



Metropolitan Transportation Authority

# April 2014

## MTA Board Action Items



**MEETING AGENDA  
METROPOLITAN TRANSPORTATION AUTHORITY BOARD  
April 30, 2014 10:00 a.m.**

347 Madison Avenue  
Fifth Floor Board Room  
New York, NY

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**AGENDA ITEMS**

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Date of next MTA Board meeting: Wednesday, May 21, 2014 at 10:00 a.m.

**Metropolitan Transportation Authority  
Minutes of  
Regular Board Meeting  
347 Madison Avenue  
New York, NY 10017**

**Wednesday, March 26, 2014  
10:00 a.m.**

**The following members were present:**

**Hon. Thomas F. Prendergast, Chairman & CEO  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. Lebow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke**

**The following members were absent:**

**Hon. Jeffrey A. Kay  
Hon. Susan Metzger**

Catherine Rinaldi, Chief of Staff, Jerome F. Page, MTA General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member James Blair, Board Member Ira R. Greenberg, Carmen Bianco, President, NYCTA, Helena Williams, President, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, President/SVP, MTA Bus Operations and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.

The Board of the Metropolitan Transportation Authority also met as the Board of the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the Metropolitan Suburban Bus Authority, the Triborough Bridge and Tunnel Authority, the Long Island Rail Road, the Metro-North



Commuter Railroad Company, the MTA Capital Construction Company, the MTA Bus Company, and the First Mutual Transportation Assurance Company.

Unless otherwise indicated, these minutes reflect items on the agenda of the Board of the Metropolitan Transportation Authority, the Metropolitan Suburban Bus Authority, and the First Mutual Transportation Assurance Company. Refer to the other agencies' minutes of this date for items on the agendas of the Boards of the other agencies.

**PUBLIC SPEAKERS.** There were ten (10) public speakers. The following speakers addressed matters relating to the MTA. Refer to the video recording of the meeting produced by the MTA and maintained in MTA records, and to the other agencies' minutes of this date, for the content of the speaker's statement and identification and comments of the other speakers.

P.C. Kalola, private citizen  
Murry Bodin, private citizen  
Gene Russianoff, Straphangers' Campaign  
John Raskin, Rider's Alliance  
William Henderson, PCAC

1. **CHAIRMAN'S OPENING COMMENTS.**

The Chairman called for a moment of silence in honor of James Romansoff, Metro-North track employee and Stedmund Dawson, NYCT subway conductor, both of whom died while performing their duties.

Chairman Prendergast noted that Mr. Romansoff's death, the most recent in a series of safety-related incidents at Metro-North, occurred only days before the Federal Railroad Administration issued its "Deep Dive" analysis of Metro-North's operations. The Chairman stated that Metro-North is currently undertaking a full-scale re-evaluation of the safety procedures and safety culture at the agency, and the Chairman said that Joseph Giulietti, Metro-North's new President, has his support and confidence. Chairman Prendergast announced that the MTA is also engaged in safety examinations of all its agencies, in line with the renewed commitment to safety.

Chairman Prendergast announced the retirement of Martin (Marty) Schnabel, New York City Transit Authority General Counsel. The Chairman commended Mr. Schnabel on his 37 years of service to the Authority. On behalf of the entire MTA, the Chairman wished Mr. Schnabel well in his retirement.

2. **MINUTES.** Upon motion duly made and seconded, the Board approved the minutes of the regular Board meeting held on February 26, 2014.

### 3. **COMMITTEE ON FINANCE.**

A. **Action Item.** Upon motion duly made and seconded, the Board approved the following action item, described in further detail in the staff summaries and documentation filed with the meeting materials.

1. 2013 Annual Procurement Report. Authorized the filing with the State of New York of the annual MTA All-Agency Procurement report for the period of January 1, 2013 – December 31, 2013, as required under Section 2879 of the Public Authorities Law.

B. **Information Item.**

1. MTA Prompt Payment Annual Report 2013. The Board received the MTA Prompt Payment Annual Report that is required to be submitted to the State Comptroller, the State Director of the Budget, the Chairman of the Senate Finance Committee, and the Chairman of the Assembly Ways and Means Committee.

C. **Procurement Items.** Upon motion duly made and seconded, the Board approved the following procurement items. The specifics are set forth in the staff summaries and documentation filed with the meeting materials.

1. Oracle U.S.A – All-Agency Oracle Proprietary Software and Maintenance under MTA’s Enterprise License Agreement (“ELA”). Approved an amendment to a previously Board-approved, all-agency contract with Oracle U.S.A. for additional Oracle proprietary software, including three years maintenance, to address software needs in support of the MTA’s core financial application acquired under MTA’s ELA expiring in 2017.
2. International Salt Company – Purchase of Highway Salt for Bridges and Service Buildings – P.O. No. 3000001646. Approved the purchase of highway salt on behalf of MTA Bridges & Tunnels.

D. **Real Estate Items.** Upon motion duly made and seconded, the Board approved the following real estate items. The specifics are set forth in the staff summaries and documentation filed with the meeting materials. Vice Chairman Fernando Ferrer recused himself from the vote on item #8 below.

#### **New York City Transit Authority**

1. Lease agreement with The New Stand LLC for the operation of a retail gift shop/newsstand located at Union 01, 14<sup>th</sup> Street-Union Square Station (Canarsie Avenue line, mezzanine level), Manhattan, N.Y.

2. Lease agreement with Consul International, Inc. for the operation of a newsstand located at Unit 02, 14<sup>th</sup> Street-Union Square Station, (Lexington Avenue line), Manhattan, N.Y.

#### **Metro-North Railroad**

3. Modification to a lease with 1687 Properties LLC for a parking lot for MNR customers and employees located at 19-21 Water Street, Poughkeepsie, N.Y.
4. Modification to a lease with Apple Inc. d/b/a Apple for a portion of an area known as “Carey’s Hole” located in Grand Central Terminal, Manhattan, N.Y.
5. Modification to an existing policy included within the Guidelines for Selection of Tenants for Grand Central Terminal.

#### **MTA Capital Construction**

6. Authorization to enter into agreements with long stay residential hotels to accommodate temporary relocation of residential occupants in connection with Second Avenue Subway project.

#### **Long Island Rail Road**

7. License agreement with Maglios Catering; Victor Ferruggiari; Expressway Mobile Catering Inc., and Kenneth James Patrick Doran for the operation of coffee trucks at the Seaford, Amityville, Kings Park and Massapequa stations.

#### **MTA Staten Island Repaid Transit Operation Authority**

8. Approval of Final Environmental Impact Statement findings relating to a portion of rail yard northwest of the Staten Island Ferry Terminal (near Richmond County Bank Ballpark) in the St. George section of Staten Island (Block 2, Lot 15), Staten Island, N.Y.

#### **Metropolitan Transportation Authority**

9. Approval of the All-Agency Real Property Disposition Guidelines and All-Agency Personal Property Disposition Guidelines required by Public Authorities Law Sections 2895-2897.

5. **GOVERNANCE COMMITTEE.** Upon motion duly made and seconded, the Board approved the following items. The specifics are set forth in the staff summaries and documentation filed with the meeting materials.

1. **Safety Committee Charter and Revisions to Governance Guidelines.** Approved the Safety Committee Charter and revisions to the Governance Guidelines.

2. Mission Statement and Measurement Report. Approved MTA's Mission Statement and Performance Measurement Report and authorized the submission of the 2013 Mission Statement and Performance Measurement Report to the State Authorities Budget Office.
3. Procurement Guidelines. Approved the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services.
4. Travel and Business Expense Policy. Approved revisions to the All-Agency Travel and Business Expense Policy.
6. **EXECUTIVE SESSION.** Upon motion duly made and seconded, the Board voted to convene an executive session in accordance with Section 105(1)(e) of the New York State Public Officers Law to discuss matters relating to collective negotiations. Upon motion duly made and seconded, the Board approved amendments to the MTA 20-Year Police Retirement Program; the MaBSTOA Pension Plan; the MTA Defined Benefit Pension Plan; the LIRR Additional Plan; the MTA All Agency Investment Guidelines; and the MTA Retiree Welfare Benefits Trust Agreement.

Thereafter, upon motion duly made and seconded, the Board voted to resume proceedings in public session.

7. **ADJOURNMENT.** Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:00 a.m.

Respectively submitted,

Victoria Clement  
Assistant Secretary



**Minutes of the  
Regular Board Meeting  
for the New York City Transit Authority,  
Manhattan and Bronx Surface Transit Operating Authority,  
Staten Island Rapid Transit Operating Authority and  
MTA Bus Company**

**Wednesday, March 26, 2014  
10:00 a.m.**

**The following members were present:**

**Hon. Thomas F. Prendergast, Chairman & CEO  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. Lebow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke**

**The following members were absent:**

**Hon. Jeffrey A. Kay  
Hon. Susan Metzger**

**Catherine Rinaldi, Chief of Staff, Jerome F. Page, MTA General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member James Blair, Board Member Ira R. Greenberg, Carmen Bianco, President, NYCTA, Helena Williams, President, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Rail Road, James Ferrara, President, TBTA, Darryl Irick, President/SVP, MTA Bus Operations and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.**

**1. CHAIRMAN PRENDERGAST CALLED THE MEETING TO ORDER**

**2. PUBLIC COMMENT PERIOD**

Nine public speakers addressed NYC Transit/MTA Bus issues:

Vincent Modafferi, President, TWU Local 106, urged the Board to settle issues relating to collective bargaining negotiations.

Robert Elznic, Division Chairman, TWU Local 106, asked the Board to approve a fair contract for transit supervisors.

P.C. Kalola asked the Board to allow him to negotiate all of the Authority's contracts.

Murray Bodin discussed his rights under the Open Meetings Law.

Gene Russianoff, Straphangers' Campaign, addressed issues relating to the state budget.

John Raskin, Rider's Alliance, urged the Board to help obtain the funds from the state that had been set aside for transit.

Matthew Shotkin discussed an issue he had with Select Bus Service.

Michael Troina, TWU Local 106, discussed collective bargaining issues and asked for raises for transit supervisors.

William Henderson, PCAC, urged the State Legislature to give the MTA the money that has been set aside for transit.

**3. CHAIRMAN PRENDERGAST'S COMMENTS**

Details of Chairman Prendergast's comments are set forth in minutes recorded by the MTA, copies of which are on file with the records of the meeting of the Board of the MTA NYC Transit/SIR/MTA Bus Company.

**4. MINUTES**

Upon motion duly made and seconded, the Board unanimously approved the minutes of the regular board meeting of MTA NYC Transit, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Railway Transit Operating Authority, and MTA Bus Company held on February 26, 2014.

## **5. COMMITTEE ON FINANCE**

### **Real Estate Item:**

**MTA NYC Transit:** Upon motion duly made and seconded, the Board approved: (i) a Lease Agreement with The New Stand, LLC for the operation of a retail gift shop/newsstand at the 14<sup>th</sup> Street-Union Square station, Canarsie Ave Line, Manhattan; and (ii) a Lease Agreement with Consul International, Inc. for the operation of a newsstand at the 14<sup>th</sup> Street-Union Square station, Lexington Ave Line, Manhattan.

## **6. COMMITTEE ON TRANSIT & BUS OPERATIONS**

### **NYC Transit & MTA Bus Company**

**Action Item:** Upon motion duly made and seconded, the Board approved a tariff change to: (1) expand the acceptable forms of identification for a senior citizen without a Reduced Fare MetroCard (RFM) to obtain a reduced-fare; under this proposal, senior citizens would be permitted to use a driver's license (or legal equivalent issued to non-drivers) from any state or a passport as a valid form of identification, in addition to the currently approved identification; and (2) update the procedures for reduced fare customers without a RFM to obtain a reduced fare on the subway to include the Reduced Fare Round Trip MetroCard, which replaced the Return Trip ticket.

### **Procurements:**

**Non-Competitive Procurements:** Upon motion duly made and seconded, the Board approved the non-competitive procurements requiring a two-thirds vote (Schedule A in the Agenda). Details of the above items are set forth in staff summaries, copies of which are on file with the records of the meeting of the Board of the New York City Transit/SIR/MTA Bus Company.

Board Member Moerdler voted in opposition to the Kawasaki Rail Car, Inc. item, described on page 77 of the Board book.

**Competitive Procurements:** Upon motion duly made and seconded, the Board approved the competitive procurements requiring a majority vote (Schedules G and L in the Agenda). Details of the above items are set forth in staff summaries, copies of which are on file with the records of the meeting of the Board of the New York City Transit/SIR/MTA Bus Company.

## **7. CORPORATE GOVERNANCE COMMITTEE**

Upon motion duly made and seconded, the Board approved: (i) the Safety Committee Charter and revisions to the MTA Governance Guidelines; (ii) the Mission Statement and Measurement Report covering the Fiscal Year 2013; (iii) the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services; and (iv) revisions to the All-Agency Travel and Business Expense Policy.


8. EXECUTIVE SESSION

Upon motion duly made and seconded, the Board voted to convene an executive session in accordance with Section 105(1)(e) of the New York State Public Officers Law to discuss matters relating to collective bargaining negotiations. Thereafter, upon motion duly made and seconded, the Board voted to resume proceedings in public session.

9. ADJOURNMENT

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:00 a.m.

Respectfully submitted,

  
Mariel A. Thompson  
Assistant Secretary



Minutes of the Regular Meeting  
Metro-North Commuter Railroad Company  
347 Madison Avenue  
New York, NY 10017

Wednesday, March 26, 2014  
10:00 a.m.

The following members were present:

Hon. Thomas F. Prendergast, Chairman & CEO  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. Lebow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke

The following members were absent:

Hon. Jeffrey A. Kay  
Hon. Susan Metzger

Catherine Rinaldi, Chief of Staff, Jerome F. Page, MTA General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member James Blair, Board Member Ira R. Greenberg, Carmen Bianco, President, NYCTA, Helena Williams, President, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, President/SVP, MTA Bus Operations and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.

Chairman Prendergast called the meeting to order.

1. Public Speakers: There were 10 public speakers.

Murray Bodin of Concerned Grandparents addressed matters pertaining to Metro-North and the Open Meetings Law.

The details of the speakers' comments are contained in the video recording of the meeting, produced by the Metropolitan Transportation Authority (MTA) and maintained in MTA records and to the minutes of the other Agencies of this date.

2. Chairman's Opening Remarks:

The Chairman called for a moment of silence in honor of James Romansoff, a Metro-North Third Railman, who was fatally struck by a train on March 10, 2014 and Stedmund Dawson, NYCT subway conductor who also died while performing his duties.

Chairman Prendergast noted that Mr. Romansoff's death, the most recent in a series of safety-related incidents at Metro-North, occurred only days before the Federal Railroad Administration (FRA) issued its "Deep Dive" analysis of Metro-North's operations. The Chairman stated that Metro-North is currently undertaking a full-scale re-evaluation of its safety procedures and safety culture, noting that Joseph Giulietti, Metro-North's new President, has his full support and confidence. Chairman Prendergast announced that the MTA is also engaged in safety examinations of all its agencies, in line with the renewed commitment to safety.

3. Approval of Minutes:

Upon motion duly made and seconded, the minutes of the Regular Board Meeting of February 26, 2014 were approved.

4. Committee on Finance:

Action Item:

Upon motion duly made and seconded, the MTA Board approved the following action item. A staff summary setting forth the details of the above item is filed with the minutes of the meeting of the MTA Board held this day.

- 2013 Annual Procurement Report.

Information Item:

- MTA Prompt Payment Annual Report 2013

A staff summary setting forth the details of the above item is filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

Procurements:

The MTA Board voted on certain MTA Headquarters procurements that relate to Metro-North. Among the procurements approved were the following competitive procurements:

- An amendment to a previously Board-approved, all-agency contract with Oracle U.S.A. for additional Oracle proprietary software, including three-years of maintenance, to address software needs in support of the MTA's core financial application.

A staff summary and report setting forth the details of the above item is filed with the minutes of the meeting of the MTA Board held this day.

Real Estate Items:

Upon motion duly made and seconded, the MTA Board approved the following real estate items recommended to it by the Committee on Finance that relate to Metro-North:

- Modification to lease agreement with 1687 Properties LLC/Dyson Foundation relating to parking spaces at Poughkeepsie Station;
- Modification to lease with Apple Inc. relating to “Carey’s Hole” at Grand Central Terminal; and
- Modification to policy included within Guidelines for Selection of Tenants for Grand Central Terminal.

Staff summaries setting forth the details of the above items are filed with the minutes of the meeting of the MTA Board held this day.

5. Committee on Metro-North Railroad:

Procurements:

Upon motion duly made and seconded, the Board approved the following non-competitive procurements recommended to it by the Committee on Metro-North Railroad Operations:

- A non-competitive, three-year miscellaneous purchase contracts with Wabtec Passenger Transit, Sepsa North America, Graham White Manufacturing and Vapor Stone Rail Systems for original equipment manufacturer (OEM) replacement parts for various Metro-North and Long Island Rail Road railcar and locomotive fleets. This is a Metro-North led joint procurement with the Long Island Rail Road;
- A non-competitive, five-year miscellaneous service contract with Norcon Communications to provide repair and maintenance support services for Grand Central Terminal (GCT) and North End Access public address systems.

Upon motion duly made and seconded, the Board approved the following competitive procurements recommended to it by the Committee on Metro-North Railroad Operations:

- Use of the Request for Proposal (RFP) process to solicit and evaluate proposals from prospective vendors for the design, manufacture, assembly and delivery of on-board video camera recording systems for Metro-North and LIRR. This is a Metro-North led joint procurement with the Long Island Rail Road.
- Use of the Request for Proposal (RFP) process to solicit and evaluate proposals from prospective vendors for the design, manufacture and delivery of a pre-wired instrument house for a Train Fault Detector System (TFD) which includes a four-

track Wheel Impact Load Detector (WILD), a four-track Automatic Tag Reader System and the design and integration for real time reporting to the Metro-North and LIRR Operation Control Centers. This is a Metro-North led joint procurement with the Long Island Rail Road.

- Use of the Request for Proposal (RFP) process to solicit and evaluate proposals from joint partnerships of Architect/Engineers/Contractors as a design/build team, to complete a design and perform all work required for the replacement of 11 escalators in Grand Central Terminal (GCT).

Upon motion duly made and seconded, the Board approved the following ratifications recommended to it by the Committee on Metro-North Railroad Operations.

- Ratification of the emergency repair of the Croton Harmon-Material Distribution Center's (MDC) STAK system used to store and retrieve material in excess of 4,000 pounds;
- Ratification of an emergency one-year service contract with Georgetown Rail Equipment Company to provide automated track inspections and joint bar measurement services.

Staff summaries and reports setting forth the details of the above items are filed with the records of this meeting.

6. Committee on Governance:

Upon motion duly made and seconded, the MTA Board approved the following items recommended to it by the Committee on Governance that relate to Metro-North.

- Approval of the Safety Committee Charter and revisions to the Governance Guidelines;
- Approval of the Mission Statement, Measurements, and Performance Indicators Report Covering Fiscal Year 2013 for submission to the Authorities Budget Office;
- Approval of the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services;
- Approval of proposed revisions to the All-Agency Travel and Business Expense Policy.

Staff summaries setting forth the details of the above items are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

7. Executive Session:

Upon motion duly made and seconded, the Board voted to convene in Executive Session pursuant to Section 105(1)(e) of the New York State Public Officers Law to discuss matters relating to collective negotiations. Upon motion duly made and seconded, the Board approved amendments to the MTA Defined Benefit Pension Plan and the MTA All Agency Investment Guidelines. Staff summaries setting forth the details of the above items are filed



with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day. Thereafter, upon motion duly made and seconded, the Board voted to reconvene in public session.

8. Adjournment:

Upon motion duly made and seconded, the members of the Board present voted to adjourn the meeting at 11:00 a.m.

Respectfully submitted,

A handwritten signature in cursive script, reading "Linda Montanino".

Linda Montanino  
Assistant Secretary

Mar 2014 Board Minutes  
Legal/Corporate

Minutes of the Regular Meeting  
Long Island Rail Road Company  
347 Madison Avenue  
New York, NY 10017

Wednesday, March 26, 2014  
10:00 a.m.

The following members were present:

Hon. Thomas F. Prendergast, Chairman & CEO  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. Lebow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke

The following members were absent:

Hon. Jeffrey A. Kay  
Hon. Susan Metzger

Catherine Rinaldi, Chief of Staff, Jerome F. Page, MTA General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member James Blair, Board Member Ira R. Greenberg, Carmen Bianco, President, NYCTA, Helena Williams, President, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, President/SVP, MTA Bus Operations and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.

Chairman Prendergast called the meeting to order.

**1. Public Speakers:**

There were ten public speakers, none of whom spoke concerning LIRR agenda items. The details of the speakers' comments are contained in the video recording of the meeting, produced by MTA and maintained in the MTA records, and in the minutes of the other Agencies of this date.

2. **Opening Remarks:**

The Chairman called for a moment of silence in honor of James Romansoff, a Metro-North Third Railman, who was fatally struck by a train on March 10, 2014 and Stedmund Dawson, NYCT subway conductor who also died while performing his duties.

Chairman Prendergast noted that Mr. Romansoff's death, the most recent in a series of safety-related incidents at Metro-North, occurred only days before the Federal Railroad Administration (FRA) issued its "Deep Dive" analysis of Metro-North's operations. The Chairman stated that Metro-North is currently undertaking a full-scale re-evaluation of its safety procedures and safety culture, noting that Joseph Giulietti, Metro-North's new President, has his full support and confidence. Chairman Prendergast announced that the MTA is also engaged in safety examinations of all its agencies, in line with the renewed commitment to safety.

Chairman Prendergast also announced the retirement of Martin Schnabel, General Counsel of NYCTA, and thanked him for 37 years of dedicated service.

3. **Approval of Minutes:**

Upon motion duly made and seconded, the minutes of the Regular Board Meeting of February 26, 2014 were approved.

4. **Committee on Finance:**

**Action Item:**

Upon motion duly made and seconded, the Board approved the 2013 Annual Procurement Report.

**Information Item:**

- MTA Prompt Payment Annual Report 2013

A staff summary setting forth the details of the above item is filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

**Procurements:**

Among the procurements recommended to it by the Finance Committee approved by the Board was an amendment to a previously Board-approved, all-agency contract with Oracle USA for additional Oracle proprietary software, including three years maintenance, in the amount of \$3,486,000 to address software needs in support of the MTA's core financial application.

**Real Estate Items:**

Upon motion duly made and seconded, the Board approved the following real estate item relating to LIRR:

- License Agreements with Maglios Catering, Victor Ferruggiari, Expressway Mobile Catering Inc. and Kenneth James Patrick Doran at Seaford, Amityville, Kings Park and Massapequa stations, respectively, for ten years terms subject to LIRR termination on 60 days' notice, for the operation of coffee trucks.

A staff summary setting forth the details of the above item is filed with the minutes of the meeting of the Metropolitan Transportation Authority held this day.

**5. Metro-North Railroad Committee:**

Among the Metro-North procurements approved were (i) non-competitive three-year miscellaneous purchase contracts to Wabtec Passenger Transit, Sepsa North America, Graham White Manufacturing and Vapor Stone Rail Systems in the combined not-to-exceed amount of \$66,400,000 (\$45,600,000 for LIRR) for various OEM replacement parts, including for LIRR's M-3, C-3 and M-7 railcars, and the DE/DM locomotive fleet and (ii) approval to use the RFP process to solicit a contract for the Design, Manufacture, Assembly and Delivery of On-Board Video Camera Recording System, including an option for LIRR equipment, and (iii) approval to use the RFP process to solicit a contract for the Design, Manufacture and Delivery of a Pre-Wired House for a Train Fault Detection System, including an option for detection system to be installed on the LIRR.

**6. Long Island Rail Road Committee:**

**Action Item:**

There was one action item:

- Approval to introduce a new ticketing approach that will enhance service and increase revenue for the Hamptons Reserve Service, by combining standard rail charges with reserve seat charges, and additional changes consistent with overall Board policy concerning the validity date and refund policy applicable to the combined ticket.

Upon motion duly made and seconded, the Committee approved this action item.

**Procurements:**

There were no LIRR procurement items presented at this meeting.

**MTA Capital Construction Procurements:**

Upon motion duly made and seconded, the Board approved the following three MTACC competitive procurements:

1. Request for approval to employ the Request for Proposal method for Contract No. C-52128.



- 2-3. Modification to Contract No. 98-0040-01R for the design services and repackaging of Contract CH058 and to increase the contract amount allocated to Construction Phase Services in the amount of \$19,988,268.

Upon motion duly made and seconded, all procurement items were approved for recommendation to the Board. Board Member Moerdler abstained with respect to items 2 and 3. Staff summaries and reports setting forth the details of the above items are filed with the minutes of the meeting of the Metropolitan Transportation Authority held this day.

7. **Committee on Governance:**

Upon motion duly made and seconded, the Board approved the following items recommended to it by the Committee on Governance that relate to LIRR.

- Approval of the Safety Committee Charter and revisions to the Governance Guidelines.
- Approval of the Mission Statement, Measurements, and Performance Indicators Report Covering Fiscal Year 2013 for submission to the Authorities Budget Office.
- Approval of the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services.
- Approval of proposed revisions to the All-Agency Travel and Business Expense Policy.

Staff summaries setting forth the details of the above items are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

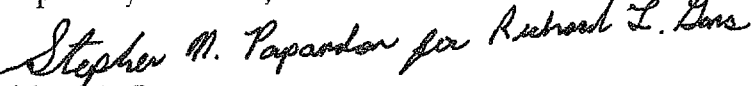
8. **Executive Session:**

The Board convened into Executive Session pursuant to Section 105(1)(e) of the New York State Public Officers Law to discuss matters relating to collective negotiations. Upon motion duly made and seconded, the Board approved amendments to the MTA Defined Benefit Pension Plan; the LIRR Additional Plan and the MTA All Agency Investment Guidelines. Staff summaries setting forth the details of the above items are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day. Thereafter, upon motion duly made and seconded, the Board voted to reconvene in public session.

9. **Adjournment:**

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:00 a.m.

Respectfully submitted,

  
Richard L. Gans  
Secretary

Minutes of the Regular Meeting  
Triborough Bridge and Tunnel Authority  
March 26, 2014

Meeting Held at  
347 Madison Avenue  
New York, New York 10017

10:00 a.m.

The following members were present:

Hon. Thomas F. Prendergast, Chairman & CEO, MTA  
Hon. Fernando Ferrer, Vice Chairman, MTA  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. LeBow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke

Not Present:

Hon. Jeffrey A. Kay  
Hon. Susan Metzger

Catherine Rinaldi, Chief of Staff; Jerome F. Page, MTA General Counsel; Stephen J. Morello, Counselor to the Chairman; Board Member James Blair; Board Member Ira R. Greenberg; Carmen Bianco, President, New York City Transit; Helena Williams, President, Long Island Rail Road; Joseph J. Giulietti, President, Metro-North Railroad; James Ferrara, President, Triborough Bridge and Tunnel Authority; Darryl Irick, President/SVP, MTA Bus Operations; and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.

The Board of the Metropolitan Transportation Authority also met as the Board of the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the Metropolitan Suburban Bus Authority, the Triborough Bridge and Tunnel Authority, the Long Island Rail Road, the Metro-North Commuter Railroad Company, the MTA Capital Construction Company, the MTA Bus Company, and the First Mutual Transportation Assurance Company.

Chairman and Chief Executive Officer Prendergast called the meeting to order.

**1. Public Speakers**

There were ten (10) public speakers. None of the speakers specifically commented on issues regarding the Triborough Bridge and Tunnel Authority. Refer to the video recording of the meeting produced by the MTA and maintained in MTA records, and to the other agencies' minutes of this date, for the content of the speakers' statements.

**2. Chairman and Chief Executive Officer Prendergast's Opening Comments**

Chairman Prendergast opened his remarks with a moment of silence for a Metro-North employee who was killed working on the tracks and for a subway conductor who died while performing his job. In addition, Chairman Prendergast discussed the Federal Railroad Administration's "Deep Dive" analysis of Metro-North Operations and that a full-scale reevaluation of safety procedures and safety culture is underway at the MTA's agencies. Chairman Prendergast thanked Martin Schnabel, General Counsel for New York City Transit, for his 37 years of exemplary service and wished him well in his retirement.

The details of Chairman and CEO Prendergast's comments are contained in the video recording of this meeting, produced by the MTA and maintained in MTA records, and the MTA's and other agencies' minutes of the meeting of this date.

**3. Approval of the Minutes of the Regular Meeting February 26, 2014**

Upon a motion duly made and seconded, the minutes of the Regular Board Meeting held on February 26, 2014 were approved.

**4. Committee on Finance**

Upon motions duly made and seconded, the Board approved the following Action Items recommended to it by the Committee on Finance, with Vice-Chairman Ferrer recused himself from the vote on the MTA Staten Island Rapid Transit Operation Authority real estate item:

(a) Action Item:

- Authorize the filing of the 2013 Annual Procurement Report;

(b) Procurements:

- 1 competitive procurement action in the amount of \$3.5 million, and
- 1 ratification in the amount of \$80,000.

(c) Real Estate Items:

- 9 real estate action items.

A copy of the staff summaries, resolutions and documents setting forth the details of the above items, as well as discussion with regard to same, are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

5. **Committee on MTA Bridges and Tunnels Operations**

**Procurements**

Commissioner Cappelli stated that there are four (4) procurements totaling \$15.7 million.

**Non-Competitive Procurements**

Commissioner Cappelli stated that there are no non-competitive procurements.

**Competitive Procurements**

Commissioner Cappelli stated that there are four (4) competitive procurements totaling \$15.7 million.

Upon a motion duly made and seconded, the Board approved the following competitive procurement item recommended to it by the Committee for MTA Bridges and Tunnels Operations:

**Personal Service Contracts**

Hardesty & Hanover, LLC	Contracts No. PSC-13-2944A-D	\$2,689,843.00
HNTB NY Engineering and Architecture, PC	Provide biennial bridge inspection and miscellaneous design services at the	\$2,001,010.29
URS Corporation - NY	Robert F. Kennedy and Verrazano-	\$2,890,830.99
WSP USA Corp.	Narrows Bridges.	<u>\$1,384,209.51</u>
		\$8,965,893.79
Atkins, P.A.	Contract No. PSC-13-2941B	\$3,000,000.00
	Provide miscellaneous toll collection consultant support services on an as- needed basis.	
Hatch Mott MacDonald NY, Inc.	Contract No. PSC-13-2942X	\$2,035,896.00
	Provide design and construction support services for Project QM-81, Control System and Control Room Rehabilitation at the Queens Midtown Tunnel.	

**Modifications to Personal Service Contracts and Miscellaneous Service Contracts  
Awarded as Contracts for Services**

Weidlinger Associates Inc./Parsons Brinckerhoff, J.V.	Contract No. PSC-11-2897 Perform investigations and design of a prototype steel deck section on the suspended span of the Throgs Neck Bridge and supplementary wind evaluations during and after orthotropic deck replacement under Project TN-49.	\$1,677,276.71
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Commissioner Cappelli stated that there are no ratifications.

**6. Governance Committee**

Upon a motion duly made and seconded the Board approved the following action items:

- Safety Committee Charter and Revisions to the Governance Principles;
- Mission Statement and Measurement Report;
- All Agency Procurement Guidelines and All Agency Guideline for Procurement Services; and
- Revised Travel and Business Expense Policy.

Copies of the All Agency Policies, Staff Summaries and details of the above items are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority.

**7. Executive Session**

Upon a motion duly made and seconded, the Board unanimously voted to convene in Executive Session pursuant to Public Officers Law §105(1)(e) to discuss matters relating to collective negotiations.

**8. Public Session**

Upon a motion duly made and seconded, the Board unanimously voted to reconvene in Public Session.

**9. Adjournment**

Upon a motion duly made and seconded, the Board unanimously voted to adjourn the meeting at 11:00 a.m.

Respectfully submitted,



Julia R. Christ  
Acting Assistant Secretary

**Regular Board Meeting  
MTA Capital Construction Company  
347 Madison Avenue  
New York, NY 10017**

**Wednesday, March 26, 2014  
10:00 a.m.**

The following members were present:

Hon. Thomas F. Prendergast, Chairman & Chief Executive Officer  
Hon. Fernando Ferrer, Vice Chairman  
Hon. Andrew Albert  
Hon. Jonathan A. Ballan  
Hon. John H. Banks, III  
Hon. Robert C. Bickford  
Hon. Norman Brown  
Hon. Allen P. Cappelli  
Hon. Mark D. Lebow  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mark Page  
Hon. Mitchell H. Pally  
Hon. David A. Paterson  
Hon. Andrew M. Saul  
Hon. James L. Sedore, Jr.  
Hon. Carl V. Wortendyke

The following member was absent:

Hon. Jeffrey A. Kay  
Hon. Susan Metzger

Catherine Rinaldi, Chief of Staff, Jerome F. Page, MTA General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member James Blair, Board Member Ira R. Greenberg, Carmen Bianco, President, NYCTA, Helena Williams, President, Long Island Rail Road, Joseph Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, President/SVP, MTA Bus Operations and Michael Horodniceanu, President, MTA Capital Construction, also attended the meeting.

The Board of the Metropolitan Transportation Authority also met as the Board of the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Rapid Transit Operating Authority, the Triborough Bridge and Tunnel Authority, the Long Island Rail Road, the Metro-North Commuter Railroad Company, the MTA Capital Construction Company, the MTA Bus Company, and the First Mutual Transportation Assurance Company.

Chairman and Chief Executive Officer ("CEO") Prendergast called the meeting to order.

## **Public Comment Period**

There were 10 public speakers. George Haikalis, President of the Institute of Rational Urban Mobility requested that the MTA Board reconsider the Upper Level Loop Alternative developed by the Delcan Corporation to replace the deep cavern plan for the East Side Access Project. He further requested that the MTA reconsider its plan to construct a new rail yard for the midday storage of cars in Sunnyside Queens.

P. C. Kalola offered his services to review MTA's contracts for opportunities to save money.

The names of the remaining speakers and the subject matter of their comments are contained in the minutes of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

## **Chairman and Chief Executive Officer's Opening Remarks**

Chairman and Chief Executive Officer ("Chairman") Thomas F. Prendergast opened with a request for a moment of silence in honor of two MTA employees who died while on duty this month: Metro North employee James Romansoff and NYCT Subway conductor Stedmund Dawson.

Chairman Prendergast noted that the MTA is undertaking a full scale re-evaluation of safety procedures and safety culture at all of the Agencies. The Chairman stated that safety will be our top priority and we will make sure we get safety right.

Chairman Prendergast announced the retirement of Martin Schnabel, General Counsel of New York City Transit. On behalf of the entire MTA, the Chairman thanked Mr. Schnabel for thirty-seven years of exemplary service and wished him a fantastic and well-deserved retirement.

The Chairman's full remarks are contained in the minutes of the meeting of the Board of the Metropolitan Transportation Authority held on February 26, 2014.

## **Approval of Minutes**

Upon motion duly made and seconded, the Board approved the minutes of the regular meeting of the Board of the Metropolitan Transportation Authority held on February 26, 2014.

## **Committee on Finance**

### Action Item

Upon motion duly made and seconded, the Board approved the filing of the annual MTA All-Agency Procurement report for the period of January 1, 2013 – December 31, 2013 with the State of New York as required under Section 2879 of the Public Authorities Law.

A copy of the Staff Summary and details of the above item is filed with the records of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

## Procurement

Upon motion duly made and seconded, the Board approved a modification to the All-Agency Contract for Oracle Proprietary Software and Maintenance under MTA's Enterprise License Agreement for additional Oracle proprietary software including maintenance.

A copy of the Resolution, Staff Summary and details of the above item is filed with the records of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

## Real Estate

Upon motion duly made and seconded, the Board adopted a resolution and approved a request to enter into agreements with long stay residential hotels to accommodate the temporary relocation of residential residents in connection with the Second Avenue Subway Project.

A copy of the Resolution, Staff Summary and details of the above item is filed with the records of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

## **Committee on Long Island Rail Road**

### Procurement Items

Upon motion duly made and seconded, the Board approved the following competitive procurement items:

1. A resolution authorizing use of the Request for Proposal method to solicit the Security Program's Reconstruction of the Integrated Electronic Security System (IESS) in the East River Tunnels Project.
2. A modification to the East Side Access Project's General Engineering Consultant contract for the repackaging of Contract CH058.
3. A modification to the East Side Access Project's General Engineering Consultant contract to increase the contract amount allocated to Construction Phase Services.

A copy of the Resolution, Staff Summaries and details of the above items are filed with the records of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

## **Governance Committee**

Upon motion duly made and seconded, the Board:

1. Approved the adoption of the proposed Safety Committee Charter and revisions to the Governance Guidelines



2. Approved the MTA's Mission Statement and Performance Measurement Report and authorized submission of the 2013 Mission Statement and Performance Report to the State Authorities Budget Office.
3. Re-approved the MTA's All-Agency Procurement Guidelines and All-Agency Guidelines for the Procurement of Services.
4. Approved a revision to the All-Agency Travel and Business Expense Policy to allow for reimbursement for business meals during the period of an emergency declared by the Governor of the State of New York or the MTA Chairman or, during a weather event requiring an employee to be on duty.

A copy of the Staff Summaries and details of the above items are filed with the records of the meeting of the Board of the Metropolitan Transportation Authority held on March 26, 2014.

#### **Executive Session**

Upon motion duly made and seconded, the Board voted to convene into Executive Session pursuant to Section 105(1)(e) of the New York State Public Officers Law to discuss matters relating to collective bargaining negotiations.

Thereafter, upon motion duly made and seconded, the Board voted to resume proceedings in public session.

#### **Adjournment**

Upon motion duly made and seconded, the Board voted to adjourn the public meeting at 11:00 AM.

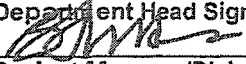

Respectfully submitted,



David K. Cannon  
Assistant Secretary



# Staff Summary

Page 1 of 2

<b>Subject</b> 2013 Annual Investment Report and amendment to the MTA All Agency Investment Guidelines
<b>Department</b> CFO/Treasury
<b>Department Head Name</b> Robert E. Foran
<b>Department Head Signature</b> 
<b>Project Manager/Division Head</b> Vinay T. Dayal 

<b>Date</b> April 28, 2014
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Comm.	4/28			
2	Board	4/30			

Internal Approvals			
Order	Approval	Order	Approval
2	Chief of Staff 		Chief Financial Officer
		1	Legal 

## Purpose:

Pursuant to the requirements of Public Authorities Law Section 2925, provide the MTA Board information on the MTA portfolio investment performance for the period 01/01/2013 to 12/31/2013, obtain Board approval of the MTA 2013 Annual Investment Report and obtain Board approval of the MTA All Agency Investment Guidelines ("Investment Guidelines or Guidelines"), as amended, to provide that the Guidelines do not apply to investments of the MaBSTOA Pension Plan.

## Discussion:

### Investment Performance Information

Investment Performance information is presented on the next page by types of funds and by bond resolution. Performance is based on book value.

### MTA Annual Investment Report

The separate 2013 MTA Annual Investment Report contains the additional information:

- The investment income record
- Commissions or other charges paid to each investment banker, broker, agent, dealer and advisor
- Investment Inventory
- Detail Transaction Report
- MTA All Agency Investment Guidelines, as amended

### Amendment to exclude the MaBSTOA Pension Plan from the MTA All Agency Investment Guidelines

As required by Public Authorities Law Section 2925, MTA approved the MTA All Agency Investment Guidelines on April 24, 2013. Article 1, Section 1 of the Investment Guidelines provides that the Guidelines do not apply to investments of MTA First Mutual Transportation Assurance Corporation and the MTA Defined Benefit Pension Plan. Such funds are subject to separately established investment guidelines.

On March 26, 2014, the Board adopted a resolution further amending the Investment Guidelines to clarify that the Guidelines do not apply to the MTA Retiree Welfare Benefits Plan and the monies deposited in the MTA Retiree Welfare Benefits Trust or to accounts established to invest employee and employer contributions under

the New York State Voluntary Defined Contribution Program. Such funds are subject to separately established investment guidelines.

A similar amendment to the Investment Guidelines is necessary to provide that the Guidelines do not apply to investments of the MaBSTOA Pension Plan (the "MaBSTOA Plan") The MaBSTOA Board of Managers approved the MaBSTOA Plan on November 22, 1989. Funds held in trust for participants of the MaBSTOA Plan are subject to separately established investment guidelines. The MaBSTOA Plan's Investment Committee invests such assets pursuant to recommendations and due diligence performed by its Financial Advisor (currently, NEPC).

## Recommendation(s):

It is recommended that the MTA Board approve the amended Investment Guidelines to clarify that the Investment Guidelines do not apply to the MaBSTOA Plan and approve the MTA's submission of the 2013 Annual Investment Report.


### Metropolitan Transportation Authority Investment Performance by Type of Fund For the Period Jan. 1, 2013 to Dec. 31, 2013

<u>Type of Fund</u>	<u>Net Earnings this Period</u>	<u>Average Daily Portfolio Balance</u>	<u>Net Portfolio Yield, 365-day Basis</u>
All Agency Investments	\$690,924	\$783,921,053	0.09%
MTA Special Assistance Fund	513,951	408,414,842	0.13%
TBTA Investments	157,126	130,790,645	0.12%
MTA Finance Fund	339,618	367,848,453	0.09%
MTA Transportation Resolution Funds	2,675,483	1,563,868,029	0.17%
State Service Contract Debt Service Fund	448	35,896,385	0.00%
MTA Dedicated Tax Fund Resolution Funds	99,362	171,599,849	0.06%
2 Broadway Certificates' Funds	9,658	14,138,018	0.07%
TBTA General Purpose Resolution Funds	230,901	297,420,647	0.08%
TBTA Subordinate Resolution Funds	28,266	47,106,165	0.06%
Other Restricted Funds	206,792	222,211,352	0.09%
<b>Total</b>	<b>\$4,952,529</b>	<b>\$4,043,215,438</b>	<b>0.12%</b>

Average Yield on 6 month Generic Treasury Bill (1/1/13 – 12/31/13)	0.08%
Average Yield on 12 month Generic Treasury Bill (1/1/13 – 12/31/13)	0.12%




Note: Table above only includes information on funds actively managed by MTA Treasury in accordance with the Board approved Investment Guidelines.  
Does not include defeasance investments for tax benefit lease transactions or insurance set asides.

# Staff Summary

Subject Law Firm Panel Addition – PTC Agreement Support
Department Office of General Counsel
Department Head Name Jerome Page, MTA General Counsel
Department Head Signature 
Project Manager Name

Date April 28, 2014
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/28/14	X		
2	Board	4/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
3	CFO 	1	Legal 
2	Chief of Staff 		

## Purpose

Board approval is requested to add the law firm Kaplan Kirsch & Rockwell, LLP, to the list of MTA approved outside counsel. It is anticipated that legal services provided by this firm will assist MTA, MNR and LIRR efforts in connection with the development and execution of Interoperability Agreements that will be necessary for implementation of Positive Train Control.

## Discussion

Pursuant to the Rail Safety Improvement Act of 2008 and the implementing FRA Regulations, MTA, MNR and LIRR are actively progressing the design, integration and implementation of Positive Train Control ("PTC") systems to advance the safety of their train operations and satisfy their obligations as commuter railroads. Implementation of PTC across the MNR and LIRR systems will, among many other challenges, require the drafting, negotiation and entry into numerous complex "Interoperability Agreements" with other railroads, both passenger and freight, that operate over portions of the same rail lines as MNR and/or LIRR. In addition to concluding such an agreement with Amtrak, the MTA Railroads will need to address interoperability arrangements with a number of freight carriers, including CSX, Norfolk Southern, Providence & Worcester and the New York & Atlantic.

The assistance of the law firm of Kaplan Kirsch & Rockwell, LLP ("KKR") would greatly benefit MNR and LIRR in connection with the development of the required Interoperability Agreements that will be necessary for PTC implementation. KKR, through its Rail Transportation Group, has substantial experience assisting commuter rail lines in connection with operating agreements and shared use arrangements with both freight railroads and Amtrak in circumstances in which they share track or corridors with commuter systems. The firm's rail practice leader, Charles Spitulnik, based in Washington D.C., has more than 30 years of experience counseling rail transportation clients, and for the past 22 years has specialized in the provision of counsel to public transit agencies and governments engaged in public rail projects and commuter rail operations. His team has negotiated extensively with freight railroads and Amtrak on the acquisition of ownership or other rights to use rights-of-way and on arrangements for shared use of the corridors or tracks by freight, intercity passenger, regional/commuter passenger and light rail/transit operations. The KKR firm has represented or advised transit and rail authorities, and state, regional and local governments, in connection with commuter rail matters in California, South Florida, Washington (state), Delaware, Indiana, North Carolina, Utah, Vermont, Virginia, the Baltimore-Washington (D.C.) region, Denver, Atlanta and Cleveland. The firm is presently advising other public commuter systems in connection with PTC implementation, and is an active participant in industry discussions about the Interoperability arrangements attendant thereto.

# Staff Summary

## FINANCE COMMITTEE MEETING (Cont'd.)

Page 2 of 2



Metropolitan Transportation Authority

The law firm's broad experience in addressing legal issues arising from commuter line - freight carrier interaction should be helpful to MNR and LIRR not only in tackling PTC interoperability matters, but also other legal matters involving the MTA Railroads' operating relationships with freights. As it does with its other public sector clients, KKR would offer MTA hourly rates for legal services that are discounted by twenty percent off the firm's standard hourly rates.

No other law firms with a similar level of experience and expertise in the representation of commuter railroads on these types of matters have been identified.

### Recommendation

The addition of Kaplan Kirsch & Rockwell, LLP to the MTA law firm panel will advance the MTA Railroads' PTC implementation efforts by providing MTA with the assistance of specialized counsel uniquely experienced in negotiation of agreements on behalf of commuter railroads with the freights and Amtrak addressing shared use issues in rail corridors. Given the importance of PTC implementation to MTA, MNR and LIRR, approval of the addition of this firm is strongly recommended.



## Staff Summary

<b>Subject</b> Payroll Mobility Tax Bond Resolution for Submission to the Capital Program Review Board
<b>Department</b> Finance
<b>Department Head Name</b> Bob Foran
<b>Department Head Signature</b> 
<b>Project Manager/Division Head</b> Patrick McCoy <i>PSM</i>

<b>Date</b> April 30, 2014
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	4/28			
2	Board	4/30			

Internal Approvals			
Order	Approval	Order	Approval
3	Chairman <i>TF</i>		Civil Rights
2	Chief of Staff <i>CR</i>	1	Legal <i>FR</i>
	Chief Financial Officer		Administration
	Procurement		Other

### Purpose:

To obtain Finance Committee and MTA Board approval of the annexed resolution authorizing the submission of the DRAFT Payroll Mobility Tax Obligation Resolution, Standard Resolution Provisions and Supplemental Resolution Provisions to the Capital Program Review Board ("CPRB") for approval. Upon approval by the CPRB, the full set of credit documents will be resubmitted to the Finance Committee and the MTA Board for formal adoption.

### Discussion and Background:

On May 7, 2009, legislation was enacted in New York State providing additional sources of revenues in the form of taxes, fees and surcharges to address the financial needs of the MTA. The law (Chapter 25 of the Laws of 2009) among other things:

- imposed a payroll mobility tax (the "Regional Mobility Tax") of 0.34 percent on payroll expenses and net earnings from self-employment within the MTA Commuter Transportation District ("MCTD") (effective as of March 1, 2009, except school districts, effective September 1, 2009) (the "Payroll Mobility Tax Revenues");
- imposed a supplemental fee of one dollar for each six month period of validity of a learner's permit or a driver's license issued to a person residing in the MCTD (effective September 1, 2009);
- imposed a supplemental fee of twenty-five dollars per year on the registration and renewals of registrants of motor vehicles who reside within the MCTD (effective September 1, 2009);
- imposed on taxicab owners a tax of fifty cents per ride on taxicab rides originating in New York City and terminating within the MCTD (effective November 1, 2009);
- imposed a supplemental tax of five percent of the cost of rentals of automobiles rented within the MCTD (effective June 1, 2009).

The other new revenues described in bullets 2-5 above comprised of the supplemental fee on learners permits and drivers licenses, supplemental fees on the registration and renewal of motor vehicles, the taxicab

surcharge, and the supplemental tax on auto rentals are collectively referred to as the "Aid Trust Account Revenues".

Chapter 25 of the Laws of 2009 provided that the revenues from the Regional Mobility Tax can be: (i) pledged by MTA to secure and be applied to the payment of bonds to be issued in the future to fund capital projects of MTA, its subsidiaries, and MTA New York City Transit and its subsidiary and (ii) used by MTA to pay capital costs, including debt service, of MTA, its subsidiaries and MTA New York City Transit and its subsidiary. Subject to the provisions of any such pledge, or in the event there is no such pledge, the Regional Mobility Tax Revenues can be used by MTA to pay for costs, including operating costs, of MTA, its subsidiaries and MTA New York City Transit and its subsidiary.

Chapter 25 of the Laws of 2009 further provided that the Aid Trust Account monies may be pledged by MTA or pledged to MTA Bridges and Tunnels to secure debt of MTA or MTA Bridges and Tunnels. Subject to the provisions of such pledge, or in the event there is no such pledge, such new revenues can be used by MTA for the payment of operating and capital costs of MTA, its subsidiaries and MTA New York City Transit and its subsidiary as MTA shall determine.

On December 9, 2011, Governor Cuomo signed into law legislation (the "December Legislation") that made changes to the payroll mobility tax. The provisions eliminated or reduced the payroll mobility tax imposed within the MCTD for certain taxpayers. The December Legislation further expressly provided that any reductions in transit aid attributable to these reductions in the payroll mobility tax "shall be offset through alternative sources that will be included in the state budget" (the "PMT Revenue Offset").

As a result of the changes to the payroll mobility tax in the December Legislation, the Governor's Memorandum in Support of the December Legislation projected a reduction in revenues collected from the payroll mobility tax. The December Legislation and the 2012-13 New York State Executive Budget provided for such reductions to be offset through alternative sources to be included in New York State's 2012-13 budget via the PMT Revenue Offset. New York State's 2014-15 budget also provided for the offset of such reductions.

Several actions by five counties and a number of towns and villages, a public school district, and certain private plaintiffs challenging the constitutionality of the legislation that enacted the payroll mobility tax (Chapter 25 of the Laws of 2009) have been conclusively resolved as of January 14, 2014, either by withdrawal or judicial dismissal.

MTA staff, working with external Bond Counsel and its Financial Advisors, has drafted the annexed Payroll Mobility Tax Obligation Resolution, the Standard Resolution Provisions, and the Supplemental Standard Resolution Provisions which comprise the fundamental legal documents of the new Payroll Mobility Tax Credit pledging all of the above described revenues. MTA is required by Public Authorities Law §1269-b(9) to submit such documentation to the Capital Program Review Board for review and approval prior to formal adoption by the MTA Board.

### **Payroll Mobility Tax (PMT) Obligation Resolution Highlights:**

- Senior and Subordinate Liens Revenue Pledge: Payroll Mobility Tax Revenues, PMT Revenue Offset, Aid Trust Account Revenues.
- Debt Service Set-Aside: Monthly 1/5<sup>th</sup> interest and 1/10<sup>th</sup> principal.
- Additional Bonds Test: 2.5X Senior Maximum Annual Debt Service and 1.75X aggregate Maximum Annual Debt Service.

- Resolution authorizes bonds solely for approved Capital Program transit and commuter projects.
- Payroll Mobility Tax Revenues are segregated and held by the State Comptroller in a special trust account solely for MTA (revenues are not available for any other use).
- Legislatively proscribed monthly distribution of Payroll Mobility Tax Revenues to MTA.
- Wet/dry appropriation of Payroll Mobility Tax revenues mitigates risk of non-appropriation and insulates against State budget delays.
- Exceptionally strong Payroll Mobility Tax Revenue base of approximately \$500 billion in 2012 (79% of total adjusted NY State wages with compound annual growth of 5.65% from 1970 through 2012).
- Payroll Mobility Tax revenues flow from State Comptroller directly to the pledged account for bondholders.
- Aid Trust Account Revenues are diversified between activity and type (transactional and non-transactional).
- Aid Trust Account Revenues have no sunset and flow daily to the State Comptroller.
- State Comptroller remits revenue on the 12<sup>th</sup> of every month to the MTA Aid Trust Account in the MTA Financial Assistance Fund.
- Aid Trust Account Revenues remitted at least quarterly to MTA, subject to appropriation and deposited into the Corporate Transportation Account of the MTA Special Assistance Fund.
- After monthly set aside, excess pledged revenues are available for debt service on Transportation Revenue Bonds and then transit and commuter operating expenses.
- Non-impairment covenant of State in MTA Act.
- Statutory MTA bankruptcy prohibition in MTA Act.

## **Recommendation:**

It is recommended that the Board approve the annexed resolution authorizing the Payroll Mobility Tax Credit DRAFT documents to the CPRB for review and approval. Upon approval by the CPRB, staff will seek final MTA Board adoption of the PMT credit documents, incorporating any requested changes from the CPRB.



## **RESOLUTION PAYROLL MOBILITY TAX RESOLUTION**

**WHEREAS**, on May 7, 2009, Chapter 25 of the Laws of 2009 was enacted in New York State to provide additional sources of revenues in the form of taxes, fees and surcharges to address the financial needs of the MTA, which new law among other things:

1. imposes a regional payroll mobility tax ("PMT") of 0.34 percent on payroll expenses and net earnings from self-employment within the MTA Commuter Transportation District ("MCTD") (effective as of March 1, 2009, except school districts, effective September 1, 2009);
2. imposes a supplemental fee of one dollar for each six month period of validity of a learner's permit or a driver's license issued to a person residing in the MCTD (effective September 1, 2009);
3. imposes a supplemental fee of twenty-five dollars per year on the registration and renewals of registrants of motor vehicles who reside within the MCTD (effective September 1, 2009);
4. imposes on taxicab owners a tax of fifty cents per ride on taxicab rides originating in New York City and terminating within the MCTD (effective November 1, 2009); and
5. imposes a supplemental tax of five percent of the cost of rentals of automobiles rented within the MCTD (effective June 1, 2009); and

**WHEREAS**, those taxes and fees described in items #2-5 above collectively are known as the "Aid Trust Account Revenues"; and

**WHEREAS**, on December 9, 2011, Governor Cuomo signed into law legislation (the "December Legislation") that made changes to the PMT, including elimination or reduction of the PMT imposed within the MCTD for certain taxpayers and expressly provided that any reductions in transit aid attributable to these reductions in the PMT "shall be offset through alternative sources that will be included in the state budget ("PMT Revenue Offset"); and

**WHEREAS**, the Governor's Memorandum in Support of the December Legislation projected a reduction in revenues collected from the PMT of \$310 million in 2012; and

**WHEREAS**, the December Legislation and the 2012-13 New York State Executive Budget provided for such reductions to be provided to MTA through the PMT Revenue Offset and were included in New York State's 2012-13 budget and in the State's 2014-15 budget; and

**WHEREAS**, several actions by five counties and a number of towns and villages, a public school district, and certain private plaintiffs challenging the constitutionality of the legislation that enacted the payroll mobility tax (Chapter 25 of the Laws of 2009) have been conclusively resolved as of January 14, 2014, either by withdrawal or judicial dismissal; and

**WHEREAS**, MTA desires to access the capital markets to provide low cost bond financing for existing approved, and future, MTA Capital Programs; and

**WHEREAS**, approval of the PMT Resolution will permit MTA to reduce its borrowing needs under the Transportation Revenue Bond Resolution and achieve an expected lower borrowing cost for the Capital Program, and

**WHEREAS**, the PMT, the PMT Revenue Offset monies, together with Aid Trust Account Revenues, constitute a stable and diverse revenue stream that can be used to secure the issuance of notes, bonds and other indebtedness in support of MTA Capital Programs; and

**WHEREAS**, MTA Finance and Legal staff, together with outside Bond Counsel and Financial Advisors, have drafted the annexed Payroll Mobility Tax Obligation Resolution, Standard Resolution Provisions and Supplemental Resolution Provisions (collectively, the "Payroll Mobility Tax Obligation Resolution Documents" ; and

**WHEREAS**, MTA is statutorily required to submit the Payroll Mobility Tax Obligation Resolution Documents to the Capital Program Review Board ("CPRB") prior to adoption by the MTA Board;

**NOW, THEREFORE, BE IT RESOLVED** that the Board hereby authorizes the submission of the Payroll Mobility Tax Obligation Resolution Documents to the CPRB.

Dated: April 30, 2014

**DRAFT DATED 3/18/14**

**METROPOLITAN TRANSPORTATION AUTHORITY**

**REGIONAL PAYROLL MOBILITY TAX  
OBLIGATION RESOLUTION**

Adopted \_\_\_\_\_, 2014  
As Approved By The  
Metropolitan Transportation Authority  
Capital Program Review Board  
on \_\_\_\_\_, 2014

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**Annex A – Standard Resolution Provisions**

**Annex B – Supplemental Standard Resolution Provisions for Regional Payroll Mobility Tax Second Lien Obligations and Second Lien Parity Debt**

**Exhibit One – Form of Obligations**

**Exhibit Two – Form of Second Lien Obligations**

## REGIONAL PAYROLL MOBILITY TAX OBLIGATION RESOLUTION

BE IT RESOLVED by the Members of the Metropolitan Transportation Authority as follows:

### ARTICLE I STANDARD RESOLUTION PROVISIONS; DEFINITIONS

**Section 101. Standard Resolution Provisions.** Except as otherwise specifically provided herein, by Supplemental Resolution or by Section A-102 of the Standard Resolution Provisions appended hereto as Annex A and the Supplemental Standard Resolution Provisions for Regional Payroll Mobility Tax Second Lien Obligations and Second Lien Parity Debt appended hereto as Annex B constitute an integral part of the Resolution and have the same force and effect as if set forth in the forepart of the Resolution.

**Section 102. Definitions.** Except as the context shall otherwise require, capitalized terms used but not otherwise defined herein shall have the respective meanings set forth in the Standard Resolution Provisions or Supplemental Standard Resolution Provisions. In the event any such term is defined in both the Standard Resolution Provisions and the Supplemental Standard Resolution Provisions, the definition contained in the Standard Resolution Provisions shall control in respect of Obligations and Parity Debt and the definition contained in the Supplemental Standard Resolution Provisions shall control in respect of Second Lien Obligations and Second Lien Parity Debt. The following terms shall, for all purposes of the Resolution, have the following meanings:

**Aid Trust Account** shall mean the metropolitan transportation authority aid trust account established in the Financial Assistance Fund pursuant to Section 92-ff of the State Finance Law, as amended.

**Aggregate Calculated Debt Service** shall mean Calculated Debt Service plus Calculated Second Lien Debt Service.

**ATA Funds** shall mean amounts on deposit in the Corporate Transportation Account in the MTA Special Assistance Fund pursuant to paragraphs (b-1) and (c-3) of subdivision 2 of Section 503 and Sections 499, 499-a, 499-b, 499-c and 499-d of the Vehicle and Traffic Law, as amended, and Section 1288 and Section 1165 of the Tax Law, as amended, which amounts represent amounts deposited in the Corporate Transportation Account from amounts deposited in the Aid Trust Account pursuant to Section 92-ff of the State Finance Law, as amended, or any other provision of law directing or permitting the deposit of money into the Aid Trust Account in the MTA Finance Fund from such Account.

**ATA Receipts** shall mean all ATA Funds deposited into the Pledged Amounts Account in the MTA Finance Fund.

**ATA Receipts Subaccount** shall mean the Account by that name established in the Pledged Amounts Account in the MTA Finance Fund by the Issuer as authorized by Section 505.

**Capital Cost Obligations** shall mean Obligations authenticated and delivered on original issuance pursuant to Section 203.

**Capital Cost Second Lien Obligations** shall mean Second Lien Obligations authenticated and delivered on original issuance pursuant to Section 208.

**Capital Costs** shall mean (i) the costs of the Issuer or any other Related Entity for the planning, design, acquisition, construction, reconstruction, rehabilitation or improvement of all or any part of the RPMT Transit and Commuter Project, including costs of acquisition of real or personal property or any interests therein, legal, administrative, engineering, planning, design, studies, insurance, financing costs (including Costs of Issuance), and initial working capital required for the commencement of operation of any such project and any capital contributions, whether or not represented by equity or debt securities or other evidences of indebtedness made by the Issuer or any other Related Entity to any Person participating in a RPMT Transit and Commuter Project for the purpose of funding any costs described in this clause (i); (ii) amounts paid into any Fund or Account upon the issuance of any Obligations or Second Lien Obligations; and (iii) payment when due (whether at the maturity of principal or on the due date of interest or upon redemption or when otherwise due, including by purchase or through tender or exchange) on any indebtedness or obligation of the Issuer or any other Related Entity which was issued or incurred to finance costs that could at the time of such payment be funded directly hereunder, including Obligations, Obligation Anticipation Notes, Parity Debt, Second Lien Obligations, Second Lien Obligation Anticipation Notes, Second Lien Parity Debt, Other Subordinated Obligations, any termination or other payments for financial, fuel or other hedging arrangements, or any such indebtedness or obligation issued or incurred by any Related Entity in connection with the RPMT Transit and Commuter Project.

**Corporate Transportation Account** shall mean the account bearing such name established by the Issuer in the Metropolitan Transportation Authority Special Assistance Fund pursuant to Section 1270-a of the Issuer Act.

**Debt Service Year** shall mean the calendar year, except that the first Debt Service Year shall begin on the date specified in the Supplemental Resolution authorizing the first Series of Obligations or Second Lien Obligations to be issued hereunder.

**Financial Assistance Fund** shall mean the fund established pursuant to Section 92-ff of the State Finance Law, as amended, and entitled the "Metropolitan Transportation Authority Financial Assistance Fund" and consisting of a Mobility Tax Trust Account and an Aid Trust Account.

**Issuer** shall mean the MTA.

**Mobility Tax Receipts** shall mean all amounts deposited into the Pledged Amounts Account in the MTA Finance Fund from amounts on deposit in the Mobility Tax Trust Account in the Financial Assistance Fund pursuant to Section 805 of the Tax Law, as amended, and any other provision of law directing or permitting the deposit of money on deposit in the Mobility Tax Trust Account in the Financial Assistance Fund into the MTA Finance Fund including, without limitation, amounts constituting Mobility Tax Replacement Receipts.

**Mobility Tax Receipts Subaccount** shall mean the Account by that name established in the Pledged Amounts Account in the MTA Finance Fund by the Issuer as authorized by Section 505.

**Mobility Tax Replacement Receipts** shall mean all amounts deposited into the Pledged Amounts Account in the MTA Finance Fund from amounts on deposit in the Mobility Tax Trust Account in the Financial Assistance Fund (i) provided from alternate sources included in an adopted State budget, (ii) constituting amounts provided to the Issuer as an offset to the elimination, reduction or other modification of amounts previously provided to the Issuer as Mobility Tax Receipts and directed or permitted to be deposited in the Mobility Tax Trust Account in the Financial Assistance Fund into the MTA Finance Fund pursuant to provision of law.

**Mobility Tax Second Lien Debt Service Fund Requirement** shall mean, with respect to each Series of Second Lien Obligations, an amount equal to the sum of (a) all interest and Principal Installments due and unpaid on any Second Lien Obligations of such Series and on any Second Lien Parity Debt as of such date and (b) an amount, calculated as of the last day of the month in which such calculation is made, equal to the sum of (i) the product of (A) the interest portion of Debt Service due on or in respect of all Outstanding Second Lien Obligations of such Series and any Second Lien Parity Debt as of the next succeeding interest payment date for such Series of Second Lien Obligations and (B) a fraction, the denominator of which is never less than 1, but otherwise is 1 less than the number of months from the preceding interest payment date for the Second Lien Obligations of such Series to the next interest payment date for such Second Lien Obligations (or the date from which interest began to accrue on such Second Lien Obligations if there is no preceding interest payment date for such Second Lien Obligations), and the numerator of which is the number of months which will have elapsed as of the last day of the month in which such calculation is made from such preceding interest payment date for such Second Lien Obligations (or the date from which interest began to accrue on such Second Lien Obligations if there is no preceding interest payment date for such Second Lien Obligations), and (ii) 10% of the Principal Installment (including in each case for purposes of this definition, principal components of Second Lien Parity Debt) due on or in respect of such Second Lien Obligations and Second Lien Parity Debt on the next succeeding Principal Installment due date (20% for Principal Installments payable 6 months after the preceding Principal Installment) times the number of months which have elapsed since the preceding Principal Installment due date (or, if there shall be no such preceding Principal Installment due date or such preceding Principal Installment due date is more than 1 year prior to the due date of such Principal Installment, then, from *the later of* a date 1 year preceding the due date of such Principal Installment and the date of, as appropriate, issuance or incurrence of the Second Lien Obligations of such Series or of such Second Lien Parity Debt); *provided, however, that* the amount calculated pursuant to clause (b)(i) above for any Series of Second Lien Obligations shall never exceed the interest due and payable on such next succeeding interest payment date (including additional interest pursuant to any related Second Lien Parity Debt) and the amount calculated pursuant to clause (b)(ii) shall never exceed the Principal Installment due on the next succeeding Principal Installment due date; and *provided further that*, with respect to each Series of Second Lien Obligations, commencing on the fifteenth day of the month preceding the month in which each interest payment date occurs, the Mobility Tax Second Lien Debt Service Requirement shall be no less than the interest and Principal Installments, if any, payable on such interest payment date with respect to such



Series. In addition, notwithstanding any other provision of the Resolution, including the Standard Resolution Provisions and the Supplemental Standard Resolution Provisions, for purposes of calculating the Mobility Tax Second Lien Debt Service Fund Requirement as of any date and determining the amount of any required deposits into the Second Lien Debt Service Fund in respect of any Second Lien Put Obligations which are subject to mandatory tender other than at the election of the Issuer or any Related Entity or any other Second Lien Obligations described in clause (iii) of the definition of Calculated Second Lien Debt Service, deposits into the Second Lien Debt Service Fund relating to Second Lien Obligation Principal Installments shall be required to be made in six equal monthly installments beginning on the date which is six months prior to such mandatory tender date in the case of Second Lien Put Obligations or six months prior to the stated maturity date of such other Second Lien Obligations. For purposes of computing the Mobility Tax Second Lien Debt Service Fund Requirement, the Second Lien Obligations of a Series and any Second Lien Parity Debt payable on each different interest payment date shall be treated as a separate Series, and if Second Lien Obligations of any Series or any Second Lien Parity Debt have different interest payment dates, such computation shall be done separately in respect of each such interest payment date.

**Mobility Tax Senior Debt Service Fund Requirement** shall mean, with respect to each Series of Obligations and as of any date, an amount equal to the sum of (a) all interest and Principal Installments due and unpaid on any Obligations of such Series and on any Parity Debt as of such date and (b) an amount, calculated as of the last day of the month in which such calculation is made, equal to the sum of (i) the product of (A) the interest portion of Debt Service due on or in respect of all Outstanding Obligations of such Series and any Parity Debt as of the next succeeding interest payment date for such Series of Obligations and (B) a fraction, the denominator of which is never less than 1, but otherwise is 1 less than the number of months from the preceding interest payment date for the Obligations of such Series to the next interest payment date for such Obligations (or the date from which interest began to accrue on such Obligations if there is no preceding interest payment date for such Obligations), and the numerator of which is the number of months which will have elapsed as of the last day of the month in which such calculation is made from such preceding interest payment date for such Obligations (or the date from which interest began to accrue on such Obligations if there is no preceding interest payment date for such Obligations), and (ii) 10% of the Principal Installment (including in each case for purposes of this definition, principal components of Parity Debt) due on or in respect of such Obligations and Parity Debt on the next succeeding Principal Installment due date (20% for Principal Installments payable 6 months after the preceding Principal Installment) times the number of months which have elapsed since the preceding Principal Installment due date (or, if there shall be no such preceding Principal Installment due date or such preceding Principal Installment due date is more than 1 year prior to the due date of such Principal Installment, then, from *the later of* a date 1 year preceding the due date of such Principal Installment and the date of, as appropriate, issuance or incurrence of the Obligations of such Series or of such Parity Debt); *provided, however, that* the amount calculated pursuant to clause (b)(i) above for any Series of Obligations shall never exceed the interest due and payable on such next succeeding interest payment date (including additional interest pursuant to any related Parity Debt) and the amount calculated pursuant to clause (b)(ii) shall never exceed the Principal Installment due on the next succeeding Principal Installment due date; and *provided further that*, with respect to each Series of Obligations, commencing on the fifteenth day of the month preceding the month in which each interest payment date occurs, the Mobility Tax Senior

Debt Service Fund Requirement shall be no less than the interest and Principal Installments, if any, payable on such interest payment date with respect to such Series. In addition, notwithstanding any other provision of the Resolution, including the Standard Resolution Provisions and the Supplemental Standard Resolution Provisions, for purposes of calculating the Mobility Tax Senior Debt Service Fund Requirement as of any date and determining the amount of any required deposits into the Senior Debt Service Fund in respect of any Put Obligations which are subject to mandatory tender other than at the election of the Issuer or any Related Entity or any other Obligations described in clause (iii) of the definition of Calculated Debt Service, deposits into the Senior Debt Service Fund relating to Principal Installments shall be required to be made in six equal monthly installments beginning on the date which is six month prior to such mandatory tender date in the case of Put Obligations or six months prior to the stated maturity date of such other Obligations. For purposes of computing the Mobility Tax Senior Debt Service Fund Requirement, the Obligations of a Series and any Parity Debt payable on each different interest payment date shall be treated as a separate Series, and if Obligations of any Series or any Parity Debt have different interest payment dates, such computation shall be done separately in respect of each such interest payment date.

**Mobility Tax Trust Account** shall mean the mobility tax trust account established in the Financial Assistance Fund pursuant to Section 92-ff of the State Finance Law, as amended.

**MTA Finance Fund** shall mean the Metropolitan Transportation Authority Finance Fund established by the Issuer pursuant to Section 1270-h of the Issuer Act and consisting of a Pledged Amounts Account and an Operating and Capital Costs Account.

**Obligations** shall mean any bonds, notes, commercial paper or other form of indebtedness of the Issuer payable from the Senior Debt Service Fund, authorized by Section 201 and delivered pursuant to Section 202 or authorized pursuant to Section A-203, but *excluding* Obligation Anticipation Notes to the extent not payable from the Senior Debt Service Fund.

**Obligations COI Subaccount** shall mean the applicable Subaccount by that name established in the Obligations Proceeds Fund for a Series of Obligations pursuant to Section 503.

