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Katherine N. Lapp
Executive Director



Metropolitan Transportation Authority

State of New York

February 24, 2005

James P. Stuckey
Executive Vice President
Forest City Ratner Companies
One MetroTech Center North
Brooklyn, New York 11201

Re: **Brooklyn Arena/Mixed Use Development Project**

Dear Mr. ~~Stuckey~~ ^{Stuckey}:

I am in receipt of your February 23 letter requesting MTA's comments on the Memorandum of Understanding ("MOU") executed by New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"); the City of New York (the "City"); New York City Economic Development Corporation ("NYCEDC") (collectively, the "Public Parties") and Forest City Ratner Companies or one or more affiliated entities ("FCRC") on February 18, 2005 with respect to the design, development, construction and operation of (a) an arena for use by a professional basketball team currently known as the New Jersey Nets and for other sports and arena events (the "Arena") and (b) a mixed-use development consisting of multifamily housing; commercial office space; and retail space in Brooklyn ("the Project"). The Project, as currently envisioned, would involve construction on certain properties owned by MTA and the relocation of the existing LIRR Vanderbilt Yard ("VD Yard") and construction of a new LIRR rail yard ("New Yard"). The MTA is committed to cooperate with FCRC as it develops its plans to implement the Project. However, I note the following terms and conditions to the MTA's cooperation:

1. The MOU contemplates the sale or lease of the MTA Properties to ESDC or FCRC. Nothing in this letter shall obligate MTA to sell or lease MTA Properties to FCRC, EDC or ESDC or preclude MTA from determining, in its sole discretion, to use a competitive process, including, without limitation, competitive bidding, for determining the fair market value of MTA Properties and/or to assist the MTA Board in determining to whom to sell or lease MTA Properties.
2. In the event that the MTA Board decides to sell or lease the MTA Properties to ESDC or FCRC, FCRC agrees that any such transaction must be based upon the fair market value of the MTA Properties. The fair

The agencies of the MTA, Peter S. Kalikow, Chairman
MTA New York City Transit
MTA Long Island Rail Road

MTA Long Island Bus
MTA Metro-North Railroad

MTA Bridges and Tunnels
MTA Capital Construction

3. market value of the MTA Properties must take into account the following:
(1) payments in lieu of sales and use taxes and mortgage recording taxes or equivalent amounts pursuant to an agreement between MTA and the Public Parties, to be executed prior to the fair market determination; and
(2) payments in lieu of real property taxes or equivalent amounts pursuant to the City and MTA to be executed prior to the fair market value determination.
4. MTA has the right to review and approve the following documents, to the extent they impact the operations and finances of the LIRR at the VD Yard, or the MTA: FCRC's development and land use plan; FCRC's financing and operating plan for the Project; FCRC's design guidelines for the Project.
5. MTA will not enter into a lease or sales agreement with any party for any of its properties until it has confirmed, to its sole satisfaction, through the development of a sketch operating plan, that an acceptable level of service can be provided to its customers during the relocation, reconfiguration and construction of the New Yard.
6. MTA's cooperation is conditioned upon FCRC's acknowledgment that VD Yard is essential in its current location and currently performs the functions described on Appendix "A" annexed hereto. All such functions are required to continue to be performed at the New Yard, which shall meet the LIRR's needs during construction of the Project and for 30 years after completion of such construction. FCRC must obtain any property necessary to move VD Yard to the location of the New Yard and must transfer a fee interest in such property to the LIRR at no cost to the LIRR or the MTA. All construction on MTA/LIRR property must be subject to the then-current LIRR work rules and scheduling requirements, as set forth in the construction agreement. The LIRR's requirements for its safe and efficient service and operating needs, until the new permanent yard is constructed, are described in Appendix "B" hereto. The LIRR reserves the right at FCRC's expense to use self-help, including the right to stop all construction if, in its sole discretion, its minimum functionality requirements are not maintained or FCRC is not adequately progressing the work to complete the New Yard by no later than July 2008. No demolition or construction will occur on LIRR properties before execution of a detailed construction agreement by FCRC and MTA. The permanent functions for the New Yard will be set forth in a Design Definition Report ("DDR"), to be approved by the LIRR, with such functions to be defined in the LIRR's sole discretion.
7. FCRC must pay all operating and capital costs associated with relocating, reconfiguring, and reconstructing VD Yard in a manner acceptable to the LIRR. FCRC will be required to assign cash or an irrevocable letter of credit in a form acceptable to the MTA in advance for all costs associated

with such relocation, reconfiguration and construction of the New Yard, the deck and the overbuild hereinafter set forth and a corporate guaranty by Forest City Ratner Companies in a form acceptable to the MTA/LIRR for payments due under any lease made by MTA to ESDC.

