

40 Quay Street, Brooklyn

Request for Proposals for Development



- **Release Date**
Thursday, May 9, 2019
- **Submission Deadline**
Thursday, August 1, 2019






Table of Contents

- 1. Executive Summary4
- 2. Site Information and Context5
 - A. Site Description5
 - B. Neighborhood and Immediate Vicinity.....6
 - C. Transportation and Access6
 - D. Parks and Open Space.....6
 - E. Zoning and Land Use.....7
 - F. Waterfront Access Plan.....8
 - G. Respondant Due Diligence8
- 3. Development Options.....8
 - A. Relocation Option.....9
 - B. Air Rights Option9
 - C. Hybrid Option.....10
- 4. Project Goals and Relocation Requirements.....10
 - A. NYCT Functions10
 - B. NYCT Relocation Requirements10
- 5. Approval Process.....12
 - Section A: State Environmental Quality Review Act (SEQRA)12
 - Section B: MTA Board Approval and New York State Public Authorities Law.....12
 - Section C: NYCT Approval of Relocation Space.....12
- 6. Proposal Requirements.....12
 - Section A: Project Description12
 - Section B: Relocation Options for NYCT Functions13
 - Section C: Respondent Description.....13
 - Section D: Financial Terms and Disposition Structure13
 - Section E: Additional Documentation.....14
 - Section F: Proposal Deposit14
- 7. Selection Criteria.....14
- 8. Selection Process.....15
- 9. Additional Disposition Terms and Due Diligence.....16
- 10. Submittal Requirements & Deadline18





Appendix A – New York State Finance Law (“Lobbying Law”) Disclosure Statement	19
Appendix B – Iran Divestment Act Certification	22
Appendix C – IRS W-9 Form.....	23
Appendix D – Insurance Requirements.....	27
Appendix E – Terms and Conditions.....	39

1. Executive Summary

The Metropolitan Transportation Authority (the “MTA”), on behalf of its affiliate, the New York City Transit Authority (the “NYCT”), is pleased to release this Request for Proposals (“RFP”) for the NYCT property located at 40 Quay Street in the Brooklyn neighborhood of Greenpoint (the “Site”), City of New York. The Site contains the NYCT Mobile Wash unit and Material Controls operation functions, further described below (the “NYCT Functions”).

The Site presents a significant opportunity to develop a large mixed-use project in one of the most exciting and rapidly developing areas of the Brooklyn waterfront. Located on the northern side of the Bushwick Inlet, the Site is adjacent to the future Bushwick Inlet Park expansion and a short walk away from the many attractions and amenities of Williamsburg and Greenpoint. The immediate area boasts a flourishing creative community, multiple live performance and nightlife venues, a diverse and growing dining scene, and a variety of parks, playgrounds, and waterfront open spaces with stunning views of Manhattan.

The primary goal of this RFP is to generate financial returns to the MTA to further the MTA’s capital program. MTA will consider proposals that involve one of the following property disposition actions:

- A 99-year ground lease of the entire Site with permanent off-site relocation of the in-place NYCT Functions (the “Relocation” option);
- Sale of surplus zoning floor area via zoning lot merger with an adjacent property (the “Air Rights” option); or
- A combination of the above (the “Hybrid” option).

These options are described in more detail in Section 2, Development Options.

Each party submitting a proposal in response to this RFP (“Proposal”) is referred to herein as a “Respondent”. The Respondent that is ultimately selected through this RFP process is referred to herein as the “Designated Proposer”.

The key dates for this RFP are:

RFP Release:	<u>Thursday, May 9, 2019</u>
Property Site Visit:	<u>Friday, June 7, 2019</u>
Questions Submittal Deadline:	<u>Friday, July 12, 2019</u>
Proposal Due Date:	<u>Thursday, August 1, 2019</u>

MTA Point of Contact

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 designated Point of Contact. **Contact with anyone else at the MTA regarding this RFP may result in ineligibility to participate in the RFP.** The designated Point of Contact for this RFP is:

John Coyne; Telephone: (212) 878-7158; Email: jcoyne@mtahq.org



2. Site Information and Context

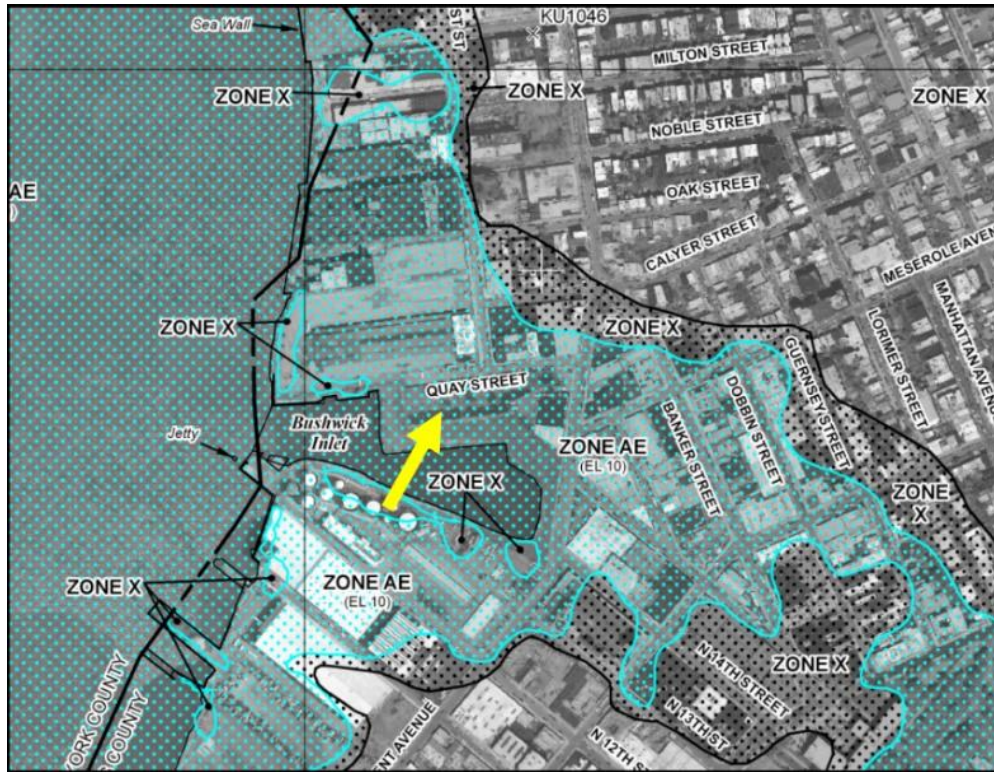
A. Site Description

The Site is an irregularly-shaped, 80,617± square foot parcel of land located on Lot 1 of Tax Block 2590, in Brooklyn, Kings County, New York, owned in fee by NYCT.



An approximately 72,600 square foot, one-story (with mezzanine) warehouse building, constructed in or about 1973, occupies the Site. The Site is in an R6 (residential) zoning district with a C2-4 commercial overlay (for more detail see the [“Zoning and Land Use”](#) section, below).

The Site is in a flood hazard zone (Zone AE), which is an area determined to be within the 1.0% annual chance floodplain, as detailed on the FEMA flood map Community-Panel #360497-0202-F (dated September 26, 2007), shown below.



B. Neighborhood and Immediate Vicinity

The Site is located in the Greenpoint neighborhood of Brooklyn Community District #1. Collectively, Community District #1 encompasses the neighborhoods of Greenpoint and Williamsburg. The district is in the northwesterly part of Brooklyn, bounded by Newtown Creek on the north, Flushing Avenue on the south, the Queens Borough line on the east and the East River on the west.

C. Transportation and Access

The Site is located in proximity to several forms of transportation:

- Subway: the Nassau Avenue and Greenpoint Avenue Stations on the Brooklyn-Queens Crosstown Local “G” subway line are both approximately 0.5 miles from the Site.
- Bus: the B32 bus, which runs from Williamsburg Bridge Plaza to 44th Drive at 21st Street in Long Island City, stops at Franklin Street a half block from the Site.
- Bike Share: there is a 25-dock Citibike station at Banker Street adjacent to 29 Meserole Avenue, approximately 1,000 feet from the Site.
- Ferry: the India Street/Greenpoint East River Ferry Terminal is approximately 0.5 mile from the Site.

