Staff Summary

Subject 370 Jay Street Disposition	**Date** April 19, 2012
Department Real Estate	**Vendor Name**
Department Head Name Jeffrey B. Rosen	**Contract Number**
Department Head Signature	**Contract Manager Name**
Project Manager/Division Head	**Table of Contents Ref #**

Board Action

Order	To	Date	Approval	Info	Other
1	Finance Committee	4/23	x		
2	Board	4/25	x		
3					

Internal Approvals

Order	Approval	Order	Approval
3	Chief of Staff	1	Legal
2	Chief Financial Officer		Administration

Purpose:

To obtain Board authorization to surrender NYCT's former headquarters at 370 Jay Street in Brooklyn, New York ("the Building") to the City of New York ("City"), subject to the reservation of easements necessary to allow for the relocation of certain vital NYCT telecommunications equipment still located in the Building.

Discussion:

Like many of the buildings NYCT uses in its operations, the Building is owned by the City and is covered by the so-called "master lease" between the City and NYCT dated June 1, 1953, as amended (the "Master Lease"). The Building still houses certain vital telecommunications equipment (the "NYCT Equipment"), as well as a small number of NYCT operations and some equipment belonging to the Transit Bureau of the New York City Police Department (the "NYPD Equipment"). However, much of the Building has been vacant since NYCT headquarters moved to 2 Broadway. The Building is in poor condition, and both its façade and all of its major building systems require replacement.

At one time -- when office rents elsewhere in the City were higher than they are today and prior to the MTA's recent administrative headcount reductions -- it was anticipated that it would be cost effective to use NYCT capital dollars to renovate the building for NYCT office use, thereby enabling NYCT to reduce its operating expenses by allowing space leases at other locations to expire. Last year, however, it was determined that the MTA's financial interests would be better served by increasing the number of employees occupying its office facility at 2 Broadway, at a relatively small marginal cost per desk, and selling the MTA's property at 341-347 Madison Avenue, rather than renovating the Building. This decision took into account a variety of factors, including the very substantial projected cost of such renovation (in excess of $200 million), the relatively favorable terms on which the MTA has been able to rent space at 333 West 34th Street and elsewhere and, above all, the impact of the MTA's recent downsizing initiatives on the MTA's office space needs.

The Master Lease contemplates that, when and if NYCT determines that a Master Lease property is no longer required by it, NYCT shall surrender such property to the City without compensation. In the present case, NYCT will be in a position to determine that the Building is no longer required and suitable for surrender only if NYCT is paid an amount sufficient to cover its cost of relocating the NYCT Equipment. Accordingly, the City has agreed to an arrangement whereby NYCT will be paid $50 million, the estimated cost of such relocation.

Once a Master Lease property is surrendered, it is the City's prerogative to dispose of such property in any lawful manner, and, as is its customary practice, the City has elected to offer the Building for sale or lease through the New York City Economic Development Corporation ("EDC"). Pursuant to EDC's July 2011 request for proposals from educational institutions interested in developing applied sciences campus in the City (the "RFP"), New York University ("NYU") has proposed to acquire the Building for the purpose of establishing a new "Center for Urban Science and Progress" ("CUSP"); and, subject to EDC Board approval and mayoral authorization pursuant to Section 384(b)(4) of the New York City Charter (which will require completion of review under the State Environmental Quality Review Act ("SEQRA") that

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will include the MTA and NYCT as "involved agencies")), the City and EDC have agreed to cause the Building to be net leased to NYU, in consideration of NYU (a) accepting the Building in its "as is" condition, (b) paying for the relocation from the Building of the NYPD Equipment and (c) paying $50 million to NYCT. The rent under such lease will be $1 per year, as EDC has determined that the payments to be made to the MTA and NYPD constitute fair compensation for the value of the Building.

In consideration of NYU depositing such $50 million amount in escrow, NYCT will relocate the NYCT Equipment in two phases of work. By the end of the 24-month first phase (which will commence after certain pre-conditions to the start of the work have been satisfied), NYCT will be obligated to vacate all but certain specified above- and below-ground temporary and permanent easement areas, and it is then that the surrender of the Building by NYCT and leasing of the Building by the City to NYU (subject to such easements) will take place. By the end of the following 18-month second phase, NYCT will be obligated to vacate all but the below-grade permanent easement areas (which will house the relocated NYCT Equipment). The pre-conditions to NYCT's obligation to begin the relocation work will include EDC Board approval and Mayoral authorization (following completion and consideration of the SEQRA review), completion by NYU of its due diligence with respect to the condition of the Building and the depositing by NYU of the aforementioned $50 million payment with an escrow agent (to be disbursed by such escrow agent to NYCT in installments as specified steps in the relocation of the NYCT Equipment are completed). If, as a result of negative findings during its due diligence, NYU decides not to proceed with the transaction, the position of NYCT and the City with respect to the Building will revert to the status quo.

The $50 million payment due from NYU to NYCT will be subject to reduction to the extent of specified liquidated damages in the event of unexcused lateness in the abandonment of the premises by NYCT. However, such damages will be capped at $9 million pre-closing and $5 million post-closing, and NYCT is confident that it can accomplish the required work in the allotted time.

Recommendation:

It is recommended that the Board authorize the surrender of the Building to the City (subject to the reservation of appropriate easements to accommodate the relocation of the NYCT Equipment), such that the Building shall no longer be subject to the Master Lease, on the above-described terms and conditions.