitted by personal delivery, whether by a proposer or by messenger, it must be delivered to the MTA New York City Transit Bid Suite at 3 Stone Street, around the corner from the 2 Broadway entrance (north side of street, between Broadway and Broad Street). Proposers WILL NOT be permitted to deliver proposals in person at the 2 Broadway entrance. Personally delivered proposals will be time stamped by staff in the Bid Suite and then proposers will be directed to place proposals in a drop box in the Bid Suite.

F. Earnest Money Deposits

For discussion about deposits for leases, see Chapter VII – Board Approval Process, Section A. - Conditional Designation Letters.

Typically, in the case of a sale, 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 deposit that will ultimately be required under the contract of sale. Except as the ~~Director, Transaction Management~~ ~~First Deputy TOM~~, may otherwise determine, such earnest money deposit should be in the amount of ten (10%) percent of the purchase price.

All earnest money checks and IRS W-9 forms should be forwarded to Tenant Management, which should make a record of such checks and then transmit such checks to the Bank designated by MTA for such purposes. Once a proposer has been eliminated from further consideration, the Associate Director, Tenant Management must be so notified by the Transaction Manager and (except as described in Chapter IX of these Guidelines) such proposer's earnest money deposit should be returned to such proposer.

Formatted: Condensed by 0.3 pt

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 16

If a proposer has been selected, its earnest money deposit may be held in a non-interest bearing non-segregated account, until such time as the contract of sale is executed, at which time it will be applied toward the down payment pursuant to the contract of sale. If the selected proposer fails to enter into a contract of sale, such proposer's earnest money deposit may be retained by the MTA, in its discretion; provided, however, that the First Deputy ~~Managing Director~~TOM and/or the Managing Director, TOM 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 Transaction Manager and their Deputy Director and MTA Legal, DGC – T&O concur that the proposer has been dealing in good faith, Tenant Management should be directed to return the proposer's earnest money deposit without interest, if any.

The deposit of earnest money with a proposal submission may be waived for a given RFP by the First Deputy ~~Managing Director~~TOM.

G. 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. Proposals are stamped and dated at the time of receipt. All proposals should be opened by the Transaction Manager in the presence of at least one other staff member, and in the meanwhile the proposals 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 (see Figure 12 for a sample checklist).

H. 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 submission. In the case of a multi-step Lease/Sale RFP Process, a decision is made based on the best and final 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, if requested.
- c. Appropriate conceptual plans for improvements have been submitted, if requested.
- d. Proposed use is acceptable in accordance with criteria stated in the RFP.

Generally, a proposal submission must be complete to be considered, and an incomplete proposal submission should be disqualified if the deficiencies are material and allowing the proposer to correct

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 17

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 Transaction 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 Transaction Manager must discuss any such non-conformity with their Deputy Director, who must inform the First Deputy ~~Managing Director~~ TOM of such non-conformity. If there is any doubt about the appropriate action to take, MTA Legal, DGC – T&Q should be consulted. All relevant decisions should be made by the ~~Managing Director in consultation with the Deputy CDO, Planning, as may be applicable under the circumstances~~, Managing Director - TOM, or by the ~~Chief Development Officer~~ CAO. If a decision is made to request action by the proposer to conform its submission to the 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 Transaction Manager, after consulting with their 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 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, or any agencies, affiliates, or subsidiaries of them;
- c. has violated the Procurement Lobbying Law (as more particularly described in Chapter XI of these Guidelines);
- 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 or any other MTA Agency; such amount is not (in the view of MTA Legal) the subject of a bona fide dispute; and such amount has remained unpaid after written demand from the MTA or another MTA Agency. Late payment, as opposed to non-payment, shall not constitute grounds

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁴

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 18

for disqualification of an otherwise responsible proposer (although it may be taken into account in scoring proposals, as described below);

- e. is in default of material non-monetary obligations to the MTA or another MTA Agency under an existing lease and the MTA or MTA Agency has provided written notice under that lease and the default has not been timely cured as provided in the lease;
- f. has any outstanding federal, state or local tax warrants or liens; or.
- g. has received an unacceptable credit report from a reputable credit reporting company.

If, after providing written notice of its intent to disqualify them as not responsible, and having afforded a proposer an opportunity to be heard, the MTA deems the proposer to be not responsible, the MTA need not undertake any further consideration of such proposer's proposal.

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 either directly or through a rent credit, abatement or other credit arrangement (“Net Present Value” or “NPV”)
- Quality of proposed improvements
- Nature of proposed business and potential benefit to the 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 determined by the Managing Director, and consistently applied. In calculating such present values, any percentage rent or other contingent rent projected by the proposer should be included only to the extent that the Transaction 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 19

standards for depreciating the cost of improvements over their useful life. By way of example, typically, the installation by tenants 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 capital improvements that are customarily considered structural or systems-related and made by a landlord, and will provide residual value to the MTA because they have a useful life that will extend beyond a typical lease term and, if paid for by a tenant, will not need to be made by MTA or 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 Transaction Manager should complete RED's NPV calculation Excel template (see Figure 13), 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 Guidelines establish a rebuttable presumption that the responsive and responsible proposer whose proposal offers the highest guaranteed payments to the MTA (calculated on a net 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 Transaction Manager should assess, compare and take into account the respective proposers' business plans, experience and financial capability, and may (with the concurrence of their Deputy Director, the First Deputy ~~Managing Director~~ **TOM**, and the Managing Director) 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;
- 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 Guidelines.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 20

I. Selection Process

1. Interviews.

After reviewing credit background checks and completed Proposer Information Forms, the Transaction Manager should (except as described in the next paragraph) schedule an interview with each responsive and responsible proposer. Two (2) staff persons must attend each interview to maintain the integrity of the process. The interview should focus on any aspects of the proposal that are not self-explanatory and any discrepancies in or questions concerning the Proposer Information Form or credit background report. If, as the result of an interview there are changes to any of the terms or conditions theretofore proposed by a proposer, the Transaction Manager should secure written confirmation of such changes from such proposer.

If there are several qualified and responsible proposers, the Transaction Manager may choose to conduct interviews with ~~the as few as~~ two (2) or three (3) proposers whose offers, over all, are most highly rated. In cases where there is only one highly rated proposer, the Transaction Manager, consulting with their Deputy Director, may choose to schedule an interview with that proposer only. An interview 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 Transaction Manager should determine (a) whether there will be any short listing of proposers before the revised offer stage and (b) whether interviews will be held before a revised offer stage. If there will be any short listing before the revised offer stage, the Transaction Manager should prepare an Authorization Memo recommending such short listing to their Deputy Director, the First Deputy ~~Managing Director~~ TOM, and the Managing Director. The purpose of such Authorization Memo is to provide support and justification for such short listing.

3. Revised Offer Stage in Multi-Step RFP.

In the case of a multi-step RFP process, after interviews and short listing, if any, the Transaction 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 class 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 Transaction Manager should proceed as if the last proposals received were the proposals received in a single-step RFP process.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER III – REQUESTS FOR PROPOSALS (RFPs)

Page 21

4. Recommendation of Award

Single-Step RFP: In the case of a single-step RFP process, upon completion of all interviews, if any, the Transaction Manager should prepare a RFP Award Authorization Memo to their Deputy Director, the First Deputy ~~Managing Director~~ TOM, and Managing Director, TOM (see Figure 14 for a form of Authorization Memo). The purpose of such RFP Award Authorization Memo is to provide support and justification for the rejection of all proposals 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 interviews, if any, and after the receipt of the final revised proposals, the Transaction Manager should prepare an RFP Award Authorization Memo for concurrence and approval by their Deputy Director, the First Deputy ~~Managing Director~~ TOM, and the Managing Director. Again, the purpose of such Authorization Memo is to provide support and justification for the rejection of all proposals or the issuance of a Conditional Designation Letter (see Chapter VII.A).

It is the responsibility of the applicable Deputy Director and the First Deputy ~~Managing Director~~ TOM to verify the Transaction Manager's net present value calculations and to assess the reasonableness of any determination by the Transaction 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 net present value basis). Any such determination should be highlighted and explained in the Transaction Manager's Authorization Memo, as well as in the applicable Staff Summary.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER IV – LEASE/SALE NEGOTIATION PROCESS

Page 22

**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 fair market value of the property to be leased-out is no greater than an average of \$15,000.00 annually over the term or the sale price does not exceed \$15,000, or
- b. proposal 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 (even if the fair market value, as applicable in (a) above, exceeds \$15,000); 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 (even if the fair market value, as applicable in (a) above, exceeds \$15,000); or
- d. under those circumstances permitted by subdivision seven of PAL Section 2897, which include the following:
 - (i) 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;
 - (ii) the purpose of the transfer is within the purpose, mission or governing statute of the public authority; or
 - (iii) such action is otherwise authorized by law.

Formatted: Indent: Left: 0.63", Hanging: 0.38"

In the case of (a), (b) or (c) above, the disposition must be for no less than the applicable fair market value. In the case of (d), it can, but does not have to be, for less than fair market value. However, if the disposition, in the case of (d), is for less than fair market value, then the following information must be provided to the relevant MTA Agency board (which must make a written determination based upon such information, that there is no reasonable alternative to the proposed below-market transfer that would achieve the same purpose of such transfer) 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,

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

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, 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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁴

CHAPTER IV – LEASE/SALE NEGOTIATION PROCESS

Page 23

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 average 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 ninety days in advance of the closing of such disposition, and a copy thereof must be preserved in the RED’s files.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

CHAPTER IV – LEASE/SALE NEGOTIATION PROCESS

Page 24

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 or fair rental value (as applicable);
- e. Proposed sale price of the property;
- f. Size of the property; and
- g. Expected date of sale of property.

The Transaction Manager is responsible for preparing any such transmittal, which should be reviewed and approved by their Deputy Director, the First Deputy ~~Managing Director~~ **TOM**, the Managing Director, MTA Legal, and the Director of State Legislative Affairs before it is sent out.

State Comptroller Review and 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 the 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 total rental payments ~~underover~~ the full term of a lease, including all option periods) in the case of a lease, 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 the OSC in December of the prior year. The ~~Associate~~ Director, Operations, with the assistance of the First Deputy ~~Managing Director~~ **TOM**, 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 the OSC. The ~~Associate~~ Director, Operations, with the assistance of the First Deputy ~~Managing Director~~ **TOM**, will prepare this report. No eligible contract may be entered into less than ten (10) days prior to the execution of the eligible contract.

Formatted: Expanded by 1.4 pt

The OSC may designate specific eligible contracts that must be submitted automatically to the OSC for prior review and approval, in the manner determined by the 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 the OSC (unless the OSC has not approved or disapproved a contract within ninety (90) 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 the OSC, must be filed with the OSC within sixty days of execution. **That means during 2021 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 sixty days of execution.**

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER V – VALUATIONS AND FAIR MARKET VALUE

Page 25

CHAPTER V – VALUATIONS AND FAIR MARKET VALUE

Scope – This chapter contains guidelines for estimating the fair market value of MTA real property (including an interest in real property, such as an easement or leasehold interest) to be offered for sale or lease.

Responsibilities –RED must obtain an independent estimate of the fair market value in connection with every sale or lease of MTA Agency real property (including an interest in real property, such as an easement or leasehold interest). Each valuation commissioned by the RED pursuant to these Guidelines should be prepared by a New York State licensed or certified appraiser, except that in the case of a proposed space lease such valuation may be prepared by a licensed real estate broker experienced in the leasing of space in the area where the subject property is located, provided that such broker cannot be involved directly or indirectly in the Lease/Sale RFP process for such space lease.

Objective – To aid the RED and MTA Board in their efforts to obtain appropriate compensation from purchasers and tenants 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 unrelated prospective buyer or tenant 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 tenants. 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 (\$1.00; 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 Guidelines, 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 tenants could be anyone; and the term “Type II Transactions” is used to refer to sales or leases of MTA Property to adjoining or neighboring property owners where such property has unique value to such adjoining or neighboring property owners.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022¹

CHAPTER V – VALUATIONS AND FAIR MARKET VALUE

Page 26

PAL Section 2897 does not distinguish between Type I Transactions and Type II Transactions; in either case, it requires that an independent valuation of estimated fair market value be obtained and retained in RED's records and (except in the special circumstances identified in Chapter IV of these Guidelines) requires public advertising for proposals. However, because many of the transactions that the RED handles are Type II transactions (e.g., MTA rights-of-way often have only one logical adjacent user; similarly, development/air rights are only transferrable generally to adjacent owners), 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 Transaction Managers to give suitable instructions to appraisers or brokers 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 Transaction Manager should instruct the appraiser or broker to prepare a typical assessment of the value of the subject MTA Property assuming full and adequate competition among potential purchasers or tenants, as the case may be. For most Type II Transactions (other than those involving a disposition of MTA Property as just one part of a larger transaction motivated, in part, by the MTA's realization of significant benefits, including, for example, enhanced customer amenities, transportation facilities or necessary access), the Transaction Manager should instruct the appraiser or broker 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 Transaction 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 they 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 tenants, the actual results of such Lease/Sale RFP Process constitute more concrete evidence of fair market value than a valuation by an appraiser or broker 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 or the Lease/Sale Negotiation Process is used). Accordingly, each Staff Summary presented for MTA Board approval should include a statement as to whether the proposed transaction would yield to the MTA the estimated fair market 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:

“(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;

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER V – VALUATIONS AND FAIR MARKET VALUE

Page 27

- (ii) an appraisal of the fair market value of the asset and any other information establishing the fair market value, as adjusted for any in-kind benefits received, 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.”

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

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 contract of sale or lease.

Responsibilities - The Transaction 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 Transaction 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 Transaction Manager should provide the requisite information to the RED’s credit reference service and order a credit background report from such service. Typically this process takes two (2) to three (3) 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 Transaction 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 First Deputy ~~Managing Director~~ TOM, TOM (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 (3) times the projected base monthly rent for the final 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;
- c. unless the tenant is itself a creditworthy entity, payment and performance of the tenant’s obligations under the lease should be personally guaranteed by a creditworthy principal of the tenant;
- d. where individual proposers intend for a newly formed entity in which they are principals to be the tenant under a lease, in most circumstances the individual proposers/principals of the entity should be expected to provide a full personal guaranty of the tenant’s lease obligations during the entire term of the lease;

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

- e. alternatively, under certain circumstances it may be appropriate to limit the scope of the personal guaranty of a creditworthy principal (to a so-called “good guy guaranty”) so that the guarantor’s liability under the same will be released before the end of the term of the lease, but not before completion of the initial improvements and some period of time beyond the voluntary early surrender of possession (typically twelve months to afford MTA an opportunity to re-lease the premises); examples of circumstances where a limited guaranty may be appropriate rather than a full guaranty, would be where a tenant will be making a substantial investment in improving the lease premises either that would have substantial residual value to the MTA or that would result in a substantial loss of investment if the lease were to be terminated for non-payment of rent such that the tenant is otherwise substantially incentivized to avoid forfeiture of its investment,
- f. if the tenant is to be required to undertake and pay for substantial capital improvements (including alterations of a permanent nature, but excluding tenant fit out work for tenant’s own use) and such capital improvements is estimated to cost more than two hundred and fifty thousand (\$250,000) in the aggregate, tenant shall be required to post, or cause to be posted, a bond issued by a corporate surety licensed to do business in the State of New York or other form of undertaking acceptable to the Comptroller of the MTA. Each such bond or similar undertaking must comply with the requirements set forth in Section 5 of Article 2 of the New York Lien Law.

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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VII – BOARD APPROVAL PROCESS

Page 30

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 (after review by the Finance Committee) has specifically authorized such sale or lease, except as permitted in Policy 33 (adopted by the MTA Board in November, 2013). Policy 33 allows the RED to award a standard retail lease to the proposer who offered the highest guaranteed rent without a Finance Committee Staff Summary or MTA Board Approval provided that (i) at least three proposals were received and (ii) 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 Transaction Manager should prepare a conditional designation letter for execution by the Managing Director, TOM on behalf of the relevant MTA Agency and counter-signature by such prospective tenant or purchaser (a “Conditional Designation Letter”; see Figure 16 for a sample form). 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.

Typically, in the case of a lease, the RED requires the selected proposer to deposit with the MTA, at the time they counter-sign and return a Conditional Designation Letter, earnest money in the amount of the security deposit that will ultimately be required under the applicable lease. Except as the Managing Director, TOM may otherwise determine, such earnest money deposit should be in the amount of three times the proposed monthly rent in the last year of the lease term.

All ~~earnest money checks and~~ IRS W-9 forms should be forwarded by the Transaction Manager to Tenant Management, who should make a record of such ~~checkswires~~ and then transmit such ~~checkswire information~~ for deposit at the Bank designated by MTA for such purpose. The proposer’s earnest money deposit may be held in a non-interest bearing non-segregated account until such time as the lease is executed, at which time it will be applied toward the security deposit required pursuant to the lease. If the selected proposer fails to enter into a lease, such proposer’s earnest money deposit may be retained by the MTA, in its discretion; provided, however, that the First Deputy ~~Managing Director~~ TOM and/or the Managing Director, TOM 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 Transaction Manager and their Deputy Director and MTA Legal, DGC – T&O concur that the proposer has been dealing in good faith, Tenant Management should be directed to return the proposer’s earnest money deposit without interest, if any.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

The submission of earnest money may be waived for a given RFP by the Managing Director, TOM.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VII – BOARD APPROVAL PROCESS

Page 31

Once an Authorization Memo approving a proposed disposition has been signed, a lease or contract of sale executed by the prospective tenant or purchaser 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.

If a proposer or purchaser fails to sign a Conditional Designation Letter or subsequently sign a lease or contract of sale, the Transaction Manager must write a “dead deal” memorandum explaining the reason why the transaction was not completed. The memo must be delivered to the applicable Deputy Director with copies distributed to the First Deputy ~~Managing Director~~ TOM, the Managing Director, TOM, the Associate Director, Tenant Management and the Yardi database administrator (to ensure the transaction account is properly closed and the applicable rentable Unit inventory is shown as available).

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 Transaction Manager should prepare a Staff Summary (unless not required pursuant to MTA Board-approved Policy 33 or other MTA Board-approved policy that may be adopted in the future) for Finance Committee approval. The following is the sequence of steps for preparation of the Staff Summary. This process typically takes approximately five (5) weeks and results in a presentation to 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 the 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 Transaction 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 Transaction Manager prepares a first draft of the Staff Summary, using the RED’s standard form (see Figure 17). Details such as the following should be included as appropriate:
 - Finance Committee meeting date
 - MTA Agency involved
 - Purchaser or tenant name
 - Location (street address and/or block and lot)
 - Activity (use)
 - Action requested (approval, extension of term, etc.)
 - Term (years)
 - Renewal options (if any)
 - Space (size/square feet, configuration, etc.)

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VII – BOARD APPROVAL PROCESS

Page 32

- Compensation (rent 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 Process), 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 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 First Deputy ~~Managing Director~~TOM, the Managing Director, TOM, and MTA Legal, DGC – T&O review the draft and make changes as they see fit.
5. MTA executive staff (General Counsel, Chief of Staff and Chief Financial Officer) review and make changes as they see fit.
6. The Managing Director, TOM signs the Staff Summary and MTA executive staff then approves by affixing their initials.
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 Transaction Manager and their Deputy Director, as well as the First Deputy ~~Managing Director~~TOM, 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 Transaction Manager should update RED's Yardi database 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 Transaction 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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VII – BOARD APPROVAL PROCESS

Page 33

D. SEQRA Compliance

As indicated above, RED staff must consult and coordinate with MTA Legal, DGC – Environmental 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 Transaction Manager should, in consultation with MTA Legal, DCG - Environmental, determine what, if any, SEQRA requirements must be satisfied and whether and how such requirements need to be addressed in the applicable Staff Summary.

Formatted: Condensed by 0.1 pt

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁴

CHAPTER VIII – PREPARATION OF FORMAL AGREEMENTS

Page 34

CHAPTER VIII - PREPARATION OF FORMAL AGREEMENTS

Scope - This chapter reviews procedures relating to the preparation of definitive legally-binding agreements for a sale or lease of MTA Property.

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

Responsibilities – The Transaction Manager has primary responsibility for completing and providing the Legal Intake Questionnaire (see Figure 23) and (in the case of a lease) a Preparer Questionnaire Form (“PQF”) (see Figure 24), and all required supporting documentation to MTA Legal, [DGC – T&O](#). MTA Legal, [DGC – T&O](#) has primary responsibility for preparation (with or without the assistance of outside counsel) of the draft lease or sale agreements. The Transaction Manager and Deputy Director is also responsible for reviewing the draft agreements and preparing the Document Approval Form (“DAF”).

Procedures - The necessary procedures for preparing the sale or lease agreement include completing the required forms and providing them to MTA Legal, [DGC – T&O](#) with all supporting documentation.

A. Drafting of Formal Agreement

Prior to or following the acceptance of the terms of the agreement by the MTA Board, the Transaction Manager should provide a completed PQF (in the case of a lease) and Legal Intake Questionnaire, and transmit them, along with other supporting documents as may be needed (including, a copy of the Authorization Memo, RFP, selected proposal, PIF and Conditional Designation Letter, and in the case of a sale, title report and survey, and if requested a copy of the valuation), to [MTA’s Deputy General Counsel, Real Estate-MTA Legal, DGC – T&O](#). An attorney will then be assigned to each project based on the Legal Intake Questionnaire. The assigned attorney from MTA Legal, [Real Estate Transactions and Operations, \(“RET&O”\)](#) is responsible for preparing and negotiating (or overseeing outside counsel in the preparation and negotiation of) the draft agreement in consultation with the appropriate Transaction Manager and/or Deputy Director. The Transaction Manager and Deputy Director will be responsible for review of the draft agreement and responding promptly to all follow-up questions that [the assigned attorney from](#) MTA Legal, [RET&O](#) (or assigned outside counsel) may have during the preparation and negotiation or comment phase.

B. Internal Review

The Transaction Manager will be responsible for review of each draft agreement, and preparing a DAF to be attached to the final negotiated form prior to execution. The assigned [attorney from](#) MTA Legal [attorney RET&O](#) (or assigned outside counsel), may under appropriate circumstances with the authorization of the Transaction Manager or Deputy Director, transmit the draft agreement to the proposer and its attorney subject to internal review.

C. Document Approval Form

The DAF is to be used for documenting review and approvals by the appropriate RED staff of final agreements prior to execution (see Figure 18). The DAF, along with supporting documentation, should be routed with the final agreement for signature or initialing by the Transaction Manager, Deputy Director,

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VIII – PREPARATION OF FORMAL AGREEMENTS

Page 35

First Deputy ~~Managing Director~~ TOM, and the Managing Director. The Tenant ID # from Yardi should be included on the DAF, if applicable.

D. Execution by Purchaser or Tenant

Once the required internal review has been completed, the Transaction Manager should send the proposed documentation to the prospective purchaser or tenant for execution. Should the prospective purchaser or tenant request changes, the Transaction Manager should present such requested changes to their Deputy Director, the First Deputy ~~Managing Director~~ TOM, the Managing Director, TOM and/or the assigned attorney from MTA Legal, RET&O for discussion and revision, as needed. Once the agreement is finalized, the prospective purchaser or tenant should be directed to execute at least four original counterparts of the agreement and any personal guaranties and return them to the Transaction Manager.

Formatted: Expanded by 0.05 pt

Formatted: Expanded by 0.05 pt

E. Execution by Authorized or Designated Signatory

Once the agreed-upon documentation has been executed by the tenant or purchaser, the Transaction Manager should use the DAF to send it (after approved by their Deputy Director, to the First Deputy ~~Managing Director~~ TOM and the assigned attorney from MTA Legal, RET&O) to the authorized or designated signatory for execution on behalf of the applicable MTA Agency by the Managing Director, TOM or other authorized designated signatory.

Formatted: Expanded by 0.05 pt

Formatted: Expanded by 0.05 pt

F. Required Deliveries

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

1. Any required earnest money, down payment and/or security deposit, to the extent, if any, not already deposited with the MTA.
2. Any required personal guaranties properly executed.
3. In the case of a lease, the first month's base rent.
4. In the case of a lease when the tenant is not already in possession (i.e., where the successful proposer is not an existing tenant or licensee incumbent), an insurance certificate evidencing coverage as required by the lease. This item must be delivered to the Transaction Manager prior to possession being delivered. The Transaction Manager should make an initial inspection of the certificate to verify that the amounts specified match those in the lease, and that all the additional insureds as required under the agreement are named on the certificate, that the address of the premises is correct and that the named insured is correct as per the lease. After the transaction file is conveyed to the Associate Director, Tenant Management, Tenant Management will be responsible for forwarding the insurance certificate to MTA Risk Management for further review and acceptance.

Note: Insurance for construction from the tenant and its contractor as well as a contractor's indemnity agreement in the form attached to the lease will be due upon approval of plans and

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER VIII – PREPARATION OF FORMAL AGREEMENTS

Page 36

prior to commencement of any work by a tenant, which in the case of a new tenant not already in possession of the premises will also be required prior to delivery of possession.

5. IRS Form W-9 for tenant and each guarantor, properly completed and executed.

All ~~checkwires~~ should be ~~forwarded~~noticed to the Associate Director, Tenant Management immediately upon receipt: (see 6 below). Copies of all the items referred to in this chapter should be maintained in the Tenant File.

6. Process for the receipt of lease security and rent

The MTA Treasury Department (“Treasury”) has established up a new Real Estate RFP Chase bank account (“Real Estate RFP” Account) that is solely used for the receipt of Security Deposit as well as First Month’s Rent checks from new tenants (except GCT). This account is setup as a passthrough account, meaning that all funds received in this account get transferred automatically to the MTAHQ Operating “COH GL Account#290421” (ONLY until the lease or license agreement is fully executed). All documents transmitted to prospective and existing tenants contain instructions to wire or otherwise electronically transfer funds to the “Real Estate RFP” account, as a condition of acceptance.

Tenant Management subsequently reaches out to the bidder to obtain evidence, such as an email of the electronic transfer and then liaises with RED Finance to verify the funds have been deposited into the account by running a current query for the “COH GL Account#290421”.

If the transaction is completed and agreement is signed, new tenant wires 1st month rent to new Chase Bank Account (funds get automatically transferred to “COH GL Account#290421”).

The Tenant Management team completes the submission of documents to MTA Tenant Management Unit (“TMU”). The following steps are then undertaken:

(1) TMU uploads all related documents in Yardi and sets up tenant actions (Create abstract, set up charges, insurance, set up tickler dates, coordinate Design & Construction work).

(2) TMU completes the official handoff to Greystone via email, copying Transaction Managers, RED Finance, & Carver bank, attaching all necessary documents (Agreement, W9, Deposit Slip) & provides two sets of instructions:

a. Instructs Greystone Accounting to setup charges in accordance with the lease agreement and Greystone Accounting advises TMU via e-mail when the charges have been set up (Greystone has 21 days from the handoff to complete tenant actions).

b. RED Finance is instructed to process an electronic payment through BSC (ACH payment) of the security deposit amount to Carver bank. Carver Bank will receive –electronic payments to the “Demand Deposit Account” (DDA).

(3) Greystone will notify TMU via email when account charges have been posted to the ledger.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

(4) TMU instructs Greystone Accounting to notify treasury to wire transfer 1st Month's rent funds from Chase bank MTAHQ Operating "COH GL Account#290421" to Chase bank agency's respective Operating account.

It should be noted that if the selected proposer fails to enter into an agreement, such proposer's earnest Security Deposit may be retained by the MTA, in its discretion; provided, however, that the First Deputy TOM and/or the Managing Director, TOM 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 CDL, and if the Transaction Manager and their Deputy Director and MTA Legal, DGC – T&O concur that the proposer has been dealing in good faith, Tenant Management should be directed to return the proposer's earnest money deposit without interest, if any.