D. Parks and Open Space

The Site is located less than half a mile to Bushwick Inlet Park. NYC Parks is currently planning an expansion of this park that would expand it up to the southern edge of the site, as shown in the concept plan, below:

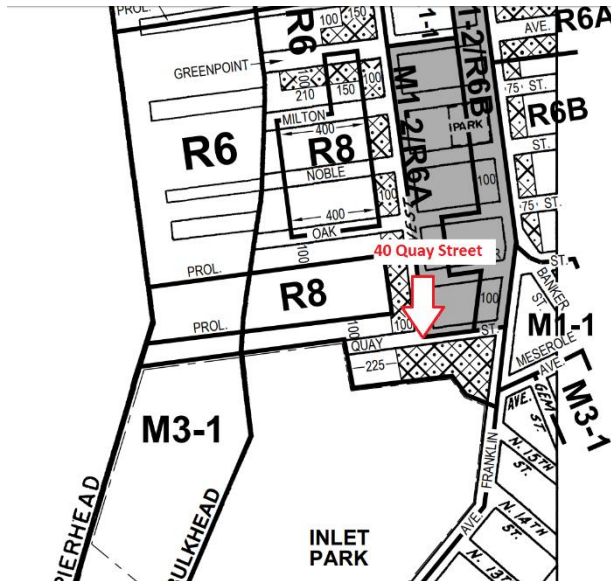



FIGURE 5-13: BUSHWICK INLET PARK, CONCEPTUAL DESIGN PLAN

The Site is also located approximately 0.3 miles south of WNYC Transmitter Park, a 6.61-acre park on the East River waterfront. Additionally, McCarren Park, a 35-acre park with a playground, sports space and a pool, is approximately 0.5 miles from the Site.

E. Zoning and Land Use

The Site is in an R6 district with a C2-4 commercial overlay, as designated by the City Planning Commission of the City of New York, shown in the zoning map excerpt, below:





Because the Site is identified as part of a waterfront access plan (further described in Section F, below) the standard use, bulk, and other regulations may be different than what is typical of the mapped zoning district. Please refer to Article VI of the Zoning Resolution for more information.

Zoning compliance is complex and requires the special ability, knowledge and training of professionals familiar with the Zoning Resolution of the City of New York (the “Zoning Resolution”) and any other appropriate regulations. Therefore, Respondent should consult with a qualified engineer or architect to determine the zoning compliance of its Proposal.

MTA encourages Respondents to consider a rezoning of the Site as part of their proposal.

F. Waterfront Access Plan

The Site is identified as “Parcel 15” in the Greenpoint-Williamsburg Waterfront Access Plan (see Article VI, Chapter 2, Section 62-931 of the Zoning Resolution).

Pursuant to that plan, in the event of a redevelopment of the Site, an “upland connection” must be constructed through the Site. This “upland connection” is a pedestrian access through the Site within the street lines of West Street to the north of the Site that connects Quay Street to the future Bushwick Inlet Park, located adjacent to the Site on the south.

Under the Greenpoint-Williamsburg Waterfront Access Plan any “upland connection” that measures at least 75 feet in width shall be considered a Wide Street for zoning purposes. Pursuant to Article VI, Sec. 62-81 of the Zoning Resolution, the upland connection is subject to the certification of the Chairperson of the City Planning Commissioner that the submitted site plan complies with the requirements under the Greenpoint-Williamsburg Waterfront Access Plan. Please refer to Article VI Sec. 62-81 of the Zoning Resolution for more information.

G. Respondant Due Diligence

Please note that the information contained in this RFP may be subject to error and omission, and the accuracy of the information provided is not guaranteed or represented to be true, complete, nor correct. Respondants should conduct their own research and due diligence.

3. Development Options

Because of the need to maintain the continuous operation of the NYCT Functions either on the Site or in a suitable relocation facility or facilities, MTA is offering three disposition options for the Site, described in more detail below. Respondents may submit proposals for more than one option. Respondents proposing a relocation of the NYCT Functions must identify sites in their proposals for which they can, upon selection, secure site control prior to the closing of the transaction.

A. Relocation Option

The Relocation Option involves the Designated Proposer permanently relocating the NYCT Functions to one or more relocation sites (the “Relocation Sites”), at the Designated Proposer’s sole cost and expense, and entering into a 99-year ground lease with NYCT for the Site. **NYCT will consider any form of property interest for the Relocation Site, but strongly prefers a permanent or long-term property interest.**

If MTA selects a Designated Proposer proposing a Relocation Option, upon designation MTA will negotiate a relocation and development agreement (the “Agreement”) that describes the Designated Proposer’s obligations to deliver the Relocation Sites to MTA (in accordance with MTA’s requirements) in return for NYCT’s obligation to vacate and grant a 99-year ground lease interest of the Site to the Designated Proposer. The Agreement will, among other things, obligate the Designated Proposer to provide all relevant environmental information on the Relocation Sites, secure the Relocation Sites within a specific time frame, make any improvements and alterations necessary to accommodate the NYCT Functions and perform any necessary remediation, relocate the NYCT Functions, and indemnify NYCT from any damages arising from the existing environmental condition of the Relocation Sites. If the Relocation Sites cannot be secured at terms agreeable to the MTA or the Designated Proposer’s other obligations under the Agreement cannot be fulfilled within the time proscribed in the Agreement MTA will have the right to terminate the transaction and designate another Respondent, or withdraw the RFP entirely.

The Designated Proposer must comply with all local laws and codes, including but not limited to the New York City Zoning Resolution, in its use and development of the Site as well as in the acquisition and build out of any or all Relocation Sites.

B. Air Rights Option

The Air Rights option involves the purchase of surplus zoning floor area from the Site via a zoning lot merger for use on an adjacent property, along with any ancillary property interests related to developing the adjacent property including light and air easements, a cantilever over the Site, and/or the improvement and use of the roof of the Site as open space.

Any proposals that involve using or modifying the Site in any way, such as utilizing the roof of the Site for open space, will be subject to NYCT review and approval and require ongoing repair, maintenance, insurance and indemnification obligations from the Designated Proposer. See Appendix D – Insurance Requirements for MTA’s standard insurance requirements (note that levels of coverage may vary from those shown depending on the size and scope of the proposed work).

The Designated Proposer would be responsible for any structural enhancements to the Site required as part of such use, as well as all maintenance and repair obligations. The Designated Proposer will hold MTA and NYCT harmless for any environmental contamination or mitigation required as a result of alterations to or use of the Site. MTA may require security for the performance of such obligations which may take the form of a letter of credit on which NYCT could draw to fund self-help, guaranties and other collateral and security as MTA may determine is appropriate.

C. Hybrid Option

MTA and NYCT will consider a combination of the Relocation and Air Rights Options that involves leaving all or a portion of the NYCT Functions on the Site permanently but with development in the air space either above the NYCT Functions, an adjacent parcel, or both.

4. Project Goals and Relocation Requirements

The primary goal of this RFP is to generate financial returns to the MTA to further the MTA's capital program.

For proposals pursuing the Relocation Option or any Hybrid Option that involves relocating some or all of the NYCT Functions from the Site, the Designated Proposer will be required to relocate the NYCT Functions at its sole cost and expense in advance of taking possession of the Site, which costs and expenses will include, but not be limited to, site search, closing or leasing costs (i.e. brokerage fees), environmental mitigation costs, and build-out costs. NYCT will consider any form of property interest for the Relocation Site, but strongly prefers a permanent or long-term property interest.

The NYCT Functions and the replacement requirements for the NYCT Functions are described in detail below.

A. NYCT Functions

The NYCT Functions consist of two functional divisions of NYCT:

- The NYCT Mobile Wash Unit, which operates a fleet of mobile wash vehicles containing cleaning supplies and equipment that are dispatched to subway stations throughout the system. The Site serves as a garage, material storage area, and a light maintenance facility for the vehicles and the associated supplies and equipment; and
- The NYCT Material Control Section, which stores and dispatches various inventory items for the subway system, including station fixtures, paper products, and cleaning supplies.

B. NYCT Relocation Requirements


The relocation requirements of each component of the NYCT Functions are described below:

General Requirements

- (1) Building Class: Semi Fireproof Warehouse
- (2) Security: Building alarm inclusive of internal and exterior cameras with monitoring system
- (3) Facility should be near a subway station and a short distance from a major highway or arterial roadway.

Mobile Wash Requirements:

- (1) Interior parking space for 104 mobile wash trucks that are approximately 24 feet in length, 7 feet and 9 inches in width, and 9 feet and 11 inches in height, and three vans. The parking space must have adequate lighting, ventilation and climate control.
- (2) Sufficient interior office space for six employees (approximately 720 square feet).
- (3) Water service and drainage capacity sufficient to service the mobile wash fleet.

