

# THE PORT AUTHORITY OF NY & NJ

## REQUEST FOR PROPOSALS (RFP)

**ISSUE DATE:** November 21, 2014

**TITLE:** SALE OF LAND AND DEVELOPMENT RIGHTS ON DYER AVENUE  
AND 33<sup>RD</sup> STREET

**RFP NO.:** 40540

**QUESTIONS DUE BY:** December 8, 2014 **TIME:** 2:00 P.M.

**PROPOSALS DUE BY:** December 16, 2014 **TIME:** 2:00 P.M.

**SOLICITATION MANAGER:**

**NAME:** Tracy Tiernan

**EMAIL:** ttiernan@panynj.gov

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## AGREEMENT ON TERMS OF DISCUSSION

The Port Authority of New York and New Jersey's (the "Authority" or "Port Authority") receipt or discussion of any information (including information contained in any proposal, vendor qualification, ideas, models, drawings, or other material communicated or exhibited by us or on our behalf) shall not impose any obligations whatsoever on the Port Authority or entitle us to any compensation therefor (except to the extent specifically provided in such written agreement, if any, as may be entered into between the Port Authority and us). Any such information given to the Port Authority before, with or after this Agreement on Terms of Discussion ("Agreement"), either orally or in writing, is not given in confidence. Such information may be used, or disclosed to others, for any purpose at any time without obligation or compensation and without liability of any kind whatsoever. Any statement which is inconsistent with this Agreement, whether made as part of or in connection with this Agreement, shall be void and of no effect. This Agreement is not intended, however, to grant to the Port Authority rights to any matter, which is the subject of valid existing or potential letters patent. The foregoing applies to any information, whether or not given at the invitation of the Authority.

Notwithstanding the above, and without assuming any legal obligation, the Port Authority will employ reasonable efforts, subject to the provisions of the Port Authority Freedom of Information Code and Procedure adopted by the Port Authority's Board of Commissioners on March 29, 2012, as may be amended, which may be found on the Port Authority website at: <http://www.panynj.gov/corporate-information/pdf/foi-code.pdf>, not to disclose to any competitor of the undersigned, information submitted which are trade secrets or is maintained for the regulation or supervision of commercial enterprise which, if disclosed, would cause injury to the competitive position of the enterprise, and which information is identified by the Proposer as proprietary, as more fully set forth in the FOI Code, which may be disclosed by the undersigned to the Port Authority as part of or in connection with the submission of a proposal.

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(Company)

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(Signature)

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(Title)

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(Date)

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## EXECUTIVE SUMMARY

The Port Authority of New York and New Jersey (the “Authority” or “Port Authority”) is seeking Proposals from qualified parties (either individual entities or joint ventures, “Proposers”) for the purchase of land and development rights associated with two tax lots that are either adjacent to or extend over the Lincoln Tunnel Expressway (commonly referred to as “Dyer Avenue”) between 33<sup>rd</sup> and 34<sup>th</sup> Streets (collectively, the “Development Rights”) in New York, New York:

- Lot 22, on Block 731, is a parcel of land on the north side of 33<sup>rd</sup> Street. It is currently used on an interim basis as a bus parking lot (“Lot 22”). Lot 22 is offered for sale.
- Lot 72, on Block 731, is occupied by Dyer Avenue, which is largely below the level of the City street grid at this location (“Lot 72”). Lot 72 includes land at grade immediately to the east and west of the Dyer Avenue. Lot 72 development rights and air space above Dyer Avenue are offered for sale (the Authority will retain ownership of Dyer Avenue and its right of way).

Further information is provided in the “Property Description” section below.

Proposers may have the flexibility to use the Development Rights on Lots 22 and 72 or to transfer them to other parcels on Block 731 in accordance with the New York City Zoning Resolution (“NYCZR”).

The Development Rights are located in the heart of the new West Side development district. Pennsylvania Station, the James A. Farley Building (the future Moynihan Station), the Hudson Yards development, Manhattan West and the High Line are all in the immediate area.

The Authority owns and operates Dyer Avenue, which stretches from the mouth of the Lincoln Tunnel to 30<sup>th</sup> Street between 9<sup>th</sup> and 10<sup>th</sup> Avenues. The roadway is a major traffic artery that must remain in operation during any construction and development resulting from this RFP. Between 33<sup>rd</sup> and 34<sup>th</sup> Streets, Dyer Avenue is depressed below the street grid (except for one lane that provides access from 33<sup>rd</sup> Street), and there is an opportunity to construct a cantilever over the roadway. Any development over Dyer Avenue will be subject to review and approval by the Authority Engineering Department, as described in this RFP. Lots 22 and 72 include approximately 11,266 SF of vacant contiguous land at grade on 33<sup>rd</sup> Street immediately to the east of Dyer Avenue. To the extent that development of Lots 22 and 72 can be limited to the land adjacent to the Dyer Avenue cut, Authority involvement in design review and approval will be reduced.

Any proposed development must comply with the New York City Building Code and the NYCZR. It is anticipated that any private development resulting from this RFP will be subject to real property taxes or payments in lieu of tax pursuant to the Hudson Yards Support and Development Agreement, dated December 1, 2006. Additional information can be found on the Hudson Yards Development Corporation website: <http://www.hydc.org/>.

Consistent with its mission, the Authority’s primary objective in issuing this RFP is to maximize revenue and provide an additional source of funding for the advancement of projects that move people and goods safely and efficiently through the Port District.

