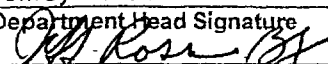
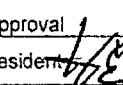

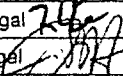
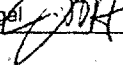


# Staff Summary

Subject Gateway Project
Department Real Estate
Department Head Name Jeffrey Rosen
Department Head Signature 
Project Manager/Division Head Jeffrey Rosen

Date April 19, 2013
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	LI Committee	4.22	x		
2	Finance	4/22	x		
3	MTA Board	4/24	x		

Internal Approvals			
Order	Approval	Order	Approval
1	LIRR President 	4	MTA Chief Financial Officer 
2	LIRR Legal 		
3	MTA Legal 		

## Purpose:

To obtain Board approval of the annexed resolution, authorizing negotiation and execution of agreements by MTA and LIRR to facilitate the construction of a concrete casing to preserve the future subsurface Right of Way ("ROW") for Amtrak's proposed Gateway Tunnel, underneath the LIRR's Eastern Rail Yard (the "Tunnel Casing Project"), including the granting of permanent easements with respect to such Project and the preserved ROW, consistent with the parameters as provided in this Staff Summary and the resolution.

## Discussion:

Numerous planning studies indicate that the existing two 100-year-old, single-track tunnels under the Hudson River, connecting New Jersey and New York City, currently operate at maximum capacity and are insufficient to meet the projected increase in demand. As a key part of its planning for future service to and from New York City, Amtrak has developed a conceptual program, known as the "Gateway Program," to build a new tunnel under the Hudson River from New Jersey through the west side of Manhattan to connect with Penn Station. The Gateway Program would support expanded rail services to meet future demand as well as improve intercity and commuter rail system safety and reliability. In addition, the Gateway Program would be expected to further create resiliency in the passenger rail system in response to disasters, and particularly flooding, as new construction could be designed to withstand flood levels at new standards, using criteria that would have prevented the flooding caused by Superstorm Sandy.

Amtrak has evaluated potential options for locating the new tunnel between the Hudson River and Penn Station and determined that only a single underground alignment under the LIRR Hudson Yards facility between 10th and 11th Avenues in Manhattan can achieve a direct connection to the majority of Penn Station's existing tracks. Hudson Yards is also the location of the mixed-use commercial overbuild project that a joint venture between affiliates of The Related Companies and Oxford Properties ("Developer") is progressing pursuant to existing agreements with MTA/LIRR (the "Overbuild Project"). Amtrak is proposing to undertake the design and construction of an underground rectangular structure 800 feet long, 50 feet wide, and approximately 35 feet tall (the "Concrete Casing"), to be constructed within the ROW to allow for the potential future development of the Gateway Tunnel. The construction of the Concrete Casing, in advance of the completion of the Overbuild Project, will prevent the permanent loss of this ROW.

The Concrete Casing is the subject of an Environmental Assessment being undertaken by the FRA and Amtrak under NEPA. At the same time, Amtrak is in negotiations with Developer concerning agreements that will allow the construction of the Concrete Casing by a design/builder so as to ensure coordination of the construction of the Concrete Casing and the Overbuild Project, without unduly delaying or burdening the Overbuild Project. Amtrak, in cooperation with Developer, has requested that MTA and LIRR facilitate the Tunnel Casing Project, by agreeing, among other things, to (a) temporarily relocate certain LIRR Maintenance of Equipment ("MoE") functions; (b) permit the demolition and subsequent rebuilding of the MoE facility at the Eastern Rail Yard; and (c) grant a temporary construction license in the Yards Parcel portion of the Eastern Rail Yard for construction of the Concrete Casing and subsequently, a permanent easement for the location of the Concrete Casing in the ROW.

Given the regional importance of the Gateway Program, its inclusion in Governor Cuomo's 2100 Commission Report following Superstorm Sandy, and the need to preserve the ROW so as not to have the Overbuild Project preclude the Gateway Program from going forward, MTA and LIRR have been cooperating with this effort, with the understanding that, as fundamental principles of MTA/LIRR's participation, (1) MTA/LIRR will not incur any financial obligations or liabilities as a result of the Tunnel Casing Project, and (2) the Tunnel Casing Project will not adversely affect MTA/LIRR's rights under its existing agreements with Developer in any material respect.

In furtherance of the Tunnel Casing Project, and preservation of the ROW, MTA and LIRR accordingly request Board approval of the accompanying resolution, authorizing the entry into such agreements as are necessary and desirable to effectuate the Tunnel Casing Project (including a temporary construction license for the construction of the Concrete Casing Work and permanent easement(s) and/or covenants in favor of Amtrak and/or Related, as their interests may lie), in accordance with the fundamental principles as stated above and consistent with the following terms:

- (1) LIRR will arrange for the expedited vacating of the MoE facility, and subsequently allow the demolition of that facility and certain tracks therefor, provided that Amtrak agrees to pay directly, or as necessary to reimburse LIRR for, LIRR's incremental increased operational expense of performing MoE operations at an alternate location, and all costs and expenses associated with (1) LIRR's relocation out of the MoE, (2) the rebuilding of the MoE, (3) LIRR's relocation back into the MoE once such rebuilding is completed, (4) LIRR's review and approval of plans and specifications for the demolition of the MoE, the construction of the Concrete Casing and the rebuilding of the MoE, and (5) LIRR force account and field personnel required by LIRR in connection with the demolition of the MoE, the construction of the Concrete Casing and the rebuilding of the MoE.
- (2) Amtrak or Developer agrees to complete the reconstruction of the MoE facility, to the same specifications as the existing MoE facility, as will be approved by LIRR, entirely at Amtrak's or Developer's own cost, to be completed within 26 months of the demolition of such facility, together with any upgrades to facilities as may be necessary in order to comply with current building codes.
- (3) Amtrak will reimburse all other costs incurred by MTA/LIRR in connection with the Tunnel Casing Project, including but not limited to legal fees incurred in the drafting and negotiating of all agreements.
- (4) Amtrak and Developer will waive any and all claims they might otherwise have against MTA/LIRR based upon its cooperation with or participation in the Tunnel Casing Project, such that MTA/LIRR will have no liability to Amtrak or Developer and neither Amtrak nor Developer will be excused from any monetary obligation to MTA/LIRR (under the agreements relating to the Tunnel Casing Project and/or