- 
- (4) Male/female locker room, break room/cafeteria space and restroom facilities for approximately 110 employees.
 - (5) Space for material storage (approximately 500 square feet).

Material Control Requirements:

- (1) Dual Loading Dock: Dock height is 48–55 inches with a dock leveler. Tractor trailer accessibility.
- (2) Exterior entry controlled by automatic roll gates of a minimum of 21' x 22' in dimensions.
- (3) Approximately 17,000 square feet of interior storage space.
- (4) Sufficient interior space to accommodate five large box trucks (approximately 2,000 square feet).
- (5) Sufficient interior office space to accommodate 10 employees (approximately 1,200 square feet).
- (6) Male/female locker room, break room/cafeteria space and restroom facilities for approximately 30 employees.

Multiple Relocation Site Option

The NYCT Functions can be relocated to a single centrally-located facility of comparable size and utility as the Site in northwestern Brooklyn or southwestern Queens. Alternately, the Mobile Wash requirements can be satisfied in two separate facilities of approximately half the size, one centrally located in either northern Brooklyn or southern Queens, and a second located in northern Manhattan or the southern Bronx.

Similarly, the Material Control requirements can be satisfied via a stand-alone facility located in either northern Brooklyn or southern Queens, or as part of the Mobile Wash relocation site in the same geographic area.

5. Approval Process

The disposition of the Site under the Relocation, Air Rights, or Hybrid options will be subject to certain approvals including, but not limited to, the following:

[Section A: State Environmental Quality Review Act \(SEQRA\)](#)

The transaction will require environmental review under the New York State Environmental Quality Review Act (“[SEQRA](#)”). The Designated Proposer will be responsible for conducting environmental due diligence and preparing any necessary documents. The MTA will assist the Designated Proposer and its consultants in complying with applicable environmental review procedures.

[Section B: MTA Board Approval and New York State Public Authorities Law](#)

The transaction will be subject to review and approval by the MTA Finance Committee and the MTA Board of Directors.

Compliance with the requirements of the Public Authorities Law is required.

[Section C: NYCT Approval of Relocation Space](#)

In the case of proposals for the Relocation Option or Hybrid Option that involves relocating some or all of the NYCT Functions from the Site, NYCT must approve the relocation site or sites, including their build-out requirements, selected by the Designated Proposer prior to vacating the site and granting a ground lease interest to the Designated Proposer. NYCT’s approval will be at its sole discretion and based on the suitability and appropriateness of the site or sites for housing the NYCT Functions, the physical condition of the site or sites, and the legal rights of use, among other considerations.

6. Proposal Requirements

Respondents to this RFP must submit Proposals that include the following sections:

- [Section A](#): Project Description
- [Section B](#): Relocation Options for NYCT Functions (if applicable)
- [Section C](#): Respondent Description
- [Section D](#): Financial Terms and Disposition Structure
- [Section E](#): Additional Documentation
- [Section F](#): Proposal Deposit

A description of what should be included in each section is described below:

[Section A: Project Description](#)

The Project description must include a detailed narrative of the Project, including:

- A description of the proposed development plan, including the type and size of the development;
- A breakdown of all proposed uses; and
- The amount of other uses such as open space and parking, if applicable.

Section B: Relocation Options for NYCT Functions

For Respondents proposing to relocate the NYCT Functions from the Site, Respondents must identify property or properties that they are willing and able to secure and dedicate to the NYCT Functions. One or more specific properties must be identified, along with the type of property interest to be conveyed (e.g. fee ownership, triple net lease, etc.), a description of the extent and cost of the work required for the identified locations to meet the relocation requirements described in Section 4 of this RFP, including any environmental mitigation work, if necessary.

Section C: Respondent Description

Respondents must demonstrate sufficient financial resources and professional ability commensurate with their Proposals. Each Proposal must provide the following:

- Description of each member of the Respondent's team, specifically describing the member's relationship to the Proposal;
- If a partnership or joint venture is proposed between entities, the entities must submit details of the arrangement by attaching a draft partnership or joint venture agreement or a similar document to the Proposal;
- Name, address, telephone number and email address of the individual who will be authorized to act on behalf of the Respondent as the primary contact and who is available to answer questions or requests for additional information;
- Any additional documentation that will support the Proposal.

Section D: Financial Terms and Disposition Structure

The Financial Terms and Disposition Structure of the Proposal should address the following three items:

1. Ground Lease Payments or Air Rights Payment

For the Relocation option, Respondents should provide a 99-year ground rent schedule with built-in escalations expressed in a fixed, non-contingent dollar amount. For the Air Rights option Respondents should provide a lump-sum purchase price. For the Hybrid option Respondents should provide some combination of the above, as relevant.

2. Payments in Lieu of Real Property Taxes ("PILOT")

Pursuant to Section 1275 of Title II of the New York Public Authorities Law, the MTA is not required to pay any fees, taxes, or assessments, whether state or local, upon any of its real property. For proposals utilizing the Relocation Option (or the Hybrid Option, if applicable) the Designated Proposer shall pay PILOTs to MTA in the amount equivalent to the real estate taxes that would be payable by the Designated Proposer if it were *not* owned in fee by the MTA. Respondents must show what the projected taxes would be, and identify the timing and amount of PILOTs that the Project is anticipated to generate. Respondents should be familiar with New York City tax assessment policies in order to make appropriate assumptions as to the assessed value in estimating the amount of PILOTs or real property taxes for the required cash flow projections.

3. Payment in Lieu of Sales and Use Taxes (“PILOST”)

Pursuant to Section 1275 of Title II of the New York Public Authorities Law, any construction performed at property owned by the MTA is exempt from local and state sales taxes. For proposals utilizing the Relocation Option, the Designated Proposer shall pay PILOSTs to MTA in an amount equivalent to the sale taxes that would be payable by the Designated Proposer with respect to improvements made to the Site if it were *not* owned in fee by the MTA. Respondents must identify the timing and amount of PILOST payments that they anticipate would be due to MTA under their proposed Project.

Section E: Additional Documentation

Respondents must enclose the following completed documents as provided in the noted appendices.

1. New York State Finance Law (“Lobbying Law”) Disclosure Statement – Appendix A
2. Iran Divestment Act Certification – Appendix B
3. IRS W-9 Form – Appendix C

Section F: Proposal Deposit

A proposal deposit is required in the form of a check payable to the Metropolitan Transportation Authority in an amount of **\$50,000** (the “Proposal Deposit”). The Proposal Deposit of the Designated Proposer will be applied toward the security deposit of the ground lease or the purchase price. The check will be deposited in an MTA account and will be returned to unsuccessful proposers within 120 days after the Deadline if a proposer selection has been made.

If the Designated Proposer fails to execute definitive transaction documents based on the terms submitted in the proposal, the amount of the Proposal Deposit may be retained by MTA as liquidated damages.

7. Selection Criteria

MTA will evaluate each Proposal and any supplemental information made available to MTA according to the selection criteria outlined below. MTA reserves the right to consider other criteria not included herein and to assign weights to the following and other such criteria.

Financial Returns to MTA and Financial Feasibility

- Respondent’s financial proposal, including the overall lease terms under a 99-year ground lease or lump sum payment for air rights; and
- Respondent’s ability to support the financial assumptions contained within the Proposal, including development costs, rents/sales prices, operating expenses, capital costs and debt service.

Acceptability of the NYCT Replacement Facility (for the Relocation option)

- Geographic location, size, and accessibility of the Respondent’s relocation site(s).
- Suitability of the relocation site(s) for NYCT’s intended uses;



- Proposer’s ability to secure the proposed site(s) in a timely fashion ;
- Type of property rights being offered;
- Proposer’s spatial build out program for NYCT’s operations to NYCT’s satisfaction; and
- Sufficient capital funding for the buildout of space and environmental mitigation of the relocation site(s), and ability to provide completion guaranty and other financial instruments or guarantees to fund reserves for the Project, as applicable.

Completeness and Quality of Overall Proposal

- Respondent’s demonstrated understanding of the scope and complexity of the Project and MTA’s goals and objectives;
- Experience, qualifications, readiness, track record and structure of Respondent and Respondent’s team; and
- Quality and completeness of Proposal and documentation.

8. Selection Process

The selection process will occur in three phases:

Phase 1: Review and Negotiation Process

Subsequent to the RFP deadline MTA will conduct a thorough review of the proposals submitted and may interview one or more Respondents. MTA may opt to negotiate term sheets, contracts and/or other ancillary documents with multiple Respondents. MTA reserves the right to terminate negotiations with or without cause. MTA reserves the right to explore an alternate transaction structure than the one outlined in this RFP with one or more Respondents after Proposals are submitted. Upon the completion of these negotiations a single Respondent will be selected as the Designated Proposer.