Formatted: Indent: Left: 0"

G. Proposer's Failure to Execute

If a proposer has held a proposed agreement for more than two (2) weeks without providing comments to the same or executing the same, the Transaction Manager) will send a letter (or request and direct the assigned attorney from MTA Legal, RET&O (or outside counsel) assigned to the transaction) to send a letter to the proposer, via electronic or overnight mail, stating that failure to provide comments, if any, or to execute the agreement within two (2) weeks following such communication by the Transaction Manager (or the assigned attorney from MTA Legal, RET&O), may result in the subject property being offered to another proposer and/or the proposer's offer and any Conditional Designation Letter being deemed nullified and of no further effect.

Formatted: Font: Not Bold, Expanded by 0.05 pt

Formatted: Expanded by 0.05 pt

Every effort should be made to contact the proposer to identify and resolve any open issues. If the Transaction Manager judges the proposed tenant's reasons for failure to respond or 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 or lease 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 Transaction Manager, after consulting with their Deputy Director, the First Deputy ~~Managing Director~~ TOM, the Managing Director, TOM and MTA Legal, should instruct the ~~Associate~~ Director, Tenant Management to retain such proposer's earnest money deposit with interest, if any, and in such event Tenant Management should withdraw the deposit and transfer it to the applicable MTA Agency's operating account; provided, however, that the First Deputy ~~Managing Director~~ TOM and/or the Managing Director, TOM 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 Transaction Manager, the Deputy Director and MTA Legal, ~~DCG – T&O~~ concur that the proposer has been dealing in good faith, the ~~Associate~~ Director, Tenant Management should be directed to return the proposer's earnest money deposit without interest, if any.

The Transaction 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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER IX – TENANT INFORMATION TRANSFER

Page 37

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 **RETransaction** 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. The Transaction Manager must input all documents and approval forms through Yardi's Elevate platform.
2. If the First Deputy ~~Managing Director~~ **TOM** approves the selection, the Transaction Manager with the assistance of Information Management (which advises the Transaction Manager of the correct property and unit descriptions), should enter basic proposer information (name, address, property unit) into Yardi to establish a transaction account ("Deal").
3. Once a tenant has been selected, approved and entered into Yardi as a Deal, the tenant will now appear on Yardi's Lease Tracking Report. This report may be printed and reviewed by the RED management staff at any time (Figure 19).
- 3.4. The authorized or designated signatory signs all of the copies of the final lease agreement and the fully executed lease agreement and, if applicable, guaranty are returned to the Transaction Manager who distributes the signed copies of the agreement and guaranty as follows:
 - Tenant including any Guarantor, or Tenant's attorney, (2 original)
 - Tenant Management - (2 originals)
 - The assigned attorney from MTA Legal, RET&O (and assigned outside counsel, if applicable) (1 fully executed pdf with exhibits)
- 4.5. The Transaction 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 Transaction Manager assembles or prepares the Tenant File, which includes the original proposal, all correspondence with the tenant, confirmation letter, two original counterparts of the lease agreement and each guaranty, Staff Summary, insurance certificate (if required at that time), IRS Form W-9 for tenant and each guarantor, construction security and the completed DAF, and attaches the Tenant Control Checklist (Figure 20), which is affixed to the respective project file before forwarding to the **Associate** Director, 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 two business days of when the Transaction Manager plans to mail

Formatted: Expanded by 0.05 pt

Formatted: Expanded by 0.05 pt

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER IX – TENANT INFORMATION TRANSFER

Page 38

a copy of an executed lease agreement to a tenant, or as soon thereafter as may be practical under the circumstances, the Transaction Manager will schedule a hand-off meeting with Tenant Management staff, including the Tenant Management Vendor and/or the appropriate Deputy Director to discuss the terms of the agreement, any planned improvements, and any special considerations. At the meeting, Tenant Management staff will verify:

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

If qualitative elements are not in order, the Transaction Manager and Tenant Management staff will work together to remedy the matter. If all is in order, Tenant Management staff will enter the “hand-off” date and “hand-off” documents (redacting, where appropriate personal information) into Yardi. After the “hand-off” from the Transaction Manager to Tenant Management, Tenant Management staff will provide the “hand-off” documents to the Tenant Management Vendor.

NOTE: It is the responsibility of the Transaction Manager to ensure that no agreement is executed by the authorized or designated signatory unless ~~checks~~wires are received in the appropriate amounts from the appropriate entity, guaranties, if applicable, are received executed by the appropriate guarantors and initial insurance certificates are received in the limits and coverages contemplated by the lease, if/when applicable.

5-6. For the Lease/Sale Negotiation Process, the Authorization Memo plus all correspondence, maps and the agreement, together with any applicable guaranties, serves as the Tenant File and is forwarded to the Associate Director, Tenant Management.

B. Insurance Coordination

As indicated above, it is the responsibility of the Transaction Manager to assure that the initial insurance certificates are received in the limits and coverages contemplated by the lease, if/when applicable. If a tenant’s insurance forms are incomplete at the time the Tenant File is forwarded to Tenant Management staff, a notation as to the status of insurance should be made. The typical reason for uninsured status at the time of execution of the lease, is because the tenant is not being delivered immediate possession. The tenant will not be delivered possession of the premises until active insurance coverage is in place. In most cases where the tenant is required to perform tenant’s initial improvement work at commencement of the term and prior to taking occupancy and opening for business at the premises, tenant will not be delivered possession of the premises until it has completed the plan submission and review process, plans have been approved and tenant has satisfied the other pre-construction conditions set forth in the lease, including delivery of construction contractor contracts, contractor indemnity agreements and certificates of insurance for the contractor’s required insurance coverage.

C. Planning and Construction

Tenant Management with the assistance of the Tenant Management Vendor is responsible for the coordination of the construction process from plan submission and approval through completion. The Transaction Manager will remain available for consultation and provide support to Tenant Management during the term of the tenant’s agreement. Tenant Management or the Tenant Management Vendor shall be responsible for updating Yardi with respect to all tenant design and construction activity.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER X – CONSTRUCTION MANAGEMENT

Page 39

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. Responsibility for the tenant design and construction process has been transferred/handed-off to Tenant Management which will work with the Tenant Management Vendor to oversee the process. The Transaction Manager is nonetheless responsible for being familiar with the process and is to remain available to provide support and assistance to Tenant Management as/when needed.

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/or code compliance departments.

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

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

A. Plan Submission

Tenants submit construction plans for approval by the MTA Agency through the RED (i.e., Tenant Management).

1. Tenant Management, with the assistance of the Transaction Manager on an as-needed basis, 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, with the assistance of the Tenant Management Vendor, will make an initial review of the plans to determine if such plans are sufficiently complete to forward to the MTA Agency for review and will either reject them for revision or forward the plans to the appropriate MTA Agency for review. If changes need to be made after the MTA Agency review, the tenant is notified in writing by the Associate Director, Tenant Management or his or her designee.
2. Once plans are approved by the MTA Agency, which approval includes approval of contractor documentation (i.e., construction agreement, work schedule, insurance certificate evidencing contractor's insurance and a signed contractor's indemnity agreement in a form attached to the lease agreement) permission to commence construction may be granted.
3. Tenant construction is administered by the MTA Agencies, each of which have different rules governing the tenant construction process for that agency. As a general rule, the following paragraphs describe how the MTA Agencies administer tenant construction.

MTA NYCT: The Tenant Management Vendor arranges a construction kick-off meeting. Attendees typically include the tenant, its contractor, subcontractors, the architect or engineer, Tenant Management staff, the Tenant Management Vendor staff and NYCT Maintenance of Way ("MoW"). MoW is responsible for approving plans, issuing a construction permit and

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁴

CHAPTER X – CONSTRUCTION MANAGEMENT

Page 40

permits or authorization to proceed with construction, periodic inspections and for granting approvals to open for business. Formal approval, acceptance of the work, and issuance of a code compliance certificate concludes the process for NYCT. The Tenant Management Vendor communicates this information to the tenant and provides tenant with authorization to open for business.

MTA LIRR: LIRR’s Capital Program Management (“CPM”) staff reviews and approves plans. Tenant Management arranges a construction kick-off meeting. Attendees typically include: Tenant Management staff, the Tenant Management Vendor staff, the tenant, its contractor, subcontractors, the architect or engineer, the Safety Department and CPM staff. CPM is responsible for issuing construction permits, periodic inspections and for granting approval to open for business. Formal approval, acceptance of the work and issuance of a code compliance certificate concludes the process for LIRR. The Tenant Management Vendor communicates this information to the tenant and provides tenant with authorization to open for business.

MTA METRO-NORTH: Capital Programs (CP) is responsible for approving plans, issuing a building permit and for periodic inspections. Tenant Management coordinates the construction kick-off meeting. Attendees typically include CP (including the Safety Department, Engineers and Code Compliance), Tenant Management staff, the Tenant Management Vendor staff, the tenant, its contractor, subcontractors, and the architect or engineer prior. CP issues a code compliance certificate upon satisfactory completion of construction. Formal approval, acceptance of the work and issuance of a code compliance certificate concludes the process for CP. The Tenant Management Vendor communicates this information to the tenant and provides tenant with authorization to open for business.

B. Construction Monitoring

Tenant Management communicates with the applicable MTA Agency staff about the status of tenant construction projects. Tenant Management periodically inspects the premises to monitor the construction progress and ensure the project proceeds according to schedule within established NYS construction and safety guidelines. Tenant Management is responsible for documenting any delays and the reasons for such delays. Once 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 a lease indicates that rent commences at the end of a buildout period specified in the lease or, if earlier, when tenant opens for business to the public, rather than at commencement of the term, Tenant Management with the assistance of the Tenant Management Vendor will monitor the status of completion of construction and the duration of the buildout period specified in the lease and is responsible for sending to tenant a rent start notice and commencing billing in accordance with the lease.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~ CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW Page 41

CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW

Scope - This chapter establishes Guidelines 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 or entities 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 Process transaction, when the Transaction Manager first solicits a response from a potential lessee or purchaser intending to result in a lease or contract of sale, which solicitation should be in writing, and ending with the final closing of the transaction.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

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. 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 communication *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 RED) 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 Questions: 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 to all Offerors 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 Offerers 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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~ CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW Page 43

- 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: 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 Offerer.
- i. Contact: 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 Managing Director, TOM may authorize another contact within the RED 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 Offerer 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;
- (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 m a n n e r 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 entity making the Contact and whether or not such person (if such person is not the Offerer) or entity was retained, employed or designated by or on behalf of the Offerer to contact the MTA regarding the procurement. Such Permissible Contacts must be recorded on the Report of Contact form (see Figure 21), 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 Managing Director, TOM who maintains a central repository of the forms as well as the original to the Transaction Manager for placement in the Project file.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

CHAPTER XI – NEW YORK STATE PROCUREMENT LOBBYING LAW

Page 44

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 entity making the Impermissible Contact and whether or not such person or entity was retained, employed or designated by or on behalf of the Offerer to contact the MTA regarding the procurement and inform the Managing Director, **TOM** and the Chief Compliance Officer of immediately, using the Report of Contact form, checking the “Impermissible Contact” box (see Figure 21).
3. **Record:** The employee obtaining the information and completing the form shall keep a copy for themselves, and deliver a copy to each of the Managing Director, and the Chief Compliance Officer, and deliver the original to the Transaction Manager for placement in the Project file. The Managing Director, **TOM** will investigate the allegations of Impermissible Contacts. If there is reasonable cause to believe that the allegations are true, the Offerer 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. **Report:** The Managing Director, **TOM** must report knowing and willful violations of the Procurement Lobbying Law to the ~~Executive Director of the MTACAQ and the~~ Chief Compliance Officer.

Formatted: Condensed by 0.05 pt

Formatted: Condensed by 0.05 pt

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 (see Figure 22) 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 proposer to return a completed Schedule W will result in such proposer being deemed 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~~ Offeror’s understanding of, and agreement to comply with, the Procurement Lobbying Law.
 - b. Certification that the information the ~~Offerer~~ Offeror 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

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~~Offerors who have been determined to be non-responsible or debarred due to violations of this section, maintained by MTA Corporate Compliance.

G. Responsibility Determination:

1. A finding that an ~~Offerer~~Offeror/Proposer has knowingly and willfully violated the Procurement Lobbying Law may result in a determination of non-responsibility and the ~~Offerer~~Offeror/Proposer may not be awarded the lease or sale.
2. The lease or sale may be awarded to an ~~Offerer~~Offeror/Proposer 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~~Offeror/Proposer is necessary to protect public property, health or safety, and that the ~~Offerer~~Offeror/Proposer 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 the Procurement Lobbying Law within four (4) years of a determination of non-responsibility will result in the ~~Offerer~~Offeror/Proposer being barred from submitting a proposal on or being awarded any real estate contract for four (4) 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~~Offeror/Proposer.

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~~Offeror/Proposer 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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022¹

GLOSSARY

Page 46

GLOSSARY

Affiliate: For purposes of these Guidelines, with respect to any specified person or entity, any other person or entity that (a) possesses the power, directly or indirectly, to direct or cause the direction of the management and policy of such specified person or entity, whether through ownership of an equity or beneficial interest (regardless of percentage), contract or otherwise or (b) owns, directly or indirectly, 30% or more of the outstanding stock, partnership interests, membership interests, or other equity or beneficial interest in such specified person or entity. For the purpose of determining the thirty percent (30%) threshold, the direct and indirect ownership interests of such other person will be aggregated with those of such other person's immediate family members (including, spouse, parents, siblings, children (including by adoption), stepparents, stepsiblings, stepchildren and any other lineal ancestor and lineal descendant or any trust (or similar estate planning vehicle) established for estate planning purposes, the sole beneficiaries of which are such natural person or any such natural person's immediate family members).

Authorization Memo: A memorandum prepared by the Transaction Manager seeking authorization as required by these Guidelines. Authorization Memos recommending award pursuant to an RFP require SEQRA check off and signature of the appropriate (i) the appropriate Deputy Director, (ii) the appropriate First Deputy ~~Managing Director~~TOM, and (iii) the appropriate Managing Director. Authorization Memos recommending award pursuant to the Lease/Sale Negotiation Process require SEQRA check off and the signatures of the appropriate (i) the appropriate Deputy Director, (ii) the appropriate First Deputy ~~Managing Director~~TOM, (iii) the appropriate Managing Director, (iv) MTA Legal DGC - Environmental and (v) the CAO for TOM or the CDO for TOD.

Chief Administrative Officer/CAO: The senior officer of the MTA who has overall responsibility for all matters concerning MTA TOM Property.

Chief Development Officer/CDO: The senior officer of MTA who has overall responsibility for all matters concerning MTA TOD Property ~~including TOM and TOD matters.~~

Conditional Designation Letter: As described in Chapter VII.

Contact: As defined in Chapter XI.

Deputy CDO, Planning: The senior executive within RED that reports directly to the CDO is designated by the CDO to oversee, among other matters, TOD, including direct oversight of the Managing Director, TOD and telecommunications, including indirect oversight of the Senior Transaction Manager, Telecommunications.

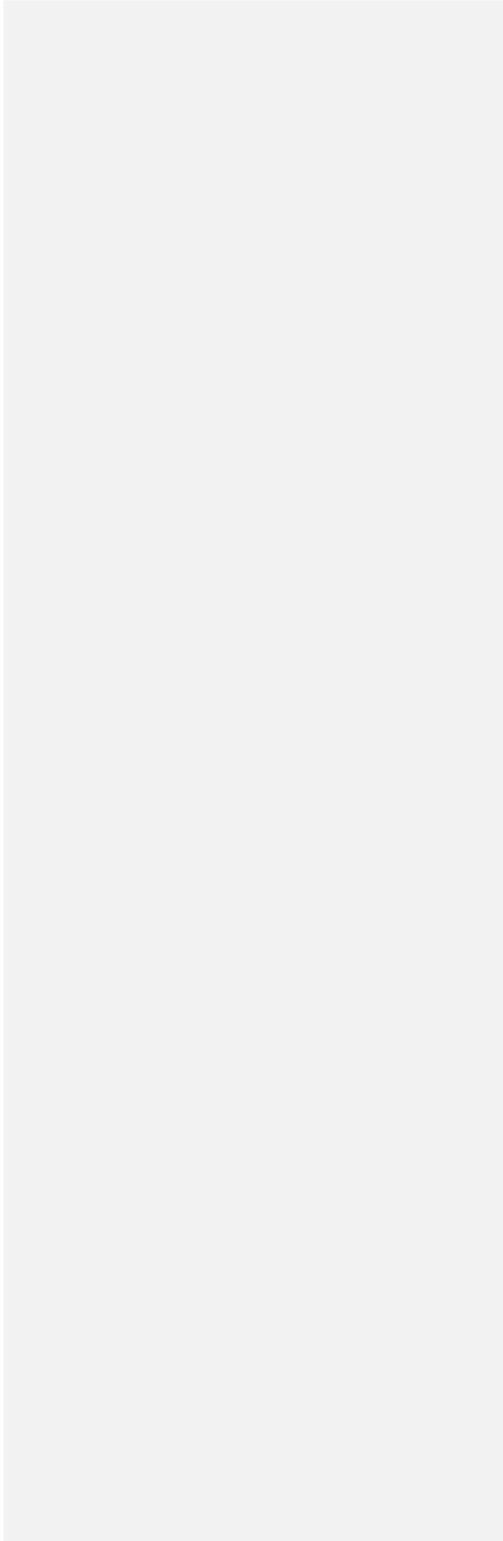
Deputy Director: The Deputy Director within TOM or the Deputy Director or Director within TOD (i) who, with respect to TOM, for a particular MTA Agency, has direct oversight of RED project managers and other personnel on transactional activities, including, leasing, disposition and acquisition of real property for that particular MTA Agency, and who reports directly to the First Deputy ~~Managing Director~~TOM, TOM, or (ii) who, with respect to TOD, has primary responsibility for direct oversight of such matters and who directly reports to the Managing Director, TOD.

Director, Grand Central Retail Leasing and Management/Director, GCT: The Director within RED who has primary responsibility for GCT retail leasing and licensing, including tenant management relating

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

to GCT retail leases and licenses. ~~Currently this position is vacant. While this position remains vacant, references in these Guidelines shall be to such person(s), individually or in combination, as the Managing Director, TOM or the Deputy CDO, Planning or the CDO may from time to time direct for the purpose of performing the particular functions assigned to the Director, Grand Central Retail Leasing and.~~

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES



METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

GLOSSARY

Page 47

~~Management/Director, GCT in these Guidelines or by the Managing Director, TOM.~~

Director, Transit-Oriented Development/Managing Director, TOD: The Director within RED who has primary responsibility for Transit-Oriented Development matters.

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

First Deputy ~~Managing Director~~TOM: The First Deputy ~~Managing Director~~TOM, TOM as to TOM matters or the First Deputy ~~Managing Director~~, TOD as to TOD matters, having responsibility as applicable under the circumstances.

First Deputy ~~Managing Director~~, TOM: The Director within the RED who has primary responsibility for TOM transactional matters, including leasing, sales and acquisition activities relating to MTA Facilities and who performs the functions of a first deputy to the Managing Director, TOM, as designated by the Managing Director, TOM. Currently this position is filled by the Director, Transaction Management. If more than one person fills this senior leasing and acquisition role, then references in these Guidelines shall be to such persons, individually or in combination, as the Managing Director, TOM or the Deputy CDO, Planning or the CDO may from time to time direct for the purpose of performing the particular functions assigned to the Director, Transaction Management in these Guidelines.

First Deputy ~~Managing Director~~, TOD: The Director within TOD who has primary responsibility for direct oversight of transaction managers within TOD and who reports directly to the Managing Director, TOD, performing the functions of a first deputy to the Managing Director, TOD, as designated by the Managing Director, TOD. Currently, this role is filled by the position of Director, Real Estate Development within TOD, which position currently is vacant. If more than one person fills this senior transit oriented development role or while this position remains vacant, then references in these Guidelines shall be to such person(s), individually or in combination, as the Managing Director, TOD or the Deputy CDO, Planning or the CDO may from time to time direct for the purpose of performing the particular functions assigned to the Director, Real Estate Development/First Deputy ~~Managing Director~~, TOD in these Guidelines or by the Managing Director, TOD.

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.

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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022¹

GLOSSARY

Page 48

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 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 (2) copies of the definitive agreement(s), the insurance certificate and the W-9 form. This file is assembled by the Transaction Manager and resides in the Information Center.

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

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

Licensing-Out Guidelines: As defined in the Introduction.

Managing Director: The Managing Director, TOM as to TOM matters or the Managing Director, TOD as to TOD matters, having responsibility as applicable under the circumstances.

Managing Director, TOD: The Director or Senior Director within the RED who has overall responsibility for the administration and day-to-day operations of the RED core group responsible for Transit-Oriented Development. Currently this position is filled by the Director, Transit-Oriented Development.

Managing Director, TOM: The Director or Senior Director within the RED who has overall responsibility for the administration and day-to-day operations of the RED, and who oversees transactional matters, including leasing, sales & acquisitions for MTA Facilities, GCT Retail Leasing and Management, and MTA Facilities’ operations. Currently this position is filled by the Director, Real Estate Transactions and Operations.

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: Metropolitan Transportation Authority (for itself and also acting on behalf of the other MTA Agencies with respect to real property owned or controlled by such other MTA Agencies). References in these Guidelines to MTA are intended to include MTA and each MTA Agency, as appropriate.

MTA Agency: As defined in the Introduction.

MTA Facilities: The improvements, buildings, overpass and underpass structures or other physical improvements located on or at MTA Property, including the structural elements and building systems comprising and/or servicing such facilities located within MTA Property (but excluding the subway and railroad tracks, signal systems and train facilities directly used in connection with the operation of the subway system or railroad system).

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2024

GLOSSARY

Page 49

MTA Property(ies): Real property, including improvements, structures and facilities (including parking lots, subway and railroad stations, station buildings and retail and amenity space) located thereon, as well as interests in real property, including easements and leasehold interests, development/air rights, directly or indirectly, owned or, pursuant to an agreement entered into by the MTA or an MTA Agency, leased or licensed to and/or operated by MTA or an MTA Agency or by another entity in which MTA or an MTA Agency has an indirect interest.

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 is 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 Transaction 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 (2) copies of the definitive agreement(s), one copy of any guaranty, if/when applicable, the insurance certificate and the W-9 form. This file resides in the Information Center.

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.

Preparer Questionnaire Form (PQF): As defined in Chapter VIII.

Recordation of Contact: As defined in Chapter XI

RED: The MTA real estate department.

Restricted Period: As defined in Chapter XI.

RFP or Request for Proposals: A request for proposals issued in accordance with these Guidelines.

RFP File: The RFP file results from the Project File and contains all relevant information regarding the RFP, including all proposals and correspondence with proposers and the Transaction Manager's notes regarding the project. This file resides in the Information Center.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~+~~

GLOSSARY

Page 50

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. It 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.

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 which unit includes the Tenant Management Vendor.

Tenant Management Vendor: Tenant Management Vendor is the vendor designated by the Managing Director, TOM or the Associate Director, Tenant Management to administer, manage and provide accounting services for the tenanted portfolio of all MTA Agencies' properties, excluding Grand Central Terminal.

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

Transaction Manager: An RED staffer who reports to a Deputy Director.

Transactions & Operations or TOM: As defined in the Introduction.

Transit-Oriented Development or TOD: All real estate-related development matters, whether by an MTA Agency, a government or other public or quasi-public entity and/or a private entity, which affects or involves any existing or to-be acquired MTA Property and/or any existing or proposed transit-related facility or amenity, including acquisitions and dispositions of real property or interests in real property for long-term revenue generation and transportation facilities; major capital projects in conjunction with or enhanced by real estate development; other co-development arrangements with private and public entities including public-private partnerships; and other opportunities for realizing revenue from real estate opportunities and strategic planning.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

GLOSSARY

Page 51

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 Transaction Manager should check the VAL Maps to verify that property is owned controlled by the MTA or an MTA Agency and update the maps as new leases are consummated. These maps are located in the Information Center.

W-9 Form: Internal Revenue Service 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 computer program developed and customized specifically for the MTA.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022+

Page | 0

Attachment 1

GCT LEASING GUIDELINES

March,
2022+

(As Originally Adopted November 18, 2009, and as Revised by Modifications approved by the MTA Board on November 13, 2013, March 26, 2014, March 25, 2015, March 23, 2016, March 22, 2017, March 21, 2018, March 27, 2019, March 25, 2020, March 17, 2021)

GUIDELINES FOR SELECTION OF TENANTS FOR GRAND CENTRAL TERMINAL

Application

These guidelines (“Guidelines”) apply to the selection of tenants 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 (as amended from time to time). (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, not longer than 60 days with no cost to the applicable MTA Agency.) These Guidelines supplement the MTA Real Estate Department Real Property Disposition Guidelines for the Leasing-Out and Sale of Real Property, adopted by the Board on March 27, 2020 as such Guidelines may be amended from time to time (the “General Guidelines”). In the event of any conflict between these Guidelines and the General Guidelines, 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.

These Guidelines are intended only for the internal guidance of officers and employees of the MTA. Nothing contained in these Guidelines is intended, and the same shall not be construed, to establish expressly or by implication, or confer upon any person or entity (including any prospective proposers or awardees) any right,

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 1

privilege, remedy, claim or benefit under, or by reason of, any requirement or provision of these Guidelines for third parties. Except to the extent prohibited by law, any provision of these Guidelines may be waived by the MTA Board (by ratification or otherwise) or by the Chairman and Chief Executive Officer of the MTA.

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, Grand Central Retail Leasing and Management, approved by the Managing Director, TOM, and advertised in accordance with the General Guidelines. 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, Grand Central Retail Leasing and Management, with the approval of the Managing Director, TOM, 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 will be used to evaluate proposals:

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

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 7%.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 2

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 7%.

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.

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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 3

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 CBRE) and MTA’s Retail Manager for GCT (currently, Jones Lang 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, Grand Central Retail Leasing and Management 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, Grand Central Retail Leasing and Management and the Director, Grand Central Retail Leasing and Management 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, Grand Central Retail Leasing and Management (after consultation with the Managing Director, TOM) determines that such proposal is not responsive, such proposal shall be disqualified and no further technical evaluation shall be performed.

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 Tenant Management;

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 4

- (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 guaranties 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 will be a determination of responsiveness by the Director, Grand Central Retail Leasing and Management using the standard criteria set forth in the General Guidelines (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 "not responsive" (and thus disqualified and eliminated from further consideration by the Director, Grand Central Retail Leasing and Management) 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, Grand Central Retail Leasing and Management determines that it is in MTA's best interests to permit a proposer to modify its proposal after the due date to correct deficiencies that would otherwise cause it to be deemed or otherwise determined to be non-responsive, such proposer shall be afforded such opportunity. If a decision is made to request action by the proposer to conform its submission with the 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 Director, Grand Central Retail Leasing and Management, if the nature of the non-conformity (e.g., missing architectural plans) warrants such longer period.

In making the foregoing determination, the Director, Grand Central Retail Leasing and Management may rely on the Technical Evaluations. If there is any doubt about the appropriate action to take, MTA Legal should be consulted.

Step 3: Initial Determination of Responsibility:

The third step is an initial determination of responsibility by the Director, Grand Central Retail Leasing and Management. The Director, Grand Central Retail Leasing and Management may determine that a prospective tenant is not responsible for any reason contemplated by the General Guidelines (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)).

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~+~~

Page | 5

A proposer may be disqualified as “not responsible” (and thus eliminated from consideration by the Director, Grand Central Retail Leasing and Management) if 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; (c) has violated the Procurement Lobbying Law (as more particularly described in Chapter XI of General Guidelines); (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 or any other MTA Agency; such amount is not (in the view of MTA Legal) the subject of a bona fide dispute; and such amount has remained unpaid for more than 30 days after written demand from the MTA or another MTA Agency; (e) is in default of material non-monetary obligations to the MTA or another MTA Agency under an existing lease and the MTA or MTA Agency has provided written notice under that lease and the default has not been timely cured as provided in the lease; (f) has any outstanding federal, state or local tax warrants or liens; or (g) has received an unacceptable credit report from a reputable credit reporting company. 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 above under the heading “Selection Criterion A”). If after providing written notice and having afforded such prospective tenant an opportunity to be heard the MTA deems a prospective tenant to be not responsible, the MTA need not undertake any further consideration of such prospective tenant’s proposal. A proposer may be deemed “not responsible” (and thus may be disqualified and eliminated from consideration by the Director, Grand Central Retail Leasing and Management) if such prospective tenant, or an Affiliate of such proposer, (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, after having been provided written notice of its intent to disqualify a proposer as not responsible, and having afforded such proposer an opportunity to be heard, a proposer is deemed to be not responsible, no further consideration of that proposal need be undertaken. In making the foregoing determination, the Director, Grand Central Retail Leasing and Management may rely on the Technical Evaluations.

