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Via Electronic Mail

Jaime Torres-Springer  
President  
MTA Construction & Development  
2 Broadway, 20<sup>th</sup> Floor  
New York, NY 10004

Richard Davey  
President  
NYC Transit  
2 Broadway, 30<sup>th</sup> Floor  
New York, NY 10004

**Re: Employee Conflicts of Interest**  
**MTA/OIG #2022-14**

Dear Mr. Torres-Springer and Mr. Davey:

The Office of the MTA Inspector General (OIG) substantiated an anonymous allegation that an MTA Construction and Development (MTA C&D) Assistant Vice President/Deputy Executive (the Executive) for Capital Programs managed two MTA contracts on which his family members, a nephew (the Nephew) and a brother (the Brother), were employed by the prime contractors. OIG found that the Executive failed to seek ethical guidance or recuse himself from oversight of these contracts. Further, OIG found that in at least one instance the Executive's family member was not qualified for his position on the MTA contract but was nevertheless approved for the role without objection from the MTA Project Management team. Finally, OIG found that both the Executive and another brother (the Nephew's Father), who is an MTA Bus Maintainer, failed to cooperate with OIG's investigation. OIG has expedited reporting on the Executive's misconduct because he intends to retire in late September 2022.

OIG recommends that the Executive be disciplined to the extent the MTA deems appropriate. OIG further recommends that the MTA Project Management Team, which includes

the Resident Engineer, the Construction Manager, and the Project Chief Executive Officer (PCEO) be reinstructed about their obligation to strictly enforce contract specifications, particularly as they pertain to the qualifications of the contractor’s project management team. Finally, OIG recommends that the Nephew’s Father be disciplined for failing to cooperate with an OIG investigation. OIG will also provide the New York State Commission on Ethics and Lobbying in Government with this report to take any action that it deems appropriate.

## **I. BACKGROUND**

### **A. The Executive**

The Executive was hired on November 9, 1987, as a General Superintendent for Facilities and assigned to the Department of Buses. In January 2013, he was promoted to Assistant Chief Officer and in this role was responsible for “the direction and execution of the building and equipment maintenance program throughout the Department of Buses.” He has managed all MTA Bus Company construction contracts since 2019, except for Sandy Resilience & Recovery program contracts.

During his tenure he has regularly received ethics training, including from the former NYS Joint Commission on Public Ethics, as well as through MTA management skills and organizational development training. He has certified that he has received the MTA All Agency Code of Ethics annually since 2015, which requires that employees seek guidance about potential conflicts and recuse themselves when necessary.

### **B. The Executive’s Family**

The Executive has a brother (the Nephew’s Father) who is currently employed by the MTA as a Bus Maintainer. That brother’s son, the Nephew, was hired by a contractor whose work was overseen by the Executive, and ultimately assigned to an MTA contract overseen by the Executive. The Executive has another brother, the Brother, who is currently working on contracts overseen by the Executive and employed by another prime contractor.

### **C. The Contracts**

#### *1. C-40257 Façade Repair and Window Replacement at East New York Bus Depot*

On March 10, 2020, NYC Transit awarded contract C-40257 to Construction Company 1, the lowest responsible bidder, for \$14,668,239. The Executive is identified as the Program Officer of the contract. Also assigned to the MTA Project Management team are the Project Chief Executive Officer (PCEO), the Construction Manager, and the Resident Engineer. The Project Management team on C-40257 all report to the Executive, either directly or indirectly.

C-40257’s specifications require that Construction Company 1 assign a “full time Project Manager exclusively to this Project until its completion.” The Project Manager, or his duly

authorized designee, is required to be at the worksite whenever work is being performed, for all inspections and testing, and from the beginning to completion and acceptance of the contract work. The Project Manager's responsibilities include coordinating all work performed on-site and providing daily status reports to the MTA Resident Engineer. The contract also requires Construction Company 1 to employ and assign a Contractor Safety Engineer (CSE) and a full-time Contractor Safety Supervisor (CSS), who will cover shifts that the CSE is unavailable to cover, such as weekend and holiday work when the CSE is not working. The CSS is required to have "a minimum of two years of safety or safety related experience", be familiar with the work performed, and maintain specified safety certifications. Additionally, Special Conditions section "SC 8", titled "Security", requires that "prior to each working shift, all Contractor and Subcontractor personnel" be identified to the MTA resident engineer on the Contractor Access form and that they produce photo identification to ensure the Resident Engineer knows who is on-site.

