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Metropolitan Transportation Authority

State of New York

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

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New York State Comptroller
110 State Street
Albany, New York 12236

Mr. Blake G. Washington.
Director, Division of the Budget
State Capitol
Albany, New York 12224

Hon. Andrea Stewart-Cousins
Temp. President and Majority Leader
New York State Senate
Legislative Office Building, Room 330
Albany, New York 12247

Hon. Carl E. Heastie
Speaker
New York State Assembly
Legislative Office Bldg., Room 932
Albany, New York 12248

Ms. Jeanette M. Moy
Commissioner of General Services
Office of General Services
41st Floor, Coming Tower, Empire State Plaza
Albany, New York 12242

State of New York
Authorities Budget Office
P.O. Box 2076
Albany, New York 12220-0076

Re: Explanatory Statement – New License Agreement for Existing Pipeline along the Long Island Rail Road’s Right of Way with Current Owner of the Pipeline

Dear Sirs/Madams:

Title 5-A, Sections 2895-2897 of the Public Authorities Law (“P.A.L.”) governs dispositions of property by public authorities, including the Long Island Rail Road Company (the “LIRR”). The LIRR intends to enter into a pipeline license agreement with Buckeye Pipe Line Company, L.P. (“Buckeye”) and is submitting this Explanatory Statement as required by the P.A.L.

Currently Buckeye owns, operates, and maintains an underground jet-fuel pipeline that runs through a portion of LIRR’s right-of-way. The installation exists under a 1965 license agreement between LIRR and Buckeye’s predecessor, Long Island Pipe Line Corporation, which agreement expired in 2010. Buckeye has remained in possession of the portions of the LIRR’s right-of-way containing the pipeline segments on a month to month basis from the expiration of the 1965 license agreement in 2010 until now, and the LIRR and Buckeye seek to memorialize the current possessory interest via a new license agreement so that the jet-fuel pipeline can continue to occupy LIRR’s right-of-way.

The agencies of the MTA

MTA New York City Transit
MTA Long Island Rail Road

MTA Metro-North Railroad
MTA Bridges and Tunnels

MTA Capital Construction
MTA Bus Company

The proposed license agreement was negotiated by LIRR and Buckeye and is authorized by Section 1266(2) of the P.A.L. because Buckeye's pipeline, which runs through a portion of LIRR's right-of-way, is a critical source of jet-fuel for LaGuardia Airport and John F. Kennedy Airport along with other appurtenances and instrumentalities thereof. This Explanatory Statement has been prepared to comply with the provisions of Section 2897(6)(d)(i)(C) of the P.A.L. because the estimated annual compensation over the term of the agreement is in excess of fifteen thousand dollars. This Explanatory Statement is required to be given to the above-named recipients pursuant to Section 2897(6)(d)(ii) of the P.A.L. not less than ninety days in advance of the intended disposal, and as such, the intended disposition will not occur until after at least ninety days have elapsed following delivery of this Explanatory Statement.

The proposed compensation for the first license year is \$390,750 with increases every five years based on the greater of 15% or increases in the Consumer Price Index. The compensation was derived from a market appraisal that was conducted by an independent appraiser, John G. Pinto, CRE, of Rail Trac Associates. To briefly summarize the history of the new license agreement for the Buckeye pipe line, (i) approximately at the time the previous license agreement expired in 2010, the LIRR and Buckeye entered into a term sheet detailing the business points for the new license agreement (the "Term Sheet"); (ii) following unproductive negotiations for the new license agreement which spanned several years, the LIRR and Buckeye agreed in 2015 that Buckeye would pay the license fee set forth in the Term Sheet, with a retroactive "true-up" back to the 2010 expiration of the previous license agreement; (iii) the LIRR and Buckeye agreed to develop a new form for the new license agreement, and during such development (a) Buckeye had three changes in the personnel responsible for negotiating the new license agreement on Buckeye's behalf (which created delays, as each new Buckeye negotiator had to become familiar with the overall transaction), and (b) the LIRR's negotiators were instructed to prioritize the renewal of the jet-fuel pipe line license agreement for LGA FUEL LLC (for the pipe line located along a segment of the LIRR's right-of-way in Queens County which also provides jet-fuel for airplanes operating at LaGuardia Airport, for which an Explanatory Statement dated March 12, 2020 was submitted to the above-named recipients (or their predecessors) pursuant to Section 2897(6)(d)(ii) of the P.A.L., and such prioritization resulted in additional delays in finalizing the negotiations for the new license agreement; and (iv) after completion of the license agreement with LGA FUEL LLC, negotiations over the new license agreement for the Buckeye pipe line progressed slowly until recently.

An important point for this arrangement is that the financial terms negotiated in the Term Sheet have been in place since 2015, and they were retroactive back to the date immediately following the expiration of the previous license agreement, with the effect that the license fee paid and payable by Buckeye is what such license fee would have been had the new license agreement been signed and in effect immediately upon the expiration of the previous license agreement. Additionally, the term of the new license agreement will be deemed to have commenced on the day after the expiration of the previous license agreement and to run for twenty (20) years (expiring on August 31, 2030), which effectively means that there will only be five (5) to six (6) years left on the term of the new license agreement if it is signed within the next few months. Additionally, to mirror the

financial backing condition of the previous license agreement wherein the previous licensee's obligations were guaranteed by its parent entity, Buckeye's parent entity, Buckeye Partners L.P., will guaranty Buckeye's obligations under the new license agreement pursuant to a separate instrument to be executed and delivered simultaneously with Buckeye's execution and delivery of the new license agreement.

Public Authorities Law 1266(2) authorizes LIRR to enter into contracts, leases or other arrangements in connection with its transportation facilities with others to provide transportation-related services and activities. Buckeye's jet-fuel pipeline, which is under the jurisdiction of the federal Pipeline and Hazardous Materials Safety Administration and the Federal Energy Regulatory Commission, is crucial to the operation of LaGuardia Airport and John F. Kennedy Airport, two of the New York metropolitan area's most important transportation facilities. Moreover, competition here would have been infeasible because the segment of the pipeline on LIRR's right-of-way is part of a much longer pipeline owned by Buckeye and no other potential owner would have had any practical ability to use these portions of the LIRR's right-of-way.

The licensed property is located in Queens, New York and is situated along the LIRR's Montauk Branch right-of-way between Blissville Yard and Fresh Pond Junction for a distance of approximately 3.5 miles (approximately 18,000 linear feet). The size of the licensed property is approximately 180,000 square feet (18,000 linear feet x a 10-foot width) as per the aforesaid appraisal performed by John G. Pinto, CRE, of Rail Trac Associates. The annual license fee for the initial year of the new license agreement is \$390,750, and such annual license fee has been adjusted by the Consumer Price Index retroactive to 2010, using the formula in the Term Sheet requiring an increase every five years based on the greater of 15% or increases in the Consumer Price Index as stated above, and is now \$516,766.88 for the current year, and it has been paid to LIRR by Buckeye.

If you have any questions or comments, please contact us at the address set forth above or call me at (212) 878-7020.

Very truly yours,



Maurice D. Chapman
Senior Associate Counsel, Real Estate Transactions and Operations
Metropolitan transportation Authority