



Metropolitan Transportation Authority

# April 2015

## MTA Board Action Items



## **MTA Board Meeting**

2 Broadway, 20th Floor

New York, N.Y. 10004

Wednesday, 4/29/2015

10:00 AM - 12:00 PM ET

### **1. PUBLIC COMMENTS PERIOD**

### **2. APPROVAL OF MINUTES**

#### **MTA Regular Board Meeting of March 25, 2015**

*MTAHQ Minutes - March 25, 2015 - Page 4*

#### **NYCT/MaBSTOA/SIR/Bus Company Regular Board Meeting of March 25, 2015**

*NYCTA Minutes - March 25, 2015 - Page 9*

#### **MTA Metro-North Railroad Regular Board Meeting of March 25, 2015**

*Metro-North Minutes - March 25, 2015 - Page 13*

#### **MTA Long Island Rail Road Regular Board Meeting of March 25, 2015**

*LIRR Minutes - March 25, 2015 - Page 18*

#### **Triborough Bridge & Tunnel Authority Regular Board Meeting of March 25, 2015**

*TBTA Minutes - March 25, 2015 - Page 23*

#### **MTA Capital Construction Regular Board Meeting of March 25, 2015**

*MTACC Minutes - March 25, 2015 - Page 29*

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

#### **Action Items**

##### **i. RRIF Loan for Positive Train Control**

*Approval of RRIF Loan for Positive Train Control - Page 32*

##### **ii. Agreement with Operation Lifesaver**

*Agreement with Operation Lifesaver - Page 130*

##### **iii. 2014 Annual Investment Report**

*2014 Annual Investment Report - Page 132*

##### **iv. Verrazano-Narrows Bridge Rebate Program**

*B & T Action Item - Page 134*

#### **Procurements Report**

*MTAHQ Procurement Report - Page 142*

##### **i. Non-Competitive (no items)**

##### **ii. Competitive**

*MTAHQ Competitive Procurements - Page 144*

##### **iii. Ratifications (no items)**

#### **Real Estate Items**

##### **i. Real Estate Agenda and Staff Summaries**

*R.E. Agenda and Staff Summaries - Page 150*

#### **4. COMMITTEE ON NYCT & BUS**

##### **Procurements Report**

*April Procurement Staff Summary and Resolution - Page 169*

##### **i. Non-Competitive**

*NYCT Non-Competitive Actions - Page 173*

##### **ii. Competitive**

*NYCT Competitive Actions - Page 175*

##### **iii. Ratifications**

*MTACC Ratifications - Page 180*

#### **5. COMMITTEE ON METRO-NORTH RAILROAD & LONG ISLAND RAIL ROAD**

##### **Procurements Report: MNR, LIRR & MTACC**

*Procurements - Page 183*

##### **MNR Procurements**

##### **i. Non-Competitive (no items)**

##### **ii. Competitive**

*MNR Competitive Procurements - Page 187*

##### **iii. Ratification**

*MNR Ratifications Procurements - Page 196*

##### **LIRR Procurements**

##### **i. Non-Competitive**

*LIRR Non-Competitive Procurements - Page 197*

##### **ii. Competitive**

*LIRR Competitive Procurements - Page 200*

##### **iii. Ratifications (no items)**

##### **MTACC Procurements**

##### **i. Non-Competitive (no items)**

##### **ii. Competitive**

*MTA CC Competitive Procurements - Page 205*

##### **iii. Ratifications**

*MTA CC Ratification Procurements - Page 210*

#### **6. COMMITTEE ON MTA BRIDGES & TUNNELS OPERATIONS (no items)**

#### **7. FIRST MUTUAL TRANSPORTATION ASSURANCE CO (FMTAC) (no items)**

Date of Next Meeting: Wednesday, May 20, 2015

**Metropolitan Transportation Authority  
Minutes of  
Regular Board Meeting  
2 Broadway  
New York, NY 10004**

**Wednesday, March 25, 2015  
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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke**

**The following member was absent:**

**Hon. Robert C. Bickford  
Hon. Andrew M. Saul**

**Donna Evans, Chief of Staff, Jerome F. Page, General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member Norman Brown, Board Member Ira Greenberg, Board Member Neal Zuckerman, Carmen Bianco, President, NYCTA, David Kubicek, Sr. V.P.-Operations, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, SVP, NYCTA/DOB, President MTA Bus and Anthony D'Amico, V.P. and CFO, 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.