**Obligations Event of Default** shall mean the events defined as such in Section 701.

**Obligations Proceeds Account** shall have the meaning given such term in Section 503.

**Obligations Proceeds Fund** shall mean the Fund by that name established in Section 502.

**Obligations Trust Estate** shall mean, collectively, but subject to the terms and provisions of Section 501, all right, title and interest of the Issuer in:

- (i) the proceeds of the sale of the Obligations,
- (ii) the Pledged Amounts Account in the MTA Finance Fund, any money on deposit therein and any money received and held by the Issuer which is required to be deposited therein, and

(iii) all Funds, Accounts and Subaccounts established by the Resolution (other than (a) the Second Lien Obligations Proceeds Fund and the Second Lien Debt Service Fund, and any accounts and subaccounts therein and (b) funds and any accounts and subaccounts therein established pursuant to a Supplemental Resolution in connection with Variable Interest Rate Obligations, Put Obligations or Parity Debt; provided, however, that, in the case of funds described in clause (b) hereof, such funds, accounts and subaccounts are specifically excepted from the Trust Estate by the Supplemental Resolution authorizing such Variable Interest Rate Obligations, Put Obligations or Parity Debt), including the investments, if any, thereof.

**Operating and Capital Costs Account** shall mean the account by that name established in the MTA Finance Fund in accordance with Section 505.

**Other Subordinated Obligations** shall mean any payment obligation (other than a payment obligation constituting Parity Debt or Second Lien Parity Debt) arising under any other contract, agreement or other obligation of the Issuer designated as "Other Subordinated Obligations" in a certificate of an Authorized Officer of the Issuer payable from amounts available to be transferred pursuant to clause third of subsection 4 of Section 505 of the Resolution and shall include, without limitation, swap termination or other fees, expenses, indemnification or other such obligations, Reimbursement Obligations not constituting Parity Reimbursement Obligations, and Reimbursement Second Lien Obligations not constituting Parity Reimbursement Second Lien Obligations.

**Pledged Amounts Account** shall mean the account by that name established in the MTA Finance Fund by the Issuer in accordance with Section 505.

**Refunding Obligations** shall mean all Obligations authenticated and delivered on original issuance pursuant to Section 205.

**Refunding Second Lien Obligations** shall mean all Second Lien Obligations authenticated and delivered upon original issuance pursuant to Section 209.

**Resolution** shall mean this Regional Payroll Mobility Tax Obligation Resolution (including the Standard Resolution Provisions set forth in Annex A and the Supplemental Standard Resolution Provisions set forth in Annex B), as from time to time amended or supplemented by Supplemental Resolutions in accordance with the terms hereof.

**RPMT Transit and Commuter Project** shall mean any Transportation District Project that may be financed with obligations the payment of which may be secured by and paid from amounts in the MTA Finance Fund in accordance with Section 1270-h of the Issuer Act.

**Second Lien Debt Service Fund** shall mean the Fund by that name established in Section 502.

**Second Lien Obligations** shall mean any bonds, notes, commercial paper or other forms of indebtedness of the Issuer, payable from the Second Lien Debt Service Fund, authorized by Section 206 and delivered pursuant to Section 207 or authorized pursuant to Section B-203, but excluding Second Lien Obligation Anticipation Notes to the extent not payable from the Second

Lien Debt Service Fund. All Second Lien Obligations shall be payable and secured in the manner permitted by Article V, and any lien on and pledge of any portion of the Second Lien Obligations Trust Estate securing Second Lien Obligations shall be junior and inferior to the lien on and a pledge of the Obligations Trust Estate herein created for the payment of the Obligations and Parity Debt.

**Second Lien Obligations COI Subaccount** shall mean the applicable Subaccount by that name established in the Second Lien Obligations Proceeds Fund for a Series of Second Lien Obligations pursuant to Section 504.

**Second Lien Obligations Event of Default** shall mean the events defined as such in Section 704.

**Second Lien Obligations Proceeds Fund** shall mean the Fund by that name established in Section 502.

**Second Lien Obligations Trust Estate** shall mean, collectively, but subject to the terms and provisions of Article V, all right, title and interest of the Issuer in:

- (i) the proceeds of the sale of the Second Lien Obligations,
- (ii) the Pledged Amounts Account in the MTA Finance Fund, any money on deposit therein and any money received and held by the Issuer which is required to be deposited therein, subject to the subordination provisions set forth in Article V of the Resolution, and
- (iii) the Second Lien Obligations Proceeds Fund and the Second Lien Debt Service Fund (other than funds, accounts and subaccounts therein established pursuant to a Supplemental Resolution in connection with Variable Interest Rate Second Lien Obligations, Second Lien Put Obligations or Second Lien Parity Debt, provided that such funds, accounts and subaccounts are specifically excepted from the Second Lien Obligations Trust Estate by the Supplemental Resolution authorizing such Variable Interest Rate Second Lien Obligations, Second Lien Put Obligations or Second Lien Parity Debt), and any accounts and subaccounts therein including the investments, if any, thereof.

**Second Lien Trustee** shall mean the Trustee or, if so provided in the Supplemental Resolution creating any Second Lien Obligations or Second Lien Parity Debt, the entity meeting the requirements of subdivision 3 of Section B-710 of the Supplemental Standard Resolution Provisions and designated as Second Lien Trustee in a Supplemental Resolution.

**Senior Debt Service Fund** shall mean the Fund by that name established in Section 502.

**Standard Resolution Provisions** shall mean the Standard Resolution Provisions appended hereto as Annex A.

**Subaccount** or **Subaccounts** shall mean each subaccount or all of the subaccounts established in Article V, as the case may be.

**Supplemental Standard Resolution Provisions** shall mean the Supplemental Standard Resolution Provisions for Regional Payroll Mobility Tax Second Lien Obligations and Second Lien Parity Debt appended hereto as Annex B.

**Section 103. Interpretation; Amendments to Certain Standard Resolution Provisions.**

1. Second Lien Obligations shall constitute Subordinated Indebtedness and Second Lien Parity Debt shall constitute Subordinated Contract Obligations for purposes of the Standard Resolution Provisions.

2. Clause (3) of the definition of "Calculated Debt Service" in Section A-101 is hereby amended by deleting "twenty-five per centum (25%)" and inserting "fifteen per centum (15%)" in replacement thereof.

3. Subsection 4 of Section A-202 is hereby amended to delete all references therein to "Subordinated Contract Obligations and inserting "Other Subordinated Obligations" in replacement thereof.

4. The reference in clause (iii) of Section A-203 is hereby amended by deleting the reference to "Subordinated Indebtedness" and inserting "Other Subordinated Obligations" in replacement thereof.

5. The first sentence of the second paragraph of Section A-402 is hereby amended by deleting the words "To the extent provided by Supplemental Resolution, the" and inserting the word "The" in replacement thereof.

6. Subsection 3 of Section A-710 is hereby amended by deleting such subsection in its entirety and inserting the following in replacement thereof:

"3. Any Trustee appointed under the provisions of this Section A-710 in succession to the Trustee shall be a Bank that is organized under the laws of the State, or, if organized under the laws of another state, authorized to do business in the State of New York, or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and which at the time of selection meets all thresholds for being well capitalized or adequately capitalized under the prompt corrective action framework applicable to insured depository institutions under Section 38 of the Federal Deposit Insurance Act as in effect from time to time or all thresholds for substantially equivalent categories in any successor legislation, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution."

7. Section A-712 is hereby amended by deleting the "provided" clause thereof and inserting in lieu thereof the following:

"provided such Person shall be a Bank that is organized under the laws of the State, or, if organized under the laws of another state, authorized to do business in the State

of New York, or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and which at the time of selection meets all thresholds for being well capitalized or adequately capitalized under the prompt corrective action framework applicable to insured depository institutions under Section 38 of the Federal Deposit Insurance Act as in effect from time to time or all thresholds for substantially equivalent categories in any successor legislation, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution, and shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.”

8. Subsection 1 of Section A-713 is hereby amended by deleting the third sentence thereof in its entirety and substituting in replacement thereof the following:

“Any successor Paying Agent or Registrar shall be appointed by the Issuer, with the approval of the Trustee, and (subject to the requirements of Section A-603) shall be a Bank that is organized under the laws of the State, or, if organized under the laws of another state, authorized to do business in the State of New York, or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and which at the time of selection meets all thresholds for being well capitalized or adequately capitalized under the prompt corrective action framework applicable to insured depository institutions under Section 38 of the Federal Deposit Insurance Act as in effect from time to time or all thresholds for substantially equivalent categories in any successor legislation, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution.”

9. Sections A-801, A-802 and A-803 of Article A-VIII are hereby amended by deleting each of such Sections in its entirety and inserting “Reserved.” in replacement thereof.

10. Section A-902 is hereby amended by deleting the last sentence in its entirety and inserting the following in replacement thereof:

“Notwithstanding anything in this Section or the Resolution to the contrary, the consent of Owners of any Series of additional Obligations to be issued hereunder to any modification or amendment of the Resolution, which modification or amendment, as well as such consent, is disclosed in the official statement or other offering document prepared in connection with the primary offering of such Series of additional Obligations, shall be deemed given and irrevocable and no other evidence of such consent shall be required.”

11. Section A-903 is hereby amended by deleting the fourth sentence in its entirety and inserting in replacement thereof the following:

“Any such consent, including any consent provided pursuant to the last sentence of Section A-902, shall be irrevocable and binding upon the Owner of the Obligations giving such consent and, anything in Section A-1102 to the contrary notwithstanding, upon any subsequent Owner of such Obligations and of any Obligations issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof).”

12. Notwithstanding any other provisions of the Resolution, including the Standard Resolution Provisions and the Supplemental Standard Resolution Provisions, to the extent the consent of Owners of Obligations and Second Lien Owners is at any time required, the existence of the consent of the required percentages of Owners of Obligations and of Second Lien Owners shall be determined separately for Obligations and for Second Lien Obligations.

## ARTICLE II AUTHORIZATION AND ISSUANCE OF THE OBLIGATIONS AND SECOND LIEN OBLIGATIONS

### Section 201. Authorization of the Obligations.

1. The Resolution hereby authorizes Obligations of the Issuer designated as “Regional Payroll Mobility Tax Obligations”, which Obligations, if and when authorized by the Issuer pursuant to one or more Supplemental Resolutions, may be issued in one or more Series or subseries. Obligations may be issued as Tax-Exempt Obligations, as Taxable Obligations, as obligations which convert on a particular date or dates from Taxable Obligations to Tax-Exempt Obligations, or as Taxable Obligations which are mandatorily exchangeable on a particular date or dates for Tax-Exempt Obligations, or otherwise as determined by Supplemental Resolution and not contrary to the Resolution as then in effect. The Obligations shall be *special obligations* of the Issuer payable solely from the Obligations Trust Estate pledged to the payment thereof pursuant to Section 501.1. The aggregate principal amount of the Obligations which may be executed, authenticated and delivered under the Resolution is not limited except as provided in the Resolution or as may from time to time be limited by law.

2. The Obligations may, if and when authorized by the Issuer pursuant to one or more Supplemental Resolutions, be issued in one or more Series or subseries, and the designations thereof, in addition to the name “Regional Payroll Mobility Tax Obligations”, shall include such further or different designations in such title for the Obligations of any particular Series or subseries as the Issuer may determine. Each Obligation shall bear upon its face the designation so determined for the Series or subseries to which it belongs.

3. Nothing in the Resolution shall be deemed to prevent the consolidation into a single Series or subseries for purposes of issuance and sale of Obligations otherwise permitted by the Resolution to be issued at the same time in two or more separate Series or subseries. In the event that separate Series or subseries are combined for purposes of issuance and sale, they may be issued under a single Supplemental Resolution notwithstanding any other provision of the Resolution. Nothing in the Resolution (except to the extent required by Supplemental Resolution) shall be deemed to prevent the separation into separate Series or subseries for

purposes of issuance and sale Obligations otherwise permitted by the Resolution to be issued in one Series or subseries.

4. Obligations may be issued for any of the purposes set forth in Sections 203 or 205.

**Section 202. General Provisions for Issuance of Obligations.** Obligations may be issued pursuant to a Supplemental Resolution upon satisfaction of the provisions of Section A-201, except that the Opinion of Bond Counsel required by Section A-201.2(a)(iii) shall be to the effect that the Obligations are valid and binding special obligations of the Issuer, enforceable in accordance with their terms and the terms of the Resolution and entitled to the benefits of the Issuer Act and the Resolution, each as amended to the date of such Opinion of Bond Counsel.

**Section 203. Special Provisions for Capital Cost Obligations.**

1. The Obligations of one or more Series may at any time, or from time to time, be authenticated and delivered upon original issuance pursuant to this Section 203 to pay, or to provide for the payment of, all or part of the Capital Costs included in a Capital Program Plan (within the meaning of Section 1269-b of the Issuer Act or any successor provision) if a Capital Program Plan is then required.

2. The Obligations of each such Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee (in addition to the documents required by Section 202) of:

(a) A certificate of an Authorized Officer to the effect that the Issuer then is, and, upon the authentication and delivery of the Obligations of such Series, shall be, in compliance with all applicable provisions of the Issuer Act relating to the issuance, sale and delivery of such Obligations;

(b) A certificate of an Authorized Officer

(A) setting forth for any 12 consecutive calendar months ended not more than 6 months prior to the date of such certificate: (i) Mobility Tax Receipts and (ii) ATA Receipts;

(B) setting forth the greatest amount for the then current or any future Debt Service Year of the sum of (x) Calculated Debt Service on all Outstanding Obligations, *including* the proposed Capital Cost Obligations and any proposed Refunding Obligations being treated as Capital Cost Obligations for purposes of clause (ii) of paragraph (e) of Section 205.1 hereof but *excluding* any Obligations or Parity Debt to be refunded with the proceeds of such Refunding Obligations being treated as Capital Cost Obligations, plus (y) additional amounts, if any, payable with respect to Parity Debt;



(C) stating that the sum of the Mobility Tax Receipts and ATA Receipts set forth in clause (A) hereof is not less than 2.5 times the amount set forth in clause (B) hereof;

(D) setting forth the greatest amount for the then current or any future Debt Service Year of the sum of (x) Calculated Debt Service on all Outstanding Obligations, *including* the proposed Capital Cost Obligations and any proposed Refunding Obligations being treated as Capital Cost Obligations for purposes of clause (ii) of paragraph (e) of Section 205.1 hereof but *excluding* any Obligations or Parity Debt to be refunded with the proceeds of such Refunding Obligations being treated as Capital Cost Obligations, (y) Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations, *excluding* any Obligations, Parity Debt, Second Lien Obligations or Second Lien Parity Debt to be refunded with the proceeds of such Refunding Obligations being issued as Capital Cost Obligations for purposes of clause (ii) of paragraph (e) of Section 205.1, plus (z) additional amounts, if any, payable with respect to Parity Debt or Second Lien Parity Debt; and

(E) stating that the sum of the Mobility Tax Receipts and ATA Receipts set forth in clause (A) hereof is not less than 1.75 times the amount set forth in clause (D) hereof;

*provided, however, that* if on the date of delivery of such certificate, there is then and thereafter required to be deposited into the MTA Finance Fund so as to constitute Mobility Tax Receipts or into the Corporate Transportation Account so as to constitute ATA Receipts or into the Pledged Amounts Account any other receipts, in each such case, which were not required to be deposited therein during the entire 12 month period to which such certificate relates, the Issuer may include in such certificate the amount which an Authorized Officer estimates would have been deposited in the MTA Finance Fund or the Corporate Transportation Account or the Pledged Amounts Account during such period if such amounts had been required to be so deposited for such entire 12 month period.

#### **Section 204. Special Provisions for Other Subordinated Obligations.**

Other Subordinated Obligations may be issued upon the terms and conditions set forth in a Supplemental Resolution of the Issuer adopted at the time of issuance of such Other Subordinated Obligations with such terms and conditions as shall be established by the Issuer in such Supplemental Resolution.

#### **Section 205. Special Provisions for Refunding Obligations.**

1. In addition to refinancings permitted under Section 203, one or more Series of Refunding Obligations (in an aggregate principal amount which will provide funds, together with other money available therefore, to accomplish such refunding) may be authenticated and

delivered upon original issuance to refund (including by redemption, payment at maturity or in connection with exchanges or tenders) all or any portion of any Outstanding Obligations or Parity Debt. The Refunding Obligations of such Series shall be authenticated and delivered by the Trustee only upon receipt by the Trustee, in addition to the documents required by Section 202, of

(a) If the Obligations or Parity Debt to be refunded are to be redeemed, instructions to the Trustee and/or the trustee for the Parity Debt, satisfactory to it, to give due notice of redemption of all the Obligations or Parity Debt so to be refunded on a redemption date specified in such instructions;

(b) If the Obligations or Parity Debt to be refunded are to be deemed paid within the meaning of the second sentence of Section A-1101.2 or similar provision with respect to Parity Debt, instructions to the Trustee and/or the trustee for the Parity Debt, satisfactory to it, to give due notice in the manner provided in the second sentence of Section A-1101.2 or similar provision with respect to Parity Debt with respect to the payment of the said Obligations or Parity Debt pursuant to said Section or provision;

(c) If the Obligations or Parity Debt to be refunded are to be deemed paid within the meaning of the second sentence of Section A-1101.2 or similar provision with respect to Parity Debt, (i) money and/or (ii) Defeasance Securities as shall be necessary to comply with the provisions of the second sentence of Section A-1101.2 or defeasance securities as shall be necessary to comply with any similar provision with respect to Parity Debt, which Defeasance Securities or defeasance securities and/or money shall be held in trust and used only as provided in Section A-1101 or similar provision with respect to Parity Debt;

(d) If the proceeds of such Series of Refunding Obligations are to be utilized by the Issuer to purchase (in connection with a tender for or redemption of Obligations or Parity Debt, or otherwise) Obligations or Parity Debt to be delivered to the Trustee and/or the trustee for the Parity Debt in satisfaction of a Sinking Fund Installment in accordance with Section A-502.3 or similar provision with respect to Parity Debt, a certificate of an Authorized Officer specifying the matters required thereby; and

(e) Either (i) a certificate of an Authorized Officer (w) setting forth (A) the greatest amount of Calculated Debt Service on all Outstanding Obligations and Parity Debt for any future Debt Service Year during the term of the Obligations (including the Refunding Obligations then proposed to be issued but excluding the Obligations or Parity Debt to be refunded or purchased) and (B) the greatest amount of Calculated Debt Service on all Outstanding Obligations and Parity Debt for any future Debt Service Year during the term of the Obligations as calculated immediately prior to the issuance of the Refunding Obligations (including the Obligations or Parity Debt to be refunded or purchased but excluding the Refunding Obligations), (x) stating that the greatest amount of Calculated Debt Service on all Outstanding Obligations and Parity Debt for any

future Debt Service Year during the term of the Obligations set forth pursuant to (A) above is not greater than the greatest amount of Calculated Debt Service on all Outstanding Obligations and Parity Debt for any future Debt Service Year during the term of the Obligations set forth pursuant to (B) above, (y) setting forth (C) the greatest amount of Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity Debt for any future Debt Service Year (including the Refunding Obligations then proposed to be issued but excluding the Obligations or Parity Debt to be refunded or purchased) and (D) the greatest amount of aggregate Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity Debt for any future Debt Service Year as calculated immediately prior to the issuance of the Refunding Obligations (including the Obligations or Parity Debt to be refunded or purchased but excluding the Refunding Obligations) and (z) stating that the greatest amount of aggregate Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity for any future Debt Service Year set forth pursuant to (C) is not greater than the greatest amount of aggregate Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity Debt set forth pursuant to (D) above; or (ii) the certificate provided for in clause (b) of Section 203.2 with respect to such Series of Refunding Obligations, considering for all purposes of such certificate that such Series of Refunding Obligations is a Series of Capital Cost Obligations and that the Refunding Obligations then proposed to be issued will be Outstanding but the Obligations or Parity Debt to be refunded will no longer be Outstanding.

2. The proceeds, including accrued interest, of the Refunding Obligations of each such Series shall be applied simultaneously with the delivery of such Obligations in the manner provided in the Supplemental Resolution authorizing such Obligations.

## **Section 206. Authorization of Second Lien Obligations.**

1. The Resolution hereby authorizes Second Lien Obligations of the Issuer designated as "Regional Payroll Mobility Tax Second Lien Obligations", which Second Lien Obligations, if and when authorized by the Issuer pursuant to one or more Supplemental Resolutions, may be issued in one or more Series or subseries. Second Lien Obligations may be issued as Tax-Exempt Second Lien Obligations, as Taxable Second Lien Obligations, as obligations which convert on a particular date or dates from Taxable Second Lien Obligations to Tax-Exempt Second Lien Obligations, or as Taxable Second Lien Obligations which are mandatorily exchangeable on a particular date or dates for Tax-Exempt Second Lien Obligations, or otherwise as determined by Supplemental Resolution and not contrary to the Resolution as then in effect. The Second Lien Obligations shall be *special obligations* of the Issuer payable solely from the Second Lien Obligations Trust Estate pledged to the payment thereof pursuant to Section 501.5. The aggregate principal amount of the Second Lien Obligations which may be executed, authenticated and delivered under the Resolution is not limited except as provided in the Resolution or as may from time to time be limited by law.

2. The Second Lien Obligations may, if and when authorized by the Issuer pursuant to one or more Supplemental Resolutions, be issued in one or more Series or subseries, and the designations thereof, in addition to the name "Regional Payroll Mobility Tax Second Lien Obligations", shall include such further or different designations in such title for the Second Lien Obligations of any particular Series or subseries as the Issuer may determine. Each Second Lien Obligation shall bear upon its face the designation so determined for the Series or subseries to which it belongs.

3. Nothing in the Resolution shall be deemed to prevent the consolidation into a single Series or subseries for purposes of issuance and sale of Second Lien Obligations otherwise permitted by the Resolution to be issued at the same time in two or more separate Series or subseries. In the event that separate Series or subseries are combined for purposes of issuance and sale, they may be issued under a single Supplemental Resolution notwithstanding any other provision of the Resolution. Nothing in the Resolution (except to the extent required by Supplemental Resolution) shall be deemed to prevent the separation into separate Series or subseries for purposes of issuance and sale of Second Lien Obligations otherwise permitted by the Resolution to be issued in one Series or subseries.

4. Second Lien Obligations may be issued for any of the purposes set forth in Sections 208 or 209.

**Section 207. General Provisions for Issuance of Second Lien Obligations.** Second Lien Obligations may be issued pursuant to a Supplemental Resolution upon satisfaction of the provisions of Section B-201, except that the Opinion of Bond Counsel required by Section B-201.2(a)(iii) shall be to the effect that the Second Lien Obligations are valid and binding special obligations of the Issuer, enforceable in accordance with their terms and the terms of the Resolution and entitled to the benefits of the Issuer Act and the Resolution, each as amended to the date of such Opinion of Bond Counsel.

**Section 208. Special Provisions for Capital Cost Second Lien Obligations.**

1. The Second Lien Obligations of one or more Series may at any time, or from time to time, be authenticated and delivered upon original issuance pursuant to this Section 208 to pay, or to provide for the payment of, all or part of the Capital Costs included in a Capital Program Plan (within the meaning of Section 1269-b of the Issuer Act or any successor provision) if a Capital Program Plan is then required.

2. The Second Lien Obligations of each such Series shall be authenticated and delivered by the Second Lien Trustee only upon receipt by the Second Lien Trustee (in addition to the documents required by Section 207) of:

- (a) A certificate of an Authorized Officer to the effect that the Issuer then is, and, upon the authentication and delivery of the Second Lien Obligations of such Series, shall be, in compliance with all applicable provisions of the Issuer Act relating to the issuance, sale and delivery of such Second Lien Obligations;
- (b) A certificate of an Authorized Officer
  - (A) setting forth for any 12 consecutive calendar months ended not more than 6 months prior to the date of such certificate:
    - (i) Mobility Tax Receipts and (ii) ATA Receipts;
  - (B) setting forth the greatest amount for the then current or any future Debt Service Year of the sum of (x) Calculated Debt Service on all Outstanding Obligations, *excluding* any Obligations or Parity Debt to be refunded with the proceeds of such Refunding Second Lien Obligations, (y) Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations, *including* the proposed Capital Cost Second Lien Obligations and any proposed Refunding Second Lien Obligations being treated as Capital Cost Second Lien Obligations for purposes of clause (ii) of paragraph (g) of Section 209.2 hereof but *excluding* any Obligations, Parity Debt, Second Lien Obligations or Second Lien Parity Debt to be refunded with the proceeds of such Refunding Second Lien Obligations being treated as Capital Cost Second Lien Obligations, plus (z) additional amounts, if any, payable with respect to Parity Debt or Second Lien Parity Debt; and
  - (C) stating that the sum of the Mobility Tax Receipts and ATA Receipts set forth in clause (A) hereof is not less than 1.75 times the amount set forth in clause (B) hereof;

*provided, however, that* if on the date of delivery of such certificate, there is then and thereafter required to be deposited into the MTA Finance Fund so as to constitute Mobility Tax Receipts or into the Corporate Transportation Account so as to constitute ATA Receipts or into the Pledged Amounts Account any other receipts, in each such case, which were not required to

be deposited therein during the entire 12 month period to which such certificate relates, the Issuer may include in such certificate the amount which an Authorized Officer estimates would have been deposited in the MTA Finance Fund or the Corporate Transportation Account or the Pledged Amounts Account during such period if such amounts had been required to be so deposited for such entire 12 month period.

**Section 209. Special Provisions for Refunding Second Lien Obligations.**

1. In addition to refinancings permitted under Section 208, one or more Series of Refunding Second Lien Obligations (in an aggregate principal amount which will provide funds, together with other money available therefore, to accomplish such refunding) may be authenticated and delivered upon original issuance to refund (including by redemption, payment at maturity or in connection with exchanges or tenders) all or any portion of any Outstanding Obligations, Parity Debt, Second Lien Obligations or Second Lien Parity Debt.

2. The Refunding Second Lien Obligations of such Series shall be authenticated and delivered by the Second Lien Trustee only upon receipt by the Second Lien Trustee, in addition to the documents required by Section B-201, of:

- (a) If the Obligations or Parity Debt to be refunded are to be redeemed, deemed paid within the meaning of the second sentence of Section A-1101.2 or similar provision with respect to Parity Debt, or purchased in satisfaction of a Sinking Fund Installment in accordance with Section A-502.3 or similar provision with respect to Parity Debt, the items set forth in clauses (a) – (d) of Section 205.1, as applicable;
- (b) If the Second Lien Obligations or Second Lien Parity Debt to be refunded are to be redeemed, instructions to the Second Lien Trustee and/or the trustee for the Second Lien Parity Debt, satisfactory to it, to give due notice of redemption of all the Second Lien Obligations or Second Lien Parity Debt so to be refunded on a redemption date specified in such instructions;
- (c) If the Second Lien Obligations or Second Lien Parity Debt to be refunded are to be deemed paid within the meaning of the second sentence of Section B-1001.2 or similar provision with respect to Second Lien Parity Debt, (i) money and/or (ii) Defeasance Securities as shall be necessary to comply with the provisions of the second sentence of Section B-1001.2 or defeasance securities as shall be necessary to comply with any similar provision with respect to Second Lien Parity Debt, which Defeasance Securities or defeasance securities and/or money shall be held in trust and used only as provided in Section B-1001 or similar provision with respect to Second Lien Parity Debt;
- (d) If the proceeds of such Series of Refunding Second Lien Obligations are to be utilized by the Issuer to purchase (in connection with a tender for or redemption of Second Lien Obligations or Second Lien Parity Debt, or

otherwise) Second Lien Obligations or Second Lien Parity Debt to be delivered to the Second Lien Trustee in satisfaction of a Second Lien Sinking Fund Installment in accordance with Section B-502.3 or similar provision with respect to Second Lien Parity Debt, a certificate of an Authorized Officer specifying the matters required thereby; and

- (e) Either (i) a certificate of an Authorized Officer (a) setting forth (A) the greatest amount of aggregate Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity Debt for any future Debt Service Year during the term of the Second Lien Obligations (including the Refunding Second Lien Obligations then proposed to be issued but excluding the Obligations, Parity Debt, Second Lien Obligations or Second Lien Parity Debt to be refunded or purchased) and (B) the greatest amount of aggregate Calculated Debt Service on all Outstanding Obligations and Parity Debt and Calculated Second Lien Debt Service on all Outstanding Second Lien Obligations and Second Lien Parity Debt for any future Debt Service Year during the term of the Second Lien Obligations as calculated immediately prior to the issuance of the Refunding Second Lien Obligations (including the Obligations, Parity Debt, Second Lien Obligations or Second Lien Parity Debt to be refunded or purchased but excluding the Refunding Second Lien Obligations and Second Lien Parity Debt) and (b) stating that the greatest amount of aggregate Calculated Debt Service and Calculated Second Lien Debt Service set forth pursuant to (A) above is not greater than the greatest amount of aggregate Calculated Debt Service and Calculated Second Lien Debt Service set forth pursuant to (B) above; or (ii) the certificate provided for in clause (b) of Section 208.2 with respect to such Series of Refunding Second Lien Obligations, considering for all purposes of such certificate that such Series of Second Lien Refunding Obligations is a Series of Capital Cost Second Lien Obligations and that the Refunding Second Lien Obligations then proposed to be issued will be Outstanding, but the Obligation, Parity Debt, Second Lien Obligation or Second Lien Parity Debt to be refunded will no longer be Outstanding.

3. The proceeds, including accrued interest, of the Refunding Second Lien Obligations of each such Series shall be applied simultaneously with the delivery of such Second Lien Obligations in the manner provided in the Supplemental Resolution authorizing such Second Lien Obligations.

### ARTICLE III FORM OF OBLIGATIONS AND SECOND LIEN OBLIGATIONS

**Section 301. Form of Obligations.** Subject to the provisions of the Resolution and except as otherwise provided pursuant to a Supplemental Resolution, each Series of Obligations

shall be issued as fully registered securities in substantially the form provided in Exhibit One appended hereto. Any Authorized Officer executing and delivering any such Obligations may make such changes in the form thereof as deemed necessary or convenient by such Authorized Officer, including changes to conform with (i) the terms of sale, (ii) the provisions of the related Supplemental Resolution, (iii) the requirements of the related Securities Depository, provider of a Credit Facility or Rating Agency, (iv) industry practice or (v) federal, State or City regulatory requirements, and the execution (whether manual or by facsimile) and delivery of any such obligations shall be conclusive evidence of the approval of all terms thereof by such Authorized Officer.

**Section 302. Form of Second Lien Obligations.** Subject to the provisions of the Resolution and except as otherwise provided pursuant to a Supplemental Resolution, each Series of Second Lien Obligations shall be issued as fully registered securities in substantially the form provided in Exhibit Two appended hereto. Any Authorized Officer executing and delivering any such Second Lien Obligations may make such changes in the form thereof as deemed necessary or convenient by such Authorized Officer, including changes to conform with (i) the terms of sale, (ii) the provisions of the related Supplemental Resolution, (iii) the requirements of the related Securities Depository, provider of a Second Lien Obligation Credit Facility or Rating Agency, (iv) industry practice or (v) federal, State or City regulatory requirements, and the execution (whether manual or by facsimile) and delivery of any such obligations shall be conclusive evidence of the approval of all terms thereof by such Authorized Officer.

#### **ARTICLE IV REDEMPTION AT DEMAND OF THE STATE OR THE CITY**

**Section 401. Redemption at Demand of the State or the City.** Except as otherwise provided pursuant to a Supplemental Resolution, either the State or the City may, upon furnishing sufficient funds therefore, require the Issuer to redeem all or any portion of the Obligations or Second Lien Obligations as provided in the Issuer Act as in effect on the date any such Obligations or Second Lien Obligations were issued.

#### **ARTICLE V PLEDGE; MAINTENANCE AND ESTABLISHMENT OF FUNDS AND ACCOUNTS AND APPLICATION THEREOF**

**Section 501. The Pledge Effected by the Resolution.**

1. There are hereby pledged for the payment of the principal and Redemption Price of, interest on, and Sinking Fund Installments for, the Obligations and, on a parity basis, Parity Debt, in accordance with their terms and the provisions of the Resolution, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution, all right, title and interest of the Issuer in the Obligations Trust Estate.

2. The pledge created by subsection 1 of this Section 501 shall in all respects secure on a *pari passu* basis all of the Obligations and Parity Debt and, except as expressly so provided, nothing contained in the Resolution shall be deemed to confer on the Owners of any



Obligations or Parity Debt any rights in the Obligations Trust Estate superior or inferior to the Owners of any other Obligations or Parity Debt.

3. The pledge created by subsection 1 of this Section 501 shall be valid and binding from and after the date of issuance and delivery of the first Obligations, and the Obligations Trust Estate shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

4. Subject to the provisions of subsection 1 of this Section 501, the Obligations Trust Estate and the Mobility Tax Receipts and ATA Receipts are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Resolution, and all corporate action on the part of the Issuer to that end has been duly and validly taken.

5. The Second Lien Obligations and Second Lien Parity Debt constitute Subordinated Indebtedness (as defined in the Standard Resolution Provisions) and the rights of Second Lien Owners to payment of principal of and interest on the Second Lien Obligations and Second Lien Parity Debt are subordinated to the rights of Owners of Obligations and Parity Debt to the extent and in the manner provided in this Article V. There are hereby pledged for the payment of the principal and Redemption Price of, interest on, and Second Lien Sinking Fund Installments for, the Second Lien Obligations and, on a parity basis, Second Lien Parity Debt, in accordance with their terms and the provisions of the Resolution, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution, all right, title and interest of the Issuer in the Second Lien Obligations Trust Estate and subordinate in all respects to the pledge of the Obligations Trust Estate securing Obligations and Parity Debt created pursuant to subsection 1 of this Section 501.

6. The Second Lien Obligations and Second Lien Parity Debt are payable solely from the Second Lien Obligations Trust Estate subject and subordinate to the payments to be made with respect to Obligations and Parity Debt from the Obligations Trust Estate as provided in Sections 504 and 601 of the Resolution, and shall be secured by a lien on and pledge of the funds in the Second Lien Obligations Trust Estate junior and inferior to the lien on and pledge of the Obligations Trust Estate created by the Resolution for the payment of the Obligations and Parity Debt. The Second Lien Obligations and Second Lien Parity Debt shall be payable from such amounts as shall from time to time be available for transfer pursuant to Section 505.4 – second of the Resolution and any amounts so transferred shall thereafter be free and clear of the lien of the Obligations Trust Estate. The pledge created by subsection 5 of this Section 501 shall in all respects secure on a *pari passu* basis all of the Second Lien Obligations and Second Lien Parity Debt and, except as expressly so provided, nothing contained in the Resolution shall be deemed to confer on the Second Lien Owners and the holders of any Second Lien Parity Debt any rights in the Second Lien Obligations Trust Estate superior or inferior to the Second Lien Owners of any other Second Lien Obligations and the holders of any Second Lien Parity Debt.

7. The pledge created by subsection 5 of this Section 501 shall be valid and binding from and after the date of issuance and delivery of the first Second Lien Obligations, and the Second Lien Obligations Trust Estate shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Issuer irrespective of whether such parties have notice thereof.

8. Subject to the provisions of subsections 1 and 5 of this Section 501, the Second Lien Obligations Trust Estate and the Mobility Tax Receipts and ATA Receipts are and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Resolution, and all corporate action on the part of the Issuer to that end has been duly and validly taken.

9. Nothing contained in this Section 501 shall be construed as limiting any authority granted to the Issuer elsewhere in the Resolution to issue or incur Obligation Anticipation Notes or Second Lien Obligation Anticipation Notes or shall be deemed a limitation upon the authority of the Issuer to issue any other bonds, notes or other obligations under the Issuer Act secured by any income and funds other than the Obligations Trust Estate or the Second Lien Obligations Trust Estate.

#### **Section 502. Establishment of Funds, Accounts and Subaccounts.**

1. The Obligations Proceeds Fund, which shall be held and administered by the Issuer, is hereby established.

2. The Second Lien Obligations Proceeds Fund, which shall be held and administered by the Issuer, is hereby established.

3. The Senior Debt Service Fund, which shall be held and administered by the Trustee, is hereby established.

4. The Second Lien Debt Service Fund, which shall be held and administered by the Trustee or, if so provided in a Supplemental Resolution, the Second Lien Trustee, is hereby established.

5. Amounts held at any time by the Issuer, the Trustee or the Second Lien Trustee in any of the Funds or Accounts established pursuant to this Section shall be held in trust separate and apart from all other funds. Additional funds, accounts or subaccounts may be established by the Issuer in its discretion pursuant to this Section upon the delivery of a certificate to the Trustee or Second Lien Trustee, as applicable, or by Supplemental Resolution.

6. Except as otherwise provided herein or in a Supplemental Resolution, all investment income earned on amounts on deposit in the Funds, Accounts or Subaccounts established under the Resolution shall remain on deposit in such Funds, Accounts or Subaccounts and applied in accordance with the provisions applicable to such Funds, Accounts or Subaccounts.

#### **Section 503. Obligations Proceeds Fund and Application Thereof.**

1. There shall be established within the Obligations Proceeds Fund a separate account ("Obligations Proceeds Account") for each Series of Obligations and within each such Account a separate Obligations COI Subaccount. Additional Subaccounts may be established by certificate of an Authorized Officer within each such Obligations Proceeds Account.

2. The Issuer shall pay into the Obligations Proceeds Fund and each Obligations Proceeds Account, if any, and each Subaccount, if any, such amounts as shall be provided for by Supplemental Resolution or in the resolution authorizing Obligation Anticipation Notes. The portion of any such amount determined by Supplemental Resolution to be used for the payment of Costs of Issuance shall be paid into and disbursed from the related Obligations COI Subaccount. Excess amounts on any Obligation COI Subaccount may be transferred by the Issuer to the related Obligations Proceeds Account and applied to the payment of Capital Costs or transferred by the Issuer to the Senior Lien Debt Service Fund and applied to the payment of interest on the related Obligations.

3. Unless otherwise provided for in a Supplemental Resolution or in the resolution authorizing Obligation Anticipation Notes, amounts in each Obligations Proceeds Account and each Subaccount shall be applied solely to the payment of Capital Costs in the manner and upon such conditions, if any, as the Issuer may provide in such Supplemental Resolution or in the resolution authorizing Obligation Anticipation Notes; *provided, however, that*, subject to any priority for Obligation Anticipation Notes, if on any interest payment date or Principal Installment due date the amounts in the Senior Debt Service Fund shall be less than Debt Service payable on such date, the Issuer shall apply amounts from the Obligations Proceeds Fund to the extent necessary to make up the deficiency.

#### **Section 504. Second Lien Obligations Proceeds Fund and Application Thereof.**

1. There shall be established within the Second Lien Obligations Proceeds Fund a separate account ("Second Lien Obligations Proceeds Account") for each Series of Second Lien Obligations and within each such Account a separate Second Lien Obligations COI Subaccount. Additional Subaccounts may be established by certificate of an Authorized Officer within each such Second Lien Proceeds Account.

2. The Issuer shall pay into the Second Lien Obligations Proceeds Fund and each Second Lien Proceeds Account and each Second Lien Obligations COI Subaccount, such amounts as shall be provided for by Supplemental Resolution or in the resolution authorizing Second Lien Obligation Anticipation Notes. The portion of any such amount determined by Supplemental Resolution to be used for the payment of Second Lien Costs of Issuance shall be paid into and disbursed from the related Second Lien Obligations COI Subaccount. Excess amounts in any Second Lien Obligations COI Subaccount may be transferred by the Issuer to the related Second Lien Obligation Proceeds Account and applied to the payment of Capital Costs or transferred by the Issuer to the Second Lien Debt Service fund and applied to the payment of interest on the related Second Lien Obligations.

3. Unless otherwise provided for in a Supplemental Resolution or in the resolution authorizing Second Lien Obligation Anticipation Notes, amounts in each Second Lien Proceeds Account, if any, and each Subaccount, if any, shall be applied solely to the payment of

Capital Costs in the manner and upon such conditions, if any, as the Issuer may provide in such Supplemental Resolution or in the resolution authorizing Second Lien Obligation Anticipation Notes; *provided, however, that*, subject to any priority for Second Lien Obligation Anticipation Notes, if on any interest payment date or Second Lien Obligations Principal Installment due date the amounts in the Second Lien Debt Service Fund shall be less than Second Lien Debt Service payable on such date, the Issuer shall apply amounts from the Second Lien Obligations Proceeds Fund to the extent necessary to make up the deficiency.

**Section 505. MTA Finance Fund; Application Thereof.**

1. The Issuer has previously established the MTA Finance Fund held by the Issuer in accordance with Section 1270-h of the Issuer Act consisting of a Pledged Amounts Account and an Operating and Capital Costs Account.

2. So long as any Obligations, Parity Debt, Second Lien Obligations, Second Lien Parity Debt and Other Subordinated Obligations are Outstanding hereunder, the Issuer shall establish and maintain in the Pledged Amounts Account a Mobility Tax Receipts Subaccount and an ATA Receipts Subaccount. All Mobility Tax Receipts shall be immediately deposited into the Mobility Tax Receipts Subaccount and all ATA Receipts shall be immediately deposited into the ATA Receipts Subaccount. Amounts held at any time by the Issuer in the Pledged Amounts Account or any Subaccount therein shall be held in trust separate and apart from all other funds.

3. The Issuer shall immediately transfer any ATA Funds deposited to the Corporate Transportation Account to the ATA Receipts Subaccount in the Pledged Amounts Account in the MTA Finance Fund.

4. Amounts deposited in any Subaccount in the Pledged Amounts Account shall be immediately applied by the Issuer as follows:

*first*, transfer to the Trustee for deposit in the Senior Debt Service Fund the amount necessary so that the amount on deposit therein shall equal the Mobility Tax Senior Debt Service Fund Requirement;

*second*, transfer, free and clear of any lien, pledge or claim of the Resolution securing Obligations or Parity Debt, to the Second Lien Trustee for deposit in the Second Lien Debt Service Fund, the amount necessary so that the amount on deposit in the Second Lien Debt Service Fund shall equal the Mobility Tax Second Lien Debt Service Fund Requirement;

*third*, transfer to another Person in accordance with the provisions of any Supplemental Resolution or other authorizing document for the payment of Obligation Anticipation Notes, Other Subordinated Obligations and Second Lien Obligation Anticipation Notes; and

*fourth*, transfer, in the discretion of the Issuer, free and clear of any lien, pledge or claim of the Resolution, any remaining amounts, including investment income, if any,

remaining on deposit in the Pledged Amounts Account into the Operating and Capital Costs Account or as otherwise required or permitted by law.

5. Amounts deposited into the Operating and Capital Costs Account shall be applied by the Issuer as provided in the Issuer Act.

#### **Section 506. Senior Debt Service Fund.**

1. The Trustee shall deposit, upon receipt thereof, all amounts transferred to the Trustee by the Issuer for deposit in the Senior Debt Service Fund in accordance with Section 505.4.

2. The Trustee shall pay out of the Senior Debt Service Fund to the respective Paying Agents (i) on or before each interest payment date for any of the Obligations and any related Parity Debt, the amount required for the interest payable on such date; (ii) on or before each Principal Installment due date, the amount required for the Principal Installment (including the portion thereof payable in respect of Parity Debt) payable on such due date; and (iii) on or before any redemption date for the Obligations or Parity Debt which occurs on any date other than an interest payment date, the amount required for the payment of interest on the Obligations or Parity Debt then to be redeemed. Such amounts shall be applied by the Paying Agents to such payments on and after the due dates thereof.

3. If on any date the sum of the amounts on deposit in the Senior Debt Service Fund exceeds the Mobility Tax Senior Debt Service Fund Requirement calculated as of such date, the Trustee shall, unless directed by the Issuer not to make such application or transfer, first apply or transfer to the Trustee to apply any or all of such excess to cure or reduce any deficiency then existing in any Fund or Account under the Resolution and then transfer any and all of the remaining amount of such excess to the Issuer for deposit, in the discretion of the Issuer, into the Operating and Capital Costs Account or as otherwise required or permitted by law free and clear of any lien, pledge and claim under the Resolution.

4. In the event of the refunding (including in connection with any payment at maturity, redemption, purchase, tender or exchange) of any Obligations, the Trustee shall, upon the direction of the Issuer, (a) withdraw from the Senior Debt Service Fund all or any portion of the amounts accumulated therein with respect to the Debt Service on the Obligations being refunded and deposit such amounts, free and clear of any lien, pledge or claim of the Resolution, with itself as Trustee or with an escrow agent to be held in trust solely for the purchase, exchange or payment of the principal or Redemption Price, if applicable, of and interest on the Obligations being refunded, (b) apply such amounts to pay the Costs of Issuance of the Refunding Obligations, (c) deposit or transfer to the Trustee to deposit such amounts in any Fund or Account established hereunder, or (d) pay such amounts over to the Issuer free and clear of any lien, pledge or claim under the Resolution for deposit, in the discretion of the Issuer, into the Operating and Capital Costs Account or as otherwise required or permitted by law; *provided, however,* that no such withdrawal or deposit shall be made unless (i) upon such refunding, the Obligations being refunded shall be deemed to have been paid within the meaning and with the effect provided in Section A-1101, and (ii) at the time of and giving effect to such withdrawal

and refunding, there shall exist no deficiency in any Fund or Account established under the Resolution.

#### **Section 507. Second Lien Debt Service Fund.**

1. The Second Lien Trustee shall deposit, upon receipt thereof, all amounts transferred to the Second Lien Trustee by the Issuer for deposit in the Second Lien Debt Service Fund in accordance with Section 505.4.

2. The Second Lien Trustee shall pay out of the Second Lien Debt Service Fund to the respective Paying Agents (i) on or before each interest payment date for any of the Second Lien Obligations and any related Second Lien Parity Debt, the amount required for the interest payable on such date; (ii) on or before each Second Lien Principal Installment due date, the amount required for the Second Lien Principal Installment (including the portion thereof payable in respect of a Second Lien Parity Debt) payable on such due date; and (iii) on or before any redemption date for the Second Lien Obligations or Second Lien Parity Debt which occurs on any interest payment date, the amount required for the payment of interest on the Second Lien Obligations or Second Lien Parity Debt then to be redeemed. Such amounts shall be applied by the Paying Agents to such payments on and after the due dates thereof.

3. If on any date the sum of the amounts on deposit in the Second Lien Debt Service Fund exceeds the Mobility Tax Second Lien Debt Service Fund Requirement calculated as of such date, the Second Lien Trustee shall, unless directed by the Issuer not to make such application or transfer, first apply or transfer to the Trustee or the Second Lien Trustee, as appropriate, to apply any or all of such excess to cure or reduce any deficiency then existing in any Fund or Account under the Resolution and then transfer any and all of the remaining amount of such excess to the Issuer for deposit, in the discretion of the Issuer, into the Operating and Capital Costs Account or as otherwise required or permitted by law free and clear of any lien, pledge and claim under the Resolution.

4. In the event of the refunding (including in connection with any payment at maturity, redemption, purchase, tender or exchange) of any Second Lien Obligations, the Second Lien Trustee shall, upon the direction of the Issuer, (a) withdraw from the Second Lien Debt Service Fund all or any portion of the amounts accumulated therein with respect to the Debt Service on the Second Lien Obligations being refunded and deposit such amounts, free and clear of any lien, pledge or claim of the Resolution, with itself as Second Lien Trustee or with an escrow agent to be held in trust solely for the purchase, exchange or payment of the principal or Redemption Price, if applicable, of and interest on the Second Lien Obligations being refunded, (b) apply such amounts to pay the Costs of Issuance of the Refunding Second Lien Obligations, (c) deposit or transfer to the Second Lien Trustee to deposit such amounts in any Fund or Account established hereunder, or (d) pay such amounts over to the Issuer free and clear of any lien, pledge or claim under the Resolution for deposit, in the discretion of the Issuer, into the Operations and Capital Costs Account or as otherwise required or permitted by law; *provided, however, that* no such withdrawal or deposit shall be made unless (i) upon such refunding, the Second Lien Obligations being refunded shall be deemed to have been paid within the meaning and with the effect provided in Section A-1101, and (ii) at the time of and giving effect to such

withdrawal and refunding, there shall exist no deficiency in any Fund or Account established under the Resolution.

5. The Issuer shall have the right to covenant with Persons to whom Second Lien Obligations and Second Lien Parity Debt run and with the Second Lien Owners or holders from time to time of Second Lien Obligations and Second Lien Parity Debt in order to add to the conditions, limitations and restrictions under which any additional Capital Cost Obligations or Refunding Obligations may be issued or Parity Debt may be incurred; *provided, however, that* the Supplemental Resolution or indenture or other agreement providing for the issuance of such Second Lien Obligations and Second Lien Parity Debt or the incurrence of such Second Lien Obligations and Second Lien Parity Debt shall not permit the holders of such obligations to declare the same, nor to instruct such holders' trustee to declare the same, to be immediately due and payable prior to any time that all Obligations and Parity Debt have become due and payable.

6. The Issuer shall have the right to covenant with Persons to whom Other Subordinated Obligations run and with the holders from time to time of Other Subordinated Obligations in order to add to the conditions, limitations and restrictions under which any additional Capital Cost Obligations, Refunding Obligations, Second Lien Capital Cost Obligations or Second Lien Refunding Obligations may be issued or Parity Debt or Second Lien Parity Debt may be incurred; *provided, however, that* the Supplemental Resolution or indenture or other agreement providing for the issuance of such Other Subordinated Obligations or the incurrence of such Other Subordinated Obligations shall not permit the holders of such obligations to declare the same, nor to instruct such holders' trustee to declare the same, to be immediately due and payable prior to any time that all Obligations, Second Lien Obligations, Parity Debt and Second Lien Parity Debt have become due and payable.

## ARTICLE VI PARTICULAR COVENANTS OF THE ISSUER

The Issuer covenants and agrees with the Trustee, the Second Lien Trustee and the Owners of all Obligations as follows:

### **Section 601. Power to Issue Obligations and Effect Pledge of Obligations Trust Estate.**

1. The Issuer is duly authorized under all applicable laws to create and issue the Obligations, adopt the Resolution and pledge the Obligations Trust Estate in the manner and to the extent provided in the Resolution. The Obligations Trust Estate is and will be free and clear of any pledge, lien, charge or encumbrance thereon or, with respect thereto prior to, or of equal rank with, the pledge created by the Resolution, and all corporate action on the part of the Issuer to that end has been duly and validly taken. The Obligations and the provisions of the Resolution are and will be the legally valid and binding special obligations of the Issuer enforceable in accordance with their terms and the terms of the Resolution. The Issuer shall at all times, to the extent permitted by law, defend, preserve and protect the pledge of the Obligations Trust Estate and all the rights of the Owners of Obligations under the Resolution against all claims and demands of all Persons whomsoever.

2. Until the pledge created in subsection 1 of Section 501 of the Resolution shall be discharged and satisfied as provided in Section A-1001, the Issuer shall not issue any bonds or other evidences of indebtedness, other than the Obligations and Parity Debt, secured by an equal or prior pledge of the Obligations Trust Estate or the Mobility Tax Receipts or the ATA Receipts, nor create or cause to be created any equal or prior pledge of, or lien, charge or encumbrance on, any of the items comprising the Obligations Trust Estate or the Mobility Tax Receipts or the ATA Receipts; *provided, however*, that nothing contained in the Resolution shall prevent the Issuer from at any time incurring any Parity Debt in accordance with Section A-201 or issuing Obligation Anticipation Notes secured as provided in Section A-203, Second Lien Obligations, in accordance with Section 206, Second Lien Parity Debt in accordance with Section B-202, or Second Lien Obligation Anticipation Notes secured as provided in Section B-203.

**Section 602. Compliance with Laws Relating to Appropriation and Related Matters.** The Issuer covenants and agrees to take all actions on its part and to comply with all laws required for the Issuer to receive any amounts appropriated to the MTA Finance Fund, including Section 92-ff of the State Finance Law.

**Section 603. Agreement of the State; No Bankruptcy.** In accordance with Section 1271 of the Issuer Act, the Issuer does hereby include the pledge and agreement of the State with the Owners of the Obligations and Second Lien Owners of Second Lien Obligations that the State will not limit or alter the denial of authority under subdivision 9 of Section 1269 of the Issuer Act, or the rights vested in the Issuer by the Issuer Act to fulfill the terms of any agreement made with such Owners and Second Lien Owners, or in any way impair the rights and remedies of such Owners and Second Lien Owners until such agreements, bonds, notes and obligations with such Owners and Second Lien Owners, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the Issuer is liable in connection with any action or proceeding by or on behalf of such Owners and Second Lien Owners, are fully met and discharged; *provided, however*, nothing contained in this Section or elsewhere in the Resolution shall be deemed to restrict the right of the State to amend, repeal, modify or otherwise alter statutes imposing or relating to the taxes producing revenues for deposit in the Financial Assistance Fund, or the appropriations relating thereto.

**Section 604. Power to Issue Second Lien Obligations and Effect Pledge of Second Lien Obligations Trust Estate.**

1. The Issuer is duly authorized under all applicable laws to create and issue the Second Lien Obligations, adopt the Resolution and pledge the Second Lien Obligations Trust Estate in the manner and to the extent provided in the Resolution. Except for the lien on the Obligations Trust Estate securing Obligations, the Second Lien Obligations Trust Estate is and will be free and clear of any pledge, lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge created by the Resolution, and all corporate action on the part of the Issuer to that end has been duly and validly taken. The Second Lien Obligations and the provisions of the Resolution are and will be the legally valid and binding special obligations of the Issuer enforceable in accordance with their terms and the terms of the Resolution. The Issuer shall at all times, to the extent permitted by law, defend, preserve and



protect the pledge of the Second Lien Obligations Trust Estate and all the rights of the Second Lien Owners under the Resolution against all claims and demands of all Persons whomsoever.

2. Until the pledge created in subsection 5 of Section 501 of the Resolution shall be discharged and satisfied as provided in Section B-1001, the Issuer shall not issue any bonds or other evidences of indebtedness, other than the Obligations, Parity Debt, Second Lien Obligations and Second Lien Parity Debt secured by an equal or prior pledge of the Second Lien Obligations Trust Estate or the Mobility Tax Receipts or the ATA Receipts, nor create or cause to be created any equal or prior pledge of, or lien, charge or encumbrance on, any of the items comprising the Second Lien Obligations Trust Estate or the Mobility Tax Receipts or the ATA Receipts; *provided, however, that* nothing contained in the Resolution shall prevent the Issuer from at any time incurring any Obligations or Parity Debt in accordance with Section A-201, issuing Obligation Anticipation Notes secured as provided in Section A-203, issuing Second Lien Obligations in accordance with Sections 206, Second Lien Parity Debt in accordance with Section B-202, or issuing Second Lien Obligation Anticipation Notes in accordance with Section B-203.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 701. Obligations Event of Default.** Each of the following events is defined as and shall constitute an "Obligations Event of Default" in respect of Obligations or Parity Debt under the Resolution:

1. There shall occur a default in the payment of principal, Sinking Fund Installment, interest or premium on any Obligation or, if so provided in the Supplemental Resolution, a default in the payment of a mandatory tender for purchase after the same shall have become due, whether at maturity or upon call for redemption or otherwise which default shall continue for a period of 30 days.

2. There shall occur a failure to observe, or a refusal to comply with, the terms of the Resolution or the Obligations, other than a failure or refusal constituting an event specified in any other subsection of this Section 701 and other than a failure to make all or any portion of any required deposit into any Fund or Account which failure is the result of the fact that the Issuer has not received sufficient Mobility Tax Receipts or ATA Receipts, as appropriate, to make such deposit; *provided, however, that* such failure or refusal shall have continued for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Issuer by the Trustee, unless the Trustee shall agree in writing to an extension of such time prior to its expiration, and *provided further that* if the failure stated in the notice cannot be remedied within the applicable period, the Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the Issuer within such period and is being diligently pursued.

3. The State or any Final Judgment shall limit or alter the denial of authority under subdivision 9 of Section 1269 of the Issuer Act to the Issuer or, subject to the proviso contained in Section 603, shall limit or alter the rights and powers vested in the Issuer by the

Issuer Act to fulfill the terms of any agreements made by it with the holders of any notes, bonds, or lease or other obligations, or in any way impair the rights and remedies of such holders until such agreements and all such obligations, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the Issuer is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

4. The pledge created in subsection 1 of Section 501 of the Resolution shall, at any time and for any reason, cease to be in full force and effect or a Final Judgment shall be rendered which shall declare the pledge to be null and void, or shall declare that the pledge does not establish in any material respect the lien it purports to establish, or that the pledge is not for the benefit of the Owners of the Obligations and Parity Debt, subject to the rights of no other parties (other than holders of Obligation Anticipation Notes and, to the extent provided in Section 206, Second Lien Obligations and Second Lien Parity Debt and Second Lien Obligation Anticipation Notes.

#### **Section 702. Powers of Trustee in Respect of an Obligations Event of Default.**

1. In the event that any Obligations Event of Default specified in Section 701 shall occur and be continuing, the Trustee may, and, upon written request of the Owners of a majority in aggregate principal amount of the Obligations then Outstanding, shall, in its name:

- (a) by suit, action or proceeding in accordance with the civil practice law and rules enforce all rights of the Owners of Obligations;
- (b) bring suit upon the Obligations against the Issuer;
- (c) by action or suit, require the Issuer to account as if it were the trustee of an express trust for the Owners of the Obligations; or
- (d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the Owners of the Obligations.

2. Subject to the provisions of Sections 701 and A-1001 and the foregoing provisions of this Section 702, the remedies conferred upon or reserved to the Trustee in respect of any Obligations Event of Default are not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Resolution or now or hereafter existing at law or in equity or by statute; provided, however, that the Trustee or the Owners of the Obligations shall not have the right to declare all Obligations to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any Obligations Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice as may be expressly required herein.

3. The Trustee shall, in addition to the foregoing powers, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth

herein or incidental to the general representation of Owners of Obligations in the enforcement and protection of their rights.

4. The Issuer covenants that if an Obligations Event of Default shall have happened and shall not have been remedied, the books of record and account of the Issuer and all other records relating to the Obligations Trust Estate shall at all times be subject to the inspection and use of the Trustee and of its agents and attorneys and, upon demand of the Trustee, the Issuer will account, as if it were the trustee of an express trust, for the Obligations Trust Estate for such period as shall be stated in such demand.

### **Section 703. Priority of Payments After Default on Obligations.**

1. In the event that the funds held by the Fiduciaries shall be insufficient for the payment of interest and principal or Redemption Price then due on the Obligations and for payments then due with respect to Parity Debt, such funds (excluding funds held for the payment or redemption of particular Obligations which have theretofore become due at maturity or by call for redemption and funds which at the time of their deposit into any Fund or Account under the Resolution have been designated to be applied solely to the payment of the principal of and premium, if any, and interest on any series of Obligation Anticipation Notes) and any other money received or collected by the Fiduciaries, or the Trustee, after making provision for the payment of any expenses necessary in the opinion of the Trustee to preserve the continuity of the amounts to be received under the Resolution or otherwise to protect the interest of the Owners of the Obligations, and for the payment of the charges and expenses and liabilities incurred and advances made by the Fiduciaries in the performance of their duties under the Resolution, shall be applied as follows:

(a) Unless the principal of all of the Obligations shall have become due and payable,

First: To the payment to the Persons entitled thereto of all installments of interest then due with respect to Obligations and the interest components of Parity Debt in the order of the maturity of such installments and interest components, and, if the amount available shall not be sufficient to pay in full any installments and interest components due on the same date, then to the payment thereof ratably, according to the amounts due on such installments and interest components, to the Persons entitled thereto, without any discrimination or preference, except as to the difference in the respective rates of interest specified in such Obligations and Parity Debt; and

Second: To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price of any Obligations and the principal component of Parity Debt which shall have become due, whether at maturity or by call for redemption, in the order of their due dates and, if the amount available shall not be sufficient to pay in full all the Obligations and Parity Debt due on any date, then to the payment thereof ratably, according to the amounts of principal and Redemption Price and

principal component due on such date, to the Persons entitled thereto, without any discrimination or preference.

(b) If the principal of all of the Obligations and the principal component of Parity Debt shall have become due and payable, to the payment of the principal and interest then due and unpaid upon the Obligations and Parity Debt without preference or priority of principal or principal component over interest or interest component or of interest or interest component over principal or principal component, or of any installment of interest or interest component over any other installment of interest or interest component, or of any Obligation or Parity Debt over any other Obligation or Parity Debt, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Obligations and Parity Debt.

2. The provisions of this Section 703 are in all respects subject to the provisions of Section A-602.

**Section 704. Second Lien Obligations Event of Default.** Each of the following events is defined as and shall constitute a "Second Lien Obligations Event of Default" in respect of Second Lien Obligations and Second Lien Parity Debt under the Resolution:

1. There shall occur a default in the payment of principal, Second Lien Sinking Fund Installment, interest or premium on any Second Lien Obligation or, if so provided in the Supplemental Resolution, a default in the payment of a mandatory tender for purchase after the same shall have become due, whether at maturity or upon call for redemption or otherwise which default shall continue for a period of 30 days.

2. There shall occur a failure to observe, or a refusal to comply with, the terms of the Resolution or the Second Lien Obligations, other than a failure or refusal constituting an event specified in any other subsection of this Section 704 and other than a failure to make all or any portion of any required deposit into any Fund or Account which failure is the result of the fact that the Issuer has not received sufficient Mobility Tax Receipts or ATA Receipts, as appropriate, to make such deposit; *provided, however, that* such failure or refusal shall have continued for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Issuer by the Second Lien Trustee, unless the Second Lien Trustee shall agree in writing to an extension of such time prior to its expiration, and *provided further that* if the failure stated in the notice cannot be remedied within the applicable period, the Second Lien Trustee shall not unreasonably withhold its consent to an extension of such time if corrective action has been instituted by the Issuer within such period and is being diligently pursued.

3. The State or any Final Judgment shall limit or alter the denial of authority under subdivision 9 of Section 1269 of the Issuer Act to the Issuer or, subject to the proviso contained in Section 603, shall limit or alter the rights and powers vested in the Issuer by the Issuer Act to fulfill the terms of any agreements made by it with the holders of any notes, bonds, or lease or other obligations, or in any way impair the rights and remedies of such holders until

such agreements and all such obligations, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses for which the Issuer is liable in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged.

4. The pledge created in subsection 5 of Section 501 of the Resolution shall, at any time and for any reason, cease to be in full force and effect or a Final Judgment shall be rendered which shall declare the pledge to be null and void, or shall declare that the pledge does not establish in any material respect the lien it purports to establish, or that the pledge is not for the benefit of the Second Lien Owners of the Second Lien Obligations and Second Lien Parity Debt, subject to the rights of no other parties (other than holders of Obligation Anticipation Notes, Obligations, Parity Debt and Second Lien Obligation Anticipation Notes).

**Section 705. Powers of Second Lien Trustee in Respect of a Second Lien Obligations Event of Default.**

1. In the event that any Second Lien Obligations Event of Default specified in Section 704 shall occur and be continuing, the Second Lien Trustee may, and, upon written request of the Second Lien Owners of a majority in aggregate principal amount of the Second Lien Obligations then Outstanding, shall, in its name,

- (a) by suit, action or proceeding in accordance with the civil practice law and rules enforce all rights of the Second Lien Owners;
- (b) bring suit upon the Second Lien Obligations against the Issuer;
- (c) by action or suit, require the Issuer to account as if it were the trustee of an express trust for the Second Lien Owners; or
- (d) by action or suit, enjoin any acts or things which may be unlawful or in violation of the rights of the Second Lien Owners.

Such rights shall be subordinate, and subject to in all respects, the pledge of the Obligations Trust Estate securing Obligations and Parity Debt created pursuant to subsection 1 of Section 501.

2. Subject to the provisions of Sections 704 and B-1001 and the foregoing provisions of this Section 705, the remedies conferred upon or reserved to the Second Lien Trustee in respect of any Second Lien Obligations Event of Default are not intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under the Resolution or now or hereafter existing at law or in equity or by statute; *provided, however*, that the Second Lien Trustee or the Second Lien Owners shall not have the right to declare all Second Lien Obligations to be immediately due and payable. No delay or omission to exercise any right or power accruing upon any Second Lien Obligations Event of Default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Second Lien Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than notice as may be expressly required herein.

3. The Second Lien Trustee shall in addition to the foregoing powers, have and possess all of the powers necessary or appropriate for the exercise of any functions specifically set forth herein or incidental to the general representation of Second Lien Owners in the enforcement and protection of their rights.

4. The Issuer covenants that if a Second Lien Obligations Event of Default shall have happened and shall not have been remedied, the books of record and account of the Issuer and all other records relating to the Second Lien Obligations Trust Estate shall at all times be subject to the inspection and use of the Second Lien Trustee and of its agents and attorneys and, upon demand of the Second Lien Trustee, the Issuer will account, as if it were the trustee of an express trust, for the Second Lien Obligations Trust Estate for such period as shall be stated in such demand.

**Section 706. Priority of Payments After Default on Second Lien Obligations.**

1. In the event that the funds held by the Fiduciaries shall be insufficient for the payment of interest and principal or Second Lien Redemption Price then due on the Second Lien Obligations and for payments then due with respect to Second Lien Parity Debt, such funds (excluding funds held for the payment or redemption of particular Second Lien Obligations which have theretofore become due at maturity or by call for redemption and funds which at the time of their deposit into any Fund or Account under the Resolution have been designated to be applied solely to the payment of the principal of and premium, if any and interest on any series of Second Lien Obligation Anticipation Notes) and any other money received or collected by the Fiduciaries, or the Second Lien Trustee, after making provision for the payment of any expenses necessary in the opinion of the Second Lien Trustee to preserve the continuity of the amounts to be received under the Resolution or otherwise to protect the interest of the Second Lien Owners, and for the payment of the charges and expenses and liabilities incurred and advances made by the Fiduciaries in the performance of their duties under the Resolution, shall be applied as follows:

(a) Unless the principal of all of the Second Lien Obligations shall have become due and payable,

First: To the payment to the Persons entitled thereto of all installments of interest then due with respect to Second Lien Obligations and the interest components of Second Lien Parity Debt in the order of the maturity of such installments and interest components, and, if the amount available shall not be sufficient to pay in full any installments and interest components due on the same date, then to the payment thereof ratably, according to the amounts due on such installments and interest components, to the Persons entitled thereto, without any discrimination or preference, except as to the difference in the respective rates of interest specified in such Second Lien Obligations and Second Lien Parity Debt; and

Second: To the payment to the Persons entitled thereto of the unpaid principal or Redemption Price of any Second Lien Obligations and the principal component of Second Lien Parity Debt which shall have

become due, whether at maturity or by call for redemption, in the order of their due dates and, if the amount available shall not be sufficient to pay in full all the Second Lien Obligations and Second Lien Parity Debt due on any date, then to the payment thereof ratably, according to the amounts of principal and Second Lien Redemption Price and principal component due on such date, to the Persons entitled thereto, without any discrimination or preference.

(b) If the principal of all of the Second Lien Obligations and the principal component of Second Lien Parity Debt shall have become due and payable, to the payment of the principal and interest then due and unpaid upon the Second Lien Obligations and Second Lien Parity Debt without preference or priority of principal or principal component over interest or interest component or of interest or interest component over principal or principal component, or of any installment of interest or interest component over any other installment of interest or interest component, or of any Second Lien Obligations and Second Lien Parity Debt over any other Second Lien Obligations and Second Lien Parity Debt, ratably, according to the amounts due respectively for principal and interest, to the Persons entitled thereto, without any discrimination or preference except as to any difference in the respective rates of interest specified in the Second Lien Obligations and Second Lien Parity Debt.

2. Such rights set forth in this Section 706 shall be subordinate, and subject in all respects, to the prior pledge of the Obligations Trust Estate securing Obligations and Parity Debt created pursuant to subsection 1 of Section 501.