## 2. *C-40237 Roof Replacement at the Fresh Pond Depot*

On October 24, 2019, Construction Company 2 was awarded a contract to replace the roof at the Fresh Pond Depot for the Lump Sum Price of \$3,870,000. The Executive is identified as the Program Officer for this project, and the MTA Project Management staff on this contract report to the Executive. The contract specifications require a CSE with at least five years of safety or safety-related experience.

## II. INVESTIGATION

OIG reviewed the Executive's and the C-40257 MTA project management team's emails. OIG also reviewed relevant documents associated with contracts C-40257 and C-40237. This review revealed that the Executive actively oversaw contracts on which both the Nephew (C-40257) and the Brother (C-40237) were both working for the contracts' prime contractor. Additionally, OIG interviewed the C-40257 MTA Project Management team as well as MTA C&D's Chief of Safety, and an employee and the president of Construction Company 2.

### A. C-40257

#### 1. *The Executive Failed to Recuse Himself When Construction Company 1 Assigned his Nephew to C-40257*

The Executive's Nephew was hired by Construction Company 1 shortly after it began working on-site at the East New York Depot on C-40257. About nine months later, Construction Company 1 transferred the Nephew to the East New York Depot in the role of the CSS. At no time did the Executive seek guidance from MTA Ethics personnel about his obligation to recuse himself from supervising the contract. Below is a summary of the facts, followed by summaries of OIG's interviews of the MTA's C-42057 Project Management team.

In August 2020, Construction Company 1 began its onsite work for C-40257 at the East New York depot. In mid-September 2020, the Nephew was hired by and began working for Construction Company 1, as a safety supervisor on a non-MTA project in midtown Manhattan despite having no prior construction experience.<sup>1</sup> The Nephew worked on the non-MTA project for approximately nine months. On May 25, 2021, Construction Company 1 submitted his resume to MTA's Resident Engineer for the CSS position on C-40257 and was approved pending submission of the required certifications. Construction Company 1 subsequently provided the Nephew's training certifications. At that time, the Nephew's only construction experience was the nine months prior he had worked for Construction Company 1. Nevertheless, as discussed below, he was approved as the CSS, a position requiring a minimum of two years of safety experience. The Nephew worked as the CSS for nearly a year, until there was an on-site accident on April 29, 2022, after which MTA C&D's Chief of Safety found he was unqualified.<sup>2</sup> Although he was removed from his safety role, the Nephew continued to work at the site until his resignation in July 2022.

Records confirm that the Executive's oversight of C-40257 was more than nominal. OIG found that the Executive was frequently included on emails about C-40257's progress and problems. Daily reports completed by the Resident Engineer also revealed that the Executive and the Nephew attended some of the same project meetings.

## 2. Interviews

OIG learned through interviews that none of the MTA Project Management staff could adequately explain why the Nephew, whose experience did not meet the contract requirements, was approved as the CSS. Additionally, it is apparent from the interviews that some members of the Project Management team had concerns about the contractor's performance, including safety issues, and in at least one instance, the Executive intervened with respect to a less than satisfactory evaluation of the contractor. Finally, while the Executive denied that he initially was aware that his Nephew was working on the contract, he admitted that at no point later did he consult with MTA Ethics personnel about the situation. Below are summaries of OIG's interviews of the MTA Project Management Team, the Nephew, the Nephew's Father, and the Executive.

### a. Resident Engineer

The Resident Engineer approved the Nephew as the CSS on May 25, 2021, pending receipt of the Nephew's required safety certifications. The Resident Engineer's email approving the Nephew, which included the Nephew's resume, was sent to Construction Company 1's

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<sup>1</sup> The Nephew graduated from college in May 2020 with a degree in Computer Science.

<sup>2</sup> Sometime during 2020, after the MTA Transformation, MTA C&D Safety assumed responsibility for approving all contract safety personnel assigned to MTA construction contracts. According to MTA C&D's Chief of Safety, Contract C-40275 was awarded prior to MTA C&D Safety assuming responsibility for approving all contractor safety personnel.

Project Manager, as well as to the MTA's Construction Manager and PCEO. Although the Nephew lacked the contractually required experience, the Resident Engineer told OIG he approved the Nephew because Construction Company 1 did not submit a qualified alternative and the contract was at a critical point. The Resident Engineer told OIG that he and the Construction Manager discussed the Nephew's resume before he approved the Nephew as the CSS.