1. **PUBLIC SPEAKERS.** There were ten (10) public speakers. The following speakers spoke on items relevant to the MTA agenda. 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 names of other speakers and for the content of speakers' statements.

Prior to the public speakers' comments, Stephen Morello, Counselor to the Chairman, read a safety-related message for the public in the event of an emergency.

James McCauley, CFRAH, Chappaqua resident  
Gene Russianoff, Straphangers Campaign  
Jeffrey Smalls, Smalls Electrical  
Ed Campanella Rodriguez, MBI Group  
Charles Brecher, Citizens Budget Committee  
George Haikalis, Institute for Rationale mobility  
Murray Boden, private citizen  
Nick Sifuentes, Riders Alliance  
Alexander Roberts, Workforce Housing Coalition

2. **CHAIRMAN'S OPENING REMARKS.**

Chairman Prendergast called the meeting to order and welcomed everyone to the March Board meeting.

3. **MINUTES.** Upon motion duly made and seconded, the Board approved the minutes of the regular Board meeting held on February 25, 2015.

4. **COMMITTEE ON FINANCE.**

A. **Action Item.** Upon motion duly made and seconded, the Board approved the following action items. The specifics are set forth in the staff summaries and documentation filed with the meeting materials.

1. **2014 Annual Procurement Report.** Authorized the filing with the State of New York the annual MTA All Agency Procurement report for the period of January 1, 2014 - December 31, 2014 as required under Section 2879 of the Public Authorities Law.

**B. Information Item.**

1. MTA Prompt Payment Annual Report 2014. 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. Smith Detection – Maintenance and Upgrade of Proprietary Security Related Equipment for MTAPD – No. 15005-0100. Approved the award of a non-competitive contract to provide maintenance and upgrade of proprietary for HazMatID multi-mode hazardous materials detectors and two GasID multi-mode gas detectors for the MTAPD.
2. Kuyimba Inc. – Music Under New York Program – No. 14245-0100. Approved the award of competitively negotiated contracts to assist Arts for Transit in administering the Music Under New York (MUNY) program for a period of three years.
3. Jeffrey Miles Robinson – All Seasonal Ground Maintenance & Landscaping Services, MTAPD (Stormville, NY) – No. 14314-0100. Approved the award of a competitively negotiated contract to perform as-needed ground maintenance and landscaping services for the MAT Police K-9 Facility located in Stormville, N.Y.
4. IBM – Phase One of MTA’s Pension Module Upgrade – No. 14049-0100. Approval an option to a previously Board-approved, all-agency, competitively negotiated, personal services contract with IBM for additional funding for Phase One of MTA’s Pension Module upgrade which includes data transformation and decommissioning of both HQ’s standalone Defined Benefits Pension and PeopleSoft Human Content Management system into a new 9.2 Pension module that is integrated with the BSC PeopleSoft 9.2 HCM module.
5. Various Contractors – All-Agency Enterprise Asset Management Consulting Services – Nos. 12021-0100 thru 0900, S/A #3. Approved an amendment to previously Board-approved competitively awarded, personal services contract with nine (9) firms to continue to provide All-Agency Asset Management Consulting Services.

**D. Real Estate Items.** Following a discussion on items #1 and #5 below, and 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. Board member Mitchell Pally voted in opposition to items # 1 and #5, and Board members Charles Moerdler and John Banks recused themselves from the

vote on items #1 and #5 below. Refer to the video recording of the meeting produced by the MTA and maintained in MTA records for Board members' discussion and comments.