Step 4: Evaluation by the Director, Grand Central Retail Leasing and Management:

The Director, Grand Central Retail Leasing and Management 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, Grand Central Retail Leasing and Management 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 Managing Director, TOM (with the approval of the Chief Development Officer) 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 Guidelines 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~+~~

Page | 6

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, Grand Central Retail Leasing and Management must convene a selection committee (the "Selection Committee") consisting of the Director, Grand Central Retail Leasing and Management, the Managing Director, TOM or his or her designee and a representative of Metro-North Commuter Railroad Company appointed by the Executive Vice President of Metro-North 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 will be furnished with the Technical Evaluations. Each Selection Committee member other than the Director, Grand Central Retail Leasing and Management shall complete his or 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 or her own best independent judgment taking into account the Technical Evaluation.

A meeting of the Selection Committee will thereafter be convened. 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 of the Selection Committee may prepare supplemental Evaluation Forms taking into account any such consultation and 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 will be the supplemental Evaluation Forms for the other Selection Committee members) will be added together and the proposals ranked based on such aggregate scoring.

Step 6: Conditional Designation

If a prospective tenant is selected, either by the Director, Grand Central Retail Leasing and Management as provided in Step 4 or by a Selection Committee as provided in Step 5, as applicable under the circumstances, the Director, Grand Central Retail Leasing and Management or his or her designee shall prepare a conditional designation letter for execution by the Managing Director, TOM or other authorized signatory on behalf of MTA and Metro-North and countersignature by such prospective tenant as contemplated by the General Guidelines.

Step 7: Determination of Whether to Present Recommendation to the Board

The Managing Director, TOM may (at any time after an RFP is issued) determine, in consultation with the MTA Legal, 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 Managing Director, TOM 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 Managing Director, TOM shall so report to the Board's Finance Committee. Otherwise, the Director, Grand Central Retail Leasing and Management shall make a final determination of responsibility with respect to the prospective tenant with the highest Total Selection Criteria Score, based on any new

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~⁺

Page | 7

information received after the initial determination of responsibility, and if such prospective tenant continues to be responsible the Managing Director, TOM shall (i) provided at least three proposals were received, award the lease to the proposer who offered pursuant to Policy 33 of the General Guidelines 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 the Staff Summary must include a reasonably detailed explanation of the factors that the Selection Committee took into account in recommending such proposal.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁺

Page | 0

Figure 1 – Property Subject to RFP

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 1

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 notification list, please complete the registration form on MTA Real Estate's website at http://enterprise.nymta.info/MTA_Real_Estate_RFP/.

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

Sincerely,

(STAFF NAME)

Enclosure (RFP Brochure and Figure1)

cc: (Director, Real Estate Transactions and Operations /
Director, Real Estate Development)
(Director, Transaction Management)
File
Chron

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 2 – Acknowledgement Letter

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

Page | 1

EXAMPLE OF ACKNOWLEDGEMENT LETTER

(When substantial research or other agency review must take place, if Real Estate Manager in his/her judgment believes a request 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

Page | 2

EXAMPLE OF ACKNOWLEDGEMENT LETTER

(When substantial research or other agency review must take place, the 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 3 – Property Not Owned/Managed by MTA

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 1

EXAMPLE OF PROPERTY NOT OWNED BY THE MTA

(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)
Transaction Manager
Real Estate Department

Enclosure (RFP Brochure and Figure1)

cc: Director, Real Estate Transactions and Operations
(Director, Transaction Management)
Chron

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 4 – Property Unavailable for Lease

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 1

EX AM PLE OF PROPERTY UNA VAILABLE 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 Transaction Manager
Real Estate Department

Enclosure (RFP Brochure and Figure1)

cc: (Director, Real Estate Transactions and Operations
(Director, Transaction Management)
Chron

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 5 – Letter Denying Request

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 1

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 freight operations.

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

Sincerely,

(NAME)
Transaction Manager
Real Estate Department

cc: (Director, Real Estate Transactions and Operations
(Director, Transaction Management)
Chron

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 6 – Parcel Information Sheet

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2024

Page | 1

MTA Parcel Information Sheet

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

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

Page 1 of 149

Station Facilities:	[enter location description. If a station, enter complete and correct station name]
Property Code / Unit Code:	[enter Yardi property code/unit number]
[Landlord OR Licensor]:	[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")]
Premises/Licensed Area:	[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"]
Deemed Rentable Square Footage:	[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 from the rent commencement date of the lease plus any free rent period for buildout between the commencement date and rent commencement date
Extension Option(s):	[enter option(s) and number of years and "at [licensee/lessee] OR landlord's discretion" or put "N/A" [years]
Transportation Purposes Termination:	FOR LEASE USE: Landlord may terminate the lease upon 90 days' notice to tenant if landlord requires the premises or any part thereof (a) for any transportation or transit purpose including the realization of revenues; (b) in connection with the construction, demolition, sale, or lease of the premises, the station or any other portion of the real property; (c) to otherwise accommodate the operation of the Railroad System; or (d) in connection with the furtherance of any of its purposes or the exercise of any of its general or special powers under the Public Authorities Law. [FOR LEASES ONLY/NOT LICENSES: If Lease is for a term of 10

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

years or longer and Tenant has made a substantial capital investment in the Premises, use the following if an amortization provision is being provided, otherwise delete: "If the lease is terminated by landlord during the first 10 years of the term, landlord will reimburse tenant for the documented unamortized reasonable costs of its permanent improvements, amortized on a straight line basis over 10 years, provided tenant is not in default at such time and vacates the premises voluntarily on the termination date, after first deducting any amounts owed by tenant to landlord.]

FOR LICENSE USE: Landlord may terminate the license, at will, at any time on [60][30] days prior notice, at no cost to landlord.

FOR SALE USE: N/A

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"]
Utility Fee:	
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%."]
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' [base rent or base compensation] based on the final year's [base rent or base compensation].
Guaranties:	Unless the tenant itself is a creditworthy entity, a creditworthy principal of tenant acceptable to landlord/licensor will be expected] to provide a guaranty of the performance and payment obligations of [tenant/licensor] under the [lease/license]. If tenant is a newly formed entity, the individual proposers)/principal(s) will be expected to provide full personal guaranties. Under appropriate circumstances, such as when tenant is making a significant capital investment in the premises, landlord in its discretion, may accept a "limited guaranty" (or so-called 'good guy' guaranty) limiting the guarantor(s)' liability to (i) tenant's obligations to complete the initial improvements, (ii) tenants payment and performance obligations while it is in possession of the premises prior to a voluntary surrender of the same in its required condition, and (iii) an additional period of time to guaranty tenant's rent obligation beyond its voluntary surrender for up to 12 months to afford landlord an opportunity to re-let the premises.

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

Page | 3

[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:	Prohibited uses are specified in the form of lease/license
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 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 4

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.

Tenant's Initial Work:

“[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].”

At a minimum, Tenant's Initial Work must include the following:

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]

Tenant's Initial Work must meet the requirements of the New York State Uniform Fire Safety and Building Code. [Landlord/Licensor], in its capacity as the construction permitting and code compliance agency under the NYS Uniform Code and not in its proprietary capacity as Landlord, or its designee shall review all proposed 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 Initial Improvements:

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.

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 be responsible for completing all required improvements regardless of the actual cost of construction.

Insurance:

The lease/license agreement will specify the insurance requirements for Tenant and its Contractors (including subcontractors of any tier) and will generally include, at a

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~+~~

Page | 5

minimum: commercial general liability insurance workers' compensation insurance, and all-risk property insurance policy.

[Enter if applicable or delete: "Railroad protective liability insurance in the amount of [enter amount] will be required of [tenant's/licensee's] contractor"]

Tenant's/Licensee's contractors will be expected to sign a contractor's insurance and indemnity agreement and providing insurance certificates evidencing the required insurance coverage prior to commencing any work.

Assignment & Subletting/Change of Control:

Any assignment or subletting or transfer of a controlling interest in a tenant entity, or other transfer of an equity interest that results in a change of control, whether directly or indirectly, is not permitted without [landlord's/licensor's] approval, in its sole discretion. However, [landlord/licensor] will not be required in certain circumstances specified in the lease/license, including to a controlled affiliate, to a distribute or legatee of a decedent's estate, or to a trust or immediate family member for financial or tax planning purposes.

Broker:

Any tenant broker is to be paid by the tenant.

Site Visit:

[enter time], [enter day of week], [enter date including year]

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

Prospective [Tenant/Licensee]: _____

Authorized Signature: _____

Name: _____

Title: _____

Date: _____

Additional Thoughts:

Add: Commencement Date, Rent Commencement Date, Initial Plan Submission Date, Initial Work Buildout Period

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 6



Metropolitan Transportation Authority

Purchase Price Proposal Form

RFP Number: [RFP Number], [TITLE]

In the form below Proposers must specify their proposed purchase price for either or both properties offered in this RFP. Proposers must submit a copy of an appraisal report prepared by a reputable appraisal firm substantiating the proposed purchase price.

Proposed Purchase Price: \$ _____

A proposal deposit in the amount of [Proposal Deposit Percentage]% of the proposed purchase price for each parcel being proposed for must be submitted along with this proposal. If selected, this deposit will be credited to the ultimate purchase price. If not selected, the proposal deposit(s) will be refunded in full.

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: _____

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 7 – RFP Cover Letter

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2024

Page | 1

2 Broadway
New York, NY 10004
212 8787000 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://enterprise.nymta.info/MTA_Real_Estate_RFP/

DEADLINE: Proposals must be received by 5:00p.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 F01m*. 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 F01m 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*.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 2

Request for Proposal
Cover Letter Page 2 of 3

7. *Iran Divestment Act Certification.*

8. *[Delete the following ~~if~~ Standard Format for Architectural Drawing Submissions. These guidelines are for the tenant and tenants architect and contractor to use in preparing design plans following (lease or license) execution.*

9. *[Delete the following if NIA] 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.

One hard copy of submission should be delivered in sealed envelopes by the date listed above to:

Ms. Dalilah Smith-Santos
Executive Secretary
Metropolitan Transportation Authority
2 Broadway, 4th Floor
New York, NY 10004
RFP Number: [enter RFP number]
Parcel Number(s): [enter number(s) or delete line if none]
Location: [enter location or delete line if none]

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~4~~

Page | 3

Request for Proposal
Cover Letter Page 3 of 3

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:

Dalilah Smith-Santos
Tel. (212) 878-1043

[Email: dsantos@mtahq.org](mailto:dsantos@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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 0

Figure 8 – Proposer Information Form

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES



Applicant Information Statement

Business Profile

Information and Instructions

The following information is provided to the MTA Real Estate Department for its preliminary review before further consideration of an intent to lease or license a specified location. The acceptance of this information statement shall not constitute an offer of the Metropolitan Transportation Authority or any affiliate or subsidiary thereof. **Proposers must provide three (3) copies of a separate completed form with each proposal package. When mailing, use a separate envelope for each proposal submitted. Please attach additional sheets as necessary. Please print or type.**

Property Desired

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

Applicant Information

Name of Applicant _____ Social Security No. - -
 Street _____
 City _____ State _____ Zip _____
 Telephone (Day) _____ Telephone (Evening) _____

Business Information

Name of Business _____
 Street _____
 City _____ State _____ Zip _____
 Telephone (Day) _____ Telephone (Evening) _____
 Type of business: Corporation Joint Venture Partnership Year Formed _____
 Employer ID No. _____ State of Incorporation _____

List all officers, partners, shareholders, or joint venturers.

- 1 Name _____ Title _____
 Street _____
 City _____ State _____ Zip _____
 Telephone (Day) _____ % Shares _____
- 2 Name _____ Title _____
 Street _____
 City _____ State _____ Zip _____
 Telephone (Day) _____ % Shares _____
- 3 Name _____ Title _____
 Street _____
 City _____ State _____ Zip _____
 Telephone (Day) _____ % Shares _____

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES



Applicant Information Statement

Business Profile (cont'd.)

Business Information
(cont'd.)

- Has the applicant or any of its principals done business under any other name within the past three years? Yes No
- Is the applicant owned or controlled by any other organization or business entity? Yes No
- Does the applicant own or control any other organization or business entity? Yes No

If yes was checked for any of the above, provide name, employer ID, and business address of each organization, corporation, or business:

1	Name of Business _____	
	Employer ID No. _____	Owner/Manager Name _____
	Street _____	
	City _____	State _____ Zip _____
2	Name of Business _____	
	Employer ID No. _____	Owner/Manager Name _____
	Street _____	
	City _____	State _____ Zip _____
3	Name of Business _____	
	Employer ID No. _____	Owner/Manager Name _____
	Street _____	
	City _____	State _____ Zip _____

List gross receipts of each business for the past three years. Attach copies of Federal Income Tax returns (1040, 1099, etc.).

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 _____

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES



Applicant Information Statement

Business Profile (cont'd.)

State or
 Municipal
 Leases or
 Contracts

List all leases or contracts entered into or currently in force between the applicant or other persons listed herein and the Metropolitan Transportation Authority ("MTA") or any other state agency or municipality within the past three (3) years. Use additional sheets if necessary.

(NYCT = MTA New York City Transit LIRR = MTA Long Island Rail Road MNR = MTA Metro-North Railroad)

- 1 NYCT LIRR MNR Other (Specify) _____
 Term _____ Annual Rent _____ Expires _____
 Location _____
- 2 NYCT LIRR MNR Other (Specify) _____
 Term _____ Annual Rent _____ Expires _____
 Location _____
- 3 NYCT LIRR MNR Other (Specify) _____
 Term _____ Annual Rent _____ Expires _____
 Location _____
- 4 NYCT LIRR MNR Other (Specify) _____
 Term _____ Annual Rent _____ Expires _____
 Location _____

List all real property in the State of New York owned, leased, or managed within the last three (3) years by the applicant or any other person listed herein, for personal or business purposes (including cooperatives or condominiums).

- 1 Owner of Record _____ Owned Leased Managed
 Location _____ Year Acquired _____
- 2 Owner of Record _____ Owned Leased Managed
 Location _____ Year Acquired _____
- 3 Owner of Record _____ Owned Leased Managed
 Location _____ Year Acquired _____
- 4 Owner of Record _____ Owned Leased Managed
 Location _____ Year Acquired _____

Has any of the property listed above been in arrears in the last three (3) years in respect to:

Real Estate Taxes Yes No Water/Sewer Assessments Yes No

Rents Yes No Loans Yes No

If yes, please explain: _____

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES



Applicant Information Statement

Business Profile (cont'd.)

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

1	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____
2	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____
3	Name of Company _____	From _____	To _____
	Street _____		
	City _____	State _____	Zip _____
	Contact _____	Title _____	Telephone _____

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 5



Metropolitan Transportation Authority

Applicant Information Statement

Business Profile (cont'd.)

Vendor Reference		
1	Name of Company _____	
	From _____ To _____	
	Street _____	
	City _____ State _____ Zip _____	
	Contact _____	
	Contact's Title _____ Telephone _____	
	Product Line _____	
	Credit Line High: _____ Low: _____ Balance: _____	
	2	Name of Company _____
		From _____ To _____
Street _____		
City _____ State _____ Zip _____		
Contact _____		
Contact's Title _____ Telephone _____		
Product Line _____		
Credit Line High: _____ Low: _____ Balance: _____		
3		Name of Company _____
		From _____ To _____
	Street _____	
	City _____ State _____ Zip _____	
	Contact _____	
	Contact's Title _____ Telephone _____	
	Product Line _____	
	Credit Line High: _____ Low: _____ Balance: _____	

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 6



Applicant Information Statement

Financial Profile

Bank References	<p>Savings Bank</p> <p>Name of Bank _____ Branch _____</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p> <p>Name of Bank Officer _____ Telephone _____</p> <p>Name on Account _____ Account No. _____</p> <p>Commercial Bank</p> <p>Name of Bank _____ Branch _____</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p> <p>Name of Bank Officer _____ Telephone _____</p> <p>Name on Account _____ Account No. _____</p>
------------------------	--

Available Lines of Credit	<p>Provide information on lines of credit available to undertake required improvements and fulfill annual rental obligations.</p> <p>1 Name of Source _____</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p> <p>Available Dollar Amount \$ _____ Interest Rate _____ Letter Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>2 Name of Source _____</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p> <p>Available Dollar Amount \$ _____ Interest Rate _____ Letter Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>3 Name of Source _____</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p> <p>Available Dollar Amount \$ _____ Interest Rate _____ Letter Attached: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
----------------------------------	---

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 7



Applicant Information Statement

Financial Profile (cont'd.)

Applicant Information

1 Name of Bank _____
Account No. _____ Branch _____
Street _____
City _____ State _____ Zip _____

2 Name of Bank _____
Account No. _____ Branch _____
Street _____
City _____ State _____ Zip _____

3 Name of Bank _____
Account No. _____ Branch _____
Street _____
City _____ State _____ Zip _____

I hereby authorize the banking, financial, and business concerns referenced in this application/statement to release to the Metropolitan Transportation Authority and/or their credit reporting agency any information requested with respect to the above-mentioned accounts and references.

By (Name) _____

Corporate Seal (If Corporation)

Title _____
Street _____
City _____ State _____ Zip _____

**Acknowledgement
Before
Notary Public**

Subscribed and Sworn to me this _____ day of _____, 20____

Notary Public's Signature _____

Notary Seal

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 8



Applicant Information Statement

Financial Profile (cont'd.)

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 applicant 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 applicant's personal assets and liabilities. Clearly indicate all sources of capitalization.

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~²

Page | 9



Applicant Information Statement

One-Year Business Plan

Income: One-year Projection	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

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 10



Applicant Information Statement

One-Year Business Plan (cont'd.)

Proposed Sales/Revenue Plan Describe the plan to achieve the volume of sales/revenue indicated in item 1 on page 8.

Proposed Staffing Indicate proposed staffing during business hours. Provide an entry for each change in the number of personnel during these hours.

Day(s) _____	Hour(s) _____	No. Personnel _____	Manager at Location: <input type="checkbox"/> Yes <input type="checkbox"/> No
Day(s) _____	Hour(s) _____	No. Personnel _____	Manager at Location: <input type="checkbox"/> Yes <input type="checkbox"/> No
Day(s) _____	Hour(s) _____	No. Personnel _____	Manager at Location: <input type="checkbox"/> Yes <input type="checkbox"/> No
Day(s) _____	Hour(s) _____	No. Personnel _____	Manager at Location: <input type="checkbox"/> Yes <input type="checkbox"/> No

Items to be Sold

Startup Costs	Legal Costs	\$ _____	
	Architectural Fees	\$ _____	
	Licensing Fees	\$ _____	
	Incorporation Fees	\$ _____	
	Rent During Construction	\$ _____	
	Construction Costs	\$ _____	(attach two estimates)
	Fixtures	\$ _____	
	Inventory	\$ _____	
	Consulting Fees	\$ _____	
	Franchise Fees	\$ _____	
	Miscellaneous	\$ _____	
	TOTAL STARTUP COSTS	\$ _____	

MTA RE (AIS 10/06) Page 10

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~²

Page | 11



Applicant Information Statement

Background

Declaration

- Has the applicant (or anyone listed herein) 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 applicant and/or any of its principals, partners, directors, owners, board members, or officers? Yes No
- Are any judgments outstanding against the applicant and/or any of its principals, partners, directors, owners, board members, or officers? Yes No
- Is any suit or other legal action pending against the applicant and/or any of its principals, partners, directors, owners, board members, or officers? Yes No
- Has the applicant or anyone listed herein ever 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 applicant or anyone listed herein ever been convicted of a felony? Yes No

If yes to any of the above, please provide all details below.

I declare under the penalties of perjury provided for by Article 210 of the New York Penal Law, that I have read fully and understand all of the terms and conditions of this statement and all of the foregoing questions in the Applicant Information Statement. The answers and statements herein including, without limitation, the Applicant Information Statement and the Credit Authorization, are to the best of my knowledge and belief true, correct and complete. I agree that in the event that circumstances reflected by the answers herein change, I will promptly notify the Real Estate Department of the Metropolitan Transportation Authority in writing by certified mail. I also understand that a misstatement, omission, or failure to update information may be cause for the Metropolitan Transportation Authority not to award to the applicant or its current principals the proposed license, and may have the effect of precluding persons or entities from doing business with the Metropolitan Transportation Authority or its affiliate organizations in the future.

Preparer's Signature _____ Date _____

Applicant's Signature _____ Date _____

Sworn to me this _____ day of _____, 20____

Notary Public's Signature _____

Notary Seal

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2021

Page | 12



Applicant Information Statement

General Affidavit

State of New York, County of _____ } ss:

being duly sworn, deposes and says

I am the _____ of _____

the sole proprietorship, joint venture, corporation, partnership (circle one) whose name is subscribed to and
which executed the foregoing

I reside at _____

Representations, Warranties, and Covenants

- A. The undersigned has received and read the entire Request for Proposal, has acquainted himself/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 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 deposits with this proposal an amount equal to three (3) months rent as proposed, in the form of a check payable to the MTA, to be retained by MTA as liquidated damages in the event the undersigned is offered and fails to enter into a lease or license on the terms contained in this proposal.
- C. The undersigned shall invest approximately _____ dollars (\$ _____) for improvements to the subject premises. (Include photographs or drawings of existing operations, and preliminary plans prepared and stamped by a New York State-licensed architect or engineer for the proposed location, which may be used as a basis for improvements to the premises.)
- D. 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.
- E. The undersigned is not 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.
- F. 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 Applicant Information Statement and Proposed Compensation Form. The answers and statements herein including, without limitation, the Applicant 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 applicant 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.
- G. The undersigned is of lawful age.
- H. The undersigned represents and warrants that no person, firm, or corporation other than herein above named has any interest in this proposed lease or license agreement.
- I. 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.
- J. To the best of the undersigned's knowledge the following statements are true and complete. If any of the following statements are not true and complete, refer to and complete Section K.
 - (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.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~²

Page | 13



Applicant Information Statement

General Affidavit (cont'd.)

- (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 applicant 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 applicant to induce any other person, partnership, corporation, or other entity to submit or not to submit a proposal, for the purpose of restricting competition.

Check off and complete Section K only if the statements contained in Section J are not true and complete.

- K. The statements set forth in paragraphs J. (i), (ii), (iii) are not true and complete. The undersigned has attached a detailed explanation as to (1) why each such paragraph is not true and complete, and (2) why the undersigned's explanation does not reflect an effort to restrain competition.

By _____ Corporate Seal
Title _____
Street _____
City _____ State _____ Zip _____

Note: For all partnerships and joint ventures, a General Affidavit for each of the partners or joint venturers must be completed, executed, notarized, and submitted with the application unless one partner or joint venturer is authorized to bind the others, in which case a single General Affidavit may be signed by one individual authorized to bind the partnership or joint venture.

Acknowledgement Before Notary Public On _____, 20____ before me personally came and appeared _____ who identified himself/herself as such person and swore the following under oath:

1. He/she resides at _____
Check off applicable provision and complete.
 - A. (For an applicant that is a PARTNERSHIP or JOINT VENTURE in which one partner or joint venturer is authorized to bind the partnership or joint venture, or a CORPORATION).
He/she is the _____ of _____, the above entity, which is a _____; that he/she signed this affidavit on behalf of himself or herself and said entity; and that he/she is duly authorized on behalf of said entity to sign this affidavit and to bind said entity.
 - B. (For an applicant that is a PARTNERSHIP or JOINT VENTURE in which more than one partner's or joint venturer's signature is authorized to bind the partnership or joint venture).
He/she is the _____ of _____ a _____ of the partners/joint venturers in the above partnership/joint venture; that he/she signed this affidavit on behalf of him or herself, said partner/joint venturer and partnership/venture; and that he/she is authorized to do so.
 - C. (For an applicant that is a SOLE PROPRIETORSHIP).
He/she is the sole proprietor of the above unincorporated business and he/she signed this affidavit on behalf of himself/herself.
2. The statements set forth in the above General Affidavit are true and complete to the best of his or her knowledge.

Notary Public's Signature _____
Notary Seal

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 9 – Pre-RFP Authorization Memo

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 1

**Metropolitan Transportation Authority
 Real Estate Department
 Authorization Memorandum-General**

Date: (Month [DD], [YYYY])
 To: (Deputy Director), Director, Transaction Management, Director, Real Estate Transactions and Operations
 From: [Project Manager Name]
 Re: [RFP reference number, agency, description i. e., retail vending, etc.]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

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

LOBBYING LAW: _____
 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) Tenant 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

- 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 _____

Christopher Nesterczuk, Transaction Management

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 3

Comments: _____

Approved: _____ Date _____

David Florio, Director, Real Estate Transactions and Operations

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 10 – Incumbent Letter

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2021

Page | 1

2 Broadway
New York, NY 10004
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, eg: Newsstand at 96" street Subway station, Manhattan]
Tenant ID: [YARDI TENANT NUMBER]
Property ID [YARDIPROPERTY 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://enterprise.nymta.info/MTA Real Estate RFP/>

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-[XXX] (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 Isl and Rail Road

MTA Long Island Bus
MTA Metro-North Rail Road

MTA Bridges and Tunnels
MTA Capital Construction

MTA Bus Company

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 11 – Sample Advertisement

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~²

Page | 1

MTA REAL ESTATE

Request for Proposals — Lease of the Tarrytown Station Building on Metro-North's Hudson Line. Proposals must be received by 3:00 p.m. on Friday, June 16th, 2017.

For information on this Request for Proposals, please go to
http://enterprise.nymta.info/MTA_Real_Estate_RFP/RFPLeasing.aspx

Metropolitan Transportation Authority

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 12 – Proposal Checklist

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022 ~~1~~

Page | 1

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	10/20/20	9/20/20	8/20/20	7/20/20
Applicant Information Statement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Business Profile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial Profile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit Authorization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
One-year Business Plan	<input type="checkbox"/>	<input type="checkbox"/>	<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) 129-k (Lobby Law) Disclosure Stmt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposed Compensation Form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
W-9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Preliminary Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deposit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Deposit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Check No	# _____			
Amount	\$ _____			

Follow Up

Letter Sent

Response Due _____

Reason: _____

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

MTA-RFD-06-2010

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

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	10/20/20	9/20/20	8/20/20	7/20/20
Appl. Information Statement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Business Profile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Financial Profile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit Authorization	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
One-year Business Plan	<input type="checkbox"/>	<input type="checkbox"/>	<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) 129-k (Lobby Law) Disclosure Stmt.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Proposed Compensation Form	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
W-9	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Preliminary Plans	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Deposit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
No Deposit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Check No. # _____				
Amount \$ _____				

Follow Up

Letter Sent

Response Due _____

Reason: _____

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

MTA RFD 06-21-00

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 13 – RFP Evaluation Form

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 1

Property & Unit Number	Parcel Name	Proposer Name	Improve.	Annual Compensation					NPV w/ improv. 6.00%	NPV w/o improv. 6.00%	Enter discount rate for NPV: 6.00%		
				Year 1	Year 2	Year 3	Year 4	Year 5			Assets	Liabilities	Net Worth

Suggested Annual Compensation for Year 1 per RFP - _____

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 14 – RFP Award Authorization Memo

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

Page | 1

**Metropolitan Transportation Authority
 Real Estate Department
 Authorization Memorandum-General**

Date: (Month [DD], [YYYY])
 To: (Deputy Director). Director, Transaction Management, Director, Real Estate Transactions and Operations
 From: [Project Manager Name]
 Re: [RFP reference number, agency, description i. e., retail, vending, etc.]