3. The provisions of this Section 706 are in all respects subject to the provisions of Section B-602.

## ARTICLE VIII

### SUPPLEMENTAL RESOLUTIONS

**Section 801. Supplemental Resolutions Effective Upon Filing With the Trustee and Second Lien Trustee.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution may be adopted, without the consent of or notice to any Owner or Second Lien Owner which, upon the filing with the Trustee and the Second Lien Trustee of a copy thereof certified by an Authorized Officer, or, if adopted prior to the appointment of a Trustee pursuant to Section A-701 or Second Lien Trustee pursuant to Section B-701, upon its adoption, shall be fully effective in accordance with its terms:

1. To add to the covenants and agreements of the Issuer in the Resolution, other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Resolution as theretofore in effect;

2. To surrender any right, power or privilege reserved to or conferred upon the Issuer by the Resolution;

3. To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Resolution of any additional security other than that granted or pledged under the Resolution;

4. To add to the Resolution any provisions required to preserve the exclusion from gross income for Federal income tax purposes of interest received on Tax-Exempt Obligations or Tax-Exempt Second Lien Obligations then Outstanding or to be issued or the exemption of interest received on any Obligations or Second Lien Obligations from State income taxation or the right to receive subsidies relating to Taxable Obligations or Taxable Second Lien Obligations then Outstanding or to be issued;

5. To modify, amend or supplement the Resolution in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect or to permit the qualification of the Obligations or Second Lien Obligations for sale under the securities laws of any of the states of the United States of America, and, if the Issuer so determines, to add hereto such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939 or similar Federal statute;

6. At any time prior to the first authentication and delivery of any Obligations under the Resolution or at any other time when no Obligations, Second Lien Obligations or Other Subordinated Obligations are Outstanding under the Resolution, to modify the provisions of the Resolution in such manner as the Issuer deems necessary or appropriate;

7. To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Resolution;

8. To insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable and are not contrary to or inconsistent with the Resolution as theretofore in effect, including, in the event the Issuer Act is amended or other legislation is enacted to so provide, the substitution of an alternate or different legal name for the current name of the Issuer or any other Related Entity in the Resolution or the form of Obligations, Second Lien Obligations or Other Subordinated Obligations;

9. To make any other modification or amendment of the Resolution which the Issuer shall in its sole discretion determine will not have a material adverse effect on the interests of the Owners of Outstanding Obligations, Second Lien Owners of Outstanding Second Lien Obligations and owners of Other Subordinated Obligations;

10. To authorize Obligations of a Series and, in connection therewith, (a) specify and determine the matters and things referred to in the provisions of the Resolution authorizing issuance of Obligations, and also any other matters and things relative to such Obligations which are not contrary to or inconsistent with the Resolution as theretofore in effect, (b) in the case of Variable Interest Rate Obligations or Put Obligations, as applicable, set forth provisions specifying the manner in which interest on Variable Interest Rate Obligations or Put Obligations, as applicable, is to be calculated for the purposes of various definitions and provisions of the Resolution, provisions providing for changes in interest rates, interest rate periods or interest payment dates for any Variable Interest Rate Obligation of a Series or Put Obligations, as



applicable, provisions regarding an Owner's right or obligation to tender Put Obligations for redemption or purchase in lieu of redemption, and provisions governing the manner in which Variable Interest Rate Obligations or Put Obligations, as applicable, which the Owner thereof has the right to, or has exercised a right to, tender for redemption or purchase in lieu of redemption shall be treated for purposes of various definitions and provisions of the Resolution, (c) set forth provisions governing the administration of any Qualified Swap or Credit Facility, and provisions providing for the issuance of Reimbursement Obligations or the conversion of other Obligations to Reimbursement Obligations (and in connection with such conversion to change the interest rates, sinking fund provisions or maturity date on such Obligations) to secure or reimburse the provider of such Credit Facility, (d) in the case of either Taxable Obligations or Tax-Exempt Obligations, set forth defeasance provisions with respect thereto (including the manner of attaining such defeasance and the effect thereof), and (e) make such additional changes herein, not materially adverse to the rights of the Owners of the Obligations previously issued, as are necessary or appropriate; or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance and delivery of such Obligations;

11. To authorize Second Lien Obligations of a Series and, in connection therewith, (a) specify and determine the matters and things referred to in the provisions of the Resolution authorizing issuance of Second Lien Obligations, and also any other matters and things relative to such Obligations which are not contrary to or inconsistent with the Resolution as theretofore in effect, (b) in the case of Variable Interest Rate Second Lien Obligations or Second Lien Put Obligations, as applicable, set forth provisions specifying the manner in which interest on Variable Interest Rate Second Lien Obligations or Second Lien Put Obligations, as applicable, is to be calculated for the purposes of various definitions and provisions of the Resolution, provisions providing for changes in interest rates, interest rate periods or interest payment dates for any Variable Interest Rate Second Lien Obligation of a Series or Second Lien Put Obligations, as applicable, provisions regarding a Second Lien Owner's right or obligation to tender Second Lien Put Obligations for redemption or purchase in lieu of redemption, and provisions governing the manner in which Variable Interest Rate Second Lien Obligations or Second Lien Put Obligations, as applicable, which the Second Lien Owner thereof has the right to, or has exercised a right to, tender for redemption or purchase in lieu of redemption shall be treated for purposes of various definitions and provisions of the Resolution, (c) set forth provisions governing the administration of any Qualified Second Lien Swap or Second Lien Obligation Credit Facility, and provisions providing for the issuance of Second Lien Reimbursement Obligations or the conversion of other Second Lien Obligations to Second Lien Reimbursement Obligations (and in connection with such conversion to change the interest rates, sinking fund provisions or maturity date on such Second Lien Obligations) to secure or reimburse the provider of such Second Lien Obligation Credit Facility, (d) in the case of either Taxable Second Lien Obligations or Tax-Exempt Second Lien Obligations, set forth defeasance provisions with respect thereto (including the manner of attaining such defeasance and the effect thereof), and (e) make such additional changes herein, not materially adverse to the rights of the Second Lien Owners of the Second Lien Obligations previously issued, as are necessary or appropriate; or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance and delivery of such Second Lien Obligations;

12. To authorize Obligation Anticipation Notes in accordance with Section A-203 and Second Lien Obligation Anticipation Notes in accordance with Section B-203 and, in connection therewith, specify and determine the matters and things referred to in Section A-203 or Section B-203, as applicable, and also any other matters and things relative to such Obligation Anticipation Notes or Second Lien Anticipation Notes, as applicable, which are not contrary to or inconsistent with the Resolution as theretofore in effect;

13. To (a) establish for any one or more Series of Obligations or Second Lien Obligations a separate debt service reserve fund which shall be permitted to be applied solely to the payment of specified Obligations or Second Lien Obligations, provided that (i) the specified Obligations or Second Lien Obligations shall have no claim or lien on nor be payable from any amounts in any other such debt service reserve fund, (ii) the specified Obligations or Second Lien Obligations shall be excluded from the calculation of any applicable debt service reserve fund requirement for any other Outstanding Obligations or Second Lien Obligations, and (iii) the amount required to be on deposit in such debt service reserve funds shall be specified in the Supplemental Resolutions authorizing the specified Obligations or Second Lien Obligations, but in no event shall such amount, after giving effect to any surety bond, insurance policy, letter of credit or similar obligation deposited in any such separate debt service reserve fund pursuant to the Resolution, be in excess of the amount that would otherwise be the debt service reserve fund requirement for such specified Obligations or Second Lien Obligations assuming that such Obligations or Second Lien Obligations were the only Obligations or Second Lien Obligations Outstanding under the Resolution; and (b) make such other amendments, changes or modifications to the Resolution as may be deemed necessary or desirable by the Issuer to insure that such debt service reserve funds function in the manner contemplated in this subsection;

14. To authorize Parity Debt and, in connection therewith, specify and determine (or provide procedures for an Authorized Officer to specify or determine) the matters and things referred to in paragraphs (4) and (6) of Section A-202, and also any other matters and things relative to such Parity Debt which are not contrary to or inconsistent with the Resolution as then in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance or entering into of such Parity Debt, and at any time to rescind or limit any authorization for any such Parity Debt theretofore authorized but not issued or entered into; in connection with the authorization of Parity Swap Obligations and Parity Reimbursement Obligations, any such Supplemental Resolution may include provisions for the availability, transferability, use or application of the Funds, Accounts and subaccounts established pursuant to Section 502 of the Resolution for the benefit of such Parity Swap Obligations and Parity Reimbursement Obligations; and may grant to the Owners of such Parity Debt the same rights granted to Owners of Obligations in Section 802 and Article A-IX herein;

15. To authorize Second Lien Parity Debt and, in connection therewith, specify and determine (or provide procedures for an Authorized Officer to specify or determine) the matters and things referred to in paragraphs (4) and (6) of Section B-202 of the Resolution, and also any other matters and things relative to such Second Lien Parity Debt which are not contrary to or inconsistent with the Resolution as then in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance or entering into of such Second Lien Parity Debt, and at any time to rescind or limit any authorization for any such Second Lien Parity Debt theretofore authorized but not issued or entered into; in

connection with the authorization of Second Lien Parity Swap Obligations and Second Lien Parity Reimbursement Obligations, any such Supplemental Resolution may include provisions for the availability, transferability, use or application of the Funds, Accounts and subaccounts established pursuant to Section 502 of the Resolution for the benefit of such Second Lien Parity Swap Obligations and Second Lien Parity Reimbursement Obligations; and may grant to the Second Lien Owners of such Second Lien Parity Debt the same rights granted to Second Lien Owners of Second Lien Obligations in Section 802 and Article B-VIII herein;

16. To authorize Other Subordinated Obligations and, in connection therewith, specify and determine (or provide procedures for an Authorized Officer to specify or determine) the matters and things required or permitted by Article V of the Resolution in connection therewith, and also any other matters and things relative to such Other Subordinated Obligations which are not contrary to or inconsistent with the Resolution as then in effect, or at any time to amend, rescind or limit any authorization for any such Other Subordinated Obligations thereto be authorized but not issued or entered into; and in connection with the authorization of Other Subordinated Obligations, any such Supplemental Resolution may include provisions for the availability, transferability, use or application of amounts available to pay Other Subordinated Obligations and any other funds, accounts or subaccounts created for the benefit of such Other Subordinated Obligations;

17. To modify any of the provisions of the Resolution in any respect whatsoever, *provided that* (i) such modification shall be, and be expressed to be, effective only after all Obligations and/or Second Lien Obligations affected thereby and Outstanding at the date of the adoption of such Supplemental Resolution shall cease to be Outstanding and (ii) such Supplemental Resolution shall be specifically referred to in the text of all Obligations and/or Second Lien Obligations, as applicable, delivered on original issuance after the date of the adoption of such Supplemental Resolution and of the Obligations and Second Lien Obligations issued in exchange therefor or in place thereof;

18. To modify, amend or supplement the Resolution in any manner, not already provided for in or pursuant to the Supplemental Resolution authorizing the related Series of Obligations in order to provide for a Credit Facility, Qualified Swap, or other similar arrangement with respect to any Series of Obligations, under the Resolution, so long as the Issuer determines that such Supplemental Resolution does not materially adversely affect the right, security and interest of the Owners of Outstanding Obligations;

19. To modify, amend or supplement the Resolution in any manner, not already provided for in or pursuant to the Supplemental Resolution authorizing the related Series of Second Lien Obligations in order to provide for a Second Lien Obligation Credit Facility, Qualified Second Lien Swap, or other similar arrangement with respect to any Series of Second Lien Obligations, under the Resolution, so long as the Issuer determines that such Supplemental Resolution does not materially adversely affect the right, security and interest of the Second Lien Owners of Outstanding Second Lien Obligations;

20. To amend or modify any Supplemental Resolution authorizing Obligations of a Series or Second Lien Obligations of a Series to reflect the substitution of a new Credit Facility

for the Credit Facility then in effect or a new Second Lien Obligation Credit Facility for the Second Lien Obligation Credit Facility then in effect, as applicable; and

21. To close the Resolution against, or provide limitations and restrictions in addition to the limitations and restrictions contained in the Resolution on, the issuance and delivery of the Obligations or Second Lien Obligations, or the issuance or entering into of other evidences of indebtedness.

In making any determination under paragraph (9) of this Section 801, the Issuer may conclusively rely upon an Opinion of Counsel or opinions of other experts or professionals.

**Section 802. Supplemental Resolutions Effective With Consent of Owners of Obligations and Second Lien Owners of Second Lien Obligations.** At any time or from time to time, a Supplemental Resolution may be adopted subject to consent by Owners of Obligations and Second Lien Owners of Second Lien Obligations in accordance with and subject to the provisions of Article A-IX or Article B-VIII, which Supplemental Resolution, upon the filing with the Trustee and Second Lien Trustee of a copy thereof certified by an Authorized Officer of the Issuer and upon compliance with the provisions of said Article A-IX or Article B-VIII, shall become fully effective in accordance with its terms as provided in said Article A-IX or Article B-VIII.

**Section 803. General Provisions.**

1. The Resolution shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article VIII and Article A-IX and B-VIII hereof. Nothing contained in this Article VIII or in Article A-IX or B-IX shall affect or limit the right or obligation of the Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in the Resolution it is provided shall be delivered to said Fiduciary.

2. Any Supplemental Resolution referred to and permitted or authorized by Section 801 may be adopted by the Issuer without the consent of any of the Owners or Second Lien Owners, but shall become effective only on the conditions, to the extent and at the time provided in said Section. The copy of every Supplemental Resolution when filed with each of the Trustee and Second Lien Trustee shall be accompanied by a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Issuer and enforceable in accordance with its terms; *provided, however*, that the concurrent delivery of an Opinion of Bond Counsel required by Section A-201.2(a) or Section B-201.2(a), as applicable, shall satisfy this requirement.

No Supplemental Resolution shall change or modify any of the rights or obligations of any Fiduciary without its written consent.

**ANNEX A**  
**STANDARD RESOLUTION PROVISIONS**

**ANNEX B**

**SUPPLEMENTAL STANDARD RESOLUTION PROVISIONS**

EXHIBIT ONE

FORM OF OBLIGATIONS

THE BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF NEW YORK AND NEITHER THE STATE NOR THE CITY SHALL BE LIABLE THEREON.

*Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.*

*As provided in the Resolution referred to herein, until the termination of the system of book-entry-only transfers through DTC and notwithstanding any other provision of the Resolution to the contrary, a portion of the principal amount of this Bond may be paid or redeemed without surrender hereof to the Paying Agent. DTC or a nominee, transferee or assignee of DTC of this Bond may not rely upon the principal amount indicated hereon as the principal amount hereof outstanding and unpaid. The principal amount hereof outstanding and unpaid shall for all purposes be the amount determined in the manner provided in the Resolution.*

METROPOLITAN TRANSPORTATION AUTHORITY  
REGIONAL PAYROLL MOBILITY TAX BOND,  
SERIES \_\_\_\_\_

No. \_\_\_\_\_

\$

Interest Rate

Maturity Date

Dated Date

CUSIP

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_ Dollars

METROPOLITAN TRANSPORTATION AUTHORITY (herein called the "MTA"), a body corporate and politic constituting a public benefit corporation, organized and existing under and by virtue of the laws of the State of New York, acknowledges itself indebted to, and for value received hereby promises to pay to the Registered Owner stated above, or registered

assigns, on the Maturity Date set forth above, but solely from the Obligations Trust Estate defined below, upon presentation and surrender of this Bond at the office or agency of MTA designated for such payment in the Borough of Manhattan, City and State of New York, or, at the option of the Registered Owner hereof, at any other office or agency of MTA designated by the MTA for such payment, the Principal Amount set forth above in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and to pay to the Registered Owner hereof interest on such Principal Amount, such payment to be made by \_\_\_\_\_, as Paying Agent, from the Dated Date set forth above or such later date to which interest has been paid, at the Interest Rate per annum set forth above, payable on \_\_\_\_\_ and semi-annually thereafter on the \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ in each year, until the MTA's obligation with respect to the payment of such Principal Amount shall be discharged. Interest on the Series \_\_\_\_\_ Bonds shall be computed on the basis of a 360-day year consisting of 12 30-day months. Interest will be paid by check mailed on the interest payment date by the Paying Agent to the Registered Owner at his address as it appears on the registration records or, at the option of any Owner of at least one million dollars (\$1,000,000) in principal amount of the Series \_\_\_\_\_ Bonds, by wire transfer in immediately available funds on each interest payment date to such Owner, provided such Owner has notified the Trustee (as hereinafter defined) in writing of such Owner's wire transfer address (which shall be in the continental United States) at least 15 days prior to the relevant payment date. *In the event that any payment date is not a business day, payment will be made on the next business day with the same force and effect as if made on the nominal date provided in the Resolution and no interest shall accrue during the intervening period with respect to any payment so deferred.*

This bond is one of a duly authorized issue of obligations of the MTA designated as its "Regional Payroll Mobility Tax Obligations" (herein called the "Bonds") issued under and pursuant to the Metropolitan Transportation Authority Act, Title 11 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (herein called the "MTA Act"), and under and pursuant to a resolution of the MTA adopted on \_\_\_\_\_, 2014, entitled "Regional Payroll Mobility Tax Obligation Resolution", as supplemented. Said resolution, as supplemented and amended, is herein called the "Resolution". This Bond is one of a series of Bonds designated as "Regional Payroll Mobility Tax Bonds, Series \_\_\_\_\_" (herein called the "Series \_\_\_\_\_ Bonds"), issued in the aggregate principal amount of \$ \_\_\_\_\_ under said Resolution. All capitalized terms used but not otherwise defined have the respective meanings ascribed by the Resolution.

*Copies of the Resolution are on file at the office of the MTA and at the principal corporate trust office of \_\_\_\_\_, New York, New York, as Trustee under the Resolution, or its successor as Trustee (herein called the "Trustee"), in the Borough of Manhattan, City and State of New York, and reference to the Resolution and any and all supplements thereto and modifications and amendments thereof and to the MTA Act is hereby made for a complete description of the pledge and covenants securing the Series \_\_\_\_\_ Bonds, the nature, extent and manner of enforcement of, and limitations with respect to, such pledge, the rights and remedies of the registered owners of the Series \_\_\_\_\_ Bonds with respect thereto, and the terms and conditions upon which the Bonds are issued and Bonds may be issued thereunder.*



This Series \_\_\_\_ Bond is a special obligation of the MTA, secured by a pledge, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution, of all right, title and interest of the MTA in the "Obligations Trust Estate", being (i) the proceeds of the sale of the Obligations, (ii) the Pledged Amounts Account in the MTA Finance Fund, any money on deposit therein and any money received and held by the MTA which are required to be deposited therein and (iii) all Funds, Accounts and Subaccounts established by the Resolution (other than the Second Lien Obligations Proceeds Fund and the Second Lien Debt Service Fund and subject to specified provisions of the Resolution) including the investments, if any, thereof.

To the extent provided in the Resolution, Bonds may be issued from time to time pursuant to Supplemental Resolutions in one or more series, or subseries, in various principal amounts, may mature at different times, may bear interest at different rates and may otherwise vary as provided in the Resolution. The aggregate principal amount of Bonds which may be issued under the Resolution is not limited except as provided in the Resolution and the MTA Act, and all Bonds issued and to be issued under the Resolution are and will be equally secured by the pledge and covenants made therein, except as otherwise expressly provided or permitted in the Resolution.

The events specified in the Resolution as such shall constitute Obligations Events of Default and the Trustee and the Owners shall have the rights and remedies provided by the Resolution. Neither the Trustee nor the Owners of the Series \_\_ Bonds shall have the right to declare all of the Bonds to be immediately due and payable in the event of a default with respect to the Resolution or any of the Bonds.

To the extent provided in the Resolution, Parity Debt, secured on a parity with the Bonds with respect to all right, title and interest of the MTA in the Obligations Trust Estate may be issued or entered into by the MTA. The aggregate principal amount of Parity Debt which may be issued or entered into under the Resolution is not limited except as provided in the Resolution and the MTA Act.

To the extent and in the manner permitted by the terms of the Resolution, modification or amendment of the Resolution and of the rights and obligations of the MTA and of the Owners of the Bonds may be made by a Supplemental Resolution, in certain instances without the written consent of the Owners of the Bonds. Reference is made to the Resolution for the terms and provisions thereof relating to amendments and supplements.

The registration of this Bond is transferable, as provided in the Resolution, only upon the books of the MTA kept for that purpose at the above mentioned office of the Trustee by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Trustee, duly executed by the Registered Owner or his duly authorized attorney, and thereupon a new registered Series \_\_\_\_\_ Bond or Series \_\_\_\_\_ Bonds in the same aggregate principal amount, interest rate and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution, and upon payment of the charges therein prescribed. The MTA and each Fiduciary, including the Trustee and any Paying Agent, may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on

account of, the principal or Redemption Price hereof and interest due hereon and for all other purposes.

The Series \_\_\_\_\_ Bonds are issued by means of a book-entry-only system, with no physical distribution of bond certificates to be made except as provided in the Resolution. One or more bond certificates for each maturity, registered in the name of the Securities Depository Nominee, is being issued for deposit with the Securities Depository and immobilized in its custody. The book-entry-only system will evidence positions held in the Series \_\_\_\_\_ Bonds by the Securities Depository's participants; beneficial ownership of the Series \_\_\_\_\_ Bonds, in the principal amount of \$5,000 or any integral multiple thereof, shall be evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The MTA and the Trustee will recognize the Securities Depository Nominee, while the Registered Owner of this Bond, as the owner of this Bond for all purposes, including payments of principal of and Redemption Price and interest on this Bond, notices and voting. Transfers of principal, interest and any Redemption Price payments to participants of the Securities Depository will be the responsibility of the Securities Depository, and transfers of principal, interest and any Redemption Price payments to beneficial owners of the Series \_\_\_\_\_ Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. Neither the MTA nor the Trustee will be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its participants or persons acting through such participants. While the Securities Depository Nominee is the owner of this Bond, notwithstanding any provisions herein contained to the contrary, payments of principal of and Redemption Price and interest on this Bond shall be made in accordance with existing arrangements among the Trustee, the MTA and the Securities Depository. In the event the Series \_\_\_\_\_ Bonds are no longer held in book-entry-only form, the Series \_\_\_\_\_ Bonds would be issuable in the form of fully registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof.

The Series \_\_\_\_\_ Bonds maturing on \_\_\_\_\_ are subject to redemption, in part (in accordance with procedures of DTC, so long as DTC is the Owner, and otherwise by lot in such manner as the Trustee in its discretion deems fair and appropriate) on any \_\_\_\_\_ on and after \_\_\_\_\_ at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof, from mandatory Sinking Fund Installments that are required to be made in amounts sufficient to redeem on \_\_\_\_\_ of each year the principal amount of such Series \_\_\_\_\_ Bonds shown below:

	<u>Sinking Fund</u>
<u>Year</u>	<u>Installment</u>
first payment	
final maturity	

The Series \_\_\_\_\_ Bonds maturing on or after \_\_\_\_\_ are subject to redemption prior to maturity on any date on or after \_\_\_\_\_, at the option of MTA, in whole or in part on any date (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the Trustee in its discretion deems proper) at 100% of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date.

Either the State of New York or The City of New York may, upon furnishing sufficient funds therefor, require the MTA to redeem all or any portion of the Series \_\_\_\_\_ Bonds as provided in the MTA Act and the Resolution.

This Bond is payable upon redemption at the above mentioned office or agency of the MTA. So long as DTC is the securities depository for the Series \_\_\_\_\_ Bonds, the Trustee must mail redemption notices to DTC at least 20 days before the redemption date. If the Series \_\_\_\_\_ Bonds are not held in book-entry-only form, then the Trustee must mail redemption notices directly to bondholders within the same time frame. A redemption of the Series \_\_\_\_\_ Bonds is valid and effective even if DTC's procedures for notice should fail. Any notice of optional redemption may state that it is conditional upon receipt by the Trustee of money sufficient to pay the Redemption Price or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before the payment of the Redemption Price if any such condition so specified is not satisfied or if any such other event occurs. All redemptions are final - even if beneficial owners did not receive their notice, and even if that notice had a defect.

If the Trustee gives an unconditional notice of redemption, then on the redemption date the Series \_\_\_\_\_ Bonds called for redemption will become due and payable. If the Trustee gives a conditional notice of redemption and holds money to pay the redemption price of the affected Series \_\_\_\_\_ Bonds, then on the redemption date the Series \_\_\_\_\_ Bonds called for redemption will become due and payable. In either case, if on the redemption date the Trustee holds money to pay the Series \_\_\_\_\_ Bonds called for redemption, thereafter, no interest will accrue on those Series \_\_\_\_\_ Bonds, and a bondholder's only right will be to receive payment of the redemption price upon surrender of those Series \_\_\_\_\_ Bonds.

The MTA Act provides that neither the members of the MTA nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

It is hereby certified and recited that all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, exist, have happened and have been performed and that the issue of the Series \_\_\_\_\_ Bonds, together with all other indebtedness of the MTA, is within every debt and other limit prescribed by the laws of the State of New York.

This Bond shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Bond shall have been authenticated by the execution by the Trustee of the Trustee's Certificate of Authentication hereon.

IN WITNESS WHEREOF, METROPOLITAN TRANSPORTATION AUTHORITY has caused this Bond to be signed in its name and on its behalf by the manual or facsimile signature of its Authorized Officer as of the Dated Date.

METROPOLITAN TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Director, Finance and an Authorized  
Officer

# TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within-mentioned Resolution.

Date of Authentication: \_\_\_\_\_

\_\_\_\_\_, as Trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite name of undersigned transferor)

---

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF TRANSFEREE

---

(Please print or typewrite name and address, including zip code, of transferee)

the within mentioned Bond and hereby irrevocably constitutes and appoints

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attorney-in-fact, to transfer the within Bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** The signature must be guaranteed by an officer of a commercial bank, trust company, or a member of the New York Stock Exchange or other national securities exchange. Notarized or witnessed signatures not acceptable.

**NOTICE:** The signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement, or any change whatsoever.

Signature Guaranteed:

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EXHIBIT TWO

FORM OF SECOND LIEN OBLIGATIONS

THE BONDS SHALL NOT BE A DEBT OF THE STATE OF NEW YORK OR THE CITY OF NEW YORK AND NEITHER THE STATE NOR THE CITY SHALL BE LIABLE THEREON.

*Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration of transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or such other name as requested by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.*

*As provided in the Resolution referred to herein, until the termination of the system of book-entry-only transfers through DTC and notwithstanding any other provision of the Resolution to the contrary, a portion of the principal amount of this Bond may be paid or redeemed without surrender hereof to the Paying Agent. DTC or a nominee, transferee or assignee of DTC of this Bond may not rely upon the principal amount indicated hereon as the principal amount hereof outstanding and unpaid. The principal amount hereof outstanding and unpaid shall for all purposes be the amount determined in the manner provided in the Resolution.*

METROPOLITAN TRANSPORTATION AUTHORITY  
REGIONAL PAYROLL MOBILITY TAX SECOND LIEN BOND,  
SERIES \_\_\_\_\_

No. \_\_\_\_\_

\$

Interest Rate

Maturity Date

Dated Date

CUSIP

Registered Owner: Cede & Co.

Principal Amount: \_\_\_\_\_ Dollars

METROPOLITAN TRANSPORTATION AUTHORITY (herein called the "MTA"), a body corporate and politic constituting a public benefit corporation, organized and existing under and by virtue of the laws of the State of New York, acknowledges itself indebted to, and for value received hereby promises to pay to the Registered Owner stated above, or registered

assigns, on the Maturity Date set forth above, but solely from the Second Lien Obligations Trust Estate defined below, upon presentation and surrender of this Bond at the office or agency of MTA designated for such payment in the Borough of Manhattan, City and State of New York, or, at the option of the Registered Owner hereof, at any other office or agency of MTA designated by the MTA for such payment, the Principal Amount set forth above in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts, and to pay to the Registered Owner hereof interest on such Principal Amount, such payment to be made by \_\_\_\_\_, as Paying Agent, from the Dated Date set forth above or such later date to which interest has been paid, at the Interest Rate per annum set forth above, payable on \_\_\_\_\_ and semi-annually thereafter on the \_\_\_\_\_ day of \_\_\_\_\_ and \_\_\_\_\_ in each year, until the MTA's obligation with respect to the payment of such Principal Amount shall be discharged. Interest on the Series \_\_\_\_\_ Bonds shall be computed on the basis of a 360-day year consisting of 12 30-day months. Interest will be paid by check mailed on the interest payment date by the Second Lien Paying Agent to the Registered Owner at his address as it appears on the registration records or, at the option of any Owner of at least one million dollars (\$1,000,000) in principal amount of the Series \_\_\_\_\_ Bonds, by wire transfer in immediately available funds on each interest payment date to such Second Lien Owner, provided such Second Lien Owner has notified the Second Lien Trustee (as hereinafter defined) in writing of such Second Lien Owner's wire transfer address (which shall be in the continental United States) at least 15 days prior to the relevant payment date. *In the event that any payment date is not a business day, payment will be made on the next business day with the same force and effect as if made on the nominal date provided in the Resolution and no interest shall accrue during the intervening period with respect to any payment so deferred.*

This bond is one of a duly authorized issue of obligations of the MTA designated as its "Regional Payroll Mobility Tax Second Lien Obligations" (herein called the "Bonds") issued under and pursuant to the Metropolitan Transportation Authority Act, Title 11 of Article 5 of the Public Authorities Law, Chapter 43-A of the Consolidated Laws of the State of New York, as amended (herein called the "MTA Act"), and under and pursuant to a resolution of the MTA adopted on \_\_\_\_\_, 2014, entitled "Regional Payroll Mobility Tax Obligation Resolution", as supplemented. Said resolution, as supplemented and amended, is herein called the "Resolution". This Bond is one of a series of Bonds designated as "Regional Payroll Mobility Tax Second Lien Bonds, Series \_\_\_\_\_" (herein called the "Series \_\_\_\_\_ Bonds"), issued in the aggregate principal amount of \$\_\_\_\_\_ under said Resolution. All capitalized terms used but not otherwise defined have the respective meanings ascribed by the Resolution.

*Copies of the Resolution are on file at the office of the MTA and at the principal corporate trust office of \_\_\_\_\_, New York, New York, as Second Lien Trustee under the Resolution, or its successor as Trustee (herein called the "Second Lien Trustee"), in the Borough of Manhattan, City and State of New York, and reference to the Resolution and any and all supplements thereto and modifications and amendments thereof and to the MTA Act is hereby made for a complete description of the pledge and covenants securing the Series \_\_\_\_\_ Bonds, the nature, extent and manner of enforcement of, and limitations with respect to, such pledge, the rights and remedies of the registered owners of the Series \_\_\_\_\_ Bonds with respect thereto, and the terms and conditions upon which Second Lien Bonds are issued and Second Lien Bonds may be issued thereunder.*



This Bond is a special obligation of the MTA, secured by a pledge, subject only to the provisions of the Resolution permitting the application thereof for the purposes and on the terms and conditions set forth in the Resolution, of all right, title and interest of the MTA in the "Second Lien Obligations Trust Estate", being (i) the proceeds of the sale of the Second Lien Obligations, (ii) the Pledged Amounts Account in the MTA Finance Fund, any money on deposit therein and any money received and held by the MTA which is required to be deposited therein and (iii) the Second Lien Obligations Proceeds Fund and the Second Lien Debt Service Fund established by the Resolution (subject to specified provisions of the Resolution) including the investments, if any, thereof. *Any lien on and pledge of any portion of the Second Lien Obligations Trust Estate securing Second Lien Obligations is, and is hereby expressly declared to be, junior and inferior to the lien on and pledge of the Obligations Trust Estate created in the Resolution for the payment of the Obligations and Parity Debt.*

To the extent provided in the Resolution, the Second Lien Bonds may be issued from time to time pursuant to Supplemental Resolutions in one or more series, or subseries, in various principal amounts, may mature at different times, may bear interest at different rates and may otherwise vary as provided in the Resolution. The aggregate principal amount of Second Lien Bonds which may be issued under the Resolution is not limited except as provided in the Resolution and the MTA Act, and all Second Lien Bonds issued and to be issued under the Resolution are and will be equally secured by the pledge and covenants made therein, except as otherwise expressly provided or permitted in the Resolution.

The events specified in the Resolution as such shall constitute Second Lien Obligations Events of Default and the Second Lien Trustee and the Second Lien Owners shall have the rights and remedies provided by the Resolution. Neither the Second Lien Trustee nor the Second Lien Owners of the Bonds shall have the right to declare all of the Bonds to be immediately due and payable in the event of a default with respect to the Resolution or any of the Bonds.

To the extent and in the manner permitted by the terms of the Resolution, modification or amendment of the Resolution and of the rights and obligations of the MTA and of the Second Lien Owners of the Bonds may be made by a Supplemental Resolution, in certain instances without the written consent of the Second Lien Owners of the Bonds. Reference is made to the Resolution for the terms and provisions thereof relating to amendments and supplements.

The registration of this Bond is transferable, as provided in the Resolution, only upon the books of the MTA kept for that purpose at the above mentioned office of the Second Lien Trustee by the Registered Owner hereof in person, or by his attorney duly authorized in writing, upon surrender of this Bond together with a written instrument of transfer satisfactory to the Second Lien Trustee, duly executed by the Registered Owner or his duly authorized attorney, and thereupon a new registered Series \_\_\_\_\_ Bond or Series \_\_\_\_\_ Bonds in the same aggregate principal amount, interest rate and maturity shall be issued to the transferee in exchange therefor as provided in the Resolution, and upon payment of the charges therein prescribed. The MTA and each Fiduciary, including the Second Lien Trustee and any Second Lien Paying Agent, may deem and treat the person in whose name this Bond is registered as the absolute owner hereof for the purpose of receiving payment of, or on account of, the principal or Second Lien Redemption Price hereof and interest due hereon and for all other purposes.

The Series \_\_\_\_\_ Bonds are issued by means of a book-entry-only system, with no physical distribution of bond certificates to be made except as provided in the Resolution. One or more bond certificates for each maturity, registered in the name of the Securities Depository Nominee, is being issued for deposit with the Securities Depository and immobilized in its custody. The book-entry-only system will evidence positions held in the Series \_\_\_\_\_ Bonds by the Securities Depository's participants; beneficial ownership of the Series \_\_\_\_\_ Bonds, in the principal amount of \$5,000 or any integral multiple thereof, shall be evidenced in the records of such participants. Transfers of ownership shall be effected on the records of the Securities Depository and its participants pursuant to rules and procedures established by the Securities Depository and its participants. The MTA and the Second Lien Trustee will recognize the Securities Depository Nominee, while the Registered Owner of this Bond, as the Second Lien Owner of this Bond for all purposes, including payments of principal of and Second Lien Redemption Price and interest on this Bond, notices and voting. Transfers of principal, interest and any Second Lien Redemption Price payments to participants of the Securities Depository will be the responsibility of the Securities Depository, and transfers of principal, interest and any Second Lien Redemption Price payments to beneficial owners of the Series \_\_\_\_\_ Bonds by participants of the Securities Depository will be the responsibility of such participants and other nominees of such beneficial owners. Neither the MTA nor the Second Lien Trustee will be responsible or liable for such transfers of payments or for maintaining, supervising or reviewing the records maintained by the Securities Depository, the Securities Depository Nominee, its participants or persons acting through such participants. While the Securities Depository Nominee is the Second Lien Owner of this Bond, notwithstanding any provisions herein contained to the contrary, payments of principal of and Second Lien Redemption Price and interest on this Bond shall be made in accordance with existing arrangements among the Second Lien Trustee, the MTA and the Securities Depository. In the event the Series \_\_\_\_\_ Bonds are no longer held in book-entry-only form, the Series \_\_\_\_\_ Bonds would be issuable in the form of fully registered Bonds without coupons in the denomination of \$5,000 or any integral multiple thereof.

The Series \_\_\_\_\_ Bonds maturing on \_\_\_\_\_ are subject to redemption, in part (in accordance with procedures of DTC, so long as DTC is the Second Lien Owner, and otherwise by lot in such manner as the Second Lien Trustee in its discretion deems fair and appropriate) on any \_\_\_\_\_ on and after \_\_\_\_\_ at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof, from mandatory Second Lien Sinking Fund Installments that are required to be made in amounts sufficient to redeem on \_\_\_\_\_ of each year the principal amount of such Series \_\_\_\_\_ Bonds shown below:

<u>Year</u>	<u>Second Lien Sinking Fund Installment</u>
first payment	
final maturity	

The Series \_\_\_\_\_ Bonds maturing on or after \_\_\_\_\_ are subject to redemption prior to maturity on any date on or after \_\_\_\_\_, at the option of MTA, in whole or in part on any date (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the Second Lien Trustee in its discretion deems proper) at 100% of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date.

Either the State of New York or The City of New York may, upon furnishing sufficient funds therefor, require the MTA to redeem all or any portion of the Series \_\_\_\_\_ Bonds as provided in the MTA Act and the Resolution.

This Bond is payable upon redemption at the above mentioned office or agency of the MTA. So long as DTC is the securities depository for the Series \_\_\_\_\_ Bonds, the Trustee must mail redemption notices to DTC at least 20 days before the redemption date. If the Series \_\_\_\_\_ Bonds are not held in book-entry-only form, then the Trustee must mail redemption notices directly to bondholders within the same time frame. A redemption of the Series \_\_\_\_\_ Bonds is valid and effective even if DTC's procedures for notice should fail. Any notice of optional redemption may state that it is conditional upon receipt by the Trustee of money sufficient to pay the Redemption Price or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before the payment of the Redemption Price if any such condition so specified is not satisfied or if any such other event occurs. All redemptions are final - even if beneficial owners did not receive their notice, and even if that notice had a defect.

If the Trustee gives an unconditional notice of redemption, then on the redemption date the Series \_\_\_\_\_ Bonds called for redemption will become due and payable. If the Trustee gives a conditional notice of redemption and holds money to pay the redemption price of the affected Series \_\_\_\_\_ Bonds, then on the redemption date the Series \_\_\_\_\_ Bonds called for redemption will become due and payable. In either case, if on the redemption date the Trustee holds money to pay the Series \_\_\_\_\_ Bonds called for redemption, thereafter, no interest will accrue on those Series \_\_\_\_\_ Bonds, and a bondholder's only right will be to receive payment of the redemption price upon surrender of those Series \_\_\_\_\_ Bonds.

The MTA Act provides that neither the members of the MTA nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

It is hereby certified and recited that all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in the issuance of this Bond, exist, have happened and have been performed and that the issue of the Series \_\_\_\_\_ Bonds, together with all other indebtedness of the MTA, is within every debt and other limit prescribed by the laws of the State of New York.

This Bond shall not be entitled to any benefit under the Resolution or be valid or become obligatory for any purpose until this Bond shall have been authenticated by the execution by the Second Lien Trustee of the Second Lien Trustee's Certificate of Authentication hereon.

IN WITNESS WHEREOF, METROPOLITAN TRANSPORTATION  
AUTHORITY has caused this Bond to be signed in its name and on its behalf by the manual or  
facsimile signature of its Authorized Officer as of the Dated Date.

METROPOLITAN TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
Director, Finance an Authorized Officer

SECOND LIEN TRUSTEE'S CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds described in the within mentioned Resolution.

Date of Authentication: \_\_\_\_\_

\_\_\_\_\_,  
as Second Lien Trustee

By: \_\_\_\_\_  
Authorized Signatory

## ASSIGNMENT

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto

---

(Please print or typewrite name of undersigned transferor)

---

PLEASE INSERT SOCIAL SECURITY OR OTHER TAX IDENTIFYING NUMBER OF  
TRANSFeree

---

(Please print or typewrite name and address, including zip code, of transferee)

the within-mentioned Bond and hereby irrevocably constitutes and appoints

---

attorney-in-fact, to transfer the within Bond on the books kept for registration thereof, with full  
power of substitution in the premises.

Dated: \_\_\_\_\_

**NOTICE:** The signature must be guaranteed  
by an officer of a commercial bank, trust  
company, or a member of the New York  
Stock Exchange or other national securities  
exchange. Notarized or witnessed signatures  
not acceptable.

**NOTICE:** The signature to this assignment  
must correspond with the name as it appears  
upon the face of the within bond in every  
particular, without alteration or enlargement,  
or any change whatsoever.

Signature Guaranteed:

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**STANDARD RESOLUTION PROVISIONS**

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## STANDARD RESOLUTION PROVISIONS

### ARTICLE A-I

#### DEFINITIONS AND STATUTORY AUTHORITY

**Section A-101. Definitions.** Capitalized terms used but not otherwise defined in this Annex A shall have the meanings set forth in the Resolution to which this Annex A is appended. The following terms shall, for all purposes herein and (except as the context may otherwise require) in the Resolution to which this Annex A is appended, have the following meanings:

**Account or Accounts** shall mean each account or all of the accounts established in Article V of the Resolution.

**Accreted Value** shall mean with respect to any Capital Appreciation Obligations (i) as of any Valuation Date, the amount set forth for such date in the Supplemental Resolution authorizing such Capital Appreciation Obligations and (ii) as of any date other than a Valuation Date, the sum of (a) the Accreted Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date and (2) the difference between the Accreted Values for such Valuation Dates. For purposes of this definition, the number of days having elapsed from the preceding Valuation Date and the number of days from the preceding Valuation Date to the next succeeding Valuation Date shall be calculated on the basis of a 360-day year of 12 30-day months, unless otherwise provided pursuant to a Supplemental Resolution.

**Accrued Debt Service** shall mean, as of any date of calculation, an amount equal to the sum of the amounts of accrued and unpaid Debt Service with respect to all Obligations and Parity Debt, calculating the accrued Debt Service with respect to each obligation at an amount equal to the sum of (i) as estimated by an Authorized Officer, interest on the Obligations and interest components of Parity Debt accrued and unpaid and to accrue to the end of the then current calendar month, and (ii) Principal Installments due and unpaid and that portion of the Principal Installment for such Obligations and Parity Debt next due which would have accrued (if deemed to accrue in the manner set forth in the definition of "Debt Service") to the end of such calendar month. For purposes of calculating Debt Service Fund deposits, Principal Installments shall not include amounts that an Authorized Officer has notified the Trustee are to be paid from sources other than Revenues, nor shall Accrued Debt Service include any amounts that, as certified by an Authorized Officer, have been set aside hereunder or otherwise in trust for the payment thereof.

**Amortized Value**, when used with respect to Authorized Investments purchased at a premium above or a discount below par, shall mean the value of such Authorized Investments computed by using an industry standard constant yield method selected by an Authorized Officer of the Issuer.

**Appreciated Value** shall mean with respect to any Deferred Income Obligations (i) as of any Valuation Date, the amount set forth for such date in the Supplemental Resolution authorizing such Deferred Income Obligations, (ii) as of any date prior to the Interest Commencement Date other than a Valuation Date, the sum of (a) the Appreciated Value on the preceding Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Valuation Date and the denominator of which is the number of days from such preceding Valuation Date to the next succeeding Valuation Date and (2) the difference between the Appreciated Values for such Valuation Dates, and (iii) as of any date on and after the Interest Commencement Date, the Appreciated Value on the Interest Commencement Date. For purposes of this definition, the number of days having elapsed from the preceding Valuation Date and the number of days from the preceding Valuation Date to the next succeeding Valuation Date shall be calculated on the basis of a 360-day year of 12 30-day months, unless otherwise provided pursuant to a Supplemental Resolution.

**Authorized Investments** shall mean and include any of the following, to the extent the same are legal for investment of the Issuer's funds:

- (i) obligations of the State or the United States government;
- (ii) obligations the timely payment of the principal and interest on which are unconditionally guaranteed by the State or the United States government;
- (iii) certificates of deposit of banks or trust companies in the State, secured, if the Issuer shall so require, by obligations of the United States or of the State of a market value equal at all times to the amount of the deposit;
- (iv) banker's acceptances with a maturity of 90 days or less which are eligible for purchase by the federal reserve banks and whose rating at the time of purchase is in the highest Rating Category of each of the Rating Agencies that then rates such banker's acceptances;
- (v) obligations of any bank or corporation created under the laws of either the United States or any state of the United States maturing within 270 days, provided that such obligations are rated in the highest Rating Category of each of the Rating Agencies that then rates such obligations;
- (vi) notes, bonds, debentures, mortgages and other evidences of indebtedness, issued or guaranteed at the time of the investment by the United States Postal Service, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Student Loan Marketing Association, the Federal Farm Credit System, or any other United States government sponsored agency, provided that at the time of the investment such agency or its obligations are rated and the agency receives, or its obligations receive, ratings in the highest Rating Category of each of the Rating Agencies that then rates such agency or its obligations;
- (vii) (A) general obligation bonds and notes of any state other than the State, provided that such bonds and notes are rated in the highest Rating Category of each of the Rating Agencies that then rates such bonds and notes, and (B) bonds and notes of

any county, town, city, village, fire district or school district of the State, provided that such bonds and notes are rated in either of the 2 highest Rating Categories of each of the Rating Agencies that then rates such bonds and notes;

- (viii) mutual funds registered with the United States Securities and Exchange Commission, whose investments are limited to obligations of the State described in clause (i) above, obligations the principal and interest of which are guaranteed by the State as described in clause (ii) above, and those securities described in clause (vii) above, and that are rated in the highest Rating Category of each of the Rating Agencies that then rates such funds;
- (ix) repurchase agreements with any dealer or bank, which agreement is secured by any one or more of the securities described in clauses (i), (ii) or (vi) above, which securities shall (A) at all times have a market value of not less than the full amount held or invested pursuant to the agreement and (B) be delivered to a Bank as defined in clause (i) or (ii) of the definition thereof, as custodian, that is independent from the dealer or bank with whom the repurchase agreement is executed; and
- (x) any other investment in which the Issuer is authorized from time to time to invest under applicable law with respect to which an Authorized Officer has, on or before the date thereof, delivered to the Trustee (A) a certificate to the Trustee designating the additional investment as an Authorized Investment and (B) Rating Confirmation.

In addition to the foregoing, in the case of any money held in reserve and sinking funds "Authorized Investments" shall include any other securities in which the trustee or trustees of any public retirement system or pension fund has the power to invest the money thereof pursuant to Article four-a of the Retirement and Social Security Law of the State. each such reserve and sinking fund being treated as a separate fund for the purposes of Article four-a of the Retirement and Social Security Law of the State.

Any investment in any of the foregoing obligations may be made in the form of an entry made on the records of the issuer of the particular obligations or of a recognized securities depository.

**Authorized Officer** shall mean (i) the Chairman and the Vice Chairman, (ii) the Executive Director, the Comptroller, the Chief Financial Officer, the Secretary and any Assistant Secretary of the Issuer, (iii) the Chief Financial Officer, the Director of Finance, and the Director of Budget and Financial Management of the MTA, and (iv) any other Person authorized by the Issuer to perform the act or sign the document in question.

**Bank** shall mean any (i) bank or trust company organized under the laws of any A: to of the United States of America, (ii) national banking association, (iii) savings bank or savings and loan association chartered or organized under the laws of any state of the United States of America, or (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law, or domestic branch or agency of a foreign bank which branch or

agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America.

**Business Day** shall mean any day of the year other than (i) Saturday or Sunday, (ii) any day on which Banks located in New York, New York or the city in which the Principal Office of the Trustee is located are required or authorized by law to remain closed, or (iii) any day on which the New York Stock Exchange is closed.

**Calculated Debt Service** for any period shall mean, as of any date of calculation and with respect to any Series of Obligations or any Parity Debt, the sum of Debt Service for such period determined by the Issuer based on the following adjustments:

(1) Interest on Variable Interest Rate Obligations shall be based on the Estimated Average Interest Rate applicable thereto.

(2) Interest on any **Obligation or Parity Debt** in respect of which the Issuer has entered into a **Qualified Swap** shall be based on:

(a) the fixed rate or rates of the Qualified Swap if the Issuer has entered into what is generally referred to as a **"floating-to-fixed"** Qualified Swap (where the Issuer pays a fixed rate and receives a floating rate); or

(b) the lower of (i) the Estimated Average Interest Rate and (ii) the effective capped rate of any Obligation or Parity Debt if the Issuer has entered into a Qualified Swap that is generally referred to as an **"interest rate cap"** (where the Issuer receives a payment if a variable rate exceeds a certain amount); or

(c) the Estimated Average Interest Rate of the Qualified Swap if the Issuer has entered into either what is generally referred to as a **"fixed-to-floating"** Qualified Swap (where the Issuer pays a variable rate and receives a fixed rate) or a **"floating-to-floating"** Qualified Swap (where the Issuer pays a variable rate and receives a different variable rate).

(3) With respect to **Put Obligations** and any Obligations of a Series the interest on which is payable periodically and at least twenty-five per centum (25%) of the original principal amount of which is stated to mature at one time and for which maturing principal amount amortization requirements have not been designated, (i) Principal Installments shall be deemed to amortize over a 30-year period from their date of issuance (or any shorter period provided by Supplemental Resolution) based on substantially level debt service as estimated by the Issuer, and (ii) interest shall be based on the actual interest rate or the Estimated Average Interest Rate, as applicable.

(4) If the Issuer has **irrevocably deposited Authorized Investments or money** with the Trustee (or otherwise in trust) for the payment of any portion of Debt Service, the expected future cash flow from such Authorized Investments and money shall be deducted from Debt Service.

(5) If the Issuer has, at any time, **irrevocably called for redemption** one or more Series of Obligations, including pursuant to a covenant to apply any portion of the

Trust Estate to redeem Obligations or Parity Debt (which particular Obligations or Parity Debt need not be specifically identified in advance, except as to interest rate and maturity), the Issuer shall take into account such redemption for purposes of determining Calculated Debt Service.

(6) With respect to **Parity Reimbursement Obligations**, accelerated payments of principal shall only be taken into account if, at the time of calculation, such amounts are payable due to a draw under a credit or liquidity facility.

**Capital Appreciation Obligations** shall mean any Obligations denominated as such and issued as to which interest is payable only at the maturity or prior redemption of such Obligations. Except as otherwise provided by Supplemental Resolution, for the purposes of (i) receiving payment of the Redemption Price if a Capital Appreciation Obligation is redeemed prior to maturity, (ii) computing the principal amount of Obligations held by the registered owner of a Capital Appreciation Obligation in giving to the Issuer or the Trustee any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever or (iii) computing Debt Service, the principal amount of a Capital Appreciation Obligation shall be deemed to be its Accreted Value (which in the case of clause (ii) may be the Accreted Value as of the immediately preceding Valuation Date).

**Certificate of Determination** shall mean a certificate of an Authorized Officer of the Issuer fixing terms, conditions and other details of Obligations, Parity Debt, Credit Facilities, Subordinated Indebtedness or Subordinated Contract Obligations in accordance with the delegation of power to do so under a Supplemental Resolution.

**City** shall mean The City of New York.

**Costs of Issuance** shall mean the costs of the authorization, sale and issuance of a Series of Obligations, Obligation Anticipation Notes, Subordinated Indebtedness, Parity Debt, Subordinated Contract Obligations or other obligations authorized under the Resolution, including with respect to any party to a transaction State bond issuance charges, document printing and reproduction costs, filing and recording fees, costs of credit ratings, fees and charges of the Trustee and other Fiduciaries and agents, legal fees and charges, professional consultants' fees, underwriting fees, fees and charges for execution, transportation and safekeeping of Obligations, premiums, fees and charges in order to obtain, renew, extend or terminate Credit Facilities and Qualified Swaps and other financial arrangements, costs and expenses of refunding such Obligations, Obligation Anticipation Notes, Subordinated Indebtedness, Parity Debt, Subordinated Contract Obligations or other obligations authorized under this Resolution, and other costs, charges and fees, including those of the Issuer and any other Related Entities, in connection with the foregoing.

**Counsel's Opinion or Opinion of Counsel or Opinion** shall mean an opinion signed by an attorney or firm of attorneys of recognized standing (who may be counsel to the Issuer) selected by the Issuer.

**Credit Facility** shall mean any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement

relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Issuer and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Outstanding Obligations, Parity Debt or Obligation Anticipation Notes.

**Debt Service** for any period shall mean, as of any date of calculation and with respect to any Series of Obligations or any Parity Debt outstanding, the sum of: (i) interest on the Obligations of such Series and the interest components of Parity Debt accruing during such period and (ii) that portion of each Principal Installment for such Obligations and Parity Debt that would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the preceding Principal Installment payment date on Outstanding Obligations and Parity Debt; provided, however, that, unless otherwise set forth in a Supplemental Resolution, no Principal Installment shall be deemed to begin accruing until the later of one year prior to such Principal Installment's due date and the date of issuance or incurrence of the related Obligation or Parity Debt.

**Debt Service Payment Date** shall mean, with respect to any portion of Debt Service, the date on which the Debt Service shall be payable.

**Defeasance Security** shall mean

(a) an Authorized Investment as specified in clause (i) of the definition thereof (other than an obligation of the State), which is not redeemable at the option of the issuer thereof,

(b) an Authorized Investment as specified in clause (i) (which is an obligation of the State), (ii), (iii), (vi) or (vii) of the definition thereof, which is not redeemable at the option of the issuer thereof and which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency,

(c) any depositary receipt issued by a Bank as custodian with respect to any Defeasance Security which is specified in clause (a) above and held by such Bank for the account of the holder of such depositary receipt. or with respect to any specific payment of principal of or interest on any such Defeasance Security which is so specified and held.

provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Defeasance Security or the specific payment of principal or interest evidenced by such depositary receipt,

(d) any certificate of deposit specified in clause (iii) of the definition of Authorized Investments in Section A-101, including certificates of deposit issued by the Trustee or by a Paying Agent, secured by obligations specified in clause (a) above of a market value equal at all times to the amount of the deposit, which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency, or

(e) any other Authorized Investment designated in a Supplemental Resolution as a Defeasance Security for purposes of defeasing the Obligations authorized by such Supplemental



Resolution, which is not redeemable at the option of the issuer thereof and which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency.

**Deferred Income Obligation** shall mean any Obligation (A) as to which interest accruing thereon prior to the Interest Commencement Date of such Obligation is (i) compounded on each Valuation Date for such Deferred Income Obligation and (ii) payable only at the maturity or prior redemption of such Obligations and (B) as to which interest accruing after the Interest Commencement Date is payable on the first interest payment date succeeding the Interest Commencement Date and periodically thereafter on the dates specified in or determined by Supplemental Resolution. Except as otherwise provided by Supplemental Resolution, for the purposes of (i) receiving payment of the Redemption Price if a Deferred Income Obligation is redeemed prior to maturity, (ii) computing the principal amount of Obligations held by the registered owner of a Deferred Income Obligation in giving to the Issuer or the Trustee any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever or (iii) computing Debt Service, the principal amount of a Deferred Income Obligation shall be deemed to be its Appreciated Value (which in the case of clause (ii) may be the Appreciated Value as of the immediately preceding Valuation Date).

**Estimated Average Interest Rate** shall mean, as to any Variable Interest Rate Obligations or Qualified Swap and as of any date of calculation, the average interest rate or rates anticipated to be borne by such Obligations or Qualified Swap, or by the combination of such arrangements, over the period or periods for which such rate or rates are anticipated to be in effect, all as estimated by an Authorized Officer.

**Fiduciary or Fiduciaries** shall mean the Trustee, any Registrar, any Paying Agent, any tender agent or any or all of them, as may be appropriate, or any Person appointed to act as a Fiduciary as provided in the Resolution.

**Final Judgment** shall mean any judgment or order of any court of competent jurisdiction, or of any arbitrator or panel of arbitrators, as to which all appeals have been exhausted.

**Fund or Funds** shall mean each fund or all of the funds established in or pursuant to Article V of the Resolution.

**Interest Commencement Date** shall mean, with respect to any particular Deferred Income Obligation, the date determined by Supplemental Resolution after which interest accruing on such Obligation shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Resolution.

**Issuer Act** shall mean the MTA Act in the event that the MTA is defined in the Resolution as the Issuer or the TBTA Act in the event that the TBTA is defined in the Resolution as the Issuer, together with any other applicable law of the State authorizing the issuance of the related Obligations by the Issuer or expressly limiting the issuance thereof or governing the security therefor.

**LIRR** shall mean The Long Island Rail Road Company and any successor thereto.

**MaBSTOA** shall mean the Manhattan and Bronx Surface Transit Operating Authority and any successor thereto.

**MNCRC** shall mean the Metro-North Commuter Railroad Company and any successor thereto.

**MSBA** shall mean the Metropolitan Suburban Bus Authority and any successor thereto.

**MTA** shall mean the Metropolitan Transportation Authority, the corporation organized and existing under the MTA Act, and any successor thereto.

**MTA Act** shall mean the Metropolitan Transportation Authority Act, being Title 11 of Article 5 of the New York Public Authorities Law, as from time to time amended.

**Obligation Anticipation Notes** shall mean any such notes issued and delivered pursuant to Section A-203, except to the extent (but only to the extent) that all or any portion of such notes either are not payable, or are anticipated by the Issuer not to be paid, from the proceeds of the Obligations in anticipation of which such notes are being issued.

**Opinion of Bond Counsel** shall mean an opinion signed by Hawkins, Delafield & Wood or any other attorney or firm of attorneys of nationally recognized standing in the field of law relating to the issuance of obligations by state and municipal entities, selected by the Issuer.

**Outstanding**, when used with reference to Obligations or Obligations of a Series, shall mean, as of any date, Obligations or Obligations of such Series theretofore or thereupon to be delivered under the Resolution except:

- (i) Any Obligations canceled at or prior to such date;
- (ii) Obligations the principal and Redemption Price, if any, of and interest on which have been paid in accordance with the terms thereof;
- (iii) Obligations in lieu of or in substitution for which other Obligations shall have been delivered pursuant to Article A-III or Section A-406 or Section A-905;
- (iv) Obligations deemed to have been paid as provided in subsection 2 of Section A-1101;
- (v) Put Obligations tendered or deemed tendered in accordance with the provisions of the Supplemental Resolution authorizing such Obligations on the applicable tender date, if the Purchase Price thereof and interest thereon shall have been paid or amounts are available and set aside for such payment as provided in such Supplemental Resolution, except to the extent such tendered Put Obligations thereafter may be resold pursuant to the terms thereof and of such Supplemental Resolution; and

- (vi) For the purpose of any consent to be given or other action to be taken by or upon the direction of Owners of a specified portion of Obligations Outstanding, Obligations excluded pursuant to Section A-1111.

The principal component of any Parity Debt shall be deemed to be Outstanding in a principal amount equal to the principal amount of the obligation then owed by the Issuer thereunder in lieu of the related Obligation, regardless of the authorized amount of the principal component of such Parity Debt or the related Obligation and provided that, unless otherwise required pursuant to the related Supplemental Resolution, the principal component of such Parity Debt shall not by itself increase the Outstanding principal amount of Obligations.

**Owner**, or any similar terms, shall mean the registered owner of any Obligation as shown on the books for the registration and transfer of Obligations maintained in accordance with Section A-305.

**Parity Debt** shall mean any Parity Reimbursement Obligation, any Parity Swap Obligation or any other contract, agreement or other obligation of the Issuer designated as constituting "Parity Debt" in a certificate of an Authorized Officer delivered to the Trustee; provided, however, that any such Parity Reimbursement Obligation, Parity Swap Obligation, or other contract, agreement or other obligation shall not constitute Parity Debt solely to the extent of any obligations to pay termination or other fees, expenses, indemnification or other similar payments to the counterparty to such arrangement; provided further that Parity Reimbursement Obligations may include accelerated principal amortization provisions to the extent permitted by subsection 4 of Section A-202.

**Parity Reimbursement Obligation** has the meaning provided in subsection 4 of Section A-202.

**Parity Swap Obligation** has the meaning provided in subsection 6 of Section A-202.

**Paying Agent** shall mean any paying agent for the Obligations of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

**Person** shall mean any individual, corporation, firm, partnership, joint venture, association, joint-stock company, trust, unincorporated association, limited liability company or other legal entity or group of entities, including any public benefit corporation, public instrumentality, quasi-governmental or governmental entity or any agency or subdivision thereof.

**Pre-existing Indebtedness** shall mean any bonds, notes or other obligations of the Issuer or any Related Entity that are issued or incurred under an authorizing resolution or other document in effect prior to the date of issuance of the initial Series of Obligations under the Resolution, including any Prior Lien Obligations.

**Principal Installments** shall mean, as of any date of calculation and with respect to any Series of Obligations or any Parity Debt, as applicable, (a) the principal amount of Outstanding Obligations of such Series, due on the dates and in the amounts specified by Supplemental

Resolution, reduced by the principal amount of such Obligations which would be retired by reason of the payment when due and application in accordance with the Resolution of Sinking Fund Installments payable before such dates, plus the unsatisfied balance (determined as provided in Section A-502 of the Resolution) of any Sinking Fund Installments due on any certain future date for Obligations of such Series, together with such redemption premiums, if any, applicable on any such future date, and (b) with respect to any Parity Debt, the amount due thereunder on the dates and in the amounts established in accordance with Section A-202 as a principal component of such Parity Debt payable on a parity with the Obligations.

**Principal Office of the Trustee** shall mean the designated corporate trust office of the Trustee.

**Purchase Price** shall mean, with respect to any Obligation, 100% of the principal amount thereof plus accrued interest, if any, plus in the case of an Obligation subject to mandatory tender for purchase on a date when such Obligation is also subject to optional redemption at a premium, an amount equal to the premium that would be payable on such Obligation if redeemed on such date.

**Put Obligations** shall mean Obligations which by their terms may be tendered at the option of the Owner thereof, or are subject to a mandatory tender other than at the election of the Issuer or a Related Entity, for payment or purchase prior to the stated maturity or redemption date thereof.

**Qualified Swap** shall mean, to the extent from time to time permitted by law, with respect to Obligations, any financial arrangement (i) which is entered into by the Issuer with an entity that is a Qualified Swap Provider at the time the arrangement is entered into. (ii) which is a cap, floor or collar; forward rate; future rate; swap (such swap may be based on an amount equal either to the principal amount of such Obligations of the Issuer as may be designated or a notional principal amount relating to all or a portion of the principal amount of such Obligations); asset, index, price or market-linked transaction or agreement; other exchange or rate protection transaction agreement; other similar transaction (however designated); or any combination thereof; or any option with respect thereto, in each case executed by the Issuer for the purpose of moderating interest rate fluctuations, reducing debt service costs or creating either fixed interest rate Obligations or Variable Interest Rate Obligations on a synthetic basis or otherwise, and (iii) which has been designated in writing to the Trustee by an Authorized Officer as a Qualified Swap with respect to such Obligations.

**Qualified Swap Provider** shall mean an entity whose senior long term obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under an interest rate exchange agreement are guaranteed by an entity whose senior long term debt obligations, other senior unsecured long term obligations, financial program rating, counterparty rating, or claims paying ability, are rated either at least as high as (i) the third highest Rating Category of each Rating Agency then maintaining a rating for the Qualified Swap Provider or (ii) any such lower Rating Categories which each such Rating Agency indicates in writing to the Issuer and the Trustee will not, by itself, result in a reduction or withdrawal of its rating on the Outstanding Obligations subject to such Qualified Swap that is in effect prior to entering into such Qualified Swap.

**Rating Agency** shall mean each nationally recognized statistical rating organization then maintaining a rating on the Obligations at the request of the Issuer.

**Rating Category** shall mean one of the generic rating categories of any Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

**Rating Confirmation** shall mean evidence that no rating then in effect from a Rating Agency will be withdrawn or reduced solely as the result of an action to be taken hereunder; provided, however, that no action requiring Rating Confirmation shall be undertaken unless at least one Rating Agency at that time maintains a rating on Obligations.

**Record Date**, except as otherwise provided by Supplemental Resolution or a certificate of an Authorized Officer, shall mean the last Business Day preceding a payment date or other date on which an action is to be taken.

**Redemption Price** shall mean, with respect to any Obligation, 100% of the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof pursuant to the Resolution.

**Registrar** shall mean any registrar for the Obligations of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

**Reimbursement Obligation** has the meaning provided in subsection 4 of Section A-202.

**Related Entity** shall mean any of the MTA, TBTA, MaBSTOA, the Transit Authority, MNCRC, LIRR, SIRTOA, MSBA and any affiliate or subsidiary of any of the foregoing now or hereafter established and designated as a Related Entity by an Authorized Officer.

**Responsible Officer** shall mean any officer assigned to the corporate trust office of the Trustee, or any other officer of the Trustee customarily performing functions similar to those performed by any of such officers and who has direct responsibility for the administration of the Resolution, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

**Securities Depository** shall mean a recognized securities depository selected by the Issuer to maintain a book-entry system in respect to all or any portion of a Series of Obligations (including, as appropriate, any nominee thereof), and shall include any substitute for or successor to the Securities Depository initially acting as Securities Depository.

**Series** shall mean all of the Obligations delivered on original issuance pursuant to a single Supplemental Resolution and denominated therein a single series, and any Obligations thereafter delivered in lieu of or in substitution therefor pursuant to Article A-III or Section A-406 or Section A-906, regardless of variations in maturity, interest rate, or other provisions.

**Sinking Fund Installment** shall mean, as of a particular date, any Sinking Fund Installment established pursuant to paragraph (m) of subsection 1 of Section A-201.

**SIRTOA** shall mean the Staten Island Rapid Transit Operating Authority and any successor thereto.

**State** shall mean the State of New York.

**Subordinated Contract Obligation** shall mean any payment obligation (other than a payment obligation constituting Parity Debt or Subordinated Indebtedness) arising under (a) any Credit Facility which has been designated as constituting a "Subordinated Contract Obligation" in a certificate of an Authorized Officer delivered to the Trustee, (h) any Qualified Swap or portion thereof which has been designated as constituting a "Subordinated Contract Obligation" in a certificate of an Authorized Officer delivered to the Trustee, and (c) any other contract, agreement or other obligation of the Issuer designated as constituting a "Subordinated Contract Obligation" in a certificate of an Authorized Officer delivered to the Trustee. Each Subordinated Contract Obligation shall be payable and secured in a manner permitted by Article V, and any lien on and pledge of any portion of the Trust Estate securing Subordinated Contract Obligations shall be junior and inferior to the lien on and pledge of the Trust Estate herein created for the payment of the Obligations and Parity Debt.

**Subordinated Indebtedness** shall mean any bond, note or other indebtedness authorized by Supplemental Resolution or other resolution of the Issuer and dissipated as constituting "Subordinated Indebtedness" in a certificate of an Authorized Officer delivered to the Trustee, which shall be payable and secured in a manner permitted by Article V of the Resolution, and any lien on and pledge of any portion of the Trust Estate securing Subordinated Indebtedness shall be junior and inferior to the lien on and pledge of the Trust Estate herein created for the payment of the Obligations and Parity Debt.

**Supplemental Resolution** shall mean any resolution supplemental to or amendatory of the Resolution adopted by the Issuer in accordance with the Resolution and, except as the context may otherwise require, including any related Certificate of Determination.

**TA Act** shall mean the New York City Transit Authority Act being Title 9 of Article 5 of the New York Public Authorities law, as amended from time to time.

**Taxable Obligations** shall mean any Obligations which are not Tax-Exempt Obligations.

**Tax-Exempt Obligations** shall mean any Obligations the interest on which is intended by the Issuer to be generally excluded from gross income for federal income tax purposes and which are designated as Tax-Exempt Obligations in the Supplemental Resolution authorizing such obligations.

**TBTA** shall mean the Triborough Bridge and Tunnel Authority, the corporation organized and existing under the TBTA Act, and any successor thereto.

**TBTA Act** shall mean the Triborough Bridge and Tunnel Authority Act, being Title 3 of Article 3 of the New York Public Authorities Law, as amended from time to time.

**Transit Authority** shall mean the New York City Transit Authority, the corporation organized and existing under the TA Act, and any successor thereto.

**Transportation District** shall mean the Metropolitan Commuter Transportation District created by Section 1262 of the MTA Act.

**Transportation District Project** shall mean any project, program or facility that the Issuer or any other Related Entity (in either case, by itself or with any other Person) is authorized from time to time by law to plan, design, acquire, establish, construct, effectuate, operate, maintain, renovate, improve, extend, rehabilitate or repair within, or for the benefit of, the Transportation District.

**Trustee** shall mean the trustee appointed by the Issuer pursuant to Section A-701, and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

**Valuation Date** shall mean (i) with respect to any Capital Appreciation Obligations the date or dates set forth in the Supplemental Resolution authorizing such Obligations on which specific Accreted Values are assigned to the Capital Appreciation Obligations and (ii) with respect to any Deferred Income Obligations, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Resolution authorizing such Obligations on which specific Appreciated Values are assigned to the Deferred Income Obligations.MTA

**Variable Interest Rate** shall mean a variable interest rate to be borne by any Obligation. The method of computing such variable interest rate shall be specified in the Supplemental Resolution authorizing such Series of Obligations.

**Variable Interest Rate Obligations** shall mean Obligations which bear a Variable Interest Rate.

#### **Section A-102. Rules of Construction.**

1. Words of one gender shall be deemed and construed to include correlative words of any other gender. Except where the context otherwise requires, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include firms, associations and corporations.

2. Except as otherwise specified herein, all references in the Resolution (including this Annex A) to Articles, Sections, and other subdivisions are to the corresponding Articles, Sections or subdivisions of the Resolution (including this Annex A), and the words herein, hereof, hereunder and other words of similar import refer to the Resolution as a whole (including this Annex A) and not to any particular Article, Section or subdivision of the Resolution or of this Annex A. References in the Resolution to Articles or Sections with "A-" preceding the number of an Article or Section are to such Article or Section of this Annex A.

3. This Annex A constitutes an integral part of the Resolution and, except to the extent provided in the next 2 sentences, has the same force and effect as if set forth in the forepart of the Resolution. To the extent expressly provided in the Resolution (not including this Annex A), the Issuer may negate, amend or modify any provision of this Annex A. In the event of any conflict between this Annex A and the forepart of the Resolution, the forepart of the Resolution shall control.

4. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof (including any table of contents in the Resolution), shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of the Resolution (including this Annex A) or describe the scope or intent of any provisions hereof.

5. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

6. All references herein to resolutions, contracts or other agreements shall be deemed to include any amendments to such documents that are approved in accordance with the terms thereof and hereof

7. Every "request," "order," "demand," "application," "appointment," "notice," "statement," "certificate," "consent," or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature, which may be delivered and "signed" pursuant to facsimile or other electronic-mail transmission in accordance with applicable law and practice.

8. The word "or" is not exclusive.

9. The word "including" means including without limitation.

**Section A-103. Authority for the Resolution.** The Resolution is adopted pursuant to the Issuer Act.

**Section A-104. Resolution to Constitute Contract.** In consideration of the purchase and acceptance of any and all of the Obligations and Parity Debt authorized to be issued hereunder by those who are Owners of the Obligations and Parity Debt from time to time, the Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Owners from time to time of the Obligations and Parity Debt; and the pledge made in the Resolution and the covenants and agreements therein set forth to be performed on behalf of the Issuer shall be for the equal benefit, protection and security of the Owners of any and all of the Obligations and Parity Debt, all of which, regardless of the time or times of their authentication, issuance and delivery, or maturity, shall be of equal rank without preference, priority or distinction of any of the Obligations or Parity Debt over any other Obligations or Parity Debt, except as expressly provided in or permitted by the Resolution.



## ARTICLE A-II

### GENERAL PROVISIONS FOR ISSUANCE OR INCURRENCE OF OBLIGATIONS, PARITY DEBT AND OBLIGATION ANTICIPATION NOTES

#### Section A-201. General Provisions for Issuance of Obligations.

1. Obligations may be issued pursuant to a Supplemental Resolution in such principal amount or amounts for each Series or subseries as may be specified in such Supplemental Resolution. Obligations of any Series or subseries shall be authorized by a Supplemental Resolution which shall specify, among other things, the following matters (or the manner of determining such matters):

(a) The authorized principal amount, designation and Series of such Obligations;

(b) The purpose or purposes for which such Obligations are being issued which shall be one or more of the purposes set forth in Section 201;

(c) The dates and the maturity dates of the Obligations of such Series;

(d) If the Obligations of such Series are interest bearing Obligations, the interest rates of the Obligations of such Series and the interest payment dates therefor;

(e) If Obligations of such Series are Capital Appreciation Obligations, the Valuation Dates for such Obligations and the Accreted Value on each such Valuation Date;

(f) If Obligations of such Series are Deferred Income Obligations, the Interest Commencement Date for such Obligations, the Valuation Dates prior to the Interest Commencement Date for such Obligations and the Appreciated Value on each such Valuation Date;

(g) If Obligations of such Series are Capital Appreciation Obligations or Deferred Income Obligations, the manner in which and the period during which principal and interest shall be deemed to accrue on such Obligations;

(h) If Obligations of such Series are Variable Interest Rate Obligations, the maximum interest rate, if any, or the method of calculating such maximum rate for such Obligations, and the provisions, if any, as to the calculation or change of Variable Interest Rates;

(i) If Obligations of such Series are Put Obligations, provisions regarding tender for purchase or redemption thereof and payment of the purchase or Redemption Price thereof;

(j) The denominations of, and the manner of dating, numbering and lettering, the Obligations of such Series;

(k) The Paying Agents, if any, and the places of payment of the principal and Redemption Price, if any, of, and interest on, the Obligations of such Series;

(l) The Redemption Prices, if any, and the redemption terms, if any, for the Obligations of such Series, provided that Obligations of any maturity for which Sinking Fund Installments shall be established pursuant to paragraph (m) of this subsection I shall in any event be redeemable, or payable at maturity, by application of the Sinking Fund Installments for such Obligations on the due dates of such Sinking Fund Installments;

(m) The amount and due date of each Sinking Fund Installment, if any, for Obligations of like maturity of such Series;

(n) Provisions necessary to authorize, in compliance with all applicable law, Obligations of such Series to be issued in the form of Obligations issued and held in book-entry form on the books of the Issuer or any Fiduciary appointed for that purpose by the Issuer and, in connection therewith, make such additional changes in the Resolution, not adverse to the rights of the Owners of the Obligations, as are necessary or appropriate to accomplish or recognize such book-entry form Obligations and specify and determine the matters and things relative to the issuance of such book-entry form Obligations as are appropriate or necessary;

(o) To the extent applicable, the provisions relating to (a) any Credit Facility, Qualified Swap or other financial arrangement entered into in connection with the issuance of the Obligations of such Series and (b) the obligations payable thereunder;

(p) The amount, if any, to be deposited in the Proceeds Fund or any Account therein;

(q) If so determined by the Issuer, provisions for the application of any money available therefor to the purchase, exchange or redemption of Obligations of such Series and for the order of purchase, exchange or redemption of such Obligations;

(r) If so determined by the Issuer, provisions for the sale of the Obligations of such Series;

(s) The forms of the Obligations of such Series and of the Trustee's certificate of authentication if other than as provided in Section 301; and

(t) Such other matters, not contrary to or inconsistent with the Resolution, as the Issuer may deem advisable or necessary in connection with the authorization, issuance, sale, or delivery of such Series of Obligations.