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

1. Surrender of unused development rights to the City of New York and the acquisition of an emergency access easement located at 28-20 Jackson Avenue (Block 264, Lot 15), Long Island City, NY 11101.
2. Master lease agreement with Columbus Development LLC d/b/a Turnstyle for the operation of retail center under the master lease located NYCT's 59<sup>th</sup> Street-Columbus Circle station, New York, N.Y.

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

3. License agreement with Oyster Rides LLC for a taxi dispatch office with three taxi parking spaces at Massapequa Station, Massapequa, N.Y.

#### **Metropolitan Transportation Authority**

4. Revised and updated 2015 MTA Real Estate Department Policies and Procedures for the Leasing-Out and Sale of Real Property (the "2015 Real Property Disposition Guidelines") and the 2015 All-Agency Guidelines for the Disposal of Personal Property (the "2015 Personal Property Disposition Guidelines"), each promulgated in accordance with Sections 2895-2897 of the New York Public Authorities Law.
5. Sale of transferrable development rights and surplus fee interest to Queens Plaza Park Development, LLC ("QPP") (Queens Block 403, consisting of Lot 1 (the MTA Property) and Lots 21 and 26 (QPP Property), pursuant to the staff summary, as amended to also approve the sale of less than 478,000 square feet of development rights provided that the cost per square foot remain at \$117.00.

### **5. COMMITTEE ON CORPORATE GOVERNANCE.**

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

1. **Mission Statement, Measurements, and Performance Indicators Report.**  
Approved the MTA's Mission Statement and authorized submission of the 2014 Mission Statement, Measurements, and Performance Indicators Report to the Independent Authorities Budget Office ("ABO"), as required by Section 169-f and Section 2824-a of the Public Authorities Law to the ABO.

**Regular Board Meeting  
March 25, 2015**

2. Drug and Alcohol Policy Statement. Approved the MTA and Agency's Drug and Alcohol Policies.
  3. Travel and Business Expense Policy. Approved revisions to the All-Agency Travel and Business Expense Policy.
  4. Public Authorities Law Required Policies. Approved certain existing policies of the MTA and its Agencies.
  5. All-Agency Procurement Guidelines and All-Agency Guidelines for Procurement of Services. Approved the MTA's All-Agency Procurement Guidelines and All-Agency Guidelines for Procurement of Services.
6. **EXECUTIVE SESSION.** Upon motion duly made and seconded, the Board voted to convene an executive session in accordance with Section 105(1)(d) and (e) of the New York State Public Officers Law to discuss matters relating proposed, pending or current litigation and collective negotiations.

Upon motion duly made and seconded, the Board approved the following collective bargaining agreements:

- (i) Metro-North and three (3) bargaining units (International Brotherhood of Electrical Workers System Council No. 7, Transport Workers Union, Locals 2001 and 2055, and Transport Workers Union, Service Attendant Agreement), covering the period of July 16, 2010 through March 15, 2017;
- (ii) MTA Bridges and Tunnels employees represented by DC 37, AFSMCE (Local 1655) covering administrative and clerical employees;
- (iii) Manhattan and Bronx Surface Transit Operating Authority (MaBSTOA) and TWU, Local 106 – Transit Supervisors Organization, Career & Salary Unit., covering clerical employees for the period of June 18, 2011 through June 18, 2016; and
- (iv) Staten Island Rapid Transit Operating Authority (SIRTOA), NYCTA, and the Transportation Communications Union (TCU), covering station cleaners, clerks, agents, and stock workers in SIRTOA.

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 10:30 a.m.