Phase 2: Negotiation and Closing Process

Upon designation, MTA and the Designated Proposer will negotiate all relevant terms of the disposition and ultimately close on the disposition and any related actions.

Depending on the development option the Designated Proposer has proposed, MTA and the Designated Proposer will negotiate and execute either: (1) in the case of the Air Rights Option, a purchase and sale agreement for zoning floor area and a zoning lot development agreement, along with any ancillary agreements that MTA may require if the Designated Proposer intends to use any portion of the Site (e.g., a cantilever), which may include (but is not limited to) a light and air easement, easement for a cantilever, construction license agreement, or completion guaranty; or (2) in the case of the Relocation Option, a ground lease and relocation and development agreement as described in Section 3 of this RFP. For the Relocation option or a Hybrid involving relocation of the NYCT Functions, the NYCT Functions must be fully relocated prior to closing on the disposition of the Site.

Notwithstanding any other provisions herein that may be to the contrary, MTA will be under no obligation to dispose of all or any portion of the Site to the Designated Proposer unless, and until, the contract of sale agreement(s) or other disposition documents, as may be required, are executed



between the MTA and such Designated Proposer, the Project has received all requisite public approvals, and all conditions pursuant to the disposition agreements have been met.

9. Additional Disposition Terms and Due Diligence

Reimbursements, Fees, Costs and Expenses

Promptly following selection of the Designated Proposer, MTA will require the Designated Proposer to enter into an expense reimbursement agreement with MTA that will obligate the Designated Proposer to reimburse MTA for the following costs and fees:

- NYCT force account work to cover any personnel that NYCT assigns to assist and/or monitor any work to the Site required as part of alterations to accommodate a roof amenity or any work on Site that may affect NYCT operations; and
- Out of pocket expenses and costs incurred by NYCT/MTA in reviewing or acting upon the Designated Proposer's plans and specifications and proposed transaction including costs incurred for engineers, appraisers, consultants, architects, and financial and real estate advisors retained, engaged or hired by MTA.
- NYCT/MTA's outside counsel legal fees and disbursements.

The Designated Proposer's reimbursements of these costs and fees to MTA will be nonrefundable, will not be used to offset the required down payment, or otherwise credited against the purchase price.

Due Diligence and Taxes

The Designated Proposer will be expected to complete its due diligence. These due diligence items must be prepared at the sole cost and expense of the Designated Proposer. All work products shall become property of the MTA upon submission.

The Designated Proposer will be required to pay all applicable taxes payable with respect to the proposed development including transfer taxes, notwithstanding any exemption on account of the involvement of the State of New York, MTA, or NYCT in the transaction.


Guaranties and Documentation

MTA may require the Designated Proposer to provide at closing a creditworthy guaranty and/or other financial security, in form and substance satisfactory to MTA, securing certain obligations of the Designated Proposer which may include, in the case of the Relocation Option, ground rent, PILOT, and PILOST obligations.

Respondents should assume that the Site and any property interests transferred or conveyed by MTA under a transaction will be disposed of in its "as is" condition without representation, warranty, or guaranty as to quantity, title, character, condition, size, or kind, or that the same is in condition or fit to be used in the Respondent's proposal.

Additional RFP Documentation





Subsequent to RFP release MTA will make the following documents available to all individuals registered for this RFP:

- Property survey
- Phase I environmental site assessment

Site Visit

A Site visit will be held at **10:00 AM on Friday, June 7, 2019**. For more information, and to RSVP, please contact John Coyne at jcoyne@mtahq.org no later than Friday, May 31, 2019.

Inquiries and Submission

All inquiries regarding this RFP should be directed to John Coyne at jcoyne.@mtahq.org. Questions will be accepted until **4:00PM on Friday, July 12, 2019**. Answers will be posted on a rolling basis at the MTA web site and distributed via email to all individuals registered for this RFP. Answers to questions submitted on this date will be posted no later than Friday, July 19, 2019.

RFP Addenda

MTA reserves the right to amend or withdraw this RFP at any time. In order to be considered, Proposals must conform to any addenda that may be issued to this RFP. MTA will advise all Respondents who have requested a copy of this RFP, by email, of any clarifications or revisions.

If, in MTA's judgment, additional time is required for Respondents to prepare their Proposals, MTA reserves the right to grant an extension of the deadline for submission of the Proposals.

10. Submittal Requirements & Deadline

Three hard copies of the Proposal and one (1) electronic version of the Proposal, on flash drive or CD (All financial models should be submitted in excel with all formulas intact, no hardcoding), in PDF must be delivered by **5:00 PM on Thursday, August 1, 2019**. The PDF of the Proposal should be in Searchable PDF format. A flash/thumb drive must be submitted in order to transmit the following: financial models, financial statements, and resumes/past project descriptions.

Proposals should be submitted in a sealed envelope identified as "**Quay Street Development RFP**" by US Mail, hand delivery, express mail, or courier service to MTA at the following address:


Metropolitan Transportation Authority
2 Broadway, 16th Floor
New York, New York 10004
Attn: John Coyne

If a submission is hand delivered, either 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 Streets). Proposers WILL NOT be permitted to deliver proposals by hand at the 2 Broadway entrance. Hand 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.

Late submissions will not be accepted.

MTA reserves the right, in its sole discretion, to withdraw or modify this RFP and to reject any Proposal as being non-responsive or if it is in the best interest of the MTA to do so (*please also see the **Terms and Conditions** included in **Appendix E** of this RFP*).

Proposals that are incomplete or not in conformance with the requirements of this RFP may be eliminated from further consideration. Respondents should note carefully the Proposal content requirements in this RFP.



Appendix A – New York State Finance Law (“Lobbying Law”) Disclosure Statement

General Information

All 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 award to the violator and its subsidiaries, affiliates and related entities. The penalty for a second violation within four (4) years is ineligibility for bidding/proposing on a procurement and/or ineligibility from being awarded any contract for a period of four (4) years. The MTA will notify the New York State Office of General Services (“OGS”) of any determinations of non-responsibility or debarments 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(9). In accordance with New York State Finance Law §139-k, an offerer must be asked to disclose whether there has been a finding of non-responsibility made within the previous four (4) years by any governmental entity due to: (a) a violation of New York State Finance Law §139-j or (b) the intentional provision of false or incomplete information to a governmental entity.

As part of its responsibility determination, New York State Finance Law §139-k(3) mandates consideration of whether an offerer fails to timely disclose accurate or complete information regarding the above non-responsibility determination. In accordance with law, no procurement contract shall be awarded to any offerer that fails to timely disclose accurate or complete information under this section, unless the factual elements of the limited waiver provision can be satisfied on the written record.

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

Was the basis for the finding of Bidder's/Proposer's non-responsibility due to the intentional provision of false or incomplete information to a governmental entity? 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: _____

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's/Proposer's Affirmation and Certification

By signing below, the Bidder/Proposer:

a) Affirms that the Bidder/Proposer understands and agrees to comply with the policy regarding permissible contacts in accordance with New York State Finance Law Sections 139-j and 139-k.

b) Certifies that all information provided to the MTA with respect to New York State Finance Law §139-j and §139-k is complete, true and accurate.

By: _____ Date: _____
(Signature of Person Certifying)

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





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.



Appendix B – Iran Divestment Act Certification

Pursuant to New York State Finance Law §165-a, Iran Divestment Act of 2012, the Office of General Services is required to post on its web site <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> a list of persons who have been determined to engage in investment activities in Iran (“the List”), as defined in that Act. Under Public Authorities Law § 2879-c, Iranian Energy Sector Divestment, the Authority, may not enter into or award a Contract unless it obtains a certification from a Bidder, who shall check the box and make the certification in Subparagraph a, below, that they are not on the List. If that certification cannot be made, the Authority may consider entering into a Contract, on a case by case basis if the Bidder checks the box and makes the certification in Subparagraph b, below, that their Iran investment is ceasing.

For purposes of this provision, a person engages in investment activities in Iran if: (A) the person provides goods or services of twenty million dollars or more in the energy sector of Iran, including a person that provides oil or liquefied natural gas tankers, or products used to construct or maintain pipelines used to transport oil or liquefied natural gas, for the energy sector of Iran; or (B) the person is a financial institution that extends twenty million dollars or more in credit to another person, for forty-five days or more, if that person will use the credit to provide goods or services in the energy sector in Iran.