# MAP AND PICTURES OF THE PREMISES

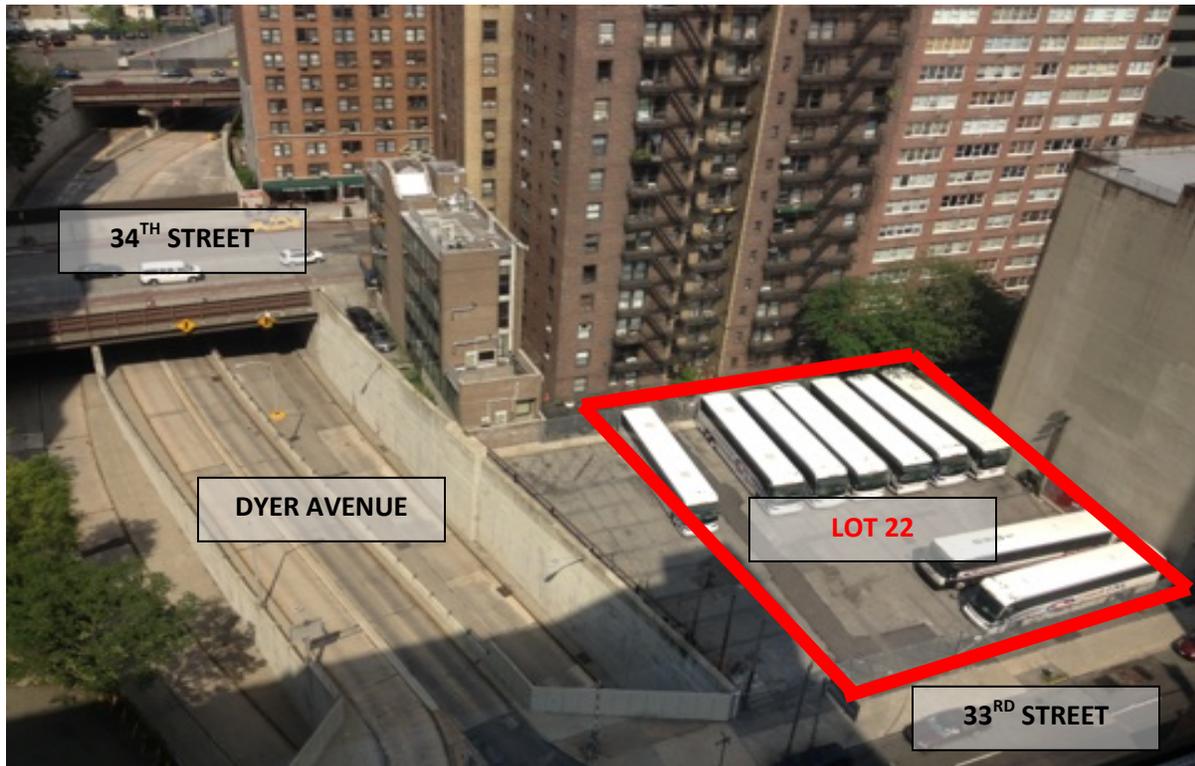
Figure 1: Tax Map



Figure 2: Aerial



*Figure 3: View Looking to the North*



*Figure 4: Second View Looking to the North*



## PROPERTY DESCRIPTION

Both Lots 22 and 72 are being offered unencumbered per the details below.

LOT 22	
Block	731
Lot	22
Address	431 West 33rd Street
Description	Vacant Land
Location	North side of 33 <sup>rd</sup> Street, between 9 <sup>th</sup> and 10 <sup>th</sup> Avenues, immediately to the east of Dyer Avenue
Lot Size (SF)	7,406
Dimensions	75' x 98.75' (75' fronts 33 <sup>rd</sup> Street)
In-Place Zoning	C6-4 / Hudson Yards Special Zoning District Subdistrict C

LOT 72	
Block	731
Lot	72
Address	448 West 34th Street
Description	Occupied by a largely below grade section of Dyer Avenue and small strips of land directly to the east and west
Location	Directly north of 33rd Street over Dyer Avenue, between 9th and 10th Avenues
Lot Size (SF)	30,289
Dimensions	Irregular site; 178' frontage on 33rd Street, 124' frontage on 34th Street, 197.5' on west of Dyer Avenue, 197.5' east of Dyer Avenue
In-Place Zoning	C6-4 / Hudson Yards Special Zoning District Subdistrict C

Lot 22 is an undeveloped parcel on the north side of 33<sup>rd</sup> Street, immediately east of Dyer Avenue, between 9<sup>th</sup> and 10<sup>th</sup> Avenues located at 431 West 33<sup>rd</sup> Street. Lot 22 is currently used for bus parking. The Authority's intent is to continue that use (or any other use it deems appropriate in its sole discretion) until the selected Proposer, if any, is prepared to start construction.

Lot 72 extends from 33<sup>rd</sup> Street to 34<sup>th</sup> Street along Dyer Avenue (largely below city street grade except for part of one lane providing access from 33<sup>rd</sup> Street) and includes three strips of vacant land on either side of Dyer Avenue:

- (i) 6,235 SF of vacant land running north to south along the west side of Dyer Avenue. The southern section is currently used as a vehicle loading area for 460 West 34<sup>th</sup> Street and the northern section contains a small community garden. Per the "Public Space" section below, proposals should include plans for a north-south through block public space as part of any development;

- (ii) 3,860 SF of vacant land (that is contiguous with Lot 22) to the east of Dyer Avenue that is currently used for bus parking as described above; and
- (iii) 778 SF of vacant land to the east of Dyer Avenue fronting 34<sup>th</sup> Street.