Respectively submitted,

Victoria Clement  
Assistant Secretary

Regular Board Meeting  
March 25, 2015

**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**

**2 Broadway, 20<sup>th</sup> Floor  
New York, NY 10004**

**Wednesday, March 25, 2015  
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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke**

**The following members were absent:**

**Hon. Robert C. Bickford  
Hon. Andrew M. Saul**

Donna Evans, MTA Chief of Staff; Jerome F. Page, MTA General Counsel; Stephen J. Morello, Counselor to the Chairman; Board Member Norman Brown; Board Member Ira Greenberg, Board Member Neal Zuckerman; Carmen Bianco, President, NYCTA; David Kubicek, Sr. V.P.- Operations, Long Island Rail Road; Joseph J. Giulietti, President, Metro-North Railroad; James Ferrara, President, TBTA; Darryl Irick, SVP, NYCTA/DOB, President MTA Bus; and Anthony D'Amico, V.P. and CFO, MTA Capital Construction, also attended the meeting.

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

**2. PUBLIC COMMENT PERIOD**

Seven public speakers addressed MTA NYC Transit/MTA Bus issues:

Gene Russianoff, of the Straphangers Campaign, discussed concerns regarding funding of the MTA's long-term capital needs.

Jeffrey Smalls, of Smalls Construction, expressed support for the MTA's DBE programs, and credited the program with bringing jobs to his company.

Ed Campanella-Rodriguez, of MBI Group, also expressed support for the MTA's DBE programs, and thanked MTA Chief Diversity Officer Michael Garner for his work on the program.

Chuck Brecher, of the Citizens Budget Commission, proposed various options to assist the MTA in funding its 2015-2019 Capital Program.

Bruce Hain, private citizen, voiced concerns regarding frequent service schedule changes.

Murray Bodin, private citizen, criticized the use of on-time performance (OTP) as a service performance metric.

Nick Fuentes, of the Riders Alliance, spoke in favor of prioritizing funding for the MTA and reducing the frequency of fare increases.

The remaining three public speakers did not address issues related to MTA NYC Transit/MTA Bus. The content of those speakers' comments are included in the video recording of the meeting produced by the MTA and maintained in MTA records, and the MTA's and other agencies' minutes of the meeting on this date.

**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/Staten Island Rapid Transit Operating Authority/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 Rapid Transit Operating Authority, and MTA Bus Company held on February 25, 2015.

## **5. COMMITTEE ON FINANCE**

### **Real Estate Items**

Upon motion duly made and seconded, the Board approved the following real estate items related to MTA New York City Transit. The specifics are set forth in the staff summaries and documentation filed with the meeting materials. The content of the Board members' discussion regarding the real estate items is included in the video recording of the meeting produced by the MTA and maintained in MTA records.

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

1. Surrender of Jackson Avenue substation development rights.
2. Master Lease with Columbus Development LLC for the retail concourse at 59<sup>th</sup> Street-Columbus Circle Station.

## **6. COMMITTEE ON TRANSIT & BUS OPERATIONS NYC Transit & MTA Bus Company**

### **Procurements:**

Non-Competitive Procurements: Upon motion duly made and seconded, the Board approved the non-competitive procurement requiring a majority vote (Schedule J in the Agenda). Details regarding the above item are set forth in the staff summary, a copy of which is on file with the records of the meeting of the Board of MTA NYC Transit /Staten Island Rapid Transit Operating Authority /MTA Bus Company.

Competitive Procurements: Upon motion duly made and seconded, the Board approved the competitive procurements requiring a majority vote (Schedules F and H 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 MTA NYC Transit /Staten Island Rapid Transit Operating Authority/MTA Bus Company.

Ratifications: Upon motion duly made and seconded, the Board approved the ratifications requiring a two-thirds vote (Schedule D in the Agenda) and those requiring a majority vote (Schedule K 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 MTA NYC Transit /Staten Island Rapid Transit Operating Authority/MTA Bus Company.

## **7. EXECUTIVE SESSION**

Upon motion duly made and seconded, the Board voted to convene an executive session in accordance with New York State Public Officers Law §105(1)(d) and §105(1)(e) to discuss matters relating to proposed, pending or current litigation and collective bargaining negotiations.

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

**8. ADJOURNMENT**

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:30 a.m.