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

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

LOBBYING LAW:
 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) Proposed 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

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

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 _____
Christopher Nesterczuk, Transaction Management

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~⁴

Page | 3

Comments: _____

Approved: _____ Date _____

David Florio, Director, Real Estate Transactions and Operations

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 15 – Lease/Sale Negotiation Authorization Memo

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 1

Metropolitan Transportation Authority

**Real Estate Department
 Authorization Memorandum— General**

Date: [Month[DD], [YYYY]]
 To: [Deputy Director], Director, Transaction Management, Director, Real Estate Transactions and Operations
 From: [Project Manager Name]
 Re: Authorization Memo – Lease/Sale Negotiation Process Award Agency, description (i.e., retail, vending, etc.)

AGENCY:

LESSEE:

LOCATION:

ACTIVITY:

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

LOBBYING LAW: _____
 Have there been Contacts? _____
 Were Contacts permissible? _____

BOND REVIEW: _____ (NINA)
 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.)

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

Paragraph 3: Nature of interest (is it 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 _____

Christopher Nesterzuk, Director, Transaction Management

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 3

Comments: _____

Recommended: _____ Date _____
David Florio, Director, Real Estate Transactions and Operations

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

Approved: _____ Date _____
[enter name], Deputy General Counsel

Comments: _____

Approved: _____ Date _____
John N. Lieber, Chief Development Officer

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~1~~

Page | 0

Figure 16 – Conditional Designation Letter

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 1

2 Broadway
New York, NY 10004
212 878-7000 Tel



Metropolitan Transportation Authority

State of New York

VIA CERTIFIED MAIL

March 5, 2019

Re: Request for Proposals

Dear Mr./Mrs. _____:

We have recently completed our analysis of the proposals received in response to the above referenced Request for Proposals. I am pleased to inform you that your company has been conditionally designated as the successful proposer, subject to MTA Board approval and your acceptance of the terms herein.

In the meantime, we will proceed to prepare a draft lease based on your *Rent Proposal* as well as the *Term Sheet* (copies of which are attached to this letter) and your agreement to provide a guarantee for the obligations under the lease of the corporate entity which will be party to the lease with the MTA.

Kindly acknowledge receipt of this letter and indicate your consent to the terms contained in the attachments by signing the Term Sheet where indicated. Also, please sign and return a copy of this letter, along with your security deposit in the amount of \$ _____ to my attention at the above MTA address as soon as possible. Please retain a signed copy for your records.

We are very glad that you have chosen to locate your business within the MTA system. Please contact _____ at (212) 878- ____ if you have any questions.

Sincerely,

ACKNOWLEDGED AND AGREED TO

THIS ____ DAY OF _____ 2019:

David Florio
Director, Real Estate Transactions
& Operations

Attachments:
Term Sheet
Rent Proposal

cc: N. Mastropietro
C. Nesterczuk

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 202~~2~~¹

Page | 0

Figure 17 – Staff Summary

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

Page | 1

Staff Summary



Page 1 of 2

Subject LEASE AGREEMENT WITH MANHATTAN COLLEGE
Department REAL ESTATE
Department Head Name JOHN N. LIEBER
Department Head Signature
Project Manager Name ARTURO ESPINOZA

Date OCTOBER 22, 2018
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	10/22/18	X		
2	Board	10/24/18	X		

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

AGENCY: MTA New York City Transit ("NYCT")
 LESSEE: Manhattan College
 LOCATION: 4000 Irwin Avenue, Bronx, New York (portion of Bronx County Block 5776 lot 401)
 ACTIVITY: Operation of an athletic field, accessory facilities and parking lots
 ACTION REQUESTED: Authorization to enter into a lease
 TERM: 10 years, terminable by NYCT on 24 months' notice for corporate purposes. In the event of NYCT termination, NYCT would be required to reimburse the Lessee's unamortized construction costs.
 SPACE: Approximately 207,975 square feet
 RENT:

Year	Annual Rent	Monthly Rent	% Increase	PSF Rent
1	\$165,000.00	\$13,750.00	3%	\$0.79
2	\$169,950.00	\$14,162.50	3%	\$0.82
3	\$175,048.50	\$14,587.38	3%	\$0.84
4	\$180,300.00	\$15,025.00	3%	\$0.87
5	\$185,709.00	\$15,475.75	3%	\$0.89
6	\$191,280.20	\$15,940.02	3%	\$0.92
7	\$197,018.60	\$16,418.22	3%	\$0.95
8	\$202,929.20	\$16,910.77	3%	\$0.98
9	\$209,017.10	\$17,418.09	3%	\$1.01
10	\$215,287.60	\$17,940.63	3%	\$1.04

Staff Summary



Page 1 of 2

Subject LEASE AGREEMENT WITH MANHATTAN COLLEGE
Department REAL ESTATE
Department Head Name JOHN N. LIEBER
Department Head Signature
Project Manager Name ARTURO ESPINOZA

Date OCTOBER 22, 2018
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022 2

Page | 2

Staff Summary

FINANCE COMMITTEE MEETING LEASE WITH MANHATTAN COLLEGE (Cont'd.)



Page 2 of 2

COMMENTS:

The athletic field used by Manhattan College has been a center for Irish football, hurling, and other Irish sporting events in New York City for decades. The property on which the athletic field, accessory facilities (including a locker room, training room, storage room and storage shed) and parking lots sit (collectively, the "Property") is administered by MTA Real Estate for the City of New York pursuant to the 1953 master lease between NYCT and the City of New York. The Property is currently licensed to Manhattan College on a short-term basis. Earlier this year, Gaelic Athletic Association ("Gaelic"), a long-time tenant of the premises adjacent to the athletic field and a long-time user of the athletic field and the accessory facilities along with Manhattan College, entered into a new lease with NYCT for said adjacent premises (pursuant to which Gaelic is performing substantial rehabilitation of the existing building on the adjacent premises), and it is anticipated that Manhattan College and Gaelic will continue sharing the athletic field for sporting events.

The Property was offered via a Request for Proposals ("RFP") for a 10-year lease term requiring the replacement of the adjacent sidewalk along West 240th Street and extensive repairs to its facilities (collectively, the "Required Improvements"). In response to the RFP, Manhattan College was the sole proposer. The present value of the rent proposed is \$1,306,887 (calculated at a 7% discount rate). Such rent is in line with the appraised value of the Property, as estimated by MTA Real Estate's independent appraiser.

Manhattan College is committed to undertaking the Required Improvements and it possesses the financial resources and wherewithal to do so.

Based on the foregoing, MTA Real Estate requests authorization for NYCT to enter into a lease agreement with Manhattan College on the above-described terms and conditions.

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022+

Page | 0

Figure 18 – **Document Approval Form**

Who is legal initials DAF?

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022+

Page | 1

Document Approval Form



Transaction Type:

Lessee / Licensee / Permittee / Grantee			Yard Account #		
Use & Location			Yard Property # / Unit #		
Project Manager	Attachments Proposer Info. Form <input type="checkbox"/> Yes <input type="checkbox"/> N/A 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"/>		SEGRA / NEPA		
Deputy Director			Action to be Taken		
			Type 1	<input type="checkbox"/>	_____
			Type 2	<input type="checkbox"/>	_____
			Unlisted	<input type="checkbox"/>	_____
			NEPA	<input type="checkbox"/>	_____

DOCUMENT REVIEW

I. Transaction Manager			II. Deputy Director			III. Christopher Nesterczuk, Director, Transaction Management		
Submitted	Revised	Approved	Submitted	Revised	Approved	Submitted	Revised	Approved
Comments			Comments			Comments		
IV. Legal Review			V. Final Review (if required)			VI. External Execution		
Submitted	Revised	Approved	Deputy Director		Approved	Sent		Via:
Comments			Leasing & Acquisitions Supervisor		Approved	Returned		<input type="checkbox"/> Overnight
								<input type="checkbox"/> Certified
								<input type="checkbox"/> Hand

DOCUMENT EXECUTION

Deputy Director	Date	Date Returned to RED
Christopher Nesterczuk, Director, Transaction Management	Date	Finance Committee Approval Date:
Legal Department	Date	
Executed by Agency Officer	Date	MTA Board Approval Date:
David Florio, Director, Real Estate Transactions and Operations	Date	

Authorized S

⬅
🖐
⊖ ⊕
75%
📄
🔄
🔍
🗑
📤

2/3/2018

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | 0

Figure 19 – Yardi Lease Tracking Report

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022

Page | 1

Agency=NYCT Property=tel18300, tsx225900, tby=20300, tby00500, tm40900, 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 Exes	Hand Off	Ofs#	Rent Com
NYCT tm40900	42 ST-TIMES SQ 0000096	02 Current 0	Pay Phone				05/01/1999			03/01/2000
tm40900	42 ST-TIMES SQ 0000090	01 Current 0					05/01/1998			02/01/2000
tel18300	42 ST 0000107	01 Current 0					06/27/1989			03/01/2000
	42 ST 0000108	02 Current 0	Barber				11/01/1995			03/01/2000
	42 ST 0000109	03 Current 0	HibvBeauty				11/01/1995			03/01/2000
	42 ST 0000110	04 Current 0	Florist				03/15/1997			02/28/2000
	42 ST 0000111	05 Current 0	Other Retail				06/02/1994			03/01/2000
	42 ST 0000112	06 Current 0	Newsstand				03/04/1994			03/01/2000
	42 ST 0000113	07 Current 0	Other Retail				11/01/1995			03/01/2000
	42 ST 0000114	08 Current 0					03/04/1994			03/01/2000
	42 ST 0000115	09 Current 0					03/01/1996			03/01/2000
	42 ST 0000116	10 Current 0	Newsstand				03/04/1994			
	42 ST 0000117	11 Current 0					06/02/1994			03/01/2000
	42 ST 0000118	12 Current 0	Newsstand				03/01/1996			03/01/2000

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | 0

Figure 20 – Tenant Control Log

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

TENANT CONTROL LOG		
TENANT NAME: _____		ACCOUNT No.: _____
AGENCY: <input type="checkbox"/> LIIR <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: _____		
REQUIRED:	INITIALS	COMMENT
1. 2 executed original counterparts of Agreement	_____	_____
2. Staff Summary of Information Item	_____	_____
3. RFP Site Data Sheet of RTN	_____	_____
4. Routing Form for Execution	_____	_____
5. Document Preparation History Form	_____	_____
6. Determination of Responsibility [*]	_____	_____
IF APPLICABLE:		
• 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: _____	
<small>[*] Only required if value of agreement is over \$15,000 in any year during term. [**] Verify completeness of Lobbying Law Disclosure Statement pages.</small>		

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | 0

Figure 21 – Record of Contact Form

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

MTA 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, 2 Broadway, 4th Floor, Email: MTARE@mta.org

*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, Email: compliance@mta.org, 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:

Real Estate Transaction No. (if known): _____

Description of the Real Estate Transaction: _____

Contact's Name: _____

Contact's Address: _____

Contact's Telephone Number: _____

Contact's Employer: _____

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 of Contact	Means*	Other MTA or Agency staff present
1.		
2.		
3.		
4.		
5.		

*Write one: Correspondence, telephone, email, in person, other

POLICHS\Forms&Ltr\RealEstate\Law\RecordOfContact(RED).doc Rev. 9/19/16

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | 0

Figure 22 – Procurement Lobbying Law Disclosure Statement

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022⁺

Page | 1

 Metropolitan Transportation Authority

New York State Finance Law Sections 139-j and 139-k ("Lobbying Law") — Disclosure Statement

General Information

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").

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.

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 awards 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 obligations due to violations of the Lobbying Law. Violations found to be "knowing and willful" must be reported to the MTA Executive Director and OGS.

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.

Instructions

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 officer 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.

As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an officer 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 officer that fails to timely disclose accurate or complete information under the section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

Disclosure of Prior Non-responsibility Determinations

Name of Bidder/Proposer: _____

Address: _____

Name and Title of Person Submitting this Form: _____

Has any governmental entity¹ made a finding of non-responsibility regarding the Bidder/Proposer in the previous four years? Yes 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? Yes No

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 section 101-c of the Legislative Law; or (7) a subsidiary or affiliate of such a public authority. (SFL §139-j, paragraph 1.a.)

MTA Fin. Law 139-j, 139-k; rev. 10-09a; page 1

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

 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/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? Yes 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? Yes No

Bidder/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.

MTA-Fin. Law 139-j, 139-k (rev. 10-06-16)-Page 2

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

 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/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? Yes 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? Yes No

Bidder/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: _____

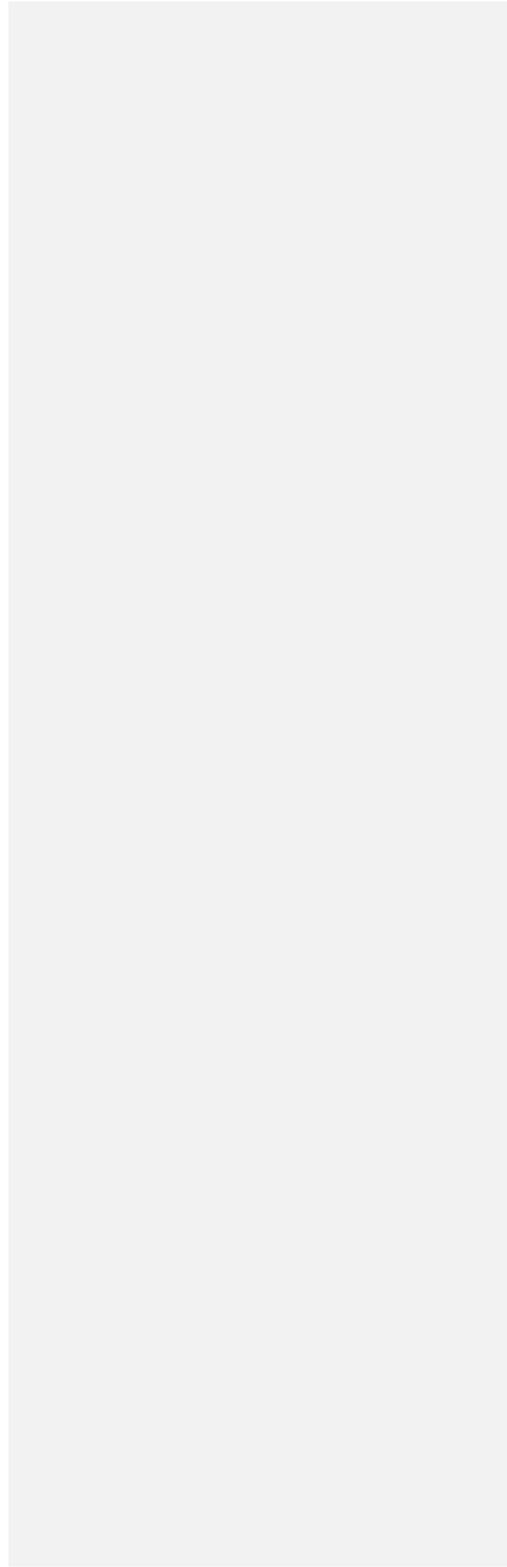
Business Telephone Number: _____

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.

MTA Fin. Law 139-j, 139-k (rev. 10-06-16)-Page 2

Figure 23 – Legal Intake Questionnaire



METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022 24

Page | 1

MTA RE LEGAL INTAKE QUESTIONNAIRE FOR LEASES AND LICENSES

Please complete the following when requesting assignments:

1. Type of assistance sought:
 - a. Assistance with preliminary matters, such as structuring a transaction, preparing an RFP, preliminary advice or attendance at meetings: _____
 - b. Assistance with drafting of complicated/non-standard business terms before documentation is ready for review: _____
 - c. Assistance with documentation preparation – Yes ___ No ___ N/A ___
If Yes, the Lease Preparer's Questionnaire Form will need to be fully completed and provided to MTA RE Legal Transactions and Operations, together with the package of other required documents noted in Item #6 below, before the Lease will be prepared or assigned to counsel. _____
 - d. Other: _____
2. What is the timing and when is it anticipated that the attorney will have documents to review?

3. 2a: PRIORITY: _____
4. Is there an MTA RE Legal Transactions and Operations attorney that is already familiar with this matter, the property or with similar transactions and if so who? _____
5. Has MTA RED authorized use of outside counsel? Yes ___ No ___
If Yes, please provide the following information for outside counsel to clear conflicts:
Name and address of Tenant: _____
Names and addresses of principals/individuals that will own Tenant or that are the Proposers: _____
Names and addresses of each Guarantor: _____
6. Briefly describe the material terms – parties, compensation, duration/term, etc. or attach a term sheet:
 - a. MTA Agency(ies) involved: _____
 - b. Counterparties: _____
 - c. Counterparty's Counsel if known: _____
 - d. Economic Terms:
 - i. Annual Rent/License Fees: _____
 - ii. Term: _____
 - iii. Significant Tenant Improvements/Investment: Yes ___ No ___ N/A ___
 - iv. Is space currently vacant? Yes ___ No ___ N/A ___
 - e. Other: _____
7. Documents to be attached for reviewing attorney include all of the following, if applicable:
 - a. Intake form/questionnaire completed ___
 - b. Lease Preparer's Questionnaire Form completed ___
 - c. DAF – Document Approval Form ___
 - d. RFP, with successful proposer responses ___
 - e. Proposer Information Form if applicable ___
 - f. Staff Summary ___
 - g. Authorization memo ___
 - h. CDL with Term Sheet ___
 - i. Documents for review ___
 - j. Property address with Block and Lot numbers, Tax Parcel _____
 - k. Any surveys and/or title reports, if applicable [N/A ___] [___]
1. FOR SALE, LEASE-OUT OR LICENSE please complete following:
 - a. Have you contacted Isabel Guerra to determine if federal funding is involved, in which case there may be a private use issue? _____

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022

Page | 2

- b. Was it competitively bid? _____
- c. Will the counterparty be investing in substantial capital improvements to prepare the premises for its use? Yes _____ No _____
- d. Describe landlord/licensor termination rights:
- Standard Corporate purposes standard provision (i.e., landlord right to terminate lease if it needs the space for corporate/transportation purposes but agrees to pay unamortized tenant improvement depreciated on a straight-line basis over over 10 years) ____ [Note: This should only be the case where tenant is expected to invest substantial capital/permanent improvements to prepare the space]
 - Standard License termination/revocation clause (i.e., licensor right to terminate or revoke for any reason/no reason on not more than 60 days' notice without any payment of reimbursement .
 - Other negotiated termination right? No ____ Yes ____ If so, describe (e.g., right to terminate after [__] years with or without reimbursement and for any specific reason or not)

e. LEASE vs. LICENSE

Is this a LEASE disposition of interest in real property) pursuant to the MTA Policies and Procedures for Leasing-Out/Sales of Real Property ("MTA Leasing-Out/Sales P&P")? Yes ____ No ____

If Yes, treated as a disposition under the PAL 2897 and as part of PAL 2897 analysis

- Do you have an appraisal/valuation? _____
- Was this competitively bid process (RFP)? Yes ____ No ____ If not, what was basis under PAL 2897 for negotiated bid? _____
- Will an explanatory statement be required (e.g., for all exchanges of real property interests or for certain negotiated bids) which will result in a 90 day conditional waiting period between contract signing and closing (include status if applicable)? _____

Is this a LICENSE (i.e., not a disposition of an interest in real property/and not intended to be a lease) which is terminable by an MTA party at will (with or without a reason) on not more than 60 days' notice at no cost and without reimbursement for unamortized tenant improvements and thus governed by the MTA Policies and Procedures for Licensing of Real Property ("MTA Licensing P&P")? Yes ____ No ____

If Yes, to comply with MTA Licensing P&P, please respond to the following:

- If applicable, the Policy # specified in the MTA Licensing P&P pursuant to which this license is being made without need for MTA Board Approval _____
- If this is pursuant to an RFP, or if not the "circumstance" specified in the MTA Licensing P&P which permits the license without an RFP but with Board Approval which is applicable to this particular proposed license _____
- Is an authorization memo or information item required under the Licensing P&P (if so provide copy)? _____

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | **3**

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~⁺

Page | 0

Figure 24 – Preparer Questionnaire Form

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

Page | 1

Date: _____, 2020

MTA RED Employee Completing this Form: _____

Landlord Agency: Please check as applicable:

<input type="checkbox"/> Metro North w MTA (Harlem-Hudson Lines)	<input type="checkbox"/> LIRR
<input type="checkbox"/> Metro North only	<input type="checkbox"/> NYCT

MTA RED RETAIL LEASE/LICENSE PREPARER QUESTIONNAIRE FORM

MTA RED is required to complete this questionnaire and to submit the completed form when requesting the preparation of a **RETAIL LEASE/LICENSE** for MTA/Metro-North/LIRR/NYCT by MTA Legal or outside counsel. Please be sure to proofread and provide accurate information. For any requested information that is inapplicable, please indicate "N/A".

INDICATE IF THIS IS A LEASE OR A LICENSE

LEASE

LICENSE If a License, licensor has right to revoke, at will, with no cost, upon ____ [Insert number of days prior notice not to exceed 60] days prior written notice.)

1. Station Property: (Cover Page)

a. Location (enter the name of the Station Property (if applicable), street address, block and lot number or other location designation): _____

b. Property Unit Code: _____

2. General: Is Tenant/Licensee an existing Tenant/Licensee already in occupancy of Premises?

YES NO

3. Fundamental Lease Provisions: (Section 1.1)

Tenant/Licensee:	Name: _____ Trade/DBA Name: _____ Type of Entity: _____ State of Organization: _____
Tenant's/Licensee's Address:	Address: _____ Attention: _____ Email Address: _____ Phone Number: _____
Guarantor(s) Name:	ALT. 1: [_____, a [natural person]. ALT.2: If there is no Guarantor, indicate N/A <input type="checkbox"/> .

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

Guarantor(s) Address:	_____ _____ _____ Attention: _____ Email Address: _____ Phone Number: _____
Premises/Licensed Area: [Note same information also required for completing Subsection 2.5.1]	a. Does the Premises/Licensed Area consist of: (x) Entire Station Building: YES <input type="checkbox"/> NO <input type="checkbox"/> (y) Portion of a Station Building or other Station Facility: YES <input type="checkbox"/> NO <input type="checkbox"/> b. If the Premises consists of an entire Station Building, indicate whether the following areas are included in the leased premises or licensed areas: Basement: YES <input type="checkbox"/> NO <input type="checkbox"/> Sidewalks: YES <input type="checkbox"/> NO <input type="checkbox"/> Plaza Areas: YES <input type="checkbox"/> NO <input type="checkbox"/> c. Describe the Premises/Licensed Area: _____ _____
Deemed Rentable Square Footage:	State the approximate deemed square feet of the Premises/Licensed Area: _____sf
LEASE ONLY: Licensed Area: [This is for space that will be licensed to a Tenant that is outside of the leased premises]	Is Tenant assigned space outside the Premises for Tenant's exclusive use or priority use (e.g. parking space(s), dumpster, etc.) Parking YES <input type="checkbox"/> NO <input type="checkbox"/> Dumpster YES <input type="checkbox"/> NO <input type="checkbox"/> Other YES <input type="checkbox"/> NO <input type="checkbox"/> Describe the Licensed Area: _____ _____ _____
Expiration Date:	Specify the number of years (after the Rent Commencement Date/Fixed License Fee Payment Date) of the Term of the Lease or duration of the License Period: _____

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

Term:	_____ years from the Rent Commencement Date/Fixed License Fee Commencement Date plus the period, if any, from the Commencement Date to the Rent Commencement/Fixed License Fee Commencement Date.		
LICENSE ONLY Revocation Notice Period:	_____ (__) DAYS' [NOTE: MAY NOT EXCEED 60 DAYS; typically either 30 or 60 per RFP].		
Initial Term Base Rent/Initial License Period Fixed License Fees:	Period	Base Rent/Fixed License Fee (Annual Rate)	Base Rent/Fixed License Fee (Monthly Rate)
	Lease/License Year 1	\$.00	\$.00
	Lease/License Year 2	\$.00	\$.00
	Lease/License Year 3	\$.00	\$.00
	Lease/License Year 4	\$.00	\$.00
	Lease/License Year 5	\$.00	\$.00
	Lease/License Year 6	\$.00	\$.00
	Lease/License Year 7	\$.00	\$.00
	Lease/License Year 8	\$.00	\$.00
	Lease/License Year 9	\$.00	\$.00
	Lease/License Year 10	\$.00	\$.00
	Delete any inapplicable Lease Years.		
Extension Option(s):	a. Does Tenant/Licensee have any Extension Option(s) to extend the Term of the Lease/License? YES <input type="checkbox"/> NO <input type="checkbox"/> b. If YES, specify the number of Extension Options and the length of each option: _____ _____		
Extension Period:	If there is any Extension Option(s), specify the number of years for each Extension Period: _____ years.		

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

<p>Tenant's/Licensee's Initial Work:</p>	<p>Is Tenant/Licensee required to perform Tenant's/Licensee's Initial Work? YES <input type="checkbox"/> NO <input type="checkbox"/>.</p> <p>If, YES, complete following and next three rows on this Questionnaire; if NO, skip next three rows on this Questionnaire:</p> <p>If Tenant/Licensee is required to perform Tenant's/Licensee's Initial Work to the Premises/Licensed Area or any other portion of the Station Property, describe Tenant's/Licensee's Initial Work or attach an Exhibit with the description: _____</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p>
<p>Initial Plan Submission Date:</p>	<p>If Tenant/Licensee is required to perform Tenant's/Licensee's Initial Work, specify the number days from the date on which the Lease/License has been fully executed and delivered by which Tenant/Licensee must submit its Initial Plans for such work: _____ days.</p>
<p>Tenant's/Licensee's Initial Work Buildout Period:</p>	<p>If Tenant/Licensee is required to perform Tenant's/Licensee's Initial Work, specify the number of days Tenant/Licensee has to complete the same after Landlord/Licensor has issued to Tenant/Licensee an Authorization to Proceed: ____ days</p>
<p>Tenant's/Licensee's Initial Work Completion Deadline:</p>	<p>ALT: 1: If Tenant/Licensee is required to perform Tenant's/Licensee's Initial Work, specify the number of days Tenant/Licensee has to complete the same after Landlord/Licensor has issued to Tenant an Authorization to Proceed: ____ days [NOTE: Should be same as Tenant's/Licensee's Initial Buildout Period from row above.]</p> <p>ALT: 2: If Tenant/Licensee is an existing Tenant/Licensee of the same Premises and is NOT required to perform any Tenant's/Licensee's Initial Work, indicate: N/A <input type="checkbox"/></p>
<p>Delay Fee:</p>	<p>ALT: 1: Insert per diem Base Rent/License Fee Amount: \$ _____ (i.e., Annual Base Rent ÷ 365 rounded to nearest dollar)</p> <p>ALT: 2: If Tenant/Licensee is NOT required to perform any Tenant's/Licensee's Initial Work, indicate N/A: <input type="checkbox"/></p>
<p>Trash Collection Fee:</p>	<p>Is Tenant/Licensee required to pay a Trash Collection Fee to Landlord/Licensor?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>If YES, specify the amount of the Trash Collection Fee:</p> <p>Annual: \$ _____</p>

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

	Monthly: \$ _____
Landlord/Licensors Utility Services: [Note information also required for completing Subsection 7.2.1, Section 7.4 and Section 7.3. See items 6, 7 and 8 below.]	Does Landlord/Licensee provide any utility services to the Premises/Licensed Area without charge? YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, specify which of the following utility services Landlord/Licensee will provide without charge: <ul style="list-style-type: none"> • Heat: YES <input type="checkbox"/> NO <input type="checkbox"/> • Electric: YES: <input type="checkbox"/> NO <input type="checkbox"/> • Water: Yes: <input type="checkbox"/> NO <input type="checkbox"/> • Other (specify): _____
Utility Fee: Note information also required for completing Subsection 7.2.1, Section 7.4 and Section 7.3. See items 6, 7 and 8 below.]	If Landlord/Licensee is providing any utility service to the Premises/Licensed Area (e.g., heat, electric), for which Tenant/Licensee pays a fee, specify such service and the applicable Utility Fee (indicate "N/A" if not applicable): Utility Service: [Heat] Annual: \$[_____] Monthly: \$[_____] Utility Service: [Electric] Annual: \$[_____] Monthly: \$[_____]
Brokers:	a. If a real estate broker has been involved in the transaction, provide the name of the real estate broker and the brokerage firm: _____ _____ b. If a real estate broker has been involved in the transaction, specify if Landlord/Licensors is paying the broker (indicate "N/A" if not applicable): _____ _____
LEASE ONLY Aggregate Tenant Broker Commission Credit:	If a real estate broker has been involved in the Lease transaction, specify if Tenant is paying the broker and receiving a rent credit and the amount of such rent credit (indicate "N/A" if not applicable): _____ _____ Confirm that MTA RED has received a copy of the brokerage agreement, and written acknowledgment signed by the broker that MTA/Landlord is not liable for any broker commission.