Together Lots 22 and 72 include approximately 11,266 contiguous SF of vacant land on 33<sup>rd</sup> Street directly to the east of the Dyer Avenue cut.

## ZONING

The Development Rights are located in a C6-4 zoning district in the Hudson Yards Special Zoning District, Sub-District C. The C6-4 district permits a wide range of high-bulk commercial and residential uses. Lots 22 and 72 are entitled to the following floor area ratios (“FAR”) and floor areas under the zoning if the development includes the purchase of additional floor area from the Hudson Yards District Improvement Fund (“DIF”) and complies with the inclusionary housing guidelines.

	LOT 22	LOT 72	TOTAL
LOT SIZE	7,406	30,289	37,695
BASE FAR	6.50x	6.50x	6.50x
MAX FAR <sup>1 2</sup>	13.00x	13.00x	13.00x
MAX BUILDABLE SF	96,281	393,756	490,037

<sup>1</sup> Requires purchasing additional FAR from the Hudson Yards DIF / compliance with inclusionary housing guidelines.

<sup>2</sup> Under New York State Law and the zoning for this location, the maximum residential is 12x FAR. The FAR can be increased to 13x for commercial development.

The zoning contains some requirements that may complicate development the street wall, retail continuity on 34<sup>th</sup> Street, minimum tower coverage and other zoning requirements. **The Authority will not consider any offer that is contingent upon zoning approvals or modifications except as described in the “Tax Lot Subdivision” described below.**

## TAX LOT SUBDIVISION

The Authority is willing to consider a subdivision and or merger of Lots 22 and 72, in its sole discretion, to accommodate a more efficient development footprint. In the event that a Proposer seeks to subdivide or merge the lots, drawings of the existing and proposed lot lines with estimated dimensions of the new and remaining lots must be submitted with the official response to this RFP.

If the selected Proposer elects to pursue this option and the Authority agrees to cooperate, the selected Proposer must prepare the application and related exhibits for the application to New York City’s Department of Finance at its sole cost. The Authority will file the final application after appropriate review.

## DEVELOPMENT OPTIONS

There are a number of options for incorporating the Development Rights into a new development on Lots 22 and 72 or other sites on Block 731. For any development on Lots 22 and 72, a

threshold issue is whether to construct a portion of the building over Dyer Avenue using a cantilever, platform or other structure or to avoid construction over Dyer Avenue by locating all development on the vacant land directly east of Dyer Avenue.

Introducing columns in the median or a cantilever, platform or other structure over some or all of Dyer Avenue will require Authority engineering, safety requirements and associated reviews. Criteria employed to evaluate proposals that include a structure over Dyer Avenue will include:

- Life Safety, including Ventilation
- Maintenance of Traffic
- Security
- Engineering
- Construction Staging
- Future Maintenance and Operation

The Authority's Design and Construction Requirements are described in Exhibit C, included herewith and made part hereof.

## **SECURITY**

The level of security assessment required will depend on which development option the Proposer elects to pursue:

- If the entire development occurs on Lot 22 and the eastern land portion of Lot 72 with no structure over the roadway, Proposers must complete a Risk and Threat Assessment ("RTA"). The RTA must be included in the final submission per the "Submission Guidelines" below.
- If the development proposes a cantilever over the eastern most lane of Dyer Avenue on Lot 72 without covering a substantial portion of the roadway, an RTA will be required and the PA will review the engineering plans to determine if a Design Based Threat Analysis ("DBT") is also required and to what extent. The DBT guidelines are included here as Exhibit D. The height of the cantilever and the distance it stretches from the eastern portion of the land on Lot 72 will be factored into the decision to conduct a DBT, which will be at the Proposer's sole cost.
- If a development proposes a platform over all or a substantial amount of the roadway, a full DBT analysis will be required. See the DBT analysis guidelines in Exhibit D.

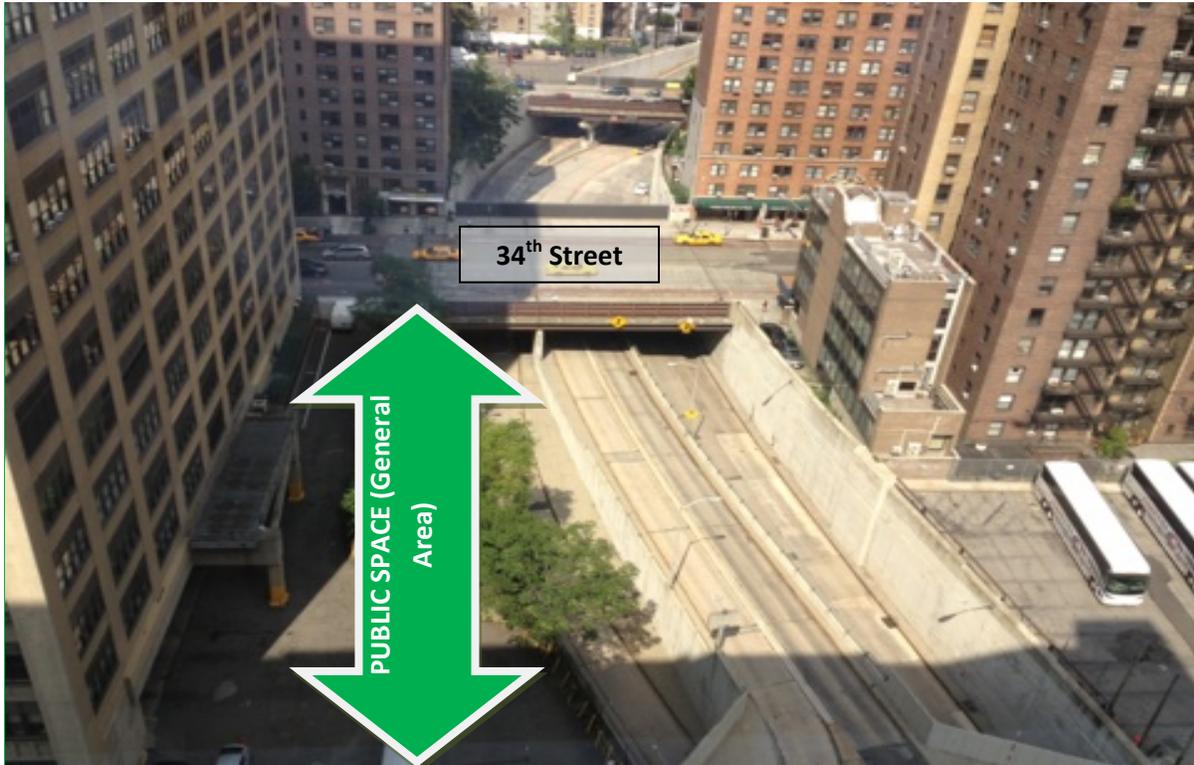
The RTA and DBT will be subject to the review and approval of the Port Authority and the analysis will be incorporated into the Purchase Contract. When the selected Proposer begins development at some point after the closing of this transaction, no additional structural approvals will be required from the Authority. The Port Authority reserves the right to review structural drawings for conformance to the design guidelines agreed to in the RTA/DBT.