Respectfully submitted,



James. J. Gallagher  
Acting Assistant Secretary

Minutes of the Regular Meeting  
Metro-North Commuter Railroad Company  
2 Broadway – 20<sup>th</sup> Floor  
New York, NY 10004

Wednesday, March 25, 2015  
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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke

The following members were absent:

Hon. Robert C. Bickford  
Hon. Andrew M. Saul

Board Member Norman Brown, Board Member Ira Greenberg, Board Member Neal Zuckerman, and Joseph J. Giulietti, President, Metro-North Railroad also attended the meeting as did various other agency presidents and staff, including Carmen Bianco, President, NYCTA, David Kubicek, Sr. V.P.-Operations, Long Island Rail Road, James Ferrara, President, TBTA, Darryl Irick, President, MTA Bus, Anthony D'Amico, V.P. and CFO, MTA Capital Construction, Catherine Rinaldi, Metro-North Chief of Staff, James B. Henly, Metro-North General Counsel, Donna Evans, MTA Chief of Staff, Jerome F. Page, MTA General Counsel, and Stephen J. Morello, Counselor to the Chairman.

Chairman Prendergast called the meeting to order.

1. Public Speakers:

There were 10 public speakers. The speakers listed below spoke on items relevant to Metro-North matters. Refer to the video recording of the meeting produced by the MTA and maintained in MTA records for these speakers' comments, and to the other agencies' minutes of this date, for the names of other public speakers.

James McCauley, private citizen of Chappaqua  
Murray Bodin, private citizen

2. Approval of Minutes:

Upon motion duly made and seconded, the minutes of the Regular Board Meeting of February 25, 2015 were approved.

3. Committee on Finance:

Upon motion duly made and seconded, the MTA Board approved the following action item recommended to it by the Committee on Finance that relates to Metro-North:

Action Item:

- 2014 Annual Procurement Report.

The details of the above item are contained in the minutes of the MTA Board meeting held this day, a staff summary filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

Information Item:

MTA information items were presented to the Board. The following item that relates to Metro-North was presented:

- MTA Prompt Payment Annual Report 2014

The details of the above item are contained in the minutes of the MTA Board meeting held this day, a staff summary and report filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

Procurements:

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

- Additional funding for a previously approved, all-agency, competitively negotiated, personal services contract with IBM for Phase One of MTA's Pension Module

upgrade which includes data transformation and decommissioning of both of HQ's standalone Defined Benefits (DB) Pension and PeopleSoft Human Content Management (HCM) systems into a new 9.2 pension module that is integrated with the BSC PeopleSoft 9.2HCM module.

- An amendment to a previously approved, competitively awarded, personal services contract with nine retainer firms for an additional \$14M to continue to provide All-Agency Asset Management Consulting Services.

The details of the above items are contained in the minutes of the MTA Board meeting held this day, staff summaries and reports filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

4. Committee on Metro-North Railroad:

Procurements:

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

- Approval to use the Request for Proposal (RFP) process to solicit and evaluate proposals from prospective contractors to provide pest control services for Grand Central Terminal.
- Approval of a personal service contract with HAKS Engineering to provide resident engineering and inspection services for the design build of the Power/C&S Infrastructure Improvements and construction of three substations on the Hudson Line and one new substation in Brewster, New York.
- Approval of a nine month miscellaneous service contract with Northeast Work & Safety Boats, LLC to provide safety boat services for Metro-North personnel performing ongoing bridge repairs on the Devon Bridge in Stratford, Connecticut.

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

- Approval to ride a competitively solicited, miscellaneous service, New York State OGS contract, award No. PGB-22892, with United Parcel Service to provide domestic and international small package delivery service for a period of 15 months through March 20, 2016.

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

- A non-competitive procurement with Coriant North America for the emergency purchase of 14 Tellabs 5320L LSPM DSI Circuit Boards and eight High Density Universal Service Modules to replace existing equipment that far exceeded its useful life.

- Emergency procurement of an additional 200,000 gallons of Ultra Low Sulfur Diesel #2 locomotive fuel for the Metro-North Danbury, Connecticut facility.