The Resident Engineer told OIG that he had asked the Nephew if he was related to the Executive and the Nephew confirmed that he was. The Resident Engineer told OIG that he has never discussed the relationship with the Executive. The Resident Engineer further stated that the Nephew's relationship to the Executive has not influenced his management of Construction Company 1. He described Construction Company 1 as very difficult to manage because the project was inadequately staffed, and the project manager was often late or absent. He told OIG that there had been "constant issues with safety" because Construction Company 1's project management staff did not walk the site but instead remained in their field office and were unable to observe the issues.<sup>3</sup> He specifically noted that Construction Company 1 did not properly monitor and maintain safety netting around the façade, which resulted in debris falling to the ground. He noted that if he were responsible for completing the All Agency Contractor Evaluations (ACE) he would give an "Unsatisfactory" rating for its safety performance.<sup>4</sup>

b. Construction Manager

The Construction Manager told OIG that he was new to the construction project manager role and C-40257 was the first construction contract he had managed. The Construction Manager denied knowing that the approved CSS was the Executive's Nephew and claimed that he did not review the Nephew's resume prior to the Resident Engineer's approval. He further stated that the PCEO "oversees everything" and that his construction manager role was assisting the PCEO. The Construction Manager noticed that the CSS and the Executive had the same surname, but he never asked if they were related. The Construction Manager was shown the email from the PCEO asking whether the Construction Manager and Resident Engineer had consulted with the Executive about the Nephew's approval as the CSS, and he did not recall whether the PCEO or the Executive influenced approving the Nephew.

The Construction Manager described C-40257 as "one of the most difficult jobs" he has worked on, describing it as "a perfect storm of problems." He noted that Construction Company 1's overall performance was "lackluster." In particular, work coordination suffered because Construction Company 1's project management was not present when needed, noting that the

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<sup>3</sup> The Resident Engineer's emails confirmed his account of persistent problems. OIG found a significant number of emails from the Resident Engineer to Construction Company 1's staff citing the problems he described to us.

<sup>4</sup> ACE requires managers to prepare interim evaluations of contractor performance every six months, evaluating five separate performance indicators: quality, management, safety, scheduling, and Minority/Women/Disadvantaged Business compliance, as well as an overall performance rating. Evaluators can rate a contractor's performance as satisfactory, marginal, or unsatisfactory. ACE procedures require that evaluators provide contractors with written notice of performance deficiencies and give them time to correct them.

Project Manager often arrived at 10 a.m. rather than 7 a.m. when the work started. He further noted that the project had continuous safety issues. The Construction Manager stated that Construction Company 1 received written notification of their performance problems.

The Construction Manager told OIG that he prepared the ACE evaluation for Construction Company 1's performance on C-40257. He explained that he had given them "Satisfactory" ratings on their evaluations because they confronted some problems not within their control such as the Covid-19 pandemic and design problems. He also said that he gave them that rating "to keep a working relationship." The Construction Manager discussed the evaluations with the Executive and told OIG that while he was not directed to give Construction Company 1 a satisfactory evaluation, the Executive told him that the job needed to keep moving. The Construction Manager described a meeting with the Executive and the PCEO during which the ACE evaluation was discussed, and they agreed to give the company a satisfactory evaluation if "they felt they could work with them." The Construction Manager told OIG that afterward he turned to the PCEO and said "what do we do, take his direction, he's the boss" referring to the Executive. The Construction Manager told OIG that he wanted to remove Construction Company 1's Project Manager from the project, but the PCEO and the Executive did not back him up.

The Construction Manager told OIG that after the April 29<sup>th</sup> on-site accident, the Executive had pushed to retain the Nephew on the project, and suggested the Nephew replace the removed CSE, a position requiring a minimum of five years of safety experience. The Construction Manager submitted the Nephew's resume to MTA C&D for approval as the CSE.<sup>5</sup> MTA C&D Safety informed the Construction Manager that the Nephew was not qualified for the CSS position he had already held for a year and rejected his resume for any safety position. Construction Company 1 was permitted to retain the Nephew on the job but only in a role that involves "coordination and doing minor tasks."