All security analysis will be at the sole cost of the Proposer.

## **PUBLIC SPACE**

All proposals are required to include a landscaped north-south through-block pedestrian passageway connecting 33<sup>rd</sup> and 34<sup>th</sup> Streets on the strip of land on Lot 72 that runs along the western edge of the Dyer Avenue cut (the “Public Space”). The Public Space must be accessible to the public during daylight hours. It will be the responsibility of the Proposer to build, maintain and operate the Public Space. See below:

*Figure 5: Public Space Looking North*



Leaders of the local community have made the development of new park and public spaces a priority. The Authority’s expectation is that the selected Proposer will consult with local elected representatives and representatives of the local community board early in the design process to discuss plans for the required Public Space. The existing community garden will remain in place and in operation (unless the Authority directs otherwise) until the proposed development is ready to proceed with construction.

## EVALUATION CRITERIA

All Proposals will be reviewed by the Authority, as required, to determine that they are responsive to this RFP and contain all required submissions.

For Proposals meeting such requirements, the following criteria will be used in the evaluation. Each category will be considered according to a percentage assigned internally by the Authority, but listed in order of importance from A – D below.

<b>EVALUATION CRITERIA - RANKED BY IMPORTANCE</b>				
	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
<b>CRITERIA</b>	Net Total Land Price <sup>1</sup>	Ease of Deal Closure <sup>2</sup>	Financial Capability and Overall Experience of Proposer <sup>3</sup>	Proposers Overall Experience

<sup>1</sup> Gross Price less Proposer Deductions per Exhibit A

<sup>2</sup> Proposer shall demonstrate the availability and source of funds required for closing

<sup>3</sup> Projects that minimize or eliminate construction over Dyer Avenue will score higher in this category

The Authority reserves the right to modify the bidding process, to request additional information, to waive Proposal defects, to negotiate with one or more Proposers, to revise the Proposal requirements at any time, including during negotiations with an individual Proposer, and to reject any and all Proposals as it may determine in its sole and absolute discretion. The Authority may, in its sole discretion, solicit a second round of Proposals from among the strongest Proposers who respond to this RFP.

Any Purchase Offer (as defined herein) will be subject to Authority Board of Commissioners approval and the Authority reserves the right to cancel any contract award at any time prior to its execution and delivery following such approval. In no event will the Authority have any liability whatsoever for any such cancellation. Proposers will be deemed to have assumed the sole risk and responsibility for any costs or expenses they may incur prior to contract execution and delivery.

## ADDITIONAL PROPOSER INFORMATION

Prospective Proposers are advised that additional information, including, but not limited to forms, documents and other information, including M/WBE Participation Plan Submission Forms and protest procedures, may be found on the Authority website at: <http://www.panynj.gov/business-opportunities/become-vendor.html>

## **INSTRUCTIONS FOR SUBMISSION OF PROPOSALS**

### **Submission Guidelines**

The Authority is seeking Proposals based on the terms set forth in the Term Sheet (Exhibit B) on page 16. Proposals should include all of the following:

1. A completed “Purchase Offer” using the template attached in Exhibit A.
2. A written project description and basic conceptual drawings that identify any building and improvements proposed to be built, including the Public Space.
3. Conceptual plans for any structure that will impact traffic operations or visibility on Dyer Avenue. In the event of any proposed overbuild, the plans should include an explanation with preliminary engineering plans for how ventilation issues will be addressed.
4. A demonstration that the Proposer possesses the expertise, experience and resources (financial and otherwise) required to develop the Premises in a timely and successful manner. More specifically, each Proposal should include:
  - a. a description of the Proposer’s history, organizational structure, financial strength, lines of business and participation in any conflicting or competing projects;
  - b. the names and resumes of the key professionals who will be responsible for the redevelopment of the Premises;
  - c. a description of comparable development projects the Proposer has completed, with particular emphasis on projects in New York City; and
  - d. a detailed description of how the purchase price and ultimate development costs will be funded, including a breakdown of equity and debt amounts and % of total cost by source.
5. An edited version of the Term Sheet in Exhibit B. The Authority is evaluating proposals in part by the extent and nature of modifications to the Term Sheet. Once a proposer is selected, the Authority will not allow any additional changes or alternations to the Term Sheet except in its sole discretion.
6. If the Proposer is seeking to merge or subdivide Lots 22 and/or 72, a drawing of the existing and proposed lot lines including estimated dimensions of the new and remaining lots.
7. A list of any and all conditions and contingencies to which the Proposer’s offer is subject, including any required due diligence, financing, or other approvals.