The Certification is as follows:

- a. **Certification that the Bidder is not on the List:** Each person, where person means natural person, corporation, company, limited liability company, business association, partnership society, trust, or any other nongovernmental entity, organization, or group, and each person signing on behalf of any other party, certifies, and in the case of a joint bid or proposal or partnership each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each person is not on the list created pursuant to paragraph (b) of subdivision 3 of section 165-a of the State Finance Law, or,
- b. **Certification that the Bidder’s investment in Iran is ceasing:** The person cannot make the certification in Subparagraph a, above, but asks the Authority to consider them for award of the Contract by certifying, under penalty of perjury, that the person’s investment activities in Iran were made before April 12, 2012; the person’s investment activities in Iran have not been expanded or renewed after April 12, 2012; and the person has adopted, publicized and is implementing a formal plan to cease its investment activities in Iran and to refrain from engaging in any new investments in Iran.

Signature/Date

Printed Name and Position

Appendix C – IRS W-9 Form

Form W-9 (Rev. January 2003) Department of the Treasury Internal Revenue Service	Request for Taxpayer Identification Number and Certification	Give form to the requester. Do not send to the IRS.
Print or type See Specific Instructions on page 2.	Name	
	Business name, if different from above	
	Check appropriate box: <input type="checkbox"/> Individual/Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ <input type="checkbox"/> Exempt from backup withholding	
	Address (number, street, and apt. or suite no.)	
	City, state, and ZIP code	
	List account number(s) here (optional)	
		Requester's name and address (optional)

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). **However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3.** For other entities, it is your employer identification number (EIN). If you do not have a number, see **How to get a TIN** on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

	Social security number
	or
	Employer identification number

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), **and**
- I am not subject to backup withholding because: **(a)** I am exempt from backup withholding, or **(b)** I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or **(c)** the IRS has notified me that I am no longer subject to backup withholding, **and**
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign Here	Signature of U.S. person ▶	Date ▶
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Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Foreign person. If you are a foreign person, use the appropriate Form W-8 (see **Pub. 515**, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.



Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a **nonresident alien or a foreign entity** not subject to backup withholding, give the requester the appropriate completed Form W-8.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 30% of such payments (29% after December 31, 2003; 28% after December 31, 2005). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will **not** be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester, or
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details), or
3. The IRS tells the requester that you furnished an incorrect TIN, or
4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or
5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate **Instructions for the Requester of Form W-9**.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of Federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your **individual** name as shown on your social security card on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, **enter the owner's name on the "Name" line.** Enter the LLC's name on the "Business name" line.

Other entities. Enter your business name as shown on required Federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note: You are requested to check the appropriate box for your status (*individual/sole proprietor, corporation, etc.*).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note: If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is **not required** on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2);
2. The United States or any of its agencies or instrumentalities;
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities;
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities; or
5. An international organization or any of its agencies or instrumentalities.

Other payees that **may be exempt** from backup withholding include:

6. A corporation;
7. A foreign central bank of issue;
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States;



9. A futures commission merchant registered with the Commodity Futures Trading Commission;
10. A real estate investment trust;
11. An entity registered at all times during the tax year under the Investment Company Act of 1940;
12. A common trust fund operated by a bank under section 584(a);
13. A financial institution;
14. A middleman known in the investment community as a nominee or custodian; or
15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

If the payment is for . . .	THEN the payment is exempt for . . .
Interest and dividend payments	All exempt recipients except for 9
Broker transactions	Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker
Barter exchange transactions and patronage dividends	Exempt recipients 1 through 5
Payments over \$600 required to be reported and direct sales over \$5,000 ¹	Generally, exempt recipients 1 through 7 ²

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are **not exempt** from backup withholding: medical and health care payments; attorneys' fees; and payments for services paid by a Federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a **resident alien** and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a **sole proprietor** and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner **LLC** that is disregarded as an entity separate from its owner (see **Limited liability company (LLC)** on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note: See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form on-line at www.ssa.gov/online/ss5.html. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS Web Site at www.irs.gov.

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note: Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon.

Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 3, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see **Exempt from backup withholding** on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA or Archer MSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account ¹
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor ²
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee ¹
b. So-called trust account that is not a legal or valid trust under state law	The actual owner ¹
5. Sole proprietorship or single-owner LLC	The owner ³
For this type of account:	Give name and EIN of:
6. Sole proprietorship or single-owner LLC	The owner ³
7. A valid trust, estate, or pension trust	Legal entity ⁴
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

Note: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or Archer MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, or to Federal and state agencies to enforce Federal nontax criminal laws and to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 30% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.



Appendix D – Insurance Requirements

SECTION A – Insurance Requirements


I. Construction Phase

The Designated Proposer, at its sole cost and expense, shall carry and maintain policies of insurance in accordance with the requirements of this section, and shall cause the following requirements to be satisfied by all contractors or construction managers (together with the Designated Proposer, each a “Permittee” for the purposes of this Appendix B), at all times during the period of construction of the Site as herein set forth below:

1. **Workers’ Compensation:** including Employer's Liability Insurance with limits of liability not less than \$2,000,000 which may be met by a combination of primary and excess insurance meeting the statutory limits of New York State.
2. **Commercial General Liability:** (ISO 2001 Form or equivalent) approved by MTA/NYCT in the Permittee’s name with limits of liability in the amount of not less than \$100,000,000 for each occurrence on a combined single limit basis for injuries to persons (including death) and damage to property, \$100,000,000 General Aggregate and \$100,000,000 in the Aggregate with respect to Products/Completed Operations. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the Umbrella/Excess Policy must follow form of the underlying policy and be extended to “drop down” to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any MTA/NYCT policy available.

Such policy should be written on an occurrence form, and shall include the following coverages:

- Additional Insured Endorsement (I.S.O. Form CG 20 26 07/04) version or equivalent approved by the MTA/NYCT, shall name the indemnitees as referenced under Section B of this agreement as Additional Insureds.
 - Contractual Liability assumed by the Permittee under this agreement;
 - Personal and Advertising Injury;
 - Products-Completed Operations;
 - Independent Contractors;
 - "XCU" (Explosion, Collapse, and Underground Hazards) where necessary; and
 - Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary.
3. **Business Automobile Liability:** (ISO Form CA 00 01 10 01 or equivalent) approved by the MTA/NYCT is required if Permittee’s vehicle enters MTA/NYCT’s property. The insurance must be in the name of the Permittee or its contractor entering the MTA/NYCT property with limits




of liability in the amount of not less than \$5,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

- 4. Railroad Protective Liability:** (ISO-RIMA or equivalent form) approved by MTA/NYCT covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:
- The policy shall be issued to the "Named Insureds" listed under Section B.
 - The limit of liability shall be not less than \$5,000,000 per occurrence, subject to a \$10,000,000 annual aggregate;
 - Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA).
 - Indicate the Name and address of the designated Contractor, project location and description of work, and permit number if applicable.
 - Evidence of Railroad Protective Liability Insurance, must be provided in the form of a policy. A detailed Insurance Binder (ACORD or Manuscript Form) will be accepted pending issuance of the policy, which must be provided within 30 days from the effective date.
- 5. Builder's Risk/Installation Floater:** The Permittee shall furnish evidence to the MTA/NYCT that it carries primary coverage for Builder's Risk/Installation Floater on an all-risk completed value form in an amount equal to the Total Contract Price. Said policy shall remain in force until the construction is completed and accepted. In the event the policy has a deductible, such deductible amount shall not exceed \$250,000 except with the express permission of the MTA/NYCT. All policy deductibles are to be assumed by the First Named Insured / Permittee. Said policy shall not contain a Coinsurance Provision.

Policy is to be written with Permittee as the First Named Insured, and the MTA/NYCT as an Additional Named Insured and Loss Payee. This insurance shall also include the interest of any and all subcontractors. Said policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the First Named Insured/Permittee." Losses are to be adjusted with the MTA/NYCT. Said policy shall also be endorsed to include a waiver of subrogation against all parties named as insured(s) and additional named insured (s), but only to the extent the loss is covered.

This insurance shall cover any and all real and personal property owned (including owner provided material, equipment and cost of owners dedicated project support labor), used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly. Policy shall include coverage for false-work, temporary buildings and debris removal including demolition, increase cost of construction, architect's fees and expenses, flood and earthquake and include all below and above ground structures, water and sewer mains. The policy shall also include coverage for materials, equipment, machinery and supplies of any nature whatsoever, used or intended for use or




hereafter created, installed or acquired provided such property is intended to be permanently located in or on the building or structures as more fully described in the construction contract.