the Overbuild Project or otherwise) by reason of any act or omission other than willful misconduct of MTA/LIRR relating to the Tunnel Casing Project, or by reason of any act or omission whatsoever of Amtrak or any other Tunnel Casing Project participant apart from MTA/LIRR.

- (5) In addition, such agreements will provide MTA/LIRR with rights to approve and inspect elements of the work affecting LIRR operations, and such other rights and protections as are deemed prudent. In order to facilitate the timely completion of the Tunnel Casing Project, MTA/LIRR agree to provide specification, design review or other approvals in accordance with a schedule agreed to by the parties, and at an agreed point in the development of plans and specifications for both the MoE replacement facility and the Concrete Casing, LIRR will agree to limit any further design comments, and/or requirements for any stoppages of work, to instances where public safety, service reliability or legal compliance are implicated.

### **Recommendation:**

It is recommended that the Board authorize the annexed resolution, authorizing entry into agreements necessary to effectuate the Tunnel Casing Project in conformity with the terms as set forth in this Staff Summary.

RESOLUTION

BOARDS OF THE

METROPOLITAN TRANSPORTATION AUTHORITY

LONG ISLAND RAIL ROAD COMPANY

WHEREAS, Amtrak has developed a conceptual program, known as the "Gateway Program", to build a new tunnel under the Hudson River from New Jersey through the west side of Manhattan to connect with Penn Station; and

WHEREAS, Amtrak has evaluated potential options for locating the new tunnel between the Hudson River and Penn Station and determined that only a single underground alignment under the LIRR Hudson Yards facility between 10<sup>th</sup> and 11<sup>th</sup> Avenues in Manhattan (the East Rail Yard) can achieve this direct connection; and

WHEREAS, the Hudson Yards is also the location for the mixed-use commercial overbuild project that a joint venture between affiliates of The Related Companies and Oxford Properties is progressing pursuant to existing agreements with MTA/LIRR ("the Overbuild Project"); and

WHEREAS, subject to the ongoing environmental review being progressed by Amtrak and the Federal Railroad Administration pursuant to NEPA, Amtrak is proposing to undertake the design and construction of an underground rectangular structure under the East Rail Yard, to be constructed within the future subsurface Right of Way ("ROW") (the "Tunnel Casing Project"), to allow for the potential future development of the Gateway Tunnel; and

WHEREAS, given the regional importance of the proposed Gateway Program to commuter transportation, and the need to preserve the ROW, so as not to have the Overbuild Project preclude the Gateway Program from going forward, MTA and LIRR have been cooperating with this effort; and

WHEREAS, Amtrak's plans for the Tunnel Casing Project would require the LIRR to vacate the Maintenance of Equipment facility in an expedited manner to allow for the demolition of that facility and certain tracks therefor, and that MTA and LIRR further facilitate the Tunnel Casing Project, by agreeing, among other things, to grant a temporary construction license and subsequently, a permanent easement to accommodate the placement of a concrete casing in the Eastern Rail Yard; and

WHEREAS, as fundamental principles of MTA/LIRR's participation, MTA/LIRR will require Amtrak and/or the Developer to incur (or reimburse MTA/LIRR for) any financial obligations that result from the Tunnel Casing Project, and that the existing Overbuild Project agreements between MTA/LIRR and Related not be adversely affected by participation in the Tunnel Casing Project; and

WHEREAS, in furtherance of the Tunnel Casing Project and in compliance with the Public Authorities Law, an appraisal of the value of any permanent easement rights required by the Tunnel Casing Project will be undertaken, and MTA will require that Amtrak provide consideration not less than the fair market value of such easement rights, prior to granting permanent easement rights in connection with the Tunnel Casing Project; and,

WHEREAS, any transaction with Amtrak to effectuate the Tunnel Casing Project shall be consistent with the terms and conditions set forth in this resolution and the accompanying staff summary; and-

WHEREAS, the Boards of the MTA and LIRR find the terms and conditions set forth herein and in the attached Staff Summary to be advantageous to the MTA and LIRR, and that the actions proposed are necessary to preserve the potential effectuation of the Gateway Program, a program of regional importance and significance to the development and improvement of commuter transportation;

NOW, THEREFORE, the Boards of the MTA and LIRR resolve as follows:

1. The Chairman, Vice Chairman and/or Interim Executive Director, and their designees, acting singly, are hereby authorized to negotiate, execute and deliver contracts and any other necessary or appropriate agreements or instruments as are necessary and desirable to effectuate the Tunnel Casing Project, in conformity with the terms and conditions set forth in this resolution and the attached Staff Summary, including but not limited to a temporary construction license for the construction of the Concrete Casing Work and permanent easement(s) and/or covenants in favor of Amtrak and/or Related, as their interests may lie, in accordance with the terms set forth in this resolution and attached Staff Summary.
2. The Chairman, Vice Chairman and/or Interim Executive Director, and their designees, acting singly, are hereby authorized to take any and all actions as may be necessary, desirable or convenient to satisfy all applicable legal or regulatory requirements in connection with the foregoing actions.

Dated: April 24, 2013