### **Proposal Format Requirements**

1. To be acceptable, Proposers shall use 12 point or greater font size. The Proposal pages shall be numbered and bound, with “Your Firm Name,” and RFP Number 40540 clearly indicated on the cover.
2. Each section of the Proposal shall be separated with a tab divider that is labeled in accordance with the number of the submission requirements specified below.

3. All proposals must be delivered in sealed envelopes and/or packages. Address Proposal to: The Port Authority of New York and New Jersey, 2 Montgomery Street, Jersey City, NJ 07302, Attention: RFP Custodian. You are requested to submit one (1) reproducible original and six (6) copies, along with seven (7) compact disc copies, of your Proposal for review. Notwithstanding retention of the compact disc, in case of conflict, the reproducible original of the proposals, shall take precedence over material on the compact disc.
4. In each submission to the Authority, including any return address label, information on the compact disc and information on the reproducible original and copies of the proposal, the Proposer shall use its FULL LEGAL NAME WITHOUT ABBREVIATIONS.
5. Your Proposal must be delivered in sufficient time so that the Authority receives it no later than 2:00 p.m. on December 16, 2014, or as otherwise stated in an Addendum, if any. The outermost cover of your submittal must include the RFP Number and the RFP title as indicated in "Title" above. The Authority assumes no responsibility for delays caused by any delivery services.
6. If your Proposal is to be hand-delivered, please note that only individuals with proper identification (e.g., photo identification) will be permitted access to the Authority's offices. Individuals without proper identification will be turned away and their packages not accepted.

### **Submission Requirements**

The Authority is seeking Proposals based on the terms set forth below. Proposals shall include all of the following:

1. In the front of your Proposal, a copy of Agreement on Terms of Discussion signed by an officer of your company.
2. A completed copy of the Company Profile
3. A completed "Purchase Offer" using the template attached in Exhibit A.
4. A written project description and basic conceptual drawings that identify any building and improvements proposed to be built, including the Public Space.
5. Conceptual plans for any structure that will impact traffic operations or visibility on Dyer Avenue. In the event of any proposed overbuild, the plans shall include an explanation with preliminary engineering plans for how ventilation issues will be addressed.
6. A demonstration that the Proposer possesses the expertise, experience, and resources (financial and otherwise) required to develop the premises in a timely and successful manner. More specifically, each Proposal should include:
  - a. a description of the Proposer's history, organizational structure, financial strength, lines of business and participation in any conflicting or competing projects;
  - b. the names and resumes of the key professionals who will be responsible for the redevelopment of the premises;
  - c. a description of comparable development projects the Proposer has completed, with particular emphasis on projects in New York City;

- d. evidence of the Proposer's ability to provide appropriate security for its obligations detailed herein.
- 7. Any exceptions the Proposer takes with respect to any Terms and Conditions referenced in this document.
- 8. A list of any and all conditions and contingencies to which the Proposer's offer is subject, including any required due diligence, zoning changes, financing, or other approvals.

**EXHIBIT A: FINANCIAL TERMS - PURCHASE OFFER**

I, \_\_\_\_\_, an authorized representative of \_\_\_\_\_, hereby submit the following purchase offer for one or both of the parcels identified in this RFP:

**Lot 22:**

- A. Zoning SF: \_\_\_\_\_
- B. Price Per Zoning SF: \_\_\_\_\_
- C. Total Price (A x B): \_\_\_\_\_
- D. Less Purchaser-Proposed Reductions (itemized with supporting detail): \_\_\_\_\_
- E. Net Land Price to Authority (C – D): \_\_\_\_\_
- F. Deposit: \_\_\_\_\_
- G. Amount Due at Closing (E – F): \_\_\_\_\_

**Lot 72:**

- A. Zoning SF: \_\_\_\_\_
- B. Price Per Zoning SF: \_\_\_\_\_
- C. Total Price (A x B): \_\_\_\_\_
- D. Less Purchaser-Proposed Reductions (itemized with supporting detail): \_\_\_\_\_
- E. Net Land Price to Authority (C – D): \_\_\_\_\_
- F. Deposit: \_\_\_\_\_
- G. Amount Due at Closing (E – F): \_\_\_\_\_

**Combined Development Rights:**

- A. Zoning SF: \_\_\_\_\_
- B. Price Per Zoning SF: \_\_\_\_\_
- C. Total Land Price: \_\_\_\_\_
- D. Less Purchaser-Proposed Reductions (itemized with supporting detail): \_\_\_\_\_
- E. Net Land Price to Authority (C – D): \_\_\_\_\_
- F. Deposit: \_\_\_\_\_
- G. Amount Due at Closing: (E - F): \_\_\_\_\_

**Proposed Development:**

- A. Development Type: \_\_\_\_\_
- B. Location: \_\_\_\_\_
- C. Requires a Cantilever (Y/N): \_\_\_\_\_
- D. Projected Closing Date: \_\_\_\_\_