Additional Questions continued on next page:

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

Page | 7

4. Landlord's/Licensor's Work: (Section 3.3)

- A. If any work is required to be performed by Landlord/Licensor (or by Tenant/Licensee on Landlord's/Licensor's behalf) to prepare the Premises/License Area or the Station Property for Tenant's/Licensor's occupancy, specify such work and complete the rest of this Paragraph 4: _____

- B. Who is performing the Landlord's/Licensor's Work:
Landlord/Licensor Tenant/Licensee N/A
- C. If Tenant/Licensee is performing or initially paying for Landlord's/Licensor's Work, is Tenant/Licensee entitled to any Construction Allowance or Rent/Fixed License Fee Credit for any of the cost of same?
YES NO N/A
- D. If Tenant is entitled to a Construction Allowance or Rent/Fixed License Fee Credit, insert the amount and any cap; _____.

5. Opening and Closing of the Station Facilities: (Section 4.5)

- a. Specify if Tenant/Licensee is required to unlock and open the Station Facilities:
YES NO N/A
- b. If Tenant/Licensee is required to unlock and open the Station Facilities, specify Tenant's/Licensee's obligations: _____

6. Heat/Heating System: (Section 7.2.1)

- a. Specify if Landlord/Licensor provides heat to the Premises/License Area without charge:
YES NO N/A
- b. Specify if Landlord/Licensor provides heat to the Premises/License Area and charges a Utility Fee for heat:
YES (Utility Fee Annual \$ _____ Monthly \$ _____) NO N/A
- c. If the Premises consists of an entire Station Building, specify if Tenant is responsible for buying heating fuel from applicable utility provider:
YES NO N/A
- d. If the Premises consists of an entire Station Building, specify if Tenant is responsible for maintaining and replacing the heating system:
YES NO N/A

7. Electricity: (Section 7.4)

- a. Specify if the Premises/License Area is directly metered, and Tenant/Licensee pays the utility company directly for electricity:
YES NO N/A
- b. Specify if the Premises/License Area is sub-metered, and Tenant/Licensee pays Landlord/Licensor for electricity:
YES NO N/A
- c. Specify if Landlord/Licensor provides electricity to the Premises/License Area without charge:

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

March 2022~~1~~

Page | 8

YES NO N/A

d. Specify if Landlord/Licensor provides electricity to the Premises/License Area, and charges Tenant/Licensee a Utility Fee for its electricity consumption:

YES (Utility Fee Annual \$_____ Monthly \$_____) NO N/A

8. Water: (Section 7.3)

a. Specify if Landlord/Licensor provides water to the Premises/License Area without charge:

YES NO N/A

b. Specify if Landlord/Licensor provides water to the Premises/License Area, and charges Tenant a Utility Fee for its water consumption:

YES (Utility Fee Annual \$_____ Monthly \$_____) NO N/A

c. Specify if the Premises/License Area is separately submetered for water and if Tenant/Licensee pays Landlord for its water consumption:

YES NO N/A

9. Services to be provided by Tenant/Licensee: (Subsection 7.12.1)

Does Tenant/Licensee provide any property-related maintenance type services to the Premises/License Area or the Station Facilities, such as vermin control, ground sweeping, and snow removal, to be provided by Tenant/Licensee:

YES NO N/A (If YES, Exhibit N to be reviewed and modified as necessary.)

If YES, specify such services:

Vermin control: YES NO N/A

Ground sweeping: YES NO N/A

Snow Removal: YES NO N/A

Other (specify): _____

10. Structural and Roof Repairs; Sidewalks and Plazas: (Section 10.2)

a. If the Premises consists of an entire Station Building is Tenant responsible for structural repairs to the Station Building including repairs to the roof of the Station Building?

YES NO N/A

b. If the Premises consists of an entire Station Building, is Tenant responsible for repairing any sidewalks or plaza areas in front of the Station Building?

YES NO N/A

11. Historic Property: (Section 11.6)

Are the Premises/License Area or the Station Building listed in a state or national registry of historic property or eligible for inclusion in such registries?

YES NO N/A

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~1~~⁺

Page | 0

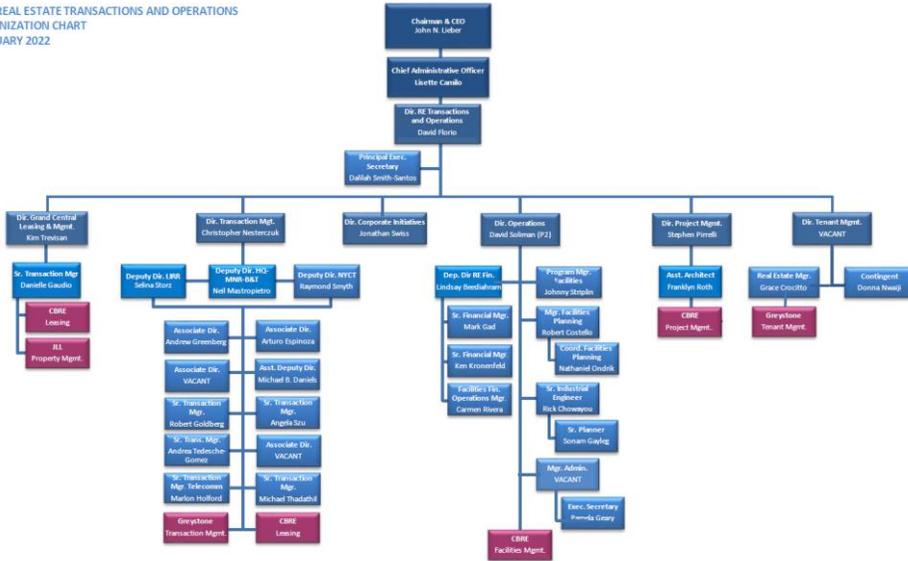
Figure 25 – RED Organizational Chart

METROPOLITAN TRANSPORTATION AUTHORITY
 REAL ESTATE DEPARTMENT
 REAL PROPERTY DISPOSITION GUIDELINES

March 2022¹

Page | 1

MTA REAL ESTATE TRANSACTIONS AND OPERATIONS
 ORGANIZATION CHART
 FEBRUARY 2022



METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

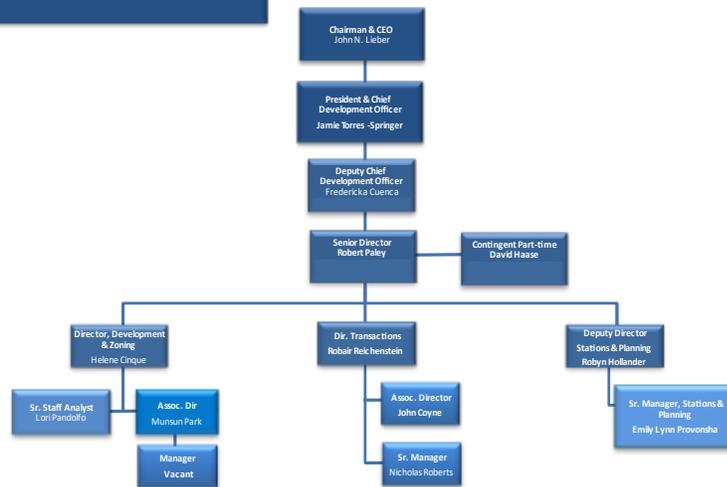
| March 202~~2~~¹

Page | 2

METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

Figure 26 – TOD Organizational Chart

Planning | Transit Oriented Development
MTA Construction & Development



METROPOLITAN TRANSPORTATION AUTHORITY
REAL ESTATE DEPARTMENT
REAL PROPERTY DISPOSITION GUIDELINES

| March 202~~2~~¹

Page | **1**



**METROPOLITAN TRANSPORTATION AUTHORITY
ALL-AGENCY GUIDELINES FOR THE
DISPOSAL OF PERSONAL PROPERTY**

Adopted by the Board on March ~~30, 2022~~

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 Construction and Development Company
- [Grand Central Madison Concourse Operating 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.

Deleted: 17
Deleted: 2
Deleted: 1

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 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 advertised 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 advertised public auction, subject to obtaining such competition as is feasible. Disposal by negotiation or by advertised 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 \$15,000 (for negotiation) or \$500,000 (for advertised public auction);
 - (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 5010.1E – Federally Funded Property

In addition to complying with PAL §§ 2895 - 2897, the MTA must also comply with Federal Transit Administration (“FTA”) Circular 5010.1E 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 5010.1E.

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 Advertised Public Auction. Surplus Property may be disposed of by negotiation or advertised public auction when (i) the Fair Market Value of such Surplus Property does not exceed \$15,000 (for negotiation) or \$500,000 (for advertised public auction) 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 procedures as needed for the implementation of these guidelines. Such written procedures, once executed, shall be filed with MTA Corporate Compliance.

**ATTACHMENT C
PERSONAL PROPERTY DISPOSITION
CONTRACTING OFFICERS**

Agency	Contact	Phone	E-mail
MTA All-Agency	Kuvershen Ayer	646-285-7602	kayer@mtahq.org
Bridges and Tunnels	Lynn Gore	646-252-7063	LGore@mtabt.org
Construction and Development	Stephen M. Plochochi	646-252-6050	stephen.plochochi@nyct.com
Long Island Railroad	Richard Mack	718-725-2621	ramack@lirr.org
Metro-North Railroad	Anthony Gardner	212-340-2293	gardner@mnr.org
MTA Bus	Julia Ferraro	718-888-6221	Julia.Ferraro@nyct.com
New York City Transit	Louis Montanti	646-252-6060	Louis.montanti@nyct.com

Deleted: Brian Bajor
 Deleted: 646-252-7032
 Deleted: bbajor@mtabt.org

Alcohol and Substance Abuse

MED-005

I. PURPOSE

The MTA Long Island Rail Road (LIRR) is committed to an alcohol and drug free workplace. This Corporate Policy and Procedure (Policy) is in furtherance of that commitment.

This Policy notifies employees of the conduct that is prohibited by the LIRR and that the consequences of engaging in prohibited conduct or other violations of this Policy include discipline, up to and including dismissal.

This Policy explains the LIRR's drug and alcohol testing program under:

- 49 CFR Part 219, which applies to employees designated by the Federal Railroad Administration (FRA) as performing Regulated Service;
- 49 CFR Part 382, which applies to employees performing commercial driving functions for the LIRR as covered by the Federal Motor Carrier Safety Administration (FMCSA); and
- LIRR authority, which applies to all LIRR employees.

This Policy describes the LIRR resources available to employees in need of treatment for drug and/or alcohol problems and encourages them to voluntarily seek such treatment before jeopardizing their safety, the safety of others, and their continued LIRR employment.

II. SCOPE

This Policy applies to all LIRR employees. Compliance is a condition of accepting and continuing LIRR employment.

Nothing in this Policy prohibits the LIRR from taking disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of this Policy or a reasonable suspicion of a violation of this Policy.

III. DEFINITIONS**A. Substances**

1. **Alcohol** - The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. **Controlled Substances** - All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.
3. **Drug** - Any substance other than alcohol that has known mind or function-altering effects on humans; specifically, including any psychoactive substance, including but not limited to, controlled substances.
4. **Intoxicant** - Any agent that produces intoxication, including but not limited to a drug or toxic substance or alcoholic beverages.
5. **Over-the-Counter (OTC) Medications** - Medications that do not require a prescription that can be purchased from pharmacies or other retail establishments.

Alcohol and Substance Abuse

MED-005

6. **Prescription Drugs** - Medications prescribed by a licensed medical practitioner for a specific course of treatment.

B. Employee Classifications**1. Regulated Service Employees - 49 CFR Part 219:**

- a. **Covered Service Employees** - Employees who perform service subject to the Hours of Service Act (49 U.S.C. § 20101, *et seq.*) (Covered Service), both represented and non-represented. This category includes the following:
- i. Engine Service Employees: Locomotive Engineer, Locomotive Engineer Trainee, Road Foreman; Training Specialist – Engine Service;
 - ii. Train Service Employees: Assistant Conductor, Conductor, Collector, Special Duty Assistant Conductor, Special Duty Conductor, Transportation Manager, Assistant Trainmaster, Transportation Rules and Air Brake Examiner, Training Specialist – Train Service;
 - iii. Dispatch Employees: Assistant to Chief Train Dispatcher, Assistant Train Director, Assistant to Train Director, Block Operator, Block Operator Trainee, Chief Train Dispatcher, Customer Communications Coordinator, Information Coordinator, Lead Train Director, PSCC Console Operator, Train Director, Train Dispatcher;
 - iv. Signal Employees: Signal Helper, Assistant Signalman – Signal, Signal Inspector, Signal Maintainer, Signal Specialist, Signal Technician, Signalman, Signalman-in-Training, Assistant Foreman – Signal, Foreman – Signal, Foreman – Signal Specialist;
 - v. M/E (Other) Employees – Electrician – ASC, Electrician – Car Mover, Electrician – Road Car.
- b. **Maintenance of Way/Roadway Work Protection Employees (MOW/RWP Employees)** - Employees whose duties include inspection, construction, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track, and flagmen and watchmen/lookouts as defined 49 CFR 214.7.

Attachment A to this Policy is a list of titles designated, or that may be designated, as performing MOW/RWP duties. This list is subject to change at any time without notice.

- c. **Mechanical Employee (MECH Employee)** - Any employee who, on behalf of a railroad, performs mechanical tests or inspections required by part 215, 221, 229, 230, 232, 238, or 299 of this chapter on railroad rolling equipment, or its components, EXCEPT FOR:
- (i) An employee who is a member of a train crew assigned to test or inspect railroad rolling equipment that is part of a train or yard movement the employee has been called to operate; or

Alcohol and Substance Abuse

MED-005

(ii) An employee who only performs one or more of the following duties:

(A) Cleaning and/or supplying cabooses, locomotives, or passenger cars with ice, food concession items, drinking water, tools, sanitary supplies, or flagging equipment;

(B) Servicing activities on locomotives such as fueling, replenishing engine oils and engine water, sanding, and toilet discharge and recharge;

(C) Checking lading for pilferage or vandalism; or

(D) Loading, unloading, or shifting car loads.

(2) An employee who only performs work related to the original manufacturing, testing, or inspection of railroad rolling equipment, or its components, on the manufacturer's behalf, is not a mechanical employee or MECH employee.

This category includes but is not limited to employees in the following crafts: Car Repairman, Electrician, Gang Foreman, Machinist, Road Car Inspector, and Sheet Metal Worker.

When an Employee is Designated as Performing Regulated Service - An employee is designated as performing Regulated Service (subject to drug/alcohol testing under federal authority) if he/she is likely to perform Covered Service or MOW/RWP duties at least four (4) times annually or an average of once per quarter.

2. Commercial Motor Vehicle Drivers (Commercial Drivers) - 49 CFR Part 382

Employees who perform service for the LIRR requiring a commercial driver's license (CDL) issued by a state authorizing operation of a commercial motor vehicle:

- a. Weighing 26,001 or more pounds; or
- b. That has a gross combination weight of 26,001 or more pounds, inclusive of a towed unit with a gross weight rating more than 10,000 pounds; or
- c. Carrying sixteen (16) or more passengers; or
- d. Transporting placardable hazardous material.

3. Safety Sensitive Employees

Though Regulated Service Employees are designated as safety sensitive under 49 CFR Part 219 and LIRR authority and Commercial Drivers are designated as safety sensitive under 49 CFR Part 382 and LIRR authority, for the purposes of this Policy, the Safety Sensitive Employee classification refers to those employees whose job titles/duties LIRR has designated as safety sensitive under LIRR authority, but does not include Regulated Service Employees or Commercial Motor Vehicle Drivers, who are classified separately (see 1. and 2. above).

4. Non-Safety-Sensitive Employees - Employees whose job titles/and or duties do not fall within the Employee Classifications in Section III.B.1, 2, or 3 of this Policy.**C. Other**

1. **Medical Review Officer (MRO)** - A licensed physician designated by the LIRR who is qualified per 49 CFR 40.121 and is responsible for receiving and reviewing laboratory results generated by the LIRR's drug testing program and evaluating medical explanations for certain drug test results.
2. **Substance Abuse Professional (SAP)** - A licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor, with the credentials required under 49 CFR 40.281 with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. For the purposes of this Policy, an LIRR Employee Assistance Professional (EAP) is the SAP, who also performs the functions of a Drug and Alcohol Counselor (DAC) under 49 CFR 219, Subpart K, and 49 CFR 240 and 242.7.
3. **Supervisor** - Any employee who is responsible for supervising or monitoring the conduct or performance of one (1) or more employees.
4. **Co-Worker** - Another employee, including a representative of the employee's collective bargaining unit.
5. **Accident/Incident** - An event or occurrence related to a LIRR operation that is required to be reported, including: fatality, injury, or illness; collision, derailment, and/or similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings.

Alcohol and Substance Abuse

MED-005

6. **“Identifying the Troubled Employee”** - A training course given by the LIRR and required for all Supervisors, per the LIRR’s Management Education Core Curriculum Program (EDUC-001), which provides instruction on the requirements of FRA regulations, Federal Motor Carrier Safety Administration (FMCSA) regulations, and LIRR policies and rules regarding drug and alcohol use and testing.
7. **Co-Worker Referral** – As per 49 CFR 219, Subpart K, a report by a Co-worker to a Supervisor that a Regulated Service Employee appeared to be unsafe to work with and/or appeared to be in violation of this Policy. The name of the Co-worker will be confidential and the Co-worker who made the report will not be called as a witness should a subsequent administrative or disciplinary action be required. If the Regulated Service Employee who is the subject of a Co-Worker Report is referred to EAP, accepts such referral, and follows the EAP’s recommendation(s) disciplinary action may be held in abeyance.
8. **Voluntary Referral** – As per 49 CFR 219, Subpart K, a program designed to encourage and facilitate the identification of a Regulated Service Employee who abuses drugs or alcohol by providing the employee the opportunity to obtain counseling or treatment before the Regulated Service Employee's drug or alcohol abuse manifests itself in a detected violation of federal regulation and/or this Policy.
9. **Verified Positive Test Result**
 - a. For a drug test, a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay or other chromatographic methods with mass spectrometry and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 C.F.R. Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."
 - b. For an alcohol breath test, an initial breath or saliva test performed on a Department of Transportation (DOT) approved "Evidential Breath Testing" or "Saliva Screening Test" device. A result of .02 or higher on the initial breath or saliva test will be confirmed by a second breath test on a DOT-approved "Evidential Breath Testing" device; the result of the second breath test must be .02 or higher for a verified positive test result.

IV. PROHIBITED CONDUCT AND EMPLOYEE REQUIREMENTS**A. All employees are prohibited from:**

1. Using alcoholic beverages, intoxicants or controlled substances, or from being under the influence or impaired by same, while subject to duty or while on duty.
2. Possessing alcohol while on duty.
3. Illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off duty.
4. Possessing drug paraphernalia in the workplace.
5. Consuming alcohol during working hours, including meal and break periods.

Alcohol and Substance Abuse

MED-005

-
6. Refusing to cooperate or intentionally interfering with the LIRR's efforts to enforce this Policy or related federal regulations, including, but not limited to, refusing to submit to drug and/or alcohol testing conducted pursuant to this Policy or related federal regulations, or tampering with the integrity of a breath, saliva, or urine sample in connection with any such test.
 7. Violating the LIRR rules and regulations (customer rules) applicable to customers on LIRR terminals, trains and stations. If there is a conflict between employee conduct that is prohibited by this Policy and conduct that is prohibited under the customer rules, this Policy governs.
- B.** All employees, whether on or off duty, are prohibited from:
1. Consuming alcohol on LIRR property.
 2. Possessing an open container of an alcoholic beverage on LIRR property.
 3. Possessing or consuming alcohol while wearing an LIRR uniform.
 4. Possessing or being under the influence of or impaired by alcohol on non-public LIRR property, including, but not limited to, shops, tracks, towers and offices.
- C.** No alcoholic beverages are permitted at LIRR-sponsored functions.
- D.** The detection of a prohibited substance resulting from any required toxicological test is a violation of this Policy.
- E.** Employees are prohibited from refusing to take a drug and/or alcohol test when directed to do so. Employees who are directed to take a urinalysis and/or breath test are expected and required to comply. A refusal to test will be considered insubordination and a violation of this Policy.
- Note:** The LIRR recognizes a refusal to test as defined in 49 CFR 40.191 and 40.261 and specified in Attachment C to this Policy (Sections VII and VIII); please see these documents for full descriptions of what constitutes a refusal to test under both federal and LIRR authority.
- F.** Medication Reporting Requirements
1. **Regulated Service Employees and Commercial Drivers** are prohibited from working while taking prescription and/or OTC medications, other than those noted in F.2. (below), unless:
 - a. Such use is brought to the attention of the MRO or designee by the employee;
 - b. The medication is prescribed or authorized for the employee's use by a licensed medical practitioner **and**;
 - c. The MRO or designee has made a good faith judgment that use of the substance as prescribed is consistent with the safe performance of the employee's duties. The determination of the MRO or designee is final and binding.

Alcohol and Substance Abuse**MED-005**

2. The following types of medications do not need to be reported to the MRO or designee by any classification of employee prior to the employee working while using them:

- Allergy shots;
- Antibiotics;
- Antifungals;
- Asthma medications;
- Beta-blockers;
- Birth control pills;
- Blood pressure medications;
- Cholesterol medications;
- Cough drops;
- Ear drops;
- Erectile dysfunction medications;
- Joint injections;
- Laxatives;
- Stool softeners;
- Reflux medications;
- Topical products (i.e., creams/ointments);
- Vaccines;
- Vitamins (ex.: A, B, C, D, E);
- Over-the-counter medications that do not have a safety-related warning on their label.

Regulated Service Employees and Commercial Drivers must report any medication with a safety-related warning to the MRO or designee prior to working while taking it; such warnings include, but are not limited to, those indicating that drowsiness/dizziness may occur or those directing you not to operate a vehicle or heavy machinery while taking the medication.

If an employee is unsure of the type of medication he/she has been prescribed after conferring with his/her prescribing doctor, then the employee must report this medication to Medical.

3. Regulated Service Employees and Commercial Drivers may work while taking prescription anti-inflammatory medications without prior approval from Medical. However, these must be reported to Medical within 24 hours of taking them or on the next business day on which Medical is open (whichever is later).
4. All employees must provide all medication and other medical information to LIRR Medical Facility (Medical) staff upon request during any visit to Medical.

Alcohol and Substance Abuse

MED-005

G. Arrest and Conviction Reporting Requirements

1. Pursuant to the federal Drug-Free Workplace Act, 41 U.S.C. §8102, et seq., an employee convicted of violating a criminal drug statute in the workplace must report the conviction to his/her department head within five (5) days of the conviction; it is the department head's responsibility to report this to Labor Relations and the Assistant Director – Employee Services.
2. An employee who is a Regulated Service Employee, a Commercial Driver or a Safety Sensitive Employee arrested for, or convicted of, violating a criminal drug or alcohol statute (including the New York State Vehicle & Traffic Law and Penal Law), in or out of the workplace, must report the arrest or conviction to his/her department head within five (5) days of the arrest or conviction; it is the department head's responsibility to report this to Labor Relations and the Assistant Director – Employee Services.

V. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT AND NON-REPORTING

- A. Employees determined to be in violation of this Policy (IV.A through IV.E above) are subject to dismissal. A represented employee may be offered the opportunity to sign a Trial Waiver/Last Chance Agreement after a first violation of this Policy and will be dismissed after a second violation.
- B. At the discretion of the LIRR, employees who are in violation of IV.A through IV.D. above (other than Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater, see V.D below) may be offered a Trial Waiver/Last Chance Agreement and suspension of not less than six (6) months without pay.
- C. At the discretion of the LIRR, employees refusing to test in violation of IV.E. above may be offered a Trial Waiver/Last Chance Agreement and a suspension of not less than nine (9) months without pay.
- D. At the discretion of the LIRR, pursuant to 49 CFR 240 and 242 (Qualification and Certification of Locomotive Engineers and Conductors, respectively), Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater may be offered a Trial Waiver/Last Chance Agreement and a suspension of not less than nine (9) months without pay.
- E. At the discretion of the LIRR, employees determined to have failed to report prescription medications and/or to report arrests/convictions, as required above (IV.F. and IV.G.) may also be subject to disciplinary action, up to and including dismissal.

VI. DRUG TESTING PROGRAM**A. General**

1. All employees are subject to drug and/or alcohol testing as required by applicable federal regulations and/or this Policy.

Attachment B to this Policy is a list of the current Drug Testing Panels under federal authority and under LIRR authority. Federal and/or LIRR Drug Testing Panels are subject to change at any time without notice.

Alcohol and Substance Abuse

MED-005

2. Pursuant to 49 CFR Part 219, the FRA requires and/or permits the LIRR to conduct, for Regulated Service Employees, the following types of drug and/or alcohol testing:
 - a. Pre-Placement;
 - b. Reasonable Suspicion;
 - c. Reasonable Cause;
 - d. Post-Accident;
 - e. Random; and
 - f. Federal Return-to-Duty and Follow-up.
3. Pursuant to 49 CFR §219.23, guidance for Regulated Service Employees about 49 CFR Part 219 is in **Attachment C** to this Policy.
4. Pursuant to 49 CFR Part 382, the FMCSA requires and/or permits the LIRR to conduct, for Commercial Drivers, the following types of drug and/or alcohol testing:
 - a. Pre-placement;
 - b. Reasonable Suspicion;
 - c. Post-Accident;
 - d. Random; and
 - e. Federal Return-to-Duty and Follow-up.
5. The LIRR may conduct drug and/or alcohol testing of **all employees** for:
 - a. Reasonable Suspicion;
 - b. Reasonable Cause; and
 - c. Discretionary.
6. The LIRR may conduct drug and/or alcohol testing of Regulated Service Employees, Commercial Drivers and/or Safety Sensitive Employees for:
 - a. Pre-placement; and as part of:
 - b. Periodic Physical Examinations;
 - c. CDL Medical Examination; and
 - d. Return-to-Duty.
7. Employees and applicants whose initial drug test results are returned as negative-dilute will be retested for the following tests: Pre-Placement; Reasonable Suspicion, Reasonable Cause, Follow-Up, and Return-to-Duty. A second negative-dilute result (from a retest as noted above) will be considered negative.
8. The LIRR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Policy.

B. Types of Drug/Alcohol Testing**1. Pre-Placement**

Human Resources will schedule a Pre-Placement drug test for applicants or employees who have received offers to perform service for the LIRR as a Regulated Service Employee; as a Commercial Driver; or as a Safety Sensitive Employee. No such employee may perform service prior to passing a drug test administered by the LIRR Medical Facility.

2. Random

Regulated Service Employees and Commercial Drivers are subject to a drug and/or alcohol test performed randomly under FRA/FMCSA regulations as applicable.