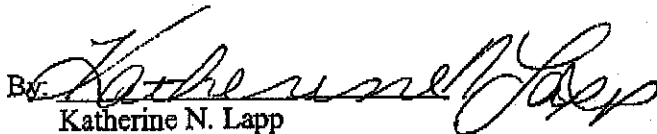
8. FCRC must agree to pay to the MTA all increases in maintenance, operating and insurance costs incurred as a result of the relocation and reconfiguring of VD Yard, including but not limited to costs associated with the maintenance, repair and rehabilitation of the deck (including the foundation and structure thereof and HVAC, lighting and fire-life safety systems associated with an enclosed yard), which costs shall be identified in a study by a consultant of the cost of operating a train yard under a deck. Forest City Ratner Companies will be required to provide a corporate guaranty in a form acceptable to the MTA/LIRR of such maintenance, operating and insurance costs.
9. FCRC must acknowledge that delays in the relocation, reconfiguration and construction of the New Yard may result in significant adverse financial and operational impacts to MTA/LIRR. These impacts include, but are not limited to, increased relocation, reconfiguration, construction and force account costs for projects connected with the East Side Access project and other projects set forth in the MTA's Capital Plan, and maintenance projects; and the cost to mitigate consequential adverse service impacts. In the event that FCRC and MTA negotiate a final agreement, such agreement must address reimbursement of MTA/LIRR for such impact costs associated with delays to the New Yard construction.
10. FCRC will be required to provide cash or a letter of credit that may be required by the MTA to guarantee the completion of the work on MTA Properties, including the completion of work in the New Yard the deck and the overbuild.
11. FCRC must agree to own, build and maintain any overbuild structure, including but not limited to HVAC, lighting and support elements. MTA will not be responsible for HVAC or lighting of the New Yard. In the event that FCRC fails to comply with its maintenance responsibilities with regard to the deck and/or the New Yard, the LIRR shall have the right to use at FCRC's expense self-help with regard to such deck and/or yard.
12. In the event that a ground lease is signed, it shall be subject to termination by MTA, in consultation with ESDC and the City, only with respect to the MTA arena site, in the event that the Arena ceases to be used regularly for a professional major league sports team during the first 30 years of the lease term, or thereafter ceases to be used for sports and/or entertainment events.

13. FCRC must agree to sign a permit to enter LIRR's property prior to performing any environmental and geo-tech testing and to enter a broad environmental indemnity acceptable to the LIRR as part of said entry permit.
14. To support MTA/LIRR operational requirements including manipulation of train consists of up to 10 M-series cars in the new VD Yard facility, FCRC must agree to provide the following: (1) a switching track (tail track) accessible from the west lead track (Lead 1) to a space provided in Block 1119, which will permit a 10-car-M-series train to access the East lead and Tracks 1 through 9; or an alternative track configuration, acceptable to MTA/LIRR, that does not reduce yard/station capacity or functionality, such determination to be made by MTA/LIRR in its sole discretion. In addition, FCRC must, at its expense, design and install a fully interlocked yard configuration of switches and signals acceptable to MTA/LIRR. If these items are not provided, in a form acceptable to the LIRR/MTA, the LIRR/MTA will not sign a final agreement for this transaction and this Letter will be deemed terminated in accordance with paragraph 16 below.
15. As a result of the new portal location, it is unknown as of the date of this Letter whether there is sufficient space to adequately construct the related interlocking, track and signal infrastructure. FCRC agrees that its design, in the sole judgment and discretion of MTA/LIRR, will provide adequate space without reducing the yard or Interlocking/Station functionality and capacity.
16. Whether the transaction described herein shall be consummated or not, FCRC shall reimburse MTA, within thirty (30) days of demand from time to time, for the following costs and expenses relating to the transaction contemplated by this MOU, including but not limited to: (a) the cost of all environmental analysis performed by the Public Parties with respect to the Project; (b) the cost of consultants acting on behalf of MTA, including but not limited to the cost of a study by a consultant of the cost of operating a train yard beneath a deck; (c) third-party legal fees and expenses incurred by the Public Parties and the MTA, pursuant to the letter from Roco Krsulic to James Stuckey, dated February 19, 2004; (d) third-party fees associated with the public approval process, including, without limitation, those arising from public hearings and notices, and (e) MTA's costs, fees and expenses associated with the condemnation process, if any. FCRC further agrees to defend and indemnify MTA from and against all liabilities (statutory or otherwise), obligations, claims, demands, penalties, causes of action, third party costs and expenses (including third party attorney's fees and expenses pursuant to the letter from Roco Krsulic to James Stuckey dated February 19, 2004), losses and injuries in any manner relating to or arising in connection with the Project described herein, including any enforcement of any such indemnity by the MTA.