**My offer is contingent upon the following items:**

**This Proposal includes a structure over the Dyer Expressway (Cantilever): (Y/N). If “Y”, attached are conceptual plans signed and sealed by a licensed engineer and cost estimates prepared by construction manager with experience building structures over active right-of-ways.**

**Purchaser Contact:**

**Name:** \_\_\_\_\_

**Firm:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Email:** \_\_\_\_\_

**Phone:** \_\_\_\_\_

**EXHIBIT B: TERM SHEET**  
**TERM SHEET**

Effective Date: \_\_\_\_\_, 2015

This term sheet (this “Term Sheet”) outlines the general terms and conditions upon which The Port Authority of New York and New Jersey (the “Authority”) and \_\_\_\_\_ (the “Purchaser”) agree to enter into a purchase and sale agreement (the “Purchase and Sale Agreement”) and related agreements for certain real property and development rights. The Executed Term Sheet must be delivered to the Authority on or by \_\_\_\_\_, **2015** or the agreement contemplated in this Term Sheet will be deemed to be automatically rescinded with no further obligations or restrictions on either party hereto.

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**Seller:** The Port Authority of New York and New Jersey (the “Authority”).

**Purchaser:**

**Property:** (a) Land located in the City of New York, State of New York and which is designated as Block 731, Lot 22 and a portion of Lot 72 on the Tax Map of the City of New York, New York County (the “Real Property”).

(b) Approximately \_\_\_\_\_ square feet of development rights appurtenant to the land located in the City of New York, State of New York and which is designated as Block 731, Lot 72 in the City of New York, State of New York on the Tax Map of the City of New York, New York County (the “Development Rights”).

The combined Real Property and the area of Lot 72 with which the Development Rights are associated shall equal a zoning lot of approximately \_\_\_\_\_ square feet (the “Development Parcel”), and generating approximately \_\_\_\_\_ square feet of development rights.

The Real Property and the Development Rights are collectively referred to as the “Property.”

**As-Is** The Property will be delivered to Purchaser at closing in its current “as-is” and “where is” condition.

**Overview:** The Purchaser hereby agrees to acquire the Property from the Authority subject to the terms of this Term Sheet.

**Purchase Price:** \$\_\_\_\_\_ (the “Purchase Price”) or \$\_\_\_\_\_ per square foot for the actual amount of as-of-right development rights purchased.

**Closing Date:** The closing date shall be on or before \_\_\_\_\_ (the “Closing Date”).

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<b>Land Use and Other City Approvals:</b>	The obligation to close this transaction will not be contingent upon the receipt of any zoning waivers, modifications or other approvals from any New York City department or agency, or any other governmental agency (other than the Authority). The Purchaser assumes all risk in securing any required modifications to the New York City Zoning Resolution and building permits post-closing.
<b>Public Space:</b>	<p>The Purchaser must construct and create a north-south through block public open space between 33<sup>rd</sup> and 34<sup>th</sup> Streets (“Public Space”). The area currently contains a community garden and a parking lot.</p> <p>The Purchaser, at its sole cost and expense, shall be responsible for designing, building, operating, and maintaining the Public Space. The Authority’s expectation is that the Purchaser will consult with local elected representatives and with representatives of the local community board early in the design process for the required Public Space. The existing community garden will remain in place and in operation (unless the Authority directs otherwise) until the proposed development is ready to proceed with construction.</p> <p>The Purchaser shall design and construct the Public Space in accordance with the Authority’s Tenant Construction and Alteration Process.</p> <p>The Authority shall grant the Purchaser an easement for the Public Space.</p>
<b>Equipment Easement:</b>	<p>The Purchaser shall grant the Authority a perpetual easement (at no cost) to install and maintain security and radio equipment including but not limited to cameras on any development adjacent to or above Dyer Avenue to ensure public safety and monitor traffic operations on the roadway below.</p> <p>The easement should allow for security and other equipment to be installed on the roof of any development (with a small dedicated closet, approximately 12’ by 12’ on the roof or top floor for needed infrastructure) or on the side of a development, as determined by the Authority and the Purchaser on a reasonable basis.</p>
<b>Environmental:</b>	Any costs and liability associated with an environmental investigation or remediation of the Real Property shall be the sole responsibility of the Purchaser and the Purchaser shall indemnify the Authority for such potential liabilities.
<b>Brokerage:</b>	Both the Authority and the Purchaser represent and warrant to each other that it has not engaged or dealt with any broker, salesman or other intermediary in connection with the proposed transaction. Each party will hold harmless, indemnify and defend the other from and against any claim based on alleged facts that are inconsistent with the representations and warranties contained in this clause.
<b>Security</b>	The proposed development must undergo a Risk and Threat Assessment (“RTA”). A proposal to construct above Dyer Avenue may be subject

to a Design Base Threat (DBT) Analysis. The analysis shall be completed at the Purchaser's expense. The RTA/DBT will be subject to the review and approval of the Authority. Any development shall be consistent with the recommendations and requirements in the final report.

**Deposit:** Upon Execution of this term sheet, the Purchaser shall make a deposit equal to \$2,000,000 ("Initial Deposit").

Upon the expiration of the Diligence Period, the Purchaser shall make an additional deposit equal to the sum of \$8,000,000 (collectively, the "Deposit").

The Deposit shall be non-refundable, except as otherwise specified in this Term Sheet or the Purchase Contract, as applicable. Upon closing, the Deposit shall be applied to the Purchase Price.

**Due Diligence:** Following execution of this Term Sheet, the Purchaser shall have 90 days to conduct standard due diligence (the "Diligence Period"). Upon expiration of the Diligence Period, the Deposit or any portion thereof that has been funded at that time, shall become non-refundable except as otherwise specified in this Term Sheet.