The details of the above items are contained in staff summaries and reports filed with the records of this meeting and in the video recording of the meeting produced by the MTA and maintained in the MTA records relating to the above items, which recording includes discussions between Board member Metzger and Chairman Prendergast regarding the Capital Plan.

5. Committee on Governance:

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

- Approval of the MTA Mission Statement, Measurements and Performance Indicators Report.
- Approval of Drug and Alcohol Policies for MTA and its Agencies.
- Authorization of proposed revisions to the All-Agency Travel and Business Expense Policy.
- Ratification and approval of revisions to policies addressing employee salary, compensation, time and attendance, travel and expenses and reimbursements.
- Approval of MTA All-Agency Procurement Guidelines and All Agency Guidelines for the Procurement of Services.

The details of the above items are contained in the minutes of the MTA Board meeting held this day, staff summaries and reports filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

6. Executive Session:

The Board, upon motion duly made and seconded, voted to convene in Executive Session pursuant to Section 105(1)(d) of the New York State Public Officers Law to discuss potential litigation and 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 the following collective bargaining agreements that relate to Metro-North:

(1) International Brotherhood of Electrical Workers System Council No. 7 for the period July 16, 2010, through January 15, 2017;

(2) Transport Workers Union, Locals 2001 and 2055 for the period July 16, 2010, through January 15, 2017; and

(3) Transport Workers Union, Service Attendant Agreement for the period July 16, 2010 through January 15, 2017.

Upon motion duly made and seconded, the Board voted to reconvene in public session.

7. Adjournment:

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Linda Montanino".

Linda Montanino  
Assistant Secretary

March 2015 Board Minutes  
Legal/Corporate

**Minutes of the Regular Board Meeting  
Long Island Rail Road Company  
2 Broadway  
New York, NY 10004**

**Wednesday, March 25, 2015  
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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke

The following member was absent:

Hon. Robert C. Bickford  
Hon. Andrew M. Saul

Donna Evans, Chief of Staff, Jerome F. Page, General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member Norman Brown, Board Member Ira Greenberg, Board Member Neal Zuckerman, Carmen Bianco, President, NYCTA, David Kubicek, Sr. V.P.-Operations, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, SVP, NYCTA/DOB, President MTA Bus and Anthony D'Amico, V.P. and CFO, MTA Capital Construction, also attended the meeting.

Chairman Prendergast called the meeting to order.

**1. Public Speakers:**

There were ten (10) public speakers. Prior to the public speakers' comments, Stephen Morello, Counsellor to the Chairman, read a safety-related message for the public in the event of an emergency. The following speakers spoke on items relevant to LIRR matters:

Geroge Haikalis, Institute for Rational Urban Mobility  
Murray Bodin, Concerned Grandparents

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 in the minutes of the other Agencies of this date.

2. **Approval of Minutes:**

Upon motion duly made and seconded, the minutes of the Regular Board Meeting of February 25, 2015 were approved.

3. **Committee on Finance:**

**Action Item:**

The following Action Item that relates to LIRR was approved:

- Authorization of the filing with the State of New York of the annual MTA All Agency Procurement report for 2014 as required under Public Authorities Law Section 2879.

**Information Item:**

The following Information Item that relates to LIRR was presented:

- Report to the Board of compliance with the New York State Prompt Payment Legislation.

**Procurements:**

The following procurements that relate to LIRR were approved:

- Approval of an option to an all-agency competitively negotiated personal services contract with IBM in the amount of \$13,739,000 for Phase One of MTA's Pension Module Upgrade.
- Approval of an amendment to a competitively awarded, personal services contract with nine retainer firms for an additional \$14,000,000 to continue to provide All-Agency Asset Management Consulting Services.

**Real Estate Items:**

The following real estate item that relates to LIRR was approved:

- License agreement with Oyster Rides LLC for a taxi dispatch office and 3 taxi parking spaces located at the LIRR Massapequa Station, Massapequa, New York, for a five year term terminable on 60 days' notice.