3. Reasonable Suspicion**a. Guidelines for Regulated Service Employees:**

- i. When Reasonable Suspicion exists for a Regulated Service Employee, drug and/or alcohol testing is mandatory under 49 CFR Part 219.
- ii. **Alcohol Test** - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Regulated Service Employee for an alcohol test.
- iii. **Drug Test** - At least two (2) Supervisors, one (1) of whom has completed the LIRR Training course "Identifying the Troubled Employee," must make the required observation before sending a Regulated Service Employee for a drug test.
- iv. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation of a Regulated Service Employee. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.
- v. Regulated Service Employees may not be tested after they have been released from duty.

b. Guidelines for Commercial Drivers

- i. All Commercial Drivers are subject to drug and/or alcohol testing when Reasonable Suspicion exists.
- ii. **Alcohol Test** - A Commercial Driver may not be subjected to alcohol testing under FMCSA regulations unless the Supervisor's observation is made just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions. At least one (1) Supervisor who has completed the LIRR's training course, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must make all reasonable efforts to conduct alcohol testing

Alcohol and Substance Abuse

MED-005

within two (2) hours of the observed behavior. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to why the test was not promptly administered. No alcohol testing may be performed after the expiration of eight (8) hours from the time of observation.

Note: A Commercial Driver may be subjected to alcohol testing under company authority (Guidelines for Safety Sensitive and Non-Safety Sensitive employees) if the Supervisor's observation is made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

- iii. **Drug Test** - At least one (1) Supervisor who has completed the LIRR's Training Program, "Identifying the Troubled Employee," must make the required observation before sending a Commercial Driver for a test. The LIRR must make diligent efforts to conduct a drug test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted.
 - iv. Commercial Drivers may not be tested after they have been released from duty.
- c. Guidelines for Safety Sensitive and Non-Safety Sensitive Employees:**
- i. All employees are subject to drug and/or alcohol testing when Reasonable Suspicion exists.
 - ii. The decision that Reasonable Suspicion exists must be based on specific contemporaneous and articulable observations by a Supervisor who has completed the required LIRR training course on "Identifying the Troubled Employee" and can document one or more of the following criteria about an on-duty employee's appearance, behavior, speech, or body odor associated with drug and/or alcohol use:
 - Staggered gait, difficulty walking
 - Slurred speech
 - Drowsiness/sleepiness
 - Odor of an intoxicant
 - Disorientation (time/place/person)
 - Rapid mood swings with no apparent reason
 - Poor coordination or body control
 - iii. Note that direct observation of the possession or use of an intoxicant or controlled substance is a violation of this Policy; no alcohol and/or drug test should be done upon such observation.
 - iv. The criteria in VI.B.3.c.ii above also applies to the direct observation necessary for a Supervisor to corroborate and investigate an FRA Co-Worker Referral.

Alcohol and Substance Abuse

MED-005

- v. Alcohol Test - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for an alcohol test.
- vi. Drug Test - At least one (1) Supervisor who has completed the LIRR training course "Identifying the Troubled Employee" must make the required observation before sending a Safety Sensitive or Non-Safety Sensitive Employee for a drug test.
- vii. The LIRR must make diligent efforts to conduct a drug and/or alcohol test within two (2) hours of the required observation. If testing is not conducted within two (2) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after the expiration of eight (8) hours from the time of the required observation.
- viii. Safety Sensitive and Non-Safety Sensitive Employees may not be tested after they have been released from duty.
- ix. Documentation - Within a reasonable time following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the Assistant Director-Employee Services or designee.

4. Reasonable Cause

a. Guidelines for Regulated Service Employees

Reasonable Cause drug and/or alcohol testing will be conducted for Regulated Service Employees under the following circumstances:

- i. **Accident/Incident** - There is an Accident/Incident and a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the Accident/Incident; or
- ii. **Rule Violation** - The Regulated Service Employee has been directly involved in one (1) or more of the following Operating Rule violations or errors.
 - Noncompliance with a train order, track warrant, track bulletin, track permit, stop and flag order, timetable, signal indication, special instruction or other directive with respect to movement of railroad on-track equipment that involves -
 - (i) Occupancy of a block or other segment of track to which entry was not authorized;
 - (ii) Failure to clear a track to permit opposing or following movements to pass;
 - _____

Alcohol and Substance Abuse

MED-005

- (iii) Moving across a railroad crossing at grade without authorization;
- (iv) Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required); or
- (v) Failure to take appropriate action, resulting in the enforcement of a positive train control system.
- (2) Failure to protect on-track equipment, including leaving on-track equipment fouling an adjacent track;
- (3) Operation of a train or other speedometer-equipped on-track equipment at a speed that exceeds the maximum authorized speed by at least 10 miles per hour or by 50% of such maximum authorized speed, whichever is less;
- (4) Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under on-track equipment, or unauthorized running through a switch;
- (5) Failure to restore and secure a main track switch as required;
- (6) Failure to apply brakes or stop short of a derail as required;
- (7) Failure to secure a hand brake or failure to secure sufficient hand brakes, as required;
- (8) Entering a crossover before both switches are lined for movement or restoring either switch to normal position before the crossover movement is completed;
- (9) Failure to provide point protection by visually determining that the track is clear and giving the signals or instructions necessary to control the movement of on-track equipment when engaged in a shoving or pushing movement;
- (10) In the case of a person performing a dispatching function or block operator function, issuance of a mandatory directive or establishment of a route that fails to provide proper protection for on-track equipment;
- (11) Interference with the normal functioning of any grade crossing signal system or any signal or train control device without first taking measures to provide for the safety of highway traffic or train operations which depend on the normal functioning of such a device. Such interference includes, but is not limited to, failure to provide alternative

methods of maintaining safety for highway traffic or train operations while testing or performing work on the devices or on track and other railroad systems or structures which may affect the integrity of the system;

- _____
- _____ (12) Failure to perform stop-and-flag duties necessary as a result of a malfunction of a grade crossing signal system;
- _____
- _____ (13) Failure of a machine operator that results in a collision between a roadway maintenance machine and on-track equipment or a regulated employee;
- _____
- _____ (14) Failure of a roadway worker-in-charge to notify all affected employees when releasing working limits;
- _____
- _____ (15) Failure of a flagman or watchman/lookout to notify employees of an approaching train or other on-track equipment;
- _____
- _____ (16) Failure to ascertain that provision was made for on-track safety before fouling a track;
- _____
- _____ (17) Improper use of individual train detection in a manual interlocking or control point;
- _____
- _____ (18) Failure to apply three point protection (fully apply the locomotive and train brakes, center the reverser, and place the generator field switch in the off position) that results in a reportable injury to a regulated employee;
- _____
- _____ (19) Failure to display blue signals in accordance with § 218.25 through § 218.30 of this chapter;
- _____
- _____ (20) Failure to perform a required brake test, or having knowledge that a required brake test was not performed, pursuant to the Class I, Class IA, Class II, or Class III, or transfer train brake test provisions of part 232, or the running brake test provisions of part 238, of this chapter;
- _____
- _____ (21) Failure to comply with prohibitions against tampering with locomotive mounted safety devices, or permitting a train to be operated with an unauthorized disabled safety device in the controlling locomotive; or
- _____
- _____ (22) Failure to have a derailing device in proper position and locked if required in accordance with § 218.109 of this chapter. Non-compliance with a train order, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:

- ~~➤ Occupancy of a block or other segment of track to which entry was not authorized;~~
 - ~~➤ Failure to clear a track to permit opposing or following movement to pass;~~
 - ~~➤ Passing an absolute restrictive signal or passing a restrictive signal without stopping (if required);~~
 - ~~● Failure to protect a train as required by a rule consistent with 49 CFR §218.37 (including failure to protect a train that is fouling an adjacent track);~~
 - ~~● Operation of a train at a speed that exceeds the maximum authorized speed by at least ten (10) miles per hour;~~
 - ~~● Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch;~~
 - ~~● Failure to apply or stop short of derail as required;~~
 - ~~● Failure to secure sufficient hand brakes;~~
 - ~~● Entering a crossover before both switches are lined for movement; or~~
 - ~~● In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.~~
- iii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.
- iv. Regulated Service Employees may not be tested after they have been released from duty.
- v. **Documentation** - The Supervisor must document the date, time, and place of the occurrence, giving rise to testing, as well as the reason for testing, and send a copy of such documentation to the Assistant Director-Employee Services or designee.
- vi. All Reasonable Cause testing is performed under LIRR authority.
- b. Guidelines for Commercial Drivers**
- The LIRR will test any Commercial Driver for drugs and/or alcohol following an Accident/Incident giving rise to Reasonable Cause testing as set forth in Section VI.B.4(c) of this Policy.
- c. Guidelines for All Employees**
- There is Reasonable Cause for LIRR to test any employee for drugs and/or alcohol under the following circumstance:

Alcohol and Substance Abuse

MED-005

- i. There is an Accident/Incident and/or a Supervisor has a reasonable belief, based on specific, articulable facts that the employee's acts or omissions contributed to the occurrence or the severity of the Accident/Incident.
- ii. The LIRR must make diligent efforts to conduct the drug and/or alcohol test within four (4) hours of an accident/incident. If testing is not conducted within four (4) hours, the Supervisor must provide the Assistant Director-Employee Services or designee with documentation as to the reason why the test was not promptly conducted. No alcohol testing may be performed after expiration of eight (8) hours from the time of the accident/incident.
- iii. Employees may not be tested after they have been released from duty.
- iv. All Reasonable Cause testing is performed under LIRR authority.

5. Post Accident

a. Regulated Service Employees - The FRA regulations set forth in 49 CFR Part 219, Subpart C on the control of alcohol and drug use require toxicological testing after accidents that involve one (1) or more of the circumstances described below:

- i. **Major train accident** - Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold) that involves one (1) or more of the following:
 - 1) A fatality;
 - 2) Release of hazardous material lading from railroad equipment accompanied by:
 - An evacuation; or
 - A reportable injury resulting from the hazardous material release, e.g. from fire, explosion, inhalation, or skin contact with the material); or
 - 3) Damage to railroad property of \$1,500,000 or more.
- ii. **Impact accident** - An impact accident (*i.e.*, a rail equipment accident defined as an "impact accident" in § 219.5 that involves damage in excess of the current reporting threshold) resulting in:
 - 1) A reportable injury; or
 - 2) Damage to railroad property of \$150,000 or more.
- iii. **Fatal train incident** - Any train incident that involves a fatality to any on-duty railroad employee.
- iv. **Passenger train accident** - Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold) involving a passenger train.
- v. **Human-factor highway-rail grade crossing accident/incident.** A highway rail grade crossing accident/incident when it involves:

Alcohol and Substance Abuse

MED-005

- 1) A Regulated Service Employee who interfered with the normal functioning of a grade crossing signal system, in testing or otherwise, without first taking measures to provide for the safety of highway traffic that depends on the normal functioning of such system, as prohibited by § 234.209 of this chapter;
- 2) A train crewmember who was, or who should have been, flagging highway traffic to stop due to an activation failure of the grade crossing system, as provided by § 234.105(c)(3) of this chapter;
- 3) A Regulated Service Employee who was performing, or should have been performing, the duties of an appropriately equipped flagger (as defined in 49 CFR § 234.5 due to an activation failure, partial activation, or false activation of the grade crossing signal system, as provided by 49 CFR § 234.105(c)(1)(2), 49 CFR § 234.106, or 49 CFR § 234.107(c)(1)(i);
- 4) A fatality to any Regulated Service Employee performing duties for the railroad, regardless of fault; or
- 5) A Regulated Service Employee who violated an FRA regulation or railroad operating rule and whose actions may have played a role in the cause or severity of the accident/incident.

Exceptions - Except for a human-factor highway-rail grade crossing accident/incident as described above: No test shall be required in the case of a collision between railroad rolling stock and a motor vehicle or other highway conveyance at a rail/highway grade crossing. No test shall be required in the case of an accident/incident, the cause and severity of which are wholly attributable to a natural cause (e.g., flood, tornado or other natural disaster) or vandalism or trespasser(s), as determined on the basis of objective and documented facts by the railroad representative responding to the scene.

In the event of an accident requiring a toxicological test, a Supervisor must contact the Assistant Director-Employee Services or designee to advise of the use of a toxicological test kit and the need for a replacement.

The determination of whether an FRA Post Accident test is required should be made based on the above and review of the FRA's most current Post Accident Testing Criteria flowchart.

b. Commercial Drivers

The FMCSA regulations set forth in 49 CFR § 382.303 on the control of alcohol and drug use require toxicological testing as soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce. The LIRR shall test for alcohol and controlled substances for each surviving driver:

- i. Who was performing safety-sensitive functions with respect to the vehicle, if the accident/incident involved the loss of human life; or
- ii. Who receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

Alcohol and Substance Abuse

MED-005

- 1) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- 2) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Alcohol Test - If a test required by this section is not administered within two (2) hours following the accident/incident, the LIRR shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a required test is not administered within eight (8) hours following the accident/incident, the LIRR shall cease attempts to administer an alcohol test and shall prepare and maintain the same record. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

Controlled Substance Test - If a required test is not administered within thirty-two (32) hours following the accident/incident, the LIRR shall cease attempts to administer a controlled substance test, and prepare and maintain on file a record stating the reasons the test was not promptly administered. Records shall be submitted to the FMCSA upon request of the Associate Administrator.

A driver who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident/incident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident/incident or to obtain necessary emergency medical care.

Exceptions - No test shall be conducted for:

- 1) An occurrence involving only boarding or alighting from a stationary motor vehicle;
- 2) An occurrence involving only the loading or unloading of cargo; or
- 3) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR Part 382.303 § 571.3) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR Part 382.303 § 177.823.

In the event of an accident requiring toxicological testing, a Supervisor must contact the Assistant Director-Employee Services or designee.

6. Federal Return-to-Duty and Follow-up

- a. Any Regulated Service Employee or Commercial Driver who has pled guilty to engaging in conduct in violation of federal regulations (i.e., FRA or FMCSA) as applicable must pass a federal drug and/or alcohol test in order to return to his/her position.

Alcohol and Substance Abuse**MED-005**

- a. Regulated Service Employees are subject to Random testing under federal authority.
- b. Commercial Drivers are subject to Random testing under federal authority.
- c. Safety Sensitive Employees are not subject to Random testing.
- d. Non-Safety Sensitive Employees are not subject to Random testing.

3. Reasonable Suspicion

- a. Regulated Service Employees are subject to Reasonable Suspicion testing under federal authority.
- b. Commercial Drivers are subject to Reasonable Suspicion testing under federal and LIRR authority.

Note: Commercial Drivers will be subject to federal Reasonable Suspicion testing in all instances except when an alcohol test is being given based on a Supervisor's observation that was made at a time other than just prior to, during, or just after the time the Commercial Driver is performing safety-sensitive (FMCSA) functions.

- c. Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Reasonable Suspicion testing under LIRR authority.

4. Reasonable Cause

- a. Regulated Service Employees are subject to Reasonable Cause testing under LIRR authority.
- b. Commercial Drivers are subject to Reasonable Cause testing under LIRR authority.
- c. Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Reasonable Cause testing under LIRR authority.

5. Post-Accident

- a. Regulated Service Employees are subject to FRA Post Accident testing under federal authority.
- b. Commercial Drivers are subject to FMCSA Post-Accident testing under federal authority.
- c. Safety Sensitive Employees are not subject to Post Accident Testing.
- d. Non-Safety Sensitive Employees are not subject to Post Accident Testing.

6. Federal Return-to-Duty and Follow-Up Testing

Note: This category of Return-to-Duty testing applies only to those employees returning to duty following a violation of federal drug and alcohol regulations.

- a. Regulated Service Employees are subject to Federal Return-to-Duty and Follow-Up testing under federal authority.
- b. Commercial Drivers are subject to Federal Return-to-Duty and Follow-Up testing under federal authority.
- c. Safety Sensitive employees are not subject to Federal Return-to-Duty and Follow-Up testing.

Alcohol and Substance Abuse

MED-005

- d. Non-Safety Sensitive employees are not subject to Federal Return-to-Duty and Follow-Up testing.

7. Discretionary Testing

- a. Regulated Service Employees are subject to Discretionary testing under LIRR authority.
- b. Commercial Drivers are subject to Discretionary testing under LIRR authority.
- c. Safety Sensitive employees are subject to Discretionary testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Discretionary testing under LIRR authority.

8. Periodic

- a. Regulated Service Employees are subject to Periodic testing as applicable under LIRR authority.
- b. Commercial Drivers are not subject to Periodic testing.
- c. Safety Sensitive employees are not subject to Periodic testing.
- d. Non-Safety Sensitive employees are not subject to Periodic testing.

9. CDL Medical Examinations

- a. Regulated Service Employees are not subject to CDL Medical Examination testing.
- b. Commercial Drivers are subject to CDL Medical Examination testing under LIRR authority.
- c. Safety Sensitive employees are not subject to CDL Medical Examination testing.
- d. Non-Safety Sensitive employees are not subject to CDL Medical Examination testing.

10. Return-to-Duty

Note: This category of Return-to-Duty testing applies only to those employees returning to duty following an absence of thirty (30) calendar days or more OR following a violation of this Policy that was not also a violation of federal regulations.

- a. Regulated Service Employees are subject to Return-to-Duty testing under LIRR authority.
- b. Commercial Drivers are subject to Return-to-Duty testing under LIRR authority.
- c. Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority.
- d. Non-Safety Sensitive employees are subject to Return-to-Duty testing under LIRR authority when specified following a violation of LIRR policy; they are not subject to Return-to-Duty testing following an absence of thirty (30) calendar days or more.

VII. RESOURCES**A. LIRR Employee Assistance Program (EAP) – (347) 494 - 6285**

1. EAP is an employee benefit available to all employees and their family members. EAP's role is to offer professional assistance in the form of short-term confidential counseling and referrals for a wide range of personal assistance, including alcohol/substance abuse.
2. Regarding alcohol/substance abuse, an EAP Substance Abuse Professional qualified by experience, education, and training (a) counsels persons affected by alcohol and/or substance abuse and evaluates their recovery; and (b) provides alcohol and drug awareness training to Supervisors.

B. An employee may seek the confidential services of the EAP regarding his/her use of controlled substances and/or alcohol or may be referred by a Supervisor, another employee, the employee's union representative or as a condition of discipline. All requests for information and assistance are held in the strictest confidence except when written permission is given by the employee or disclosure is required by law or other authority.

C. Health Insurance Benefits - The LIRR's group health insurance plans include coverage for alcohol and/or drug abuse treatment.

D. Referral Programs (FRA) – A Regulated Service Employee will be classified as participating in a Referral Program from the time he/she seeks assistance through LIRR's designated DAC, provided that said assistance is requested before the employee has been charged with conduct deemed by LIRR sufficient to warrant dismissal, except as noted in Section VII.D.5. below, and that the employee reports to the DAC either (1) during non-duty hours or (2) while unimpaired and otherwise in compliance with this Policy. A referred employee may maintain an employment relationship with the LIRR subject to the conditions and procedures of Federal regulations and LIRR policies.

1. A Voluntary Referral is designed to encourage and facilitate the identification of a Regulated Service Employee with a drug and/or alcohol issue by providing the employee the opportunity to obtain counseling or treatment before this issue manifests itself in a safety concern for the Regulated Service Employee or others or a violation of Federal regulation and/or LIRR policy.
2. A Co-Worker Referral is designed to encourage co-worker participation in avoiding safety concerns based on a Regulated Service Employee's drug and/or alcohol issue or a violation of Federal regulation and/or LIRR policy. A Regulated Service Employee may be classified as a Co-Worker Referral following an alleged offense of the LIRR's Alcohol and Drug Policy, provided the alleged violation is brought to the attention of the LIRR by the Regulated Service Employee's Co-Worker. The Co-Worker must report that the Regulated Service Employee was apparently unsafe to work with or was, or appeared to be, in violation of the LIRR's Alcohol and Drug Policy. The Regulated Service Employee must accept a referral to the DAC to be considered a Co-Worker Referral.

3. Referral Program Provisions

- a. The DAC will handle the referral and all subsequent counseling and treatment as confidential except as indicated in Section VII.D.4 (below).
 - b. The DAC will schedule the necessary interviews with the Regulated Service Employee and complete an evaluation within ten (10) calendar days of the date the Regulated Service Employee contacted the DAC with the request to be evaluated.
 - c. At the time a referred Regulated Service Employee requests assistance through the LIRR for an alcohol or drug problem, he/she will be granted a leave of absence from the LIRR for the minimum time recommended by the DAC to complete a primary education, counseling, or treatment program and establish control over the employee's drug or alcohol abuse problem.
 - d. A referred Regulated Service Employee will be returned to service on the recommendation of the DAC upon compliance with any recommended return-to-service requirements and the successful completion of a return-to-duty medical examination if required under the Regulated Service Employee's applicable collective bargaining agreement or LIRR policy. Approval to return to service will not be unreasonably withheld.
4. Waiver of Confidentiality – Locomotive Engineers, Conductors, or Candidates for Certification – Per Section VIII.D. below, the policy of confidentiality for certified Locomotive Engineers, certified Conductors, or Candidates for Certification in a referral program as referenced in 49 CFR 219 Subpart K is waived to the extent that the LIRR shall receive from the DAC official notice of the Substance Abuse disorder and shall suspend or revoke the certification as appropriate if the person at any time refuses to comply with the recommended course of counseling or treatment.

Waiver of Confidentiality – Regulated Employees – Per Section VIII.D below, the policy of confidentiality for Regulated Employees in a referral program as referenced in 49 CFR 219 Subpart K is waived to the extent that the LIRR shall receive from the DAC official notice of the Substance Abuse disorder if the employee at any time refuses to cooperate in a DAC's recommended course of counseling or treatment.

5. Consistent with 49 CFR 219.1001(d)(2), the LIRR is not required to adhere to a voluntary, co-worker, or non-peer referral program when the referral is made for the purpose, or with the effect, of anticipating or avoiding the imminent and probable detection of a violation of any Federal or LIRR rule, policy, or procedure by a supervising employee.

VIII. CONFIDENTIALITY

- A. No Supervisor or employee may disclose to any individual any drug and/or alcohol use or testing information concerning any other employee, unless: such disclosure is necessary for compliance with this Policy or applicable federal law/regulations; or the employee has signed a release authorizing the disclosure of such confidential information.
- B. All records maintained in the course of carrying out the procedures described in this Policy and under federal drug and alcohol testing laws must be maintained in a separate, locked

Alcohol and Substance Abuse**MED-005**

file pursuant to the LIRR Confidentiality & Security of Personal Identifying Information Policy, EMPL-007.

- C.** If an employee discloses the information or records described above to any other individual for any reason, except as permitted above, the employee may be subject to administrative or disciplinary action, up to and including dismissal.
- D.** Consistent with §§240.119(e) and 242.115(g) of federal regulations, for a certified Locomotive Engineer, certified Conductor, or a candidate for Engineer or Conductor certification, confidentiality is waived (to the extent the railroad receives from a DAC official notice of the active drug abuse disorder and suspends or revokes the certification, as appropriate) if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

Consistent with §§219.1005 of federal regulations, for a Regulated Employee, confidentiality is waived if the employee at any time refuses to cooperate in a recommended course of counseling or treatment.

IX. RELATED POLICIES

MED-002 - Americans with Disabilities Act (ADA)
LEAVE-003 - Family and Medical Leave Act (FMLA)
MED-001 - Medical Assessment Policy
EMPL-007 – Confidentiality & Security of Personal Identifying Information Policy

X. ATTACHMENTS

Attachment A – Titles Designated as MOW/RWP Employees and titles which may be designated as MOW/RWP Employees
Attachment B – Federal and LIRR Drug Panels
Attachment C – Guidance for Regulated Service Employees about 49 CFR Part 219

XI. REVISION TRACKING

June 2007

February 2008

April 2009

June 2014 - The Policy was scheduled for review per CP&P BPM-001 – Issuance of Corporate Policies and Procedures. Updated the reference number to the Drug-Free Workplace Act from 41 U.S.C. § 701 to 41 U.S.C. § 8102.

June 2017 - The Policy was revised in compliance with 49 CFR Part 219; delineates when action is/may be taken under federal authority and under LIRR authority; adds a requirement that arrests/convictions by Regulated Service Employees, Commercial Drivers and Safety Sensitive Employees for violating drug/alcohol statutes in or out of the workplace must be reported pursuant to the Policy; and adds, as an attachment, information about drug testing panels under Federal/LIRR authority.

Alcohol and Substance Abuse

MED-005

-
- March 2018** - The Policy was revised in further compliance with 49 CFR Part 219, including §219.23 by adding: Attachment A, titles of MOW/RWP Employees and titles which may be designated as MOW/RWP Employees; and Attachment C, "Guidance for Regulated Service Employees about 49 CFR Part 219." Additional information was added to Section VII. of the Policy regarding Referral Program provisions and to Section VI.C. to clarify testing authority for test types. A reference to federal regulation was added to Section IV. to define a refusal to test.
- March 2020** - This Policy was revised to reflect changes in medication reporting requirements for FRA Regulated employees and CDL drivers; to distinguish between consequences for engaging in prohibited conduct and for non-reporting violations; to clarify the definition of Return to Duty testing; to reflect changes in Federal and LIRR Drug Panels (Attachment B).
- Dec. 2020** - This Policy was revised to reflect a change in the timeframe for consequences for engaging in prohibited conduct; to reflect a change in EAP's confidentiality provision for Regulated Service employees.
- March 2022** - This Policy was revised to reflect the addition of Mechanical Employees (MECH) to the Regulated Service Employees classification per 49 CFR 219. References to this classification were updated in the main body of the policy and in Attachment C. In addition, the Guidelines for Reasonable Cause testing for Regulated Service Employees have been updated to reflect changes in 49 CFR 219.

Guidance for Regulated Service Employees about 49 CFR Part 219¹

I. Introduction

Regulated Service Employees are subject to drug/alcohol testing under federal authority as provided in the Federal Railroad Administration (FRA)'s regulations in 49 CFR Part 219, <https://www.ecfr.gov/>. The general purpose of this program is to prevent accidents and casualties in railroad operations that result from impairment of employees by alcohol and/or drugs.

Regulated Service Employees are, like all LIRR employees, subject to drug/alcohol testing under LIRR authority as provided in the LIRR Alcohol and Substance Abuse Policy, MED-005 (sometimes referred to as the Policy), <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>.

Note: In some instances, drug/alcohol testing, prohibited conduct, and the consequences for engaging in prohibited conduct, may be stricter and/or broader under the Policy than under 49 CFR Part 219.

II. When an Employee is designated as a Regulated Service Employee

There are two employee classifications that come under the heading of "Regulated Service" in 49 CFR Part 219.

A. The first classification, Covered Service Employees, refers to employees who perform work under the Hours of Service laws or who are subject to performing such service. The titles of employees who generally perform Covered Service are listed in Section III.B.1.a. of the Policy at page 2. Covered Service Employees have been subject to drug/alcohol testing under 49 CFR Part 219 for many years.

Note: Covered Service does not include any period when the employee is relieved of all responsibilities and is free to come and go without restriction.

B. Effective June 12, 2017, FRA added a **second classification** of employees to its federal drug/alcohol testing program: employees who perform Maintenance of Way (MOW) activities.

- LIRR refers to this employee classification as Maintenance of Way/Roadway Worker Protection (MOW/RWP) Employees. The duties performed by employees in this classification are described in Section III.B.1.b. of the LIRR Alcohol and Substance Abuse Policy at Page 2. The titles of employees designated as MOW/RWP Employees and who may be designated as MOW/RWP Employees are listed in Attachment A to the Policy.

¹ Per 49 CFR §219.23, this Guidance is an educational material provided to Regulated Service Employees as Attachment C to the LIRR Alcohol and Substance Abuse Policy, MED-005, <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>.

C. Effective March 4, 2022, FRA added a **third classification** of employees to its federal drug/alcohol testing program: employees who, on behalf of a railroad, perform mechanical tests or inspections required by parts 215, 221, 229, 230, 232, or 238 of the CFR on railroad rolling equipment, or its components. This includes employees from the following positions/areas if they are performing the work specified above: Car Repairman, Electrician, Gang Foremen, Machinist, Road Car Inspectors, Sheet Metal Workers, and Management. This classification is referred to going forward as MECH.