c. Project Chief Executive Officer

The PCEO told OIG that although his office is in the East New York Depot, he is not onsite often, does not know Construction Company 1's schedule or staff titles, and believed that the Nephew had been "only hired on a temporary basis" as the CSS. The PCEO believed that after the April 29, 2022 accident, Construction Company 1 proposed using the Nephew as the CSE, a position requiring five years of safety-related experience. The MTA Project Management team, in turn, submitted the Nephew's resume to MTA C&D Safety, a post-MTA Transformation requirement. The Nephew was rejected by MTA C&D Safety because he lacked the required experience. The PCEO recently learned that the Nephew is related to the

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<sup>5</sup> On May 11, 2022, the Resident Engineer sent an email to the owner of Construction Company 1 rescinding MTA's approval of its CSE and its Quality Manager. The Construction Manager told OIG that despite this email Construction Company 1's Project Manager pushed to retain the Quality Manager. Both the Quality Manager and the Nephew were permitted to remain on the project.

Executive and claimed that he only knew him onsite by his first name.<sup>6</sup> He said that the Executive had never mentioned his Nephew was the CSS.

The PCEO said that the Construction Manager prepared the ACE evaluations for Construction Company 1's performance on C-40257, he reviewed them, and the Executive approved them. He conceded that Construction Company 1's performance merited a marginal or unsatisfactory evaluation, but he did not push for that assessment since he was concerned that the company might be "debarred with a lower rating" thereby further delaying the project. He denied that he was pressured by the Executive or anyone else to give Construction Company 1 a satisfactory rating. He noted that Construction Company 1's president was repeatedly notified about project deficiencies, by hard copy letters and emails, but rarely responded to those correspondences. The PCEO said that it is unusual for a contractor to ignore such correspondence.

d. The Nephew

The Nephew initially told OIG that in late May or early June 2020, during the Covid-19 pandemic, he walked the streets of midtown Manhattan with his friends, carrying his resume and looking for work. Although he had no prior construction work experience, he told OIG that he walked onto a construction site in midtown Manhattan and asked the contractor if they were hiring. He claimed that he was told to talk to Construction Company 1's project manager, who asked for his resume. According to the Nephew, he was subsequently contacted by Construction Company 1's Project Manager about being a safety "person." The Nephew told OIG that he was told to report to the midtown Manhattan project after he completed the Occupational Safety and Health Administration (OSHA) 30-hour course, and from June through August he completed the required safety courses. He began working with Construction Company 1 in August 2020. The Nephew told us that when he began working on Construction Company 1's midtown Manhattan project, Construction Company 1's Project Manager was working primarily on C-40257 but returned to the midtown Manhattan project as needed. The Nephew was transferred by Construction Company 1 to the East New York Depot in June 2021. When OIG asked the Nephew if the Executive was his uncle, he denied it.

Because the Nephew's initial statements were not credible, OIG placed him under oath. After being placed under oath, the Nephew retracted his initial statements to the OIG. First, the Nephew admitted that the Executive is his paternal uncle. Then he explained that in May or June 2020, his father, an MTA Bus Maintainer, asked for his resume and told him he knew someone who could help him get a job. The Nephew was then contacted by Construction Company 1's Project Manager. The Nephew told OIG that both Construction Company 1's Project Manager and owner instructed him to not tell anyone he is the Executive's nephew. Finally, he admitted that Construction Company 1's Project Manager told him to tell OIG the fabricated story and

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<sup>6</sup> Notably, the Resident Engineer, the Nephew and the PCEO, as well as the Executive, are included on many C-40257 emails reviewed by OIG, including a request sent directly to the PCEO to approve the Nephew's Asite (software) training. Those emails clearly reveal that the Nephew and the Executive have the same surname.

deny that he is the Executive's nephew. However, he maintained that he did work on the midtown Manhattan project for Construction Company 1 from August 2020 until he was transferred to the East New York project.

e. The Nephew's Father

The Nephew's Father is one of the Executive's brothers and is employed by the MTA as a Bus Maintainer, assigned to the Mother Clara Hale Depot. He told OIG that his son was struggling to get a computer science job when he graduated from college. He denied that his son gave him his resume. He then told OIG, in detail, the same false story that his son initially told OIG and then ultimately retracted. OIG placed the Nephew's Father under oath, and he continued to deny any role in helping his son find a job and providing the Executive with his son's resume.

