Staff Summary

Metropolitan Transportation Authority

Subject West Side Yards Acquisition Proposals	**Date** March 30, 2005
Department Real Estate	**Vendor Name** N/A
Department Head Name Roco Krsulic	**Contract Number** N/A
Department Head Signature	**Contract Manager Name** N/A
Project Manager Name	**Table of Contents Ref #** N/A

Board Action					
Order	To	Date	Approval	Info	Other
1	Board	3/31/05	x		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal
		2	Executive Director

BACKGROUND:

Pursuant to a Request for Proposals dated February 22, 2005, the MTA solicited interest for the sale or lease of the air space and related real property interests above the western portion of the John D. Caemmerer West Side Yard (the "Site") located between 30th and 33rd Streets and 11th and 12th Avenues in Manhattan. The Site is currently used as a commuter rail car and locomotive storage yard with support facilities for Long Island Rail Road ("LIRR").

On March 21, 2005, the MTA received five proposals, two of which were deemed non-responsive because they were not accompanied by the required $25,000 deposit. The remaining three proposals were submitted by Jets Development LLC ("Jets"); Madison Square Garden L.P. ("MSG"); and TransGas Energy, LLC ("TransGas").

SUMMARY OF PROJECTS PROPOSED:

MSG – MSG proposes to develop a mixed-use community referred to as Hudson Gardens generally consisting of 5,800 residential units (800 of which will be affordable housing), a public park, elementary school, public library, 750-room hotel, restaurants, and office, retail, recreational and community facilities. MSG is offering to pay the MTA $400 million.

Jets – The Jets propose to build the New York Sports & Convention Center ("NYSCC") on the Site, a multi-use sports, entertainment and convention facility. In addition, the Jets have submitted a proposal executed by six real estate developers indicating an intention to purchase certain transferable development rights ("TDRs") at $100 per square foot if the Site and certain other unspecified receiving parcels are rezoned, which TDRs can be used with respect to development on those parcels. The Jets are offering to pay $250 million for the physical portion of the Site necessary for the NYSCC and, if the Site and receiving parcels are rezoned, the Jets' real estate partners have expressed an interest in paying up to an additional $440 million for the TDRs (4.4 million square feet of TDRs at $100 per square foot).

TransGas – The focus of TransGas' proposal is not on the development of the Site, but rather on the construction of a $2 billion 1100 megawatt electricity and steam "cogeneration" facility in Brooklyn. The payments to MTA under the TransGas proposal are contingent upon the following: (1) TransGas and MTA (or another power purchaser of equal creditworthiness) enter into a 40-year power purchase agreement; (2) Con Edison enters into a 40-year contract to purchase not less than 2 million pounds per hour of steam; and (3) the power plant receive its siting permits and all governmental approvals. TransGas is offering to pay the MTA $700 million – $200 million to be spent at MTA's discretion and the remaining $500 million of which is to be spent on other capital projects for NYCT largely chosen by TransGas and its partners, Siemens Westinghouse Power Corporation and ABB Inc., who also expect to be the vendors for the projects.

DISCUSSION OF PROPOSALS:

The TransGas proposal is contingent upon a number of factors, many of which are outside of the control of the MTA. There are no assurances that the Brooklyn power plant will ever be sited or permitted, or that Con Edison will sign a 40-year steam contract (or be required to do so by the New York Public Service Commission). MTA has recently authorized a 13-year energy contract with the New York Power Authority and would have to terminate that contract and make "exit" payments in order to enter into a 40-year power agreement with TransGas. In addition, $500 million of the expected $700 million in economic benefits would go toward non-priority capital projects that are not contained in the MTA's proposed 2005-2009 Capital Plan. In short, the essence of this transaction is that the MTA would be paying money through the 40-year power purchase agreement that would largely be used to finance capital projects on a taxable basis – projects that are not a priority for MTA and for which TransGas and its partners appear likely to be the vendors. This sole source arrangement would raise obvious procurement issues for the MTA.

The MSG proposal offers $400 million for the acquisition of the Site (of which a $40 million non-refundable deposit would be made at contract signing and $360 million at closing) and, in addition, a commitment to construct the necessary platform over the Site at an estimated cost of $360 million. MSG has advised MTA that it is committed to close the acquisition of the Site immediately following its selection by MTA. MSG has agreed to obtain a platform completion guaranty and to fund a $25 million platform repair and maintenance reserve, with additional contributions to such fund as necessary to maintain the $25 million balance (estimated at $6 million annually). MSG has also agreed to pay annual LIRR increased operating costs associated with operating below the platform (estimated at $1.5 million annually). The MSG proposal includes schematic drawings for a one-level bus depot on the Site should the current NYCT Quill bus depot north of the current Javits Convention Center need to be relocated; however, staff review indicates that this space would not be adequate for NYCT needs. The MSG construction plans indicate the platform would be constructed in three phases (commencing in August 2007, July 2010 and March 2014, respectively), but the potential impact to the LIRR operations of a phased construction is unknown at this time. Prior to any closing, MTA would need to reach an agreement with MSG that would finalize the amount of the annual operating cost payment, including security costs, and that would include satisfactory credit support for the annual operating cost payment, the annual platform reserve contribution and the platform completion guaranty, complete environmental indemnity to MTA for existing conditions (with satisfactory credit backing), and a platform design, construction schedule and track outage protocol that meet the LIRR's operational needs.