The policy shall expressly provide coverage but, not be limited to the following:

- Coverage for natural disasters such as flood, windstorm, and earth movement (including but not limited to earthquake, landslide, earth sinking, rising or shifting, volcanic eruption, explosion or effusion and all naturally occurring or due to man-made or other artificial causes).
- Damage to MTA existing property or property leased to the MTA or property while in the care custody and control of the MTA - covering damage to useable existing property if resulting from a peril insured against and emanating from the work performed by the insured contractor(s); subject to a sublimit of \$2,500,000 per occurrence.
- Coverage for materials and equipment stored off site and while in transit. The minimum limit of insurance shall be equal to the maximum storage value at the largest storage location considering the value of all material or equipment located at the off - site storage location. A separate limit shall be applicable to material and equipment while in transit which represents the maximum value of the material or equipment in any one transit conveyance.
- Contractors Expediting Expense and Extra Expense subject to a limit of \$2,500,000 each.
- The policy must permit partial or beneficial occupancy prior to the final acceptance of the work.
- Policy coverage extensions are to be provided addressing Changes in Law, Ordinance or Regulation and Increase Cost of Construction.
- The policy shall provide coverage for resultant damage including amendment of exclusions (if necessary) pertaining to error in design, plans and or faulty workmanship.
- Equipment Breakdown Coverage / Hot testing coverage shall be included in the policy providing coverage during installation and testing operations including but not limited to performance testing of any machinery, equipment, electrical apparatus, traction power systems, signal systems and associated controls etc., where applicable.
- Coverage shall be provided on a "Replacement Cost" basis with a policy modification to cover all cost to repair or replace the structure or work (including overhead and profits) and based on replacement cost calculations at the 'time of repair or replacement'.
- Debris Removal equal to a minimum sum insured representing 25% of the replacement cost of the project.

Evidence of Builder's Risk/Installation Floater Insurance requires submission of the policy and approval is conditioned upon the MTA/NYCT's review of the final policy form. Pending issuance of the policy, a temporary binder can be provided to the MTA/NYCT in advance of the start of construction and allowing sufficient time to review the documents for coverage content. The binder for insurance must be replaced with an actual policy within 45 days of the policy inception. The policy shall be amended by endorsement allowing thirty (30) days' notice of cancellation with such notice sent to the First Named Insured and the MTA/NYCT.



6. Environmental Insurance: In the event environmental or pollution exposures exist, the Permittee shall require the environmental contractor or sub-contractor to provide the applicable insurance covering such exposure. The limits and types of insurance provided must be satisfactory to the MTA/NYCT and approved prior to the start of the work.

a. Contractor's Pollution Liability: In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), the Contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Contractor or its Subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$5,000,000. The Contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Contractor's Pollution Liability Insurance shall be in effect from the time the MTA/NYCT permits the work relating to the Hazardous Substances or other environmentally regulated substances and materials to begin through the completion of the work.

i. This insurance shall name the following entities as additional insured's: the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates.

ii. This insurance may be supplied by the Subcontractor performing the Work, if the Permittee is not performing any of the relevant Work and providing all applicable additional insureds are named.

iii. The Contractor or its Sub-contractor performing the Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Project Engineer. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements referenced in the Insurance Article.

iv. In the event that the Contractor or its Subcontractors transports from the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the **MCS-90 Endorsements** shall be attached to the auto liability policy. The CA9948 03/06 endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$5,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. **A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$5,000,000 limits.**

v. Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the MTA/NYCT.

b. Pollution Legal Liability (Non-Owned Disposal Site Coverage): If the project activities include the disposal of waste or other hazardous substance from the work site, the Contractor shall maintain or cause to be maintained pollution legal liability with limits of liability of at least \$5,000,000 per occurrence naming the following as additional insureds, with a copy of said endorsement submitted to MTA/NYCT. Additionally, coverage shall be maintained in one of the following ways:

i. A stand-alone policy;

ii. If coverage is not provided under a stand-alone policy, but is included in either an Environmental Package policy and/or a Contractors Pollution Liability policy, a Non-Owned Disposal Site endorsement may be provided listing the indemnitees referenced above as additional insureds, or;

iii. The contractor may also designate the disposal site, and provide a certificate of insurance from the disposal facility naming the above referenced indemnitees as additional insureds.

II. Perpetual Permanent Easement and Maintenance Agreement

The Designated Proposer, at its sole cost and expense, shall carry and maintain, or cause to be carried and maintained, policies of insurance at all times after completion of construction, as set forth below:

- 1. Commercial General Liability:** (ISO 2001 Form or equivalent) approved by MTA/NYCT in the Permittee's name with limits of liability in the amount of not less than \$100,000,000 for each occurrence on a combined single limit basis for injuries to persons (including death) and damage to property, \$100,000,000 General Aggregate and \$100,000,000 in the Aggregate with respect to Products/Completed Operations. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the Umbrella/Excess Policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any MTA/NYCT policy available.

Such policy should be written on an occurrence form, and shall include the following coverages:

- Additional Insured Endorsement (I.S.O. Form CG 20 26 07/04) version or equivalent approved by the MTA/NYCT, shall name the indemnitees as referenced under Section B of this agreement as Additional Insureds.
- Contractual Liability assumed by the Permittee under this agreement;
- Personal and Advertising Injury;
- Products-Completed Operations;
- Independent Contractors;


- "XCU" (Explosion, Collapse, and Underground Hazards) where necessary;
- Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary.

In the event of a repair, maintenance, or any construction, installation or alteration work, the following insurance will be required:

2. **Workers' Compensation:** including Employer's Liability Insurance with limits of liability not less than \$2,000,000 which may be met by a combination of primary and excess insurance meeting the statutory limits of New York State.
3. **Commercial General Liability:** (ISO 2001 Form or equivalent) approved by MTA/NYCT in the Permittee's name with limits of liability in the amount of not less than \$10,000,000 for each occurrence on a combined single limit basis for injuries to persons (including death) and damage to property, \$10,000,000 General Aggregate and \$10,000,000 in the Aggregate with respect to Products/Completed Operations. The limits may be provided in the form of a primary policy or combination of primary and umbrella/excess policy. When the minimum contract amounts can only be met when applying the umbrella/excess policy, the Umbrella/Excess Policy must follow form of the underlying policy and be extended to "drop down" to become primary in the event primary limits are reduced or aggregate limits are exhausted. Such insurance shall be primary and non-contributory to any other valid and collectible insurance and must be exhausted before implicating any MTA/NYCT policy available.

Such policy should be written on an occurrence form, and shall include the following coverages:

- Additional Insured Endorsement (I.S.O. Form CG 20 26 07/04) version or equivalent approved by the MTA/NYCT, shall name the indemnitees as referenced under Section B of this agreement as Additional Insureds.
 - Contractual Liability assumed by the Permittee under this agreement;
 - Personal and Advertising Injury;
 - Products-Completed Operations;
 - Independent Contractors;
 - "XCU" (Explosion, Collapse, and Underground Hazards) where necessary;
 - Contractual Liability Exclusion, applicable to construction or demolition operations to be performed within 50 feet of railroad tracks, must be removed, where necessary.
4. **Business Automobile Liability:** (ISO Form CA 00 01 10 01 or equivalent) approved by the MTA/NYCT is required if Permittee's vehicle enters MTA/NYCT's property. The insurance must be in the name of the Permittee or its contractor entering the MTA/NYCT property with limits of liability in the amount of not less than \$5,000,000 each accident for claims for bodily injuries (including death) to persons and for damage to property arising out of the ownership, maintenance or use of any owned, hired or non-owned motor vehicle.

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5. **Railroad Protective Liability:** (ISO-RIMA or equivalent form) approved by MTA/NYCT covering the work to be performed at the designated job site and affording protection for damages arising out of bodily injury or death, physical damage to or destruction of property, including damage to the Insured's own property and conforming to the following:
- The policy shall be issued to the "Named Insureds" listed under Section B.
 - The limit of liability shall be not less than \$5,000,000 per occurrence, subject to a \$10,000,000 annual aggregate;
 - Policy must be endorsed to provide coverage for claims arising from injury to employees covered by Federal Employer's Liability Act (FELA).
 - Indicate the Name and address of the designated Contractor, project location and description of work, and permit number if applicable.
 - Evidence of Railroad Protective Liability Insurance, must be provided in the form of a policy. A detailed Insurance Binder (ACORD or Manuscript Form) will be accepted pending issuance of the policy, which must be provided within 30 days from the effective date.
6. **Builder's Risk/Installation Floater:** The Permittee shall furnish evidence to the MTA/NYCT that it carries primary coverage for Builder's Risk/Installation Floater on an all-risk completed value form in an amount equal to the Total Contract Price. Said policy shall remain in force until the construction is completed and accepted. In the event the policy has a deductible, such deductible amount shall not exceed \$250,000 except with the express permission of the MTA/NYCT. All policy deductibles are to be assumed by the First Named Insured / Permittee. Said policy shall not contain a Coinsurance Provision.