f. The Executive

After OIG interviewed the Nephew and the Nephew's Father, OIG expanded its review of the Executive's email and found that he received three messages from the Nephew's email address: one, sent June 9, 2020, identified as an "IPM.Note.MSG," which included his resume as an attachment; the second and third, sent September 15, 2020, and September 16, 2020, with the subject line "proof of address" and included multiple attachments with the Nephew's Father's identification.<sup>7</sup>

The Executive told OIG that he was responsible for the MTA team managing C-40257. He acknowledged that he is included on emails and informed of issues when a project "goes sideways." He stated that the Resident Engineer includes him on emails to Construction Company 1's Project Manager and owner when there are problems with the company's performance and contract compliance. The Executive confirmed that Construction Company 1 has had performance problems on C-40257 from the beginning, including, among other things, the Project Manager's attendance, Construction Company 1 employees not signing the contractor access forms, and safety-related work stoppages. He confirmed that he receives "all of the [Resident Engineer's] emails." OIG showed the Executive an email sent from Construction Company 1 Project Manager directly to the Executive about guidance on how to respond to the Resident Engineer's safety direction. The Executive could not explain why Construction Company 1's Project Manager ignored the chain of command and claimed that when he (the Executive) next saw the Project Manager at a meeting, he told the Project Manager to not contact him directly.

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<sup>7</sup> The Nephew resigned from Construction Company 1 in July 2022 and has not responded to OIG efforts to discuss the emails that were found.



The Executive told OIG that despite Construction Company 1's problems on this project, he claimed he had no idea that they had received multiple satisfactory ACE evaluations until June 2022. He did admit that in early 2022 he "heard" that the MTA Project Management team was planning on giving Construction Company 1 a negative evaluation, but he intervened and instructed them to give the company until the end of the month to improve. The Executive claimed that he sent Construction Company 1 an email threatening they would incur liquidated damages due to its failure to meet the schedule but failed to provide this email to OIG as requested.

The Executive told OIG that he reviewed all resumes submitted by contractors for the Project Manager, CSE, and Quality Manager roles prior to the MTA Transformation, when MTA C&D assumed responsibility for all construction projects. He told OIG that he would only review hard copies of resumes and would document his approval with his initials and "ok" written on the hard copy kept in the contract file. He claimed he would not approve a Safety Supervisor. The Executive denied approving the Nephew as the CSS. He claimed he did not know the Nephew was employed by Construction Company 1 until he was told by either Construction Company 1's Project Manager or one of the MTA project management staff.

When shown the emails from the Nephew's account that contained attachments from the Nephew's Father, the Executive explained that he did not think the Nephew's Father had an email address and that he needed the identification to help the Nephew's Father apply for a gun license. When asked about the June 2020 email with the Nephew's resume attached, the Executive denied that he solicited or did anything with the resume. The Executive claimed that four or five years ago he had a falling out with the Nephew, and consequently, only speaks to the Nephew's Father. He claimed that he had no idea how the Nephew got a job with Construction Company 1 and said that he never acknowledged or spoke to the Nephew during meetings. He agreed that the Nephew was not qualified for the safety position he held. He admitted that he did not seek ethical guidance on whether he should recuse himself from overseeing this contract or Construction Company 1.<sup>8</sup>

g. Nephew's Father's Second Interview

The Nephew told OIG that he had not given the Executive his resume; yet the Nephew's resume and the Nephew's Father's documents were sent to the Executive from the Nephew's email. Because the Nephew did not respond to OIG's attempts to speak to him about the emails from his email address, the OIG reinterviewed the Nephew's Father to ask him about them.

In response to OIG's general questions about his own email account, the Nephew's Father volunteered that his son (the Nephew) scanned documentation for his gun license

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<sup>8</sup> OIG also confirmed with the office of MTA Corporate Compliance that the Executive did not seek counsel about whether he would need to recuse himself from overseeing contracts on which his family members worked.

renewal and emailed it to the Executive from the Nephew's email address. When asked for an explanation about what prompted him to volunteer this information, the Nephew's Father stated that after his first OIG interview, he demanded that his son (the Nephew) explain why he (the Nephew) told OIG he had given his resume to the Nephew's Father. The Nephew's Father said that the Nephew then admitted that he had sent his resume to the Executive. The Nephew's Father offered no explanation why that would have prompted him to volunteer to OIG that the Nephew also sent the Executive documents for the Nephew's Father. The Nephew's Father confirmed that years ago the Nephew created a family rift after a conflict with the Executive. He could not, however, explain why the Nephew would send a resume to his estranged uncle, the Executive.