"Standard Due Diligence" shall include environmental review, title matters, subsurface condition review and other investigations directly related to the condition of the Property.

**Documentation:** Concurrent with the 90 day Due Diligence Period, the Purchaser and Port Authority shall to draft and finalize the transaction documents, which may include, but not be limited to:

1. Purchase and Sale Agreement;
2. Zoning Lot Development Agreement;
3. Light and Air Easement;
4. Easement, Maintenance and Operating Agreements; and
5. Any other document necessary or agreed upon to effectuate this transaction.

**Termination:** The Authority and the Purchaser will proceed in good faith to enter into the Purchase and Sale Agreement by \_\_\_\_\_ 2015. If the Authority and the Purchaser have not executed the Purchase and Sale Agreement by such date then the Authority shall have the option to terminate this Term Sheet, and neither party will have any further obligation to the other. If the parties proceeded in good faith as required, but are unable to reach an agreement by the aforesaid date and the Port Authority elects to terminate, then the Deposit shall be returned to the Purchaser less any reasonable Authority expenses incurred with the negotiations in an amount not to exceed \$50,000.

The balance of the Purchase Price (i.e., after crediting the Deposit) is due upon closing of this transaction.

**Authority Board Approval:**

The Purchaser expressly acknowledges that it is executing this Term Sheet prior to authorization by the Authority Board of Commissioners for execution of this Term Sheet by the Authority and prior to the execution of this Term Sheet by the Authority. The Purchaser acknowledges that its execution of this Term Sheet as aforesaid shall constitute an irrevocable offer to the Authority by the Purchaser that the Purchaser shall be bound by the terms of this Term Sheet as of the Effective Date of this Term Sheet, and that such irrevocable offer shall be in full force and effect unless and until deemed to have ended pursuant to the provisions of the paragraph immediately below. The Purchaser agrees that the Authority may rely on such irrevocable offer to proceed to obtain authorization from its Board of Commissioners as required for the execution of this Term Sheet by the Authority; it being expressly understood and agreed, however, that neither the foregoing nor the execution of this Term Sheet by the Purchaser shall or shall be deemed to create any obligation or duty on the part of the Authority to obtain such authorization from its Board of Commissioners, or shall be deemed to be any assurance that its Board of Commissioners will grant such authorization, or any obligation to execute this Term Sheet. This Term Sheet shall not be binding upon the Authority until duly executed by an executive officer thereof and delivered to the Purchaser by an authorized representative of the Authority.

In the event (i) the Authority has not obtained authorization from its Board of Commissioners to enter into this Term Sheet before \_\_\_\_\_, 2015 or (ii) authorization obtained from the Board of Commissioners shall be vetoed by either the Governor of the State of New York or the Governor of the State of New Jersey prior to the expiration of any applicable veto period, then the Purchaser shall be deemed to be released from its irrevocable offer set forth in the paragraph above and the Deposit shall be refunded to it (without any reduction for the Authority's expenses) and the Purchaser's execution and delivery of this Term Sheet and, if applicable, the Purchase & Sale Agreement shall be deemed null and void *ab initio* and neither the Authority nor the Purchaser shall have any rights or obligations hereunder or thereunder.

**Taxes:**

The Purchaser shall pay all real estate, mortgage recording and other taxes applicable to privately owned properties in the City of New York.

**Subdivision:**

The parties shall cooperate in all phases of the application to subdivide or merge Lot 22 and/or Lot 72 including but not limited to application, presentation and effectuation of the subdivision. This transaction is not contingent on the creation of new tax lots. The Purchaser will bear all costs associated with the application process.

**Counterparts** This Term Sheet may be executed in one or more counterparts, each counterpart for all purposes being deemed an original, and all such counterparts shall together constitute one and the same agreement. This Term Sheet, to the extent delivered by means of a facsimile machine or electronic mail, with the original signature page to follow by regular mail, will be treated in all manner and respects as an original instrument and will be considered to have the same binding legal effect as if it were an original signed version thereof delivered in person.

**Governing Law** This Term Sheet and the definitive agreements to be entered into as contemplated in this Term Sheet, shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements to be entered into and performed within such State, without regard to conflict of law principles.

**No Personal Liability** No Commissioner, director, officer, agent or employee of the Authority, shall be charged personally or held contractually liable by or to any party under any term or provision of this Term Sheet, or of any other agreement, document or instrument executed in connection therewith, or of any supplement, modification or amendment to this Term Sheet, or to such other agreement, document or instrument, or because of any breach or alleged breach thereof, or because of its or their execution or attempted execution.

**Confidentiality:** Subject to the Authority’s Freedom of Information policy, neither the Authority nor the Purchaser shall disclose the terms and conditions of this Term Sheet to any third party other than employees and agents working on this transaction on behalf of the Authority and the Purchaser.

**Assignment** The Purchaser may not assign this contract.

**ACCEPTED AND AGREED TO BY:  
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
DATE: \_\_\_\_\_

## **EXHIBIT C: DRAFT CONTRACT**

To be determined.

## EXHIBIT D: DESIGN BASED THREAT ANALYSIS

Preparation of the DBT shall include identification of design threats to the program under consideration, which shall include at a minimum:

- **Improvised Explosive Devices (Blast)** - Two sizes of blast threats shall be considered, small and large. The small conventional explosive is a portable man-carried blast threat. The large conventional explosive is a vehicle-borne threat.
- **Precision Demolition** - Precision demolition encompasses a variety of threats including contact charges, military cutting equipment, mechanical and thermal cutting tools, shape cutting charges, and explosively formed penetrators.
- **Intentional Vehicular Impact** - Impact threats shall include passenger vehicles, as well as small and large trucks.
- **Fire** - Fire threats initiated by vehicles shall be considered. A hydrocarbon fire which burns up to 1100 degrees Celsius shall be used.