An Authorized Officer to whom a Supplemental Resolution has delegated the power to determine any of the foregoing shall execute a Certificate of Determination evidencing such determinations or other actions taken pursuant to the delegation under such Supplemental Resolution, and such Certificate of Determination shall be conclusive evidence of the terminations or actions of such Authorized Officer as to the matters stated therein. The matters set forth in any such Certificate of Determination shall have the same effect as if set forth in the related Supplemental Resolution.

2. The Obligations may be sold in one or more Series or subseries (each of which shall contain a designation distinguishing it from other Series or subseries), and shall be delivered by the Issuer under the Resolution but only upon receipt by the Trustee of

(a) An Opinion of Bond Counsel in customary form to the effect that (i) the Issuer has the right and power under the Issuer Act to adopt the Resolution, and the Resolution has been duly and lawfully adopted by the Issuer, is in full force and effect, and is valid and binding upon the Issuer, and enforceable in accordance with its terms, and no other authorization for the Resolution is required as of the date thereof; (ii) the Resolution creates the valid pledge which it purports to create of the Trust Estate in the manner and to the extent provided in Section 501; and (iii) the Obligations are valid and binding obligations of the Issuer, enforceable in accordance with their terms and the terms of the Resolution and entitled to the benefits of the Issuer Act as amended to the date of such Opinion of Bond Counsel, and (iv) such Obligations have been duly and validly authorized and issued in accordance with law and the Resolution;

(b) A copy of the Supplemental Resolution authorizing such Obligations, certified by an Authorized Officer;

(c) A written order of the Issuer as to the delivery of the Obligations, signed by an Authorized Officer;

(d) A certificate of an Authorized Officer to the effect that, upon the delivery of the Obligations of such Series (i) no event which constitutes a default under the Resolution or any of the Obligations shall have occurred and be continuing or, if such an event is continuing, upon issuance of the Obligations such default shall be cured, and (ii) no such event would result from the authentication and delivery of the Obligations of such Series;

(e) If any Obligations are Variable Interest Rate Obligations or a Qualified Swap is being entered into that will result in a variable interest rate obligation of the Issuer, a determination by an Authorized Officer of the Estimated Average Interest Rate;

(f) If any Obligations of such Series are Put Obligations, a determination by an Authorized Officer of the method or methods to be employed to provide for the purchase or redemption of all Put Obligations of such Series if the Owners thereof elected to tender for purchase or redemption the entire aggregate Outstanding principal amount of the Put Obligations of such Series; and

(g) Such further documents and money as are required by the provisions of Article II, this Article A-II or Article A-VIII.

3. If Obligations are to be listed on a domestic or foreign stock exchange, the Authorized Officers are hereby authorized to take all such actions as they deem necessary or appropriate to comply with the listing requirements of such exchange, including the appointment of a member of such exchange as listing agent, the publication where required by such exchange of all redemption notices, the appointment of a special clearing agent and paying agent, and the execution of an undertaking letter with such exchange.

4. The Obligations shall not be a debt of the State or the City and neither the State nor the City shall be liable thereon, nor shall Obligations be payable out of any funds other than those of the Issuer as provided in the Resolution.

**Section A-202. Credit Facilities; Qualified Swaps and Other Similar Arrangements; Parity Debt.**

1. The Issuer may include such provisions in a Supplemental Resolution authorizing the issuance of a Series of Obligations secured by a Credit Facility as the Issuer deems appropriate, and no such provisions shall be deemed to constitute an amendment to the Resolution requiring action under Article or Article A-IX, including:

(a) So long as the Credit Facility is in full force and effect and payment on the Credit Facility is not in default, then (i) the issuer of the Credit Facility shall be deemed to be the sole Owner of the Outstanding Obligations the payment of which such Credit Facility secures or (ii) in the alternative or with respect to particular matters, the approval, consent or action of the issuer of the Credit Facility shall be required in addition to the approval, consent or action of the applicable percentage of the Owners of the Outstanding Obligations, in either case when the approval, consent or action of the Owners for such Obligations is required or may be exercised under the Resolution including Section A-802 hereof and following an Event of Default hereunder; provided, however, that no issuer of a Credit Facility shall be deemed to be the sole Owner of Outstanding Obligations pursuant to this provision in the event that the Credit Facility or Credit Facilities securing such Obligations provide only liquidity support.

(b) In the event that the principal, Sinking Fund Installments, if any, and Redemption Price, if applicable, and interest due on any Outstanding Obligations (or Purchase Price of any Outstanding Obligations to the extent the issuer of the Credit Facility has not been reimbursed) shall be paid under the provisions of the Credit Facility, all covenants, agreements and other obligations of the Issuer to the Owners of such Obligations shall continue to exist and such issuer of the Credit Facility shall be subrogated to the rights of such Owners in accordance with the terms of such Credit Facility.

2. In addition, such Supplemental Resolution may establish such provisions as are necessary (i) to comply with the provisions of each such Credit Facility, (ii) to provide relevant information to the issuer of the Credit Facility, (iii) to provide a mechanism for paying Principal Installments and interest on Obligations secured by the Credit Facility, and (iv) to make provision for any events of default or for additional or improved security required by the issuer of a Credit Facility.

3. The Issuer may enter into such agreements with the issuer of such Credit Facility providing for, *inter alia*: (i) the payment of fees and expenses to such issuer for the issuance of such Credit Facility, (ii) the terms and conditions of such Credit Facility and the Obligations affected thereby, and (iii) the security, if any, to be provided for the issuance of such Credit Facility.

4. The Issuer may secure such Credit Facility by an agreement providing for the purchase of the Obligations secured thereby with such adjustments to the rate of interest, method

of determining interest, maturity, or redemption provisions as specified by the Issuer in the applicable Supplemental Resolution. The Issuer may also in an agreement with the issuer of such Credit Facility agree to directly reimburse such issuer for amounts paid under the terms of such Credit Facility (together with interest thereon, the "**Reimbursement Obligation**"); *provided, however*, that no amounts shall be payable by the Issuer under a Reimbursement Obligation for purposes of the Resolution, until amounts are paid under such Credit Facility by the issuer thereof. As determined by Supplemental Resolution, any such Reimbursement Obligation, which may include interest calculated at a rate higher than the interest rate on the related Obligation and accelerated principal amortization, (1) may be secured by a pledge of, and a lien on, the Trust Estate on a parity with the lien created by Section 501 of the Resolution to secure the Obligations (a "**Parity Reimbursement Obligation**"), but only to the extent that (prior to any acceleration of all Obligations, if permitted) any principal amortization requirements are *either* (A) commensurate with the amortization requirements for such related Obligations, without acceleration or (B) accelerated to no greater extent than to require repayment in equal principal installments over 5 or more years, or (ii) may constitute a Subordinated Contract Obligation, as determined by the Issuer. Parity Reimbursement Obligations shall not include any payments (other than interest calculated at a higher rate pursuant to a Credit Facility) (i) of any fees or expenses, (ii) pursuant to any indemnification provisions or (iii) pursuant to term-loan or other principal amortization requirements in reimbursement of any such advance that are more accelerated than permitted by clauses (A) and (B) of the preceding sentence, and any such payments of the items specified in clauses (1), (ii) or (iii) shall constitute Subordinated Contract Obligations.

5. Any such Credit Facility shall be for the benefit of and secure such Obligations or portion thereof as specified in any applicable Supplemental Resolution.

6. In connection with the issuance of any Obligations or at any time thereafter so long as Obligations remain Outstanding, the Issuer may, to the extent permitted pursuant to law, from time to time enter into Qualified Swaps. The Issuer's obligation to pay any amount under any Qualified Swap may be secured by a pledge of, and a lien on, the Trust Estate on a parity with the lien created by Section 501 of the Resolution to secure the Obligations (a "**Parity Swap Obligation**"), or may constitute a Subordinated Contract Obligation, as determined by the Issuer. Parity Swap Obligations shall not include any payments of any termination or other fees, expenses, indemnification or other obligations to a counterparty to a Qualified Swap, which payments shall be Subordinated Contract Obligations.

7. Parity Debt shall not be a debt of the State or the City and neither the State nor the City shall be liable thereon, nor shall Parity Debt be payable out of any funds other than those of the Issuer pledged therefor pursuant to the Resolution.

8. Except to the extent that an Authorized Officer directs that such amounts be deposited in any other Fund or Account pledged to the payment of Obligations, any amounts paid to the Issuer under a Qualified Swap shall be deposited in the Debt Service Fund.

9. To the extent applicable and not readily apparent with respect any Parity Debt, either the terms of such Parity Debt shall specify (or an Authorized Officer shall specify in

writing) the interest and principal components of or the scheduled payments corresponding to principal and interest under, such Parity Debt or the manner of determining the foregoing.

**Section A-203. Obligation Anticipation Notes.** Whenever the Issuer shall have, by Supplemental Resolution, authorized the issuance of a Series of Obligations, the Issuer may by resolution authorize the issuance of Obligation Anticipation Notes in anticipation of the issuance of such authorized Series of Obligations, in a principal amount not exceeding the Principal amount of the Obligations of such Series so authorized. The principal of and premium, of any, and interest on such Obligation Anticipation Notes and any renewals of such Obligation Anticipation Notes shall be payable only from any or all of the following items designated by the Issuer at or prior to issuance of any such series of Obligation Anticipation Notes (i) the proceeds of any renewals of such Obligation Anticipation Notes issued to repay such Obligation Anticipation Notes, (ii) the proceeds of the sale of the Series of Obligations in anticipation of which such Obligation Anticipation Notes are issued, (iii) amounts available to pay Subordinated Indebtedness, or (iv) any other money available therefor and not pledged under the Resolution. Such proceeds and other amounts set forth in clauses (i), (ii), (iii) and (iv) may be pledged for the payment of the principal of and premium, if any, and interest on such Obligation Anticipation Notes, and any such pledge of the items set forth in clauses (i) and (ii) shall have priority over any other pledge created by the Resolution, including Section 501. In any case, such Obligation Anticipation Notes shall be retired or provision shall be made for their retirement not later than the date of authentication and delivery of the Series of Obligations in anticipation of which they are issued. The proceeds of the sale of Obligation Anticipation Notes other than renewals thereof shall be applied to the purposes for which the Obligations in anticipation of which such Obligation Anticipation Notes are authorized and shall be deposited in the appropriate Fund or Account established by the Resolution for such purposes or, if so provided in the resolution authorizing renewals of Obligation Anticipation Notes issued to pay outstanding Obligation Anticipation Notes, applied directly to such payment. Investment earnings from any amounts on deposit in any Fund or Account under the Resolution representing the proceeds of any Obligation Anticipation Notes shall be applied in the manner set forth in the resolution authorizing such Obligation Anticipation Notes.

## **ARTICLE A-III**

### **GENERAL TERMS AND PROVISIONS OF OBLIGATIONS**

Except as otherwise provided by Supplemental Resolution, the Obligations shall be subject to the terms and provisions of these Standard Resolution Provisions.

#### **Section A-301. Medium of Payment; Form and Date.**

1. The Obligations and Parity Debt shall be payable, with respect to interest, principal and Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts (or to the extent permitted by law, in any other coin or currency authorized pursuant to a Supplemental Resolution for related Obligations and Parity Debt).

2. Obligations shall be issued in the form of fully registered Obligations without coupons. Obligations, the certificate of authentication, if any, and the form of assignment shall be in substantially the form provided for in Exhibit One with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or thereby or are required by law, and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officers executing such Obligations, as evidenced by their execution of the Obligations. Any portion of the text of any Obligation may be set forth on the reverse thereof, with an appropriate reference thereto on the face of such Obligation, or as multiple pages (with or without such a reference). Obligations may be typewritten, printed, engraved, lithographed or otherwise produced.

3. Obligations shall be dated, and shall bear or not bear interest, as provided in the Supplemental Resolution authorizing such Obligations.

**Section A-302. Legends.** Obligations may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of the Resolution as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the Issuer.

**Section A-303. Execution and Authentication.**

1. The Obligations shall be executed in the name of the Issuer by the manual or facsimile signature of an Authorized Officer or in such other manner as may be required by law or specified in a Supplemental Resolution. In case any of the officers who shall have signed any of the Obligations shall cease to be such officer before the Obligations so signed shall have been actually delivered, such Obligations may, nevertheless, be delivered as herein provided, and may be issued as if the Persons who signed such Obligations had not ceased to hold such offices. Any Obligation may be signed on behalf of the Issuer by such Persons as at the actual time of the execution of such Obligation shall be duly authorized or hold the proper office in the Issuer, although at the date of the Obligations such Persons may not have been so authorized or have held such office.

2. Obligations of each Series shall bear thereon a certificate of authentication, executed manually by the Trustee. Only such Obligations as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under the Resolution and no Obligation shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Trustee. Such certificate of the Trustee upon any Obligation executed on behalf of the Issuer shall be conclusive evidence that the Obligation so authenticated has been duly authenticated and delivered under the Resolution and that the Owner thereof is entitled to the benefits of the Resolution.

**Section A-304. Interchangeability of Obligations.** Obligations, upon surrender thereof at the office of the Registrar with a written instrument of transfer satisfactory to the Registrar, duly executed by the Owner or his duly authorized attorney, may, at the option of such Owner, be exchanged for an equal aggregate principal amount of Obligations of the same Series, maturity and interest rate of any other authorized denomination.

**Section A-305. Negotiability, Transfer and Registry.** All the Obligations issued under the Resolution shall be negotiable, subject to the provisions for registration and registration of transfer contained in the Resolution and in the Obligations. So long as any of the Obligations shall remain Outstanding, the Issuer shall maintain and keep, at the office of the Registrar, books for the registration and registration of transfer of Obligations; and, upon presentation thereof for such purpose at said office and under such reasonable regulations as it or the Registrar may prescribe, the Issuer shall register or cause to be registered therein, and permit to be transferred thereon, the registration of any Obligation entitled to registration or registration of transfer. So long as any of the Obligations remain Outstanding, the Issuer shall make all necessary provision to permit the exchange of Obligations at the office of the Registrar.

**Section A-306. Transfer of Obligations.**

1. The transfer of each Obligation shall be registerable only upon the books of the Issuer, which shall be kept by the Registrar, by the Owner thereof in person or by his attorney authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Registrar executed by the Owner or his authorized attorney. Upon the registration of transfer of any such Obligation, the Issuer shall issue in the name of the transferee a new Obligation of the same aggregate principal amount, Series, maturity and interest rate as the surrendered Obligation.

2. The Issuer and each Fiduciary may deem and treat the Person in whose name any Outstanding Obligation shall be registered upon the books of the Issuer as the absolute owner of such Obligation, whether such Obligation shall be overdue or not, for the purpose of receiving payment of; or on account of the principal and Redemption Price, if any, of and interest on such Obligation and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid, and neither the Issuer nor any Fiduciary shall be affected by any notice to the contrary. The Issuer agrees to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, unless acting in bad faith or with negligence under the Resolution, in so treating such registered owner.

**Section A-307. Regulations With Respect to Exchanges and Transfers.** In all cases in which the privilege of exchanging Obligations or registering the transfer of Obligations is exercised, the Issuer shall execute and the Registrar shall deliver Obligations in accordance with the provisions of the Resolution. All Obligations surrendered in any such exchanges or registrations of transfer shall forthwith be canceled by the Registrar. For every such exchange or registration of transfer of Obligations, whether temporary or definitive, the Issuer or the Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

**Section A-308. Obligations Mutilated, Destroyed, Stolen or Lost.** In case any Obligation shall become mutilated or be destroyed, stolen or lost, the Issuer shall execute, and thereupon the Trustee and Registrar shall deliver, a new Obligation of like tenor, Series, maturity, interest rate and principal amount as the Obligation so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Obligation, upon surrender and cancellation



of such mutilated Obligation, or in lieu of and substitution for the Obligation destroyed, stolen or lost, upon filing with the Trustee and Registrar evidence satisfactory to the Issuer and the Trustee and Registrar that such Obligation has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Issuer and the Trustee and Registrar with indemnity satisfactory to them and complying with such other reasonable regulations as the Issuer and the Trustee and Registrar may prescribe and paying such expenses as the Issuer and Trustee and Registrar may incur. All Obligations so surrendered to the Registrar shall be canceled by it. If any such Obligation shall have matured, or if such Obligation shall have been called for redemption or a redemption date pertaining thereto shall have passed, instead of issuing a new Obligation the Issuer may cause the same to be paid without surrender thereof upon indemnity satisfactory to the Issuer and the Trustee. Any such new Obligations issued pursuant to this Section in substitution for Obligations alleged to be destroyed, stolen or lost shall constitute original additional contractual obligations on the part of the Issuer, whether or not the Obligations so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Obligations issued under the Resolution, in any money or securities held by the Issuer or the Fiduciary for the benefit of the Owners of Obligations.

**Section A-309. Book-Entry-Only System.** The Issuer may employ a book-entry-only system of registration with respect to any Obligations and may utilize the procedures regarding such registration set forth in this Section A-309, as such procedures may be modified or superseded pursuant to the Supplemental Resolution authorizing such Obligations. Any provisions of the Resolution inconsistent with book-entry-only Obligations shall not be applicable to such book-entry-only Obligations.

Any Authorized Officer is hereby authorized to take all actions required for each Series of Obligations to be eligible under the rules and regulations of The Depository Trust Company ("DTC"), 55 Water Street, New York, New York, for investment and trading as uncertificated securities. DTC is hereby appointed as the initial Securities Depository for the obligations, with Cede & Co., a nominee thereof, being the initial registered owner of the Obligations. In the event that any Securities Depository resigns or is removed, any Authorized Officer may select a substitute Securities Depository. The Issuer and any Fiduciary, and any agent of the Issuer or any Fiduciary, may treat any Securities Depository in whose name any Obligations is registered as the owner of such Obligation for all purposes under the Resolution. For so long as the Securities Depository is the registered owner of the Obligations, procedures with respect to the transmission of notices and the transfer of ownership of, redemption of and payment of principal or Redemption Price, if any, of and interest on such Obligations so held shall be in accordance with arrangements among the Trustee, the Issuer and the Securities Depository.

So long as the Obligations are registered in the name of the Securities Depository, the Issuer and the Trustee shall have no responsibility or obligation to any Securities Depository participant, indirect participant or beneficial owner of the Obligations. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of any Securities Depository or any Securities Depository participant or indirect participant with respect to any beneficial ownership interest in the Obligations, (ii) the delivery to any Securities Depository participant, indirect participant, beneficial owner or any other person, other than the Securities Depository, of any

notice with respect to the Obligations, including any notice of redemption or tender, or (iii) the payment to any Securities Depository participant, indirect participant, beneficial owner or any other person, other than the Securities Depository, of any amount with respect to the principal of or Redemption Price or interest on the Obligations.

The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of any Securities Depository with respect to any Series of Obligations. Notice of such termination shall be given by the Issuer to the Trustee prior to or simultaneously with such termination. In the event the book-entry only system is discontinued with respect to the Obligations, principal and Redemption Price of and interest on the Obligations shall be paid as provided in the Resolution.

Consistent with DTC book-entry provisions, one or more typewritten certificates shall be prepared for each maturity of the Obligations of a Series and registered in the name of the Securities Depository. There shall be no physical distribution of bond or other certificates to beneficial owners of such Obligations. In the event that the Obligations do not qualify to be held by the Securities Depository or that either the Issuer determines to discontinue the book-entry only system or DTC determines to discontinue providing its service with respect to the Obligations and there is no successor Securities Depository, the bond or other certificates shall be delivered in the form required by the Resolution.

Unless otherwise directed by an Authorized Officer, "CUSIP" identification numbers will be imprinted on the Obligations, but such numbers shall not constitute a part of the contract evidenced by the Obligations and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Obligations. As a convenience to the Owners of the Obligations, the Issuer and the Trustee may use such CUSIP numbers in any notices to the Owners of the Obligations, including any notices of redemption of the Obligations. Failure on the part of the Issuer or the Trustee to use such CUSIP numbers in any notice to Owners of the Obligations shall not constitute an Event of Default or any similar violation of the Issuer's contract with such Owners. The Issuer will promptly notify the Trustee of any change in the CUSIP numbers.

## ARTICLE A-IV

### REDEMPTION AND TENDER OF OBLIGATIONS

**Section A-401. Privilege of Redemption and Redemption Price.** Except as otherwise provided in the Resolution or a Supplemental Resolution, Obligations subject to redemption pursuant to a Supplemental Resolution shall be subject to redemption only in accordance with this Article A-IV.

Obligations subject to redemption prior to maturity pursuant to a Supplemental Resolution shall be redeemable, upon written notice as provided in this Article A-IV, at such times, at such Redemption Prices and upon such terms as may be specified in the Supplemental Resolution authorizing such Obligations.

**Section A-402. Redemption at the Election of the Issuer; Tender to Related Entities.** In the case of any redemption of Obligations at the election of the Issuer, the Issuer shall give written notice to the Trustee of its election so to redeem, of the redemption date, of the Series, of the principal amounts of the Obligations of each maturity and interest rate of such Series to be redeemed (which Series, maturities, interest rates and principal amounts thereof to be redeemed shall be determined by the Issuer in its sole discretion, subject to any limitations with respect thereto contained in any Supplemental Resolution). Such notice shall be given at least 45 days prior to the redemption date or such shorter period as may be provided in the Supplemental Resolution or as shall be acceptable to the Trustee. In the event notice of redemption shall have been given as in Section A-405 provided but subject to the second paragraph of Section A-405, the Issuer shall on or prior to the redemption date cause to be paid out to the appropriate Paying Agent or Paying Agents out of money available therefor an amount in cash which, in addition to other money, if any, available therefor held by such Paying Agent or Paying Agents, will be sufficient to redeem on the redemption date at the Redemption Price thereof, all of the Obligations to be redeemed.

To the extent provided by Supplemental Resolution the Issuer may, in its sole discretion, purchase or grant to any Related Entity the option to purchase, at any time and from time to time, any Obligations which are redeemable at the election of the Issuer at a purchase price equal to the redemption price therefor. To exercise any such option, the Issuer or the Related Entity shall give the Trustee a written request exercising such option within the time periods specified in the related Supplemental Resolution as though such written request were a written request of the related Issuer for redemption, and the Trustee shall thereupon give the Owners of the Obligations to be purchased notice of such purchase in the manner specified in the related Supplemental Resolution as though such purchase were a redemption. On the date fixed for purchase pursuant to any exercise of such an option, the Issuer or the Related Entity shall pay the purchase price of the Obligations then being purchased to the Trustee in immediately available funds, and the Trustee shall pay the same to the sellers of such Obligations against delivery thereof. Following such purchase, the Trustee shall cause such Obligations to be registered in the name of the Issuer or the Related Entity or its nominee and shall deliver them to the Issuer, the Related Entity or its nominee. Except to the extent otherwise directed by an Authorized Officer, no purchase of Obligations pursuant to such an option shall operate to extinguish the indebtedness of the Issuer evidenced thereby. Any such option to purchase by a Related Entity either shall be conditioned

on the provision of sufficient money therefor by the Related Entity or shall be an obligation of the Issuer in the event that the Related Entity does not provide sufficient money therefor.

**Section A-403. Redemption Otherwise Than at the Issuer's Election.** Whenever by the terms of the Resolution. Obligations are required to be redeemed otherwise than at the election of the Issuer, the Trustee shall select the Obligations to be redeemed, give the notice of redemption and pay out of money available therefor the Redemption Price to the appropriate Paying Agents in accordance with the terms of this Article A-IV. The Trustee shall have no liability in making such selection.

**Section A-404. Selection of Obligations to Be Redeemed.** In the event of redemption of less than all the Outstanding Obligations of like tenor, Series, maturity and interest rate, the Trustee shall select, as directed by the Issuer (as to the timing of such selection, manner of such selection or otherwise) or otherwise in such manner as the Trustee in its discretion shall deem appropriate and fair, the numbers of the Obligations to be redeemed and portions of any thereof to be redeemed in part. Obligations of denominations equal or less than the minimum authorized denomination thereof may be redeemed only as a whole. Obligations of denominations of more than the minimum authorized denomination thereof may be redeemed either as a whole or in part (which, if redeemed in part, must assure that the portion of the Obligation which is not redeemed is an authorized denomination). For the purposes of this action A-404, Obligations, or portions thereof, which have theretofore been selected for redemption shall not be deemed Outstanding.

**Section A-405. Notice of Redemption.** When the Trustee shall receive notice from the Issuer of its election to redeem Obligations pursuant to Section A-402, and when redemption of Obligations is required by the Resolution pursuant to Section A-403, the Trustee shall give notice, in the name of the Issuer, of the redemption of such Obligations, which notice shall specify the Series (including CUSIP numbers), maturities and, if any maturity shall include Obligations bearing different interest rates and all Obligations of such maturity are not being redeemed, the interest rate of the Obligations to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Obligations of any like tenor, Series, maturity and interest rate are to be redeemed, the letters and numbers or other distinguishing marks of such Obligations so to be redeemed, and, in the case of Obligations to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed, and, if applicable, that such notice is conditional and the conditions that must be satisfied. Such notice shall further state that on such date there shall become due and payable upon each Obligation to be redeemed the Redemption Price thereof, or the Redemption Price of the specified portions of the principal thereof in the case of Obligations to be redeemed in part only, together with interest accrued to the redemption date, and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be given not less than 30 days nor more than 45 days, or for such other period as may be specified in a Supplemental Resolution authorizing a particular Series, before the redemption date, to the Owners of any Obligations or portions of Obligations which are to be redeemed. Failure so to give any such notice to any particular Owner shall not affect the validity of the proceedings for the redemption of Obligations not owned by such Owner and failure of any Owner to receive such notice shall not affect the validity of the proposed redemption of

Obligations. The Issuer may provide notices of redemption at such additional times as it may determine necessary or appropriate.

Any notice of optional redemption given pursuant to this Section may state that it is conditional upon receipt by the Trustee of money sufficient to pay the Redemption Price of such Obligations or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such Redemption Price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Trustee to affected Owners of Obligations as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Unless otherwise provided by Supplemental Resolution, notices of redemption shall be sent by first class mail, postage prepaid.

Notice of redemption of any Series of Obligations shall also be sent by the Trustee to such additional Persons as may be specified in the Supplemental Resolution authorizing such Series.

**Section A-406. Payment of Redeemed Obligations.** Notice having been given in the manner provided in Section A-405, the Obligations or portions thereof so called for redemption shall, subject to the second paragraph of Section A-405, become due and payable on the redemption date so designated at the Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Obligations, or portions thereof, shall be paid at the Redemption Price plus interest accrued and unpaid to the redemption date. If there shall be called for redemption less than all of an Obligation, the Issuer shall execute and cause to be delivered, upon the surrender of such Obligation, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Obligation so surrendered, at the option of the owner thereof, Obligations of like tenor, Series, maturity and interest rate in any of the authorized denominations. If, on the redemption date, money for the redemption of all the Obligations or portions thereof of any like tenor, Series, maturity and interest rate to be redeemed, together with interest to the redemption date, shall be held by the Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Obligations or portions thereof of such Series, maturity and interest rate so called for redemption shall cease to accrue. If said money shall not be so available on the redemption date, such Obligations or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

## **ARTICLE A-V**

### **INVESTMENT OF FUNDS; SINKING FUND INSTALLMENTS; CANCELLATION AND DISPOSITION OF OBLIGATIONS**

#### **Section A-501. Investment of Funds.**

1. Subject to the provisions of Section A-1104, amounts in the Funds and Accounts established by Section 502 of the Resolution may be invested only in Authorized Investments and only when and as specifically directed in writing by an Authorized Officer.

2. The Trustee or the Issuer shall sell any Authorized Investments held in any Fund, Account or subaccount to the extent required for payments from such Fund, Account or subaccount. The proceeds of such sales, and of all payments at maturity or upon redemption of such investments, shall be held in the applicable Fund, Account or subaccount to the extent required to meet the requirements of such Fund, Account or subaccount. Except as provided by Supplemental Resolution, in computing the amount of such Funds, Accounts and subaccounts, investments shall be valued at par, or if purchased at other than par, shall be valued at Amortized Value. Accrued interest received upon the sale of any Authorized Investment to the extent such amount exceeds any accrued interest paid on the purchase of such Authorized Investment shall be treated as interest earned on such Authorized Investment for purposes of this Section.

3. Nothing in the Resolution shall prevent any Authorized Investments required as investments of or security for any Fund, Account or subaccount held under the Resolution from being held in book-entry form.

4. In making any investment in any Authorized Investments with money in any Fund or Account established under the Resolution, the Trustee or the Issuer may combine such money with money in any other Fund or Account held by it, but solely for purposes of making such investment in such Authorized Investments.

#### **Section A-502. Satisfaction of Sinking Fund Installments.**

1. Any amount accumulated in the Debt Service Fund in respect of and up to the unsatisfied balance of each Sinking Fund Installment shall be applied by the Trustee to either (a) or (b) below as directed by the Issuer (together with amounts accumulated in the Debt Service Fund with respect to interest on the Series of Obligations for which such Sinking Fund Installment was established) if so directed by an Authorized Officer prior to the 45th day preceding the due date of such Sinking Fund Installment as follows:

(a) to the purchase of Obligations for which such Sinking Fund Installment was established, at prices (including any brokerage and other charges) not exceeding the principal amount of such Obligations plus unpaid interest accrued to the date of purchase, such purchases to be made in such manner as the Issuer shall direct; or

(b) to the redemption of Obligations for which such Sinking Fund Installment was established, if then redeemable by their terms at the prices referred to in clause (a) of this subsection 1 of this Section A-502.

All Obligations so purchased or redeemed shall be canceled by the Trustee prior to the 45th day preceding the due date of such Sinking Fund Installment.

2. Upon the purchase or redemption of any Obligation pursuant to subsection 1 of this Section, an amount equal to the principal amount of the Obligations so purchased or redeemed shall be credited toward the next Sinking Fund Installment thereafter to become due with respect to the Obligations of such maturity and the amount of any excess of the amounts so credited over the amount of such Sinking Fund Installment shall be credited by the Trustee against future Sinking Fund Installments for such Series as specified by an Authorized Officer. Prior to the purchase or redemption of such Obligations, the Issuer shall deliver to the Paying Agent and to the Trustee a certificate of an Authorized Officer specifying (i) the principal amount, Series, maturity, interest rate and numbers of the Obligations so to be purchased or redeemed, (ii) the date and Series of the Sinking Fund Installment in satisfaction of which such Obligations are so to be purchased or redeemed, (iii) the aggregate principal amount of the Obligations so to be purchased or redeemed, and (iv) the unsatisfied balance of each such Sinking Fund Installment after giving effect to the delivery of such Obligations.

3. In satisfaction, in whole or in part, of any Sinking Fund Installment, the Issuer may deliver to the Trustee at least 45 days prior to the date of such Sinking Fund Installment, for cancellation, Obligations acquired by purchase or redemption, except Obligations acquired by purchase or redemption pursuant to the provisions of subsection 1 of this Section, of the maturity and interest rate entitled to such Sinking Fund Installment. All Obligations so delivered to the Trustee in satisfaction of a Sinking Fund Installment shall reduce the amount thereof by the amount of the aggregate principal amount of such Obligations. Concurrently with such delivery of such Obligations the Issuer shall deliver to the Paying Agent and to the Trustee a certificate of an Authorized Officer, specifying (i) the principal amount, Series, maturity, interest rate and numbers of the Obligations so delivered, (ii) the date and Series of the Sinking Fund Installment in satisfaction of which such Obligations are so delivered, (iii) the aggregate principal amount of the Obligations so delivered, and (iv) the unsatisfied balance of each such Sinking Fund Installment after giving effect to the delivery of such Obligations.

4. The Trustee shall, upon receipt of the notice and in the manner required by the Resolution, call for redemption, on the date of each Sinking Fund Installment falling due prior to maturity, such principal amount of Obligations of the Series, interest rate and maturity entitled to such Sinking Fund Installment as is required to exhaust the unsatisfied balance of such Sinking Fund Installment.

**Section A-503. Cancellation and Disposition of Obligations.** All Obligations that have been paid (whether at maturity or by acceleration, call for redemption, purchase by the Issuer and presentation for cancellation, or otherwise) or delivered to the Trustee for cancellation shall be canceled and not reissued, except as otherwise provided in a Supplemental Resolution with respect to Put Obligations. Unless otherwise directed by the Issuer, the Trustee shall treat canceled Obligations in accordance with its document retention policies. Notwithstanding any

other provision of the Resolution, the Issuer may in its sole discretion purchase any obligations of the Issuer or any Related Entity for investment purposes and any such obligations shall remain outstanding unless and until presented for cancellation.



## ARTICLE A-VI

### PARTICULAR COVENANTS OF THE ISSUER

The Issuer covenants and agrees with the Trustee and the Owners of Obligations as follows:

**Section A-601. Payment of Obligations and Parity Debt.** The Issuer shall duly and punctually pay or cause to be paid from the Trust Estate as provided in the Resolution the principal or Redemption Price, if any, of every Obligation and the interest thereon and all Parity Debt, at the dates and places, and in the manner provided in the Obligations and Parity Debt, according to the true intent and meaning thereof.

**Section A-602. Extension of Payment of Obligations.** The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Obligations or the time of payments of any claims for interest by the purchase or funding of such Obligations or claims for interest or by any other arrangement and in case the maturity of any of the Obligations or the time for payment of such claims for interest shall be extended, such Obligations or claims for interest shall not be entitled, in case of any Event of Default, to the benefit of the Resolution or to any payment out of the Trust Estate, except subject to the prior payment of the principal of all Obligations Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Obligations as shall not be represented by such extended claims for interest. Nothing herein shall be deemed to limit the right of the Issuer (i) to issue refunding obligations as provided in the Resolution and such issuance shall not be deemed to constitute an extension of maturity of the Obligations, (ii) to issue Put Obligations and neither such issuance nor the operation of the provisions of such Put Obligations shall be deemed to constitute an extension of maturity of the Obligations, (iii) to apply any amount in any Fund held under the Resolution for such purpose to the purchase or redemption of Obligations or (iv) to issue securities having a maturity date, including any extension of maturity contemplated at the time of issuance, of no more than 270 days from the issue date.

**Section A-603. Offices for Servicing Obligations.** Except as otherwise provided in the Resolution, the Issuer shall at all times maintain one or more offices or agencies in the City and State of New York where Obligations may be presented for payment, registration, transfer or exchange, and where notices, demands and other documents may be served upon the Issuer in respect of the Obligations or of the Resolution. The Issuer may appoint the Trustee or any other Fiduciary as its agent to maintain such office or agency for the payment, redemption, registration, transfer or exchange of Obligations and for the service upon the Issuer of such notices, demands and other documents. The Issuer may also maintain one or more offices or agencies outside of the City or State for the same purposes.

**Section A-604. Further Assurance.** To the extent permitted by law, the Issuer from time to time shall make, do, execute, adopt, acknowledge and deliver, and take all and every such further acts, deeds, conveyances, assignments, resolutions, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and

confirming all and singular the rights and interests in the Trust Estate or assigned, or intended so to be, or which the Issuer may become bound to pledge or assign.

**Section A-605. Accounts and Reports.**

1. The Issuer shall keep proper books of record and account of its operations. Such books of account are to be audited at least annually by independent certified public accountants experienced in governmental accounting selected by the Issuer. A copy of each audit report, annual balance sheet and income and expense statement shall be filed with the Trustee and sent to any Owner filing with the Issuer a written request therefor.

2. The Issuer shall annually, within 6 months after the close of each fiscal year or at such other time required under applicable law or a subsequent contract with all or certain Owners (or, if not available by such date, when and if available), file with the Trustee, and otherwise as provided by law, a copy of an annual report for such year, accompanied by the opinion of the accountants specified in subsection 1 of this Section.

**Section A-606. General.**

1. The Issuer shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Issuer under the provisions of the Resolution and, to the extent material to the interests of Owners, the Issuer Act.

2. Upon the date of authentication and delivery of any of the Obligations, all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in connection with the issuance of such Obligations (and any related Parity Debt then being incurred) shall exist, shall have happened and shall have been performed and the issuance of such Obligations (and any related Parity Debt then being incurred), together with all other indebtedness of the Issuer, shall be within every debt and other limit prescribed by the laws of the State, as applicable.

## ARTICLE A-VII

### CONCERNING THE TRUSTEE, PAYING AGENTS AND THE REGISTRAR

**Section A-701. Trustee; Appointment and Acceptance of Duties.** On or prior to the delivery of any Obligations, the Issuer shall appoint a Trustee. The Trustee shall signify its acceptance of the duties and obligations imposed upon it by the Resolution by executing and delivering to the Issuer a written acceptance thereof

#### **Section A-702. Duties, Liabilities and Rights of the Trustee.**

(a) Prior to the occurrence of an Event of Default of which a Responsible Officer of the Trustee has written notice or actual knowledge, and after the curing or waiver of any Event of Default which may have occurred:

(1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Resolution, and no implied covenants or obligations shall be read into the Resolution against the Trustee; and

(2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of the Resolution; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee is under a duty to examine same to determine whether or not they conform to the requirements of the Resolution.

(b) In case an Event of Default of which a Responsible Officer of the Trustee has written notice or actual knowledge has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by the Resolution, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use in the conduct of such Person's own affairs.

(c) No provision of the Resolution shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

1. this subsection (c) shall not be construed to limit the effect of subsection (a) of this Section A-702;

2. the Trustee is not and shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it is proven that the Trustee was negligent in ascertaining the pertinent facts;

3. the Trustee is not and shall not be liable with respect to any action taken or omitted to be taken by it in good faith (i) in accordance with the direction of the Owners of the applicable percentage of Obligations then Outstanding relating to the time, method and

place of conducting any proceeding for any remedy available to the Trustee, or (ii) which it believes to be authorized or within its rights or powers under the Resolution;

4. no provision of the Resolution shall require the Trustee to expend or risk its own funds or otherwise incur any personal or financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, for which it has not received a satisfactory indemnity;

5. the Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person and shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

6. the Trustee shall not be charged with knowledge of an Event of Default unless a Responsible Officer of the Trustee shall have received written notice from an Owner or the Issuer or have actual knowledge; provided that the Trustee shall be deemed to have actual knowledge of any failure to pay principal or Redemption Price of or interest on Obligations when due;

7. the Trustee shall not be under any obligation, to take any action that is discretionary hereunder;

8. neither the Trustee nor any of its directors, officers, employees or agents shall be personally liable for any action taken, suffered or omitted by the Trustee in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon the Trustee by the Resolution;

9. the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians, or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodians or nominees appointed with due care by it hereunder; and

10. the Trustee may request that the Issuer deliver a certificate of an Authorized Officer setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant hereto, which certificate may be signed by any Person authorized to sign such a certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

(d) Whether or not expressly so provided, every provision of the Resolution relating to the conduct or affecting the liability of or affording protection to the Trustee is subject to the provisions of this Section A-702.

(e) In the event that the Trustee is also acting as Paying Agent or Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this Article A-V II shall also be afforded to the Paying Agent and Registrar.

**Section A-703.            Paying Agents and Registrars; Appointment and Acceptance of Duties.**

1.     The Trustee is hereby appointed the Registrar and a Paying Agent with respect to the Obligations. The Issuer may at any time or from time to time appoint one or more other Paying Agents and Registrars in the manner and subject to the conditions set forth in Section A-713 for the appointment of a successor Paying Agent or Registrar. The Issuer may be appointed a Paying Agent or Registrar.

2.     Each Paying Agent and Registrar other than the Trustee shall signify its acceptance of the duties and obligations imposed upon it by the Resolution by executing and delivering to the Issuer and to the Trustee a written acceptance thereof.

**Section A-704.            Responsibilities of Fiduciaries.** The recitals of fact contained in the Resolution and in the Obligations shall be taken as the statements of the Issuer and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of the Resolution or of any Obligations issued thereunder or in respect of the security afforded by the Resolution, and no Fiduciary shall incur any liability in respect thereof. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Obligations for value or the application of the proceeds thereof or the application of any money paid to the Issuer. No Fiduciary shall be under any responsibility or duty with respect to the application of any money paid to any other Fiduciary. No Fiduciary shall be liable in connection with the performance of its duties under the Resolution, or for any losses, fees, taxes or other charges incurred upon the purchase or sale or redemption of any securities purchased for or held in any Fund under the Resolution, including any losses incurred by reason of having to sell securities prior to their maturity date, except in each case for its own willful misconduct, negligent action or negligent failure to act.

**Section A-705.            Evidence on Which Fiduciaries May Act.**

1.     Each Fiduciary shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel of its selection, who may or may not be counsel to the Issuer, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken, omitted to be taken or suffered by it under the Resolution in good faith and in accordance therewith.

2.     Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under the Resolution, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of the Resolution; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

3. Except as otherwise expressly provided in the Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Issuer to any Fiduciary shall be sufficiently executed if executed in the name of the Issuer by an Authorized Officer.

**Section A-706. Compensation.** The Issuer shall pay to each Fiduciary from time to time such compensation as shall be agreed to in writing between the Fiduciary and the Issuer for all services rendered under the Resolution (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under the Resolution. To the extent permitted by law, the Issuer further agrees to indemnify and save each Fiduciary and its officers, directors, agents, and employees harmless against any and all liabilities, losses, damages, claims or expenses which it may incur in the acceptance, exercise and performance of its powers and duties hereunder and which are not due to its willful misconduct, negligence or bad faith. The obligations of this Section A-706 shall survive the discharge of the Resolution. No obligation of the Issuer to make any payment to any fiduciary shall have the benefit of any lien on or pledge or assignment of the Trust Estate.

A Fiduciary shall notify the Issuer promptly of any claim for which it may seek indemnity. The Issuer shall defend the claim and the Trustee shall cooperate in the defense. The Fiduciary may have separate counsel and the Issuer shall pay the reasonable fees and expenses of such counsel.

**Section A-707. Certain Permitted Acts.** Any Fiduciary may become the owner of any Obligations or any other obligations of the Issuer, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law and pursuant to the Resolution, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Owners of Obligations or the holders of any other obligations of the Issuer or to effect or aid in any reorganization growing out of the enforcement of the Obligations or any other obligations the Issuer or the Resolution, whether or not any such committee shall represent the Owners of a majority in principal amount of the Obligations then Outstanding.

**Section A-708. Resignation of Trustee.** The Trustee may at any time resign and be discharged of the duties and obligations created by the Resolution by giving not less than 60 days' written notice to the Issuer and mailing notice thereof to the Owners of the Obligations, specifying the date when such resignation shall take effect, at least 45 days prior to the effective date, provided that such resignation shall take effect upon *the later of* (i) the day specified in such notice and (ii) the day a successor shall have been appointed by the Issuer or the Owners of Obligations as provided in Section A-710 and shall have qualified therefor.

**Section A-709. Removal of Trustee.** The Trustee may be removed at any time by an instrument or concurrent instruments in writing, filed with the Trustee, and signed by the Owners of a majority in principal amount of the Obligations then Outstanding or their attorneys-in-fact duly authorized, excluding any Obligations held by or for the account of the Issuer or any Related Entity. In addition, so long as no Event of Default shall have occurred and be continuing

hereunder and the Trustee is not pursuing any right or remedy available to it pursuant to the Resolution, the Trustee may be removed by the Issuer at any time for failure to provide reasonably acceptable services, failure to charge reasonably acceptable fees or any other reasonable cause, all as determined by a certificate of an Authorized Officer filed with the Trustee. Any such removal shall not be effective until a successor shall have been appointed by the Issuer or the Owners of Obligations as provided in Section A-710 and shall have qualified therefor.

**Section A-710. Appointment of Successor Trustee.**

1. In case at any time the Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Trustee, or of its property or affairs, a successor may be appointed by the Owners of a majority in principal amount of the Obligations then Outstanding, excluding any Obligations held by or for the account of the Issuer, by an instrument or concurrent instruments in writing signed and acknowledged by such Owners of Obligations or by their attorneys-in-fact duly authorized and delivered to such successor Trustee, notification thereof being given to the Issuer and the predecessor Trustee; provided, nevertheless, that unless a successor Trustee shall have been appointed by the Owners of Obligations as aforesaid, the Issuer by a duly executed written instrument signed by an Authorized Officer of the Issuer shall therewith appoint a Trustee to fill such vacancy until a successor Trustee shall be appointed by the Owners of Obligations as authorized in this Section A-710. The Issuer shall mail notice of any such appointment made by it to all Owners within 20 days after such appointment. Any successor Trustee appointed by the Issuer shall, immediately and without further act, be superseded by a Trustee appointed by the Owners of Obligations.

2. If in a proper case no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section within 45 days after the Trustee shall have given to the Issuer written notice as provided in Section A-708 or after a vacancy in the office of the Trustee shall have occurred by reason of its inability to act, the Trustee or the Owner of any Obligation may, at the expense of the Issuer, apply to any court of competent jurisdiction to appoint a successor Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

3. Any Trustee appointed under the provisions of this Section A-710 in succession to the Trustee shall be a Bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and having a capital and surplus aggregating at least \$100 million, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution.

**Section A-711. Transfer of Rights and Property to Successor Trustee.** Any successor Trustee appointed under the resolution shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Issuer, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become

fully vested with all money, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if originally named as Trustee; but the Trustee ceasing to act shall nevertheless, on the written request of the Issuer, or of the successor Trustee, and, upon the payment of all of its charges hereunder, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any property held by it under the Resolution, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Issuer. Any successor Trustee shall promptly notify the Registrar and the Paying Agents of its appointment as Trustee.

**Section A-712. Merger or Consolidation.** Any Person into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its municipal corporate trust business, provided such Person shall be a Bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and having a capital and surplus aggregating at least \$100 million, and shall be authorized by law to perform all the duties imposed upon it by the Resolution, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

**Section A-713. Resignation or Removal of Paying Agent or Registrar and Appointment of Successor.**

1. Any Paying Agent or Registrar may at any time resign and be discharged of the duties and obligations created by the Resolution by giving at least 60 days' written notice to the Issuer, the Trustee, and the other Paying Agents or Registrar, as the case may be. Any Paying Agent or Registrar may be removed at any time by an instrument filed with such Paying Agent or Registrar and the Trustee and signed by the Issuer. Any successor Paying Agent or Registrar shall be appointed by the Issuer, with the approval of the Trustee, and (subject to the requirements of Section A-603) shall be a Bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America doing business and having a corporate trust office in The City of New York and having a capital and surplus aggregating at least \$100 million, which is willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution.

2. In the event of the resignation or removal of any Paying Agent, such Paying Agent shall pay over, assign and deliver any money held by it as Paying Agent to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Paying Agent, the Trustee shall act as such Paying Agent.



3. In the event of the resignation or removal of any Registrar, such Registrar shall transfer and deliver all records, certificates and documents held by it as Registrar to its successor, or if there be no successor, to the Trustee. In the event that for any reason there shall be a vacancy in the office of any Registrar, the Trustee shall act as such Registrar.

**Section A-714. Adoption of Authentication.** In case any of the Obligations contemplated to be issued under the Resolution shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of any predecessor Trustee so authenticating such Obligations and deliver the Obligations so authenticated; and in case any of such Obligations shall not have been authenticated, any successor Trustee may authenticate such Obligations in the name of the predecessor Trustee, or in the name of the successor Trustee, and in all such cases such certificate shall have the full force which it is anywhere in said Obligations or in the Resolution provided that the certificate of the Trustee shall have.

**Section A-715. Continuing Disclosure Agreements.** The Trustee shall be entitled to the same rights and the same degree of indemnification in its execution and performance of each continuing disclosure agreement entered into pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 as amended, as it is under the Resolution.

## ARTICLE A-VIII

### SUPPLEMENTAL RESOLUTIONS

**Section A-801. Supplemental Resolutions Effective Upon Filing With the Trustee.** For any one or more of the following purposes and at any time or from time to time, a Supplemental Resolution may be adopted, without the consent of or notice to any Owner, which, upon the filing with the Trustee of a copy thereof certified by an Authorized Officer, or, if adopted prior to the appointment of a Trustee pursuant to Section A-701, upon its adoption, shall be fully effective in accordance with its terms:

1. To close the Resolution against, or provide limitations and restrictions in addition to the limitations and restrictions contained in the Resolution on, the issuance and delivery of the Obligations, or the issuance or entering into of other evidences of indebtedness; or to close any resolution authorizing Pre-existing Indebtedness of the Issuer against, or provide limitations and restrictions in addition to the limitations and restrictions contained in such resolution on, the issuance and delivery of obligations under such resolutions, or the issuance or entering into of other evidences of indebtedness;

2. To add to the covenants and agreements of the Issuer in the Resolution, other covenants and agreements to be observed by the Issuer which are not contrary to or inconsistent with the Resolution as theretofore in effect;

3. To add to the limitations and restrictions in the Resolution, other limitations and restrictions to be observed by the Issuer which are not contrary to or inconsistent with the Resolution as theretofore in effect;

4. To surrender any right, power or privilege reserved to or conferred upon the Issuer by the Resolution;

5. To authorize Obligations of a Series and, in connection therewith, (a) specify and determine the matters and things referred to in the provisions of the Resolution authorizing issuance of Obligations, and also any other matters and things relative to such Obligations which are not contrary to or inconsistent with the Resolution as theretofore in effect, (b) in the case of Variable Interest Rate Obligations or Put Obligations, as applicable, set forth provisions specifying the manner in which interest on Variable Interest Rate Obligations or Put Obligations, as applicable, is to be calculated for the purposes of various definitions and provisions of the Resolution, provisions providing for changes in interest rates, interest rate periods or interest payment dates for any Variable Interest Rate Obligation of a Series or Put Obligations, as applicable, provisions regarding an Owner's right or obligation to tender Put Obligations for redemption or purchase in lieu of redemption, and provisions governing the manner in which Variable Interest Rate Obligations or Put Obligations, as applicable, which the Owner thereof has the right to, or has exercised a right to, tender for redemption or purchase in lieu of redemption shall be treated for purposes of various definitions and provisions of the Resolution, (c) set forth provisions governing the administration of any Qualified Swap or Credit Facility, and provisions providing for the issuance of Reimbursement Obligations or the conversion of other Obligations to Reimbursement Obligations (and in connection with such conversion to

change the interest rates, sinking fund provisions or maturity date on such Obligations) to secure or reimburse the provider of such Credit Facility, (d) in the case of either Taxable Obligations or Tax-Exempt Obligations, set forth defeasance provisions with respect thereto (including the manner of attaining such defeasance and the effect thereof), and (e) make such additional changes herein, not materially adverse to the rights of the Owners of the Obligations previously issued, as are necessary or appropriate; or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance and delivery of such Obligations;

6. To authorize Obligation Anticipation Notes in accordance with Section A-203 arid, in connection therewith, specify and determine the matters and things referred to in Section A-203, and also any other matters and things relative to such Obligations which are not contrary to or inconsistent with the Resolution as theretofore in effect;

7. To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by, the Resolution of any additional security other than that granted or pledged under the Resolution;

8. To (a) establish for any one or more Series of Obligations a separate debt service reserve fund which shall be permitted to be applied solely to the payment of specified Obligations, provided that (i) the specified Obligations shall have no claim or lien on nor be payable from any amounts in any other such debt service reserve fund, (ii) the specified Obligations shall be excluded from the calculation of any applicable debt service reserve fund requirement for any other Outstanding Obligations, and (iii) the amount required to be on deposit in such debt service reserve funds shall be specified in the Supplemental Resolutions authorizing the specified Obligations, but in no event shall such amount, after giving effect to any surety bond, insurance policy, letter of credit or similar obligation deposited in any such separate debt service reserve fund pursuant to the Resolution, be in excess of the amount that would otherwise be the debt service reserve fund requirement for such specified Obligations assuming that such Obligations were the only Obligations Outstanding under the Resolution; and (b) make such other amendments, changes or modifications to the Resolution as may be deemed necessary or desirable by the Issuer to insure that such debt service reserve funds function in the manner contemplated in this subsection;

9. To authorize Parity Debt and, in connection therewith, specify and determine (or provide procedures for an Authorized Officer to specify or determine) the matters and things referred to in paragraphs (4) and (6) of Section A-202 of the Resolution, and also any other matters and things relative to such Parity Debt which are not contrary to or inconsistent with the Resolution as then in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the first issuance or entering into of such Parity Debt, and at any time to rescind or limit any authorization for any such Parity Debt theretofore authorized but not issued or entered into; in connection with the authorization of Parity Swap Obligations and Parity Reimbursement Obligations, any such Supplemental Resolution may include provisions for the availability, transferability, use or application of the Funds, Accounts and subaccounts established pursuant to Section 502 of the Resolution for the benefit of such Parity Swap Obligations and Parity Reimbursement Obligations; and shall grant to the Owners of such Parity

Debt the same rights granted to Owners of Obligations in Section A-802 and Article A-1X herein;

10. To authorize Subordinated Indebtedness or Subordinated Contract Obligations and, in connection therewith, specify and determine (or provide procedures for an Authorized Officer to specify or determine) the matters and things required or permitted by Article V of the Resolution in connection therewith, and also any other matters and things relative to such Subordinated Indebtedness or Subordinated Contract Obligations which are not contrary to or inconsistent with the Resolution as then in effect, or at any time to amend, rescind or limit any authorization for any such Subordinated Indebtedness or Subordinated Contract Obligations thereto be authorized but not issued or entered into; and in connection with the authorization of Subordinated Indebtedness or Subordinated Contract Obligations, any such Supplemental Resolution may include provisions for the availability, transferability, use or application of amounts available to pay Subordinated Indebtedness or Subordinated Contract Obligations and any other funds, accounts or subaccounts created for the benefit of such Subordinated Indebtedness or Subordinated Contract Obligations;

11. To modify any of the provisions of the Resolution in any respect whatsoever, *provided that* (i) such modification shall be, and he expressed to be, effective only after all Obligations affected thereby and Outstanding at the date of the adoption of such Supplemental Resolution shall cease to be Outstanding and (ii) such Supplemental Resolution shall be specifically referred to in the text of all Obligations delivered on original issuance after the date of the adoption of such Supplemental Resolution and of the Obligations issued in exchange therefor or in place thereof;

12. To add to the Resolution any provisions required by law to preserve the exclusion from gross income for Federal income tax purposes of interest received on Tax-Exempt Obligations then Outstanding or to be issued or the exemption of interest received on any Obligations from State income taxation;

13. To modify, amend or supplement the Resolution in any manner, not already provided for in or pursuant to the Supplemental Resolution authorizing the related Series of Obligations in order to provide for a Credit Facility, Qualified Swap, or other similar arrangement with respect to any Series of Obligations, under the Resolution, so long as the Issuer determines that such Supplemental Resolution does not materially adversely affect the right, security and interest of the Owners of Outstanding Obligations;

14. To modify, amend or supplement the Resolution in such manner as to permit the qualification hereof under the Trust Indenture Act of 1939, as amended, or any similar Federal statute hereafter in effect or to permit the qualification of the Obligations for sale under the securities laws of any of the states of the United States of America, and, if the Issuer so determines, to add hereto such other terms, conditions and provisions as may be required by said Trust Indenture Act of 1939 or similar Federal statute;

15. To amend or modify any Supplemental Resolution authorizing Obligations of a Series to reflect the substitution of a new Credit Facility for the Credit Facility then in effect;

16. At any time prior to the first authentication and delivery of any Obligations under the Resolution or at any other time when no Obligations are Outstanding under the Resolution, to modify the provisions of the Resolution in such manner as the Issuer deems necessary or appropriate;

17. To cure any ambiguity, supply any omission, or cure or correct any defect or inconsistent provision in the Resolution;

18. To insert such provisions clarifying matters or questions arising under the Resolution as are necessary or desirable and are not contrary to or inconsistent with the Resolution as theretofore in effect, including, in the event the Issuer Act is amended or other legislation is enacted to so provide, the substitution of an alternate or different legal name for the current name of the Issuer or any other Related Entity in the Resolution or the form of Obligations; or

19. With Rating Confirmation, to make any other modification or amendment of the Resolution which the Issuer shall in its sole discretion determine will not have a material adverse effect on the interests of the Owners of Outstanding Obligations.

In making any determination under paragraph (19) of this Section A-80I, the Issuer may conclusively rely upon an Opinion of Counsel or opinions of other experts or professionals.

**Section A-802. Supplemental Resolutions Effective With Consent of Owners of Obligations.** At any time or from time to time, a Supplemental Resolution may be adopted subject to consent by Owners of Obligations in accordance with and subject to the provisions of Article A-IX hereof, which Supplemental Resolution, upon the filing with the Trustee of a copy thereof certified by an Authorized Officer of the Issuer and upon compliance with the provisions of said Article A-IX, shall become fully effective in accordance with its terms as provided in said Article A-IX.

**Section A-803. General Provisions.**

1. The Resolution shall not be modified or amended in any respect except as provided in and in accordance with and subject to the provisions of this Article A-VIII and Article A-IX hereof. Nothing contained in this Article A-VIII or in Article A-IX shall affect or limit the right or obligation of the Issuer to execute and deliver to any Fiduciary any instrument which elsewhere in the Resolution it is provided shall be delivered to said Fiduciary.

2. Any Supplemental Resolution referred to and permitted or authorized by Section A-801 may be adopted by the Issuer without the consent of any of the Owners, but shall become effective only on the conditions, to the extent and at the time provided in said Section. The copy of every Supplemental Resolution when filed with the Trustee shall be accompanied by a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Issuer and enforceable in accordance with its terms; *provided, however*, that the concurrent delivery of an Opinion of Bond Counsel required by Section A-201.2(a) shall satisfy this requirement.

3. No Supplemental Resolution shall change or modify any of the rights or obligations of any Fiduciary without its written consent.

## ARTICLE A-IX

### AMENDMENTS

**Section A-901. Mailing.** Any provision in this Article for the mailing of a notice or other paper to Owners shall be fully complied with if it is mailed postage prepaid to each Owner of any affected Obligation then Outstanding at such Owner's address, if any, appearing upon the registry books of the Issuer, and (ii) to the Trustee; or, in each case, to such parties by facsimile or other means to the extent permitted by applicable law and arrangements.

**Section A-902. Powers of Amendment.** Any modification or amendment of the Resolution and of the rights and obligations of the Issuer and of the Owners, in any particular, may be made by a Supplemental Resolution, with the written consent given as provided in Section A-903, (i) of the Owners of a majority in principal amount of the Obligations Outstanding at the time such consent is given, and (ii) in case less than all of the Obligations then Outstanding are affected by the modification or amendment, of the Owners of a majority in principal amount of the Obligations so affected and Outstanding at the time such consent is given; *provided, however*, that if such modification or amendment will, by its terms, not take effect so long as particular Obligations remain Outstanding, the consent of the Owners of such Obligations shall not be required and such Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Obligations under this Section. No such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal of any Outstanding Obligation or of any installment of interest thereon or a reduction in the principal amount or the Redemption Price thereof or in the rate of interest thereon without the consent of the Owner of such Obligation, (b) reduce the percentages or otherwise affect the classes of Obligations the consent of the Owners of which is required to waive an Event of Default or otherwise effect any such modification or amendment, (c) create a preference or priority of any Obligation or Obligations over any other Obligation or Obligations, without the consent of the Owners of all such Obligations, (d) create a lien prior to or on parity with the lien of the Resolution securing Obligations, without the consent of the Owners of all of the Obligations then Outstanding, or (e) change or modify any of the rights or obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, an Obligation shall be deemed to be affected by a modification or amendment of the Resolution if the same materially and adversely affects the rights of the Owner of such Obligation. The Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment particular Obligations would be affected by any modification or amendment of the Resolution and any such determination shall be binding and conclusive on the Issuer and all Owners of Obligations. The Trustee may request and receive an opinion of counsel, including a Counsel's Opinion, as conclusive evidence as to whether particular Obligations would be so affected by any such modification or amendment of the Resolution and the Trustee shall have no duty or obligation to take any action hereunder unless and until it has received such opinion. Notwithstanding anything in this Section or the Resolution to the contrary, the consent of Owners of any Series of additional Obligations to be issued hereunder shall be deemed given if the underwriters or initial purchasers for resale thereof consent in writing to any modification or amendment effected thereby, and such modification or amendment, as well as such consent, is disclosed in the official statement or other offering document pursuant to which such Series of additional Obligations is offered and sold.

**Section A-903. Consent of Owners of Obligations.** The Issuer at any time may adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of Section A-902 to take effect when and as provided in this Section. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Trustee) together with a request to the Owners for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Issuer to the Owners (but failure to mail such copy and request shall not affect the validity of the Supplemental Resolution when consented to as in this Section provided). Such Supplemental Resolution shall not be effective unless and until (i) there shall have been filed with the Trustee (a) the written consents of Owners of the percentages of Outstanding Obligations specified in Section A-902 and (b) a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted and filed by the Issuer in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Issuer and enforceable in accordance with its terms, and (ii) a notice shall have been mailed to Owners as hereinafter in this Section A-903 provided. Any such consent, including any consent provided by the initial purchaser of an Obligation from the Issuer, shall be binding upon the Owner of the Obligations giving such consent and, anything in Section A-1102 to the contrary notwithstanding, upon any subsequent Owner of such Obligations and of any Obligations issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof). At any time after the Owners of the required percentages of obligations shall have filed their consents to the Supplemental Resolution, the Trustee shall make and file with the Issuer and the Trustee a written statement that the Owners of such required percentages of Obligations have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Issuer on a stated date, a copy of which is on file with the Trustee) has been consented to by the Owners of the required percentages of Obligations and will be effective as provided in this Section A-903, may be given to Owners of Obligations by the Issuer by mailing such notice to Owners of Obligations (but failure to mail such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this Section A-903 provided). The Issuer shall file with the Trustee proof of the mailing of such notice. A record, consisting of the papers required or permitted by this Section A-903 to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Issuer, the Fiduciaries and the Owners of all Obligations at the expiration of 40 days after the filing with the Trustee of the proof of the mailing of such last-mentioned notice, except in the event of a final decree of a court of competent jurisdiction setting aside such Supplemental Resolution in a legal action or equitable proceeding for such purpose commenced within such 40-day period; provided, however, that any Fiduciary and the Issuer during such 40-day period and any such further period during which any such action or proceeding may be pending shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Resolution as they may deem expedient.

**Section A-904. Modifications by Unanimous Consent.** The terms and provisions of the Resolution and the rights and obligations of the Issuer and of the Owners of Obligations may be modified or amended in any respect upon the adoption and filing by the Issuer of a Supplemental Resolution and the consent of the Owners of all of the Obligations then Outstanding, such consent to be given as provided in Section A-903 except that no notice to



Owners of Obligations shall be required; *provided, however*, that no such modification or amendment shall change or modify any of the rights or obligations of any Fiduciary without the filing with the Trustee of the written consent thereto of such Fiduciary in addition to the consent of the Owners of Obligations.

**Section A-905. Notation on Obligations.** Obligations issued and delivered after the effective date of any action taken as in Article A-VIII or this Article provided may, and, if the Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved to the Issuer and the Trustee as to such action, and in that case upon demand of the Owner of any Obligation Outstanding at such effective date and presentation of its Obligation for the purpose at the corporate trust office of the Trustee, suitable notation shall be made on such Obligation by the Trustee as to any such action. If the Issuer or the Trustee shall so determine, Obligations so modified as in the opinion of the Trustee and the Issuer to conform to such action shall be prepared, authenticated and delivered. Upon demand of the Owner of any Obligations then Outstanding and the surrender of such Obligations, there shall be authenticated and exchanged therefor, new Obligations having the same terms, other than the noted modification, as the Obligations surrendered.

## **ARTICLE A-X**

### **DEFAULT AND REMEDIES**

**Section A-1001. Abrogation of Right to Appoint Statutory Trustee; Preservation of Statutory Rights and Remedies.** Any right of the Owners of Obligations to appoint a trustee under the Issuer Act is hereby abrogated. Subject to the foregoing sentence of this Section A-1001 and the provisions of Section 701 of the Resolution, the Owners of Obligations and the Trustee acting on behalf of the Owners of Obligations shall be entitled to all of the rights and remedies provided or permitted by law.

## ARTICLE A-XI

### MISCELLANEOUS

#### Section A-1101. Defeasance.

1. If the Issuer shall pay or cause to be paid to the Owners of all Obligations then Outstanding the principal and interest and Redemption Price, if any, to become due thereon, at the times and in the manner stipulated therein and in the Resolution, then, at the option of the Issuer, expressed in an instrument in writing signed by an Authorized Officer and delivered to the Trustee, the covenants, agreements and other obligations of the Issuer to the Owners of Obligations shall be discharged and satisfied. In such event, the Trustee shall, upon the request of the Issuer, execute and deliver to the Issuer all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries shall pay over or deliver to the Issuer all money, securities and funds held by them pursuant to the Resolution which are not required for the payment or redemption of Obligations not theretofore surrendered for such payment or redemption.

2. Outstanding Obligations or any portions thereof for the payment or redemption of which money shall have been set aside and shall be held in trust by the Paying Agents shall at the respective maturity or redemption dates thereof be deemed to have been paid within the meaning and with the effect expressed in subsection I of this Section. Outstanding Obligations or any portions thereof shall, prior to the maturity or redemption date thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection I of this Section either (A) with respect to the defeasance of Taxable Obligations, Tax-Exempt Obligations or otherwise, as provided in the Supplemental Resolution authorizing their issuance or (B) if (a) in case any of said Obligations are to be redeemed on any date prior to their maturity, the Issuer shall have given to the Trustee in form satisfactory to it irrevocable instructions to mail as provided in Article A-IV notice of redemption on said date of such Obligations, (b) there shall have been irrevocably deposited with the Trustee either money in an amount which shall be sufficient, or Defeasance Securities the principal of and the interest on which when due will provide money which, together with the money, if any, deposited with the Trustee at the same time, shall be sufficient, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, to pay when due, the principal or Redemption Price, if applicable, and interest due and to become due on such Obligations or such portions thereof on and prior to the redemption date or maturity date thereof, as the case may be, and (c) in the event such Obligations are not by their terms maturing or are not subject to redemption within the next succeeding 60 days, the Issuer shall have given the Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, a notice to the Owners of such Obligations that the deposit required by (b) above has been made with the Trustee and that said Obligations are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which money is to be available for the payment of the principal or Redemption Price, if applicable, on such Obligations. Neither Defeasance Securities nor money deposited with the Trustee pursuant to this Section nor principal or interest payments on any such Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Redemption Price, if applicable, and interest on said Obligations; *provided, however*, that any money on deposit with the Trustee, (i) to the extent

such money will not be required at any time for such purpose, shall be paid over to the issuer as received by the Trustee, free and clear of any trust, lien or pledge securing said Obligations or otherwise existing under the Resolution, and (ii) to the extent such money will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Defeasance Securities maturing at times and in amounts sufficient, together with any money available to the Trustee for such purpose, to pay when due the principal or Redemption Price, if applicable, and interest to become due on said Obligations on and prior to such redemption date or maturity date thereof, as the case may be. Notwithstanding any other provision hereof, the Issuer may at the time of defeasance elect to retain the right to redeem or require the tender of Any obligations deemed paid pursuant to this Section A-1101.2. The Trustee shall, at the direction of the Issuer, select the Obligations or portions thereof that are deemed to have been paid in advance of the redemption of such Obligations.

3. Anything in the Resolution to the contrary notwithstanding, any money held by a Fiduciary in trust for the payment and discharge of the principal or Redemption Price of or interest on any of the Obligations which remains unclaimed for 2 years after the date when such principal, Redemption Price or interest, respectively, has become due and payable, either at stated maturity dates or by call for earlier redemption, if such money was held by the Fiduciary At such date, or for 2 years after the date of deposit of such money if deposited with the Fiduciary after the date when such principal, Redemption Price, or interest, respectively, became due and payable, shall, at the written request of the Issuer, be repaid by the Fiduciary to the Issuer, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Owners of Obligations shall look only to the Issuer for the payment of such principal, Redemption Price, or interest, respectively. Notwithstanding the foregoing or anything in the Resolution to the contrary, any money held by a Fiduciary in trust for the payment and discharge of any Obligations which remains unclaimed after such money was to be applied to the payment of such Obligations in accordance with the Resolution may be applied in accordance with the provisions of the Abandoned Property Law of the State, being Chapter 1 of the Consolidated Laws of the State or any successor provision thereto, and upon such application, the Fiduciary shall thereupon be released and discharged with respect thereto and the Owners of Obligations shall look only to the Issuer or the Comptroller of the State for the payment of such Obligations. Before being required to make any such payment to the Issuer or to apply such money in accordance with the Abandoned Property Law of the State, the Fiduciary shall, at the expense of the Issuer, cause to be mailed to the Owners entitled to receive such money a notice that said money remains unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the mailing, the balance of such money then unclaimed will be returned to the Issuer or applied in accordance with the Abandoned Property Law of the State, as the case may be.

**Section A-1102. Evidence of Signatures of Owners of Obligations and Ownership of Obligations.**

1. Any request, consent, revocation of consent or other instrument which the Resolution may require or permit to be signed and executed by the Owners of Obligations may be in one or more instruments of similar tenor, and shall be signed or executed by such Owners of Obligations in Person or by their attorneys-in-fact appointed in writing or by such electronic or other means as may be recognized pursuant to applicable law. Proof of (i) the execution of

any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any Person of the Obligations shall be sufficient for any purpose of the Resolution except as otherwise therein expressly provided) if made in the following manner, or in any other manner satisfactory to the Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Owner or his attorney-in-fact of such instrument may be proved by the certificate of a signature guarantor, or of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership such certificate or affidavit shall also constitute sufficient proof of his authority;

(b) The ownership of Obligations and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

2. Any request or consent by the Owner of any Obligation shall bind all future Owners of such Obligation in respect of anything done or suffered to be done by the Issuer or any Fiduciary in accordance therewith.

**Section A-1103. Money field for Particular Obligations.** The amounts held by any Fiduciary for the payment of the interest, principal or Redemption Price due on any date with respect to particular Obligations shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Owners of Obligations entitled thereto.