The Nephew's Father shrugged his shoulders when he was asked why he did not insist that his son correct his statement to OIG or why he failed to call OIG to advise us that his son admitted sending the Executive his resume. The Nephew's Father told OIG that he complained to his son that his story had placed his job at the MTA in jeopardy, but nevertheless made no effort to correct the story told to OIG. The Nephew's Father also denied that the Executive spoke to him about the emails sent from the Nephew's email account, even though OIG had questioned the Executive about the emails. Moreover, the Nephew's Father acknowledged that he had seen the Executive two weeks prior to his second OIG interview, the same time OIG contacted the Nephew to try to schedule a follow-up meeting.

## **B. C-40237**

1. *The Executive Failed to Recuse Himself from Overseeing Multiple Contracts on Which his Brother was Employed by Construction Company 2.*

On October 24, 2019, Construction Company 2 was awarded contract C-40237 to replace the roof at the Fresh Pond Depot. On March 25, 2020, the Executive's Brother was approved as the CSE on the contract. OIG reviewed employee emails as well as documents provided by the MTA Project Management team. Among those records OIG found emails authored by the Brother as an employee of Construction Company 2, on which the Executive was included. OIG also subpoenaed Construction Company 2 for the Brother's employment records and project assignments. The records provided revealed that Construction Company 2 assigned the Brother, in addition to C-40237, to the following projects managed by the Executive: East New York Bus Depot (C-40254); College Point Bus Depot (E-31383); and Queens Village Bus Depot (C-40273).

2. *Interviews*
  - a. The Executive

When OIG asked the Executive about his family, he told us that he is one of seven brothers and openly identified 5 of his brothers by name and did not hesitate to identify where

four of the six work.<sup>9</sup> OIG had to ask him his sixth brother's (the Brother) name and workplace. He initially told us that the Brother works at Home Depot. However, after being confronted with documentation that confirmed that the Brother is employed by Construction Company 2, he acknowledged that the Brother worked for the company and is assigned to C-40237 as the CSE. The Executive further acknowledged that he was "the boss of the project," and that he did not seek ethical guidance on his obligation to recuse himself from oversight of the project.

The Executive claimed that he did not know how his brother got his job with Construction Company 2 and claimed he did not know that he worked for the company until he saw him on the job. However, that claim is belied by his brother's prior assignments to contracts under the Executive's management.<sup>10</sup>

b. Construction Company 2

OIG subpoenaed information about the Brother's employment with Construction Company 2, including his employment application and the names of any employment references. In response, Construction Company 2's Finance Manager telephoned OIG and explained that the Brother was referred to the company by "an MTA employee," although he could not remember the MTA employee's name. He explained that the Brother previously worked as a bookkeeper for Walgreens and at Home Depot. The Finance Manager said that he would check with Construction Company 2's President and a Company Project Manager, who interviewed the Brother, about who from MTA referred the Brother. He also told OIG that Construction Company 2 had paid for all the Brother's safety certification training.

Shortly after the call with the Finance Manager, the President of Construction Company 2 called an OIG representative. The President denied that the Brother had been referred by an MTA employee. He claimed that the Brother lived in the neighborhood and may have called or walked into the office to inquire about a job. The President denied that the Brother had been a Walgreens bookkeeper but said that instead he had worked as a "shift supervisor" who had been required to receive OSHA training because he was required to supervise employees unloading trucks.

OIG received a copy of the resume the Brother submitted to Construction Company 2. While it describes his prior position at Walgreens as a "shift leader" there is nothing in his resume describing safety responsibilities or listing OSHA certification. Nor does his resume reflect any construction experience.<sup>11</sup>

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<sup>9</sup> One of his brothers died in 2021.

<sup>10</sup> The Brother has been employed by Construction Company 2 since October of 2016, according to the resume submitted for his approval as the CSE on C-40237. According to Project Status Report the Executive had oversight of two of Construction Company 2's contracts, one had recently been deemed "substantially complete" and the other was in financial closeout.

<sup>11</sup> OIG was unable to confirm that the CSE assigned to C-40237 was the Executive's brother until the Executive's interview. OIG intends on interviewing the brother in our continued investigation of Construction Company 2.