Policy is to be written with Permittee as the First Named Insured, and the MTA as an Additional Named Insured and Loss Payee. This insurance shall also include the interest of any and all subcontractors. Said policy shall be endorsed to provide that "all premium considerations are the sole responsibility of the First Named Insured/Permittee." Losses are to be adjusted with the MTA/NYCT. Said policy shall also be endorsed to include a waiver of subrogation against all parties named as insured(s) and additional named insured (s), but only to the extent the loss is covered.

This insurance shall cover any and all real and personal property owned (including owner provided material, equipment and cost of owners dedicated project support labor), used or intended for use or hereafter created, installed or acquired, including while in the course of building, erection, installation and assembly. Policy shall include coverage for false-work, temporary buildings and debris removal including demolition, increase cost of construction, architect's fees and expenses, flood and earthquake and include all below and above ground structures, water and sewer mains. The policy shall also include coverage for materials, equipment, machinery and supplies of any nature whatsoever, used or intended for use or hereafter created, installed or acquired provided such property is intended to be permanently located in or on the building or structures as more fully described in the construction contract. The policy shall expressly provide coverage but, not be limited to the following:

- Coverage for natural disasters such as flood, windstorm, and earth movement (including but not limited to earthquake, landslide, earth sinking, rising or shifting, volcanic eruption, explosion or effusion and all naturally occurring or due to man-made or other artificial causes).
- Damage to MTA existing property or property leased to the MTA or property while in the care custody and control of the MTA covering damage to useable existing property if resulting from a peril insured against and emanating from the work performed by the insured contractor(s); subject to a sublimit of \$2,500,000 per occurrence.
- Coverage for materials and equipment stored off site and while in transit. The minimum limit of insurance shall be equal to the maximum storage value at the largest storage location considering the value of all material or equipment located at the off- site storage location. A separate limit shall be applicable to material and equipment while in transit which represents the maximum value of the material or equipment in any one transit conveyance.
- Contractors Expediting Expense and Extra Expense subject to a limit of \$2,500,000 each.
- The policy must permit partial or beneficial occupancy prior to the final acceptance of the work.
- Policy coverage extensions are to be provided addressing Changes in Law, Ordinance or Regulation and Increase Cost of Construction.
- The policy shall provide coverage for resultant damage including amendment of exclusions (if necessary) pertaining to error in design, plans and or faulty workmanship.
- Equipment Breakdown Coverage / Hot testing coverage shall be included in the policy providing coverage during installation and testing operations including but not limited to performance testing of any machinery, equipment, electrical apparatus, traction power systems, signal systems and associated controls etc., where applicable.
- Coverage shall be provided on a "Replacement Cost" basis with a policy modification to cover all cost to repair or replace the structure or work (including overhead and profits) and based on replacement cost calculations at the "time of repair or replacement".
- Debris Removal equal to a minimum sum insured representing 25% of the replacement cost of the project.

Evidence of Builder's Risk/Installation Floater Insurance requires submission of the policy and approval is conditioned upon the MTA/NYCT's review of the final policy form. Pending issuance of the policy, a temporary binder can be provided to the MTA/NYCT in advance of the start of construction and allowing sufficient time to review the documents for coverage content. The binder for insurance must be replaced with an actual policy within 45 days of the policy inception. The policy shall be amended by endorsement allowing thirty (30) days' notice of cancellation with such notice sent to the First Named Insured and the MTA/NYCT.

7. **Environmental Insurance:** In the event environmental or pollution exposures exist, the Permittee shall require the environmental contractor or sub-contractor to provide the applicable insurance covering such exposure. The limits and types of insurance provided must be satisfactory to the MTA/NYCT and approved prior to the start of the work.



a. Contractor's Pollution Liability: In the case of a contract involving environmentally regulated substances or hazardous material exposure(s), the Contractor shall provide Contractor's Pollution Liability Insurance with respect to the work and activities of the Contractor or its Subcontractors, including but not limited to handling, transporting or disposing of any hazardous substances and/or environmentally regulated materials and any sudden and/or non-sudden pollution or impairment of the environment, including clean-up costs and defense. This insurance shall have limits of liability specifically written for this contract in the amount of at least \$5,000,000. The Contractor shall comply with all federal, state, and/or local laws, rules and regulations and shall obtain any additional coverages required by federal, state, or local government agencies. The Contractor's Pollution Liability Insurance shall be in effect from the time the MTA/NYCT permits the work relating to the Hazardous Substances or other environmentally regulated substances and materials to begin through the completion of the work.

- This insurance shall name the following entities as additional insured's: the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates.
- This insurance may be supplied by the Subcontractor performing the Work, if the Permittee is not performing any of the relevant Work and providing all applicable additional insureds are named.
- The Contractor or its Sub-contractor performing the Work shall obtain all permits, licenses and other forms or documentation which are required and forward them to the Project Engineer. The insurance shall be submitted to MTA Risk and Insurance Management Department pursuant to requirements referenced in the Insurance Article.
- In the event that the Contractor or its Subcontractors transports from the Site hazardous substances or any other environmentally regulated substance that requires a governmentally regulated manifest, the **MCS-90 Endorsements** shall be attached to the auto liability policy. The CA9948 03/06 endorsement or equivalent is also required if transporting to a site outside of NYS and/or the contractor is domiciled in a state other than New York State. Both shall be furnished on a primary basis with limits of liability of at least \$5,000,000 per occurrence providing coverage for bodily injury or property damage including liability for environmental restoration resulting from negligence in the operation, maintenance or use of any motor vehicle involved in the transportation of hazardous substances or any other environmentally regulated substance as required pursuant to any federal, state or local laws, rules and regulations. **A copy of each endorsement, if applicable, shall be submitted for review as part of the insurance submission showing the \$5,000,000 limits.**
- Any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances or regulations regarding the performance of the work should be provided to the MTA/NYCT.

b. Pollution Legal Liability (Non-Owned Disposal Site Coverage): If the project activities include the disposal of waste or other hazardous substance from the work site, the Contractor shall maintain or cause to be maintained pollution legal liability with limits of liability of at least \$5,000,000 per occurrence naming the following as additional insureds, with a copy of said endorsement submitted to MTA/NYCT.

- Additionally, coverage shall be maintained in one of the following ways:
- A stand-alone policy;
- If coverage is not provided under a stand-alone policy, but is included in either an Environmental Package policy and/or a Contractors Pollution Liability policy, a Non-Owned Disposal Site endorsement may be provided listing the indemnitees referenced above as additional insureds, or;
- The contractor may also designate the disposal site, and provide a certificate of insurance from the disposal facility naming the above referenced indemnitees as additional insureds.

SECTION B -- Indemnitees (Additional Insureds / Named Insureds)

Additional Insureds under all policies set forth in this Appendix B may include, at the option of the City, NYCLDC, NYCEDC and/or MTA: The City of New York, New York City Land Development Corporation, New York City Economic Development Corporation, New York City Transit (NYCT), Metropolitan Transportation Authority (MTA) and its subsidiaries and affiliates and New York & Atlantic Railway Company (when applicable), Anacostia Rail Holdings. Each of these entities and the respective affiliates and subsidiaries existing currently or in the future of and successors shall also be "Indemnified Parties" under the relevant transaction documents.

SECTION C – General Insurance Requirements

I. Insurance Companies

All of the insurance required by this Article shall be with Companies licensed or authorized to do business in the State of New York with an A.M. Best Company rating of not less than A-/VII or better and reasonably approved by the MTA/NYCT.

II. Forms

All forms shall comply with the Insurance Services Office, Inc. ("ISO") or its equivalent approved by the Insurance Department of the State of New York.

III. Policy Deductible / Self Insured Retention

Insurance may contain a deductible and or self-insured retention and shall not exceed \$100,000. The Permittee shall be responsible for all claim expenses and loss payments within the deductible or self-insured retention.