**Section A-1104. General Regulations as to Money and Funds.**

1. Each of the Funds and Accounts established by the Resolution shall be a trust fund for the purposes thereof.

2. All amounts of the Issuer held or set aside under the Resolution shall, until paid over to the Fiduciaries or otherwise invested or applied as provided in the Resolution, be deposited by the Issuer in its name, on demand or time deposit, in such Banks as shall be selected by the Issuer. Any amounts held by any Fiduciary under the Resolution shall be deposited in such Banks as the Issuer may select. Any such deposit may be made in the commercial banking department of any Fiduciary which may honor checks on such deposit with the same force and effect as if it were not such Fiduciary, and without any duty to inquire into whether any withdrawals of such funds are in accordance with or might violate any of the provisions of the Resolution. Such deposits shall be continuously secured by the obligations of the United States of America or of the State, which obligations shall have a market value (exclusive of accrued interest) at all times at least equal to the amount of such deposits, which obligations shall be segregated in trust for the account of the Issuer, or shall be otherwise held as the Issuer and the depository may agree. Securities deposited with the Federal Reserve Bank to secure all trust accounts of a depository shall be deemed to comply with the foregoing requirement.

3. Unless otherwise specified in a Supplemental Resolution authorizing the issuance of Obligations, all money held by any Fiduciary, as such, may be deposited by such Fiduciary in its banking department on demand or, if and to the extent directed by the Issuer and acceptable to such Fiduciary, on time deposit, and all such deposits shall be continuously secured by the obligations of the United States of America or of the State which obligations shall have a market value (exclusive of accrued interest) at all times at least equal to the amount of such deposits. Securities deposited with the Federal Reserve Bank to secure all trust accounts of the Fiduciary shall be deemed to comply with the foregoing requirement. Such Fiduciary shall allow and credit on such money such interest, if any, as it customarily allows upon similar funds of similar size and under similar conditions or as required by law.

**Section A-1105. Preservation and Inspection of Documents.** All documents received by a Fiduciary under the provisions of the Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Issuer, any other Fiduciary, and any Owners of at least 5% aggregate principal amount of Obligations and their agents and their representatives, any of whom may make copies thereof

**Section A-1106. Parties Interest Herein.** Nothing in the Resolution expressed or implied is intended or shall be construed to confer upon, or to give to any Person, other than he Issuer, the Fiduciaries, the Owners of Obligations and the holders of Parity Debt, any right, remedy or claim under or by reason of the Resolution or any covenant, condition or stipulation thereof, and all the covenants, stipulations, promises and agreements in the Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Fiduciaries, the Owners of Obligations and the holders of Parity Debt.

**Section A-1107. No Recourse on the Obligations.** No recourse shall be had for the payment of the principal or Redemption Price of or interest on the Obligations or Parity Debt or for any claim based thereon or on the Resolution against any member, officer, or employee of the Issuer or any Person executing the Obligations.

**Section A-1108. Successors and Assigns.** Whenever in the Resolution the Issuer is named or referred to, it shall be deemed to include its successors and assigns and all the covenants and agreements in the Resolution contained by or on behalf of the Issuer shall bind and ensure to the benefit of its successors and assigns whether so expressed or not.

**Section A-1109. Business Days.** Except as otherwise provided pursuant to a Supplemental Resolution, if the date for making any payment or the last date for performance of any act or the exercising of any right, as provided in the Resolution, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding Business Day with the same force and effect as if made or done on the nominal date provided in the Resolution and no interest shall accrue during the intervening period with respect to any payment so deferred.

**Section A-1110. Severability of Invalid Provisions.** If any term or provision of this Annex A or the Resolution shall be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of

public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever, and such term and provision shall be valid and enforced to the fullest extent permitted by law.

The invalidity of any one or more phrases, sentences, clauses or Sections of the Resolution shall not affect the remaining portions of the Resolution, or any part hereof, including any part of this Annex A.

**Section A-1111. Exclusion of Obligations.** Obligations owned or held by or for the account of the Issuer or any Related Entity shall not be deemed Outstanding for the purpose of any consent to be given or other action to be taken by or upon the direction of Owners of a specified portion of Obligations Outstanding, and the Issuer or any Related Entity shall not be entitled with respect to such Obligations to give any such consent or to take, or direct the taking of, any such action. At the time of any such consent or action, the Issuer shall furnish to the Trustee a certificate of an Authorized Officer, upon which the Trustee may conclusively rely, describing all Obligations so to be excluded.

**Section A-1112. Governing Law.** The Resolution, including this Annex A, shall be governed by and interpreted in accordance with internal laws of the State, without regard to conflict of law principles thereof.





**DRAFT DATED 3/9/14**

**ANNEX B**

**SUPPLEMENTAL STANDARD RESOLUTION PROVISIONS FOR REGIONAL  
PAYROLL MOBILITY TAX SECOND LIEN OBLIGATIONS AND SECOND LIEN  
PARITY DEBT**

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**SUPPLEMENTAL STANDARD RESOLUTION PROVISIONS FOR REGIONAL  
PAYROLL MOBILITY TAX SECOND LIEN OBLIGATIONS AND SECOND LIEN  
PARITY DEBT**

**ARTICLE B-I**

**DEFINITIONS AND STATUTORY AUTHORITY**

**Section B-101. Definitions.** Capitalized terms used but not otherwise defined in this Annex B shall have the meanings set forth in the Resolution, including Annex A appended thereto, to which this Annex B is appended. The following terms shall, for all purposes herein and (except as the context may otherwise require) in the Resolution to which this Annex B is appended, have the following meanings:

**Accrued Second Lien Debt Service** shall mean, as of any date of calculation, an amount equal to the sum of the amounts of accrued and unpaid Second Lien Obligation Debt Service with respect to all Second Lien Obligations and Second Lien Parity Debt, calculating the accrued Second Lien Obligation Debt Service with respect to Second Lien Obligations at an amount equal to the sum of (i) as estimated by an Authorized Officer, interest on the Second Lien Obligations and interest components of Second Lien Parity Debt accrued and unpaid and to accrue to the end of the then current calendar month, and (ii) Second Lien Obligation Principal Installments due and unpaid and that portion of the Second Lien Obligation Principal Installment for such Second Lien Obligations and Second Lien Parity Debt next due which would have accrued (if deemed to accrue in the manner set forth in the definition of Second Lien Obligation Debt Service) to the end of such calendar month. For purposes of calculating deposits relating to Second Lien Debt Service Fund, Second Lien Obligation Principal Installments shall not include amounts that an Authorized Officer has notified the Second Lien Trustee are to be paid from sources other than Mobility Tax Receipts and ATA Tax Receipts, nor shall Accrued Second Lien Debt Service include any amounts that, as certified by an Authorized Officer, have been set aside hereunder or otherwise in trust for the payment thereof.

**Calculated Second Lien Debt Service** for any period shall mean, as of any date of calculation and with respect to any Series of Second Lien Obligations or any Second Lien Parity Debt, the sum of Second Lien Obligation Debt Service for such period determined by the Issuer based on the following adjustments:

(i) Interest on Variable Interest Rate Second Lien Obligations shall be based on the Second Lien Obligation Estimated Average Interest Rate applicable thereto.

(ii) Interest on any Second Lien Obligations or Second Lien Parity Debt in respect of which the Issuer has entered into a Qualified Second Lien Swap shall be based on:

(a) the fixed rate or rates of the Qualified Second Lien Swap if the Issuer has entered into what is generally referred to as a "floating-to-fixed" Qualified Second Lien Swap (where the Issuer pays a fixed rate and receives a floating rate); or

(b) the lower of (i) the Second Lien Obligation Estimated Average Interest Rate and (ii) the effective capped rate of any Second Lien Obligations or Second Lien Parity Debt if the Issuer has entered into a Qualified Second Lien Swap that is generally referred to as an "interest rate cap" (where the Issuer receives a payment if a variable rate exceeds a certain amount); or

(c) the Second Lien Obligation Estimated Average Interest Rate of the Qualified Second Lien Swap if the Issuer has entered into either what is generally referred to as a "fixed-to-floating" Qualified Second Lien Swap (where the Issuer pays a variable rate and receives a fixed rate) or a "floating-to-floating" Qualified Second Lien Swap (where the Issuer pays a variable rate and receives a different variable rate).

(iii) With respect to Second Lien Put Obligations and any Second Lien Obligations of a Series the interest on which is payable periodically and at least fifteen per centum (15%) of the original principal amount of which is stated to mature at one time and for which maturing principal amount amortization requirements have not been designated, (i) Second Lien Obligation Principal Installments shall be deemed to amortize over a 30-year period from their date of issuance (or any shorter period provided by Supplemental Resolution) based on substantially level debt service as estimated by the Issuer, and (ii) interest shall be based on the actual interest rate or the Second Lien Obligation Estimated Average Interest Rate, as applicable.

(iv) If the Issuer has irrevocably deposited Authorized Investments or money with the Second Lien Trustee (or otherwise in trust) for the payment of any portion of Second Lien Obligation Debt Service, the expected future cash flow from such Authorized Investments and money shall be deducted from Second Lien Obligation Debt Service.

(v) If the Issuer has, at any time, irrevocably called for redemption one or more Series of Second Lien Obligations, including pursuant to a covenant to apply any portion of the Second Lien Obligations Trust Estate to redeem Second Lien Obligations or Second Lien Parity Debt (which particular Second Lien Obligations or Second Lien Parity Debt need not be specifically identified in advance, except as to interest rate and maturity), the Issuer shall take into account such redemption for purposes of determining Calculated Second Lien Debt Service.

(vi) With respect to Parity Reimbursement Second Lien Obligations, accelerated payments of principal shall only be taken into account if, at the time of calculation, such amounts are payable due to a draw under a credit or liquidity facility.

**Capital Appreciation Second Lien Obligations** shall mean any Second Lien Obligations denominated as such and issued as to which interest is payable only at the maturity or prior redemption of such Second Lien Obligations. Except as otherwise provided by Supplemental Resolution, for the purposes of (i) receiving payment of the Second Lien Obligation Redemption Price if Capital Appreciation Second Lien Obligations are redeemed prior to maturity, (ii) computing the principal amount of Second Lien Obligations held by the

registered owner of a Capital Appreciation Second Lien Obligations in giving to the Issuer or the Second Lien Trustee any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever or (iii) computing Second Lien Obligation Debt Service, the principal amount of a Capital Appreciation Second Lien Obligations shall be deemed to be its Second Lien Obligation Accreted Value (which in the case of clause (ii) may be the Second Lien Obligation Accreted Value as of the immediately preceding Second Lien Obligation Valuation Date).

**Certificate of Determination**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean a certificate of an Authorized Officer of the Issuer fixing terms, conditions and other details of Second Lien Obligations, Second Lien Parity Debt, Second Lien Obligation Anticipation Notes or Second Lien Obligation Credit Facilities or such other matters in accordance with the delegation of power to do so under the Resolution or a Supplemental Resolution.

**Deferred Income Second Lien Obligations** shall mean any Second Lien Obligations (A) as to which interest accruing thereon prior to the Second Lien Obligation Interest Commencement Date of such Second Lien Obligations is (i) compounded on each Second Lien Obligation Valuation Date for such Deferred Income Second Lien Obligations and (ii) payable only at the maturity or prior redemption of such Second Lien Obligations and (B) as to which interest accruing after the Second Lien Obligation Interest Commencement Date is payable on the first interest payment date succeeding the Second Lien Obligation Interest Commencement Date and periodically thereafter on the dates specified in or determined by Supplemental Resolution. Except as otherwise provided by Supplemental Resolution, for the purposes of (i) receiving payment of the Second Lien Obligation Redemption Price if Deferred Income Second Lien Obligations are redeemed prior to maturity, (ii) computing the principal amount of Second Lien Obligations held by the registered owner of a Deferred Income Second Lien Obligations in giving to the Issuer or the Second Lien Trustee any notice, consent, request, or demand pursuant to the Resolution for any purpose whatsoever or (iii) computing Second Lien Obligation Debt Service, the principal amount of a Deferred Income Second Lien Obligations shall be deemed to be its Second Lien Obligation Appreciated Value (which in the case of clause (ii) may be the Second Lien Obligation Appreciated Value as of the immediately preceding Second Lien Obligation Valuation Date).

**DTC** has the meaning provided in Section B-309.

**Fiduciary or Fiduciaries**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean the Trustee, the Second Lien Trustee, any Registrar or Second Lien Registrar, any Paying Agent, any Second Lien Paying Agent, any tender agent or any or all of them, as may be appropriate, or any Person appointed to act as a Fiduciary as provided in the Resolution.

**Issuer Act**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean the MTA Act in the event that the MTA is defined in the Resolution as the Issuer or the TBTA Act in the event that the TBTA is defined in the Resolution as the Issuer, together with any other applicable law of the State authorizing the issuance of the related Second Lien Obligations by the Issuer or expressly limiting the issuance thereof or governing the security therefor.

**Opinion of Bond Counsel**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean an opinion signed by Nixon Peabody LLP, Hawkins Delafield & Wood LLP or any other attorney or firm of attorneys of nationally recognized standing in the field of law relating to the issuance of Second Lien Obligations by state and municipal entities, selected by the Issuer.

**Outstanding**, when used with reference to Second Lien Obligations or Second Lien Obligations of a Series, shall mean, as of any date, Second Lien Obligations or Second Lien Obligations of such Series theretofore or thereupon to be delivered under the Resolution except:

- (i) Any Second Lien Obligations canceled at or prior to such date;
- (ii) Second Lien Obligations the principal and Second Lien Obligation Redemption Price, if any, of and interest on which have been paid in accordance with the terms thereof;
- (iii) Second Lien Obligations in lieu of or in substitution for which other Second Lien Obligations shall have been delivered pursuant to Article B-III or Section B-406 or Section B-805;
- (iv) Second Lien Obligations deemed to have been paid as provided in subsection 2 of Section B-1001;
- (v) Second Lien Put Obligations tendered or deemed tendered in accordance with the provisions of the Supplemental Resolution authorizing such Second Lien Obligations on the applicable tender date, if the Second Lien Obligation Purchase Price thereof and interest thereon shall have been paid or amounts are available and set aside for such payment as provided in such Supplemental Resolution, except to the extent such tendered Second Lien Put Obligations thereafter may be resold pursuant to the terms thereof and of such Supplemental Resolution; and
- (vi) For the purpose of any consent to be given or other action to be taken by or upon the direction of Second Lien Owners of a specified portion of Second Lien Obligations Outstanding, Second Lien Obligations excluded pursuant to Section B-1008.

The principal component of any Second Lien Parity Debt shall be deemed to be Outstanding in a principal amount equal to the principal amount of the Second Lien Obligations then owed by the Issuer thereunder in lieu of the related Second Lien Obligations, regardless of the authorized amount of the principal component of such Second Lien Parity Debt or the related Second Lien Obligations and provided that, unless otherwise required pursuant to the related Supplemental Resolution, the principal component of such Second Lien Parity Debt shall not by itself increase the Outstanding principal amount of Second Lien Obligations.

**Parity Reimbursement Second Lien Obligation** has the meaning provided in subsection 4 of Section B-202.



**Parity Swap Second Lien Obligation** has the meaning provided in subsection 6 of Section B-202.

**Principal Office of the Second Lien Trustee** shall mean the designated corporate trust office of the Second Lien Trustee.

**Qualified Second Lien Swap** shall mean, to the extent from time to time permitted by law, with respect to Second Lien Obligations, any financial arrangement (i) which is entered into by the Issuer with an entity that is a Qualified Second Lien Swap Provider at the time the arrangement is entered into, (ii) which is a cap, floor or collar; forward rate or future rate swap (such swap may be based on an amount equal either to the principal amount of such Second Lien Obligations of the Issuer as may be designated or a notional principal amount relating to all or a portion of the principal amount of such Second Lien Obligations); asset, index, price or market-linked transaction or agreement; other exchange or rate protection transaction agreement; other similar transaction (however designated); or any combination thereof; or any option with respect thereto, in each case executed by the Issuer for the purpose of moderating interest rate fluctuations, reducing debt service costs or creating either fixed interest rate Second Lien Obligations or Variable Interest Rate Second Lien Obligations on a synthetic basis or otherwise, and (iii) which has been designated in writing to the Second Lien Trustee by an Authorized Officer as a Qualified Second Lien Swap with respect to such Second Lien Obligations.

**Qualified Second Lien Swap Provider** shall mean an entity whose senior long-term obligations, other senior unsecured long-term obligations, financial program rating, counterparty rating, or claims paying ability, or whose payment obligations under an interest rate exchange agreement are guaranteed by an entity whose senior long-term debt obligations, other senior unsecured long-term obligations, financial program rating, counterparty rating, or claims paying ability, are rated either at least as high as (i) the third highest Rating Category of each Rating Agency then maintaining a rating for the Qualified Second Lien Swap Provider or (ii) any such lower Rating Categories which each such Rating Agency indicates in writing to the Issuer and the Second Lien Trustee will not, by itself, result in a reduction or withdrawal of its rating on the Outstanding Second Lien Obligations subject to such Qualified Second Lien Swap that is in effect prior to entering into such Qualified Second Lien Swap.

**Rating Agency**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean each nationally recognized statistical rating organization then maintaining a rating on the Second Lien Obligations at the request of the Issuer.

**Rating Confirmation**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean evidence that no rating then in effect from a Rating Agency will be withdrawn or reduced solely as the result of an action to be taken hereunder; provided, however, that no action requiring Rating Confirmation shall be undertaken unless at least one Rating Agency at that time maintains a rating on Second Lien Obligations.

**Reimbursement Second Lien Obligations** has the meaning provided in subsection 4 of Section B-202.

**Responsible Second Lien Obligation Officer** shall mean any officer assigned to the corporate trust office of the Second Lien Trustee, or any other officer of the Second Lien Trustee customarily performing functions similar to those performed by any of such officers and who has direct responsibility for the administration of the Resolution, and also, with respect to a particular matter, any other officer, to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

**Second Lien Costs of Issuance** shall mean Costs of Issuance as defined in the Standard Resolution Provisions relating to Second Lien Obligations, Second Lien Parity Debt or Second Lien Obligation Anticipation Notes.

**Second Lien Obligation Accreted Value** shall mean with respect to any Capital Appreciation Second Lien Obligations (i) as of any Second Lien Obligation Valuation Date, the amount set forth for such date in the Supplemental Resolution authorizing such Capital Appreciation Second Lien Obligations and (ii) as of any date other than a Second Lien Obligation Valuation Date, the sum of (a) the Second Lien Obligation Accreted Value on the preceding Second Lien Obligation Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Second Lien Obligation Valuation Date and the denominator of which is the number of days from such preceding Second Lien Obligation Valuation Date to the next succeeding Second Lien Obligation Valuation Date and (2) the difference between the Second Lien Obligation Accreted Values for such Second Lien Obligation Valuation Dates. For purposes of this definition, the number of days having elapsed from the preceding Second Lien Obligation Valuation Date and the number of days from the preceding Second Lien Obligation Valuation Date to the next succeeding Second Lien Obligation Valuation Date shall be calculated on the basis of a 360-day year of 12 30-day months, unless otherwise provided pursuant to a Supplemental Resolution.

**Second Lien Obligation Anticipation Notes** shall mean any such notes issued and delivered pursuant to Section B-203, except to the extent (but only to the extent) that all or any portion of such notes either are not payable, or are anticipated by the Issuer not to be paid, from the proceeds of the Second Lien Obligations in anticipation of which such notes are being issued.

**Second Lien Obligation Appreciated Value** shall mean with respect to any Deferred Income Second Lien Obligations (i) as of any Second Lien Obligation Valuation Date, the amount set forth for such date in the Supplemental Resolution authorizing such Deferred Income Second Lien Obligations, (ii) as of any date prior to the Second Lien Obligation Interest Commencement Date other than a Second Lien Obligation Valuation Date, the sum of (a) the Second Lien Obligation Appreciated Value on the preceding Second Lien Obligation Valuation Date and (b) the product of (1) a fraction, the numerator of which is the number of days having elapsed from the preceding Second Lien Obligation Valuation Date and the denominator of which is the number of days from such preceding Second Lien Obligation Valuation Date to the next succeeding Second Lien Obligation Valuation Date and (2) the difference between the Second Lien Obligation Appreciated Values for such Second Lien Obligation Valuation Dates, and (iii) as of any date on and after the Second Lien Obligation Interest Commencement Date, the Second Lien Obligation Appreciated Value on the Second Lien Obligation Interest Commencement Date. For purposes of this definition, the number of days having elapsed from the preceding Second Lien Obligation Valuation Date and the number of days from the

preceding Second Lien Obligation Valuation Date to the next succeeding Second Lien Obligation Valuation Date shall be calculated on the basis of a 360-day year of 12 30-day months, unless otherwise provided pursuant to a Supplemental Resolution.

**Second Lien Obligation Business Day** shall mean any day of the year other than (i) Saturday or Sunday, (ii) any day on which Banks located in New York, New York or the cities in which the Principal Office of the Trustee and the Second Lien Trustee are located are required or authorized by law to remain closed, or (iii) any day on which the New York Stock Exchange is closed.

**Second Lien Obligation Credit Facility** shall mean any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Issuer and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Outstanding Second Lien Obligations, Second Lien Parity Debt or Second Lien Obligation Anticipation Notes.

**Second Lien Obligation Debt Service** for any period shall mean, as of any date of calculation and with respect to any Series of Second Lien Obligations or any Second Lien Parity Debt Outstanding, the sum of: (i) interest on the Second Lien Obligations of such Series and the interest components of Second Lien Parity Debt accruing during such period and (ii) that portion of each Second Lien Obligation Principal Installment for such Second Lien Obligations and Second Lien Parity Debt that would accrue during such period if such Second Lien Obligation Principal Installment were deemed to accrue daily in equal amounts from the preceding Second Lien Obligation Principal Installment payment date on Outstanding Second Lien Obligations and Second Lien Parity Debt; provided, however, that, unless otherwise set forth in a Supplemental Resolution, no Second Lien Obligation Principal Installment shall be deemed to begin accruing until the later of one year prior to such Second Lien Obligation Principal Installment's due date and the date of issuance or incurrence of the related Second Lien Obligations or Second Lien Parity Debt.

**Second Lien Obligation Debt Service Payment Date** shall mean, with respect to any portion of Second Lien Obligation Debt Service, the date on which the Second Lien Obligation Debt Service shall be payable.

**Second Lien Obligation Defeasance Security** shall mean

(i) an Authorized Investment as specified in clause (i) of the definition thereof (other than an obligation of the State), which is not redeemable at the option of the issuer thereof,

(ii) an Authorized Investment as specified in clause (i) (which is an obligation of the State), (ii), (iii), (vi) or (vii) of the definition thereof, which is not redeemable at the option of the issuer thereof and which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency,

(iii) any depositary receipt issued by a Bank as custodian with respect to any Second Lien Obligation Defeasance Security which is specified in clause (i) above and held by such Bank for the account of the holder of such depositary receipt or with respect to any specific payment of principal of or interest on any such Second Lien Obligation Defeasance Security which is so specified and held, provided that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Second Lien Obligation Defeasance Security or the specific payment of principal or interest evidenced by such depositary receipt,

(iv) any certificate of deposit specified in clause (iii) of the definition of Authorized Investments in Section A-101, including certificates of deposit issued by the Trustee, Second Lien Trustee, a Paying Agent or a Second Lien Paying Agent, secured by obligations specified in clause (i) above of a market value equal at all times to the amount of the deposit, which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency, or

(v) any other Authorized Investment designated in a Supplemental Resolution as a Second Lien Obligation Defeasance Security for purposes of defeasing the Second Lien Obligations authorized by such Supplemental Resolution, which is not redeemable at the option of the issuer thereof and which shall be rated at the time of the investment in the highest long-term Rating Category by each Rating Agency.

**Second Lien Obligation Estimated Average Interest Rate** shall mean, as to any Variable Interest Rate Second Lien Obligations or Qualified Second Lien Swap and as of any date of calculation, the average interest rate or rates anticipated to be borne by such Second Lien Obligations or Qualified Second Lien Obligation Swap, or by the combination of such arrangements, over the period or periods for which such rate or rates are anticipated to be in effect, all as estimated by an Authorized Officer.

**Second Lien Obligation Interest Commencement Date** shall mean, with respect to any particular Deferred Income Second Lien Obligations, the date determined by Supplemental Resolution after which interest accruing on such Second Lien Obligations shall be payable on the first interest payment date succeeding such Second Lien Obligation Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Resolution.

**Second Lien Obligation Principal Installments** shall mean, as of any date of calculation and with respect to any Series of Second Lien Obligations or any Second Lien Parity Debt, as applicable, (a) the principal amount of Outstanding Second Lien Obligations of such Series, due on the dates and in the amounts specified by Supplemental Resolution, reduced by the principal amount of such Second Lien Obligations which would be retired by reason of the payment when due and application in accordance with the Resolution of Second Lien Sinking Fund Installments payable before such dates, plus the unsatisfied balance (determined as provided in Section B-501 of the Resolution) of any Second Lien Sinking Fund Installments due on any certain future date for Second Lien Obligations of such Series, together with such redemption premiums, if any, applicable on any such future date, and (b) with respect to any

Second Lien Parity Debt, the amount due thereunder on the dates and in the amounts established in accordance with Section B-202 as a principal component of such Second Lien Parity Debt payable on a parity with the Second Lien Obligations.

**Second Lien Obligation Purchase Price** shall mean, with respect to any Second Lien Obligations, 100% of the principal amount thereof plus accrued interest, if any, plus in the case of a Second Lien Obligation subject to mandatory tender for purchase on a date when such Second Lien Obligations are also subject to optional redemption at a premium, an amount equal to the premium that would be payable on such Second Lien Obligations if redeemed on such date.

**Second Lien Obligation Redemption Price** shall mean, with respect to any Second Lien Obligations, 100% of the principal amount thereof plus the applicable premium, if any, payable upon the redemption thereof pursuant to the Resolution.

**Second Lien Obligation Valuation Date** shall mean (i) with respect to any Capital Appreciation Second Lien Obligations the date or dates set forth in the Supplemental Resolution authorizing such Second Lien Obligations on which specific Second Lien Obligation Accreted Values are assigned to the Capital Appreciation Second Lien Obligations and (ii) with respect to any Deferred Income Second Lien Obligations, the date or dates on or prior to the Second Lien Obligation Interest Commencement Date set forth in the Supplemental Resolution authorizing such Second Lien Obligations on which specific Second Lien Obligation Appreciated Values are assigned to the Deferred Income Second Lien Obligations.

**Second Lien Obligation Variable Interest Rate** shall mean a variable interest rate to be borne by any Second Lien Obligations. The method of computing such variable interest rate shall be specified in the Supplemental Resolution authorizing such Series of Second Lien Obligations.

**Second Lien Owner**, or any similar terms, shall mean the registered owner of any Second Lien Obligations as shown on the books for the registration and transfer of Second Lien Obligations maintained in accordance with Section B-305.

**Second Lien Parity Debt** shall mean any Parity Reimbursement Second Lien Obligations, any Parity Swap Second Lien Obligations or any other contract, agreement or other Second Lien Obligations of the Issuer designated as constituting "Second Lien Parity Debt" in a certificate of an Authorized Officer delivered to the Second Lien Trustee; provided, however, that any such Parity Reimbursement Second Lien Obligations, Parity Swap Second Lien Obligations, or other contract, agreement or other Second Lien Obligations shall not constitute Second Lien Parity Debt solely to the extent of any obligation to pay termination or other fees, expenses, indemnification or other similar payments to the counterparty to such arrangement; provided further that Parity Reimbursement Second Lien Obligations may include accelerated principal amortization provisions to the extent permitted by subsection 4 of Section B-202. Each Second Lien Parity Debt shall be payable and secured in a manner permitted by Article V, and any lien on and pledge of any portion of the Second Lien Obligations Trust Estate securing Second Lien Parity Debt shall be junior and inferior to the lien on and pledge of the Obligations Trust Estate created for the payment of the Obligations and Parity Debt.

**Second Lien Paying Agent** shall mean any paying agent for the Second Lien Obligations of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

**Second Lien Put Obligations** shall mean Second Lien Obligations which by their terms may be tendered at the option of the Second Lien Owner thereof, or are subject to a mandatory tender other than at the election of the Issuer or a Related Entity, for payment or purchase prior to the stated maturity or redemption date thereof.

**Second Lien Registrar** shall mean any registrar for the Second Lien Obligations of any Series and its successor or successors and any other Person which may at any time be substituted in its place pursuant to the Resolution.

**Second Lien Sinking Fund Installment** shall mean, as of a particular date, any Second Lien Sinking Fund Installment established pursuant to paragraph (m) of subsection 1 of Section B-201.

**Securities Depository** shall mean a recognized securities depository selected by the Issuer to maintain a book-entry system in respect to all or any portion of a Series of Second Lien Obligations (including, as appropriate, any nominee thereof), and shall include any substitute for or successor to the Securities Depository initially acting as Securities Depository.

**Series**, when used with reference to Second Lien Obligations or Second Lien Parity Debt, shall mean all of the Second Lien Obligations delivered on original issuance pursuant to a single Supplemental Resolution and denominated therein a single series, and any Second Lien Obligations thereafter delivered in lieu of or in substitution therefor pursuant to Article B-III or Section B-406 or Section B-805, regardless of variations in maturity, interest rate, or other provisions.

**Taxable Second Lien Obligations** shall mean any Second Lien Obligations which are not Tax-Exempt Second Lien Obligations.

**Tax-Exempt Second Lien Obligations** shall mean any Second Lien Obligations the interest on which is intended by the Issuer to be generally excluded from gross income for federal income tax purposes and which are designated as Tax-Exempt Second Lien Obligations in the Supplemental Resolution authorizing such Second Lien Obligations.

**Variable Interest Rate Second Lien Obligations** shall mean Second Lien Obligations which bear a Variable Interest Rate.

**Section B-102. Rules of Construction.**

1. This Annex B constitutes an integral part of the Resolution and, except to the extent provided in the next two sentences, has the same force and effect as if set forth in the forepart of the Resolution. To the extent expressly provided in the Resolution (not including this Annex B), the Issuer may negate, amend or modify any provision of this Annex B. In the event of any conflict between this Annex B and the forepart of the Resolution, the forepart of the

Resolution shall control. In the event of any conflict between this Annex B and Annex A in respect of Second Lien Obligations or Second Lien Parity Debt, this Annex B shall control.

2. Second Lien Obligations shall constitute Subordinated Indebtedness for all purposes of Annex A.

**Section B-103. Resolution to Constitute Contract.** In consideration of the purchase and acceptance of any and all of the Second Lien Obligations and Second Lien Parity Debt authorized to be issued hereunder by those who are Second Lien Owners of the Second Lien Obligations and Second Lien Parity Debt from time to time, the Resolution shall be deemed to be and shall constitute a contract between the Issuer and the Second Lien Owners and the holders of Second Lien Parity Debt from time to time; and the pledge made in the Resolution and the covenants and agreements therein set forth to be performed on behalf of the Issuer shall be for the equal benefit, protection and security of the Second Lien Owners of any and all of the Second Lien Obligations and Second Lien Parity Debt, all of which, regardless of the time or times of their authentication, issuance and delivery, or maturity, shall be of equal rank without preference, priority or distinction of any of the Second Lien Obligations or Second Lien Parity Debt over any other Second Lien Obligations or Second Lien Parity Debt, except as expressly provided in or permitted by the Resolution.

## **ARTICLE B-II**

### **GENERAL PROVISIONS FOR ISSUANCE OR INCURRENCE OF SECOND LIEN OBLIGATIONS, SECOND LIEN PARITY DEBT AND SECOND LIEN OBLIGATION ANTICIPATION NOTES**

#### **Section B-201. General Provisions for Issuance of Second Lien Obligations.**

1. Second Lien Obligations may be issued pursuant to a Supplemental Resolution in such principal amount or amounts for each Series or subseries as may be specified in such Supplemental Resolution. Second Lien Obligations of any Series or subseries shall be authorized by a Supplemental Resolution which shall specify, among other things, the following matters (or the manner of determining such matters):

(a) The authorized principal amount, designation and Series of such Second Lien Obligations;

(b) The purpose or purposes for which such Second Lien Obligations are being issued which shall be one or more of the purposes set forth in Section 201;

(c) The dates and the maturity dates of the Second Lien Obligations of such Series;

(d) If the Second Lien Obligations of such Series are interest bearing Second Lien Obligations, the interest rates of the Second Lien Obligations of such Series and the interest payment dates therefor;

(e) If Second Lien Obligations of such Series are Capital Appreciation Second Lien Obligations, the Second Lien Obligation Valuation Dates for such Second Lien Obligations and the Second Lien Obligation Accreted Value on each such Second Lien Obligation Valuation Date;

(f) If Second Lien Obligations of such Series are Deferred Income Second Lien Obligations, the Second Lien Obligation Interest Commencement Date for such Second Lien Obligations, the Second Lien Obligation Valuation Dates prior to the Second Lien Obligation Interest Commencement Date for such Second Lien Obligations and the Second Lien Obligation Appreciated Value on each such Second Lien Obligation Valuation Date;

(g) If Second Lien Obligations of such Series are Capital Appreciation Second Lien Obligations or Deferred Income Second Lien Obligations, the manner in which and the period during which principal and interest shall be deemed to accrue on such Second Lien Obligations;

(h) If Second Lien Obligations of such Series are Variable Interest Rate Second Lien Obligations, the maximum interest rate, if any, or the method of calculating such maximum rate for such Second Lien Obligations, and the provisions, if any, as to the calculation or change of Second Lien Obligation Variable Interest Rates;

(i) If Second Lien Obligations of such Series are Second Lien Put Obligations, provisions regarding tender for purchase or redemption thereof and payment of the purchase or Second Lien Obligation Redemption Price thereof;

(j) The denominations of, and the manner of dating, numbering and lettering, the Second Lien Obligations of such Series;

(k) The Second Lien Paying Agents, if any, and the places of payment of the principal and Second Lien Obligation Redemption Price, if any, of, and interest on, the Second Lien Obligations of such Series;

(l) The Second Lien Obligation Redemption Prices, if any, and the redemption terms, if any, for the Second Lien Obligations of such Series, provided that Second Lien Obligations of any maturity for which Second Lien Sinking Fund Installments shall be established pursuant to paragraph (m) of this subsection 1 shall in any event be redeemable, or payable at maturity, by application of the Second Lien Sinking Fund Installments for such Second Lien Obligations on the due dates of such Second Lien Sinking Fund Installments;

(m) The amount and due date of each Second Lien Sinking Fund Installment, if any, for Second Lien Obligations of like maturity of such Series;

(n) Provisions necessary to authorize, in compliance with all applicable law, Second Lien Obligations of such Series to be issued in the form of Second Lien Obligations issued and held in book-entry form on the books of the Issuer or any Fiduciary appointed for that purpose by the Issuer and, in connection therewith, make



such additional changes in the Resolution, not adverse to the rights of the Second Lien Owners, as are necessary or appropriate to accomplish or recognize such book-entry form Second Lien Obligations and specify and determine the matters and things relative to the issuance of such book-entry form Second Lien Obligations as are appropriate or necessary;

(o) To the extent applicable, the provisions relating to (a) any Second Lien Obligation Credit Facility, Qualified Second Lien Swap or other financial arrangement entered into in connection with the issuance of the Second Lien Obligations of such Series and (b) the obligations payable thereunder;

(p) The amount, if any, to be deposited in the Second Lien Obligations Proceeds Fund or any Account therein;

(q) If so determined by the Issuer, provisions for the application of any money available therefor to the purchase, exchange or redemption of Second Lien Obligations of such Series and for the order of purchase, exchange or redemption of such Second Lien Obligations;

(r) If so determined by the Issuer, provisions for the sale of the Second Lien Obligations of such Series;

(s) The forms of the Second Lien Obligations of such Series and of the Second Lien Trustee's certificate of authentication if other than as provided in Section 301; and

(t) Such other matters, not contrary to or inconsistent with the Resolution, as the Issuer may deem advisable or necessary in connection with the authorization, issuance, sale, or delivery of such Series of Second Lien Obligations.

An Authorized Officer to whom a Supplemental Resolution has delegated the power to determine any of the foregoing shall execute a Certificate of Determination evidencing such determinations or other actions taken pursuant to the delegation under such Supplemental Resolution, and such Certificate of Determination shall be conclusive evidence of the terminations or actions of such Authorized Officer as to the matters stated therein. The matters set forth in any such Certificate of Determination shall have the same effect as if set forth in the related Supplemental Resolution.

2. The Second Lien Obligations may be sold in one or more Series or subseries (each of which shall contain a designation distinguishing it from other Series or subseries) and shall be delivered by the Issuer under the Resolution but only upon receipt by the Second Lien Trustee of

(a) An Opinion of Bond Counsel in customary form to the effect that (i) the Issuer has the right and power under the Issuer Act to adopt the Resolution, and the Resolution has been duly and lawfully adopted by the Issuer, is in full force and effect, and is valid and binding upon the Issuer, and enforceable in accordance with its terms, and no other authorization for the Resolution is required as of the date thereof; (ii) the

Resolution creates the valid pledge which it purports to create of the Second Lien Obligations Trust Estate in the manner and to the extent provided in Section 501; (iii) the Second Lien Obligations are valid and binding obligations of the Issuer, enforceable in accordance with their terms and the terms of the Resolution and entitled to the benefits of the Issuer Act and the Resolution, each as amended to the date of such Opinion of Bond Counsel; and (iv) such Second Lien Obligations have been duly and validly authorized and issued in accordance with law and the Resolution;

(b) A copy of the Supplemental Resolution authorizing such Second Lien Obligations, certified by an Authorized Officer;

(c) A written order of the Issuer as to the delivery of the Second Lien Obligations, signed by an Authorized Officer;

(d) A certificate of an Authorized Officer to the effect that, upon the delivery of the Second Lien Obligations of such Series (i) no event which constitutes a default under the Resolution or any of the Second Lien Obligations shall have occurred and be continuing or, if such an event is continuing, upon issuance of the Second Lien Obligations such default shall be cured, and (ii) no such event would result from the authentication and delivery of the Second Lien Obligations of such Series;

(e) If any Second Lien Obligations are Variable Interest Rate Second Lien Obligations or a Qualified Second Lien Swap is being entered into that will result in a variable interest rate obligation of the Issuer, a determination by an Authorized Officer of the Second Lien Obligation Estimated Average Interest Rate;

(f) If any Second Lien Obligations of such Series are Second Lien Put Obligations, a determination by an Authorized Officer of the method or methods to be employed to provide for the purchase or redemption of all Second Lien Put Obligations of such Series if the Second Lien Owners thereof elected to tender for purchase or redemption the entire aggregate Outstanding principal amount of the Second Lien Put Obligations of such Series; and

(g) Such further documents and money as are required by the provisions of Article II, this Article B-II or Article VIII.

3. If Second Lien Obligations are to be listed on a domestic or foreign stock exchange, the Authorized Officers are hereby authorized to take all such actions as they deem necessary or appropriate to comply with the listing requirements of such exchange, including the appointment of a member of such exchange as listing agent, the publication where required by such exchange of all redemption notices, the appointment of a special clearing agent and paying agent, and the execution of an undertaking letter with such exchange.

4. The Second Lien Obligations shall not be a debt of the State or the City and neither the State nor the City shall be liable thereon, nor shall Second Lien Obligations be payable out of any funds other than those of the Issuer as provided in the Resolution.

**Section B-202. Second Lien Obligation Credit Facilities; Qualified Second Lien Swaps and Other Similar Arrangements; Second Lien Parity Debt.**

1. The Issuer may include such provisions in a Supplemental Resolution authorizing the issuance of a Series of Second Lien Obligations secured by a Second Lien Obligation Credit Facility as the Issuer deems appropriate, and no such provisions shall be deemed to constitute an amendment to the Resolution requiring action under Article VIII, Article A-IX or Article B-VIII, including:

(a) So long as the Second Lien Obligation Credit Facility is in full force and effect and payment on the Second Lien Obligation Credit Facility is not in default, then (i) the issuer of the Second Lien Obligation Credit Facility shall be deemed to be the sole owner of the Outstanding Second Lien Obligations the payment of which such Second Lien Obligation Credit Facility secures or (ii) in the alternative or with respect to particular matters, the approval, consent or action of the issuer of the Second Lien Obligation Credit Facility shall be required in addition to the approval, consent or action of the applicable percentage of the Second Lien Owners of the Outstanding Second Lien Obligations, in either case when the approval, consent or action of the Second Lien Owners for such Second Lien Obligations is required or may be exercised under the Resolution including Section B-803 hereof and following a Second Lien Obligations Event of Default hereunder; provided, however, that no issuer of a Second Lien Obligation Credit Facility shall be deemed to be the sole owner of Outstanding Second Lien Obligations pursuant to this provision in the event that the Second Lien Obligation Credit Facility or Second Lien Obligation Credit Facilities securing such Second Lien Obligations provide only liquidity support.

(b) In the event that the principal, Second Lien Sinking Fund Installments, if any, and Second Lien Obligation Redemption Price, if applicable, and interest due on any Outstanding Second Lien Obligations (or Second Lien Obligation Purchase Price of any Outstanding Second Lien Obligations to the extent the issuer of the Second Lien Obligation Credit Facility has not been reimbursed) shall be paid under the provisions of the Second Lien Obligation Credit Facility, all covenants, agreements and other Second Lien Obligations of the Issuer to the Second Lien Owners of such Second Lien Obligations shall continue to exist and such issuer of the Second Lien Obligation Credit Facility shall be subrogated to the rights of such Second Lien Owners in accordance with the terms of such Second Lien Obligation Credit Facility.

2. In addition, such Supplemental Resolution may establish such provisions as are necessary (i) to comply with the provisions of each such Second Lien Obligation Credit Facility, (ii) to provide relevant information to the issuer of the Second Lien Obligation Credit Facility, (iii) to provide a mechanism for paying Second Lien Obligation Principal Installments and interest on Second Lien Obligations secured by the Second Lien Obligation Credit Facility, and (iv) to make provision for any events of default or for additional or improved security required by the issuer of a Second Lien Obligation Credit Facility.

3. The Issuer may enter into such agreements with the issuer of such Second Lien Obligation Credit Facility providing for, *inter alia*: (i) the payment of fees and expenses to such issuer for the issuance of such Second Lien Obligation Credit Facility, (ii) the terms and

conditions of such Second Lien Obligation Credit Facility and the Second Lien Obligations affected thereby, and (iii) the security, if any, to be provided for the issuance of such Second Lien Obligation Credit Facility.

4. The Issuer may secure such Second Lien Obligation Credit Facility by an agreement providing for the purchase of the Second Lien Obligations secured thereby with such adjustments to the rate of interest, method of determining interest, maturity, or redemption provisions as specified by the Issuer in the applicable Supplemental Resolution. The Issuer may also in an agreement with the issuer of such Second Lien Obligation Credit Facility agree to directly reimburse such issuer for amounts paid under the terms of such Second Lien Obligation Credit Facility (together with interest thereon, the **"Reimbursement Second Lien Obligations"**); *provided, however*, that no amounts shall be payable by the Issuer under a Reimbursement Second Lien Obligation for purposes of the Resolution, until amounts are paid under such Second Lien Obligation Credit Facility by the issuer thereof as determined by Supplemental Resolution, any such Reimbursement Second Lien Obligations, which may include interest calculated at a rate higher than the interest rate on the related Second Lien Obligations and accelerated principal amortization, (i) may be secured by a pledge of, and a lien on, the Second Lien Obligations Trust Estate on a parity with the lien created by Section 501 of the Resolution to secure the Second Lien Obligations (a **"Parity Reimbursement Second Lien Obligation"**), but only to the extent that (prior to any acceleration of all Second Lien Obligations, if permitted) any principal amortization requirements are *either* (A) commensurate with the amortization requirements for such related Second Lien Obligations, without acceleration or (B) accelerated to no greater extent than to require repayment in equal principal installments over 5 or more years, or (ii) may constitute an Other Subordinated Contract Obligation, as determined by the Issuer. Parity Reimbursement Second Lien Obligations shall not include any payments (other than interest calculated at a higher rate pursuant to a Second Lien Obligation Credit Facility) (x) of any fees or expenses, (y) pursuant to any indemnification provisions or (z) pursuant to term-loan or other principal amortization requirements in reimbursement of any such advance that are more accelerated than permitted by clauses (A) and (B) of the preceding sentence, and any such payments of the items specified in clauses (x), (y) or (z) shall be paid from amounts available to be transferred pursuant to clause third of subsection 4 of Section 505 of the Resolution.

5. Any such Second Lien Obligation Credit Facility shall be for the benefit of and secure such Second Lien Obligations or portion thereof as specified in any applicable Supplemental Resolution.

6. In connection with the issuance of any Second Lien Obligations or at any time thereafter so long as Second Lien Obligations remain Outstanding, the Issuer may, to the extent permitted pursuant to law, from time to time enter into Qualified Second Lien Swaps. The Issuer's obligation to pay any amount under any Qualified Second Lien Swap may be secured by a pledge of, and a lien on the Second Lien Obligations Trust Estate on a parity with the lien created by Section 501 of the Resolution to secure the Second Lien Obligations (a **"Parity Swap Second Lien Obligation"**), or may constitute a Second Lien Parity Debt, as determined by the Issuer. Parity Swap Second Lien Obligations shall not include any payments of (x) of any fees or expenses, (y) pursuant to any indemnification provisions or (z) any termination payments or other obligations to a counterparty to a Qualified Second Lien Swap, which payments shall be

paid from amounts available to be transferred pursuant to clause third of subsection 4 of Section 505 of the Resolution.

7. Second Lien Parity Debt shall not be a debt of the State or the City and neither the State nor the City shall be liable thereon, nor shall Second Lien Parity Debt be payable out of any funds other than those of the Issuer pledged therefor pursuant to the Resolution.

8. Except to the extent that an Authorized Officer directs that such amounts be deposited in any other Fund or Account pledged to the payment of Second Lien Obligations, any amounts paid to the Issuer under a Qualified Second Lien Swap shall be deposited in the Second Lien Obligations Debt Service Fund.

9. To the extent applicable and not readily apparent with respect any Second Lien Parity Debt, either the terms of such Second Lien Parity Debt shall specify (or an Authorized Officer shall specify in writing) the interest and principal components of or the scheduled payments corresponding to principal and interest under such Second Lien Parity Debt or the manner of determining the foregoing.

**Section B-203. Second Lien Obligation Anticipation Notes.** Whenever the Issuer shall have, by Supplemental Resolution, authorized the issuance of a Series of Second Lien Obligations, the Issuer may by resolution authorize the issuance of Second Lien Obligation Anticipation Notes in anticipation of the issuance of such authorized Series of Second Lien Obligations, in a principal amount not exceeding the principal amount of the Second Lien Obligations of such Series so authorized. The principal of and premium, if any, and interest on such Second Lien Obligation Anticipation Notes and any renewals of such Second Lien Obligation Anticipation Notes shall be payable only from any or all of the following items designated by the Issuer at or prior to issuance of any such series of Second Lien Obligation Anticipation Notes: (i) the proceeds of any renewals of such Second Lien Obligation Anticipation Notes issued to repay such Second Lien Obligation Anticipation Notes, (ii) the proceeds of the sale of the Series of Second Lien Obligations in anticipation of which such Second Lien Obligation Anticipation Notes are issued, (iii) amounts available to pay Other Subordinated Obligations, or (iv) any other money available therefor and not pledged under the Resolution. Such proceeds and other amounts set forth in clauses (i), (ii), (iii) and (iv) may be pledged for the payment of the principal of and premium, if any, and interest on such Second Lien Obligation Anticipation Notes, and any such pledge of the items set forth in clauses (i) and (ii) shall have priority over any other pledge created by the Resolution, including Section 501. In any case, such Second Lien Obligation Anticipation Notes shall be retired or provision shall be made for their retirement not later than the date of authentication and delivery of the Series of Second Lien Obligations in anticipation of which they are issued. The proceeds of the sale of Second Lien Obligation Anticipation Notes other than renewals thereof shall be applied to the purposes for which the Second Lien Obligations in anticipation of which such Second Lien Obligation Anticipation Notes are authorized and shall be deposited in the appropriate Fund or Account established by the Resolution for such purposes or, if so provided in the resolution authorizing renewals of Second Lien Obligation Anticipation Notes issued to pay outstanding Second Lien Obligation Anticipation Notes, applied directly to such payment. Investment earnings from any amounts on deposit in any Fund or Account under the Resolution representing

the proceeds of any Second Lien Obligation Anticipation Notes shall be applied in the manner set forth in the resolution authorizing such Second Lien Obligation Anticipation Notes.

## **ARTICLE B-III**

### **GENERAL TERMS AND PROVISIONS OF SECOND LIEN OBLIGATIONS**

Except as otherwise provided by Supplemental Resolution, the Second Lien Obligations and Second Lien Parity Debt shall be subject to the terms and provisions of the Standard Resolutions Provisions and these Supplemental Standard Resolution Provisions.

#### **Section B-301. Medium of Payment; Form and Date.**

1. The Second Lien Obligations and Second Lien Parity Debt shall be payable, with respect to interest, principal and Redemption Price, in any coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts (or to the extent permitted by law, in any other coin or currency authorized pursuant to a Supplemental Resolution for Second Lien Obligations and related Second Lien Parity Debt).

2. Second Lien Obligations shall be issued in the form of fully registered Second Lien Obligations without coupons. Second Lien Obligations, the certificate of authentication, if any, and the form of assignment shall be in substantially the form provided for in Exhibit Two of the Resolution with such appropriate variations, omissions, substitutions and insertions as are permitted or required hereby or thereby or are required by law, and may have such letters, numbers or other marks of identification and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by the officers executing such Second Lien Obligations, as evidenced by their execution of the Second Lien Obligations. Any portion of the text of any Second Lien Obligations may be set forth on the reverse thereof, with an appropriate reference thereto on the face of such security evidencing Second Lien Obligations, or as multiple pages (with or without such a reference). Second Lien Obligations may be typewritten, printed, engraved, lithographed or otherwise produced.

3. Second Lien Obligations shall be dated, and shall bear or not bear interest, as provided in the Supplemental Resolution authorizing such Second Lien Obligations.

**Section B-302. Legends.** Second Lien Obligations may contain or have endorsed thereon such provisions, specifications and descriptive words not inconsistent with the provisions of the Resolution as may be necessary or desirable to comply with custom, the rules of any securities exchange or commission or brokerage board, or otherwise, as may be determined by the Issuer.

#### **Section B-303. Execution and Authentication.**

1. The Second Lien Obligations shall be executed in the name of the Issuer by the manual or facsimile signature of an Authorized Officer or in such other manner as may be required by law or specified in a Supplemental Resolution. In case any of the officers who shall have signed any of the Second Lien Obligations shall cease to be such officer before the Second

Lien Obligations so signed shall have been actually delivered, such Second Lien Obligations may, nevertheless, be delivered as herein provided, and may be issued as if the Persons who signed such Second Lien Obligations had not ceased to hold such offices. Any Second Lien Obligations may be signed on behalf of the Issuer by such Persons as at the actual time of the execution of such Second Lien Obligations shall be duly authorized or hold the proper office in the Issuer, although at the date of the Second Lien Obligations such Persons may not have been so authorized or have held such office.

2. Second Lien Obligations of each Series shall bear thereon a certificate of authentication, executed manually by the Second Lien Trustee. Only such Second Lien Obligations as shall bear thereon such certificate of authentication shall be entitled to any right or benefit under the Resolution and no Second Lien Obligations shall be valid or obligatory for any purpose until such certificate of authentication shall have been duly executed by the Second Lien Trustee. Such certificate of the Second Lien Trustee upon any Second Lien Obligations executed on behalf of the Issuer shall be conclusive evidence that the Second Lien Obligations so authenticated has been duly authenticated and delivered under the Resolution and that the Second Lien Owner thereof is entitled to the benefits of the Resolution.

**Section B-304. Interchangeability of Second Lien Obligations.** Second Lien Obligations, upon surrender thereof at the office of the Second Lien Registrar with a written instrument of transfer satisfactory to the Second Lien Registrar, duly executed by the Second Lien Owner or his duly authorized attorney, may, at the option of such Second Lien Owner, be exchanged for an equal aggregate principal amount of Second Lien Obligations of the same Series, maturity and interest rate of any other authorized denomination.

**Section B-305. Negotiability, Transfer and Registry.** All the Second Lien Obligations issued under the Resolution shall be negotiable, subject to the provisions for registration and registration of transfer contained in the Resolution and in the Second Lien Obligations. So long as any of the Second Lien Obligations shall remain Outstanding, the Issuer shall maintain and keep, at the office of the Second Lien Registrar, books for the registration and registration of transfer of Second Lien Obligations; and, upon presentation thereof for such purpose at said office and under such reasonable regulations as it or the Second Lien Registrar may prescribe, the Issuer shall register or cause to be registered therein, and permit to be transferred thereon, the registration of any Second Lien Obligations entitled to registration or registration of transfer. So long as any of the Second Lien Obligations remain Outstanding, the Issuer shall make all necessary provision to permit the exchange of Second Lien Obligations at the office of the Second Lien Registrar.

**Section B-306. Transfer of Second Lien Obligations.**

1. The transfer of each Second Lien Obligations shall be registerable only upon the books of the Issuer, which shall be kept by the Second Lien Registrar, by the Second Lien Owner thereof in person or by his attorney authorized in writing, upon surrender thereof together with a written instrument of transfer satisfactory to the Second Lien Registrar executed by the Second Lien Owner or his authorized attorney. Upon the registration of transfer of any such Second Lien Obligations, the Issuer shall issue in the name of the transferee a new Second Lien

Obligation of the same aggregate principal amount, Series, maturity and interest rate as the surrendered Second Lien Obligation.

2. The Issuer and each Fiduciary may deem and treat the Person in whose name any Outstanding Second Lien Obligations shall be registered upon the books of the Issuer as the absolute owner of such Second Lien Obligations, whether such Second Lien Obligations shall be overdue or not, for the purpose of receiving payment of or on account of the principal and Second Lien Obligation Redemption Price, if any, of and interest on such Second Lien Obligations and for all other purposes, and all such payments so made to any such registered owner or upon his order shall be valid and effectual to satisfy and discharge the liability upon such Second Lien Obligations to the extent of the sum or sums so paid, and neither the Issuer nor any Fiduciary shall be affected by any notice to the contrary. The Issuer agrees to indemnify and save each Fiduciary harmless from and against any and all loss, cost, charge, expense, judgment or liability incurred by it, unless acting in bad faith or with negligence under the Resolution, in so treating such registered owner.

**Section B-307. Regulations With Respect to Exchanges and Transfers.** In all cases in which the privilege of exchanging Second Lien Obligations or registering the transfer of Second Lien Obligations is exercised, the Issuer shall execute and the Second Lien Registrar shall deliver Second Lien Obligations in accordance with the provisions of the Resolution. All Second Lien Obligations surrendered in any such exchanges or registrations of transfer shall forthwith be canceled by the Second Lien Registrar. For every such exchange or registration of transfer of Second Lien Obligations, whether temporary or definitive, the Issuer or the Second Lien Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

**Section B-308. Second Lien Obligations Mutilated, Destroyed, Stolen or Lost.** In case any Second Lien Obligations shall become mutilated or be destroyed, stolen or lost, the Issuer shall execute, and thereupon the Second Lien Trustee and Second Lien Registrar shall deliver, a new Second Lien Obligations of like tenor, Series, maturity, interest rate and principal amount as the Second Lien Obligations so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Second Lien Obligations, upon surrender and cancellation of such mutilated Second Lien Obligations, or in lieu of and substitution for the Second Lien Obligations destroyed, stolen or lost, upon filing with the Second Lien Trustee and Second Lien Registrar evidence satisfactory to the Issuer and the Second Lien Trustee and Second Lien Registrar that such Second Lien Obligations has been destroyed, stolen or lost and proof of ownership thereof, and upon furnishing the Issuer and the Second Lien Trustee and Second Lien Registrar with indemnity satisfactory to them and complying with such other reasonable regulations as the Issuer and the Second Lien Trustee and Second Lien Registrar may prescribe and paying such expenses as the Issuer and Second Lien Trustee and Second Lien Registrar may incur. All Second Lien Obligations so surrendered to the Second Lien Registrar shall be canceled by it. If any such Second Lien Obligations shall have matured, or if such Second Lien Obligations shall have been called for redemption or a redemption date pertaining thereto shall have passed, instead of issuing a new Second Lien Obligation the Issuer may cause the same to be paid without surrender thereof upon indemnity satisfactory to the Issuer and the Second Lien Trustee. Any such new Second Lien Obligations issued pursuant to this Section in substitution for Second Lien Obligations alleged to be destroyed, stolen or lost shall constitute original additional



contractual obligations on the part of the Issuer, whether or not the Second Lien Obligations so alleged to be destroyed, stolen or lost be at any time enforceable by anyone, and shall be equally secured by and entitled to equal and proportionate benefits with all other Second Lien Obligations issued under the Resolution, in any money or securities held by the Issuer or the Fiduciary for the benefit of the Second Lien Owners.

**Section B-309. Book-Entry-Only System.** The Issuer may employ a book-entry-only system of registration with respect to any Second Lien Obligations and may utilize the procedures regarding such registration set forth in this Section B-309, as such procedures may be modified or superseded pursuant to the Supplemental Resolution authorizing such Second Lien Obligations. Any provisions of the Resolution inconsistent with book-entry-only Second Lien Obligations shall not be applicable to such book-entry-only Second Lien Obligations.

Any Authorized Officer is hereby authorized to take all actions required for each Series of Second Lien Obligations to be eligible under the rules and regulations of The Depository Trust Company ("DTC"), 55 Water Street, New York, New York, for investment and trading as uncertificated securities. DTC is hereby appointed as the initial Securities Depository for the obligations, with Cede & Co., a nominee thereof, being the initial registered owner of the Second Lien Obligations. In the event that any Securities Depository resigns or is removed, any Authorized Officer may select a substitute Securities Depository. The Issuer and any Fiduciary, and any agent of the Issuer or any Fiduciary, may treat any Securities Depository in whose name any Second Lien Obligation is registered as the owner of such Second Lien Obligations for all purposes under the Resolution. For so long as the Securities Depository is the registered owner of the Second Lien Obligations, procedures with respect to the transmission of notices and the transfer of ownership of, redemption of and payment of principal or Second Lien Obligation Redemption Price, if any, of and interest on such Second Lien Obligations so held shall be in accordance with arrangements among the Second Lien Trustee, the Issuer and the Securities Depository.

So long as the Second Lien Obligations are registered in the name of the Securities Depository, the Issuer and the Second Lien Trustee shall have no responsibility or obligation to any Securities Depository participant, indirect participant or beneficial owner of the Second Lien Obligations. Without limiting the immediately preceding sentence, the Issuer and the Second Lien Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of any Securities Depository or any Securities Depository participant or indirect participant with respect to any beneficial ownership interest in the Second Lien Obligations, (ii) the delivery to any Securities Depository participant, indirect participant, beneficial owner or any other person, other than the Securities Depository, of any notice with respect to the Second Lien Obligations, including any notice of redemption or tender, or (iii) the payment to any Securities Depository participant, indirect participant, beneficial owner or any other person, other than the Securities Depository, of any amount with respect to the principal of or Second Lien Obligation Redemption Price or interest on the Second Lien Obligations.

The Issuer, in its sole discretion and without the consent of any other person, may terminate the services of any Securities Depository with respect to any Series of Second Lien Obligations. Notice of such termination shall be given by the Issuer to the Second Lien Trustee prior to or simultaneously with such termination. In the event the book-entry only system is

discontinued with respect to the Second Lien Obligations, principal and Redemption Price of and interest on the Second Lien Obligations shall be paid as provided in the Resolution.

Consistent with DTC book-entry provisions, one or more typewritten certificates shall be prepared for each maturity of the Second Lien Obligations of a Series and registered in the name of the Securities Depository. There shall be no physical distribution of bond or other certificates to beneficial owners of such Second Lien Obligations. In the event that the Second Lien Obligations do not qualify to be held by the Securities Depository or that either the Issuer determines to discontinue the book-entry only system or DTC determines to discontinue providing its service with respect to the Second Lien Obligations and there is no successor Securities Depository, the bond or other certificates shall be delivered in the form required by the Resolution.

Unless otherwise directed by an Authorized Officer, "CUSIP" or other recognized identification numbers ("CUSIP numbers") will be imprinted on the Second Lien Obligations, but such numbers shall not constitute a part of the contract evidenced by the Second Lien Obligations and any error or omission with respect thereto shall not constitute cause for refusal of any purchaser to accept delivery of and pay for the Second Lien Obligations. As a convenience to the Second Lien Owners, the Issuer and the Second Lien Trustee may use such CUSIP numbers in any notices to the Second Lien Owners, including any notices of redemption of the Second Lien Obligations. Failure on the part of the Issuer or the Second Lien Trustee to use such CUSIP numbers in any notice to Second Lien Owners shall not constitute a Second Lien Obligations Event of Default or any similar violation of the Issuer's contract with such Second Lien Owners. The Issuer will promptly notify the Second Lien Trustee of any change in the CUSIP numbers.

#### **ARTICLE B-IV**

##### **REDEMPTION AND TENDER OF SECOND LIEN OBLIGATIONS**

**Section B-401. Privilege of Redemption and Second Lien Obligation Redemption Price.** Except as otherwise provided in the Resolution or a Supplemental Resolution, Second Lien Obligations subject to redemption pursuant to a Supplemental Resolution shall be subject to redemption only in accordance with this Article B-IV.

Second Lien Obligations subject to redemption prior to maturity pursuant to a Supplemental Resolution shall be redeemable, upon written notice as provided in this Article B-IV, at such times, at such Second Lien Obligation Redemption Prices and upon such terms as may be specified in the Supplemental Resolution authorizing such Second Lien Obligations.

**Section B-402. Redemption at the Election of the Issuer; Tender to Related Entities.** In the case of any redemption of Second Lien Obligations at the election of the Issuer, the Issuer shall give written notice to the Second Lien Trustee of its election so to redeem, of the redemption date, of the Series, of the principal amounts of the Second Lien Obligations of each maturity and interest rate of such Series to be redeemed (which Series, maturities, interest rates and principal amounts thereof to be redeemed shall be determined by the Issuer in its sole discretion, subject to any limitations with respect thereto contained in any Supplemental

Resolution). Such notice shall be given at least 45 days prior to the redemption date or such shorter period as may be provided in the Supplemental Resolution or as shall be acceptable to the Second Lien Trustee. In the event notice of redemption shall have been given as in Section B-405 provided but subject to the second paragraph of Section B-405, the Issuer shall on or prior to the redemption date cause to be paid out to the appropriate Second Lien Paying Agent or Second Lien Paying Agents out of money available therefor an amount in cash which, in addition to other money, if any, available therefor held by such Second Lien Paying Agent or Second Lien Paying Agents, will be sufficient to redeem on the redemption date at the Second Lien Obligation Redemption Price thereof, all of the Second Lien Obligations to be redeemed.

To the extent provided by Supplemental Resolution the Issuer may, in its sole discretion, purchase or grant to any Related Entity the option to purchase, at any time and from time to time, any Second Lien Obligations which are redeemable at the election of the Issuer at a purchase price equal to the redemption price therefor. To exercise any such option, the Issuer or the Related Entity shall give the Second Lien Trustee a written request exercising such option within the time periods specified in the related Supplemental Resolution as though such written request were a written request of the related Issuer for redemption, and the Second Lien Trustee shall thereupon give the Second Lien Owners of the Second Lien Obligations to be purchased notice of such purchase in the manner specified in the related Supplemental Resolution as though such purchase were a redemption. On the date fixed for purchase pursuant to any exercise of such an option, the Issuer or the Related Entity shall pay the purchase price of the Second Lien Obligations then being purchased to the Second Lien Trustee in immediately available funds, and the Second Lien Trustee shall pay the same to the sellers of such Second Lien Obligations against delivery thereof. Following such purchase, the Second Lien Trustee shall cause such Second Lien Obligations to be registered in the name of the Issuer or the Related Entity or its nominee and shall deliver them to the Issuer, the Related Entity or its nominee. Except to the extent otherwise directed by an Authorized Officer, no purchase of Second Lien Obligations pursuant to such an option shall operate to extinguish the indebtedness of the Issuer evidenced thereby. Any such option to purchase by a Related Entity either shall be conditioned on the provision of sufficient money therefor by the Related Entity or shall be an obligation of the Issuer in the event that the Related Entity does not provide sufficient money therefor.

**Section B-403. Redemption Otherwise Than at the Issuer's Election.** Whenever by the terms of the Resolution Second Lien Obligations are required to be redeemed otherwise than at the election of the Issuer, the Second Lien Trustee shall select the Second Lien Obligations to be redeemed, give the notice of redemption and pay out of money available therefor the Second Lien Obligation Redemption Price to the appropriate Second Lien Paying Agents in accordance with the terms of this Article B-IV. The Second Lien Trustee shall have no liability in making such selection.

**Section B-404. Selection of Second Lien Obligations to Be Redeemed.** In the event of redemption of less than all the Outstanding Second Lien Obligations of like tenor, Series, maturity and interest rate, the Second Lien Trustee shall select, as directed by the Issuer (as to the timing of such selection, manner of such selection or otherwise) or otherwise in such manner as the Second Lien Trustee in its discretion shall deem appropriate and fair, the numbers of the Second Lien Obligations to be redeemed and portions of any thereof to be redeemed in part. Second Lien Obligations of denominations equal or less than the minimum authorized

denomination thereof may be redeemed only as a whole. Second Lien Obligations of denominations of more than the minimum authorized denomination thereof may be redeemed either as a whole or in part (which, if redeemed in part, must assure that the portion of the Second Lien Obligations which is not redeemed is an authorized denomination). For the purposes of this Section B-404, Second Lien Obligations, or portions thereof, theretofore selected for redemption shall not be deemed Outstanding.

**Section B-405. Notice of Redemption.** When the Second Lien Trustee shall receive notice from the Issuer of its election to redeem Second Lien Obligations pursuant to Section B-402, and when redemption of Second Lien Obligations is required by the Resolution pursuant to Section B-403, the Second Lien Trustee shall give notice, in the name of the Issuer, of the redemption of such Second Lien Obligations, which notice shall specify the Series (including CUSIP numbers), maturities and, if any maturity shall include Second Lien Obligations bearing different interest rates and all Second Lien Obligations of such maturity are not being redeemed, the interest rate of the Second Lien Obligations to be redeemed, the redemption date and the place or places where amounts due upon such redemption will be payable and, if less than all of the Second Lien Obligations of any like tenor, Series, maturity and interest rate are to be redeemed, the letters and numbers or other distinguishing marks of such Second Lien Obligations so to be redeemed, and, in the case of Second Lien Obligations to be redeemed in part only, such notice shall also specify the respective portions of the principal amount thereof to be redeemed, and, if applicable, that such notice is conditional and the conditions that must be satisfied. Such notice shall further state that on such date there shall become due and payable upon the Second Lien Obligations to be redeemed the Second Lien Obligation Redemption Price thereof, or the Second Lien Obligation Redemption Price of the specified portions of the principal thereof in the case of Second Lien Obligations to be redeemed in part only, together with interest accrued to the redemption date; and that from and after such date interest thereon shall cease to accrue and be payable. Such notice shall be given not less than 30 days nor more than 45 days, or for such other period as may be specified in a Supplemental Resolution authorizing a particular Series, before the redemption date, to the Second Lien Owners of any Second Lien Obligations or portions of Second Lien Obligations which are to be redeemed. Failure so to give any such notice to any particular Owner shall not affect the validity of the proceedings for the redemption of Second Lien Obligations not owned by such Second Lien Owner and failure of any Second Lien Owner to receive such notice shall not affect the validity of the proposed redemption of Second Lien Obligations. The Issuer may provide notices of redemption at such additional times as it may determine necessary or appropriate.

Any notice of optional redemption given pursuant to this Section may state that it is conditional upon receipt by the Second Lien Trustee of money sufficient to pay the Second Lien Obligation Redemption Price of such Second Lien Obligations or upon the satisfaction of any other condition, or that it may be rescinded upon the occurrence of any other event, and any conditional notice so given may be rescinded at any time before payment of such Second Lien Obligation Redemption Price if any such condition so specified is not satisfied or if any such other event occurs. Notice of such rescission shall be given by the Second Lien Trustee to affected Second Lien Owners as promptly as practicable upon the failure of such condition or the occurrence of such other event.

Unless otherwise provided by Supplemental Resolution, notices of redemption shall be sent by first class mail, postage prepaid.

Notice of redemption of any Series of Second Lien Obligations shall also be sent by the Second Lien Trustee to such additional Persons as may be specified in the Supplemental Resolution authorizing such Series.

**Section B-406. Payment of Redeemed Second Lien Obligations.** Notice having been given in the manner provided in Section B-405, the Second Lien Obligations or portions thereof so called for redemption shall, subject to the second paragraph of Section B-405, become due and payable on the redemption date so designated at the Second Lien Obligation Redemption Price, plus interest accrued and unpaid to the redemption date, and, upon presentation and surrender thereof at the office specified in such notice, such Second Lien Obligations, or portions thereof, shall be paid at the Second Lien Obligation Redemption Price plus interest accrued and unpaid to the redemption date. If there shall be called for redemption less than all of a Second Lien Obligation, the Issuer shall execute and cause to be delivered, upon the surrender of such Second Lien Obligation, without charge to the owner thereof, for the unredeemed balance of the principal amount of the Second Lien Obligation so surrendered, at the option of the owner thereof, Second Lien Obligations of like tenor, Series, maturity and interest rate in any of the authorized denominations. If, on the redemption date, money for the redemption of all the Second Lien Obligations or portions thereof of any like tenor, Series, maturity and interest rate to be redeemed, together with interest to the redemption date, shall be held by the Second Lien Paying Agents so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date interest on the Second Lien Obligations or portions thereof of such Series, maturity and interest rate so called for redemption shall cease to accrue. If said money shall not be so available on the redemption date, such Second Lien Obligations or portions thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption.

## **ARTICLE B-V**

### **SECOND LIEN SINKING FUND INSTALLMENTS; CANCELLATION AND DISPOSITION OF SECOND LIEN OBLIGATIONS**

#### **Section B-501. Satisfaction of Second Lien Sinking Fund Installments.**

1. Any amount accumulated in the Second Lien Debt Service Fund in respect of and up to the unsatisfied balance of each Second Lien Sinking Fund Installment shall be applied by the Second Lien Trustee to either (a) or (b) below as directed by the Issuer (together with amounts accumulated in the Second Lien Debt Service Fund with respect to interest on the Series of Second Lien Obligations for which such Second Lien Sinking Fund Installment was established) if so directed by an Authorized Officer prior to the 45th day preceding the due date of such Second Lien Sinking Fund Installment as follows:

(a) to the purchase of Second Lien Obligations for which such Second Lien Sinking Fund Installment was established, at prices (including any brokerage and other charges) not exceeding the principal amount of such Second Lien Obligations plus unpaid

interest accrued to the date of purchase, such purchases to be made in such manner as the Issuer shall direct; or

(b) to the redemption of Second Lien Obligations for which such Second Lien Sinking Fund Installment was established, if then redeemable by their terms at the prices referred to in clause (a) of this subsection 1 of this Section B-501.