## POLICIES and ANALYSIS

### A. MTA All-Agency Code of Ethics

#### 1. *§ 1.07: Cooperation with Audits and Investigations*

The MTA All-Agency Code of Ethics (the Code) Section 1.07 states, in pertinent part, that employees must cooperate fully and honestly with audits and investigations conducted by the MTA Inspector General. Failure to cooperate will subject an employee to appropriate disciplinary penalty, up to and including dismissal.

Here, during their OIG interviews the Executive's answers to OIG's questions were evasive, while the Nephew's Father's were simply not credible. For instance, OIG asked the Executive where his brother worked and rather than disclosing that he was employed by Construction Company 2, he either lied or told a partial truth. It was only after OIG confronted him with irrefutable evidence contained in Construction Company 2's documents bearing his brother's name that he admitted the truth. As discussed above, when the Nephew's Father, without any prompting, blurted out that the Nephew emailed documents to the Executive that were needed for his license renewal, it was obvious that he had discussed the emails with the Executive and crafted responses anticipating OIG questions. Yet, the Nephew's Father denied discussing the emails with the Executive. Finally, the Nephew's Father told OIG the same story about how the Nephew got the job with Construction Company 1 that his son recanted.

#### 2. *§4.01 Conflicts of Interest/Recusal*

Section 4.01 of the Code provides, in pertinent part, that employees must not have any interest, direct or indirect, which may conflict with the proper discharge of their duties. An employee is further obligated to notify their Agency Ethics Officer about any conflict of interest they may confront and avoid the appearance of a conflict of interest. In particular, the Code notes that an employee may be confronted with a conflict of interest when they participate in an MTA transaction in which a family member may have a direct or indirect financial interest or other private interest. The Code requires that MTA employees refrain from participating in an MTA matter in which there may be a Conflict of Interest until after the Agency Ethics Officer determines whether recusal is required.

Here, the Executive was required to seek guidance about his obligation to recuse himself from C-40257 and C-40237 since he had family members working on each of these contracts as employees of the prime contractor. Notably, the Nephew was not qualified for the job assignment for which he was approved for C-40257. Finally, the Executive's attempt to conceal that his Brother is employed by Construction Company 2 revealed that he understood it created, at minimum, an appearance of a Conflict of Interest.

### 3. §4.02 Public Trust

Section 4.02 of the Code, prohibits employees from engaging in conduct that “will raise suspicion among the public that they are likely to be engaged in acts that are in violation of the public trust.” It further requires employees avoid “even the appearance” they can be improperly influenced in the performance of their work, induced to violate the public trust, or impair their independence of judgment in the exercise of their official duties. It further proscribes employees from using their official position to secure unwarranted privileges for themselves or others. And finally, it prohibits employees from engaging in conduct that provides a “reasonable basis for the impression that any person can improperly influence them or unduly enjoy their favor in the performance of their official duties or that they are affected by the kinship, rank, position, or influence of any party or person.”

Here the Executive’s family members, who had no prior construction safety experience, were hired by construction companies that were under the Executive’s supervision at the time they were hired. In fact, the Nephew’s resume was submitted and ultimately approved for a role for which he was not qualified. Although OIG was given conflicting information from Construction Company 2 about how the Brother was hired, the resume he submitted revealed neither construction nor safety experience when he was hired. Moreover, although OIG has been unable to prove that the Executive overlooked Construction Company 1’s poor performance on C-40257, the circumstances could provide a “reasonable basis for the impression” that the Executive’s tolerance of Construction Company 1’s poor performance may have been influenced by the Nephew’s employment by Construction Company 1.

## B. New York State Public Officers Law

### 1. § 74(3)(f)

Public Officers Law § 74(3)(f) provides, in pertinent part, that no state employee should by his conduct give reasonable basis for the impression that any person can improperly influence him or unduly enjoy his favor in the performance of his official duties, or that he is affected by the kinship, rank, position or influences of any party or person.

As discussed above, the Nephew’s employment by Construction Company 1 and the Executive’s tolerance for its poor performance could provide a reasonable basis for the impression that the Executive was improperly influenced by that relationship.

### 2 § 74(3)(h)

Public Officers Law § 74(3)(h) provides, in pertinent part that an officer or employee of a state agency, member of the legislature or legislative employee should endeavor to pursue a course of conduct which will not raise suspicion among the public that he or she is likely to be engaged in acts that are in violation of his or her trust.

