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Fax and mail

August 15, 2005

Mr. Roco Krsulic
Metropolitan Transportation Authority
347 Madison Avenue
New York, NY 10017-3739

Re: Vanderbilt Yards RFP

Dear Mr. Krsulic:

I am writing in response to your letter of August 8, 2005 which was in response to my earlier letter of July 27th to Chairman Kalikow. While I was pleased that you responded, I was surprised by the content of the letter.

Initially, it is striking that you chose to ignore the primary point of the letter – that MTA should not proceed to accept the FCRC bid when it was premised upon the use of eminent domain when the use of that power as envisioned by FCRC is contrary to the Supreme Court's recent Kelo decision. Your letter and the MTA Board action on July 27th completely failed to address that important contingency.

I also take exception to your brazen characterization of MTA's actions with respect to Vanderbilt Yards as "a full Request for Proposal process, and a review of competing proposals". While making a statement like that in a letter may appear to make it true, the facts belie your position. As you know, FCRC has been in discussions with MTA for at least a year, has had privileged and unequalled access to the Vanderbilt Yards and MTA's technical requirements and even entered into a letter of agreement in February 2005 with FCRC which set forth many of the terms of a formal agreement for the disposition of Vanderbilt Yards. In contrast to those secretive negotiations, the "full Request for Proposal process" consisted of only two advertisements buried in the back of the New York Times and Real Estate Weekly and a requirement for bidders to

submit responses in little over a month. Moreover, the technical details of the RFP were daunting requiring significant investment of engineering expertise associated with designing a platform and relocating MTA facilities.

If you continue to insist the RFP process was legitimate and properly advertised and if I am wrong that there were only two advertisements for bids, please provide me with proofs of publication in other newspapers or publications where potential developers may have been informed of the RFP. If it was mailed directly to potential developers, please provide of list of the addressees.

While MTA did its best to avoid publicizing the RFP, my client, a citizen's group, Develop Don't Destroy – Brooklyn, Inc., sent information mailings about the RFP to 96 potential developers around the country. That effort resulted in the competing bid from Extell Development Company.

Considering the enormous obstacles placed in its path with respect to the RFP, after a tremendous effort Extell put in a complete and responsive bid package. Not only did the Extell proposal present a scale compatible with the community and reflect community input, but it offered a price to MTA of \$100 million in excess of the bid from FCRC.

Rather than give Extell the consideration it was due, its bid was summarily rejected as somehow incomplete. Any alleged deficiencies were never identified and if there was a lack of detail with respect to maintenance and relocation of MTA facilities, it would seem prudent to provide Extell an opportunity to undertake the further investigation and design to provide those details. Obviously, FCRC was provided that opportunity for many months prior to the release of the RFP.

I listened on the telephone to the July 27th Board meeting. There was virtually no discussion of the relative merits of the two proposals and no staff evaluation or recommendation. At one point, the Board took an unexplained recess and returned about a half-hour later with a resolution authorizing the Executive Director to negotiate exclusively with FCRC. That was a striking move since that proposal was \$100 million less than the Extell bid and there was nothing else material in the FCRC bid that warranted MTA's disregard of the Extell proposal. Mr. Kalikow's statement that it would be "immoral" to negotiate with two bidders at the same time was preposterous. First, the MTA is a public authority whose fiduciary obligation is to its riders and the taxpayers. Second, there is nothing immoral or unethical when all the parties know there are multi-party negotiations.

Instead of being improper, further consideration of both proposals is mandated by law. MTA is bound by the State Environmental Quality Review Act (SEQRA). MTA cannot choose a final proposal on the basis of price alone but must also consider the environmental impacts of the action and choose the alternative that avoids or minimizes adverse impacts to the maximum extent practicable, balanced by economic and social considerations. Therefore, regardless of the negotiations with FCRC, MTA will have to consider the Extell proposal in an Environmental Impact Statement as an alternative. Thus, both proposals should remain under consideration until

the SEQRA process is complete.

Nevertheless, the MTA Board decided to continue to ignore its legal obligations and work with its predetermined choice. Thanks to several press reports we know what really occurred. While the MTA had previously announced its intention of not taking action at that meeting, and that it would consider both proposals at least until its September meeting, Mr. Kalikow took telephone calls from Mayor Bloomberg and Governor Pataki during the meeting, and acting at their direction pushed through the resolution to deal exclusively with FCRC.

We are dismayed by MTA's callous disregard for the basic elements of due process, transparency and its fiduciary obligations. Its actions do not promote trust in the system but rather reinforce the prevailing perception of favoritism and cronyism. You should be aware that recent similar actions by other authorities, like the New York State Canal Corporation, have been overturned. Should MTA continue on this misbegotten course, we expect a similar fate will result.

Very truly yours,

/s/

Jeffrey S. Baker

Cc:

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Hon. Alan Hevesi
Hon. Sheldon Silver
Hon. Joseph Bruno
Hon. Richard Brodsky
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Hon. Letitia James
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