

## **Eastern Rail Yard Transferrable Development Rights (“ERY TDRs”) Disposition and Pricing Mechanism Policy**

Adopted January 16, 2009; Amended April 9, 2013 and November 25, 2014

### Disposition and Pricing Mechanism Policy

Sales of the ERY TDRs will be pursuant to the disposition and pricing mechanism policy (“Disposition and Pricing Mechanism Policy”), as set forth below. This Disposition and Pricing Mechanism Policy shall remain in effect until the MTA is entitled to elect, and has elected to assume control of ERY TDR dispositions pursuant to the 2006 City-MTA Railyard Agreement (“Railyard Agreement”) and the City-MTA Letter Agreement dated as of May 25, 2010 (“Letter Agreement”) concerning the Railyard Agreement.

### Disposition Process

- HYDC will negotiate and effectuate ERY TDR sales with each eligible property owner that desires to purchase ERY TDRs under this Disposition and Pricing Mechanism Policy.
  - The price per square foot of ERY TDRs to be sold will be established through the Pricing Mechanism, as described below.
  - All sales will be cash sales in one lump sum payment at closing.
- Eligible property owners may apply to purchase ERY TDRs by sending an application to HYDC containing the following items:
  - Amount of ERY TDRs to be purchased.
  - Demonstration of fee ownership of the receiving parcel. A contract for the purchase of such fee ownership is acceptable, but ERY TDRs sale will not close prior to the closing on such contract
  - Proposed timing of transaction.
  - Draft application to Department of City Planning, and other required documents, for the certification to transfer ERY TDRs pursuant to Section 93-34 of the Zoning Resolution.
  - Non-refundable application fee in the amount of \$10,000.
- A non-refundable appraisal fee will be charged in an amount to be determined by HYDC.
- HYDC will be solely responsible for engaging appraisers, determining the timing of the transaction and for determining other normal terms and conditions to closing in its sole discretion.
- Sales of ERY TDRs shall require HYIC approval, but shall not require MTA approval provided that the price is equal to or greater than the Threshold Price or New Threshold Price, as applicable, as defined in the Pricing Mechanism section below.
- HYDC will prepare an Explanatory Statement describing each negotiated sale for submission by the MTA and HYIC to the required State officials in satisfaction of PAAA requirements. Sales of TDRs subject to an explanatory statement cannot be closed until the 90-day statutory waiting period following the transmission of such statements to such State officials.

- Upon closing, MTA and HYIC will execute all documentation required to effectuate the transfer of the subject ERY TDRs.
- HYDC shall not amend or deviate from this Disposition and Pricing Mechanism Policy without the prior written consent of HYIC and MTA.

### Pricing Mechanism

The price per square foot of ERY TDRs to be sold shall be established pursuant to this pricing mechanism (“Pricing Mechanism”):

- Upon receiving an application for purchase of ERY TDRs, all required supporting documentation, application fee, and a non-refundable appraisal fee, HYDC will order an appraisal of the fee value as of the date of the application letter of the receiving site from one of its on-call appraisers. The appraisal fee shall be determined by HYDC. The appraisal shall be finalized before it is discussed or shared with the transfer applicant.
- Based upon a pricing study prepared for HYDC in 2008, and a pricing study update prepared for HYDC in 2013, HYDC will apply a percentage of 65% to the final appraised value per square foot of the fee of the receiving parcel to establish the per square foot value of the ERY TDRs. HYDC shall commission a new study every three (3) years, or more frequently as HYDC deems necessary, to determine whether such percentage should be adjusted; provided, however, that the next pricing study shall be completed prior to April 15, 2015. Once a pricing study has been completed and if HYDC determines that the percentage should be adjusted, HYDC shall publish the new percentage in an amended pricing policy. The new percentage shall not apply to applicants that (1) submit its application before the amended pricing policy has been published (“Publish Date”) and (2) have closed on the purchase within six (6) months of the Publish Date.
- The price established for the ERY TDRs pursuant to this Pricing Mechanism shall not require MTA approval, provided that (1) if the sale shall take place prior to September 28, 2020, the ERY TDR price per square foot is equal to or greater than the higher of (X) the price per square foot then in effect for the District Improvement Fund Bonus under Section 93-31 of the Zoning Resolution (the “DIB Contribution Amount”), or (Y) \$103 (the threshold price determined according to this subitem (1), the “Threshold Price”); or (2) if the sale shall take place on or after September 28, 2020, the ERY TDR price per square foot is equal to or greater than such new threshold price per square foot as has been agreed to by the MTA pursuant to the Railyard Agreement or otherwise determined pursuant to the arbitration process set forth in the Railyards Agreement (the threshold price determined according to this subitem (2), the “New Threshold Price”).