The Jets propose to pay the MTA $250 million ($50 million at contract signing and $200 million secured by a letter of credit at closing, as described below) for the physical portion of the Site necessary to build the NYSCC (2.2 million square feet). The purchase price will be paid in $50 million installments on each anniversary of the closing date, with the final payment to come on the earlier of the 4th anniversary of the closing date or the issuance of the Certificate of Occupancy. As an alternative, the Jets have offered to pay the total purchase price at closing as a net present value payment using a 9.5% discount rate (estimated discounted value is $210 million). The Jets propose closing on the acquisition on or before June 1, 2005. As part of their bid, the Jets submitted a non-binding proposal executed by the following six real estate developers: Rockrose Corp., Glenwood Management Corp., Jack Resnick & Sons, Inc., Related Companies, L.P., Donald Zucker Company and The Brodsky Organization. These developers have expressed an interest in purchasing TDRs from the MTA at $100 per square foot (up to a maximum of 4.4 million square feet) should the MTA achieve rezoning of the Site and other designated parcels. The estimated annual LIRR increased operating costs of $1.5 million are included in the Jets' $250 million proposal (*i.e.*, not an additional payment). The Jets have agreed to provide a platform completion guaranty and to incrementally fund over a period of 25 years a $25 million platform maintenance reserve (however, the reserve cannot be applied by the MTA to support mechanical and utility systems installed under the platform). The Jets bid identifies governmental subsidies of $600 million ($300 million from the State and $300 million from the City) to pay for the platform costs and a roof for the NYSCC. While the Public Authorities Control Board ("PACB") must approve the required override of local zoning by the Empire State Development Corporation for the construction of the NYSCC, the Jets have advised the MTA that they are prepared to close on the acquisition of the Site in advance of PACB action. The Jets have proposed to provide for a two-level NYCT bus depot on the south side of the Site to accommodate the possible relocation of the Quill bus depot. Staff had tentatively indicated that an earlier design of this space would be sufficient for NYCT bus operations; however, NYCT staff has not yet reviewed the Jets' newest design. The Jets have proposed that if MTA does not need space for a Quill relocation, the Jets will construct a garage and rent it for a ten-year term, automatically renewable, at the initial rate of $540,000 per year, payable to MTA. Prior to any closing, MTA would need to reach an agreement with the Jets that would finalize the amount of the annual operating payment, including security costs, and that would include satisfactory credit support for the annual operating cost payment, provide for the timing and the amount of annual platform reserve contribution and the use of reserve funds, set forth the scope and credit support for the platform completion guaranty, provide for complete environmental indemnity to MTA for existing conditions (with satisfactory credit backing), and provide a platform design, construction schedule and track outage protocol that meet the LIRR's operational needs. Additionally, if MTA determines to retain unused development rights from the site, the Board should consider whether the form of disposition should be structured as a leasehold, not a fee disposition.

RECOMMENDATION:

MTA Staff recommends that the TransGas proposal not be pursued for the reasons stated above. MTA Staff will await direction from the MTA Board on how to proceed with regard to the Jets and MSG proposals. The net proceeds received from the selected developer shall be "Net Proceeds of Qualified Agreements" within the meaning of the Transportation Revenue Bond Resolution to be applied to transit and commuter capital projects.

RESOLUTION

BOARD OF THE
METROPOLITAN TRANSPORTATION AUTHORITY

WHEREAS, pursuant to a Request for Proposals dated February 22, 2005, the Metropolitan Transportation Authority ("MTA") solicited interest for the sale or lease of the air space and related real property interests above the western portion of the John D. Caemmerer West Side Yard located between 30th and 33rd Streets and 11th and 12th Avenues in Manhattan (the "Site"); and

WHEREAS, on March 21, 2005, the MTA received five proposals, two of which were deemed non-responsive because they were not accompanied by the required $25,000 deposit; and

WHEREAS, the remaining three proposals were submitted by Jets Development, LLC ("Jets"); Madison Square Garden, L.P. ("MSG"); and TransGas Energy, LLC ("TransGas"); and

WHEREAS, following its further evaluation of the Jets, MSG and TransGas proposals, the MTA Board has determined that the following actions should be taken.

NOW THEREFORE, upon the recommendation of MTA's Executive Director, the Board of the MTA resolves as follows:

1. For the reasons stated in the Staff Summary submitted to the Board, no further action shall be taken on the TransGas Proposal.

2. No further action shall be taken with respect to the MSG proposal and negotiations shall be initiated with the Jets with respect to the Jets proposal in an effort to consummate a transaction satisfactory to MTA.

3. The Chairman and the Executive Director and their respective designees are hereby authorized to negotiate the terms and conditions of any binding agreements to sell or lease air space and related real property interests relating to the Site to the Jets in connection with the Jets proposal.

4. The Chairman and Executive Director and their respective designees are hereby authorized to take such actions and enter into and execute such agreements, contracts, leases, documents, and other instruments, and to address all concerns related to the Jets proposal, including those set forth in the Staff Summary submitted to the Board, as may be necessary, desirable or

convenient to effectuate the sale or lease of air space and related real property interests relating to the Site to the Jets in connection with the Jets proposal.

5. The Chairman and Executive Director and their respective designees are hereby authorized to take such actions as may be required to satisfy legal or regulatory requirements in connection with the foregoing actions, including but not limited to the preparation of any environmental analyses, evaluations, documents, determinations, or findings that may be required prior to final approval of any binding agreements to sell or lease air space and related real property interests relating to the Site to the Jets in connection with the Jets proposal.