All Second Lien Obligations so purchased or redeemed shall be canceled by the Second Lien Trustee prior to the 45th day preceding the due date of such Second Lien Sinking Fund Installment.

2. Upon the purchase or redemption of any Second Lien Obligations pursuant to subsection 1 of this Section, an amount equal to the principal amount of the Second Lien Obligations so purchased or redeemed shall be credited toward the next Second Lien Sinking Fund Installment thereafter to become due with respect to the Second Lien Obligations of such maturity and the amount of any excess of the amounts so credited over the amount of such Second Lien Sinking Fund Installment shall be credited by the Second Lien Trustee against future Second Lien Sinking Fund Installments for such Series as specified by an Authorized Officer. Prior to the purchase or redemption of such Second Lien Obligations, the Issuer shall deliver to the Second Lien Paying Agent and to the Second Lien Trustee a certificate of an Authorized Officer specifying (i) the principal amount, Series, maturity, interest rate and numbers of the Second Lien Obligations so to be purchased or redeemed, (ii) the date and Series of the Second Lien Sinking Fund Installment in satisfaction of which such Second Lien Obligations are so to be purchased or redeemed, (iii) the aggregate principal amount of the Second Lien Obligations so to be purchased or redeemed, and (iv) the unsatisfied balance of each such Second Lien Sinking Fund Installment after giving effect to the delivery of such Second Lien Obligations.

3. In satisfaction, in whole or in part, of any Second Lien Sinking Fund Installment, the Issuer may deliver to the Second Lien Trustee at least 45 days prior to the date of such Second Lien Sinking Fund Installment, for cancellation, Second Lien Obligations acquired by purchase or redemption, except Second Lien Obligations acquired by purchase or redemption pursuant to the provisions of subsection 1 of this Section, of the maturity and interest rate entitled to such Second Lien Sinking Fund Installment. All Second Lien Obligations so delivered to the Second Lien Trustee in satisfaction of a Second Lien Sinking Fund Installment shall reduce the amount thereof by the amount of the aggregate principal amount of such Second Lien Obligations. Concurrently with such delivery of such Second Lien Obligations the Issuer shall deliver to the Second Lien Paying Agent and to the Second Lien Trustee a certificate of an Authorized Officer, specifying (i) the principal amount, Series, maturity, interest rate and numbers of the Second Lien Obligations so delivered, (ii) the date and Series of the Second Lien Sinking Fund Installment in satisfaction of which such Second Lien Obligations are so delivered, (iii) the aggregate principal amount of the Second Lien Obligations so delivered, and (iv) the unsatisfied balance of each such Second Lien Sinking Fund Installment after giving effect to the delivery of such Second Lien Obligations.

4. The Second Lien Trustee shall, upon receipt of the notice and in the manner required by the Resolution, call for redemption, on the date of each Second Lien Sinking Fund

Installment falling due prior to maturity, such principal amount of Second Lien Obligations of the Series, interest rate and maturity entitled to such Second Lien Sinking Fund Installment as is required to exhaust the unsatisfied balance of such Second Lien Sinking Fund Installment.

**Section B-502. Cancellation and Disposition of Second Lien Obligations.** All Second Lien Obligations that have been paid (whether at maturity or by acceleration, call for redemption, purchase by the Issuer and presentation for cancellation, or otherwise) or delivered to the Second Lien Trustee for cancellation shall be canceled and not reissued, except as otherwise provided in a Supplemental Resolution with respect to Second Lien Put Obligations. Unless otherwise directed by the Issuer, the Second Lien Trustee shall treat canceled Second Lien Obligations in accordance with its document retention policies. Notwithstanding any other provision of the Resolution, the Issuer may in its sole discretion purchase any Second Lien Obligations of the Issuer or any Related Entity for investment purposes and any such Second Lien Obligations shall remain outstanding unless and until presented for cancellation.

## **ARTICLE B-VI**

### **PARTICULAR COVENANTS OF THE ISSUER**

The Issuer covenants and agrees with the Second Lien Trustee and the Second Lien Owners as follows:

**Section B-601. Payment of Second Lien Obligations and Second Lien Parity Debt.** The Issuer shall duly and punctually pay or cause to be paid from the Second Lien Obligations Trust Estate as provided in the Resolution the principal or Second Lien Obligation Redemption Price, if any, of every Second Lien Obligations and the interest thereon and all Second Lien Parity Debt, at the dates and places, and in the manner provided in the Second Lien Obligations and Second Lien Parity Debt, according to the true intent and meaning thereof.

**Section B-602. Extension of Payment of Second Lien Obligations.** The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of any of the Second Lien Obligations or the time of payments of any claims for interest by the purchase or funding of such Second Lien Obligations or claims for interest or by any other arrangement, and in case the maturity of any of the Second Lien Obligations or the time for payment of such claims for interest shall be extended, such Second Lien Obligations or claims for interest shall not be entitled, in case of any Second Lien Obligations Event of Default, to the benefit of the Resolution or to any payment out of the Second Lien Obligations Trust Estate, except subject to the prior payment of the principal of all Second Lien Obligations Outstanding the maturity of which has not been extended and of such portion of the accrued interest on the Second Lien Obligations as shall not be represented by such extended claims for interest. Nothing herein shall be deemed to limit the right of the Issuer (i) to issue refunding Second Lien Obligations as provided in the Resolution and such issuance shall not be deemed to constitute an extension of maturity of the Second Lien Obligations, (ii) to issue Second Lien Put Obligations and neither such issuance nor the operation of the provisions of such Second Lien Put Obligations shall be deemed to constitute an extension of maturity of the Second Lien Obligations, (iii) to apply any amount in any Fund held under the Resolution for such purpose to the purchase or redemption of



Second Lien Obligations or (iv) to issue securities having a maturity date, including any extension of maturity contemplated at the time of issuance, of no more than 270 days from the issue date.

**Section B-603. Offices for Servicing Second Lien Obligations.** Except as otherwise provided in the Resolution, the Issuer shall at all times maintain one or more offices or agencies in the City and State where Second Lien Obligations may be presented for payment, registration, transfer or exchange, and where notices, demands and other documents may be served upon the Issuer in respect of the Second Lien Obligations or of the Resolution. The Issuer may appoint the Second Lien Trustee or any other Fiduciary as its agent to maintain such office or agency for the payment, redemption, registration, transfer or exchange of Second Lien Obligations and for the service upon the Issuer of such notices, demands and other documents. The Issuer may also maintain one or more offices or agencies outside of the City or State for the same purposes.

**Section B-604. Further Assurance.** To the extent permitted by law, the Issuer from time to time shall make, do, execute, adopt, acknowledge and deliver, and take all and every such further acts, deeds, conveyances, assignments, resolutions, transfers and assurances as may be necessary or desirable for the better assuring, conveying, granting, assigning and confirming all and singular the rights and interests in the Second Lien Obligations Trust Estate or assigned, or intended so to be, or which the Issuer may become bound to pledge or assign.

**Section B-605. Accounts and Reports.**

1. The Issuer shall keep proper books of record and account of its operations. Such books of account are to be audited at least annually by independent certified public accountants experienced in governmental accounting selected by the Issuer. A copy of each audit report, annual balance sheet and income and expense statement shall be filed with the Second Lien Trustee and sent to any Second Lien Owner filing with the Issuer a written request therefor.

2. The Issuer shall annually, within 6 months after the close of each fiscal year or at such other time required under applicable law or a subsequent contract with all or certain Second Lien Owners (or, if not available by such date, when and if available), file with the Second Lien Trustee, and otherwise as provided by law, a copy of an annual report for such year, accompanied by the opinion of the accountants specified in subsection 1 of this Section.

**Section B-606. General.**

1. The Issuer shall do and perform or cause to be done and performed all acts and things required to be done or performed by or on behalf of the Issuer under the provisions of the Resolution and, to the extent material to the interests of Second Lien Owners, the Issuer Act.

2. Upon the date of authentication and delivery of any of the Second Lien Obligations, all conditions, acts and things required by law and the Resolution to exist, to have happened and to have been performed precedent to and in connection with the issuance of such Second Lien Obligations (and any related Second Lien Parity Debt then being incurred) shall exist, shall have happened and shall have been performed and the issuance of such Second Lien Obligations (and any related Second Lien Parity Debt then being incurred), together with all



other indebtedness of the Issuer, shall be within every debt and other limit prescribed by the laws of the State, as applicable.

## **ARTICLE B-VII**

### **CONCERNING THE SECOND LIEN TRUSTEE, SECOND LIEN PAYING AGENTS AND THE SECOND LIEN REGISTRAR**

**Section B-701. Second Lien Trustee; Appointment and Acceptance of Duties.**  
On or prior to the delivery of any Second Lien Obligations, the Issuer shall appoint a Second Lien Trustee. The Second Lien Trustee shall signify its acceptance of the duties and Second Lien Obligations imposed upon it by the Resolution by executing and delivering to the Issuer a written acceptance thereof.

**Section B-702. Duties, Liabilities and Rights of the Second Lien Trustee.**

1. Prior to the occurrence of a Second Lien Obligations Event of Default of which a Responsible Second Lien Obligation Officer has written notice or actual knowledge, and after the curing or waiver of any Second Lien Obligations Event of Default which may have occurred:

(a) the Second Lien Trustee undertakes to perform such duties and only such duties as are specifically set forth in the Resolution, and no implied covenants or Second Lien Obligations shall be read into the Resolution against the Second Lien Trustee; and

(b) in the absence of bad faith on its part, the Second Lien Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Second Lien Trustee and conforming to the requirements of the Resolution; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Second Lien Trustee, the Second Lien Trustee is under a duty to examine same to determine whether or not they conform to the requirements of the Resolution.

2. In case a Second Lien Obligations Event of Default of which a Responsible Second Lien Obligation Officer has written notice or actual knowledge has occurred and is continuing, the Second Lien Trustee shall exercise such of the rights and powers vested in it by the Resolution, and use the same degree of care and skill in their exercise, as a prudent Person would exercise or use in the conduct of such Person's own affairs.

3. No provision of the Resolution shall be construed to relieve the Second Lien Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(a) this subsection 3 shall not be construed to limit the effect of subsection 1 of this Section B-702;

(b) the Second Lien Trustee is not and shall not be liable for any error of judgment made in good faith by a Responsible Second Lien Obligation Officer, unless it is proven that the Second Lien Trustee was negligent in ascertaining the pertinent facts;

(c) the Second Lien Trustee is not and shall not be liable with respect to any action taken or omitted to be taken by it in good faith (i) in accordance with the direction of the Second Lien Owners of the applicable percentage of Second Lien Obligations then Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Second Lien Trustee, or (ii) which it believes to be authorized or within its rights or powers under the Resolution;

(d) no provision of the Resolution shall require the Second Lien Trustee to expend or risk its own funds or otherwise incur any personal or financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, for which it has not received a satisfactory indemnity;

(e) the Second Lien Trustee may rely on any document believed by it to be genuine and to have been signed or presented by the proper Person and shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Second Lien Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(f) the Second Lien Trustee shall not be charged with knowledge of a Second Lien Obligations Event of Default unless a Responsible Second Lien Obligation Officer shall have received written notice from a Second Lien Owner or the Issuer or have actual knowledge; provided that the Second Lien Trustee shall be deemed to have actual knowledge of any failure to pay principal or Second Lien Obligation Redemption Price of or interest on Second Lien Obligations when due;

(g) the Second Lien Trustee shall not be under any obligation to take any action that is discretionary hereunder;

(h) neither the Second Lien Trustee nor any of its directors, officers, employees or agents shall be personally liable for any action taken, suffered or omitted by the Second Lien Trustee in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon the Second Lien Trustee by the Resolution;

(i) the Second Lien Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians, or nominees and the Second Lien Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodians or nominees appointed with due care by it hereunder; and

(j) the Second Lien Trustee may request that the Issuer deliver a certificate of an Authorized Officer setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant hereto, which certificate may be signed by any Person authorized to sign such a certificate, including any Person specified as so authorized in any such certificate previously delivered and not superseded.

4. Whether or not expressly so provided, every provision of the Resolution relating to the conduct or affecting the liability of or affording protection to the Second Lien Trustee is subject to the provisions of this Section B-702.

5. In the event that the Second Lien Trustee is also acting as Second Lien Paying Agent or Second Lien Registrar hereunder, the rights and protections afforded to the Second Lien Trustee pursuant to this Article B-VII shall also be afforded to the Second Lien Paying Agent and Second Lien Registrar.

**Section B-703. Second Lien Paying Agents and Second Lien Registrars; Appointment and Acceptance of Duties.**

1. The Second Lien Trustee is hereby appointed the Second Lien Registrar and a Second Lien Paying Agent with respect to the Second Lien Obligations. The Issuer may at any time or from time to time appoint one or more other Second Lien Paying Agents and Second Lien Registrars in the manner and subject to the conditions set forth in Section B-713 for the appointment of a successor Second Lien Paying Agent or Second Lien Registrar. The Issuer may be appointed a Second Lien Paying Agent or Second Lien Registrar.

2. Each Second Lien Paying Agent and Second Lien Registrar other than the Second Lien Trustee shall signify its acceptance of the duties and obligations imposed upon it by the Resolution by executing and delivering to the Issuer and to the Second Lien Trustee a written acceptance thereof.

**Section B-704. Responsibilities of Fiduciaries.** The recitals of fact contained in the Resolution and in the Second Lien Obligations shall be taken as the statements of the Issuer and no Fiduciary assumes any responsibility for the correctness of the same. No Fiduciary makes any representations as to the validity or sufficiency of the Resolution or of any Second Lien Obligations issued thereunder or in respect of the security afforded by the Resolution, and no Fiduciary shall incur any liability in respect thereof. No Fiduciary shall be under any responsibility or duty with respect to the issuance of the Second Lien Obligations for value or the application of the proceeds thereof or the application of any money paid to the Issuer. No Fiduciary shall be under any responsibility or duty with respect to the application of any money paid to any other Fiduciary. No Fiduciary shall be liable in connection with the performance of its duties under the Resolution, or for any losses, fees, taxes or other charges incurred upon the purchase or sale or redemption of any securities purchased for or held in any Fund under the Resolution, including any losses incurred by reason of having to sell securities prior to their maturity date, except in each case for its own willful misconduct, negligent action or negligent failure to act.

**Section B-705. Evidence on Which Fiduciaries May Act.**

1. Each Fiduciary shall be protected in acting or refraining from acting upon any notice, resolution, request, consent, order, certificate, report, opinion, bond, or other paper or document believed by it to be genuine, and to have been signed or presented by the proper party or parties. Each Fiduciary may consult with counsel of its selection, who may or may not be counsel to the Issuer, and the opinion of such counsel shall be full and complete authorization

and protection in respect of any action taken, omitted to be taken or suffered by it under the Resolution in good faith and in accordance therewith.

2. Whenever any Fiduciary shall deem it necessary or desirable that a matter be proved or established prior to taking or suffering any action under the Resolution, such matter (unless other evidence in respect thereof be therein specifically prescribed) may be deemed to be conclusively proved and established by a certificate of an Authorized Officer, and such certificate shall be full warrant for any action taken or suffered in good faith under the provisions of the Resolution; but in its discretion the Fiduciary may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

3. Except as otherwise expressly provided in the Resolution, any request, order, notice or other direction required or permitted to be furnished pursuant to any provision thereof by the Issuer to any Fiduciary shall be sufficiently executed if executed in the name of the Issuer by an Authorized Officer.

**Section B-706. Compensation.** The Issuer shall pay to each Fiduciary from time to time such compensation as shall be agreed to in writing between the Fiduciary and the Issuer for all services rendered under the Resolution (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and also all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under the Resolution. To the extent permitted by law, the Issuer further agrees to indemnify and save each Fiduciary and its officers, directors, agents, and employees harmless against any and all liabilities, losses, damages, claims or expenses which it may incur in the acceptance, exercise and performance of its powers and duties hereunder and which are not due to its willful misconduct, negligence or bad faith. The obligations of this Section B-706 shall survive the discharge of the Resolution. No obligations of the Issuer to make any payment to any Fiduciary shall have the benefit of any lien on or pledge or assignment of the Obligations Trust Estate or the Second Lien Obligations Trust Estate.

A Fiduciary shall notify the Issuer promptly of any claim for which it may seek indemnity. The Issuer shall defend the claim and the Second Lien Trustee shall cooperate in the defense. The Fiduciary may have separate counsel and the Issuer shall pay the reasonable fees and expenses of such counsel.

**Section B-707. Certain Permitted Acts.** Any Fiduciary may become the owner of any Second Lien Obligations or any other obligations of the Issuer, with the same rights it would have if it were not a Fiduciary. To the extent permitted by law and pursuant to the Resolution, any Fiduciary may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Second Lien Owners or the holders of any other obligations of the Issuer or to effect or aid in any reorganization growing out of the enforcement of the Second Lien Obligations or any other obligations of the Issuer under the Resolution, whether or not any such committee shall represent the Second Lien Owners of a majority in principal amount of the Second Lien Obligations then Outstanding.

**Section B-708.      Resignation of Second Lien Trustee.** The Second Lien Trustee may at any time resign and be discharged of the duties and obligations created by the Resolution by giving not less than 60 days' written notice to the Issuer and mailing notice thereof to the Second Lien Owners of the Second Lien Obligations, specifying the date when such resignation shall take effect, at least 45 days prior to the effective date, provided that such resignation shall take effect upon *the later of* (i) the day specified in such notice and (ii) the day a successor shall have been appointed by the Issuer or the Second Lien Owners as provided in Section B-710 and shall have qualified therefor.

**Section B-709.      Removal of Second Lien Trustee.** The Second Lien Trustee may be removed at any time by an instrument or concurrent instruments in writing, filed with the Second Lien Trustee, and signed by the Second Lien Owners of a majority in principal amount of the Second Lien Obligations then Outstanding or their attorneys-in-fact duly authorized, excluding any Second Lien Obligations held by or for the account of the Issuer or any Related Entity. In addition, so long as no Second Lien Obligations Event of Default shall have occurred and be continuing hereunder and the Second Lien Trustee is not pursuing any right or remedy available to it pursuant to the Resolution, the Second Lien Trustee may be removed by the Issuer at any time for failure to provide reasonably acceptable services, failure to charge reasonably acceptable fees or any other reasonable cause, all as determined by a certificate of an Authorized Officer filed with the Second Lien Trustee. Any such removal shall not be effective until a successor shall have been appointed by the Issuer or the Second Lien Owners as provided in Section B-710 and shall have qualified therefor.

**Section B-710.      Appointment of Successor Second Lien Trustee.**

1. In case at any time the Second Lien Trustee shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Second Lien Trustee, or of its property, shall be appointed, or if any public officer shall take charge or control of the Second Lien Trustee, or of its property or affairs, a successor may be appointed by the Second Lien Owners of a majority in principal amount of the Second Lien Obligations then Outstanding, excluding any Second Lien Obligations held by or for the account of the Issuer, by an instrument or concurrent instruments in writing signed and acknowledged by such Second Lien Owners or by their attorneys-in-fact duly authorized and delivered to such successor Second Lien Trustee, notification thereof being given to the Issuer and the predecessor Second Lien Trustee; provided, nevertheless, that unless a successor Second Lien Trustee shall have been appointed by the Second Lien Owners as aforesaid, the Issuer by a duly executed written instrument signed by an Authorized Officer of the Issuer shall therewith appoint a Second Lien Trustee to fill such vacancy until a successor Second Lien Trustee shall be appointed by the Second Lien Owners as authorized in this Section B-710. The Issuer shall mail notice of any such appointment made by it to all Second Lien Owners within 20 days after such appointment. Any successor Second Lien Trustee appointed by the Issuer shall, immediately and without further act, be superseded by a Second Lien Trustee appointed by the Second Lien Owners.

2. If in a proper case no appointment of a successor Second Lien Trustee shall be made pursuant to the foregoing provisions of this Section within 45 days after the Second Lien Trustee shall have given to the Issuer written notice as provided in Section B-708 or after a

vacancy in the office of the Second Lien Trustee shall have occurred by reason of its inability to act, the Second Lien Trustee or the Second Lien Owner of any Second Lien Obligations may, at the expense of the Issuer, apply to any court of competent jurisdiction to appoint a successor Second Lien Trustee. Said court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Second Lien Trustee.

3. Any Second Lien Trustee appointed under the provisions of this Section B-710 in succession to the Second Lien Trustee shall be a Bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in The City of New York, and having a capital and surplus aggregating at least \$100 million, if there be such a Bank willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution.

**Section B-711. Transfer of Rights and Property to Successor Second Lien Trustee.** Any successor Second Lien Trustee appointed under the resolution shall execute, acknowledge and deliver to its predecessor Second Lien Trustee, and also to the Issuer, an instrument accepting such appointment, and thereupon such successor Second Lien Trustee, without any further act, deed or conveyance, shall become fully vested with all money, estates, properties, rights, powers, duties and obligations of such predecessor Second Lien Trustee, with like effect as if originally named as Second Lien Trustee; but the Second Lien Trustee ceasing to act shall nevertheless, on the written request of the Issuer, or of the successor Second Lien Trustee, and, upon the payment of all of its charges hereunder, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as may reasonably be required for more fully and certainly vesting and confirming in such successor Second Lien Trustee all the right, title and interest of the predecessor Second Lien Trustee in and to any property held by it under the Resolution, and shall pay over, assign and deliver to the successor Second Lien Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Second Lien Trustee for more fully and certainly vesting in and confirming to such successor Second Lien Trustee any such estates, rights, powers and duties, any and all such deeds, conveyances and instruments in writing shall, on request, and so far as may be authorized by law, be executed, acknowledged and delivered by the Issuer. Any successor Second Lien Trustee shall promptly notify the Second Lien Registrar and the Second Lien Paying Agents of its appointment as Second Lien Trustee.

**Section B-712. Merger or Consolidation.** Any Person into which any Fiduciary may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which any Fiduciary may sell or transfer all or substantially all of its municipal corporate trust business, provided such Person shall be a Bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America, doing business and having a corporate trust office in the City, and having a capital and surplus aggregating at least \$100 million, and shall be authorized by law to perform all the duties imposed upon it by the Resolution, shall be the successor to such Fiduciary without the execution or filing of any paper or the performance of any further act.

**Section B-713. Resignation or Removal of Second Lien Paying Agent or Second Lien Registrar and Appointment of Successor.**

1. Any Second Lien Paying Agent or Second Lien Registrar may at any time resign and be discharged of the duties and obligations created by the Resolution by giving at least 60 days' written notice to the Issuer, the Second Lien Trustee, and the other Second Lien Paying Agents or Second Lien Registrar, as the case may be. Any Second Lien Paying Agent or Second Lien Registrar may be removed at any time by an instrument filed with such Second Lien Paying Agent or Second Lien Registrar, the Second Lien Trustee and the Trustee and signed by the Issuer. Any successor Second Lien Paying Agent or Second Lien Registrar shall be appointed by the Issuer, with the approval of the Second Lien Trustee, and (subject to the requirements of Section B-603) shall be a bank that is organized under the laws of the State or is a national banking association organized under the laws of the United States of America doing business and having a corporate trust office in The City of New York and having a capital and surplus aggregating at least \$100 million, which is willing and able to accept the office on reasonable and customary terms and authorized by law to perform all the duties imposed upon it by the Resolution.

2. In the event of the resignation or removal of any Second Lien Paying Agent, such Second Lien Paying Agent shall pay over, assign and deliver any money held by it as Second Lien Paying Agent to its successor, or if there be no successor, to the Second Lien Trustee. In the event that for any reason there shall be a vacancy in the office of any Second Lien Paying Agent, the Second Lien Trustee shall act as such Second Lien Paying Agent.

3. In the event of the resignation or removal of any Second Lien Registrar, such Second Lien Registrar shall transfer and deliver all records, certificates and documents held by it as Second Lien Registrar to its successor, or if there be no successor, to the Second Lien Trustee. In the event that for any reason there shall be a vacancy in the office of any Second Lien Registrar, the Second Lien Trustee shall act as such Second Lien Registrar.

**Section B-714. Adoption of Authentication.** In case any of the Second Lien Obligations contemplated to be issued under the Resolution shall have been authenticated but not delivered, any successor Second Lien Trustee may adopt the certificate of authentication of any predecessor Second Lien Trustee so authenticating such Second Lien Obligations and deliver the Second Lien Obligations so authenticated; and in case any of such Second Lien Obligations shall not have been authenticated, any successor Second Lien Trustee may authenticate such Second Lien Obligations in the name of the predecessor Second Lien Trustee, or in the name of the successor Second Lien Trustee, and in all such cases such certificate shall have the full force which it is anywhere in said Second Lien Obligations or in the Resolution provided that the certificate of the Second Lien Trustee shall have.

**Section B-715. Continuing Disclosure Agreements.** The Second Lien Trustee shall be entitled to the same rights and the same degree of indemnification in its execution and performance of each continuing disclosure agreement entered into pursuant to Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended, as it is under the Resolution.

## ARTICLE B-VIII

### AMENDMENTS

**Section B-801. Mailing.** Any provision in this Article for the mailing of a notice or other paper to Second Lien Owners shall be fully complied with if it is mailed, postage prepaid, (i) to each Second Lien Owner of any affected Second Lien Obligations then Outstanding at such Second Lien Owner's address, if any, appearing upon the registry books of the Issuer, and (ii) to the Second Lien Trustee; or, in each case, to such parties by facsimile or other means to the extent permitted by applicable law and arrangements.

**Section B-802. Powers of Amendment.** Any modification or amendment of the Resolution and of the rights and obligations of the Issuer and of the Second Lien Owners, in any particular, requiring the consent of the Second Lien Owners may be made by a Supplemental Resolution, with the written consent given as provided in Section B-803, (i) of the Second Lien Owners of a majority in principal amount of the Second Lien Obligations Outstanding at the time such consent is given, and (ii) in case less than all of the Second Lien Obligations then Outstanding are affected by the modification or amendment, of the Second Lien Owners of a majority in principal amount of the Second Lien Obligations so affected and Outstanding at the time such consent is given; *provided, however*, that if such modification or amendment will, by its terms, not take effect so long as particular Second Lien Obligations remain Outstanding, the consent of the Second Lien Owners of such Second Lien Obligations shall not be required and such Second Lien Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Second Lien Obligations under this Section. No such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal of any Outstanding Second Lien Obligations or of any installment of interest thereon or a reduction in the principal amount or the Second Lien Obligation Redemption Price thereof or in the rate of interest thereon without the consent of the Second Lien Owner of such Second Lien Obligations, (b) reduce the percentages or otherwise affect the classes of Second Lien Obligations the consent of the Second Lien Owners of which is required to waive a Second Lien Obligations Event of Default or otherwise effect any such modification or amendment, (c) create a preference or priority of any Second Lien Obligations over any other Second Lien Obligations, without the consent of the Second Lien Owners of all such Second Lien Obligations, (d) create a lien prior to or on parity with the lien of the Resolution securing Second Lien Obligations, other than the lien on the Obligations Trust Estate securing Obligations, without the consent of the Second Lien Owners of all of the Second Lien Obligations then Outstanding, or (e) change or modify any of the rights or Second Lien Obligations of any Fiduciary without its written assent thereto. For the purposes of this Section, Second Lien Obligations shall be deemed to be affected by a modification or amendment of the Resolution if the same materially and adversely affects the rights of the Second Lien Owner of such Second Lien Obligations. The Second Lien Trustee may in its discretion determine whether or not in accordance with the foregoing powers of amendment particular Second Lien Obligations would be affected by any modification or amendment of the Resolution and any such determination shall be binding and conclusive on the Issuer and all Second Lien Owners. The Second Lien Trustee may request and receive an opinion of counsel, including a Counsel's Opinion, as conclusive evidence as to whether particular Second Lien Obligations would be so affected by any such modification or amendment of the Resolution and the Second Lien Trustee shall have no duty or obligation to take any action



hereunder unless and until it has received such opinion. Notwithstanding anything in this Section or the Resolution to the contrary, the consent of Second Lien Owners of any Series of additional Second Lien Obligations to be issued hereunder to any amendment or modification of the Resolution, which modification or amendment, as well as such consent, is disclosed in the official statement or other offering document prepared in connection with the primary offering of such Series of additional Second Lien Obligations, shall be deemed given and irrevocable, and no other evidence of such consent shall be required.

**Section B-803. Consent of Second Lien Owners.** The Issuer at any time may adopt a Supplemental Resolution making a modification or amendment permitted by the provisions of Section B-802 to take effect when and as provided in this Section. A copy of such Supplemental Resolution (or brief summary thereof or reference thereto in form approved by the Second Lien Trustee) together with a request to the Second Lien Owners for their consent thereto in form satisfactory to the Second Lien Trustee, shall be mailed by the Issuer to the Second Lien Owners (but failure to mail such copy and request shall not affect the validity of the Supplemental Resolution when consented to as in this Section provided). Such Supplemental Resolution shall not be effective unless and until (i) there shall have been filed with the Second Lien Trustee (a) the written consents of Second Lien Owners of the percentages of Outstanding Second Lien Obligations specified in Section B-802 and (b) a Counsel's Opinion stating that such Supplemental Resolution has been duly and lawfully adopted and filed by the Issuer in accordance with the provisions of the Resolution, is authorized or permitted by the Resolution, and is valid and binding upon the Issuer and enforceable in accordance with its terms, and (ii) a notice shall have been mailed to Second Lien Owners as hereinafter in this Section B-803 provided. Any such consent, including any consent provided pursuant to the last sentence of Section 802, shall be irrevocable and binding upon the Second Lien Owner of the Second Lien Obligations giving such consent and, anything in Section B-1002 to the contrary notwithstanding, upon any subsequent Second Lien Owner of such Second Lien Obligations and of any Second Lien Obligations issued in exchange therefor (whether or not such subsequent Owner thereof has notice thereof). At any time after the Second Lien Owners of the required percentages of Second Lien Obligations shall have filed their consents to the Supplemental Resolution, the Second Lien Trustee shall make and file with the Issuer and the Second Lien Trustee a written statement that the Second Lien Owners of such required percentages of Second Lien Obligations have filed such consents. Such written statement shall be conclusive that such consents have been so filed. At any time thereafter, notice, stating in substance that the Supplemental Resolution (which may be referred to as a Supplemental Resolution adopted by the Issuer on a stated date, a copy of which is on file with the Second Lien Trustee) has been consented to by the Second Lien Owners of the required percentages of Second Lien Obligations and will be effective as provided in this Section B-803, may be given to Second Lien Owners by the Issuer by mailing such notice to Second Lien Owners (but failure to mail such notice shall not prevent such Supplemental Resolution from becoming effective and binding as in this Section B-803 provided). The Issuer shall file with the Second Lien Trustee proof of the mailing of such notice. A record, consisting of the papers required or permitted by this Section B-803 to be filed with the Second Lien Trustee, shall be proof of the matters therein stated. Such Supplemental Resolution making such amendment or modification shall be deemed conclusively binding upon the Issuer, the Fiduciaries and the Second Lien Owners of all Second Lien Obligations at the expiration of 40 days after the filing with the Second Lien Trustee of the proof of the mailing of such last-mentioned notice, except in the event of a final decree of a court of

competent jurisdiction setting aside such Supplemental Resolution in a legal action or equitable proceeding for such purpose commenced within such 40-day period; provided, however, that any Fiduciary and the Issuer during such 40-day period and any such further period during which any such action or proceeding may be pending shall be entitled in their absolute discretion to take such action, or to refrain from taking such action, with respect to such Supplemental Resolution as they may deem expedient.

**Section B-804. Modifications by Unanimous Consent.** The terms and provisions of the Resolution and the rights and obligations of the Issuer and of the Second Lien Owners may be modified or amended in any respect upon the adoption and filing by the Issuer of a Supplemental Resolution and the consent of the Second Lien Owners of all of the Second Lien Obligations then Outstanding, such consent to be given as provided in Section B-803 except that no notice to Second Lien Owners shall be required; *provided, however*, that no such modification or amendment shall change or modify any of the rights or obligation of any Fiduciary without the filing with the Second Lien Trustee of the written consent thereto of such Fiduciary in addition to the consent of the Second Lien Owners.

**Section B-805. Notation on Second Lien Obligations.** Second Lien Obligations issued and delivered after the effective date of any action taken as in this Article B-VIII provided may, and, if the Second Lien Trustee so determines, shall, bear a notation by endorsement or otherwise in form approved to the Issuer and the Second Lien Trustee as to such action, and in that case upon demand of the Second Lien Owner of any Second Lien Obligations Outstanding at such effective date and presentation of its Second Lien Obligations for the purpose at the corporate trust office of the Second Lien Trustee, suitable notation shall be made on such Second Lien Obligations by the Second Lien Trustee as to any such action. If the Issuer or the Second Lien Trustee shall so determine, Second Lien Obligations so modified as in the opinion of the Second Lien Trustee and the Issuer to conform to such action shall be prepared, authenticated and delivered. Upon demand of the Second Lien Owner of any Second Lien Obligations then Outstanding and the surrender of such Second Lien Obligations, there shall be authenticated and exchanged therefor, new Second Lien Obligations having the same terms, other than the noted modification, as the Second Lien Obligations surrendered.

## **ARTICLE B-IX**

### **DEFAULT AND REMEDIES**

**Section B-901. Abrogation of Right to Appoint Statutory Second Lien Trustee; Preservation of Statutory Rights and Remedies.** Any right of the Second Lien Owners to appoint a trustee under the Issuer Act is hereby abrogated. Subject to the foregoing sentence of this Section B-901 and the provisions of Section 704, the Second Lien Owners and the Second Lien Trustee acting on behalf of the Second Lien Owners shall be entitled to all of the rights and remedies provided or permitted by law.

## **ARTICLE B-X**

### **MISCELLANEOUS**

#### **Section B-1001. Defeasance.**

1. If the Issuer shall pay or cause to be paid to the Second Lien Owners of all Second Lien Obligations then Outstanding the principal and interest and Second Lien Obligation Redemption Price, if any, to become due thereon, at the times and in the manner stipulated therein and in the Resolution, then, at the option of the Issuer, expressed in an instrument in writing signed by an Authorized Officer and delivered to the Second Lien Trustee, the covenants, agreements and other obligations of the Issuer to the Second Lien Owners shall be discharged and satisfied. In such event, the Second Lien Trustee shall, upon the request of the Issuer, execute and deliver to the Issuer all such instruments as may be desirable to evidence such discharge and satisfaction and the Fiduciaries for the Second Lien Obligations shall pay over or deliver to the Issuer all money, securities and funds held by them pursuant to the Resolution which are not required for the payment or redemptions of Second Lien Obligations not theretofore surrendered for such payment or redemption.

2. Outstanding Second Lien Obligations or any portions thereof for the payment or redemption of which money shall have been set aside and shall be held in trust by the Second Lien Paying Agents shall at the respective maturity or redemption dates thereof be deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section. Outstanding Second Lien Obligations or any portions thereof shall, prior to the respective maturity or redemption dates thereof, be deemed to have been paid within the meaning and with the effect expressed in subsection 1 of this Section either (A) as provided in the Supplemental Resolution authorizing their issuance or (B) if not so provided, if (a) in case any of said Second Lien Obligations are to be redeemed on any date prior to their maturity, the Issuer shall have given to the Second Lien Trustee in form satisfactory to it irrevocable instructions to mail as provided in Article B-IV notice of redemption on said date of such Second Lien Obligations, (b) there shall have been irrevocably deposited with the Second Lien Trustee either money in an amount which shall be sufficient, or Second Lien Obligation Defeasance Securities the principal of and the interest on which when due will provide money which, together with the money, if any, deposited with the Second Lien Trustee at the same time, shall be sufficient, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon, to pay when due, the principal or Second Lien Obligation Redemption Price, if applicable, and interest due and to become due on such Second Lien Obligations or such portions thereof on and prior to the redemption date or maturity date thereof, as the case may be, and (c) in the event such Second Lien Obligations are not by their terms maturing or are not subject to redemption within the next succeeding 60 days, the Issuer shall have given the Second Lien Trustee in form satisfactory to it irrevocable instructions to mail, as soon as practicable, a notice to the Second Lien Owners of such Second Lien Obligations that the deposit required by (b) above has been made with the Second Lien Trustee and that said Second Lien Obligations are deemed to have been paid in accordance with this Section and stating such maturity or redemption date upon which money is to be available for the payment of the principal or Second Lien Obligation Redemption Price, if applicable, on such Second Lien Obligations. Neither Second Lien Obligation Defeasance Securities nor money deposited with the Second Lien Trustee pursuant to

this Section nor principal or interest payments on any such Second Lien Obligation Defeasance Securities shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal or Second Lien Obligation Redemption Price, if applicable, and interest on said Second Lien Obligations; *provided, however*, that any money on deposit with the Second Lien Trustee, (i) to the extent such money will not be required at any time for such purpose, shall be paid over to the Issuer as received by the Second Lien Trustee, free and clear of any trust, lien or pledge securing said Second Lien Obligations or otherwise existing under the Resolution, and (ii) to the extent such money will be required for such purpose at a later date, shall, to the extent practicable, be reinvested in Second Lien Obligation Defeasance Securities maturing at times and in amounts sufficient, together with any money available to the Second Lien Trustee for such purpose, to pay when due the principal or Second Lien Obligation Redemption Price, if applicable, and interest to become due on said Second Lien Obligations on and prior to such redemption date or maturity date thereof, as the case may be. Notwithstanding any other provision hereof, the Issuer may at the time of defeasance elect to retain the right to redeem or require the tender of obligations deemed paid pursuant to this Section B-1001.2. The Second Lien Trustee shall, at the direction of the Issuer, select the Second Lien Obligations or portions thereof that are deemed to have been paid in advance of the redemption of such Second Lien Obligations.

3. Anything in the Resolution to the contrary notwithstanding, any money held by a Fiduciary in trust for the payment and discharge of the principal or Second Lien Obligation Redemption Price of or interest on any of the Second Lien Obligations which remains unclaimed for 2 years after the date when such principal, Second Lien Obligation Redemption Price or interest, respectively, has become due and payable, either at stated maturity dates or by call for earlier redemption, if such money was held by the Fiduciary at such date, or for 2 years after the date of deposit of such money if deposited with the Fiduciary after the date when such principal, Second Lien Obligation Redemption Price, or interest, respectively, became due and payable, shall, at the written request of the Issuer, be repaid by the Fiduciary to the Issuer, as its absolute property and free from trust, and the Fiduciary shall thereupon be released and discharged with respect thereto and the Second Lien Owners shall look only to the Issuer for the payment of such principal, Second Lien Obligation Redemption Price, or interest, respectively. Notwithstanding the foregoing or anything in the Resolution to the contrary, any money held by a Fiduciary in trust for the payment and discharge of any Second Lien Obligations which remains unclaimed after such money was to be applied to the payment of such Second Lien Obligations in accordance with the Resolution may be applied in accordance with the provisions of the Abandoned Property Law of the State, being Chapter 1 of the Consolidated Laws of the State or any successor provision thereto, and upon such application, the Fiduciary shall thereupon be released and discharged with respect thereto and the Second Lien Owners shall look only to the Issuer or the Comptroller of the State for the payment of such Second Lien Obligations. Before being required to make any such payment to the Issuer or to apply such money in accordance with the Abandoned Property Law of the State, the Fiduciary shall, at the expense of the Issuer, cause to be mailed to the Second Lien Owners entitled to receive such money a notice that said money remains unclaimed and that, after a date named in said notice, which date shall be not less than 30 days after the date of the mailing, the balance of such money then unclaimed will be returned to the Issuer or applied in accordance with the Abandoned Property Law of the State, as the case may be.

**Section B-1002. Evidence of Signatures of Second Lien Owners and Ownership of Second Lien Obligations.**

1. Any request, consent, revocation of consent or other instrument which the Resolution may require or permit to be signed and executed by the Second Lien Owners may be in one or more instruments of similar tenor, and shall be signed or executed by such Second Lien Owners in Person or by their attorneys-in-fact appointed in writing or by such electronic or other means as may be recognized pursuant to applicable law. Proof of (i) the execution of any such instrument, or of an instrument appointing any such attorney, or (ii) the holding by any Person of the Second Lien Obligations shall be sufficient for any purpose of the Resolution, except as otherwise therein expressly provided, if made in the following manner, or in any other manner satisfactory to the Second Lien Trustee, which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Second Lien Owner or his attorney-in-fact of such instrument may be proved by the certificate of a signature guarantor, or of any notary public or other officer authorized to take acknowledgments of deeds, that the Person signing such request or other instrument acknowledged to him or her the execution thereof, or by an affidavit of a witness of such execution, duly sworn to before such notary public or other officer. Where such execution is by an officer of a corporation or association or a member of a partnership, on behalf of such corporation, association or partnership such certificate or affidavit shall also constitute sufficient proof of his authority; and

(b) The ownership of Second Lien Obligations and the amount, numbers and other identification, and date of holding the same shall be proved by the registry books.

2. Any request or consent by a Second Lien Owner of Second Lien Obligations shall bind all future Second Lien Owners of such Second Lien Obligations in respect of anything done or suffered to be done by the Issuer or any Fiduciary in accordance therewith.

**Section B-1003. Money Held for Particular Second Lien Obligations.** The amounts held by any Fiduciary for the payment of the interest, principal or Second Lien Obligation Redemption Price due on any date with respect to particular Second Lien Obligations shall, on and after such date and pending such payment, be set aside on its books and held in trust by it for the Second Lien Owners entitled thereto.

**Section B-1004. Preservation and Inspection of Documents.** All documents received by a Fiduciary under the provisions of the Resolution shall be retained in its possession and shall be subject at all reasonable times to the inspection of the Issuer, any other Fiduciary, and any Second Lien Owners of at least 5% aggregate principal amount of Second Lien Obligations and their agents and their representatives, any of whom may make copies thereof.

**Section B-1005. Interest of Parties Herein.** Nothing in the Resolution expressed or implied is intended or shall be construed to confer upon, or to give to any Person, other than the Issuer, the Fiduciaries, the Second Lien Owners and the holders of Second Lien Parity Debt, any right, remedy or claim under or by reason of the Resolution or any covenant, condition or stipulation thereof, and all the covenants, stipulations, promises and agreements in the

Resolution contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Fiduciaries, the Second Lien Owners and the holders of Second Lien Parity Debt.

**Section B-1006. No Recourse on the Second Lien Obligations.** No recourse shall be had for the payment of the principal or Second Lien Obligation Redemption Price of or interest on the Second Lien Obligations or Second Lien Parity Debt or for any claim based thereon or on the Resolution against any member, officer, or employee of the Issuer or any Person executing the Second Lien Obligations.

**Section B-1007. Severability of Invalid Provisions.** If any term or provision of Annex A, this Annex B or the Resolution shall be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever, and such term and provision shall be valid and enforced to the fullest extent permitted by law.

The invalidity of any one or more phrases, sentences, clauses or Sections of the Resolution shall not affect the remaining portions of the Resolution, or any part thereof, including any part of Annex A or this Annex B.

**Section B-1008. Exclusion of Second Lien Obligations.** Second Lien Obligations owned or held by or for the account of the Issuer or any Related Entity shall not be deemed Outstanding for the purpose of any consent to be given or other action to be taken by or upon the direction of Second Lien Owners of a specified portion of Second Lien Obligations Outstanding, and the Issuer or any Related Entity shall not be entitled with respect to such Second Lien Obligations to give any such consent or to take, or direct the taking of, any such action. At the time of any such consent or action, the Issuer shall furnish to the Second Lien Trustee a certificate of an Authorized Officer, upon which the Second Lien Trustee may conclusively rely, describing all Second Lien Obligations so to be excluded.

**Section B-1009. Governing Law.** The Resolution, including Annex A and this Annex B, shall be governed by and interpreted in accordance with internal laws of the State, without regard to conflict of law principles thereof.

# Staff Summary



Metropolitan Transportation Authority

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<b>Subject</b> Request for Authorization to Award Various Procurements
<b>Department</b> Executive
<b>Department Head Name</b> Bob Foran
<b>Department Head Signature</b> 
<b>Division Head Name</b> Angel Barbosa

<b>Date</b> April 23, 2014
<b>Vendor Name</b> Various
<b>Contract Number</b> Various
<b>Contract Manager Name</b> Various
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	4/28/2014			
2	Board	4/30/2014			

Internal Approvals			
Order	Approval	Order	Approval
1	Procurement	3	CFO
2	Legal		

## PURPOSE:

To obtain approval of the Board to award various contracts/contract modifications and purchase orders, as reviewed by the MTA Finance Committee.

## DISCUSSION:

MTAHQ proposes to award Non-competitive procurements in the following categories:

# of Actions   \$ Amount

None   None

MTAHQ proposes to award Competitive procurements in the following categories:

### Schedules Requiring Majority Vote

Schedule B: Request to Use RFP

Schedule F: Personal Services Contracts

1   TBD  
1   \$1,235,000

**SUBTOTAL**   2   \$1,235,000

MTAHQ presents the following procurement actions for Ratification:

None   None

**TOTAL**   2   \$1,235,000

**BUDGET IMPACT:** The purchases/contracts will result in obligating MTAHQ operating and capital funds in the amount listed. Funds are available in the current MTAHQ operating/capital budgets for this purpose.

**RECOMMENDATION:** That the purchases/contracts be approved as proposed. (Items are included in the resolution of approval at the beginning of the Procurement Section.)

## BOARD RESOLUTION

### METROPOLITAN TRANSPORTATION AUTHORITY

WHEREAS, in accordance with Section 1265-a and Section 1209 of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public work contracts, and the solicitation and award of request for proposals in regard to purchase and public work contracts; and

WHEREAS, in accordance with the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous procurement contracts, and certain change orders to procurement, public work, and miscellaneous procurement contracts; and

WHEREAS, in accordance with Section 2879 of the Public Authorities Law and the All Agency Guidelines for Procurement of Services, the Board authorizes the award of certain service contracts and certain change orders to service contracts.

NOW, the Board resolves as follows:

1. As to each purchase and public work contract set forth in the annexed Schedule A, the Board declares competitive bidding to be impractical or inappropriate for the reasons specified therein and authorizes the execution of each such contract.

2. As to each request for proposals (for purchase and public work contracts) set forth in Schedule B for which authorization to solicit proposals is requested, for the reasons specified therein the Board declares competitive bidding to be impractical or inappropriate, declares it is in the public interest to solicit competitive request for proposals and authorizes the solicitation of such proposals.

3. As to each request for proposals (for purchase and public work contracts) set forth in Schedule C for which a recommendation is made to award the contract, the Board authorizes the execution of said contract.

4. The Board ratifies each action taken set forth in Schedule D for which ratification is requested.

5. The Board authorizes the execution of each of the following for which Board authorization is required: i) the miscellaneous procurement contracts set forth in Schedule E; ii) the personal service contracts set forth in Schedule F; iii) the miscellaneous service contracts set forth in Schedule G; iv) the modifications to personal/miscellaneous service contracts set forth in Schedule H; v) the contract modifications to purchase and public work contracts set forth in Schedule I; and vi) the modifications to miscellaneous procurement contracts set forth in Schedule J.

6. The Board ratifies each action taken set forth in Schedule K for which ratification is requested.

7. The Board authorizes the budget adjustments to estimated quantity contracts set forth in Schedule L.



**LIST OF PROCUREMENTS FOR BOARD APPROVAL, APRIL 2014**  
**COMPETITIVE PROCUREMENTS**

**METROPOLITAN TRANSPORTATION AUTHORITY**

*Procurements Requiring Majority Vote:*

**B. Request to Use RFP for Procurement of Purchases and Public Work in lieu of Sealed Bids**  
(Staff Summaries only required for items estimated to be greater than \$1 million)

- |   |            |                                      |
|---|------------|--------------------------------------|
| 1. <b>Emergency Bus Services</b><br><b>Contract No. TBD</b> | <b>TBD</b> | <u><i>Staff Summary Attached</i></u> |
|---|------------|--------------------------------------|

Approval is requested to use the RFP process to solicit and evaluate proposals from prospective vendors to provide and operate weekday bus services under the direction of the MTA in the event of a strike at Long Island Rail Road later this year. Although MTA recognizes that a strike would be tremendously disruptive to LI RR customers and the regional economy and remains committed to reaching a settlement with the LIRR unions, it is nonetheless prudent to make necessary preparations in the event of the cessation of LIRR service later this year. One strategy would be to offer limited bus service on weekdays only between certain sites in the LIRR service territory and locations within the City of New York with connecting NYCT subway and/or bus service. Because of the uncertainty as to the precise timing and duration of any work stoppage, it is important to act now to identify vendors who are sufficiently flexible to be able to offer these services on an as-needed basis.

**F. Personal Service Contracts**

Staff Summaries required for items greater than: \$100K Sole Source; \$250K Other Non-Competitive, \$1M Competitive)

- |  |                                       |                                      |
|--|---------------------------------------|--------------------------------------|
| 2. <b>Willdan Homeland Solutions</b><br><b>Security, Emergency Response and Related Training</b><br><b>Contract No. 13306-0100</b> | <b>\$1,235,000</b><br>(Not-to-Exceed) | <u><i>Staff Summary Attached</i></u> |
|--|---------------------------------------|--------------------------------------|

Competitively negotiated – 2 proposals – 24 months

It is recommended that the Board approve the award of a federally-funded (Department of Homeland Security) competitively negotiated, all-agency personal service contract to Willdan Inc. for the development and delivery of continuing security and emergency response training courses, workshops and exercises for MTA employees for a twenty-four month period from May 1, 2014 thru April 30, 2016 at a combined total amount not to exceed \$1,235,000.

# Staff Summary

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<b>Item Number:</b>					
<b>Dept &amp; Dept Head Name:</b> Planning/W. Wheeler					
<b>Division &amp; Division Head Name:</b> -----					
<b>Board Reviews</b>					
Order	To	Date	Approval	Info	Other
1	LI Committee	4/28/14		x	
2	Finance	4/28	x		
3	Board	4/30	x		
<b>Internal Approvals</b>					
Order	Approval	Order	Approval		
1	General Counsel				
2	Chief Financial Officer				
3	Dir Labor Relations				
4	Chief of Staff				

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name:</b> TBD	<b>Contract Number:</b>
<b>Description:</b> Emergency Bus Services	
<b>Total Amount:</b> TBD	
<b>Contract Term (including Options, if any)</b>	
<b>Option(s) included in Total Amount?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Procurement Type:</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type:</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source:</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

## PURPOSE/RECOMMENDATION:

Approval is requested to use the Request for Proposals (RFP) process to solicit and evaluate proposals from prospective vendors to provide and operate weekday bus services under the direction of the MTA in the event of a strike at Long Island Rail Road later this year.

## II. DISCUSSION:

MTA has been negotiating with Long Island Rail Road unions since their contracts expired in June of 2010. A coalition of eight LIRR unions comprised of 5,300 employees proceeded to mediation under the Railway Labor Act and were released from mediation at the end of 2013. Since that time, two separate Presidential Emergency Boards have been convened in an effort to resolve the outstanding issues between the parties. The second Presidential Emergency Board conducted hearings last week and will issue a recommendation to the parties in May. A 60-day cooling off period will follow, and both labor and management will have the right to exercise self-help if they are unable to reach a settlement by mid-July.

Although MTA recognizes that a strike would be tremendously disruptive to LIRR customers and the regional economy and remains committed to reaching a settlement with the LIRR unions, it is nonetheless prudent to make necessary preparations the event of the cessation of LIRR service later this year. One strategy would be to offer limited bus service on weekdays only between certain sites in the LIRR service territory and locations within the City of New York with connecting NYCT subway and/or bus service. Because of the uncertainty as to the precise timing and duration of any work stoppage, it is important to act now to identify vendors who are sufficiently flexible to be able to offer these services on an as-needed basis.

Upon completion of the RFP process, Board approval will be sought.

## III. D/M/WBE INFORMATION:

MTA Planning will work with the MTA Department of Diversity and Civil Rights with respect to the assignment of goals for these contract(s).

## IV. IMPACT ON FUNDING: TBD

## V. ALTERNATIVES:

1. Not to provide emergency bus service in the event of an LIRR strike. This is not recommended, as emergency bus service, together with encouraging telecommuting and carpooling, will form part of an overall strategy to assist LIRR customers with their travel needs for the duration of any work stoppage.



## Staff Summary

2. Use NYCT and/or MTA Bus resources to provide the emergency service. This is not practical. MTA bus transit resources are completely committed to providing daily service to over 2.6m customers.

## Staff Summary

### Schedule F: Personal Service Contracts



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<b>Item Number:</b> <b>Dept &amp; Dept Head Name:</b> Security/ Raymond Diaz						<b>SUMMARY INFORMATION</b> <b>Vendor Name:</b> Willdan Homeland Solutions		<b>Contract Number:</b> 13306-0100	
<b>Division &amp; Division Head Name:</b> Office of Security/Anthony Marcogliano						<b>Description:</b> Security, Emergency Response and Related Training			
<b>Board Reviews</b>						<b>Total Amount:</b> \$ 1,235,000			
Order	To	Date	Approval	Info	Other	<b>Contract Term (Including Options, If any)</b> Twenty-Four (24) months			
1	Finance	4/28/2014				<b>Option(s) Included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
2	Board	4/30/2014				<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>Internal Approvals</b>						<b>Procurement Type:</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive			
Order	Approval	Order	Approval			<b>Solicitation Type:</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:			
1	Procurement	4	Diversity and Civil Rights			<b>Funding Source:</b> <input type="checkbox"/> Operating <input type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:			
2	Security	5	Legal						
3	CFO								

#### Narrative

#### I. PURPOSE/RECOMMENDATION

It is recommended that the Board approve the award of a federally-funded (Department of Homeland Security) competitively negotiated, all-agency personal service contract to Willdan Inc. for the development and delivery of continuing security and emergency response training courses, workshops and exercises for MTA employees for a twenty-four month period from May 1, 2014 thru April 30, 2016 at a combined total amount not to exceed \$1,235,000.

#### II. DISCUSSION

In 2007, the Board approved a federally-funded comprehensive security and emergency response training program for employees from MTA New York City Transit, MTA Long Island Rail Road, MTA Metro-North, MTA Bus and MTA Staten Island Rapid Transit. This contract will continue this training by serving as a refresher and enhancing previously trained employees and offering training for new employees. Specifically, this training is to develop scenarios that will train and prepare employees how to react to real emergency situations either through prevention or response.

Request for Proposals (RFP) was publicly advertised and letters advising potential proposers of the RFP's availability were mailed to nine (9) vendors. Two (2) proposals were received. A Selection Committee consisting of representatives from MTA Headquarters, New York City Transit, Long Island Rail Road Metro-North Railroad and MTA Bus evaluated the proposals and determined that Willdan Inc. is the most technically qualified and best suited to perform the services identified by the RFP.

Fourteen thousand (14,000) employees will be trained (36,000 were previously trained) namely train operators, conductors, station agents, cleaners, rail control center personnel, dispatchers, and supervisors. These are the operating personnel who could prevent an incident from even happening by learning how to identify a plot, and are the ones who would be on the scene before and after an incident occurs. Training MTA operating personnel in prevention and response actions is probably the most cost effective use of such funding possible: working to prevent an incident from occurring in the first place.

# Staff Summary

Contract No. 13306-0100

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As a result of negotiations, the original proposed cost for a half-day training class of \$805.00 was reduced to \$790.00 and the cost for a full-day training class of \$1,427.00 was reduced to \$1,398, a difference of \$15.00 to \$29.00 respectively; this represents a 2% price reduction. Under the previous contract issued eight (8) years ago, the average costs for a half and full day classes were \$695.00 and 1,297.00 respectively. Compared to the prior contract, the half day course has increased by \$95 or 12.02% from \$695.00 to \$790.00 and the full day course increased by \$101 or 7.22% from \$1,297.00 to \$1,398.00. The above pricing is the same as offered to State agencies and the Federal government and is thus considered fair and reasonable.

### **III. D/M/WBE INFORMATION**

The MTA's Department of Diversity and Civil Rights established 17% DBE goals for this contract.

### **IV. IMPACT ON FUNDING**

Funding will be provided through Grant Award 2013-RA- 00012 from the Department of Homeland Security.

### **V. ALTERNATIVES**

1. Use of in-house staff. This alternative is not feasible. MTA does not have the staff nor the technical expertise to conduct this training.
2. Do not provide services. This is not a recommended alternative. MTA employees must be trained in specific areas in order to provide protection for its employees, customers and infrastructure. Additionally, in response to recommendations of the 9/11 Commission Report, the Transit Security Administration is in the process of promulgating training standards that will make such training mandatory.

**APRIL 2014**  
**MTA REAL ESTATE**  
**LIST OF REAL ESTATE ACTION ITEMS FOR BOARD APPROVAL**

**ACTION ITEMS**

**MTA NEW YORK CITY TRANSIT**

In support of the MTAPD Radio Project, (i) license agreement with PI Telecom Infrastructure, LLC to construct and operate wireless support structures on Metro-North Railroad property and (ii) authorization to enter into agreement for use of existing structures on private property

**MTA METRO-NORTH RAILROAD**

Lease with Oren's GCT, LLC dba Oren's Daily Roast for the retail sale of tenant-branded and roasted whole and ground coffee beans, loose and packaged tea and related accessories in Retail Space MKT-23 at Grand Central Terminal

Lease with New York Film Academy Ltd dba New York Film Academy ("NYFA") for the operation of an information center where people engage with NYFA staff members to learn about educational programs offered at the New York Film Academy

Lease with Gotham 42nd Street, LLC for space at 110 East 42nd Street, New York, New York to house Metro North's Employee Assistance Program

**MTA LONG ISLAND RAIL ROAD**

Acquisition of temporary easements at 310-333 East Shore Road, Village of Thomaston, Town of North Hempstead, Nassau County, New York

# **METROPOLITAN TRANSPORTATION AUTHORITY**

# Staff Summary



Metropolitan Transportation Authority

Subject <b>AGREEMENTS FOR MTAPD RADIO PROJECT</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>GEORGE MCDONALD</b>

Date <b>APRIL 28, 2014</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	LIRR & MNR Committee	4/28/14		X	
2	Finance Committee	4/28/14	X		
3	Board	4/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal
3	Chief of Staff		
2	Chief Financial Officer		

Board approval is requested for (1) a Master License Agreement for Construction and Operation of new wireless equipment support structures ("Structures") on MNR property and (2) authorization to enter into agreements with commercial operators of existing Structures for the installation of MTAPD Radio System wireless antennas, wireless ground equipment, and other associated equipment.

## 1) MASTER LICENSE FOR CONSTRUCTION AND OPERATION OF NEW STRUCTURES

MASTER LICENSOR/SUB-LICENSEE: Metropolitan Transportation Authority ("MTA") on behalf of the Metropolitan Transportation Authority Police Department ("MTAPD").

MASTER LICENSEE/SUB-LICENSOR: PI Telecom Infrastructure, LLC ("Parallel").

ACTIVITY: Master license to construct and operate new Structures (the "Master License") and sub-licenses for MTAPD use of such Structures.

LOCATIONS: Fifteen properties in Dutchess, Orange, Putnam, Rockland and Westchester Counties controlled by Metro-North Commuter Railroad ("Metro-North"), approximately as shown in Exhibit A, subject to adjustment based on final system design.

ACTIONS REQUESTED: Approval of terms.

TERM: 40 years.

COMPENSATION PAYABLE TO MASTER LICENSEE FOR MTAPD OCCUPANCY: Structures with additional users: MTAPD is required to pay \$1,850 per month (\$22,200 per annum), with 3% annual increases for the first 20 years of the term.  
Structures without additional users (if any): License fees of \$3,500 per month (\$42,000 per annum), with 3% annual increases.

No fees are payable by MTAPD starting in year 21, whether or not co-location (i.e. other use) is permitted.

Such MTAPD license fees were proposed and negotiated based on an assumed capital cost to the Master Licensee per structure. If the final approved construction budget for a structure is higher or lower than the assumed capital cost, such fees will be adjusted by \$50 per each \$5,000 deviation above or below such budget. Licensee will bear the risk of construction costs exceeding the approved budget for each Structure.



# Staff Summary

**COMPENSATION  
PAYABLE TO MTA BY  
MASTER LICENSEE:**

Construction completion payment: Upon the completion of construction of each Structure, Master Licensee shall make a one-time payment to MTA in the amount of \$10,185, regardless of whether co-location is permitted.

Additional user revenue share: For Structures with additional users, Master Licensee shall remit to MTA a portion of the resulting sublicense fees received by Master Licensee as follows:

- First sublicense: 50% of gross revenues;
- Second sublicense: 60% of gross revenues;
- Third and each additional sublicense thereafter: 70% of gross revenues;

**TERMINATION:**

MTA has the right to terminate this agreement at any time with the proviso that Parallel be reimbursed for costs incurred.

## **2) AGREEMENTS WITH COMMERCIAL OPERATORS OF EXISTING STRUCTURES**

**AGENCY:**

MTA, on behalf of MTAPD.

**LICENSORS/LESSORS:**

Various commercial owners and operators of existing Structures in the MTA service area.

**LOCATIONS:**

Up to 39 locations, subject to change based on availability and system design.

**ACTION REQUESTED:**

Authorization to enter into leases and/or licenses to allow the MTA to install and operate radio equipment on such Structures.

**TERM:**

To be negotiated on a case-by-case basis.

**COMPENSATION:**

Prevailing market rates, to be negotiated on a case by case basis.

## **DISCUSSION**

The existing two-way radio system utilized by the MTA Police Department requires upgrading to modern standards on the VHF and 700/800 MHz spectra to facilitate reliable and clear police communications throughout the 12-county Metropolitan Commuter Transportation District and in Metro-North service areas in Connecticut which encompasses 14 Counties, 2 States and 5,000 square miles. Due to gaps in radio coverage with the existing system, the MTA Police instituted a temporary mitigation measure of two-man patrols in areas with limited radio coverage until the new radio system is in place. The cost of 2-man patrols was identified at \$2.4M which will be eliminated with the new system. This reduction in operating costs will help offset an estimated \$5.9M increase to the MTAPD annual operating budget due to radio tower lease costs and maintenance payments. In July 2012, the Board authorized MTA Long Island Rail Road ("LIRR"), on behalf of MTAPD, to proceed with a Request for Proposals for a contract to design, build, operate and maintain a new MTAPD radio system (the "System RFP"). The system will consist of wireless antennas, wireless ground equipment, radios, and other associated equipment ("System Equipment"). The System RFP will be issued during the 2<sup>nd</sup> quarter of 2014. The system's wireless antennas and associated equipment must be located on monopole or other antenna support structures ("Structures"). The proposed agreements herein provide the required antenna locations.

Preliminary engineering performed by a consultant engaged by LIRR to provide a preliminary design for the System Contract has determined that, to provide coverage throughout the MTA service area, the antennas and ground equipment to be procured by the selected System contractor will need to be installed at approximately 79 locations. The locations and required heights of the antennas have been determined based on a radio frequency promulgation study designed to minimize required infrastructure while optimizing performance. MTA Real Estate, LIRR and the MTAPD have investigated Structure availability and have determined there are 64 suitable Structures that already exist (of which 18 are controlled by local, state and federal government entities, 7 are controlled by LIRR, and 39 are controlled by commercial operators). MTA expects that occupancy agreements will be implemented for all 18 government sites.

After extensive review and analysis, it has been determined that there are no suitable existing Structures in the vicinity of 15 required antenna locations in Dutchess, Orange, Putnam, Rockland and Westchester Counties. Accordingly, the only feasible option to provide coverage at such locations is to construct new Structures on property controlled by Metro-North. Such Structures (typically "monopole"-type facilities) will be located approximately as described on Exhibit A. Minor adjustments to such locations may be required as a result of the final design of the radio system.

# Staff Summary

To defray costs and risks for System build out and to maximize benefits to the MTA, MTA customers and MTAPD's strategic partners, the proposed Master License Agreement will transfer the capital cost of construction of the new Structures onto the Master Licensee. This will also enable the MTA to generate additional revenues in the form of co-location fees from other wireless carriers. Co-location of wireless carriers on the new Structures will provide MTA customers and local residents with enhanced access to emergency services and cellular networks in areas where little or no coverage currently exists. In addition, certain regional first responders will be provided with mission critical communications in areas where existing coverage is minimal. This approach will reduce overall costs, satisfy the System requirements for antenna structures and provide an important benefit to our customers. This revenue producing business model of shared MTA and third party use of wireless infrastructure has been successful in the context of the other contracts MTA has awarded for wireless networks in the subway system and at other locations within the MTA transportation system.

After considering the critical path activities for implementing the MTAPD Radio Project, staff concluded that the most cost effective way to proceed is to award the Master License for the proposed new Structures as soon as possible to ensure that the Master Licensee has sufficient time to complete due diligence on each Structure location and design and build the Structures in time to receive the equipment that will be designed and installed upon award of the System RFP as described above.

## **New Structures RFP**

In late 2012, MTA Real Estate issued a Request for Expressions of Interest ("RFEI") from companies interested in constructing and operating the new Structures that will need to be constructed on Metro-North-controlled property. Expressions of interest were received from 10 companies, with three companies submitting complete responses to the RFEI.

In July of 2013, taking into account information gleaned from such RFEI responses, MTA Real Estate issued a Request for Proposals to enter into the proposed Master License (the "Structure RFP"). As amended, the Structure RFP contemplated that the Master Licensee would construct the Structures at the Master Licensee's cost, recouping a portion of such costs through sub-license fees paid by MTAPD for the right to locate its radio antennas at specified locations on the structures and its ground equipment within the associated compound. To minimize such sub-license fees and maximize the utility of the Structures, the Structure RFP provided that, in addition to sub-licenses with the MTAPD, the selected Master Licensee will be permitted to enter into sublicenses with wireless communications providers to co-locate antennas on the Structures and equipment within the compound. Any revenue generated from such sublicenses will be shared with the MTA on the terms described above.

In response to the RFP, Real Estate received responsive proposals from four wireless facility companies: SBA, Global Tower, Crown Castle and Parallel. The proposals were evaluated by representatives of MTA Real Estate, MTA Strategic Initiatives and the MTAPD Radio Project team (the "Selection Committee"). Following evaluation of the initial proposals and the issuance of addenda in response to proposer questions, MTA issued a request for "best and final" offers from Global Tower, Crown Castle and Parallel.

In response to such request for best and final offers, Global Tower withdrew. Crown Castle submitted three best and final offer scenarios, and Parallel submitted two. In reviewing such scenarios, the Selection Committee considered the likelihood and timing of co-locations on the Structures and the associated costs and revenues, the licensee fees that would be payable by MTAPD, and the overall range of potential costs of the project to MTAPD over the projected term. Both firms were deemed technically capable of constructing, operating and maintaining the Structures and associated infrastructure.

The proposals from Parallel and Crown Castle addressed several variables, including, most importantly, whether or not co-location on each structure would be permitted, how much compensation MTAPD would be required to pay for its right to occupy the structure, and what revenue share was being proposed. Assuming an average Structure construction cost of \$350,000, Parallel's most attractive offer had a worst case downside NPV exposure (no co-locations) of negative \$362,000 per Structure versus a best case upside NPV exposure (4 co-locations per Structure) of \$617,000 per Structure. Crown Castle's most attractive offer had a worst case downside NPV exposure of negative \$501,000 per Structure versus a best case upside NPV exposure of \$674,000 per Structure. The Selection Committee decided that Crown Castle's moderately higher upside (NPV \$57,000 difference per Structure) did not justify taking on the significantly increased downside exposure (\$139,000 per Structure).

# Staff Summary

Parallel is a national right-of-way management and asset development company based in Jacksonville, Florida. It is a subsidiary of Florida East Coast Industries, which is owned by investment funds managed by Fortress Investment Group LLC. Parallel has significant experience in end-to-end Structure development, operations, maintenance and marketing and with other mass transportation providers and railroads, including the MTA LIRR East Side Access Project.

Construction and operation of the new Structures and related facilities described in this staff summary will be exempt from local regulation (pursuant to Public Authorities Law Section 1266(8)) and from review under the State Environmental Quality Review Act (pursuant to Public Authorities Law Section 1266(11)). Metro-North has conducted community outreach regarding the proposed new Structures and will continue to do so.

Based on the foregoing, MTA Real Estate requests Board approval to enter the Master License and related sub-licenses with Parallel on behalf of MTAPD.

## Use of Existing Structures

Because the proposed new MTAPD radio system will require the installation of antennas and other equipment on up to 39 existing privately-owned commercial Structures throughout the MTA operating territory, MTA Real Estate will need to negotiate and enter into agreements with the operators of such Structures.

MTA Real Estate has contracted with an appraiser with specialized qualifications in infrastructure valuation to estimate the market rent rates that the MTA should expect to pay to locate antennas on 33 of such 39 Structures. The consultant's findings were that monthly rental rates for such occupancies should range from a low of \$1,400.00 per month to a high of \$4,000.00 per month depending on locational demand. Thus, the range of estimated aggregate monthly rental payments for the 39 sites would be from \$54,600 per month to \$156,000 per month (or from \$655,200 to \$1.872 million per annum).

Although MTA Real Estate will attempt to coordinate the commencement of such agreements as closely as possible with the System RFP implementation schedule, the commercial realities of the marketplace may require MTA Real Estate to act quickly and in advance of full system completion.

To facilitate the timely finalization of such transactions, MTA Real Estate requests Board authorization to enter into up to 39 occupancy agreements for existing commercial structures at the best-available negotiated rates without additional Board review and approval of specific transactions, provided such rates are determined to be fair and reasonable based on market rates in the region.