- 17. FCRC and MTA agree that, except as set forth in paragraph 15, neither this Letter nor any discussions had or to be had between FCRC, the Public Parties and the MTA in respect of the Project, shall in any event form the basis for any action against, or claim of liability on the part of, any or all of FCRC or MTA; and (b) this Letter is non-binding and does not create or give rise to any legally enforceable rights or legally enforceable obligations or liabilities of any kind on the part of any party hereto.
- 18. This Letter Agreement shall be terminable at will by MTA or FCRC upon 10 days written notice. The obligations of FCRC set forth in Section 15 above shall survive such termination.


Please counter-sign this Letter below to indicate your acknowledgment of, and agreement to, the foregoing.

Sincerely,
METROPOLITAN TRANSPORTATION AUTHORITY

By: 
Katherine N. Lapp

Date: 2/24/05

Agreed to by Forest City Ratner Companies
FOREST CITY RATNER COMPANIES

By: 
James P. Stuckey
Date: 2/24/05

Appendix A

Vanderbilt Storage Yard Functions

- a. Daily storage of at least 72 Electric Multiple Unit ("MU") cars, including ten consists during midday and eleven consists "staged" for evening passenger revenue service (Note: the Atlantic Branch operates at a near subway-like headway with eleven trains per hour in the westbound AM peak period and 154 trains over a 24-hour period.);
- b. Daily toilet service for 50 cars, including 98% of the new M7 fleet and consists operating on the Far Rockaway, Hempstead, West Hempstead and Long Beach branches;
- c. All LIRR M7 "Extraordinary" interior cleaning;
- d. Daily "turning around" cleaning for 68 MU's;
- e. Daily "2B" Inspections for up to 68 cars;
- f. Storage, switching, elevation and manipulation of equipment for unscheduled maintenance (Note: With eleven trains per hour in the westbound AM peak Period, VD Yard is the only place to pull faulty consists off the 8.6 mile two-track Atlantic Branch until Jamaica);
- g. Storage and staging of track work equipment;
- h. Switching and manipulation of equipment to support 15 day car washing cycle in Babylon and Ronkonkoma;
- i. Switching and manipulation of equipment to support scheduled maintenance cycle in West Side Yard and Jamaica;
- j. Operation of electric car shop for special programs and retrofits;
- k. Contemplated additional storage to accommodate the 40% system-wide fleet expansion in 2009 through 2012 associated with the East Side Access program implementation;
- l. Is the site of a new substation, specifically the northeast corner of Block 1119. The substation has undergone a \$3.3 million upgrade. It provides power to the yard and Atlantic Terminal and will accommodate the increased power needs of the new M7 equipment;
- m. Is the site of a signal generator, specifically on the north side of Block 1119

APPENDIX B

Required Yard
Functions

	Current Yard	Temp. Yard	Deficit in Temp. Yard
Storage Capacity	72	42	-30

	MU Cars	MU Cars	MU Cars
Berthing Capacity	10	5	-5
	Consists	Consists	Consists
Toilet Servicing Opportunities/Day	36	21	-15
	MU Cars	MU Cars	MU Cars
E. I. C. Opportunities/Day	72	42	-30
	MU Cars	MU Cars	MU Cars
2B Inspection Opportunities/Day	72	42	-30
	MU Cars	MU Cars	MU Cars
Inspection Pitts	2	0	-2
	Electric Car Shop		

Main utility of VD yard is the ability to store, switch and block consists for agency specific initiatives such as scheduled maintenance, unscheduled maintenance, toilet servicing, EIC cleaning, 2B inspections, new fleet introduction, fleet modifications or future fleet enhancements. All temporary yard stages must have four 8-car tracks and one 10-car track.

All the Current Level of Yard Functions are required to operate the Railroad.

The above Temporary Yard Functions Levels must be supplied by FRC in all stages of the Temporary Yard.

Minimum clearances (22 feet plus side clearances) and maximum grades (2.0%) must be maintained.

The deficits in the Temporary Yard are not deficits that can be scheduled around. These deficits will have to be accommodated at other locations on the Railroad.

FCR will be responsible for all capital and incremental operating costs encountered by the LIRR to make up for the above Deficits in the Temporary Yard.