As discussed above, the Executive's supervision of contracts on which the contractors assigned the Executive's family members could surely raise suspicion among the public that his conduct violated the public trust.

### **III. FINDINGS**

1. The Nephew provided either his father or the Executive with his resume and was hired by Construction Company 1.
2. Construction Company 1 hired the Nephew and assigned to him a role that he was not qualified to perform on an MTA contract supervised by the Executive and told him not to tell anyone he is related to the Executive.
3. The Nephew was approved as the CSS by the MTA Project Management team despite lacking the very specific minimum requirements of the contract.
4. All members of the MTA Project Management team agreed that Construction Company 1's performance on C-40257 was poor, yet the company consistently received satisfactory ACE evaluations. On at least one occasion the Executive influenced MTA Project Management staff's judgment to secure Construction Company 1 a satisfactory evaluation it might not have otherwise received.
5. Construction Company 2 hired the Executive's Brother in October 2016 while also working on several contracts being overseen by the Executive.
6. Construction Company 2 gave OIG conflicting accounts about how the Brother was hired by the company, with the more plausible account being that he was referred by an MTA employee.
7. As detailed above, the Executive and the Nephew's Father's failed to cooperate fully and honestly with OIG in violation of MTA All-Agency Code of Ethics § 1.07.
8. The Executive did not seek guidance regarding the clear conflict of interest overseeing contracts on which his Nephew and his Brother were employed, in violation of the MTA All-Agency Code of Ethics § 4.01.
9. The Executive's behavior violated the public trust and gives the impression that he was improperly influenced by his familial relationships when overseeing the contracts in violation of the MTA All-Agency Code of Ethics § 4.02 and NYS Public Officers Law § 74 (3)(f) and § 74(3)(h).

#### **IV. RECOMMENDATIONS**

1. We recommend that the Executive be disciplined to the extent that the Agency deems appropriate.
2. We recommend that the Nephew's Father be disciplined to the extent that the Agency deems appropriate.
3. We recommend that the Resident Engineer, Construction Manager, and the PCEO be reinstructed about their obligation to strictly enforce contract specifications, particularly as they pertain to contractor project management team qualifications.

As always, we appreciate your continued courtesy and cooperation. Please advise our office within thirty (30) days of any action you intend to take, and the result of any action taken. In addition, please indicate your acceptance or rejection of each recommendation and the proposed quarter in the calendar year that the recommendation will be implemented.

Please be advised that the Office of the MTA Inspector General may publicly disclose this report consistent with its statute and other state law, which may include name(s) of individuals and entities. Should you have any questions, or need additional information, please contact William McGrogan, Executive Deputy Inspector General, Investigations, at (212) 878-0143.

Very truly yours,

/S/

Elizabeth Keating

cc: Janno Lieber, Chair, MTA Board of Directors and CEO  
Evan Eisland, Executive Vice President, General Counsel & Contracts MTA C&D  
Lamond Kears, Chief Compliance Officer, MTA  
Paige Graves, General Counsel, MTA  
David Farber, General Counsel, NYC Transit  
Monica Murray, Chief Administrative Officer, NYC Transit  
Diane Nardi, Senior Vice President and Deputy General Counsel, MTA C&D



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**Addendum**  
**to**  
**MTA/OIG #2022-14**

**Employee Conflict of Interest**

In October 2023, in response to the Office of MTA Inspector General's (OIG) investigation and report, MTA Construction & Development (MTA C&D) and NYC Transit (collectively the "MTA Parties"), advised OIG that it had suspended the now former MTA C&D employee without pay within twenty-four hours of receiving OIG's report. Shortly thereafter, in accordance with internal procedures, his employment with the agency was terminated. The Nephew's Father's discipline was subject to Collective Bargaining Agreement (CBA) procedures, and NYC Transit imposed a pre-disciplinary suspension, without pay. Following the CBA arbitration process, the arbitrator issued a final determination that the Nephew's Father should be suspended, and NYC Transit suspended the Nephew's Father for 20 days without pay. Finally, within two weeks of MTA C&D's receipt of OIG's report, the Resident Engineer, Construction Manager, and PCEO were reinstructed by their Business Unit Leader on their obligation to strictly enforce contract specifications. The employees have also completed in-house training to ensure that these employees manage contracts according to contract specifications.