## Exhibit A

### Listing, Location and Description of Proposed New Structures

#	Site	County	Coordinates		Antenna Height	Site Description
			Lat	Long	AGL (m)	
1	New Hamburg Station	Dutchess	41 35 16.6	-73 56 52	45.7	Proposed Structure site is located south of New Hamburg Station at the edge of the parking area. Vacant land is occupied by a decommissioned generator located near the bridge.
2	Wassaic Station	Dutchess	41 48 52.9	-73 33 45	45.7	Proposed Structure to be located at the station beyond the parking area located east of the station platform. Land is vacant.
3	Harlem Valley Wingdale	Dutchess	41 38 47.8	-73 34 05	45.7	Proposed Structure site is located approx. 1 mile north of the station platforms. Land is located across the tracks from a vacant building (formerly a bar/lounge).
4	Port Jervis Station	Orange	41 22 22.4	-74 41 47	45.7	Proposed Structure site is located west of the station platforms at the "Y" junction within the Port Jervis yard area. Empty trailers and containers nearby.
5	Otisville Station	Orange	41 28 18.8	-74 31 45	45.7	Proposed Structure site is located across from Otisville Station beyond the parking area on vacant land, adjacent to the access road.
6	Salisbury Station	Orange	41 26 12.1	-74 06 06	45.7	Proposed Structure site is located at the north end of the Salisbury Station platform area, beyond existing RR equipment cases. Tower would be installed within the sunken area adjacent to the existing retaining wall.
7	Harriman South Station	Orange	41 17 36.2	-74 08 24	45.7	Proposed Structure site is located adjacent to the existing MTPD personnel trailer located at the north end of the station parking lot. Land area is vacant.
8	Campbell Hall Station	Orange	41 27 05.2	-74 15 59	48.8	Proposed Structure site is located west of the station parking area on vacant land. Tower location would be at the far southwest end of the lot beyond fenced storage area.
9	Rt. 164	Putnam	41 28 39.9	-73 36 33	45.7	Proposed Structure site would be located approx. 1/10th mile north of R164 alongside the MNR Harlem line. Land is vacant and will require an access road along the tracks.
10	Spring Valley Station	Rockland	41 06 43.2	-74 02 38	45.7	Proposed site is located west of the Spring Valley Station along MNR's defunct Piermont track line. Tower site would be installed on old RR RoW.
11	Pearl River Station	Rockland	41 03 28.4	-74 01 20	45.7	Proposed Structure would be located south of Pearl River Station at the edge of the parking area. Tower would be

# Staff Summary

						installed on vacant land separating the two parking areas.
12	Tarrytown Station	Westchester	41 04 32.0	-73 51 55	45.7	Proposed Structure site is located at the southern end of the Tarrytown yard/storage area.
13	Peekskill Station	Westchester	41 17 09.6	-73 55 50	45.7	Proposed Structure site would be located approx. 1 mile south of Peekskill Station, adjacent to an existing Signal HQ building/lot area. Selected site lies between the MNR track line and active siding.
14	Mount Kisco Station	Westchester	41 12 40.0	-73 43 38	45.7	Proposed Structure would be located east of Mt. Kisco Station within storage area. Lot area is vacant.
15	CP223 - Rye	Westchester	40 58 45.4	-73 41 39	45.7	Proposed Structure site would be located adjacent to the existing Structure located along the I95 corridor. Area contains abandoned shacks and equipment cases.

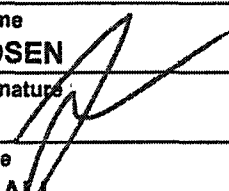
# **MTA METRO NORTH RAILROAD**

# Staff Summary






Metropolitan Transportation Authority

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<b>Subject</b> <b>LEASE AGREEMENT</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JEFFREY B. ROSEN</b>
<b>Department Head Signature</b> 
<b>Project Manager Name</b> <b>NANCY MARSHALL</b>

<b>Date</b> <b>APRIL 28, 2014</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	04/28/14	X		
2	Board	04/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal 
3	Chief of Staff 		
2	Chief Financial Officer 		

**AGENCY:** MTA Metro-North Railroad ("Metro-North")  
**LESSEE:** Oren's GCT, LLC dba Oren's Daily Roast  
**LOCATION:** Retail Space MKT-23 and Storage Space BS-07  
**ACTIVITY:** The retail sale of tenant-branded and roasted whole and ground coffee beans, loose and packaged tea and related accessories used in the preparation and consumption of coffee and/or tea.  
**ACTION REQUESTED:** Approval of terms  
**TERM:** 5 years  
**SPACE:** Approximately 143 sq. ft. and approximately 88 sq. ft. of storage space  
**COMPENSATION:** Annual Base Rent plus 18% of gross sales over Breakpoint, as follows:

<u>Year</u>	<u>Annual Base Rent</u>	<u>PSF</u>	<u>Breakpoint</u>
1	\$114,543.00	\$801.00	\$700,000
2	\$117,929.29	\$824.68	\$721,000
3	\$121,518.67	\$849.78	\$742,630
4	\$125,164.23	\$875.27	\$764,908
5	\$128,919.16	\$901.53	\$787,856

**STORAGE RENT:** \$84.50 per sq. ft. per year, increasing annually by 3%  
**MARKETING:** \$11.00 per sq. ft. per year increasing annually by 3%  
**TRASH:** \$13.00 per sq. ft. per year increasing annually by 3%  
**SECURITY:** Three months minimum rent plus a personal guaranty from Oren Bloostein (limited to six months rent after vacating of premises)  
**INSURANCE:** Standard  
**CONSTRUCTION PERIOD:** 60 days

# Staff Summary

## FINANCE COMMITTEE MEETING

### Oren's GCT, LLC dba Oren's Daily Roast (Cont'd.)

#### COMMENTS:

In response to a recent MTA Request for Proposals ("RFP") for Retail Space MKT-23, Grand Central Terminal, proposals were received from Oren's Daily Roast, Irving Farm Coffee Roasters and Stumptown Coffee Roasters.

Per the Guidelines for Selection of Tenants for Grand Central Terminal approved by the MTA Board in November 2009, and amended in March 2014, such proposals were independently evaluated by Williams Jackson Ewing and Jones Lang LaSalle, and subsequently evaluated by the Director of GCT Development. When evaluating the proposals, two evaluation criteria were taken into account. Selection Criterion A, which accounts for 70% of the score, is designed to evaluate the direct economic value of a proposal. Selection Criterion B, which accounts for 30% of the score reflects the evaluator's determination of a proposal's indirect economic benefit to the MTA.

As illustrated in the attached chart, Oren's Daily Roast's Unadjusted Guaranteed Rent Amount (i.e. the proposed guaranteed minimum rent, on a present value basis determined using a discount rate of 6%) and its Total Selection Criteria Score were both higher than those for the other proposers; and consequently a selection committee was not convened. The rent proposed by Oren's Daily Roast exceeds the estimated fair market rental value of the subject space, as determined by Williams Jackson Ewing.

Oren's Daily Roast has been a successful tenant in the Grand Central Market since 1999. Oren's has 12 NYC locations, and has an established reputation as a purveyor of high-quality tenant- branded roasted coffee beans. In 2005 Oren Bloostein began "Oren's At Origin", a fair trade program that sources beans direct from farmers in the Americas, Africa, Indonesia, and the South Pacific. In addition to a varied selection of tenant-branded and roasted coffee beans, Oren's will continue to sell a limited assortment of loose leaf and bagged teas, as well as a selection of quality brand coffee brewers, grinders and coffee/tea accessories.

Based on the foregoing, MTA Real Estate requests Board authorization to enter into a lease agreement with Oren's GCT, LLC dba Oren's Daily Roast on the foregoing terms and conditions.

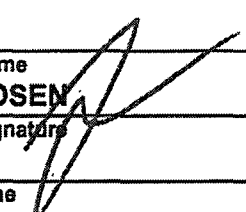


**Grand Central Terminal Retail Leasing Evaluation Sheet**  
 Evaluator: Nancy Marshall, Director GCT Development

Space: MKT- 23 (currently Oren's Daily Roast)  
 Date: March 21, 2014




Scoring	A	B	C	D	E	F	G	H	I	J
	<u>Unadjusted Guaranteed Rent Amount</u>	<u>Guaranteed Rent Adjustment Factor</u>	<u>Adjusted Guaranteed Rent Amount (A x B)</u>	<u>Unadjusted Percentage Rent Amount</u>	<u>Percentage Rent Adjustment Factor**</u>	<u>Adjusted Percentage Rent Amount (D x E)</u>	<u>Adjusted Total Rent Amount (C + F)</u>	<u>Selection Criterion A Score *** (0-70)</u>	<u>Selection Criterion B Score (0-30)</u>	<u>Total Selection Criterion Score (H + I)</u>
Oren's Daily Roast	\$510,523	1	\$510,523	0	0	0	\$510,523	70	20	90
Irving Farm Coffee Roasters	\$491,744	1	\$491,744	0	0	0	\$491,744	67.4	15	82.4
Stumptown Coffee Roasters	\$191,224	1	\$191,224	0	0	0	\$191,224	25.2	30	55.2
* Guaranteed Rent Adjustment Factor: from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0.00 per guidelines										
** Percentage Rent Adjustment Factor: as high as 0.50 (no uncertainty about D) to as low as zero (great uncertainty about D)										
*** Selection Criterion A Score: 70 multiplied by the ratio of the Adjusted Total Rent Amount for the proposer to the highest Adjusted Total Rent Amount (from column G)										

# Staff Summary

Subject <b>LEASE AGREEMENT</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>NANCY MARSHALL</b>

Date <b>APRIL 28, 2014</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	04/28/14	X		
2	Board	04/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Chief Financial Officer 		
	Civil Rights		

## Narrative

**AGENCY:** MTA Metro-North Railroad ("Metro-North")  
**LESSEE:** New York Film Academy Ltd dba New York Film Academy ("NYFA")  
**LOCATION:** Retail Space MC-60A  
**ACTIVITY:** An information center where people engage with NYFA staff members to learn about educational programs offered at the New York Film Academy. The space will be outfitted with film shooting equipment including an overhead lighting grid and professional film cameras. Staff members will distribute NYFA course information and marketing materials.  
**ACTION REQUESTED:** Approval of terms  
**TERM:** Ten years, subject to termination as of May 21, 2019 by either party.  
**SPACE:** Approximately 225 sq. ft.  
**COMPENSATION:**

<u>Year</u>	<u>Annual Base Rent</u>	<u>PSF</u>
1	\$223,200.00	\$300.00
2	\$229,896.00	\$309.00
3	\$236,792.88	\$318.27
4	\$243,896.67	\$327.81
5	\$251,213.57	\$337.65
6	\$258,749.98	\$347.78
7	\$266,512.48	\$358.21
8	\$274,507.85	\$368.96
9	\$282,743.09	\$380.03
10	\$291,225.38	\$391.43

**MARKETING:** \$10.61 per sq. ft. per year increasing annually by 3%  
**TRASH:** \$ 6.00 per sq. ft. per year increasing annually by 3%  
**SECURITY:** Three months minimum rent  
**INSURANCE:** Standard  
**CONSTRUCTION PERIOD:** 60 days

# Staff Summary

## FINANCE COMMITTEE MEETING

New York Film Academy, Ltd dba New York Film Academy (Cont'd.)



Metropolitan Transportation Authority

Page 2 of 2

### COMMENTS:

In response to a recent MTA Request for Proposals ("RFP") for Retail Space MC-60A in the Lexington Passage of Grand Central Terminal, proposals were received from NYFA, American Telecommunications dba T Mobile, Charbonnel & Walker Ltd dba Charbonnel & Walker, Le Palais des Thes, La Maison Du Chocolat, Pop Karma, Josh Bach, Satya Jewelry, Cursive, D.Fiori, Bellocq Teas, NuNu Chocolates, Erwin Pearl, BK Belts, Michal Negrin and Andrews Ties.

Per the Guidelines for Selection of Tenants for Grand Central Terminal approved by the MTA Board in November 2009, and amended in March 2014, such proposals were independently evaluated by Williams Jackson Ewing and Jones Lang LaSalle, and subsequently evaluated by the Director of GCT Development. When evaluating the proposals, two evaluation criteria were taken into account. Selection Criterion A, which accounts for 70% of the score, is designed to evaluate the direct economic value of a proposal. Selection Criterion B, which accounts for 30% of the score, reflects the evaluator's determination of a proposal's indirect economic benefit to the MTA.

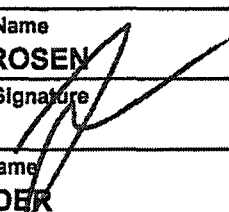
As illustrated in the attached chart, NYFA's Unadjusted Guaranteed Rent Amount (i.e. the proposed guaranteed minimum rent, on a present value basis determined using a discount rate of 6%) and its Total Selection Criteria Score were both higher than those for the other proposers; and consequently a selection committee was not convened. The rent proposed by NYFA exceeds the estimated fair market rental value of the subject space as determined by Williams Jackson Ewing.

NYFA has proposed to operate an interactive information hub in this location at GCT. NYFA's concept is to set up a small studio at which tourists and New Yorkers can gather information about the NYFA and its educational programs offered in NYC as well as its programs offered around the globe. The space will be outfitted with typical film shooting equipment, including an overhead lighting grid, professional film cameras and small set pieces. NYFA will distribute information and marketing materials to all interested parties.

Based on the foregoing, MTA Real Estate requests Board authorization to enter into a lease agreement with the New York Film Academy ("NYFA") on the foregoing terms and conditions.




Scoring	A	B	C	D	E	F	G	H	I	J
	Unadjusted Guaranteed Rent Amount	Guaranteed Rent Adjustment Factor	Adjusted Guaranteed Rent Amount (A x B)	Unadjusted Percentage Rent Amount	Percentage Rent Adjustment Factor**	Adjusted Percentage Rent Amount (D x E)	Adjusted Total Rent Amount (C + F)	Selection Criterion A Score *** (0-70)	Selection Criterion B Score (0-30)	Total Selection Criterion Score (H + I)
New York Film Academy	2,219,264	1.0	2,219,264	-	-	-	2,219,264	70.0	15.0	85.00
American Telecommunications	1,996,578	1.0	1,996,578	139,163	0.21	29,224	2,025,802	63.9	-	63.90
Charbonnel et Walker	1,244,686	1.0	1,244,686	67,442	-	-	1,244,686	39.3	20.0	59.30
Le Patis Des Thees	998,256	1.0	998,256	156,853	0.11	17,254	1,015,510	32.0	20.0	52.00
La Maison du Chocolat	935,866	1.0	935,866	22,331	0.50	11,166	947,032	29.9	20.0	49.90
Pop Kama	937,739	1.0	937,739	-	-	-	937,739	29.6	-	29.60
Joan Bach	889,072	1.0	889,072	-	-	-	889,072	28.0	15.0	43.00
Satya Jewelry	848,518	1.0	848,518	93,714	0.26	24,366	872,884	27.5	15.0	42.50
Cursive	838,535	1.0	838,535	-	-	-	838,535	26.4	25.0	51.40
D. Fiori	831,879	1.0	831,879	136,714	0.04	5,469	837,348	26.4	15.0	41.40
Bellocq	767,410	1.0	767,410	220,357	-	-	767,410	24.2	15.0	39.20
NuNu Chocolates	748,693	1.0	748,693	276,581	-	-	748,693	23.6	15.0	38.60
Erwin Pearl	707,098	1.0	707,098	124,655	0.10	12,466	719,564	22.7	20.0	42.70
BK Belts	582,311	1.0	582,311	100,274	0.50	50,137	632,448	19.9	15.0	34.90
Michal Negrin	598,954	1.0	598,954	-	-	-	598,954	18.9	15.0	33.90
Andrews Ties	559,023	1.0	559,023	-	-	-	559,023	17.6	15.0	32.60
* Guaranteed Rent Adjustment Factor: from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0.00 per guidelines										
** Percentage Rent Adjustment Factor: as high as 0.50 (no uncertainty about D) to as low as zero (great uncertainty about D)										
*** Selection Criterion A Score: 70 multiplied by the ratio of the Adjusted Total Rent Amount for the proposer to the highest Adjusted Total Rent Amount (from column G)										

# Staff Summary

Subject <b>LEASE AGREEMENT</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>MICHAEL BADER</b>

Date <b>APRIL 28, 2014</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/28/14	X		
2	Board	4/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal 
3	Chief of Staff 		
2	Chief Financial Officer 		

AGENCY: MTA Metro-North Railroad ("Metro North")  
 LANDLORD: Gotham 42<sup>nd</sup> Street, LLC  
 LOCATION: 110 East 42<sup>nd</sup> Street, New York, New York  
 ACTIVITY: Lease of space for Employee Assistance Program ("EAP")  
 ACTION REQUESTED: Approval of terms  
 TERM: Seven years and two months  
 SPACE: 1,840 rentable square feet (Suite 1301)  
 BASE RENT:

Year	Rent per SF
1	51.00
2	52.40
3	53.84
4	55.32
5	63.41
6	65.15
7	66.94

LANDLORD WORK: Per agreed upon floor plan, the space is to be provided fully built out with new paint, carpet and lighting fixtures.  
 POSSESSION: Upon substantial completion of Landlord's Work  
 RENEWAL OPTION: None  
 ESCALATION: Base rent shall be increased by 2.75% per annum.  
 REAL ESTATE TAX ESCALATION: Tenant to pay proportionate share of increases over a fiscal 2014/15 base tax year.  
 UTILITIES: Electric - \$3.25 per rentable square ft., subject to survey. Cost of all other utilities included in base rent.  
 SERVICES: Cleaning and HVAC service during normal building hours (Monday through Friday 8 AM to 6 PM) and building security will be provided at no extra cost to Tenant.  
 REPAIRS AND MAINTENANCE: Landlord will be responsible for repairs and maintenance of building common areas and common building systems and structural components.  
 Tenant will be responsible for maintenance and non-structural repairs within the space.

# Staff Summary

## FINANCE COMMITTEE MEETING Lease Agreement (Cont'd)

SECURITY DEPOSIT:       None.

### COMMENTS:

As previously reported to and discussed with the Finance Committee, as part of the MTA's comprehensive right sizing plan, MTA management has targeted the end of 2014 for the delivery of vacant possession of 341-347 Madison Avenue to a developer. Accordingly, EAP's office needs to be relocated.

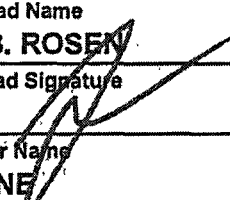
Because EAP provides confidential services to Metro-North employees, it needs to be located in reasonably close proximity to Metro-North's flagship operations at Grand Central Terminal and the adjoining Graybar office building at 420 Lexington Avenue, but is ideally not co-located with such function.

Following a comprehensive survey of available pre-built spaces within the Grand Central district, Cushman & Wakefield identified eight facilities within a 10-minute walking distance of GCT and the Graybar. All eight were inspected and four buildings – 110 East 42<sup>nd</sup> Street (1,840 square feet), 11 East 44<sup>th</sup> Street (3,581 square feet), 25 West 45<sup>th</sup> Street (2,781 square feet) and 60 East 42<sup>nd</sup> Street (2,209 square feet) - were identified as potentially suitable. Requests for proposals were sent to the owners, but one of them withdrew after proposing (60 East 42<sup>nd</sup>) and another declined (11 East 44<sup>th</sup>) to submit a proposal. Following negotiations, it was determined that the least costly alternative was 110 East 42<sup>nd</sup> Street, which is located directly across from Grand Central Terminal and has direct access from the building to the Lexington Avenue subway.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease with 110 East 42<sup>nd</sup> Street on the above-described terms and conditions.




# **MTA LONG ISLAND RAIL ROAD**

# Staff Summary

Subject <b>ACQUISITION OF TEMPORARY EASEMENTS</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>JOHN COYNE</b>

Date <b>APRIL 28, 2014</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/28/14	X		
2	Board	4/30/14	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal 
3	Chief of Staff 		
2	Chief Financial Officer 		

AGENCY: MTA Long Island Rail Road ("LIRR")

GRANTOR: 310-333 East Shore Road LLC

LOCATION: 310-333 East Shore Road, Village of Thomaston, Town of North Hempstead; Section 2, Block 375, Lot 25A on the tax map of Nassau County, New York

ACTIVITY: Acquisition of exclusive and nonexclusive temporary easements

ACTION REQUESTED: Approval of terms

TERM: 24 months, with an extension option of up to 12 additional months

SPACE: 5,929 square feet for the non-exclusive temporary easement area, 7,410 square feet for the exclusive temporary easement area.

COMPENSATION: \$5,435.83 per month for the initial 24-month term (paid in a lump sum of \$130,460), and \$5,435.83 per month for any month-to-month extensions up to 12 months thereafter.

## COMMENTS

LIRR requires both an exclusive temporary easement and a non-exclusive temporary easement across the parking area of the property located at 310-333 East Shore Road in Thomaston, New York (the "Subject Property"). These easements are required to facilitate a planned rehabilitation by LIRR of the Colonial Road Bridge, an automobile bridge over the LIRR right-of-way that LIRR is responsible for maintaining.

The Subject Property contains a two-story commercial office building and is adjacent to the LIRR right-of-way. The only feasible access to the LIRR right-of-way along the portion of the Port Washington Branch in the vicinity of the Colonial Road Bridge is across the Subject Property's parking lot. As a result, LIRR requires an exclusive temporary easement with respect to the portion of Grantor's parking lot that is directly adjacent to the Port Washington right-of-way for a staging area. LIRR also requires a non-exclusive temporary easement across other portions of Grantor's parking area in order to access the exclusive temporary easement area. Both easements will be required for a period of two to three years.

Grantor has agreed to grant LIRR the temporary easement interests for an initial term of 24 months and has agreed to allow LIRR to extend the term for up to 12 additional months, at LIRR's option. After negotiations, Grantor has agreed to accept as compensation \$130,460 for the initial 24-month period, and \$5,435.83 per month for any monthly extensions that LIRR may opt to exercise for up to 12 months thereafter. The proposed compensation amount for the easements is within 10% of the fair market value as estimated by the MTA's appraiser.



# Staff Summary

## FINANCE COMMITTEE MEETING

### 310-333 East Shore Rd Temp Easements (Cont'd.)



Metropolitan Transportation Authority

Page 2 of 2

Based on the foregoing, MTA Real Estate requests authorization to enter into a temporary easement agreement with 310-333 East Shore Road LLC on the above-described terms and conditions.

## **6. SERVICE CHANGES**

# Report



## **ACTION ITEM:**

## **SERVICE REVISION:**

### **Q103 ADD WEEKEND SERVICE and ADD WEEKDAY EVENING SERVICE**

## **SERVICE ISSUE:**

The Q103 provides weekday only local bus service along the Vernon Boulevard corridor in western Queens between Astoria and Hunters Point, via the intermediate neighborhood of Long Island City. The western Queens waterfront has experienced increased growth over the past several years with the construction of new residential developments, especially at the northern and southern ends. There are also current plans for further development. Additionally, the Q103 has been experiencing regular ridership increases. As the area grows more populous, there have been requests for additional bus service, and in particular, increased Q103 service. The Q103, which is the only bus route on this corridor, currently operates weekdays only from the early morning through the evening peak periods (approximately 6:30 AM to 7:30 PM), and no service on the weekends.

## **RECOMMENDED SOLUTION:**

On an experimental basis, expand the hours of service on the Q103: add weekend service (initially 8 AM-7 PM) and add weekday service later in the evening (initially about 1.5 hours later until approximately 9 PM). The travel path and bus stops will remain unchanged.

## **ESTIMATED IMPACT:**

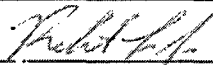
There would be an annualized cost of approximately \$315,000 for the proposed additional service. Provision for this increase has been included in the 2014 budget.

## **PLANNED IMPLEMENTATION:**

June 2014. Once the Q103's expanded hours of service has been in operation for some time, MTA Bus will schedule a public hearing to receive comments from the community on the implementation of the new weekend service and expanded weekday evening service. After the public hearing, a determination will be made on retaining the service revisions.





# Staff Summary

Page 1 of 3

Subject	Q103 Add Weekend Service and Add Weekday Evening Service
Department	Operations Planning
Department Head Name	Robert Lai/Mark Holmes
Department Head Signature	
Project Manager Name	Warren Berry

Date	April 4, 2014
Vendor Name	N/A
Contract Number	N/A
Contract Manager Name	N/A
Table of Contents Ref #	N/A

Board Action					
Order	To	Date	Approval	Info	Other
1	President		X		
2	MTA Board		X		

Internal Approvals			
Order	Approval	Order	Approval
4	President		
3	Executive Vice President		
2	VP, Government and Community Relations		
1	Vice President, Operations Planning		



## Narrative

### PURPOSE:

The purpose of this staff summary is to obtain Board approval to provide expanded service on the Q103, adding weekend service and adding later evening weekday service on an experimental basis. Once the Q103 revisions have been in operation and an evaluation period has passed, a public hearing will be held. Following this hearing, a determination will be made on making the changes permanent. This route was formerly operated by Queens Surface Coach Corporation and transitioned into MTA Bus service on February 27, 2005.

### DISCUSSION:

The Q103 provides local bus service on weekdays only from approximately 6:30 AM to 7:30 PM between Hunters Point and Astoria, Queens, via the intermediate neighborhoods of Ravenswood and Long Island City along the Vernon Boulevard corridor on the western Queens waterfront. The Q103 travels a one-way distance of approximately 3.5 miles, transporting approximately 790 passengers per weekday.

The Vernon Boulevard waterfront corridor, once mainly industrial, is becoming increasingly residential with the construction of new residential apartment buildings, which has been encouraged by recent rezonings. This development is most pronounced at the northern and southern ends, and there are also current plans for further development, which has led to community requests for additional bus service. The Q103 provides the only transit service along the Vernon Boulevard corridor. The route connects to the subway at the 21 St - Queensbridge  station and the Vernon Blvd - Jackson Ave  station.

In part, because of the development activity and growth in the community, Q103 ridership has been increasing in recent years. Average daily ridership grew approximately 41.5% from 2011 to 2014, from approximately 558 average riders per weekday in 2011 to 790 in 2014. In early 2014, ridership average had increased by 21.0% over 2013. In this time, service frequency has been incrementally improved to respond to this ridership growth as per the scheduling guidelines.

Requests for added Q103 service, especially weekends, have increased recently as the area continues to grow and with the anticipation of further development planned for the area. This planned development includes a new residential complex with neighborhood retail in Halle's Point, which will add 2,600 new dwelling units, and new residential complex with retail and a school at Astoria Cove, which will add approximately 1,700 new dwelling units; both at the northern end of the Q103 service route. Additionally, high-density residential and mixed-use development is proposed for Hunters Point South near the south end of the route. Lastly, there are also several attractions along the Q103 that would gain better transit access.

Expansion of the hours of service of the Q103 would better serve this growing residential community and respond to community requests.

## **RECOMMENDATION:**

Implement experimental expansion in the hours of service of the Q103 local bus route by adding weekend service and extending weekday operating hours. The Q103 would retain its current travel path, but Saturday and Sunday service would be added with the initial weekend hours of approximately 8 AM to 7 PM, and the weekday hours of service would be expanded by approximately 1.5 hours later to approximately 9 PM.

Afterward, schedule a public hearing to inform the public and receive comments from the community on the implementation of a new Q103 service on the weekends and revisions to the Q103 weekday schedule. After the public hearing, a determination will be made on retaining the service revisions.

## **ALTERNATIVES:**

The only alternative is to leave Q103 bus service between western Astoria and Long Island City unchanged, however this would forego the opportunity to provide enhanced transit access for growing communities in western Queens and would not respond to community requests.

## **IMPACT ON FUNDING:**

There would be an annualized cost of approximately \$315,000 for the proposed Q103 service expansion; however, provision for this has been included in the 2014 budget.

# Staff Summary

Page 3 of 3

## IMPLEMENTATION:

June 2014. Once the Q103's expanded hours of service has been in operation for some time, MTA Bus will schedule a public hearing to receive comments from the community on the implementation of the new weekend service and expanded weekday evening service. After the public hearing, a determination will be made on retaining the service revisions.

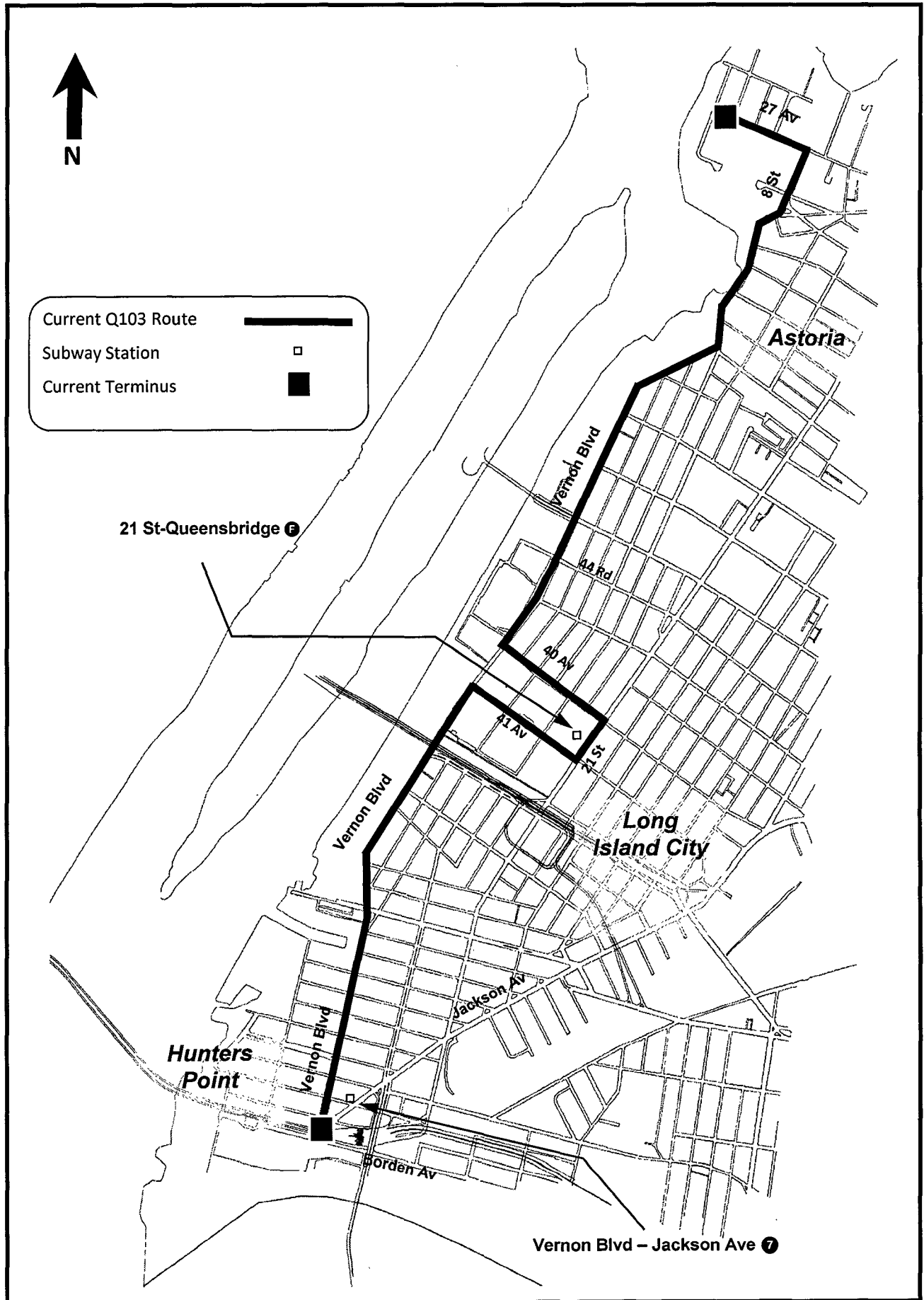
Approved for Submission to the Board:



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Darryl C. Irick  
President

# Q103 Travel Path



## **BOARD RESOLUTION**

**WHEREAS**, in a Staff Summary dated April 4, 2014, the Acting Vice Presidents of Operations Planning has recommended, on an experimental basis, to expand the hours of service on the Q103 by adding Saturday and Sunday with the initial weekend hours of approximately 8 AM to 7 PM, and expand weekday hours of service to approximately 9 PM; and

**WHEREAS**, upon review of the Staff Summary and the documents referenced in or attached to it, the Board has determined that:

- the proposed changes would respond to growing ridership, increased residential development activity along the Vernon Boulevard corridor, additional planned residential development along the Vernon Boulevard corridor, and community requests;
- the funding for the proposed experimental service is included in the 2014 budget;

**NOW, THEREFORE IT BE RESOLVED** that the Board authorizes the President or his designee to implement, on an experimental basis, at such time deemed practicable, the service changes described in said Staff Summary and attachments.



# Report

## PROCUREMENTS

The Procurement Agenda this month includes 6 actions for a proposed expenditure of \$27.5M.



**NYC Transit proposes to award Competitive procurements in the following categories:**

Schedules Requiring Majority Vote:

Schedule G:	Miscellaneous Service Contracts	1	\$	0.4 M
Schedule H:	Modifications to Personal/Miscellaneous Service Contracts	1	\$	7.5 M
SUBTOTAL		2	\$	7.9 M

**MTA Capital Construction proposes to award Competitive procurements in the following categories:**

Schedules Requiring Majority Vote:

Schedule I:	Modifications to Purchase and Public Work Contracts	1	\$	0.9 M
SUBTOTAL		1	\$	0.9 M

**MTA Bus Company proposes to award Competitive procurements in the following categories: NONE**

**MTA Bus Company proposes to award Ratifications in the following categories: NONE**

**NYC Transit proposes to award Ratifications in the following categories:**

Schedules Requiring Two-Thirds Vote:

Schedule D:	Ratification of Completed Procurement Actions	1	\$	7.8 M
SUBTOTAL		1	\$	7.8 M

**MTA Capital Construction proposes to award Ratifications in the following categories:**

Schedules Requiring Majority Vote:

Schedule K:	Ratification of Completed Procurement Actions	1	\$	0.9
SUBTOTAL		1	\$	0.9
TOTAL		6	\$	27.5

**COMPETITIVE BIDDING REQUIREMENTS:** The procurement actions in Schedules A, B, C and D are subject to the competitive bidding requirements of PAL 1209 or 1265-a relating to contracts for the purchase of goods or public work. Procurement actions in the remaining Schedules are not subject to these requirements.

**BUDGET IMPACT:** The purchases/contracts will result in obligating funds in the amounts listed. Funds are available in the current operating/capital budgets for this purpose.

**RECOMMENDATION:** That the purchases/contracts be approved as proposed. (Items are included in the resolution of approval at the beginning of the Procurement Section.)

## **BOARD RESOLUTION**

**WHEREAS**, in accordance with Section 1265-a and 1209 of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public work contracts, and the solicitation and award of request for proposals in regard to purchase and public work contracts; and

**WHEREAS**, in accordance with the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous service and miscellaneous procurement contracts, certain change orders to purchase, public work, and miscellaneous service and miscellaneous procurement contracts, and certain budget adjustments to estimated quantity contracts; and

**WHEREAS**, in accordance with Section 2879 of the Public Authorities Law and the All-Agency Guidelines for Procurement of Services, the Board authorizes the award of certain service contracts and certain change orders to service contracts.

NOW, the Board resolves as follows:

1. As to each purchase and public work contract set forth in annexed Schedule A, the Board declares competitive bidding to be impractical or inappropriate for the reasons specified therein and authorizes the execution of each such contract.

2. As to each request for proposals (for purchase and public work contracts) set forth in Schedule B for which authorization to solicit proposals is requested, for the reasons specified therein, the Board declares competitive bidding to be impractical or inappropriate, declares it is in the public interest to solicit competitive request for proposals, and authorizes the solicitation of such proposals.

3. As to each request for proposals (for purchase and public work contracts) set forth in Schedule C for which a recommendation is made to award the contract, the Board authorizes the execution of said contract.

4. As to each action set forth in Schedule D, the Board declares competitive bidding impractical or inappropriate for the reasons specified therein, and ratifies each action for which ratification is requested.

5. The Board authorizes the execution of each of the following for which Board authorization is required: i) the miscellaneous procurement contracts set forth in Schedule E; ii) the personal service contracts set forth in Schedule F; iii) the miscellaneous service contracts set forth in Schedule G; iv) the modifications to personal/miscellaneous service contracts set forth in Schedule H; v) the contract modifications to purchase and public work contracts set forth in Schedule I; and vi) the modifications to miscellaneous procurement contracts set forth in Schedule J.

6. The Board ratifies each action taken set forth in Schedule K for which ratification is requested.

7. The Board authorizes the budget adjustments to estimated contracts set forth in Schedule L.

**APRIL 2014**

**LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**H. Modifications to Personal Service Contracts and Miscellaneous Service Contracts Awarded as Contracts for Services**

(Approvals/Staff Summaries required for substantial change orders and change orders that cause the original contract to equal or exceed the monetary or durational threshold required for Board approval.)

- |   |                            |                                      |
|---|----------------------------|--------------------------------------|
| <b>1. Dental Pay Plus, Inc. d/b/a<br/>Pro Benefits Administrators<br/>Contract# 08E9879.7</b> | <b>\$10,000,000 (Est.)</b> | <b><u>Staff Summary Attached</u></b> |
|---|----------------------------|--------------------------------------|

Modification to the contract for third party Dental Administrative Services to extend the term one year with an option for up to an additional twelve months.

**APRIL 2014**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**G. Miscellaneous Service Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M RFP; No Staff Summary required if sealed bid procurement.)

- |                                    |                         |                                      |
|------------------------------------|-------------------------|--------------------------------------|
| <b>1. Summit Security Services</b> | <b>\$413,020 (Est.)</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Eight-month contract</b>        |                         |                                      |
| <b>RFQ# 75848</b>                  |                         |                                      |

Fire safety director services for the new Fulton Center and the adjacent Corbin Building.

**H. Modifications to Personal Service Contracts and Miscellaneous Service Contracts Awarded as Contracts for Services**

(Approvals/Staff Summaries required for substantial change orders and change orders that cause the original contract to equal or exceed the monetary or durational threshold required for Board approval.)

- |   |                           |                                      |
|---|---------------------------|--------------------------------------|
| <b>2. AlliedBarton Security Services, LLC</b> | <b>\$7,545,000 (Est.)</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Contract# 06H9503.6</b>                    |                           |                                      |

Modification to the contract to provide uniformed armed security guard services, in order to extend the contract term for nine months, plus an option to extend the contract term for up to an additional three months.

**APRIL 2014**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**I. Modifications to Purchase and Public Work Contracts**

(Approvals/Staff Summaries required for substantial change orders and change orders that cause the original contract to equal or exceed the monetary or durational threshold required for Board approval.)

**1. SSK Constructors, JV  
Contract# C-26007.33**

**\$930,000**

**Staff Summary Attached**

Modification to the contract for the construction of the Second Avenue Subway, 72nd Street Station, in order to address impact costs associated with previously granted time extensions.

**APRIL 2014**

**LIST OF RATIFICATIONS FOR BOARD APPROVAL**

**Procurements Requiring Two-Thirds Vote:**

**D. Ratification of Completed Procurement Actions**

(Staff Summaries required for items requiring Board approval.) Note – in the following solicitations, NYC Transit attempted to secure a price reduction. No other substantive negotiations were held except as indicated for individual solicitations.

- |   |                    |                                      |
|---|--------------------|--------------------------------------|
| <b>1. Kratos Public Safety and Security</b>   | <b>\$7,777,000</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Contract# C-52120</b>  |                    |                                      |
| Furnish, install, and integrate an Electronic Security System at the Court Street/Borough Hall Station Complex. |                    |                                      |



**APRIL 2014**

**LIST OF RATIFICATIONS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**K. Ratification of Completed Procurement Actions (Involving Schedule E-J)**

(Staff Summaries required for items requiring Board approval.)

- |   |                  |                                      |
|---|------------------|--------------------------------------|
| <b>1. E.E. Cruz and Tully Construction<br/>Company, JV, LLC<br/>Contract # C-26010.51</b> | <b>\$867,783</b> | <b><u>Staff Summary Attached</u></b> |
|---|------------------|--------------------------------------|

Modification to the contract for station finishes for the Second Avenue Subway, 96<sup>th</sup> Street Station, in order to replace rigid galvanized conduit and power cable with metal clad cable utilized for tunnel lighting.

Item Number: 1

<b>Vendor Name (&amp; Location)</b> Dental Pay Plus, Inc. d/b/a Pro Benefits Administrators (Amherst, NY)	
<b>Description</b> Third Party Dental Administrative Services	
<b>Contract Term (including Options, if any)</b> May 15, 2008 – May 14, 2014	
<b>Option(s) included in Total Amount?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> n/a	
<b>Procurement Type</b> <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Division of Human Resources, Dawn Pinnock	

Contract Number	AWO/Modification #
08E9879	7
<b>Original Amount:</b>	
	\$ 5,200,000
<b>Prior Modifications:</b>	
	\$ 26,000,000
<b>Prior Budgetary Increases:</b>	
	\$ 0
<b>Current Amount:</b>	
	\$ 31,200,000
<b>This Request: (including option)</b>	
	\$ 10,000,000 (Est.)
<b>% of This Request to Current Amount:</b>	
	32.1%
<b>% of Modifications (including This Request) to Original Amount:</b>	
	692.3%

**Discussion:**

This modification is to extend the contract term with Dental Pay Plus, Inc. (Dental Pay Plus) to continue to provide third-party dental administration services for one year from May 15, 2014 through May 14, 2015, with an option to extend the contract term for up to an additional twelve months. Exercise of the option will be subject to NYC Transit Procurement authorization.

Under the contract, Dental Pay Plus processes claims for NYC Transit's enrollees, monitors membership, and maintains the provider network. Dental Pay Plus receives an administrative fee for their services and the balance of funds allocated to the contract are used to reimburse dental providers based upon a fixed reimbursement schedule that has remained constant. The projected annual expenditure for administrative costs is \$330,000, or 7% of annual expenditures of \$5,000,000 for the entire contract. Approximately \$4,670,000 per year, or 93% of projected annual expenditures, is for dental provider reimbursements.

As part of their collective bargaining agreement, members of Transport Workers Union Local 100, the Subway Surface Supervisors Association, the Transit Supervisors Organization, and represented employees are entitled to receive dental benefits. To ensure these union members continue to have dental coverage, it is necessary to extend the contract with Dental Pay Plus until an RFP can be completed based on the plan coverage provisions agreed to in labor negotiations.

NYC Transit currently has approximately 22,000 members and 25,000 dependents enrolled in the Dental Pay Plus plan. For this extension and option, Dental Pay Plus agreed to maintain the administrative fee of \$1.25 per enrolled member per month established in 2009. Dental Pay Plus only charges an administrative fee for members, not for their dependents. In 2013, Dental Pay Plus processed 49,500 claims, which is approximately 4,100 claims per month. Based on the above, Dental Pay Plus' fees are deemed fair and reasonable.

# Schedule G: Miscellaneous Service Contracts

Item Number: 1

<b>Vendor Name (&amp; Location)</b> Summit Security Services (Uniondale, NY)
<b>Description</b> Fire Safety Director Services
<b>Contract Term (including Options, if any)</b> May 1, 2014 – February 2, 2015
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Piggyback NYS OGS contract

<b>Contract Number</b> RFQ 75848	<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total Amount:</b>	\$413,020 (Est.)
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Department of Subways, Joseph Leader	

## Discussion:

This contract is for fire safety director services with Summit Security Services (Summit) at the new Fulton Center and the adjacent Corbin Building in the estimated amount of \$413,020. The contract will be awarded pursuant to the All-Agency Guidelines for the Procurement of Services, Article XIV, Paragraph D, which states that an Authority may contract for a service available through an existing contract between a contractor and the State of New York or the City of New York or another Authority. The contract will utilize existing New York State Office of General Services (NYS OGS) Contract PS65725 that was competitively solicited through a request for proposals process and whose pricing and other commercial terms specified in the contract have been deemed satisfactory.

A fire safety director is responsible for conducting fire and evacuation drills, selecting qualified personnel for a fire brigade and organizing, training, supervising and maintaining the availability and readiness of the fire brigade, and conducting monthly testing of the fire alarm communications system. The Fulton Center will maintain 24-hour-a-day, seven-days-per-week coverage, whereas the Corbin Building, an office facility, will have coverage from six a.m. to six p.m. seven-days-per-week.

NYS OGS competitively solicited and awarded a contract for fire safety director services through July 23, 2017, but NYC Transit has decided to utilize this NYS OGS contract for only nine months at this time in order to coincide with the expiration in February 2015 of the current NYC Transit fire safety director services contract at 130 Livingston Street, 370 Jay Street, and at the RCC. A new contract for NYC Transit's locations will be solicited and awarded prior to February 2015 to provide continuity of service.

Having evaluated all available facts, Procurement finds Summit to be responsible, and Summit's estimated total price of \$413,020 to be fair and reasonable.

## Schedule H: Modifications to Personal Service & Miscellaneous Service Contracts

Item Number: 2

<b>Vendor Name (&amp; Location)</b> AlliedBarton Security Services, LLC (King of Prussia, PA)	
<b>Description</b>  Armed Security Guard Services	
<b>Contract Term (including Options, if any)</b> April 1, 2008 – April 30, 2014	
<b>Option(s) included in Total Amount?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> n/a	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Division of Revenue, Alan Putre Department of Security, Vincent DeMarino	

<b>Contract Number</b> 06H9503	<b>AWO/Modification #</b> 6
<b>Original Amount: (Est.)</b> \$ 21,885,332	
<b>Option Amount</b> \$ 12,043,290	
<b>Total Amount:</b> \$ 33,928,622	
<b>Prior Modifications: (excluding options)</b> \$ 7,622,613	
<b>Prior Budgetary Increases:</b> \$ 0	
<b>Current Amount:</b> \$ 41,551,235	
<b>This Request: (including option)</b>	
\$4,745,000: Revenue Control \$ 7,545,000	
\$2,800,000: Security (Est.)	
<b>% of This Request to Current Amount:</b> 18.2%	
<b>% of Modifications (including This Request) to Total Amount:</b> 44.7%	

### Discussion:

This modification will extend the contract term with Allied Barton Security Services, LLC (Allied) to continue to provide armed security guard services for an additional nine months from May 1, 2014 to January 31, 2015, with an option to extend the contract term for up to an additional three months. Exercise of the option will be subject to NYC Transit Procurement authorization.

In December 2007, the Board approved the award of a three-year competitively negotiated miscellaneous service contract to Allied to provide armed security guard services for NYC Transit's Division of Revenue Control at the Consolidated Revenue Facility and other locations throughout NYC Transit. The contract included two one-year options, both of which were exercised. Subsequent modifications extended the contract term to April 30, 2014. Under the contract, Allied provides armed security guards who conduct patrols, control access to the facility, monitor all activities utilizing closed-circuit television, monitor alarms, and handle emergencies. Allied also provides armed guards who perform similar duties for the Department of Security at designated NYC Transit locations.

This modification is needed to allow NYC Transit sufficient time to complete negotiations, make various scope revisions and award a new multi-year contract for armed security guard services. As a result of an extensive outreach to firms, NYC Transit received six proposals for the armed guard services contract. The number of proposals has led to an extended time period to conduct evaluations and negotiations. The estimated expenditures for this extension and option have been derived using the Prevailing Wage Rate, and have been deemed fair and reasonable. The cost for the nine-month extension is estimated at \$5,636,250, and the option is estimated at \$1,908,750.

# Schedule I: Modifications to Purchase and Public Work Contracts



Item Number: 1

<b>Vendor Name (&amp; Location)</b> SSK Constructors, JV (Secaucus, NJ)	
<b>Description</b> Second Avenue Subway – 72 <sup>nd</sup> Street Station Cavern Mining, G3/G4 tunnels, Heavy Civil/Structural	
<b>Contract Term (including Options, if any)</b> October 1, 2010 – January 14, 2014	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> MTA Capital Construction, Dr. Michael Horodniceanu	

<b>Contract Number</b> C-26007	<b>AWO/Modification #</b> 33
<b>Original Amount:</b>	\$ 447,180,260
<b>Prior Modifications:</b>	\$ 5,240,514
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 452,420,774
<b>This Request:</b>	\$ 930,000
<b>% of This Request to Current Amount:</b>	0.2%
<b>% of Modifications (including This Request) to Original Amount:</b>	1.4%

## Discussion:

This modification addresses impact costs associated with excusable and impactable time extensions granted under Modification Nos. 31 and 42.

The original contract work includes the 72<sup>nd</sup> Street Station cavern mining, G3/G4 tunnels, and Heavy Civil/Structural work in Manhattan as part of the Second Avenue Subway project. The revised Substantial Completion date of January 14, 2014 has been achieved.

A Stop Work Order to cease blasting at the west turnout cavern (located between 65<sup>th</sup> and 66<sup>th</sup> Streets) was issued to the contractor effective June 27, 2011 in response to concerns raised by an adjacent building owner located on 66<sup>th</sup> Street between 2<sup>nd</sup> and 3<sup>rd</sup> Avenues. The matter with the building owner was resolved and the Stop Work Order was lifted on June 29, 2011, resulting in a compensable project delay of two work days. Modification No. 31 addressed the two-day time extension but not the associated impact costs.

Similarly, a Stop Work Order to cease blasting was issued by MTACC effective November 23, 2011 in response to community concerns regarding perceived excesses of dust and smoke at the 69<sup>th</sup> Street and 72<sup>nd</sup> Street muck house locations. MTACC's investigation determined that the contractor was in compliance with the requirements of the contract and lifted the Stop Work Order on December 5, 2011, resulting in a compensable project delay of five work days. Modification No. 42 addressed the five-day time extension and the costs associated with the additional dust/smoke emission control measures added by the contractor, but not the associated impact costs.

This Modification No. 33 addresses the impact costs associated with the delay of seven work days. Since these compensable delays directly impacted blasting activities at the south end of the station, shaft and service costs associated with the 69<sup>th</sup> Street shaft are also included as impact costs. The shaft and service costs are associated with staffing the top and bottom of the main access shaft which provides access for personnel, equipment and removal of blasting debris for three shifts per day.

The contractor submitted an impact cost proposal for \$1,400,650. MTACC's revised estimate was \$989,260. Following review by MTA Audit, negotiations resulted in the agreed upon lump sum price of \$930,000, which is considered fair and reasonable. Savings of \$470,650 were achieved.

**Schedule D: Ratification of Completed Procurement Actions**

Item Number: 1

<b>Vendor Name (&amp; Location)</b> Kratos Public Safety & Security Solutions, Inc. (Fair Lawn, NJ)	<b>Contract Number</b> C-52120	<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Description</b>  Furnish, install and integrate an Electronic Security System at the Court Street/Borough Hall Station Complex	<b>Total Amount:</b> \$7,777,000	
<b>Contract Term (including Options, if any)</b> Eighteen months	<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a	<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Capital Program Management, Frederick E. Smith	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive		
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:		

**Discussion:**

It is requested that the Board formally ratify the award of this contract to Kratos Public Safety & Security Solutions, Inc. (KPSS) to furnish, install, and integrate an Electronic Security System (ESS) at the Court Street/Borough Hall Station Complex. The MTA Security Program is developing an integrated Inter-Agency ESS infrastructure to allow for commonality across all MTA agencies as well as direct communication to the NYC Police Department (NYPD). The ESS is an infrastructure consisting of hardware and software that will integrate all NYC Transit legacy security subsystems as well as new applications onto a single platform.

Contract C-52120 will furnish, install and integrate an ESS at the Court Street/Borough Hall Station Complex. This contract has been awarded pursuant to an Emergency Declaration signed by all agency presidents in December 2002. The contract was solicited using a two-step selection process whereby interested bidders were evaluated and selected based on their technical experience and integrity. This pre-selection process afforded NYC Transit the ability to control the distribution of its security sensitive information and have competition for this procurement. Twenty-eight contractors were identified as being capable of performing this work. All of the contractors were required to sign non-disclosure agreements and have previously worked with NYC Transit.

Following advertisement, seven bids were received. KPSS submitted the lowest bid of \$7,777,000. The price was found to be fair and reasonable. KPSS' subsidiary, Henry Brothers Electronics, Inc., has three ongoing NYC Transit construction contracts as a prime contractor.

Background investigations and materials revealed "significant adverse information" (SAI) within the meaning of the All-Agency Responsibility Guidelines for KPSS, but MTA Management approval was subsequently received. Accordingly, KPSS was found fully responsible for award.

KPSS (as Henry Brothers Electronics, Inc.) has achieved its M/W/DBE goals on its previous MTA Contracts.

## Schedule K: Ratification of Completed Procurement Actions

Item Number: 1

<b>Vendor Name (&amp; Location)</b> E.E. Cruz and Tully Construction Company, JV, LLC (New York, NY)	
<b>Description</b> Second Avenue Subway – 96 <sup>th</sup> Street Station Finishes	
<b>Contract Term (including Options, if any)</b> June 22, 2012 – December 21, 2015	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> MTA Capital Construction, Dr. Michael Horodniceanu	

<b>Contract Number</b> C-26010	<b>AWO/Modification #</b> 51
<b>Original Amount:</b>	\$ 324,600,000
<b>Prior Modifications:</b>	\$ 4,957,630
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 329,557,630
<b>This Request:</b>	\$ 867,783
<b>% of This Request to Current Amount:</b>	0.3%
<b>% of Modifications (including This Request) to Original Amount:</b>	1.8%

### Discussion:

This retroactive modification addresses the replacement of rigid galvanized conduit and RHW-2 power cable for tunnel lighting with Metal Clad (MC) cable due to Underwriters Laboratory's (UL) suspension of its fire-rated certification for RHW-2 power cable.

The original contract requires the following in order to complete the 96<sup>th</sup> Street Station: rehabilitation and retrofit of the existing 99<sup>th</sup> – 105<sup>th</sup> Street tunnel; construction of invert slab and benches in the newly constructed 87<sup>th</sup> – 92<sup>nd</sup> Street tunnel and in the northern section of the 97<sup>th</sup> – 99<sup>th</sup> Street tunnel; installation of mechanical systems including HVAC, electrical medium voltage and 120V systems; plumbing; supply and installation of elevators and escalators; construction of the station platform, mezzanine levels, ancillaries and entrances; construction of interior walls and rooms; installation of architectural finishes; restoration of the surface of Second Avenue and adjacent streets; removal of the temporary road deck installed in previous contracts; and maintenance of the station until contract completion.

As new construction, all Second Avenue Subway (SAS) contract designs have been prepared in accordance with National Fire Protection Association (NFPA) fire-protection and life-safety requirements for underground, surface, and elevated transit and passenger rail systems. NFPA requires that fire-resistive cables in the station for emergency lighting, communication and emergency ventilation have a minimum of one-hour fire-resistive rating when submitted to testing methods specified by UL. RHW-2 power cable was previously certified by UL and utilized in SAS designs along with NYC Transit's standard cable encasement of Rigid Galvanized Steel (RGS) conduit which is used for its strength and resistance to wet conditions in the subway environment. On September 12, 2012, UL suspended its fire-rated cable certification for RHW-2 cable due to its failure to meet the one hour fire-resistive rating when encased in RGS conduit. In order to avoid significant delays to the SAS Project, MTACC, along with NYC Transit's CPM, Maintenance of Way and the Office of System Safety, have agreed that MC cable, which is UL certified, could be used for all tunnel lighting applications in Phase 1 of the SAS Project. MC cable is a metal jacketed cable and although it is installed without encasement (conduit) it does require additional supports and connecting and terminating devices, such as special junction boxes, splice boxes, and fittings. NYC Transit has recently accepted the use of MC cable in other current projects.

This modification includes the installation of approximately 24,000 linear feet of MC cable and a credit for the deletion of previously specified RHW-2 cable and RGS conduit. Similar modifications will be required under the 72<sup>nd</sup> and 86<sup>th</sup> Street Station Contracts. Due to the lead time associated with MC cable and in order to mitigate potential delays, it was necessary to direct the contractor to purchase the material. Retroactive approval by the MTACC President was obtained on November 5, 2013. Additional retroactive approval was obtained from the MTACC President on March 5, 2014 for the installation of approximately 2,300 linear feet of advanced shipped MC cable.

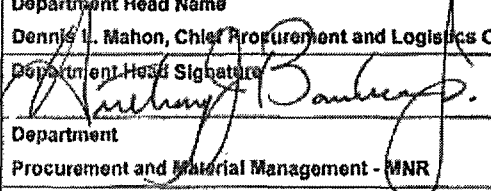
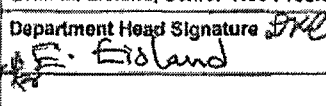
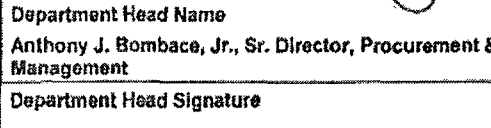
The contractor's cost proposal was \$1,688,363; MTACC's estimate was \$867,783. Several attempts at negotiations were made, and although MTACC and the contractor were close on the cost of the deleted work, agreement could not be reached on the required level of effort and the cost for the installation of the MC cable. Due to the critical nature of this changed work, approval is requested to direct the contractor to proceed with the work unilaterally at MTACC's cost estimate of \$867,783. All records of time and material will be kept during the performance of the work in the event of a Dispute.

**METRO-NORTH/LONG ISLAND  
COMMITTEE**

**PROCUREMENTS  
FOR  
BOARD  
ACTION**

**April 30, 2014**



<b>Subject</b> Request for Authorization to Award Various Procurements						<b>Date</b> April 30, 2014			
<b>Department</b> Procurement and Logistics - LIRR						<b>Department</b> Law and Procurement - MTACC			
<b>Department Head Name</b> Dennis L. Mahon, Chief Procurement and Logistics Officer						<b>Department Head Name</b> Evan M. Eisland, Senior Vice President and General Counsel			
<b>Department Head Signature</b> 						<b>Department Head Signature</b> 			
<b>Department</b> Procurement and Material Management - MNR									
<b>Department Head Name</b> Anthony J. Bombace, Jr., Sr. Director, Procurement & Material Management									
<b>Department Head Signature</b> 									
<b>Board Action</b>									
Order	To	Date	Approval	Info	Other				
1	LIRR/MNR Committee	4.28.14							
2	MTA Board	4.30.14							
<b>Internal Approvals</b>									
Order	Approval	Order	Approval						
X	President, LIRR								
X	President, MNR								
X	President, MTACC								

**PURPOSE:**

To obtain approval of the Board to award various contracts and purchase orders, and to inform the Metro-North/Long Island Committee of these procurement actions.

**DISCUSSION:**

LIRR proposes to award Non-Competitive procurements in the following categories:

	<u># of Actions</u>	<u>\$ Amount</u>
<u>Schedules Requiring Two-Thirds Vote:</u>		
Schedule A: Non-Competitive Purchases and Public Work Contracts	2	\$1,442,000
<b>SUBTOTAL:</b>	2	\$1,442,000

MNR proposes to award Non-Competitive procurements in the following categories:

	<u># of Actions</u>	<u>\$ Amount</u>
<u>Schedules Requiring Majority Vote:</u>		
Schedule G: Miscellaneous Service Contracts	1	\$3,419,779
<b>SUBTOTAL:</b>	1	\$3,419,779

MTACC proposes to award Non-Competitive procurements in the following categories: NONE

**LIRR proposes to award Competitive procurements in the following categories:**

		<u># of Actions</u>	<u>\$ Amount</u>
<u>Schedules Requiring Two-Thirds Vote:</u>			
Schedule B:	Competitive Requests for Proposals (Solicitation)	1	\$TBD
Schedule C:	Competitive Requests for Proposals (Award)	1	\$25,959,880
<u>Schedules Requiring Majority Vote:</u>			
Schedule I:	Modifications to Purchase and Public Work Contracts	1	\$11,321,166
SUBTOTAL:		3	\$37,281,046

**MNR proposes to award Competitive procurements in the following categories:**

<u>Schedules Requiring Majority Vote:</u>			
Schedule G:	Miscellaneous Service Contracts	2	\$2,161,000
SUBTOTAL:		2	\$2,161,000

**MTACC proposes to award Competitive procurements in the following categories:**

<u>Schedules Requiring Two Thirds Majority Vote:</u>			
Schedule B:	Competitive Request for Proposals	1	\$TBD
<u>Schedules Requiring Majority Vote:</u>			
Schedule H:	Modifications to Personal and Miscellaneous Service Contracts	1	\$846,232
Schedule I:	Modifications to Purchase and Public Work Contracts	1	\$2,154,714
SUBTOTAL:		3	\$3,000,946

**LIRR proposes to award Ratifications in the following categories:**

NONE

**MNR proposes to award Ratifications in the following categories:**

<u>Schedules Requiring Majority Vote:</u>			
Schedule K:	Ratification of Completed Procurement Actions	4	\$1,218,250
SUBTOTAL:		4	\$1,218,250

**MTACC proposes to award Ratifications in the following categories:**

<u>Schedules Requiring Majority Vote:</u>			
Schedule K	Ratification of Completed Procurement Action	1	\$5,500,000
SUBTOTAL:		1	\$5,500,000

**TOTAL:        16        \$54,023,021**

The contractors noted above and on the following Staff Summary Sheets have been found in all respects responsive and responsible, and are in compliance with State laws and regulations concerning procurements.

**BUDGET IMPACT:**

The purchases/contracts will result in obligating Long Island Rail Road, Metro-North Railroad and MTA Capital Construction operating and capital funds in the amount listed. Funds are available in the current operating/capital budgets for this purpose.

**RECOMMENDATION:**

That the purchases/contracts be approved as proposed. (Items are included in the resolution of approval at the beginning of the Procurement Section.)

## METROPOLITAN TRANSPORTATION AUTHORITY

WHEREAS, in accordance with Section 1265-a and Section 1209 of the Public Authorities law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public work contracts, and the solicitation and award of request for proposals in regard to purchase and public work contracts; and

WHEREAS, in accordance with the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous procurement contracts, and certain change orders to procurement, public work, and miscellaneous procurement contracts; and

WHEREAS, in accordance with Section 2879 of the Public Authorities Law and the All Agency Guidelines for Procurement of Services, the Board authorizes the award of certain service contracts and certain change orders to service contracts.

NOW, the Board resolves as follows:

1. As to each purchase and public work contract set forth in the annexed Schedule A, the Board declares competitive bidding to be impractical or inappropriate for the reasons specified therein and authorizes the execution of each such contract.
2. As to each request for proposals (for purchase and public work contracts) set forth in Schedule B for which it is deemed in the public interest to obtain authorization to solicit competitive proposals through a publicly advertised RFP for the reasons specified therein the Board declares it to be impractical or inappropriate to utilize a procurement process inviting sealed bids with award to the lowest responsive/responsible bidder.
3. As to each request for proposals (for purchase and public work contracts) set forth in Schedule C for which a recommendation is made to award the contract, the Board authorizes the execution of said contract.
4. The Board ratifies each action taken set forth in Schedule D for which ratification is requested.
5. The Board authorizes the execution of each of the following for which Board authorization is required: i) the miscellaneous procurement contracts set forth in Schedule E; ii) the personal service contracts set forth in Schedule F; iii) the miscellaneous service contracts set forth in Schedule G; iv) the modifications to personal/miscellaneous service contracts set forth in Schedule H; v) the contract modifications to purchase and public work contracts set forth in Schedule I; and vi) the modifications to miscellaneous procurement contracts set forth in Schedule J.
6. The Board ratifies each action taken set forth in Schedule K for which ratification is requested.

**APRIL 2014**

**MTA LONG ISLAND RAIL ROAD**

**LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

*Procurements Requiring Two-Thirds Vote*

**Schedule A: Non-Competitive Purchase and Public Works Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive)

- |    |   |   |                                      |
|----|---|---|--------------------------------------|
| 1. | <b>LB Foster Rail Technologies, Inc.</b><br><b>Sole Source</b><br><b>Contract No. IT04116</b> | <b>\$580,000-LIRR</b><br><b>\$ 72,000-MNR</b><br><b><u>\$105,000-NYCT</u></b><br><b>\$757,000-Not-to-Exceed</b> | <i><u>Staff Summary Attached</u></i> |
|----|---|---|--------------------------------------|

LIRR, on behalf of itself, Metro-North Railroad (MNR) and New York City Transit (NYCT) requests approval to award three separate three-year Sole Source estimated quantity contracts, to L. B. Foster Rail Technologies, Inc. (LB Foster), in the following not-to-exceed amounts: LIRR - \$580,000, MNR - \$72,000 and NYCT - \$105,000. Under the contracts, LB Foster will provide the LIRR, MNR and NYCT (collectively, the Agencies) with rail lubrication and traction applicators as well as replacement parts on an as-needed basis allowing each Agency to repair and maintain its existing respective rail lubrication and friction management systems manufactured by Portec Rail Products, Inc. (Portec). (At the end of December 2010, LB Foster acquired Portec and its catalog of track lubricating and friction management equipment).

- |    |  |  |                                      |
|----|--|--|--------------------------------------|
| 2. | <b>North American Equipment</b><br><b>Sole Source</b><br><b>Contract No. IT05850</b> | <b>\$415,000-LIRR</b><br><b><u>\$270,000-MNR</u></b><br><b>\$685,000-Not-to-Exceed</b> | <i><u>Staff Summary Attached</u></i> |
|----|--|--|--------------------------------------|

LIRR, on behalf of itself and Metro-North Railroad (MNR) (collectively the "Railroads"), requests MTA Board approval to award individual sole source contracts to North American Equipment Sales Co., Inc. (North American) for the supply of parts required on an as-needed basis to maintain Little Giant/Badger cranes, American & Ohio Locomotive cranes, Teleweld rail heaters, and Airtac impact tools. The Railroads will issue individual orders to North American for a three-year period each in the not-to-exceed amounts of \$415,000 (LIRR) and \$270,000 (MNR).



## Staff Summary

Item Number: 1

<b>Vendor Name</b> LB Foster Rail Technologies, Inc. Pittsburgh, PA
<b>Description</b> Spare Parts Required to Perform Maintenance and Repairs of LB Foster Lubricators and Traction Gel Applicators
<b>Contract Term (including Options, if any)</b> 3 Years
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Procurement Type</b> <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source

<b>Contact Number</b> IT04116	<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No								
<b>Total Amount:</b>	<table> <tr> <td>LIRR</td> <td>\$580,000</td> </tr> <tr> <td>MNR</td> <td>\$ 72,000</td> </tr> <tr> <td>NYCT</td> <td>\$105,000</td> </tr> <tr> <td>Not-to-Exceed</td> <td>\$757,000</td> </tr> </table>	LIRR	\$580,000	MNR	\$ 72,000	NYCT	\$105,000	Not-to-Exceed	\$757,000
LIRR	\$580,000								
MNR	\$ 72,000								
NYCT	\$105,000								
Not-to-Exceed	\$757,000								
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:									
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Maintenance of Way – John Collins, Chief Engineer									
<b>Contract Manager:</b> Richard Barone									

### Discussion:

LIRR, on behalf of itself, Metro-North Railroad (MNR) and New York City Transit (NYCT) requests approval to award three separate three-year Sole Source estimated quantity contracts, to L. B. Foster Rail Technologies, Inc. (LB Foster), in the following not-to-exceed amounts: LIRR - \$580,000, MNR - \$72,000 and NYCT - \$105,000. Under the contracts, L.B. Foster will provide the LIRR, MNR and NYCT (collectively, the Agencies) with rail lubrication and traction applicators as well as replacement parts on an as-needed basis allowing each Agency to repair and maintain its existing respective rail lubrication and friction management systems manufactured by Portec Rail Products, Inc. (Portec). (At the end of December 2010, LB Foster acquired Portec and its catalog of track lubricating and friction management equipment).

LIRR advertised its intent to award a Joint Sole Source procurement to LB Foster in the NYS Contract Reporter on February 12, 2014, in the New York Post on February 20, 2014 and on the Web on February 20, 2014. No other vendor expressed interest in competing for this procurement. The prices submitted by LB Foster were reviewed and compared to the Producer Price Index (PPI) for finished goods - Series Id: WPSSOP3000. LB Foster's overall prices have increased no more than 1.2% annually, which is in line with PPI index annual increase of 1.2%. The LB Foster price list will be fixed for the first year of the contract and will then be adjusted on the contract anniversary date utilizing a previously agreed upon PPI. LB Foster has certified that all prices offered to the Agencies are equal to or not greater than prices charged to their most favored transit customer or any other commuter railroad or transit agency. As a result of the above, prices have been determined to be fair and reasonable.

## Schedule A: Non-Competitive Purchases and Public Works

### Staff Summary



Long Island Rail Road

Item Number: 2

<b>Vendor Name</b> North American Equipment – Bucyrus, Ohio
<b>Description</b> Various Replacement Parts
<b>Contract Term (including Options, if any)</b> 3 Year Contract
<b>Option(s) Included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Procurement Type</b> <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source

<b>Contact Number</b> IT05850	<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Total Amount:</b>	LIRR \$415,000 MNR \$270,000 Not-to-Exceed \$685,000
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Maintenance of Way – John Collins, Chief Engineer	
<b>Contract Manager:</b> Richard Barone	

#### Discussion:

LIRR, on behalf of itself and Metro-North Railroad (MNR) (collectively the "Railroads"), requests MTA Board approval to award individual sole source contracts to North American Equipment Sales Co., Inc. (North American) for the supply of parts required on an as-needed basis to maintain Little Giant/Badger cranes, American & Ohio Locomotive cranes, Teleweld rail heaters, and Airtec impact tools. The Railroads will issue individual orders to North American for a three-year period each in the not-to-exceed amounts of \$415,000 (LIRR) and \$270,000 (MNR).

North American is the exclusive distributor of these highly specialized pieces of equipment, which must be maintained in good operating condition to support on-going infrastructure maintenance programs. LIRR advertised its intent to award sole source contracts to North American in the NYS Contract Reporter on July 26, 2013, in the NY Post on August 8, 2013 and on the Web on August 15, 2013. No other manufacturer expressed an interest in competing for this contract.

North American offered list price plus delivery costs for Teleweld rail heaters, Airtec impact tools, American & Ohio Locomotive crane parts and a 5% discount off list on Little Giant/Badger parts plus delivery costs for the contract term. The price lists are subject to change by manufacturer. A comparison of the current price lists for Teleweld rail heaters parts over pricing for 2012 reflects an average price increase of 1.16%. The Producer Price Index (PPI) for heat transfer equipment, including heat pumps increased by 1.78%. The 2013 price for Airtec impact tool parts increase over the previous pricing by 2.77%, whereas the PPI for Power-driven hand tools, pneumatic, hydraulic, and power-actuated increased by 5.31%. American & Ohio Locomotive and Little Giant/Badger parts price list increased by 6.05%, while the PPI for parts for cranes, draglines, and shovels (sold separately) increased by 8.2%. Overall, the price list was found acceptable when compared to the appropriate PPI. North American has certified that all prices offered to the Agencies are equal to or not greater than prices charged to their most favored transit customer or any other Commuter Railroad or Transit Agency. As a result of the above, prices are determined to be fair and reasonable.

APRIL 2014

METRO-NORTH RAILROAD

LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Schedules Requiring Two-Thirds Vote:

**G. Miscellaneous Service Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M RFP; No Staff Summary required if Sealed Bid Procurement.)

- 1 **Siemens Industry, Inc.** **\$3,419,779** **Staff Summary Attached**  
**Maintenance and System Upgrades for the Siemens GCT Building Management and GCT Fire Alarm and Life Safety Systems**

Approval is requested to award two, non-competitive, five year miscellaneous service contracts for maintenance and system upgrades for the Grand Central Terminal (GCT) Siemens Building Management System (BMS) and the GCT Siemens Fire Alarm and Life Safety System (FAS). The BMS primarily controls most of the GCT heating, ventilation, air conditioning systems, and monitors many critical alarms. The FAS can pinpoint alarm conditions anywhere throughout GCT, which facilitates a rapid response to fire and life safety events.