An employee is designated as performing Regulated Service (subject to drug/alcohol testing under federal authority) if he/she is likely to perform Covered Service ~~or~~, MOW/RWP, or MECH duties **at least four (4) times annually or an average of once a quarter.**

III. 49 CFR 219 Prohibitions²

49 CFR Part 219 §§101-103 prohibits the use/possession of alcohol or any **controlled substance**³ by a Regulated Service Employee when on duty and subject to performing Regulated Service, and provides:

- No FRA-Regulated employee may report for Regulated Service, or go or remain on duty in Regulated Service, while—
 - Under the influence of or impaired by alcohol;
 - Having 0.04 or more alcohol concentration in the breath or blood; or
 - Under the influence of or impaired by any controlled substance.
- No FRA-Regulated employee may use alcohol for whichever is the lesser of the following periods:
 - Within four (4) hours of reporting for Regulated Service; or
 - After receiving notice to report for Regulated Service.
- No FRA-Regulated employee whose alcohol test under 49 CFR Part 219 indicates an alcohol concentration of 0.02 or greater but less than 0.04 may perform or continue to perform Regulated Service for LIRR, nor may LIRR permit the FRA-Regulated employee to perform or continue to perform Regulated Service, until the start of his/her next regularly scheduled duty period, but not less than eight (8) hours following the test.
- Regulated Employees found to have violated subpart B of 49 CFR 219 will be removed immediately from Regulated Service.

² For additional information, see Section IV (Prohibited Conduct) and Section V (Consequences of Engaging in Prohibited Conduct) of the Policy at pages 4-7.

³ Section III.A.2. of the Policy at page 1 lists the FRA definition of Controlled Substances as:

All substances listed in Schedules I to V as set forth in 21 C.F.R. 802 Parts 1301-1316, or as the Schedules may be revised from time to time by publication in the Federal Register. Controlled Substances include Narcotics/Opiates, Depressants, Stimulants, Hallucinogens, and Cannabis.

Note: Under LIRR Authority:

- A positive alcohol test result of 0.02 but less than 0.04 is a violation of the Policy and may result in discipline up to and including dismissal.
- A positive alcohol test result of 0.04 or higher is a violation of the Policy and may result in discipline up to and including dismissal.
- A positive drug test is a violation of the Policy and may result in discipline up to and including dismissal.

IV. Consequences of Engaging in Prohibited Conduct Include

- Regulated Employees found to have engaged in Prohibited Conduct (as designated in subpart B of 49 CFR 219) will be removed immediately from regulated service.
- Section V.A. of the Policy at Page 7 provides that employees determined to be in violation of the Policy will be subject to dismissal. At the discretion of the LIRR, employees may be offered a suspension of no less than six (6) months without pay with the following exceptions:
 - Locomotive Engineers, Conductors, or Candidates for Certification who test positive for alcohol at a level of 0.04 or greater may be offered a suspension of no less than nine (9) months without pay;
 - An employee who refuses to test may be offered a suspension of no less than nine (9) months without pay;
 - Section V.E. of the Policy at Page 7 references consequences for non-reporting.
- A represented employee may be offered the opportunity to sign a Trial Waiver ~~and~~ a Last Chance Agreement after a first violation of this Policy and will be dismissed after a second violation.

V. Restrictions on Regulated Service Employee Use of Over-The-Counter (OTC) and Prescription Medications

- Attachment B to the Policy lists the current drug panels under federal authority and under LIRR Authority. Federal and LIRR drug panels are subject to change at any time without notice.
- Effective ~~June 12, 2017, MOW/RWP~~ March 4, 2022, MECH employees became subject to the restrictions regarding OTC and prescription medications in 49 CFR Part 219 which already applied to Covered Service Employees ~~and MOW/RWP Employees (effective June 12, 2017).~~
- All Regulated Service Employees are **prohibited** from working while taking any prescription and/or OTC medications other than those listed below unless the Medical Review Officer (MRO) determines that such usage is consistent with the safe performance of his/her duties. See Section IV.F. of the Policy at Page 5.
- The only types of medications that do not need to be reported to Medical prior to working while taking them are listed below:
 - Allergy shots;
 - Antibiotics;
 - Antifungals;
 - Asthma medications;
 - Beta-blockers;
 - Birth control pills;
 - Blood pressure medications;
 - Cholesterol medications;
 - Cough drops;
 - ~~Ear~~ Ear drops;
 - ~~Erectile dysfunction~~ Erectile dysfunction medications;
 - Joint injections;
 - Laxatives;
 - Stool softeners;

- Reflux medications;
- Topical products (i.e., creams/ointments);
- Vaccines;
- Vitamins (ex.: A, B, C, D, E);
- Over-the-counter medications that do not have a safety-related warning on their label.

Reminder: If you are considering taking a prescription and/or OTC medication(s) other than those listed above, bring this to the attention of the LIRR Medical Facility **as soon as possible during Medical's business hours (Monday through Friday, 7:30 a.m. – 4:00 p.m.) or on Saturday or Sunday from 9:00 a.m. – 12:00 p.m.** You cannot work unless the MRO has determined in advance that you can and his/her decision is final and binding.

Note: A prescription medication has to have been prescribed **for you**, not someone else.

VI. Drug/Alcohol Testing – Types of Testing

- **Types of Tests** - As a Regulated Service Employee, you are required to submit to alcohol and drug tests administered in accordance with 49 CFR 219 and are subject to the following types of drug and/or alcohol Testing under federal authority: 1) *Pre-Placement*; 2) *Reasonable Suspicion*; 3) *Post-Accident*; 4) *Random*; 5) *Follow-up*.
- A description of the circumstances when each type of drug/alcohol test under 49 CFR Part 219 can be conducted is in Section VI. of the Policy at Pages 7 – 15; this also notes additional testing that may be performed under LIRR authority.
- The LIRR does not perform Reasonable Cause testing under federal authority; all Reasonable Cause testing is performed under LIRR authority.

Steps Taken to Protect the Integrity of the Testing Process

- All federal alcohol and drug testing is performed by Breath Alcohol Technicians (BATs) and urine specimen collectors who have been certified in the requirements of 49 CFR Part 40 and strictly follow U.S. Department of Transportation (DOT) guidelines for testing.
- Employees confirm all relevant and identifying information on the Alcohol Testing Form and Chain of Custody form at the time of testing; they also witness the sealing of the urine specimen bottles and initial both bottles.
- The alcohol testing device used is calibrated on a regular basis.
- Urine specimens are sent to a laboratory certified by the U.S. Department of Health and Human Services.
- Results are reviewed by the MRO and MRO Assistant and communicated only with LIRR personnel on a need-to-know basis.

Steps Taken to Maintain Confidentiality of the Testing Process

- Medical information which the employee provides to the MRO during the verification process is treated as confidential by the MRO and is not communicated to LIRR personnel except as required in 49 CFR Part 40.
- The laboratory observes confidentiality requirements as provided in the regulations. The LIRR does not advise the laboratory of the identity of persons submitting specimens. The laboratory performing the testing must keep all records pertaining to the drug test for a period of two (2) years.
- All test results remain exclusively in the secure files of the MRO. The MRO will observe strict confidentiality in accordance with the regulations and professional standards. The MRO retains the reports of individual test results as required in 49 CFR Part 219 Subpart J.
- The LIRR's Designated Employer Representative (DER) maintains all test results reported by the MRO, both positive and negative, in secure storage. The results are retained as required in 49 CR Part 219 Subpart J. Other personnel are informed of individual test results only in the case of positive tests and only on a need-to-know basis.

VII. Drug Testing - What is a Refusal?

Under 49 CFR Part 40, a Regulated Service Employee will be considered to have **REFUSED A DRUG TEST** under 49 CFR Part 219 **if he/she:**

- Fails to appear for any test within a reasonable time, as determined by the LIRR after being directed to do so by the LIRR.
- Fails to remain at the testing site until the testing process is complete.
- Fails to provide a urine specimen for any drug test required. (There is a limited exception under certain circumstances for pre-employment test.)
- In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of his/her provision of a specimen under 49 CFR §§40.67(l) and 40.69(g)).
- Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (per 49 CFR §40.193(d)(2)).
- Fails or declines to take an additional drug test the LIRR or collector has directed him/her to take (per 49 CFR §40.197(b)).
- Fails to undergo a medical examination/evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under §40.193(d).

- Fails to cooperate with any part of the testing process. *Examples:* refusal to empty pockets when directed by the collector; behavior that disrupts the collection process; fail to wash hands after being directed to do so by the collector.
- For an observed collection, fails to follow the observer's instructions to: raise his/her clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if he/she has any type of prosthetic or other device that could be used to interfere with the collection process.
- Possesses or wears a prosthetic or other device that could be used to interfere with the collection process.
- Admits to the collector or MRO that he/she adulterated or substituted the specimen.

VIII. Alcohol Testing - What is a Refusal?

Under 49 CFR Part 40, a Regulated Service Employee will be considered to have **REFUSED AN ALCOHOL TEST** under 49 CFR Part 219 **if he/she:**

- Fails to appear for any test within a reasonable time, as determined by the LIRR, after being directed to do so by the LIRR.
- Fails to remain at the testing site until the testing process is complete.
- Fails to provide an adequate amount of saliva or breath for an alcohol test.
- Fails to provide a sufficient breath specimen, and the MRO has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure.
- Fails to undergo a medical examination or evaluation, as directed by the LIRR as part of the insufficient breath procedures outlined above.
- Fails to sign the required certification.
- Fails to cooperate with any part of the testing process.

IX. Consequences for Violations Include but are not Limited to:

- Immediate Removal from Service.
- Dismissal.
- **Reminder:** See Section V. of the Policy (Consequences of Engaging in Prohibited Conduct) at page 7 for additional information.

X. Information Concerning the Effects of Alcohol and Drug Misuse

Employment:

In the workplace, employees who misuse alcohol and other drugs often have issues including lost productivity, absenteeism, injuries, fatalities, theft, and low employee morale; employers may experience an increase in healthcare costs and legal liabilities.

Impairment in cognition, perception, and motor skills at work create a dangerous environment for the user and his or her co-workers.

Home Life:

Drug and alcohol use can also damage relationships at home. Families are often negatively impacted by the effects of drugs. They may feel helpless, angry, embarrassed or ashamed. They might even begin to exclude the individual struggling with addiction from family and social gatherings. Substance abuse often increases the likelihood of domestic violence and erratic behavior.

Health and Well-being:

Drug and alcohol abuse negatively impacts both physical and mental health. Misuse of these drugs may cause blackouts, poisoning, overdose, physical and psychological dependence, damage to vital organs such as the brain, heart, and liver and may result in death. Psychological problems as a result of the misuse of alcohol and drugs include depression, psychosis, severe anxiety, impaired judgment and coordination. Drug & Alcohol abuse are also associated with acquaintance assault and rape, DUI/DWI arrests, falls, drowning and other injuries, contracting sexually transmitted diseases including HIV, and unwanted or unplanned sexual experiences and pregnancy.

XI. Signs and Symptoms of an Alcohol or Drug Problem

Physical warning signs of drug abuse or addiction may include:

- Bloodshot eyes;
- Pupils larger or smaller than usual;
- Changes in appetite or sleep patterns;
- Sudden weight loss or weight gain;
- Deterioration of physical appearance and/or personal grooming habits;
- Unusual smells on breath, body, or clothing;
- Tremors, slurred speech, or impaired coordination.

Behavioral warning signs of drug abuse or addiction may include:

- Drop in attendance and performance at work;
- Unexplained financial problems; borrowing or stealing;
- Engaging in secretive or suspicious behaviors;
- Sudden change in friends, favorite hangouts, and hobbies;
- Frequently getting into trouble (fights, accidents, illegal activities).

Psychological warning signs of drug abuse or addiction may include:

- Unexplained change in personality or attitude;
- Sudden mood swings, irritability, or angry outbursts;
- Periods of unusual hyperactivity, agitation, or giddiness;
- Lack of motivation; appears lethargic or "spaced out";
- Appears fearful, anxious, or paranoid.

At the Long Island Rail Road, observation of any of the following criteria by a trained supervisor may result in a Reasonable Suspicion drug and/or alcohol test:

- Staggered gait/difficulty walking;
- Slurred speech;
- Drowsiness/sleepiness;

Alcohol and Substance Abuse**MED-005**

- Odor of an intoxicant;
- Disorientation (time/place/person):
- Rapid mood swings with no apparent reason;
- Poor coordination or body control.

XII. Available Methods of Evaluating and Solving Problems

Any New York State Office of Alcoholism and Substance Abuse Services (OASAS) approved treatment facility is qualified to evaluate the individual and the impact of his or her drug and alcohol use. If needed, these facilities can suggest a treatment plan. The LIRR's Employee Assistance Program (EAP) only refers employees to OASAS approved facilities who are willing and able to provide EAP with proper documentation. The facilities must actively partner with EAP in treating the employee and returning him or her to work when sober and able to safely perform their duties.

EAP is available to employees and their family members for assistance with a wide variety of issues. EAP staff also act as the LIRR's designated Substance Abuse Professionals (SAP) and Drug and Alcohol Counselors (DACs) and can provide information concerning the effects of alcohol and drug misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol or drug problem (the employee's or a coworker's); and available methods of evaluating and resolving problems associated with the misuse of alcohol and drugs.

To contact EAP, call (347) 494-6285.

- *EAP is located at 300 Old Country Road, Suite 103, Mineola, NY 11501.*

Reminder: Information about EAP's confidential counseling and services, including Voluntary and Co-Worker Referrals, is in Section VII. of the Policy at pages 18-21.

XIII. More Questions?

- If you have questions about why you were designated as a Regulated Service Employee, contact your department.
- If you have questions about 49 CFR Part 219 after checking the regulations, <https://www.ecfr.gov/>, contact Don Eccleston, Deputy Chief Safety Officer – Compliance and Performance at (347) 494-6021.
- If you have questions about the LIRR Alcohol and Substance Abuse Policy after checking the Policy, <http://www.lirr.org/CorporateDocs/Policies/HR/MED-005.pdf>, contact Christopher M. Yodice, Assistant Director – Employee Services at (347) 494-6276.

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**
Effective Date: February 15, 1986
Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012
Page 1 of ~~18~~16

I. SUMMARY

Metro-North Railroad (MNR) is committed to operating and maintaining an alcohol-free and drug-free workplace to provide a safe environment for its Employees and customers. All sites at which Company business is conducted, including all vehicles used for business or commuting purposes, are to be drug and alcohol-free.

MNR policies prohibit all Employees from using or possessing alcohol during an Employee's tour of duty, while an Employee is on MNR property or while otherwise engaged in MNR business, and/or when such use would make him or her unfit to report for duty or to be on-duty. MNR prohibits the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances in the workplace. Additionally, the unlawful use of any drug or controlled substance at any time is prohibited.

MNR requires all Employees to abide by the terms of these policies as a condition of employment and/or the performance of duties. Employees who violate these policies are subject to disciplinary action, up to and including termination from employment at MNR. MNR conducts alcohol and drug testing of Employees under the circumstances required by federal regulations and/or as specified herein. Employees are encouraged to familiarize themselves with the alcohol and drug testing procedures covering their respective job titles.

MNR, in accordance with DOT (49 CFR § 40, 219, and 382) and Non-DOT (Company Authority) testing reserves the right to require or take immediate action(s) to perform Reasonable Cause and/or Reasonable Suspicion alcohol and drug testing, and to remove from safety-sensitive duties any Employee and/or Contractor performing any work related to railroad activities.

This Corporate Policy and Operating Procedure (Procedure), provides a general overview of the United States Department of Transportation (DOT) drug use and alcohol misuse prevention rules for the commercial transportation industries that apply to MNR and its Employees. This Procedure also sets forth rules and procedures of MNR addressing alcohol and substance abuse that are in addition to the applicable DOT rules. Regulated Service (Note: Regulated Service includes ~~both~~ Covered Employees [as defined in 49 U.S.C. Sections 21101-21108](#), and Maintenance of Way Employees, as defined in 49 CFR Part 214.7, [and Mechanical Employees as defined in 49 CFR Part 219.5](#)) Employees and Commercial Motor Vehicle Drivers are advised to consult the specific rules published by the DOT agencies for the detailed DOT agency requirements applicable to them. Regulated Service Employees should also familiarize themselves with applicable provisions of collective bargaining agreements. Materials related to drug and alcohol policies are issued regularly and are available to any Employee by accessing MNR's Intranet, or by contacting a Supervisor or the Human Resources Department.

MNR will hold any Employee who engages in the illegal use of drugs or who suffers from a drug-use or an alcohol-use disorder to the same qualification standards for employment or job performance and behavior (such as attendance) to which the Company holds its other Employees, even if unsatisfactory performance, behavior, or rule or policy infractions are related to the Employee's drug and/or alcohol use. MNR encourages all Employees to voluntarily seek assistance with alcohol and drug related problems and provides a qualified Employee Assistance Program (EAP) for all Employees.

This Procedure does not supersede the applicability and enforceability of other agreements, rules, policies and regulations. Employees must comply with all agreements, rules, policies and regulations applicable to their employment and must at all times satisfy the performance standards applicable to their employment.



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**
Effective Date: February 15, 1986
Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012
Page 2 of ~~18~~16

This Procedure does not supersede ~~the~~ MNR's rights and obligations set forth in the Code of Federal Regulations concerning the certification and procedures of locomotive engineers and conductors.

Nothing in this Procedure prohibits MNR from taking administrative or disciplinary action, up to and including dismissal, with or without conducting drug and/or alcohol testing, when there is a violation of, or reasonable suspicion of a violation of, this Procedure.

II. PROHIBITED EMPLOYEE CONDUCT

All sites at which MNR business is conducted, including all vehicles used for business purposes, are to be drug and alcohol-free workplaces.

1. On-Duty Use of Alcohol/Controlled Substances. All Employees are prohibited from using alcoholic beverages, intoxicants or controlled substances while subject to duty or while on-duty.
2. Possession of Alcohol. All Employees are prohibited from possessing alcoholic beverages while subject to duty or while on-duty.
3. Alcohol Prohibition at Sponsored Functions. Alcoholic beverages are prohibited at MNR sponsored functions.
4. On or Off-Duty Illegal Controlled Substance Activity, including Possession/Use. All Employees are prohibited from illegally manufacturing, distributing, selling, dispensing, possessing or using any illegally obtained controlled substance on or off-duty.
5. Possession of Drug Paraphernalia. All Employees are prohibited from possessing drug paraphernalia in the workplace.
6. Use of Medications by Safety Sensitive Employees. Safety Sensitive Employees' (as defined below in Section IV) use of prescription and/or over-the-counter (OTC) medications is subject to the following requirements:
 - a. Prescriptions
 1. The use of any ~~orally administered~~ prescription medication is required to be brought to the attention of a MNR Medical Review Officer (MRO) or designee by the Employee before performing service. Safety Sensitive Employees have an obligation to provide such notice as soon as practicable after receiving the prescription from the Employee's licensed medical professional. Each department with safety-sensitive Employees must designate alternative point(s) of contact to receive such notice in the event the Medical Office is closed or the MRO is otherwise unavailable, and, upon receipt of such notice, the point of contact should confer with the Human Resources Department regarding appropriate next steps to determine the Employee's suitability for service.
 2. Prior to obtaining a prescription from his or her licensed medical practitioner, a Safety Sensitive Employee is expected to advise the licensed medical practitioner of the safety-sensitive classification of his or her job title and of his or her safety-sensitive duties.

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 3 of ~~48~~16

3. The MRO or designee, is required to make a determination regarding the risk, if any, created by the Safety Sensitive Employee's use of the prescribed medication while under the influence of such medication and to advise the Employee whether he or she should refrain from reporting for duty (or from continuing to perform his or her duties) while using or under the influence of such medication. Such a determination of the MRO or designee is final and binding.

~~3.4.~~ Performance of service by Safety Sensitive Employees while using or under the influence of a prescription medication in violation of these procedures is prohibited. Safety Sensitive Employees who fail to comply with these procedures are subject to discipline, up to and including dismissal. See the accompanying OHS issued document for safe prescription drug use guidelines.

b. OTC Medications

1. The use of certain ~~orally administered~~ OTC medications, whether at the suggestion of a licensed medical professional or otherwise, may also have an adverse and unacceptable impact upon the Safety Sensitive Employee's performance of his or her job-related responsibilities. See the accompanying OHS issued document for safe OTC drug use guidelines.
2. With respect to any ~~orally administered~~ OTC medication that does not appear in the safe OTC drug use guidelines, Safety Sensitive Employees are required to follow the notice and authorization procedures set forth above under Section II.6(a) (1) and (3). Any questions regarding the possible impact of an OTC medication should be directed to the MRO.
3. In the event a Safety Sensitive Employee, while using such an OTC drug that does not appear in the safe OTC drug use guidelines, experiences drowsiness, fatigue, or other side effects that create concern regarding the safety impacts of use of such OTC drug by the Safety Sensitive Employee in connection with the performance of his/her safety-sensitive duties, s/he must contact his or her Supervisor or the employer's MRO immediately and follow his or her direction as to the Safety Sensitive Employee's fitness for duty for the shift they are working or next scheduled to work, and obtain advance authorization and review under Section II.6.(a) (1) and (3) of the use of such OTC drug in connection with any future report to duty while using or under the influence of such OTC drug.
4. Safety Sensitive Employee performance of service while using or under the influence of an OTC medication in violation of these requirements is prohibited.

Refusal to Test, Cooperate or Intentional Interference with Procedure. All Employees are prohibited from refusing to cooperate or from intentionally interfering with MNR's efforts to enforce this Procedure or related federal regulations, including, but not limited to, refusing to submit to a drug and/or alcohol test conducted pursuant to this Procedure or federal regulations, or tampering with the integrity of a breath or urine sample in connection with such tests.

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 4 of ~~18~~16

III. CONSEQUENCES OF ENGAGING IN PROHIBITED CONDUCT

1. Discipline/Dismissal. Employees violating this Procedure are subject to discipline, up to and including dismissal. MNR is not required to conduct drug and/or alcohol testing before taking disciplinary action, up to and including dismissal, for a violation of this Procedure.
2. Reasonable Cause Testing: Refusal or Detection of Prohibited Substance. When there is Reasonable Cause (as set forth below in Section VII), an Employee must take a breath, and/or urinalysis test in accordance with FRA regulations, or MNR Policies and Procedures. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Procedure.
3. Reasonable Suspicion Testing: Refusal of Test or Detection of Prohibited Substance. When there is Reasonable Suspicion (as set forth below in Section VII) that an Employee has used alcohol, intoxicants or a controlled substance while on-duty or while on-duty is under the influence of same, the Employee may be required to take a breath, and/or urinalysis test in accordance with FRA regulations or MNR Policies and Procedures. Employees who are requested to take a breath, and/or urinalysis test and refuse will be subject to dismissal. The detection of a prohibited substance, resulting from any required toxicological test, will constitute a violation of this Procedure.
4. Workplace Violation of Criminal Drug Statute. Under the federal Drug-Free Workplace Act, 41 USC §701, et seq., Employees convicted of violating a criminal drug statute in the workplace, must report the conviction to MNR's Human Resource Department – Planning & Administration Division located at 420 Lexington Avenue, 12th Floor within five (5) days of the conviction. Employees convicted of such a violation or who fail to report such a conviction may be subject to disciplinary action, up to and including dismissal. An Employee who has been convicted of such a violation must contact Metro-North's EAP Department to arrange for an in-person evaluation. No Employee will be permitted by MNR to return to duty following such a conviction without first receiving a written authorization from MNR's Occupational Health Services department ("OHS") to return to duty.
5. Off-Duty Misconduct. Employees may be subject to disciplinary action, up to and including dismissal, if MNR is notified of off-duty misconduct that can be established relating to alcohol and/or drug abuse (for example, a drug or alcohol related conviction) or the Employee's illegal manufacturing, distribution, dispensing, or possession of controlled substances. In accordance with MNR's Corporate Policy and Operating Procedure: 21-028, any person employed by MNR who is arrested and charged with a felony or misdemeanor (for example, Driving While Impaired) must notify MNR within 48 hours. This notification must be made in writing to the Human Resources Department – Planning & Administration division located on the 12th Floor, 420 Lexington Ave. The Employee must provide a copy of the court document setting forth the felony or misdemeanor charges within 5 days of receipt to Human Resources, Planning & Administration division. An Employee who has been convicted of a felony or misdemeanor that is drug or alcohol related must contact EAP to arrange for an in-person evaluation. Such an Employee may not return to work prior to receiving a return to duty evaluation with OHS and receiving written authorization to return to work.
6. Return to Duty. Any Employee who has engaged in conduct in violation of this Procedure must pass a drug and/or alcohol test to return to his/her position. The Employee may not return to active duty until the negative drug and alcohol results are received by MNR. In addition, that Employee may be subject to unannounced follow-up drug and/or alcohol testing as directed under federal laws and

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 5 of ~~18~~16

regulations, or as a condition of the discipline, as described under Section V.5.

7. Past or present involvement in a rehabilitation program, EAP, or with other treatment practitioners cannot serve as a defense nor mitigate the circumstances of alleged violations of Company rules, policies or laws.

IV. EMPLOYEE CLASSIFICATIONS RELEVANT TO TESTING PROGRAM

Regulated Service Employees - 49 CFR Parts 40, 219, and 382:

1. Covered Service Employees - Applies to all ~~covers~~ Employees who perform work regulated by the Federal Hours of Service Laws (49 U.S.C. §§ 21101-21108). the following titles: A. Locomotive Engineers; B. Conductors and Assistant Conductors; C. Rail Traffic Controllers; Yardmasters; D. Signal Foreman, Assistant Signal Foreman, Signal Maintainer, Signal Inspector, Signalman, Assistant Signalman, and Signal Helper; (while performing work covered by the Hours of Service Act), and E. Mechanical Department Electricians (while performing work covered by the Hours of Service Act).
2. Maintenance of Way/Roadway Work Protection Employees (MOW/RWP Employees) – Applies to all Employees who perform duties as Maintenance of Way workers as described in 49 CFR Part 214.7, including ~~Covers the following titles [representative list]: A. Track Workers; B. B&B employees; C. Track Inspectors; Power Employees; D. Welder; E. Track Supervisors; F.,~~ Conductor Flags and any Employees whose duties include inspection, maintenance or repair of railroad track, bridges, roadway, signal and communication systems, electric traction systems, roadway facilities or roadway maintenance machinery on or near track or with the potential of fouling a track and flagmen and watchmen/lookouts, ~~as defined in 49CFR 214.7.~~
3. Mechanical Employees – Applies to Employees who perform mechanical duties as defined in 49 CFR Part 219.5, which covers any Employee who performs mechanical tests or inspections required by parts 215, 221, 229, 230, 232, 238, or 299 of this chapter on railroad rolling equipment, or its components.

CDL Drivers (Commercial Driver’s License): Employees who occupy a job title that MNR has determined requires a commercial driver’s license (CDL) issued by a state authorizing operation of a commercial motor vehicle described in 49 CFR § 382.107 are classified as Commercial Drivers. Commercial Drivers are required to comply with this Procedure and with the alcohol and drug prohibitions and provisions in 49 CFR § 382 of the Federal Motor Carrier Safety Administration (“FMCSA”) regulations. This category includes non-agreement Employees performing service as Commercial Drivers.

Safety-Sensitive (“SS”) Employees: Safety Sensitive Employees are those Employees who perform service in job titles which the Company has determined involve tasks so fraught with risks of injury that even a momentary lapse of attention can have disastrous or irremediable consequences to the Employee or others. A list of the job titles the Company has designated as Safety-Sensitive is maintained by the Human Resources Department. Job titles of Regulated Service Employees and Commercial Drivers are included within the Safety Sensitive classification. This definition also includes agreement and non-agreement Employees in other job titles designated as Safety-Sensitive.

Non-Safety-Sensitive (“Non-SS”) Employees: Employees who do not perform service in job titles



Metro-North Railroad

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Number: 21-012

Effective Date: February 15, 1986

Page 6 of ~~48~~16

Revised Date: March ~~12, 2021~~~~XX~~, 2022

classified as Covered Employee, Commercial Driver, or Safety-Sensitive Employee. ~~Such employees~~Such Employees perform low risk tasks where non-performance of those tasks would not present immediate danger to Employees or others.