**The DBT shall document assumptions used, including but not limited to:**

- **Threat characteristics** - Threat characteristics describe the threat considered. While items such as charge size and fire temperature are inherent to the threat, the characteristics could include assessments of required skill level, required time on target, and availability for a threat to be carried out. These characteristics impact the likelihood of a threat scenario occurring.
- **Performance level** - Performance levels are thresholds to determine should a threat scenario be successful. There shall be two performance levels considered - - repairable damage and “no collapse.” Repairable damage is a tolerated amount of damage that would be considered acceptable, which includes duration of lost service or repair value. “No Collapse” would be a less stringent threshold requiring only that the structure not catastrophically collapse, although damage may not be repairable.
- **Progressive collapse** - Progressive collapse is a concern for many structures and shall be addressed based on structure type. Assessment shall be made on structure type and should consider material properties and robustness of the structure. Detailed modeling is not required in this assessment.
- **Establishment of design considerations to mitigate vulnerabilities** - Design considerations and criteria for mitigations shall be addressed. This shall include performance based criteria that may be used in the design of mitigations for inclusion in the program. Mitigations may be physical or operational, i.e. shielding elements, security protocols, or response plans.

## **EXHIBIT E: AUTHORITY DESIGN AND CONSTRUCTION CRITERIA**

### **Traffic**

#### **A. Vertical Clearance over Dyer Avenue**

Port Authority criteria -17'-0" desired clearance to the bottom of structures over the roadway for future overhead sign installation and to maintain sight lines to the existing signs.

#### **B. Columns**

A roadside environment free of fixed objects, such as columns, enhances the opportunity for reducing crash severity for errant vehicles that leave the roadway. The design of columns within the right of way should be avoided or minimized. If a column must be placed within the right of way, it must be located within the footprint of the existing median and encapsulated by concrete barrier and proper end treatments (i.e. impact attenuators, etc.) utilized based on guidelines in the AASHTO Roadside Design Guide. All columns will be subject to approval at Port Authority's sole discretion.

### **Mechanical**

If a development cantilevers over Dyer Ave., the Authority will require an engineering analysis to determine whether a Mechanical Ventilation is required for the "covered" portion of the roadway. The engineering analyses to address requirements of applicable codes and standards for the roadway under any proposed overbuild development plan shall demonstrate that no additional ventilation is required because of the overbuild. The analyses shall consist of potential fire scenarios and shall consider the roadway configuration and geometry; vehicular traffic characteristics such as bi-directional traffic, types of vehicle including passenger cars, buses, and heavy goods trucks traveling in the roadway (Northbound and Southbound); any existing overbuild structures, buildings and roadways that are contiguous to the proposed development; and surrounding projects.

- A. If a ventilation system serving the roadway as determined by the engineering analyses is required, it shall be capable of performing as an independent, standalone operation. Air quality parameters in the roadway level, including carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), obscuration (PM), shall be continuously monitored. The ventilation system, if required, shall be designed and automatically controlled to minimize ambient air quality impacts and maintain pollutant below EPA thresholds under free flowing traffic or congested traffic conditions.
- B. Fans and all associated equipment shall be designed for a 30-year service life of continuous operation.
- C. Air quality sensors strategically located in the roadway shall alert the operator when pollutant concentration levels exceed the thresholds stated above. The ventilation system control shall respond automatically to elevated pollution levels and shall be integrated and interfaced with the existing supervisory control and data acquisition (SCADA) system for remote monitoring and/or control of the ventilation system at the Operation Control Center (OCC) in the LT Administration Building.

- D. Ventilation system control shall be defined in a mode table system operation for normal, maintenance and emergency operations. The mode tables shall list methods of detection and associated equipment, and fans and dampers required to operate.

### **Geotechnical**

- A. For both the non-seismic and seismic conditions, the foundation loads from any structures to be constructed on site, including platforms to be constructed over the depressed Dyer Ave. approach roadway for the Lincoln Tunnel, shall be founded on sound bedrock in such a manner that foundation loads do not apply vertical or lateral loads to the Dyer Ave. retaining walls.
- B. The New York approach structures to the Lincoln Tunnel are classified as “critical structures” per NYCDOT Seismic Design Guidelines for Bridges. Evaluate the effect of seismic loads for the proposed new construction and provide schematics of proposed shear wall system.
- C. Review all available subsurface soil/bedrock information for the site. For the Conceptual Plans and Basis of Design Report, provide conceptual foundation details including allowable bearing capacities and lateral loads based on the available subsurface soil information.

### **Construction**

In connection with construction over or adjacent to Dyer Avenue, any proposed lane closures or other disruptions of traffic must be reviewed and approved in advance by the Authority. As a general rule, the following closures should be acceptable if necessary for construction to proceed:

- Weekend closure of all lanes between 11 p.m. Friday and 5 a.m. Monday, except during holiday weekends.
- Overnight closure of all lanes between 11 p.m. and 5:00 a.m.
- Closures will be permitted at other times, provided (1) one traffic northbound and one traffic lane southbound remain open and (2) no closures will be permitted during weekday peak periods from 7 a.m. to 10 a.m. and between 3 p.m. and 7 p.m.

**Developers and their contractors will be responsible for maintenance of traffic during any closures.**