IV. Policy Terms

These policies must: (i) be written in accordance with the requirements of the paragraphs above, as applicable; (ii) be endorsed in form acceptable to include a provision that should the policy be canceled, materially changed, or not renewed, notice shall be delivered in accordance with the insurance policy provisions to the MTA/NYCT, and (iii) state or be endorsed to provide that the coverage afforded under the Permittee's policies shall apply on a primary and not on an excess or contributing basis with any policies which may be available to the MTA/NYCT, and also that the Permittee's policies, primary and excess, must be exhausted before implicating any MTA/NYCT policy available. (iv) In addition,



Permittee's policies shall state or be endorsed to provide that, if a subcontractor's policy contains any provision that may adversely affect whether Permittee's policies are primary and must be exhausted before implicating any MTA/NYCT policy available, Permittee's and subcontractor's policies shall nevertheless be primary and must be exhausted before implicating any MTA/ NYCT policy available. At least two (2) weeks prior to the expiration of the policies, the Permittee shall endeavor to provide evidence of renewal or replacement policies of insurance, with terms and limits no less favorable than the expiring policies.

V. Waiver of Subrogation

All of above required insurance policies must include a waiver of subrogation in favor of the Indemnified Parties.

SECTION C – Submission of Insurance

Certificates of Insurance may be supplied as evidence of policies except for Railroad Protective Liability. However, if requested by the MTA/NYCT, the Permittee shall deliver to the MTA/NYCT within forty-five (45) days a copy of such policies, certified by the insurance carrier as being true and complete. If a Certificate of Insurance is submitted, it must: (1) be provided on the MTA/ NYCT Certificate of Insurance; (2) be signed by an authorized representative of the insurance carrier or producer and notarized; (3) disclose any deductible, self-insured retention, sub-limit, aggregate limit or any exclusions to the policy that materially change the coverage; (4) indicate the Additional Insureds as required herein under Section B; The Permittee must provide a copy of the Additional Insured Endorsement (ISO) Form CG 20 26 07/04 or its equivalent and must reference the policy information; (5) indicate project name and location on the certificate; and (6) expressly reference the inclusion of all required endorsements .

The Permittee or its Contractor/Subcontractor performing the work shall furnish evidence of all policies before any work is started to the MTA/NYCT:

C/o MTA Risk Insurance Management
2 Broadway – 21st Floor
New York, NY 10004

SECTION E – No Limit of Liability

The minimum amounts of insurance required in the detail description of policies above shall not be construed to limit the extent of the Permittee's liability under this Agreement.

SECTION F -- Right to Request Additional Insurance

Permittee further agrees to provide, at Permittee's sole cost and expense, such increased or expanded insurance coverage as MTA/NYCT may from time to time as deem appropriate.

SECTION G -- Event of Default

If, at any time during the period of this Agreement, insurance as required is not in effect, or proof thereof is not provided to the MTA/NYCT, the MTA/NYCT shall have the options to: (i) direct the Permittee to suspend work or operation with no additional cost or extension of time due on account thereof; or (ii) treat such failure as an Event of Default.





SECTION H – Notice of Claim

The Permittee shall file the following with the New York City Transit Claims Department, Attention: Director of Claims, with a copy to the Engineer: (1) a notice of any occurrence likely to result in a claim against the NYCT, which shall be filed immediately; and (2) a detailed, sworn proof of interest and loss, which shall be filed within sixty (60) days from the date of loss.

Appendix E – Terms and Conditions

RFP Terms & Conditions:

This RFP is being offered subject to the following conditions:

1. As-is: no representations are made as to the condition of the Site or any property rights described herein. Except as the RFP may expressly otherwise provide, the Designated Proposer shall be required to accept the Site and related property rights as-is.

2. Utilities: except as the RFP may expressly otherwise provide, the Designated Proposer shall be responsible for providing its own utilities at its sole cost and expense. This includes any work, permits, etc., that are required to bring any service or utility to the Site.

3. Rules and Regulations: additional rules, regulations, and restrictions may apply to the Site and the use of any appurtenant rights. These are described in the RFP.

Proposal Submissions:

The submission requirements for this RFP are described in Section 6I of this document (“Proposal Requirements”). No property rights shall be conveyed or shall be deemed granted and no rights whatsoever shall accrue to the Designated Proposer or any other person against the MTA or any affiliate or subsidiary thereof unless and until definitive documents are fully executed and exchanged. The execution of an agreement by the MTA or an affiliate or subsidiary is subject to the approval of the MTA Board.

The MTA reserves the right, without liability, to:

1. Postpone the submission deadline,
2. Reject any and all proposals,
3. Negotiate all terms and conditions, including compensation, location, and site improvements, with any proposer,
4. Modify or withdraw this RFP or any property specified in it at any time and without explanation, or
5. Waive any requirement.

The information provided in this RFP is summary in nature and has been prepared without audit or verification. No representations or warranties of any kind, either expressed or implied, are made with respect to such information by the MTA, its affiliates or subsidiaries, or by any officer, employee, or agent thereof. Applicants must recognize that the properties are being offered on an “as-is” basis and that applicants’ proposals must rely solely on their own independent study. A detailed independent investigation by the applicant should be made before submitting a proposal.


Withdrawal of Proposals:

After the submission deadline, proposals shall be considered an offer and may not be withdrawn until at least 180 days after the submission deadline. Any withdrawal before that date shall result in forfeiture of the Proposal Deposit.





- Selection Criteria:** The selection criteria for this RFP are described in Section 7 (“Selection Criteria”) of this RFP. In addition to the criteria described in Section 7, MTA reserves the right to add additional criteria or remove specified criteria.
- No Brokerage Commission:** Except as the RFP may expressly otherwise provide, no commissions whatsoever for brokerage or any other fee or compensation shall be due or payable by the MTA or any affiliate or subsidiary.
- Non-Discrimination:** The MTA will not discriminate against any person on the basis of race, creed, color, national origin, sex, age, sexual orientation, handicap, or marital status in accepting, reviewing, and evaluating proposals.
- Eligibility:** MTA employees, or employees of any affiliate or subsidiary, are not eligible to propose. A proposal submitted by any such employee shall be disqualified.
- Protests:** All complaints or protests relating to this RFP, including all complaints or protests that are exceptions to the limitation on contacts during a Restricted Period as set forth in the Procurement Lobbying Law (New York State Finance Law § 139-j and 139-k), must be addressed to the MTA General Counsel, 2 Broadway, New York, New York 10004, and should be made in advance of an RFP award where the basis for the complaint or protest is known to the proposer in advance of an RFP award. Complaints and protests will only be accepted from proposers or prospective proposers whose direct economic interest would be affected by an award to a tenant, licensee, or purchaser or by failure to make such an award. Complaints and protests regarding an RFP award must be received within 14 days of the RFP award authorization by the MTA Board; any complaint or protest received later than 14 days following the MTA Board action approving an award to a tenant or licensee shall be deemed untimely. Any complaint or protest shall include:
- (1) the name and address of the complainant or protester;
 - (2) identification of this RFP and the space or spaces or property relevant to the complaint or protest; and
 - (3) a detailed statement of the factual and legal grounds of the complaint or protest, including a description of the applicable law or other requirement that is alleged to have been violated, together with all relevant documents.
- The MTA General Counsel shall transmit the complaint or protest to the MTA Director of Transit Oriented Development for consideration. A complaint or protest found by the MTA Director of Transit Oriented Development to be patently without merit or untimely may be rejected without further consideration. Otherwise, the MTA Director of Transit Oriented Development may, at his or her sole discretion, conduct interviews, meet with the complainant or protester to review the issues raised in the complaint or protest, request additional written or oral submissions or take any other actions he or she deems necessary to determining the merits of the complaint or protest. After review of a complaint or protest submitted under these provisions, the MTA Director of Transit



Oriented Development will issue a written decision on the basis of the information provided by the complainant or protester, the result of any meetings with the complainant or protester, and the MTA Director of Transit Oriented Development's own investigation. If the MTA Director of Transit Oriented Development finds that the complaint or protest has merit, MTA will take appropriate action to correct the disposition process to protect the rights of the complainant or protester.

Notwithstanding the pendency of a complaint or protest, MTA reserves the right, in the sole discretion of the MTA Director of Transit Oriented Development based upon the circumstances, to proceed with the disposition process, including without limitation, to seek action by the MTA Board, to negotiate, execute and deliver a lease, license, or purchase and sale agreement and to commence action to remove a holdover tenant or licensee. No complaint or protest, whether pending or decided, shall toll or otherwise or extend a complainant's or protester's time to pursue other remedies, including without limitation, commencing an Article 78 petition.