Other Defined Employees under the Procedure:

1. Peer or Co-Worker: Any Employee or union representative who is not the Supervisor of an Employee suspected of being in violation of this Procedure.
2. Supervisor: An officer, manager, or other Employee of the Company who is responsible for supervising or monitoring the conduct or performance of one or more Employees. This definition includes both agreement and non-agreement Supervisors.
3. Medical Review Officer ("MRO"): A licensed physician designated by Metro-North to receive laboratory results produced by the laboratory retained by the Company, to evaluate drug and/or alcohol tests, and to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information. An MRO may also be a licensed physician assigned to assess the safety risks of use of prescription and/or OTC medications by Safety Sensitive Employees.
4. Substance Abuse Professional ("SAP"): A person who evaluates Employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare. The SAP must meet the requirements of 49 CFR § 40.281. For purposes of this Procedure, the Company's EAP Counselor is the "SAP."
5. Drug and Alcohol Counselor ("DAC"): means a person who meets the credentialing and qualification requirements described 49CFR § 242.7.
6. Designated Employer Representative ("DER"): An Employee authorized by the employer to take immediate action(s) to remove Employees from safety-sensitive duties, or cause Employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The "DER" also receives test results and other communications for the employer, consistent with the requirements of 49 CFR § 40.

V. ADDITIONAL DEFINITIONS

1. ACCIDENT/INCIDENT: An event or occurrence related to MNR train operations that is required to be reported, including: fatality, injury, or illness; collision, derailment, and similar events involving the operation of on-track equipment that resulted in monetary damage in excess of the current reporting threshold; and impact between rail on-track equipment and highway users at crossings, if a human factor event occurs.
2. WORKPLACE: any location that MNR business is conducted, whether on or off MNR property.
3. SUBSTANCES:

~~a.~~ ALCOHOL: The intoxicating agent in beverage alcohol, ethanol, or other low molecular weight alcohols including methyl or isopropyl alcohol.

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Number: 21-012

Effective Date: February 15, 1986

Page 7 of 4816

Revised Date: March ~~12, 2021~~ XX, 2022

e-b. CONTROLLED SUBSTANCES: All substances listed in Schedules I to V as set forth in 21 CFR Part 1308, and referenced in the DOT guidelines (49 CFR Part 40). In addition to these controlled substances, MNR reserves the right to test for additional controlled substances, included below, but not limited to the following list:

- i. Narcotics/Opiates – Opium, Morphine, Codeine, Heroin, Hydromorphone, Meperidine (Demerol), Methadone, Oxycodone, Hydrocodone, Suboxone,
- ii. Depressants – Chloral Hydrate, Barbiturates, Benzodiazepines, Methaqualone (Qualudes), Glutethimide (Doriden),
- iii. Stimulants – Cocaine, Amphetamines, Phenmetrazine (Preludin), Methylphenidate (Ritalin), Methamphetamine
- iv. Hallucinogens – LSD, Mescaline and Peyote, Amphetamine Variants, Phencyclidine (PCP), Phencyclidine Analogies
- v. Cannabis – Marijuana, Tetrahydrocannabinol (THC), Hashish and Hashish Oil

e-c. DRUG: Any substance other than alcohol that has known mood or function-altering effects on humans, including but not limited to, controlled substances.

d. INTOXICANT: Any agent that produces intoxication, such as a drug or toxic substance or alcoholic beverages.

e. OVER-THE-COUNTER (OTC) DRUGS: Medications that do not require a prescription and that can be purchased from pharmacies or other retail establishments.

f. PRESCRIPTION DRUGS: Medication prescribed by licensed medical personnel or dentists for a specific course of treatment.

4. RESOURCES:

a. Employee Assistance Program (“EAP”): A confidential counseling program provided by the Company where licensed professionals assist Employees and their immediate family members with various work/life issues. Each EAP counselor is a certified Substance Abuse Professional (“SAP”) qualified to evaluate and counsel persons affected by alcohol and/or substance abuse problems and to provide the appropriate treatment and follow-up recommendations. Additionally, the EAP provides alcohol and substance abuse awareness training to Company managers and Supervisors.

b. MNR Reasonable Suspicion Signs and Symptoms Training: MNR– training course which provides instruction on the requirements of federal regulations, company policies and procedures, and rules regarding drug and alcohol use and testing.

5. VERIFIED POSITIVE TEST RESULT:

a. For a drug test: a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay and reviewed and verified as positive by an MRO in accordance with the procedures set forth in 49 CFR § 40 – “Procedures for Transportation Workplace Drug and Alcohol Testing Programs”.

b. For an alcohol breath test: an initial breath test performed on a DOT-approved “Evidential



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Number: 21-012

Effective Date: February 15, 1986

Page 8 of 4816

Revised Date: March ~~12, 2021~~ XX, 2022

Breath Testing” device, with a result of .02% or higher, confirmed by a second breath test conducted within the prescribed time limit. A reading of .04% or higher constitutes a Federal positive test for a Regulated Service Employee. A result .02-.039 ~~greater but less than .04~~ constitutes a positive test result under MNR Company Authority. Any result under .02 does not currently constitute a Federal violation or a violation of this policy Procedure.

6. DEFINED TYPES OF DRUG/ALCOHOL TESTING:

a-c. PRE-EMPLOYMENT/PRE-PLACEMENT TESTING: a drug test for those transferees or job applicants who have received offers to perform service for the Company in a job title classified as: a Regulated Service Employee (Covered Employee, Maintenance of Way or Mechanical Employee) Commercial Driver, or Safety-Sensitive Employee. No Employee may perform service as a Regulated Service Employee Covered, Commercial Driver, or Safety-Sensitive Employee before successfully passing a pre-placement drug test scheduled and administered under the direction of MNR’s Human Resources Department.

REASONABLE SUSPICION TESTING: a drug and/or alcohol test that must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors that are usually associated with drug and/or alcohol use that leads the Supervisor to believe that the Employee is unable to perform their essential job duties. All Employees are subject to drug and/or alcohol testing when reasonable suspicion exists. Section VII.2, 3 and 4 below provides additional detail concerning Reasonable Suspicion Testing in the contexts of (i) Company Authority Testing; (ii) ~~Covered~~ Regulated ~~Covered~~ Service Employee-Federally Mandated Testing; and (iii) Commercial Driver Federally Mandated Testing.

b-d. REASONABLE CAUSE TESTING: a drug and/or alcohol test following an accident/incident as defined in Section VII. 5 and 6 of this Procedure and definitions in the Code of Federal Regulations. The Company will test any Employee for drugs and/or alcohol following an accident/incident meeting specific criteria and/or when a Supervisor has a reasonable belief, based on specific, articulable facts, that the Employee’s acts or omissions contributed to the occurrence or the severity of the accident/incident. ~~for~~ for a rules violation. This testing will be conducted under Company Authority. MNR reserves the right to conduct reasonable cause testing under Non-DOT testing with criteria defined further in the policy.

e-e. POST-ACCIDENT TESTING: a drug and/or alcohol test after an accident that meets specific criteria set forth in 49 CFR § 219 and § 382.

e-f. RANDOM TESTING: a drug and/or alcohol test performed randomly under applicable Federal regulations and in accordance with the procedures set forth in MNR’s Plan for Random Selection for and Scheduling of Random Drug and Alcohol Testing (the “Plan”) and can also result from Company Authority Testing. ~~Covered Employee~~ Regulated ~~Covered~~ Service ~~ed~~ Employees and Commercial Driver Employees are subject to Random Testing. All Employees associated with random testing must ensure that all paperwork and associated materials must be are handled in a confidential manner.

e-g. RETURN-to-DUTY TESTING: a drug and/or alcohol test performed if a Regulated Service ~~Covered~~ Commercial Driver or Safety-Sensitive Employee has been absent from work for any reason for 14 days or more (or a lesser time period specified in a collective bargaining



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Number: 21-012

Effective Date: February 15, 1986

Page 9 of 4816

Revised Date: March ~~12, 2021~~XX, 2022

agreement). ~~This will apply to employees in a DOT covered position or safety sensitive position that return to duty after a positive drug and/or alcohol test.~~ Directly observed testing, as mandated and described in 49 CFR Part 40 ("Direct Observation Procedures"), will apply to ~~these and all unannounced follow-up tests.~~ Employees returning to duty after having previously failed a drug and/or alcohol test. The observer will be of the same gender as the Employee being tested.

f.h. FOLLOW-UP TESTING: an unannounced drug and/or alcohol test performed under applicable Federal regulations and at the direction of the SAP/DAC, after an Employee has engaged in conduct in violation of the CFR, and/or this Procedure.

VI. SUMMARY OF EMPLOYEE CLASSIFICATIONS SUBJECT TO VARIOUS TYPES OF DRUG AND ALCOHOL TESTING:

MNR Employees are subject to drug and/or alcohol testing as required or authorized by this Procedure and/or by applicable federal regulations.

A. FEDERALLY MANDATED TESTING

Federal regulations require Metro-North to conduct drug and alcohol testing under identified circumstances, as summarized below. (Definitions of each of the types of identified circumstances are contained in Section V.4 above and further details provided in Section VII.)

1. Regulated Service Employees - As set forth in 49 CFR § 219, the FRA requires MNR to conduct drug and/or alcohol testing of Regulated Service Employees in the following defined situations:
 - a. Pre-employment (including transfers to Regulated Covered Service)
 - b. Reasonable Suspicion,
 - c. Post-Accident,
 - d. Random,
 - e. Return to Duty ~~, and~~ (after completion of SAP ~~program~~)evaluation.
 - f. Follow-up.
2. Commercial Drivers - **As** set forth in 49 CFR § 382, the FMSCA requires MNR to conduct drug and/or alcohol testing of Commercial Drivers in the following defined situations:
 - a. Pre-employment (including transfers to Commercial Driver positions)
 - b. Reasonable Suspicion,
 - c. Post-Accident,
 - d. Random,
 - e. Return to Duty ~~, and~~ (after completion of SAP ~~program~~)evaluation.
 - f. Follow-up.

B. COMPANY AUTHORITY TESTING ~~Non-~~NON~~DOT:~~

In addition, MNR pursuant to this Procedure may determine to conduct drug and alcohol testing in defined circumstances, as stated herein ("Company Authority Testing").

1. All Metro-North Employees (without regard to Employee Classification) ~~)).~~ - Pursuant to this



Metro-North Railroad

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 10 of ~~18~~16

Procedure, MNR may conduct Company Authority drug and/or alcohol testing of any Metro-North Employee, without regard to the Employee's job classification under Section IV, in the following defined circumstances:

- a. Reasonable Suspicion,
- b. Reasonable Cause, or
- c. Follow-up.
- d. ~~Random~~

2. ~~Safety Sensitive Employees~~ - In addition to the circumstances set forth above for Company Authority testing relating to Metro-North Employees generally, Metro-North may conduct Company Authority testing of Safety-Sensitive Employees in any of the following defined circumstances:

- a. Pre-placement,
- b. Periodic Physical Examination,
- c. Return-to-Duty Physical Examination.

MNR may from time to time, under its own discretion, designate certain categories of Safety Sensitive Employees for random testing.

3. ~~Regulated Service Service Employees; Commercial CDL Drivers~~ - In addition to the circumstances set forth above for Company Authority testing relating to All Metro-North Employees generally (see B.1) and Company Authority testing of Metro-North Safety Sensitive Employees (see B.2), Metro-North may conduct Company Authority testing of Regulated ~~Service Service~~ Employees or Commercial Drivers in any of the defined circumstances in which federally mandated testing would apply to such Employee classification.

VII. CIRCUMSTANCES WHEN TYPES OF TESTING WILL BE PERFORMED

1. Pre-Employment/Pre-Placement

- a. The Human Resources Department will schedule a pre-placement drug test for those applicants or transferees who have received offers to perform service for MNR as (1) Regulated ~~Service Service~~ Employees, (2) ~~Commercial~~ CDL Drivers, or (3) Safety-Sensitive Employees.
- b. No Employee may perform service as a (1) ~~Regulated Service Covered~~ Employee, (2) ~~Commercial~~ CDL Driver, or (3) Safety-Sensitive Employee before passing a drug test administered by OHS.

2. Reasonable Suspicion – Company Authority

- a. All Employees are subject to drug and/or alcohol testing where Reasonable Suspicion exists.
- b. For all Employees, the decision to conduct the test must be based on specific, current, articulable observations of the appearance, behavior, speech, or body odors of the Employee. Testing should occur when the Supervisor reasonably suspects that an Employee has used either drugs or alcohol on duty or is working under the influence of drugs or alcohol by observing one or more of the following criteria (these criteria are applicable as well to the direct observation necessary



Metro-North Railroad

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 11 of ~~18~~16

- for a Supervisor to corroborate and investigate a co-worker report):
- i. Staggered gait, difficulty walking
 - ii. Slurred speech
 - iii. Drowsiness/sleepiness
 - iv. Odor of an intoxicant
 - v. Disorientation (time/place/person)
 - vi. Rapid mood swings for no apparent reason
 - vii. Poor coordination or body control
 - viii. Bizarre behavior
 - ix. Direct observation of use of an intoxicant or controlled substance.
- c. At least one Supervisor who has completed ~~SAFE~~-MNR Reasonable Suspicion ~~Training~~-Signs and Symptoms Training ~~(Signs & Symptoms)~~ must make the required observations before sending an Employee for alcohol testing. In the case of sending an Employee for drug testing, at least one Supervisor must make the required observations and a second Supervisor, after conferring, must agree on the articulable symptoms being conveyed. In the event that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~DER or the Program Manager~~ or DER of the Random Testing with the information. ~~or the Program Manager of the Random Testing Program.~~
- d. Documentation: Within a reasonable time (in most cases, the time for completion and submission of the documentation should not exceed **24 hours**) following a Supervisor's determination of Reasonable Suspicion, the Supervisor must document the date, time, and place, as well as a description of the observed behavior, and send a copy of such documentation to the DER or Program Manager.
- ~~d.e.~~ During Off Hours, in the event a basis exists for a Reasonable Suspicion Test, the Supervisor on duty is to call the Operations Control Center at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Supervisor must articulate the signs and symptoms ~~he~~ they have observed. The Chief RTC will promptly call the Alcohol and Drug Technician on-duty and dispatch them to the field location. If there are any problems or issues, ~~the Program Manager, or DER or Program Manager of Random Testing~~ should be immediately contacted.
3. Reasonable Suspicion – Regulated Service Employees subject to FRA Regulations
- a. When Reasonable Suspicion exists with respect to a ~~Regulated Service Covered~~ Employee, drug and/or alcohol testing is mandatory under 49 C.F.R. § 219 (also mandatory for ALL Employees).
 - b. Alcohol Test: At least one Supervisor who has completed ~~SAFE~~-MNR Reasonable Suspicion Signs and Symptoms Training must make the required observation before sending a ~~Covered Regulated Service Covered~~ Employee ~~Employee~~ for an alcohol test The Supervisor who makes the determination may not conduct the testing on the suspected Employee.⁴ In the event that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~Program Manager or DER or Program Manager of Random testing with the information.~~



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~^{XX, 2022}

Number: 21-012

Page 12 of ~~18~~¹⁶

- c. Drug Test: At least two Supervisors, one of whom has completed ~~SAVE~~-MNR Reasonable Suspicion Signs and Symptoms Training, must make the required observation before sending the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the ~~Program Manager or~~-DER or Program-Manager of Random Testing with the information.
- d. The Company must make diligent efforts to conduct a drug and/or alcohol test within two hours of the initial observation of the Regulated Service Covered Employee. If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to the reason why the test was not promptly conducted. Absolutely no testing may be performed after the expiration of eight hours from the time of observation.⁴
- e. Regulated Service Employees may not be tested after they have been removed from service.

~~§219.300 3(b)(1) With respect to an alcohol test, the required observations must be made by a supervisor trained in accordance with §219.11(g). The supervisor who makes the determination that reasonable suspicion exists may not conduct testing on that employee.~~

~~§219.300 3(b)(2) With respect to a drug test, the required observations must be made by two supervisors, at least one of whom is trained in accordance with §219.11(g).~~

4. Reasonable Suspicion – Commercial Drivers subject to FMCSA Regulations

- a. A Commercial Driver may not be subjected to any testing under the FMCSA regulations unless the Supervisor's observation is made just before, during, or just after the time the Commercial Driver is performing safety-sensitive functions.
- b. Alcohol Testing: At least one Supervisor who has completed ~~SAVE~~-MNR Reasonable Suspicion training must make the required observation before sending a Commercial Driver for a test. The Company must make all reasonable efforts to conduct alcohol testing within two hours of the observed behavior. If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to why the test was not promptly administered. Absolutely no alcohol testing may be performed after the expiration of eight hours from the time of observation. In the event, that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212-340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the DER with the information.
- c. Drug Testing: At least one Supervisor who has completed ~~SAVE~~-MNR Reasonable Suspicion training must make the required observation before sending a Commercial Driver for a test. ~~The Company must conduct a drug test within 8~~ 24 hours of the observed behavior. ~~If testing is not conducted within 24 hours, the supervisor must provide the Director of Operating Rules with documentation as to why the test was not promptly administered.~~ If testing is not conducted within two hours, the Supervisor must provide the ~~Director of Operating Rules~~-DER or Program Manager of Random Testing with documentation as to why the test was not promptly administered.



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 13 of ~~18~~16

Absolutely no 1 testing may be performed after the expiration of eight hours from the time of observation. In the event, that the Employee cannot be transported to a facility for testing, the Supervisor will notify the Operations Control Center (OCC) at 212- 340-2050 and inform the Chief Rail Traffic Controller of the situation. The Chief RTC shall contact the DER with the information.

5. Reasonable Cause – Company Authority for Safety-Sensitive Employees

- a. The Company may test any Safety-Sensitive Employee for drugs and/or alcohol following an incident, accident, or rules violation giving rise to Reasonable Cause testing of Regulated Service Employees as set forth in Section VII–6, below.
- b. The Company may also test any Employee for drugs and/or alcohol following an accident involving a motorized vehicle where the accident was not due to mechanical failure or the negligent action of a motorist other than the Safety-Sensitive Employee and the Safety- Sensitive Employee was driving a motorized vehicle involved in an accident which (1) results in the loss of human life or (2) causes bodily injury to himself or others requiring medical attention away from the scene or (3) results in a vehicle ~~being transported away from the scene~~, receiving any type of damage. ~~(4) damage to property whether it be MNR property or private property.~~

~~3§219.305 (b) If a test required by this subpart is not administered within two hours following a determination made under this section, the railroad must prepare and maintain on file a record stating the reasons the test was not administered within that time period. The eight-hour requirement is satisfied if the individual has been delivered to the collection site (where the collector is present) and the request has been made to commence collection of the specimens within that period. The records required by this section must be submitted to FRA upon request of the FRA Drug and Alcohol Program Manager record stating the reasons the test was not administered within that time period. If an alcohol or drug test required by this subpart is not administered within eight hours of a determination made under this subpart, the railroad must cease attempts to administer the test and must record the reasons for not completing it.~~

6. Reasonable Cause – DOT or FRA Regulations

- a. Accident or Incident - The Regulated Service Employee has been involved in an accident or incident reportable under 49 C.F.R. § 225, and a Supervisor has a reasonable belief, based upon specific, articulable facts that the Employee's acts or omissions contributed to the occurrence or severity of the accident or incident; or
- b. Rule Violation⁵ ~~-- An The~~ Employee who has been directly involved in one or more of the following operating rule violations or errors: as set forth in 49 CFR 219.403 must submit to toxicology testing under federal regulations. A Supervisor must contact the DER for specific instructions following a rule violation or error that meets the requirements of this section.
 - i. ~~Non-compliance with a train order, track warrant, timetable, signal indication, special instruction or other direction with respect to movement of a train that involves:~~
 - a. ~~Occupancy of a block or other segment of track to which entry was not authorized;~~
 - b. ~~Failure to clear a track to permit opposing or following movement to pass;~~
 - c. ~~Moving across a railroad crossing at grade without authorization; or~~
~~Passing an absolute restrictive signal or passing a restrictive signal without stopping (if~~



Metro-North Railroad

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~**XX, 2022**

Number: 21-012

Page 14 of ~~18~~**16**

~~required);~~

- ~~ii. — Failure to protect a train as required by a rule consistent with 49 C.F.R. § 218.37 (including failure to protect a train that is fouling an adjacent track);~~

~~Operation of a train at a speed that exceeds the maximum authorized speed by at least ten miles per hour or by 50 percent of such maximum authorized speed, whichever is less;~~

- ~~iv. — Alignment of a switch in violation of a railroad rule, failure to align a switch as required for movement, operation of a switch under a train, or unauthorized running through a switch. Failure to apply or stop short of derail as required; Failure to secure a hand brake or failure to secure sufficient hand brakes;~~

~~Entering a crossover before both switches are lined for movement; or~~

- ~~vi. — In the case of a person performing a dispatching function or block operator function, issuance of a train order or establishment of a route that fails to provide proper protection for a train.~~
- ~~vii. — MNR reserves the right to conduct Non-DOT testing when an MNR employee's actions or lack of action may have contributed to an incident/accident (i.e., motor vehicle accident or any other type of motorized vehicle/equipment)~~

- c. The Company must make diligent efforts to conduct the drug and/or alcohol test within two hours of an accident or incident. If testing is not conducted within two hours, the Supervisor must provide the **Director of Operating Rules-DER** with documentation as to the reason why the test was not promptly conducted. Absolutely no testing may be performed after expiration of eight hours from the time of the accident or incident. If testing under Company Authority (Non-DOT) MNR will always attempt to mirror the Federal regulations, however, MNR reserves the right to extend the testing window if the Supervisor has **put in writing the reasons for the delay a** documented **the** reason why the delay occurred.

- d. Regulated Service Employees may not be tested after they have been removed from service.

- e. Documentation - The Supervisor must make every effort to comply with the testing windows as described under federal testing guidelines.

7. Post-Accident Testing

- a. Regulated Service Employees: The FRA regulations on the control of alcohol and drug use require toxicological testing after accidents that meet specific criteria set forth in 49 C.F.R § 219, Subpart C. In the event of such an accident, a Supervisor must contact the DER ~~and Director of Regulatory Oversight~~ for specific instructions.
- b. **Commercial** CDL Drivers: The FMCSA regulations on the control of alcohol and drug use require toxicological testing after accidents and incidents that meet specific criteria set forth in 49C.F.R. § 382.303. In the event of an accident, a Supervisor must contact the DER ~~or the Director of Regulatory Oversight~~ for further instructions.

8. Random Testing

- a. Regulated Service Employees: Random testing of Regulated Service Employees is performed by the Company under applicable FRA regulations and/or Company Authority and in accordance



Metro-North Railroad

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Number: 21-012

Effective Date: February 15, 1986

Page 15 of 4816

Revised Date: March ~~12, 2021~~XX, 2022

with the procedures set forth in Metro-North's 219 Compliance Plan ~~for Random Selection and Scheduling of Random Drug and Alcohol Testing (the "Plan")~~. These procedures will adhere to confidentiality standards in accordance with Federal regulations. A copy of the Plan is available for inspection ~~in~~ with the DER or the Director of Regulatory Oversight.

- b. ~~Commercial~~ CDL Drivers: Random testing of ~~Commercial~~ CDL Drivers is performed by the Company under applicable FMCSA regulations and in accordance with the Plan.

9. Follow-up Testing

- a. An Employee who has engaged in conduct in violation of the FRA (as described in §219.104) regulations, the FMCSA regulations and/or this Procedure must pass a drug and/or alcohol test in order to return to his or her position.

~~b.~~ In addition, such an Employee is subject to unannounced follow-up drug and/or alcohol ~~e-b.~~ testing as directed by federal rules and regulations and the Company's Medical OHS and/or EAP.

10. Periodic Physical Examination Testing

Covered, Commercial Drivers and Safety-Sensitive Employees whose positions require periodic physical examinations will be subjected to drug testing as part of those examinations.

11. Return-to-Duty Physical Examination Testing

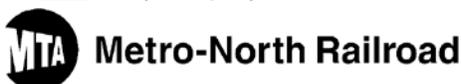
Covered, Commercial Drivers and Safety-Sensitive Employees who have been absent from work for any reason for 14 days or more will be subjected to drug and/or alcohol testing as part of a return-to-duty physical examination.

VIII. **TEST PROCEDURES AND RETESTS**

The Company and vendors hired by the Company to perform testing shall follow the procedures established by the Department of Transportation ("DOT") for all drug and alcohol testing conducted under this Procedure. These procedures are set forth in 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

IX. **CONFIDENTIALITY**

1. No Supervisor or Employee may disclose to any individual any drug or alcohol use or testing information concerning any other Employee, unless such disclosure is necessary for compliance with this Operating Procedure or federal law and regulations or unless the Employee whose records are at issue executes a release specifically authorizing the disclosure of such information.
2. All records maintained while carrying out the procedures described in this Procedure and under federal drug and alcohol testing laws must be maintained in a separate, dedicated, secure location.
3. If any Employee discloses the information or records described above to any other individual for



Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**

Effective Date: February 15, 1986

Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012

Page 16 of ~~18~~16

any reason, that Employee may be subject to administrative or disciplinary action, up to and including dismissal.

3.4. Referrals:

- a. Self-Referral – An Employee will be considered a “voluntary self-referral” from the time he/she seeks assistance through the EAP. All information and subsequent counseling and/or treatment in the case of a voluntary self-referral shall remain confidential and seeking assistance as a Voluntary Self-Referral will not impact an individual's employment status, except in circumstances as provided below.
 - i. If the self-referring Employee has been or is charged with conduct deemed sufficient to warrant discipline, disclosure limited to the Employee's compliance or non-compliance with EAP recommendations shall be subject to disclosure and may be taken into account in determining discipline and any employment consequences arising in connection with such discipline.
 - ii. If the self-referring Employee is employed in a job title that is classified as Covered Service or is otherwise Safety Sensitive and in the EAP's professional judgment, a self-referring Employee appears to be a threat to the safety of the traveling public or his or her co-workers, MNR, upon the recommendation of EAP, can take protective action which may include removing the Employee from service until the treatment recommendations are met. If an Employee refuses to comply with the recommended course of treatment, MNR can suspend or revoke the Employee's certification.
- b. Co-Worker Referral – a report by a co-worker to a Supervisor that an Employee was apparently unsafe to work with or was, or appeared to be, in violation of this Procedure. The name of the reporting co-worker will be kept confidential and that individual will not be called as a witness should a subsequent administrative or disciplinary action be required. If the Employee who is the subject of a Co-Worker Referral is referred to EAP, accepts that referral and follows EAP's recommendation(s), disciplinary action may be held in abeyance.

4.5. The collection and testing process will be in accordance with Federal regulations. The Employee will always be tested in a setting where ~~aural and visual~~ privacy is maintained. MNR will always attempt to mirror Federal regulations with Non-DOT testing whenever possible.

X. ADMINISTRATION

The Vice President of Human Resources is responsible for interpreting and administering this Procedure.

*This Procedure sets forth only guidelines and does not constitute a contract, express or implied. Metro-North expressly reserves the right to change or cancel this Procedure at its sole discretion at any time. **Any exceptions to this Procedure must be approved by the President.***

Corporate Policy and Operating Procedure

Title: **ALCOHOL AND SUBSTANCE ABUSE**
Effective Date: February 15, 1986
Revised Date: March ~~12, 2021~~XX, 2022

Number: 21-012
Page 17 of ~~18~~16

REVISION TRACKING

March 2017 – Update of reporting time for arrest notification (MTA Board Approved).

March 2018 – 2017 FRA expansion of Employee titles subject to random testing (MTA Board Approved).

March 2019 – Inclusion of Contractor related testing language.

~~March 2021 – March 2021 – correction to the language of FRA & FMCSA, as some references are not included. Further clarification that MNR performs Non-DOT “For Cause” testing beyond defined FRA scope of testing. Included Conductor Flags under M of W regulated testing.~~

March 2024 – Updated to include Mechanical Employees under Regulated Service. Administrative changes were made to align Policy with Federal regulations, and to be consistent with MNR Policy for Non-DOT testing. Rule Violation under “Reasonable Cause – DOT or FRA Regulations” section has been expanded to be all inclusive in accordance with CFR-219.301.