Siemens is the Original Equipment Manufacturer (OEM) for both systems and is the only authorized company to maintain the proprietary software that runs them. The contracts will provide continuous preventive maintenance, technical support, troubleshooting, repairs and replacement, and testing and inspection services. Various parts and equipment for each system are either being replaced to maintain leading edge technology or parts are being replaced due to obsolescence. Additionally, the contracts will include a provision for necessary upgrades as directed and approved solely by MNR. The maintenance and upgrades are expected to extend the life of the systems approximately 10 years. Also, during the period of these contracts, MNR will begin the process of a comprehensive evaluation of the technologies that are available to possibly replace the systems.

In accordance with MNR and MTA procurement guidelines, a notification of the sole source procurement was placed in the New York State Contract Reporter, the New York Post, The Daily Challenge, and on the MNR website. MNR has complied with PAL§ 1265-a (3) regarding the posting of advertisements in order to identify potential alternate suppliers and with MTA All-Agency Procurement Guidelines for this sole source procurement. No alternate suppliers responded to the notification. The MTA Department of Diversity and Civil rights assigned 0% M/WBE goals for this contract.

The cost for the Building Management System is \$1,557,838 and the cost for the Fire Alarm and Life Safety System agreement is \$1,861,941. MNR Procurement negotiated a 20% discount on the labor rates and a 60% discount on parts for the system upgrades, from the proposed amounts as submitted by Siemens. All prices are deemed to be fair and reasonable for the level of services required. The total cost for both contracts is \$3,419,779. These procurements are to be funded by the MNR Operating Budget.



## Staff Summary

Item Number G					
Dept & Dept. Head Name: <i>[Signature]</i> Procurement & Material Management, Anthony J. Bombace, Jr.					
Division & Division Head Name:					
Board Reviews					
Order	To	Date	Approval	Info	Other
1	M-N Comm.Mtg.	04-28-14	X		
2	MTA Board Mtg.	04-30-14	X		
Internal Approvals					
Order	Approval	Order	Approval		
X	President <i>[Signature]</i>	X	V.P. General Counsel <i>[Signature]</i>		
X	Sr. V.P. Operations <i>[Signature]</i>		V.P. Planning		
X	V.P. Finance & IT <i>[Signature]</i>				
	Capital Programs				

<b>SUMMARY INFORMATION</b>	
Vendor Name Siemens Industry, Inc	Contract Number 26232/26233
Description Maintenance & System Upgrades for the Siemens GCT Building Management System (BMS) and GCT Fire Alarm and Life Safety System (FAS)	
Total Amount Total: \$3,419,779 (BMS: \$1,557,838 & FAS: \$1,861,941)	
Contract Term (including Options, if any) Five years	
Option(s) included in Total Amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive	
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source	
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

## Narrative

**I. PURPOSE/RECOMMENDATION:**

Approval is requested to award two, non-competitive, five year miscellaneous service contracts for maintenance and system upgrades for the Grand Central Terminal (GCT) Siemens Building Management System (BMS) and the GCT Fire Alarm and Life Safety System (FAS).

**II. DISCUSSION:**

MNR requests MTA Board approval to award two, non-competitive, five year miscellaneous service contracts for maintenance and system upgrades for the Grand Central Terminal (GCT) Siemens Building Management System (BMS) and the GCT Fire Alarm and Life Safety System (FAS). The BMS primarily controls most of the GCT heating, ventilation, air conditioning systems, and monitors many critical alarms. It also controls various other mechanical/electrical equipment throughout GCT. The FAS can pinpoint alarm conditions anywhere throughout GCT, which facilitates a rapid response to fire and life safety events.

Siemens is the Original Equipment Manufacturer (OEM) for both systems and is the only authorized company to maintain the proprietary software that runs them. The contracts will provide continuous preventive maintenance, technical support, troubleshooting, repairs and replacement, and testing and inspection services. Various parts and equipment for each system are either being replaced to maintain leading edge technology or parts are being replaced due to obsolescence. Additionally, the contracts will include a provision for necessary upgrades as directed and approved solely by MNR. The maintenance and upgrades are expected to extend the life of the systems approximately 10 years. Also, during the period of these contracts, MNR will begin the process of a comprehensive evaluation of the technologies that are available to possibly replace the systems.

## Staff Summary

In accordance with MNR and MTA procurement guidelines, a notification of the sole source procurement was placed in the New York State Contract Reporter, the New York Post, The Daily Challenge, and on the MNR website. MNR has complied with PAL§ 1265-a (3) regarding the posting of advertisements in order to identify potential alternate suppliers and with MTA All-Agency Procurement Guidelines for this sole source procurement. No alternate suppliers responded to the notification.

Siemens submitted a Contractor Responsibility Form as a requirement for the new contract and disclosed information constituting "Significant Adverse Information" ("SAI") under the MTA All-Agency Responsibility Guidelines. MNR prepared a Responsibility Waiver and with MNR recommendation the MTA Chairman approved same on February 25, 2014.

Siemens proposed pricing for the five year contract term for the BMS is \$1,557,838, which includes costs for: maintenance = \$590,592, upgrades = \$842,246 and an allowance = \$125,000. The cost for the FAS is \$1,861,941, which includes maintenance = \$1,006,486, upgrades = \$730,455, and an allowance = \$125,000. MNR Procurement negotiated a 20% discount on the labor rates and a 60% discount on parts for the system upgrades, from the proposed amounts as submitted by Siemens. All prices are to be deemed fair and reasonable.

### **III. D/M/WBE INFORMATION:**

The MTA Department of Diversity and Civil Rights set 0% MWBE goals for these contracts.

### **IV. IMPACT ON FUNDING:**

The cost for the Building Management System is \$1,557,838 and the cost for the Fire Alarm and Life Safety System agreement is \$1,861,941. The total cost for both contracts is \$3,419,779. These procurements are to be funded by the MNR Operating Budget.

### **V. ALTERNATIVES:**

MNR does not have the available in-house staff with both the expertise and capability to perform the required maintenance/upgrades on the Siemens' Building Management System and Fire Alarm and Life Safety Systems.

APRIL 2014

**MTA LONG ISLAND RAIL ROAD**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

*Procurements Requiring Two-Thirds Vote*

**Schedule B: Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)**  
(Staff Summaries only required for items estimated to be greater than \$1 million)

- |    |   |              |                                      |
|----|---|--------------|--------------------------------------|
| 3. | <b>TBD</b><br><b>Competitive RFP</b><br><b>Contract No. TBD</b> | <b>\$TBD</b> | <i><u>Staff Summary Attached</u></i> |
|----|---|--------------|--------------------------------------|

LIRR requests MTA Board approval to adopt a resolution declaring that competitive bidding is impractical or inappropriate and that it is in the public's best interest to use the Request for Proposal (RFP) procurement method pursuant to Section 1265-a of the Public Authorities Law to solicit a Design/Build construction contract for the Ellison Avenue Bridge Replacement Project.

*Procurements Requiring Two-Thirds Vote*

**Schedule C: Competitive Request for Proposals (Award of Purchase and Public Work Contracts)**  
(Staff Summaries only required for items requiring Board approval)

- |    |   |  |                                      |
|----|---|--|--------------------------------------|
| 4. | <b>Picone-Schiavone II, a joint-venture<br/>Of John P. Picone Inc. and<br/>Schiavone Construction Co. LLC</b><br><b>Competitive RFP</b><br><b>Contract No. 6121</b> | <b>\$23,979,000-Base Work</b><br><b><u>\$ 1,980,880-Options</u></b><br><b>\$25,959,880</b> | <i><u>Staff Summary Attached</u></i> |
|----|---|--|--------------------------------------|

LIRR requests approval to award a Contract to Picone-Schiavone II, a joint-venture of John P. Picone Inc. and Schiavone Construction Co. LLC, in the amount of \$25,959,880 to provide Design-Build Services for the Reconfiguration of the Johnson Avenue Yard in Jamaica, Queens. The Contract is part of the initial phase of Jamaica Capacity Improvements - Phase I, leading to the construction of a new station platform (Platform F) consistent with future East Side Access service and scoot service from Jamaica to Brooklyn.

*Procurements Requiring Majority Vote*

**Schedule I: Modifications to Purchase and Public Work Contracts**

(Staff Summaries required for individual change orders greater than \$250K. Approval without Staff Summary required for change orders greater than 15% of the adjusted contract amount which are also at least \$50K)

- |    |   |                     |                                      |
|----|---|---------------------|--------------------------------------|
| 5. | <b>Bombardier Transportation/<br/>Siemens Rail</b><br><b>Contract Nos. 1712 / 29544</b> | <b>\$11,206,702</b> | <i><u>Staff Summary Attached</u></i> |
|----|---|---------------------|--------------------------------------|

LIRR requests Board approval to issue contract modifications to accelerate performance of the Positive Train Control System Integrator ("SI") contract to increase delivery rates for (i) PTC On-Board Equipment Kits for M-7 cars (LIRR and MNR) and M-3 cars (MNR only), and (ii) PTC Wayside Equipment Kits (both Railroads), and (iii) to obtain earlier delivery of MNR wayside transponders, at a total combined lump sum cost of \$11,206,702

# Schedule B: Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)

## Staff Summary



Long Island Rail Road

Page 1 of 2

Item Number: 3					
Dept/Dept Head Name: Procurement & Logistics, Dennis Mahon					
Department Head Signature & Date <i>[Signature]</i>					
Division/Division Head Name: Program Management, Richard Oakley					
Division Head Signature & Date <i>[Signature]</i>					
Board Reviews					
Order	To	Date	Approval	Info	Other
1	LI Committee	4.28.14			
2	MTA Board	4.30.14			
Internal Approvals					
Order	Approval	Order	Approval		
1	President <i>[Signature]</i>	4	VP/CFO <i>[Signature]</i>		
2	Executive VP <i>[Signature]</i>	5	VP/Gen'l Counsel <i>[Signature]</i>		
3	Sr. VP/Operations <i>[Signature]</i>	6	Sr. VP/Administration <i>[Signature]</i>		

SUMMARY INFORMATION	
Vendor Name TBD	Contract Number TBD
Description : Design-Build Ellison Avenue Bridge Replacement	
Total Amount \$TBD	
Contract Term (including Options, if any) 790 Calendar Days	
Options(s) included in Total Amount: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-Competitive	
Solicitation Type <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

### Narrative:

#### I. PURPOSE/RECOMMENDATION

LIRR requests MTA Board approval to adopt a resolution declaring that competitive bidding is impractical or inappropriate and that it is in the public's best interest to use the Request for Proposal (RFP) procurement method pursuant to Section 1265-a of the Public Authorities Law to solicit a Design/Build construction contract for the Ellison Avenue Bridge Replacement Project.

#### II. DISCUSSION

LIRR will seek a Design/Build Contractor for the final design and construction of the Ellison Avenue Bridge Replacement Project. Below is a brief description of the elements for the project. The Ellison Avenue Bridge is a roadway bridge over LIRR's Main Line, which was originally constructed by the LIRR as an overpass in 1896, and was rebuilt in 1941 as a two-lane roadway bridge with pedestrian sidewalks on both sides. The bridge is located above LIRR's Main Line at Mile Post 21.0, north of Old Country Road and between the Carle Place and Westbury Train Stations. The Ellison Avenue Bridge is surrounded by residential properties, with a posted speed limit of 30 MPH and a load weight restriction limit of 3 tons. The roadway deck of the Bridge is in poor condition and is in need of replacement.

The Design/Build Contractor will be required to complete the final design of the bridge with specific design details and construct the new structural steel members, bridge deck, bridge seats, and abutments. The existing 3-span bridge (including piers and abutments) will be completely demolished and replaced with a wider single span steel bridge to accommodate a future third track as part of Main Line Corridor Improvements. In addition, the abutments will be constructed deep enough to accommodate additional vertical clearance for potential future freight train service.

LIRR is requesting to use the RFP method for design/build procurement to ensure that the design is consistent with the necessary means and methods and encourage the selected proposer to identify innovative construction methods to minimize impacts to the project schedule, LIRR operations, and the surrounding residential area. Furthermore, the competitive RFP procurement method allows the LIRR to select a Contractor based upon considerations of technical capability, experience, with a particular type of project, past performance, qualifications of key personnel, safety records and project schedule as well as provides the LIRR with the ability to evaluate the contractors approach to key components of the project such as site constraints, construction schedule, access issues, means and methods, sequence of operation and minimal impact to Railroad operation, in addition to cost. In the past the MTA Board has previously authorized use of the RFP process in connection with many past Design-Build contracts for which the above considerations were important and effective.

## Schedule B: Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)

### Staff Summary



Page 2 of 2

#### III. IMPACT ON FUNDING

This contract will be funded by LIRR's 2005 to 2009 Capital Program Budget.

#### IV. ALTERNATIVES

The alternative is to use the Invitation for Bid (IFB) procurement method. The IFB procurement method does not allow the LIRR to negotiate costs or select a Contractor based upon best experience, technical capability, and a construction methodology which has the least impact to LIRR operations and the community. In addition, an IFB would (i) require drawings to be at the 100% level for the Ellison Avenue Bridge Replacement Project, thus potentially delaying the start of construction, (ii) delay meaningful dialogue with the Contractor until after award, thereby preventing the LIRR from being able to negotiate improvements to the construction schedule and incorporate more efficient means and methods for construction.

# Schedule C Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)

## Staff Summary



Long Island Rail Road

Page 1 of 2

Item Number: 4					
Dept & Dept Head Name: Procurement & Logistics, Dennis Mahon					
Department Head Signature & Date <i>[Signature]</i>					
Division & Division Head Name: Program Management, Richard Oakley					
Division Head Signature & Date <i>[Signature]</i>					
Board Reviews					
Order	To	Date	Approval	Info	Other
1	LI Committee	4.28.14			
2	MTA Board	4.30.14			
Internal Approvals					
Order	Approval	Order	Approval		
6	President <i>[Signature]</i>	3	VP/CFO <i>[Signature]</i>		
5	Executive VP <i>[Signature]</i>	2	Sr. VP/Operations <i>[Signature]</i>		
4	VP/Gen'l Counsel & Sec'y <i>[Signature]</i>	1	SP VP/Administration <i>[Signature]</i>		

<b>SUMMARY INFORMATION</b>	
Vendor Name	Contract Number
Picone-Schiavone II, Joint Venture	6121
Description Design-Build Johnson Avenue Yard Reconfiguration	
Total Amount	
\$23,979,000 Base Work + \$1,980,880 Options	
Contract Term (Including Options, if any)	
765 consecutive calendar days	
Options(s) included in Total Amount: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Procurement Type	
<input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-Competitive	
Solicitation Type	
<input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
Funding Source	
<input type="checkbox"/> Operating <input type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	

### I. PURPOSE/RECOMMENDATION:

LIRR requests approval to award a Contract to Picone-Schiavone II, a joint-venture of John P. Picone Inc. and Schiavone Construction Co. LLC, in the amount of \$ \$25,959,880, to provide Design-Build Services for the Reconfiguration of the Johnson Avenue Yard in Jamaica, Queens. The Contract is part of the initial phase of Jamaica Capacity Improvements - Phase I, leading to the construction of a new station platform (Platform F) consistent with future East Side Access service and scoot service from Jamaica to Brooklyn.

### II. DISCUSSION:

Award of this contract to Picone-Schiavone for the reconstruction of the Johnson Avenue Yard will allow the future construction of the additional Jamaica service platform required to support East Side Access Readiness and will facilitate the next phase of Jamaica Capacity Improvements, including the extension of existing Jamaica Station Platforms A - E to 12-Car Platforms. This Contract (#6121) represents the initial scope of work required to provide ESA service to Grand Central Terminal as well as the phasing of other Jamaica Capacity Improvements including universal 12-car train access to Jamaica that will improve overall train capacity to Manhattan Terminals. The Design-Build Contractor will perform the final Johnson Avenue Yard design while effectively progressing yard construction, modifying track alignments, and providing space needed for the additional platform to be located south of the existing station platforms. Work includes new track and service aisles; retaining walls and other structural support systems; drainage systems; yard lighting; utility relocations; communication and security systems for a fully functional yard.

At its March 2013 meeting, the MTA Board approved the use of the "Request for Proposals" (RFP) method to solicit this contract. Proposals were submitted by seven firms, with pricing ranging from \$23,920,085 to \$51,546,000. Prices were requested for Base Work as well as Option Work (for acquisition, storage, and delivery of additional switches, and for additional track work within the yard).

After an initial assessment of the proposals, two of the proposers were eliminated from further consideration: one whose price proposal was well outside the range of costs proposed by the other six firms and LIRR's internal estimate; the other for submitting a deficient technical proposal that did not meet the technical specifications of the RFP. The remaining five proposals, from firms ECCO III Enterprises Inc., Kiewit Infrastructure Corp., Picone-Schiavone II, Skanska-Railworks Joint Venture, and Tully Construction Co. Inc., were evaluated by a Technical Evaluation Committee (TEC) composed of LIRR departmental stakeholders, and oral presentations were given by the proposers. The final evaluation of the firms, including their price offerings, led to a short-list of three firms (Kiewit, Picone-Schiavone II, and Tully) deemed to be within a competitive range. "Best and Final Offers" were requested from these three firms, who responded in the amounts (including options) of \$25,827,880 (Picone-Schiavone II), \$27,099,445, and \$35,090,000 (second and third lowest responders). The BAFOs were evaluated using a combination of cost (75% weight) and technical (25% weight) criteria, and Picone-Schiavone II was determined to be the firm offering the best value to the LIRR (\$23,847,000 base work + \$1,980,880 Option Work).

## **Staff Summary**



Page 2 of 2

Picone-Schiavone II's proposal, with Stantec as the proposed design sub-consultant, conformed entirely to the critical LIRR technical requirements when evaluated against the RFP technical criteria (which included technical approach, planning and scheduling, corporate qualifications and experience, and experience of the project team's key personnel). The TEC also considered the alternate work methodologies, resulting in overall time and cost savings to the project, which were proposed by Picone-Schiavone II in relation to key elements of the Work. When compared to other proposers, Picone-Schiavone II presented a very strong technical response, and the most competitive overall price, including Option Work.

LIRR commenced negotiations with Picone-Schiavone II, and negotiated a final price of \$23,979,000 for the base work of the contract (\$58,915 more than the firm's original base work proposal of \$23,920,085, due to the LIRR acceleration of switch acquisitions). This price is less than the LIRR engineer's estimate, and is considered fair and reasonable. The contract also contains three options for various additional work elements, individually priced, with a total negotiated price of \$1,980,880.

Picone-Schiavone II's responsibility has been reviewed and this review has disclosed significant adverse information within the meaning of Responsibility Guidelines. LIRR has reviewed the information and after due consideration thereof, submitted a waiver of adverse information to the Chairman. LIRR will not make any award until the waiver has been reviewed and approved. LIRR also proposes to apply NYCTA and MTACC's current Independent Monitor agreement to this contract

Based upon the evaluation process outlined above, it is the recommendation of LIRR that Picone-Schiavone II be awarded this design-build contract for the total base price of \$23,979,000, plus options of \$1,980,880.

### **III. D/M/WBE INFORMATION:**

This contract has a 17% DBE goal, which Picone-Schiavone II has committed to meeting. John P. Picone, Inc. and Schiavone Construction Co., LLC have achieved previous M/W/DBE goals on recent MTA contracts.

**IV. ADVERTISING:** On July 11, 2013, LIRR publicly advertised the RFP for this project in the N.Y.S Contract Reporter, the N.Y. Post, and on the MTA website. Additionally, the advertisement was sent directly to fourteen construction firms deemed capable of performing this work.

### **V. IMPACT ON FUNDING:**

This contract will be funded by a Federal Transportation Administration grant.

### **VI. ALTERNATIVES:**

LIRR in-house forces are not available to perform all of the construction work associated with the Johnson Ave Yard Reconfiguration. Hence, the only alternative to retaining a 3<sup>rd</sup>-party vendor is to not undertake the work. This is not a viable alternative, as the reconfiguration of Johnson Avenue Yard is an integral part of the overall Jamaica Capacity Improvements Phase I project, which itself is an integral part of the East Side Access "Opening Day" Readiness effort.

# Schedule I: Modifications to Purchase and Public Works Contracts

## Staff Summary



Long Island Rail Road

Page 1 of 2

Item Number: 5

<b>Vendor Name (&amp; Location)</b>	
Bombardier Transportation / Siemens Rail Automation (f/k/a InvensysRail)	
<b>Description</b>	
Positive Train Control System Integrator	
<b>Contract Term (Including Options, if any)</b>	
Option(s) included in Total Amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive	
Solicitation Type <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source</b>	
<input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b>	
Chris Calvagna	

Contact Number	AWO/Modification #
1712 / 29544	2
<b>Original Amount:</b>	
\$428,477,247	
<b>Prior Modifications:</b>	
\$0	
<b>Prior Budgetary Increases:</b>	
\$0	
<b>Current Amount:</b>	
\$428,477,247	
<b>This Request:</b>	
\$11,321,166	
<b>% of This Request to Current Amount:</b>	
2.6%	
<b>% of Modifications (Including This Request) to Original Amount:</b>	
2.6%	

**Purpose and Recommendation:** LIRR requests Board approval to issue contract modifications to accelerate performance of the Positive Train Control System Integrator ("SI") contract to increase delivery rates for (i) PTC On-Board Equipment Kits for M-7 cars (LIRR and MNR) and M-3 cars (MNR only), and (ii) PTC Wayside Equipment Kits (both Railroads), and (iii) to obtain earlier delivery of MNR wayside transponders, at a total combined lump sum cost of \$11,321,166

### Discussion:

At the November 2013 meeting of the Board, LIRR and MNR obtained approval to award contracts to a joint venture of Bombardier Transportation/Siemens Rail Automation in the not-to-exceed amount, inclusive of phases and options, of \$218,015,977 for LIRR and \$210,461,270 for MNR to design, integrate and furnish Positive Train Control ("PTC") systems necessary to comply with the Railroads' obligations as commuter railroads under the Rail Safety Improvement Act of 2008 and the implementing FRA Regulations. Due to the complexities of the systems to be installed on the Railroads, the substantial engineering challenges presented by the project and the large volume of installation work involving Railroad forces, the contract targeted completion of most project elements by the end of 2018. Following the Spuyten Duyvil derailment and in keeping with the Chairman's and the Board's emphasis on aggressive advancement of safety priorities, the Railroads were directed to engage the SI in discussion seeking to obtain significant acceleration in the PTC project.

Working with the SI, the Railroads developed a plan to achieve the following important and significant acceleration of equipment deliveries (thereby allowing earlier installation by Railroad forces):

#### ON-BOARD KITS (ADDITIONAL COST: 4.5M - \$3M LIRR/\$1.5M MNR):

These are computers and associated hardware which must be installed on the Railroads' existing fleet of rolling stock. This proposal accelerates the PTC On-Board equipment delivery rates by 100% for LIRR's M7 cars, which represent 74% of LIRR's Rolling Stock, and MNR's M7A and M3A cars, which represent 49% of MNR's Rolling Stock (MNR M-8 Cars and other portions of the fleet are being separately provisioned). (LIRR's future M-9 fleet will be equipped at manufacturing.) Specifically, current contract schedules show the completion of installation of kits on (i) MNR's 336 M-7 cars by December 2018, and 138 M-3 cars by June 2018 and (ii) LIRR's 836 M-7 cars by October 2018. This modification will accelerate scheduled delivery dates by 21 months (to March 2017) for MNR M-7A cars, and by 17 months (to April 2017) for LIRR M-7 cars.

#### WAYSIDE KITS (ADDITIONAL COST: \$5.8M - \$2.9M LIRR/\$2.9M MNR):

These are the units placed on the Railroads' right-of-way which facilitate the communication between the PTC central office computers and the on-board computers. Overall delivery rates are accelerated under this change order, supporting completion of installations on the final significant track segments approximately 12 months earlier than currently scheduled. Together, the acceleration of on-board and wayside equipment delivery will result in the acceleration of PTC installation by more than 12 months relative to the current contract schedule, over territory traveled by about 90% of LIRR's and 85% of MNR's respective weekday customers.



## **Staff Summary**



### **MNR TRANSPONDERS TO ENFORCE CIVIL AND MAXIMUM AUTHORIZED SPEEDS (ADDITIONAL COST: \$1.0M):**

MNR has the ability to operate ACSES (PTC) on certain equipped M8 cars, P32 Locos, BL 20s and cab cars to enforce Civil and Maximum Authorized Speeds. This modification will support the deployment of transponders on the MNR rights-of-way starting early in 2015, in advance of full PTC implementation. Note that LIRR will evaluate a future change order for early delivery of transponders, i.e., before installation of PTC on all wayside segments to enforce curves or tangent segments.

### **RISKS AND EVALUATION OF ACCELERATION COSTS:**

The contract schedule associated with the original contract award already challenged both SI and Railroad forces: Thus, accelerating deliveries and installations introduces additional risk elements. Railroad MoE and MoW resources will have to be augmented through hiring and training of additional workforce personnel, and there will be costs to the Railroads beyond the third-party SI costs. MNR is currently seeking additional options to meet the accelerated schedule. As part of that process and consistent with MNR labor agreements, third party contractors, including OEM car builders, are being evaluated for possible off-property installation of on-board kits. In the event this evaluation proves advantageous, MTA Board approval will be sought at that time to implement those agreements.

The SI must identify and obtain additional engineering and manufacturing personnel, facilities and other resources. The contract modifications proposed here represent all involved parties' best efforts at balancing these risks and concerns with the important safety benefits inherent to acceleration of the overall project. The parties recognize that significant pilot testing must prove successful for acceleration of kits to have a benefit to the overall project schedule.

Contractually, the parties have agreed to a reasonable apportionment of these risk factors. Thus, the SI bears the full risk of late delivery of the accelerated on-board units, through the imposition of liquidated damages ("LDs") based on the revised, earlier delivery dates; while the risk of late deliveries associated with the wayside equipment is shared, as LD's will not be imposed unless the SI falls at least 50% behind the new accelerated schedule. This agreement reflects the SI's legitimate concerns about meeting the new and aggressive time frames.

The Railroads have worked diligently to verify the SI's expected increased costs related to these modifications, although it is inherently difficult to cost out the acceleration of certain elements within a large and complex design and manufacturing contract. Nevertheless, the pricing is deemed acceptable given that (i) the SI has reluctantly taken on considerable additional risk by agreeing to the acceleration of delivery kits, particularly in view of the R&D nature of the project; which adds a difficult-to-quantify element to the pricing, (ii) the combined cost of these modifications is approximately 2.6% of the overall contract value, and (iii) as noted in the November 2013 Staff Summary, the SI's overall contract price was approximately \$52M less than the other proposer, such that the revised contract price, including these acceleration costs, are still substantially below the other proposers' price.

### **Alternative:**

The Railroads could elect not to accelerate the performance of this contract. Given the substantial safety-related benefits to earlier implementation of PTC, this alternative is not recommended.

In lieu of the lump sum pricing as described herein, the Railroads could request that the SI accelerate with payment to be made on a time and material basis, but it is believed that this approach will result in a less coordinated and successful project, with the prospect of delays and monetary claims significantly in excess of what we have negotiated with the SI.

APRIL 2014

METRO-NORTH RAILROAD

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Schedules Requiring Majority Vote:

**G. Miscellaneous Service Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M RFP; No Staff Summary required if Sealed Bid Procurement.)

**1. Advanced Hermetic, Inc. \$161,000 (not-to-exceed)**

**Remanufacture of Trane Semi-Hermetic Compressors for Metro-North's M-2/M-4 Railcars**

Approval is requested for a competitively solicited, two-year miscellaneous service contract to Advanced Hermetic, Inc. to provide for the remanufacture of Metro-North Railroad's (MNR) M-2 and M-4 Railcar compressors. This contract is required to maintain and support the railcars for their estimated remaining two-year life until they are decommissioned from revenue service and disposed of. All of the remanufacture services under this contract shall be as directed by MNR; there is no guarantee for any service from Advanced Hermetic.

In accordance with MNR and MTA procurement guidelines, an advertisement for the required services was placed in the New York State Contract Reporter, The New York Post, El Diario, the Daily Challenge and posted on the Metro-North Website. Sixteen vendors were sent solicitations and three bids were received. Advanced Hermetic was the lowest responsive and responsible bidder.

The pricing will remain fixed for the two year period, and it has been deemed fair and reasonable for the level of services to be provided. The total award of this contract is not-to-exceed \$161,000. This procurement is to be funded by the MNR Operating Budget.

**2. Masabi, LLC. \$2,000,000 (estimated) Staff Summary Attached**

**Mobile Ticketing Program for MNR and LIRR**

Approval is requested to award a negotiated, six-year miscellaneous service contract (RFP process, 11 proposals received, four firms short-listed) to Masabi, LLC for implementation of a Mobile Ticketing Program, including development and maintenance of all support systems for both railroads. This is a Metro-North-led joint agency RFP with Long Island Rail Road.

Metro-North Railroad and Long Island Rail Road (the "Railroads") seek to adopt a new ticketing and fare payment alternative involving the use of mobile devices. The primary objective of the program is to provide customers with a fully functional and customer-friendly software application for mobile devices that allows the purchase of tickets. The purchased ticket would be displayed with a visual image/barcode displays on a mobile device. The railroads will also explore a print-at-home option for customers.

In accordance with MNR and MTA procurement guidelines, an advertisement for the required services was placed in the New York State Contract Reporter, El Diario, the Daily Challenge, New York Post and

on the Metro-North Website. 104 vendors requested the RFP package, 29 vendors attended the pre-proposal conference, 11 proposals were received, and four firms were shortlisted.

Based on in-depth review of all Technical Proposals, Oral Presentations, product demonstrations, and cost analysis, the Selection Committee selected Masabi LLC as the best overall firm for the implementation of a Mobile Ticketing Program. Masabi's expertise and background includes: recent implementation of a successful mobile ticketing application for MBTA-Boston (the foundation of the system Masabi proposes for MNR/LIRR), development of a mobile ticketing application for NICE Bus in Nassau County, Long Island, and prior deployment of mobile ticketing at nine railroads in the UK (half of the UK market). The application is easy to understand and use, and is a proven technology that has been used for several years in the London Transport realm. In addition, the NYC Transit's New Fare Payment System Group, and the MTA Enterprise Architecture Committee evaluated Masabi's technical proposal and found that the Masabi solution uses open architecture and open standards, which is consistent with the MTA's goal of agency-wide interoperability.

Masabi's proposal was the most financially advantageous as it proposed a fixed fee per transaction cost of \$0.059, which includes all developmental, implementation, and maintenance and support costs for the life of the contract. No fees would be paid to the vendor unless the application is used. The railroads assume an adoption rate of 5% per year of current and projected ticket sales (or 25% over 5 years). The estimated total contract value is \$2.0M (MNR \$1.0M, LIRR \$1.0M) over the six-year term. Only one other firm offered a per ticket fee ranging from \$0.12 per ticket to \$0.18 per ticket (not per transaction). The three other firms proposed upfront development costs that ranged from \$4.8M-\$9.6M, and ongoing maintenance costs that ranged from \$1.5M-\$14.2M for various turnkey scenarios. This procurement is to be funded by each Railroad's Operating Budget.

# Staff Summary

Item Number G					
Dept. & Dept. Head Name: <i>[Signature]</i>					
Procurement & Material Management, Anthony J. Bombace, Jr.					
Division & Division Head Name:					
Date Submitted: April 8, 2014					
<b>Board Reviews</b>					
Order	To	Date	Approval	Info	Other
1	M-N Comm.Mtg.	4-28-14	X		
2	MTA Board Mtg.	4-30-14	X		
<b>Internal Approvals</b>					
Order	Approval	Order	Approval		
X	President <i>[Signature]</i>	X	V.P. General Counsel <i>[Signature]</i>		
X	Sr. V.P. Operations <i>[Signature]</i>	X	V.P. Planning <i>[Signature]</i>		
X	V.P. Finance & IT <i>[Signature]</i>				
	Capital Programs				

<b>SUMMARY INFORMATION</b>	
Vendor Name	Contract #
Masabi, LLC.	8836-A
Description	
Mobile Ticketing Program for MNR & LIRR	
Total Amount - \$2,000,000 estimated (MNR \$1.0M, LIRR \$1.0M)	
Contract Term (including Options, if any)	
Six Years	
Option(s) included in Total Amount?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Renewal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Procurement Type	
<input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
Solicitation Type	
<input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
Funding Source	
<input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

## I. PURPOSE/RECOMMENDATION:

Approval is requested to award a negotiated six-year miscellaneous service contract (RFP process, 11 proposals received, four firms were short-listed) to Masabi, LLC for Implementation of the Mobile Ticketing Program, providing customers with the ability to purchase tickets that can be downloaded to mobile devices. This is a Metro-North-led joint agency RFP with the Long Island Rail Road.

## II. DISCUSSION:

Metro-North Railroad (MNR) and Long Island Rail Road (LIRR) (the "Railroads") seek to adopt a new ticketing and fare payment alternative that would allow customers to purchase tickets using their mobile devices and display them to train crews on-board for validation.

### Overview of Current Railroad Systems

Both Railroads operate 'open systems' i.e. there are no fare barriers (fare gates/ validators) at the stations. Currently, customers purchase tickets for travel between specific stations within the individual railroad fare zones and for specific peak and off-peak travel periods. Ticket prices are calculated according to each railroad's tariff that encourages use of pre-paid tickets (i.e. tickets purchased prior to boarding the trains). All tickets are required to be inspected, and as appropriate, collected by on-train crew. Customers who do not have pre-purchased tickets purchase them on-board from train crews after paying a premium.

The Railroads offer customers several ticket purchasing venues that include station ticket office windows, automated ticket vending machines at stations, ticket-by-mail, online via the WebTicket program and on-board purchasing. Depending on the venue, a variety of payment options are available (cash, checks, debit/ATM cards, major credit cards and transit benefit cards). The Railroads also maintain separate proprietary back office systems supporting ticket sales and revenue collection.

## **Benefits of the Mobile Ticketing Program**

The primary objective of the program is to develop and implement a customer-friendly and thoroughly tested software application that provides railroad customers with the ability to purchase tickets and receive the purchased ticket in visual and barcoded displays on their mobile devices. The introduction and system-wide implementation of the mobile ticketing program at the Railroads will:

- Enhance customer service by providing the Railroads' customers with additional convenient ticket purchasing options
- Utilize technology to facilitate on-board train inspection, validation and collection functions and ensure that revenue collection is maximized
- Reduce costs of future ticket selling infrastructure and equipment replacement
- Set the stage for future interoperability across the MTA

The vendor will provide the Mobile App, Ticket Validation Software to scan and validate tickets, a Web portal providing a print-at-home option (to be implemented at the Railroads' discretion), and a Host Server supporting both railroads. The Railroads' Ticket Issuing Machines (TIMs) utilized by train crew for on-board fare collection will be modified to accommodate barcode scanning for on-board validation of mobile and print-at-home tickets.

Each railroad would roll-out mobile ticketing through a phased-in approach. The vendor would be permitted to roll-out mobile ticketing to specific branch segments and/or ticket types only after successful pilot testing. Expansion to additional branch segments and/or ticket types would proceed only after successful deployment in preceding phases.

## **Procurement Discussion**

On December 27, 2012, RFP No. 8836-A was advertised in the New York State Contract Reporter, El Diario, the Daily Challenge, New York Post and on the Metro-North Website. On March 22, 2013, 11 technical proposals were received from the following firms: Accenture, ACS-Xerox, Clark Universal, Cubic, DMI, IBM/CooCoo, Masabi, LLC, NTT Data, Portafare, Trapeze and Unwire.

A Selection Committee comprised of nine members representing the Railroads Customer Services, Information Technology, Operations Planning, Market Development, Transportation, Passenger Revenue, Controller, and Procurement & Material Management Departments evaluated the proposals using a two phase approach. Additional stakeholders from key MNR/LIRR departments were appointed as Technical and Financial Advisors to the Committee.

## **Proposals Evaluation:**

The vendor proposals were evaluated under a two-phased approach outlined below.

The Phase 1 evaluation criteria, listed in order of importance, were as follows:

*Technical Proposal*--Demonstrate understanding of the Technical Specification Requirement and Technical Capability; *Past Experience* and performance on similar projects; *Demonstrate Confidence Level* in the vendor capability and financial resources to perform the assigned Scope of Work in the time projected; and *Responsiveness* to the requirements of the RFP.

The Selection Committee evaluated all 11 proposals under the Phase 1 criteria and made the determination to short-list the following four firms: ACS Transport Solutions, Inc. (a Xerox Company), IBM Corporation (partnered with CooCoo), Cubic Transportation Systems, Inc. and Masabi, LLC.

The RFP Phase 2 evaluation criteria, listed in order of importance, were as follows:

*Technical Capability* - Ability to provide technical services, equipment and systems as required in this RFP, including presentations and product demonstration; *Past Experience*/Demonstrated experience and products with similar railroad or transportation services, *Cost & Schedule* - overall costs and duration of project development as well as ongoing maintenance and *Project Management* - Proposed Management/Design Team.

On April 17, 2013 all short-listed firms submitted their cost proposals. After the Selection Committee evaluated all four cost proposals under Phase 2, the short-listed firms were invited for Oral Presentations and to demonstrate their products. The Oral Presentations allowed each short-listed firm to address questions as well as provide a live demonstration of their proposed product and solution for the Railroads' Mobile Ticketing needs.

## **Cost Proposals & Analysis**

All four short-listed vendors were asked to propose a mobile ticketing application at a fixed price per transaction or other alternative cost structure. Various business models were proposed including cost structures based on fixed price per transaction, percent of sales, turnkey scenarios. The Selection Committee determined that Masabi's proposal was the most cost-effective. Masabi was the only firm that offered to absorb startup, developmental and maintenance costs. Masabi's cost proposal is based upon a \$0.059 fixed fee per transaction, inclusive of developmental, implementation, hosting and ongoing systems maintenance/upgrade costs, and remains the same regardless of the number of tickets or the value per transaction. No fees are paid unless the application is used. Based on a conservative estimate of the Railroads customers that will utilize the option to purchase tickets on their mobile devices, the Railroads are estimating the adoption rate to be 5% per year of current and projected ticket sales (or 25% over 5 years). The estimated total contract value is \$2.0M (MNR \$1.0M, LIRR \$1.0M) over the six-year term.

Only one other firm offered a per ticket fee ranging from \$0.12 per ticket to \$0.18 per ticket (not per transaction). The three other firms proposed upfront development costs ranging from \$4.8M-\$9.6M, and ongoing maintenance costs that ranged from \$1.5M-\$14.2M for various turnkey scenarios.

## **Recommendation**

Based on in-depth review of all Technical Proposals, Oral Presentations, product demonstrations, and cost analysis, the Selection Committee selected Masabi LLC as the best overall firm to provide a Mobile Ticketing Application. Masabi's expertise and background includes: recent implementation of a successful mobile ticketing application for MBTA-Boston (the foundation of the system Masabi proposes for MNR/LIRR), development of a mobile ticketing application for NICE Bus in Nassau County, Long Island, and prior deployment of mobile ticketing at nine railroads in the UK (half of the UK market). Masabi's application is easy to use, customer friendly and is a proven technology that has been used for several years in the London Transport realm. Additionally, Masabi presented solutions to the security and anti-fraud challenges associated with a print-at-home ticketing option.

In addition, the NYC Transit's New Fare Payment System Group, and the MTA Enterprise Architecture Committee evaluated Masabi's technical proposal and found that the Masabi solution uses open architecture and open standards, which is consistent with the MTA's goal of agency-wide fare payment interoperability.

**III. D/M/WBE INFORMATION:** The MTA Department of Diversity and Civil Rights (DDCR) established 10% MBE and 10% WBE goals for this contract. Masabi has met the pre-award goal qualification requirements set by MTA DDCR.

**IV. IMPACT ON FUNDING:** The total cost for this Mobile Ticketing Program is estimated at \$2.0M (MNR \$1.0M, LIRR \$1.0M). This procurement is to be funded by each Railroad's Operating Budget.

**V. ALTERNATIVES:** None. MNR & LIRR do not have the technical expertise to implement a Mobile Ticketing application in a cost and time effective manner.

April 2014

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Two-Thirds Vote:**

**Schedule B. Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)  
(Staff Summaries required for items estimated to be greater than \$1M.)**

- |    |   |                       |                               |
|----|---|-----------------------|-------------------------------|
| 1. | Contractor To Be Determined<br>Contract Term To Be Determined<br>Contract No. CM007 | Cost To Be Determined | <u>Staff Summary Attached</u> |
|----|---|-----------------------|-------------------------------|

Pursuant to Subdivision 4(f) of section 1265-a of the Public Authorities Law, and Article IIIA (6) of the All Agency Procurement Guidelines, MTACC requests that the Board adopt a resolution declaring competitive bidding is impractical or inappropriate and it is in the public interest to issue a competitive Request for Proposal ("RFP") for the GCT Station Caverns for the East Side Access Project.

**Procurements Requiring Majority Vote**

**Schedule H. Modifications To Personal and Miscellaneous Service Contracts  
(Approval/Staff Summaries required for substantial change orders and change orders that cause the original contract to equal or exceed the monetary or duration threshold required for Board approval)**

- |    |   |            |                               |
|----|---|------------|-------------------------------|
| 2. | PB America/STV/Parsons Transportation<br>Group, Joint Venture<br>Contract No. 98-0040-01R<br>Modification Nos. 59 | \$ 846,232 | <u>Staff Summary Attached</u> |
|----|---|------------|-------------------------------|

Pursuant to Article XIII of the MTA All-Agency Guidelines for the Procurement of Services, MTACC seeks Board approval of a Contract modification for revisions to the design to include a new public entrance.

**Schedule I. Modifications To Purchase and Public Work Contracts  
(Staff Summaries required for individual change orders greater than \$750K. Approval without Staff Summary required for change orders greater than 15% of the adjusted contract amount which are also at least \$250K)**

- |    |  |             |                               |
|----|--|-------------|-------------------------------|
| 3. | Granite-Traylor-Frontier, Joint Venture<br>Contract No. CQ031<br>Modification No. 98 | \$2,154,714 | <u>Staff Summary Attached</u> |
|----|--|-------------|-------------------------------|

Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC seeks Board approval of a modification of a modification for the close out of unresolved claims, changes and credits and the final reconciliation of unit quantities and allowance items..

**Schedule B: Competitive Requests for Proposals  
Staff Summary**

<b>Item Number:</b> 1					
<b>Dept &amp; Dept Head Name:</b> Law & Procurement, E. Eisland <i>E. Eisland</i>					
<b>Division &amp; Division Head Name:</b> Procurement, D. Cannon <i>David X. Cannon</i>					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	MNR & LI Committee	4/28/14	X		
2	Board	4/30/14	X		
<b>Internal Approvals</b>					
	<b>Approval</b>		<b>Approval</b>		
2	<i>WME</i> Executive Vice President	3	President <i>[Signature]</i>		
1	<i>[Signature]</i> SVP & Sr. Program Executive, East Side Access				

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> RFP Authorizing Resolution	<b>Contract Number</b> CM007
<b>Description</b> GCT Station Caverns for the East Side Access Project	
<b>Total Amount</b> N/A	
<b>Contract Term (including Options, if any)</b> To Be Determined	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	

**I. PURPOSE/RECOMMENDATION**

To request and recommend that the Board adopt a resolution declaring that competitive bidding is impractical or inappropriate and that, pursuant to Subdivision 4(f) of Section 1265-a of the Public Authorities Law and Article IIIA (6) of the All Agency Procurement Guidelines, it is in the public interest to issue a competitive Request for Proposal ("RFP") for Contract CM007, GCT Station Caverns for the East Side Access Project.

**II. DISCUSSION**

On October 24, 2012, bids were received for the Contract "Manhattan Structures II and Facilities Fit-Out CM012". The bids were considerably higher than the East Side Access Program Budget and Estimate and were therefore rejected on November 21, 2012. The revised strategy for procurement of the work that was included in CM012 is to issue several minor Additional Work Orders under current Contracts, and to award three new Contracts for the remaining work. The proposed CM007 – GCT Station Caverns Contract is the last of the new smaller Contracts.

Based on MTACC's analysis of the bids received on CM012, subsequent conversations with the bidding contractors, and the award of the first two smaller Contracts, CM005 and CM006, it was determined that access to the work site, productivity of the work force and coordination with adjacent contractors were, among other items, major contributors to the risks attributed to this work by the bidding contractors. The high level of risk translated into a high level of contingency reflected in the bid prices on CM012.

The access and coordination required by each contractor to facilitate the best price for the work depends on each contractor's planned sequence of performance, technical approaches to the work and other anticipated means and methods. Procurement through the RFP process will allow the MTA to receive means and methods proposals from contractors and afford the MTA with the opportunity to work through access, coordination and other perceived risks with each contractor in an effort to achieve the lowest price possible for the work. The RFP process will also permit MTACC to evaluate the relative benefits of alternative technical proposals and weigh alternatives that are in the best interest of the MTA.

The RFP process will require the interested firms to submit a technical proposal, which will include their technical approach, qualifications, experience and schedule. The technical proposals will be evaluated against MTACC's established criteria and negotiations on technical and commercial issues will be held with those firms considered to be in a competitive range. Upon completion of the negotiations, those firms will be invited to submit a cost proposal. Award will be made to the responsible firm whose cost proposal offers the best value.

**II. IMPACT ON FUNDING**

Funding for this Contract will be from the Capital Program.

**III. ALTERNATIVES**

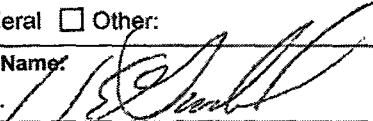
The use of a sealed bid process in which factors other than cost cannot be considered is not recommended as it does not provide a means to evaluate different technical matters or to consider or negotiate alternative proposals to achieve the overall best value to the MTA.



**Schedule H: Modifications to Personal and Miscellaneous Service Contracts**



Item Number: 2

<b>Vendor Name (&amp; Location)</b> Parsons Brinckerhoff/STV/Parsons Transportation Group, JV (NY)	
<b>Description</b> East Side Access General Engineering Consultant (GEC) Services	
<b>Contract Term (including Options, if any)</b> March 2016	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> East Side Access, W. Goodrich, P.E. 	

Contract Number	AWO/Modification #
98-0040-01R	59
<b>Original Amount:</b>	
\$ 140,000,000	
<b>Prior Modifications:</b>	
\$ 252,389,365	
<b>Prior Budgetary Increases:</b>	
\$ 0	
<b>Current Amount:</b>	
\$ 392,389,365	
<b>This Request</b>	
\$ 846,232	
<b>% of This Request to Current Amount:</b>	
0.22%	
<b>% of Modifications (including This Request) to Original Amount:</b>	
181%	

**Discussion:**

This Contract is for engineering, design and construction phase services for the LIRR East Side Access (ESA) project. In accordance with Article XIII of the MTA All-Agency Guidelines for the Procurement of Services, Board approval is requested to modify the Contract for design revisions to include a new public entrance.

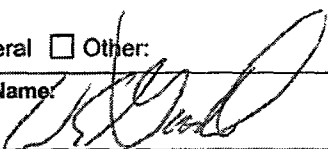
This Modification is for revisions to the new LIRR Concourse at Grand Central Terminal to accommodate the future construction of a public entrance from MTA-owned property at 341, 345 and 347 Madison Avenue, between 44<sup>th</sup> and 45<sup>th</sup> Streets. The current design does not include an entrance at this location. This property will be redeveloped and there exists an opportunity to acquire easements to make physical improvements in the Concourse to accommodate an entrance through the property. The proposed entrance will enhance passenger flow, provide another egress location and offer LIRR customers another route to reach their ultimate destinations.

The Consultant submitted a cost proposal of \$973,911 for this modification while the MTACC estimate was \$965,389. Negotiations were held and the parties agreed to a cost of \$846,232, which is considered fair and reasonable.

**Schedule I: Modifications to Purchase or Public Work Contracts**



Item Number: 3

<b>Vendor Name (&amp; Location)</b> Granite-Traylor-Frontier ("GTF"), Joint Venture	
<b>Description</b> Queens Bored Tunnels and Structures for the East Side Access Project	
<b>Contract Term (including Options, if any)</b>  42 Months	
<b>Option(s) included in Total Amount?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> East Side Access, W. Goodrich, P.E. 	

Contract Number	AWO/Modification #
CQ031	98
<b>Original Amount:</b>	
	\$ 659,200,700
<b>Prior Modifications:</b>	
	115,644,587 \$ (includes an option of \$58,400,000)
<b>Prior Budgetary Increases:</b>	
	\$ 0
<b>Current Amount:</b>	
	\$ 774,845,287
<b>This Request</b>	
	\$ 2,154,714
<b>% of This Request to Current Amount:</b>	
	.28%
<b>% of Modifications (including This Request) to Original Amount:</b>	
	17.9%

**Discussion:**

The work under this contract includes the construction of four soft-ground bored tunnels and miscellaneous demolition of surface structures for the East Side Access (ESA) Project. Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC seeks Board approval of a modification for the close out of unresolved claims, changes and credits and the final reconciliation of unit quantities and allowance items.

This modification will resolve all remaining and unresolved claims and changes arising under this Contract, including, among other things, claims for extra work and differing site conditions related to the defective slurry walls constructed by the defaulted CQ028 contractor, credits for items such as removal of the Tunnel A Approach Structure excavation and bracing and the reconciliation of allowance and unit price items and quantities.

The Contractor submitted proposals which sought a net contract increase of approximately \$13.2M while MTACC's independent cost assessments of each of the issues resulted in a net credit of approximately \$1.5M. The parties met on several occasions to discuss the merits of their respective positions and ultimately agreed to a net lump sum increase in the amount of \$2,154,714 which is considered to be fair and reasonable. There is no time impact associated with this modification. Funding is available through the Contract's contingency. This modification allows for the final close out of this Contract.

**APRIL 2014**

**METRO-NORTH RAILROAD**

**LIST OF RATIFICATIONS FOR BOARD APPROVAL**

**Schedules Requiring Majority Vote:**

**K. Ratification of Completed Procurement Actions**

(Staff Summaries required for unusually large or complex items which otherwise would require Board approval)

**1. International Salt Company \$290,000**

**Inventory Replenishment of Bulk Rock Salt**

Emergency purchase of bulk rock salt for use at locations (i.e. sidewalks, service roads, parking lots, and shops & maintenance buildings) throughout MNR's operating territory. Due to the inordinate amount of snow storm events and sub-freezing temperatures that occurred in the Northeast region during the 2013-2014 winter season, the estimated bulk rock salt on hand for this winter's maintenance proved to be insufficient; thereby creating an inventory shortfall.

International Salt Company, the current supplier of bulk rock salt to MNR agreed to supply an additional quantity of the salt at the current contract pricing. The cost to be paid for this emergency purchase is consistent with previous prices paid and is deemed fair and reasonable. The total amount for this purchase is \$290,000 and is funded by the MNR Operating Budget.

**2. Delta Composites, Inc. \$98,500**

**Purchase of 3<sup>rd</sup> Rail Fiberglass Non-Conductive Channels**

Emergency purchase for 3<sup>rd</sup> rail fiberglass non-conductive channels needed to preclude electrical arcing. This arcing creates an unsafe electrical path through the bracket assembly, shorting the 3<sup>rd</sup> Rail (positive) to the running rail (negative). The new fiberglass non-conductive channels will be used to replace existing steel conductive channels located at various MNR 3<sup>rd</sup> rail territories. The fiberglass channels are less susceptible to electrical arcing especially when excessive amounts of runoff are washed onto MNR rights-of-way. Competitive bids were obtained on an expedited basis and Delta Composites submitted the lowest bid for the material. Prices have been deemed to be fair and reasonable. The total cost for the 3<sup>rd</sup> rail fiberglass channels is \$98,500 and is funded by the MNR Operating Budget.

**3. Mac Products \$129,750**

**Emergency Material Purchase of Splice Covers for 150lb 3<sup>rd</sup> Rail**

Emergency purchase for splice covers for MNR's 3<sup>rd</sup> Rail system. The splice covers will replace deteriorating or missing covers located at various 3<sup>rd</sup> rail locations throughout MNR territory. This condition was exacerbated this winter due to the excessive de-icing saltwater runoff from overhead bridges, platforms, or other structures along MNR's rights-of-way.

Competitive bids were obtained on an expedited basis and Mac Products submitted the lowest bid for the material. Prices have been deemed to be fair and reasonable. The total cost for the 3<sup>rd</sup> rail splice covers is \$129,750 and is funded by the MNR Operating Budget.

**4 General Electric Transportation Systems LLC Inc. \$700,000 (not-to-exceed)**

**Repair of Locomotive No. 225**

Emergency repair of Locomotive No. 225 damaged as a result of the December 2013 derailment. The scope of the work includes repairs to the carbody and structure and the electro-mechanical systems. The work required is beyond the capacity of the MNR in-house forces.

General Electric, the Original Equipment Manufacturer (OEM) and designer of the Locomotive has the necessary material and technical staff available to support the immediate repair and subsequent testing to return the locomotive to service as soon as possible. The cost of the repairs is not-to-exceed \$700,000 and is funded by the MNR Operating Budget.

April 2014

LIST OF RATIFICATIONS FOR BOARD APPROVAL

Procurements Requiring Majority Vote:

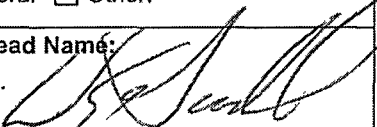
Schedule K. Ratification of Completed Procurement Actions (Involving Schedule E-J)  
(Staff Summaries required for items requiring Board Approval)

- |    |   |             |                               |
|----|---|-------------|-------------------------------|
| 1. | Tutor Perini Corporation<br>Contract No. CQ032<br>Modification No. 44 | \$5,500,000 | <u>Staff Summary Attached</u> |
|----|---|-------------|-------------------------------|

Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC seeks Board approval to modify the contract to extend the 63<sup>rd</sup> Street Tunnel structure and backfill the Bellmouth. This is a scope and budget transfer.

## Schedule K: Ratification of Completed Procurement

## Item Number 1

<b>Vendor Name (&amp; Location)</b> Tutor Perini Corporation (Peekskill, New York)		<b>Contract Number</b> CQ032	<b>AWO/Modification #</b> Mod 44
<b>Description</b> Plaza Substation and Queens Structures for the ESA Project		<b>Original Amount:</b> \$ 147,377,000	
<b>Contract Term (including Options, if any)</b>  1,653 days		<b>Prior Modifications:</b> \$ 60,056,570	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> n/a		<b>Prior Budgetary Increases:</b> \$ 0	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive		<b>Current Amount:</b> \$ 207,433,570	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification		<b>This Request</b> \$ 5,500,000	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:		<b>% of This Request to Current Amount:</b> 2.65%	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> East Side Access, W. Goodrich, P.E. 		<b>% of Modifications (including This Request) to Original Amount:</b> 44.5%	

**Discussion:**

The work under this Contract is for the structural and architectural rehabilitation of existing facilities within the 63<sup>rd</sup> Street Tunnel as well as the construction of the Plaza Interlocking and Facility Power Substation B10 for the East Side Access (ESA) Project. In accordance with Article IX of the All-Agency Procurement Guidelines, MTACC is requesting Board approval to modify the Contract to extend the 63<sup>rd</sup> Street Tunnel structure and backfill the Bellmouth. This is a scope and budget transfer.

Presently, the original 63<sup>rd</sup> Street Tunnel structure continues at the Bellmouth as an open cut to the start of the new Northern Boulevard underpass tunnel. The Bellmouth open cut has a depth of approximately 60 feet. Future Contract CM012A's scope includes extending the 63<sup>rd</sup> Street Tunnel structure to the new Northern Boulevard tunnel and backfilling the west and south sections of the Bellmouth area to grade level. Contract CM012A is not expected to receive Notice to Proceed until 2016.

MTACC has determined that it would be beneficial to the ESA Project to transfer this work into existing Contract CQ032. Performing this work now under CQ032 would allow the work to be completed earlier and will create new staging areas for adjacent Contracts CM006, CM007 and CS179. This will eliminate the need to establish contractual Access Restraints which will improve access for follow-on contractors and alleviate adjacent contractor interferences.

The Contractor submitted a cost proposal in the amount of \$ 8,204,187 while MTACC's estimate is \$6,154,659. Negotiations were held and the parties agreed to a \$5,500,000 price for this Work which is considered to be fair and reasonable. Funding for this modification will be transferred from CM012A. The addition of this scope of work will not impact the CQ032's schedule or substantial completion date. In order to achieve the schedule savings and efficiency benefits discussed above, the MTACC President approved a retroactive memorandum and the Contractor was directed to proceed with the work up to the not-to-exceed amount of \$800,000. Authorization to proceed with the remainder of the work under this modification will be given upon Board ratification of this modification.



# Bridges and Tunnels

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## Procurements April 2014



# Staff Summary

<b>Subject:</b>	Request for Authorization to Award Various Procurements
<b>Department:</b>	Procurement
<b>Department Head Name</b>	M. Margaret Terry <i>mmt</i>
<b>Department Head Signature</b>	
<b>Project Manager Name</b>	Various

<b>Date</b>	April 10, 2014
<b>Vendor Name</b>	
<b>Contract Number</b>	
<b>Contract Manager Name</b>	
<b>Table of Contents Ref #</b>	

Board Action					
Order	To	Date	Approval	Info	Other
1	President	4/10/14	<i>[Signature]</i>		
2	MTA B&T Committee	4/28/14			
3	MTA Board	4/30/14			

Internal Approvals			
Order	Approval	Order	Approval
<i>[Signature]</i>	President		VP Operations
<i>[Signature]</i>	Executive Vice President		VP & Chief Engineer
	SVP & General Counsel		Chief Procurement Officer
	VP Administration		

Internal Approvals (cont.)							
Order	Approval	Order	Approval	Order	Approval	Order	Approval
	Chief Financial Officer		Chief Technology Officer		Chief Health & Safety Officer		Chief EEO Officer
	Chief Security Officer		Chief Maintenance Officer		MTA Office of Civil Rights		

## PURPOSE:

To obtain approval of the Board to award various contracts and purchase orders, and to inform the MTA B&T Committee of these procurement actions.

## DISCUSSION:

MTA B&T proposes to award Non-Competitive procurements in the following categories: None.

MTA B&T proposes to award Competitive procurements in the following categories:

<u>Schedules Requiring Majority Vote</u>		<u># of Actions</u>	<u>\$ Amount</u>
Schedule II	Modifications to Personal/Miscellaneous Service Contracts	1	\$ 0.525M
Schedule J	Modifications to Miscellaneous Procurement Contracts	1	\$ 1.450M
TOTAL		2	\$ 1.975M

MTA B&T presents the following procurement actions for Ratification: None.

## BUDGET IMPACT:

The purchases/contracts will result in obligating MTA B&T and Capital funds in the amount listed. Funds are available in the current MTA B&T operating/capital budgets for this purpose.

## RECOMMENDATION:

That the purchases/contracts be approved as proposed. (Items are included in the resolution of approval at the beginning of the Procurement Section.)

The legal name of MTA Bridges and Tunnels is Triborough Bridge and Tunnel Authority.



**MTA BRIDGES & TUNNELS**  
**TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY**

**WHEREAS**, in accordance with §559 and §2879 of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public work contracts, and the solicitation and award of request for proposals in regard to purchase and public work contracts; and

**WHEREAS**, in accordance with §2879 of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous procurement contracts, and certain changes orders to procurement, public work, and miscellaneous procurement contracts; and

**WHEREAS**, in accordance with § 2879 of the Public Authorities Law and the All Agency Guidelines for Procurement of Services, the Board authorizes the award of certain service contracts, and certain change orders to service contracts; and

**NOW**, the Board resolves as follows:

1. As to each purchase and public work contract set forth in annexed Schedule A, the Board declares competitive bidding to be impractical or inappropriate for the reasons specified therein and authorizes the execution of each such contract.
2. As to each request for proposals (for purchase and public work contracts) set forth in Schedule B for which authorization to solicit proposals is requested, for the reasons specified therein, the Board declares competitive bidding to be impractical or inappropriate, declares it is in the public interest to solicit competitive request for proposals and authorizes the solicitation of such proposals.
3. As to each request for proposals (for purchase and public work contracts) set forth in Schedule C for which a recommendation is made to award the contract, the Board authorizes the execution of said contract.
4. The Board ratifies each action set forth in Schedule D for which ratification is requested.
5. The Board authorizes the execution of each of the following for which Board authorization is required: i) the miscellaneous procurement contracts set forth in Schedule E; ii) the personal service contracts set forth in Schedule F; iii) the miscellaneous service contracts set forth in Schedule G; iv) the modifications to personal/miscellaneous service contracts set forth in Schedule H; the contract modifications to purchase and public work contracts set forth in Schedule I; and vi) the modifications to miscellaneous procurement contracts set forth in Schedule J.
6. The Board ratifies each action taken set forth in Schedule K for which ratification is requested.
7. The Board authorizes the budget adjustments to estimated contracts set forth in Schedule L.

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**  
**APRIL 2014**

**MTA BRIDGES & TUNNELS**

**Procurements Requiring Majority Vote:**

**H: Modifications to Personal Service Contracts and Miscellaneous Service Contracts Awarded as Contracts for Services**

(Approvals/Staff Summaries required for substantial change orders and change orders that cause original contract to equal or exceed monetary or durational threshold required for Board approval)

1. **Ross and Baruzzini, Inc.** **\$524,973.23** **Staff Summary Attached**  
**Contract No. PSC-10-2887**

Extend the design of the electronic security system at the Throgs Neck Bridge from the suspended spans to the approach spans, perform additional work and increase funding for construction support services.

**J: Modifications to Miscellaneous Procurement Contracts**

(Approvals/Staff Summaries required for individual change orders greater than \$250K. Approvals without Staff Summaries required for change orders greater than 15% of previously approved amount which are at least \$50K)

2. **Sprague Operating Resources, LLC** **\$1,450,000.00** **Staff Summary Attached**  
**Contract No. 101074**

Additional funding required to cover increased vehicle fuel costs.

## Schedule H: Modifications to Personal Service Contracts and Miscellaneous Service Contracts

Item Number : 1 (Final)

<b>Vendor Name (&amp; Location)</b> Ross and Baruzzini, Inc., St. Louis, MO	<b>Contract Number</b> PSC-10-2887	<b>AWO/Modification #</b>
<b>Description</b> Design and Design Support Services During Construction for Task 26, Furnishing and Installation of an Integrated Electronic Security System at the Throgs Neck Bridge		
<b>Contract Term (including Options, if any)</b> August 19, 2011 – August 18, 2015		
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive		
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:		
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:		
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Engineering & Construction, Joe Keane, P.E.		
	<b>Original Amount:</b>	\$1,409,990.92
	<b>Prior Modifications:</b>	\$158,095.55
	<b>Prior Budgetary Increases:</b>	\$0.00
	<b>Current Amount:</b>	\$1,568,086.47
	<b>This Request:</b>	\$524,973.23
	<b>% of This Request to Current Amount:</b>	33.5%
	<b>% of Modifications (including This Request) to Original Amount:</b>	48.4%

### Discussion:

B&T is seeking Board approval under the All-Agency Guidelines for Procurement of Services to amend this contract with Ross and Baruzzini, Inc. (R&B) for additional funding in the amount of \$524,973.23. Consistent with the Procurement Guidelines, this amendment constitutes a substantial change.

Pursuant to Board approval in July, 2011, Contract PSC-10-2887 was awarded to R&B in the amount of \$1,409,990.92 for a four-year duration to perform design and construction support services for Task 26, Furnishing and Installation of an Integrated Electronic Security System at the Throgs Neck Bridge. This proposed amendment addresses the following:

1. The Contract scope limited the design of the electronic security system to the suspended spans of the bridge and the service building in anticipation of using existing conduit and fiber on the approaches. During design development, the Engineer determined that new fiber trunk lines along the Queens and Bronx approaches were required to provide one continuous system across the entire facility. Therefore this portion of the Amendment authorizes the design completion of new fiber cable and conduit at the approach spans of the bridge.
2. The scope also required an analysis of the existing building spaces for adequacy to accommodate the required communication and security equipment. The Engineer had determined that an existing building space should be repurposed to develop a Security Data Center (SDC). Design of a SDC was not included in the original scope and is formalized in this amendment.
3. Due to the extensive security requirements, the Engineer determined that R&B should also develop detailed testing and commissioning guidance documents to assist in systems acceptance.
4. Additional funding for construction support services are required to: (i) provide support for the additional design services provided above, and (ii) expedite and coordinate portions of the work under currently active construction contracts already mobilized at the approaches to save costs by taking advantage of existing work platforms.

R&B submitted a proposal for the above in the amount of \$661,637. The Engineer's estimate is \$534,300. Based on comparison with the Engineer's estimate, the negotiated amount of \$524,973.23 (2% below the estimate) is considered fair and reasonable. Funding for this amendment is available under the 2005-2009 MTA Security Program (Agency G) under projects G5140109 for \$219,410.86 and G5140108 for \$305,562.37.

## Schedule J: Modifications to Miscellaneous Procurement Contracts

Item Number: **2** (Final)

<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><b>Vendor Name (&amp; Location)</b> Sprague Operating Resources, LLC, White Plains, NY</td> </tr> <tr> <td style="padding: 2px;"><b>Description</b> All-Agency On-Site Fuel Deliveries, Fuel Station Monitoring/Maintenance Services and Off-Site Fuel Card</td> </tr> <tr> <td style="padding: 2px;"><b>Contract Term (including Options, if any)</b> May 31, 2010 – May 15, 2015</td> </tr> <tr> <td style="padding: 2px;"><b>Option(s) included in Total Amount?</b>      <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;"><b>Procurement Type</b>    <input checked="" type="checkbox"/> Competitive    <input type="checkbox"/> Non-competitive</td> </tr> <tr> <td style="padding: 2px;"><b>Solicitation Type</b>    <input type="checkbox"/> RFP    <input checked="" type="checkbox"/> Bid    <input type="checkbox"/> Other:</td> </tr> <tr> <td style="padding: 2px;"><b>Funding Source</b> <input checked="" type="checkbox"/> Operating    <input checked="" type="checkbox"/> Capital    <input type="checkbox"/> Federal    <input type="checkbox"/> Other:</td> </tr> <tr> <td style="padding: 2px;"><b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Operations, Patrick Parisi</td> </tr> </table>	<b>Vendor Name (&amp; Location)</b> Sprague Operating Resources, LLC, White Plains, NY	<b>Description</b> All-Agency On-Site Fuel Deliveries, Fuel Station Monitoring/Maintenance Services and Off-Site Fuel Card	<b>Contract Term (including Options, if any)</b> May 31, 2010 – May 15, 2015	<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:	<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Operations, Patrick Parisi	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;"><b>Contract Number</b> 101074</td> <td style="padding: 2px;"><b>AWO/Modification #7</b></td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>Original Amount:</b> \$5,612,237.00</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>Prior Modifications:</b> \$722,261.89</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>Prior Budgetary Increases:</b> \$0.00</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>Current Amount:</b> \$6,334,498.89</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>This Request:</b> \$1,450,000.00</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>% of This Request to Current Amount:</b> 22.9%</td> </tr> <tr> <td colspan="2" style="padding: 2px;"><b>% of Modifications (including This Request) to Original Amount:</b> 38.7%</td> </tr> </table>	<b>Contract Number</b> 101074	<b>AWO/Modification #7</b>	<b>Original Amount:</b> \$5,612,237.00		<b>Prior Modifications:</b> \$722,261.89		<b>Prior Budgetary Increases:</b> \$0.00		<b>Current Amount:</b> \$6,334,498.89		<b>This Request:</b> \$1,450,000.00		<b>% of This Request to Current Amount:</b> 22.9%		<b>% of Modifications (including This Request) to Original Amount:</b> 38.7%	
<b>Vendor Name (&amp; Location)</b> Sprague Operating Resources, LLC, White Plains, NY																									
<b>Description</b> All-Agency On-Site Fuel Deliveries, Fuel Station Monitoring/Maintenance Services and Off-Site Fuel Card																									
<b>Contract Term (including Options, if any)</b> May 31, 2010 – May 15, 2015																									
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																									
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive																									
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:																									
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:																									
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Operations, Patrick Parisi																									
<b>Contract Number</b> 101074	<b>AWO/Modification #7</b>																								
<b>Original Amount:</b> \$5,612,237.00																									
<b>Prior Modifications:</b> \$722,261.89																									
<b>Prior Budgetary Increases:</b> \$0.00																									
<b>Current Amount:</b> \$6,334,498.89																									
<b>This Request:</b> \$1,450,000.00																									
<b>% of This Request to Current Amount:</b> 22.9%																									
<b>% of Modifications (including This Request) to Original Amount:</b> 38.7%																									

**Discussion:**

B&T is seeking approval in accordance with the All-Agency Procurement Guidelines for additional funds in an amount of \$1,450,000 under delivery order, PO 101074, with Sprague Operating Resources, LLC (Sprague) issued under the Metro-North All-Agency On-Site Fuel Deliveries, Fuel Station Monitoring/Maintenance Services and Off-Site Fuel Card Contract No. 66993C. On May 14, 2010 pursuant to sealed competitive bidding, MNR approved the award of a five year MTA All-Agency Master Agreement (Contract No. 66993C) consisting of fuel delivery, on-site fuel station maintenance and monitoring and fuel card services to Sprague. B&T awarded PO 101074 to Sprague in the amount of \$5,612,237 for five years from May 31, 2010 through May 15, 2015 in accordance with the MNR Contract. In addition to B&T, the participating agencies for the services described above were Metro-North Railroad and Long Island Rail Road. The Contractor is required to provide: (i) on-site delivery of fuel products (87 octane gasoline, ultra low sulfur diesel #2, E-85, and biodiesel) on a consignment basis; (ii) monitoring, maintenance and repair of all on-site hardware and equipment supporting the fuel stations; and (iii) fuel cards to access both on-site and off-site fueling stations. PO 101074 has subsequently been amended for additional work primarily related to repairs and upgrades to fuel station equipment in an amount of \$722,261.89. The current value of the contract is \$6,334,498.89. The proposed Amendment will add funding in the amount of \$1,450,000 to cover increased fuel costs through the expiration of the contract. The additional funding is necessary based on market conditions as the price of fuel in all categories (Unleaded, Ultra Low Sulfur Diesel #2 and E85) has increased substantially since the inception of the contract. The adjusted rates payable under the purchase order are consistent with the pricing structure contained in MNR Contract 66993C and are therefore fair and reasonable. Funding for this amendment is available in the Operating Budget under GL #706602.