The details of the above items are contained in the minutes of the MTA Board meeting held this day and staff summaries and reports filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

4. **Committee on Long Island Rail Road:**

**Action Item:**

Upon motion duly made and seconded, the following Action Item for LIRR was approved:

- Authorization to Negotiate and Execute an Amendment to Gateway Tunnel Agreement(s) with Amtrak with respect to the incorporation of a new tandem wheel-truing machine in the rebuilt Maintenance of Equipment Facility.

The details of the above item is contained in the staff summary filed with the records of this meeting and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

**Procurements:**

Upon motion duly made and seconded, the following LIRR competitive procurements were approved:

- Approval to award a competitively bid three year Miscellaneous Service contract to Metro Weather Service, Inc. to provide current and comprehensive meteorological information services to the LIRR from May 1, 2015 through April 30, 2018, at the firm-fixed price of \$22,032.
- Approval to award a competitively bid, Miscellaneous Service, New York State OGS Contract Award No. PGB-22892, with United Parcel Service (UPS). Under this contract, UPS will provide domestic and international small package delivery service for a period of fifteen (15) months, through March 20, 2015, in the not to exceed amount of \$80,000.
- Approval to issue a Contract modification in the amount of \$360,000 to Go Green Environmental Services LLC, to allow for the continued pumping and lawful disposal of waste from cesspools and sewers at various rail road stations, and for vector and jetting services need for upcoming tunnel cleaning. The additional funding will cover services through the original contract term, which expires in November 2015.

The details of the above items are contained in the staff summaries and reports filed with the records of this meeting and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

**MTA Capital Construction Procurements:**

With respect to MTA Capital Construction, upon motion duly made and seconded, the Board approved the following procurement items:

- Ratification of a modification to Contract No. 98-0040-01R for additional design services required to address changes to signal and supervisory control equipment at eight central instrument locations in the amount of \$1,197,544.

The details of the above item are contained in the staff summary and reports filed with the records of this meeting and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

5. **Governance Committee:**

**Action Item:**

Upon motion duly made and seconded, the MTA Board approved the following Action Items recommended to it by the Committee on Governance that relate to LIRR:

- Approval of the MTA Mission Statement, Measurements and Performance Indicators Report.
- Approval of Drug and Alcohol Policies for MTA and its Agencies.
- Authorization of proposed revisions to the All-Agency Travel and Business Expense Policy.
- Ratification and approval of revisions to policies addressing employee salary, compensation, time and attendance, travel and expenses and reimbursements.
- Approval of MTA All-Agency Procurement Guidelines and All Agency Guidelines for the Procurement of Services.

The details of the above items are contained in the minutes of the MTA Board meeting held this day, staff summaries and reports filed with those minutes and in the video recording of the meeting, produced by the MTA and maintained in MTA records.

6. **Executive Session:**

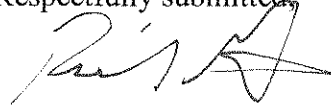
The Board, upon motion duly made and seconded, voted to convene into Executive Session pursuant to Sections 105(1)(d) and (e) of the New York State Public Officers Law to discuss matters relating to pending litigation and collective negotiations.

Upon motion duly made and seconded, the Board voted to reconvene in public session.

7. Adjournment:

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 11:30 a.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Richard Gans', written over the words 'Respectfully submitted,'.

Richard Gans  
Secretary

**TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY**

**BOARD MINUTES**

**March 25, 2015**

Minutes of the Regular Meeting  
Triborough Bridge and Tunnel Authority  
March 25, 2015

Meeting Held at  
2 Broadway, 20<sup>th</sup> Floor  
New York, New York 10004

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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke

The following members were absent:

Hon. Robert C. Bickford  
Hon. Andrew M. Saul

Donna Evans, Chief of Staff, Jerome F. Page, General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member Norman Brown, Board Member Ira Greenberg, Board Member Neal Zuckerman, Carmen Bianco, President, New York City Transit, David Kubicek, Sr., Vice President-Operations, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, Triborough Bridge and Tunnel Authority, Darryl Irick, Senior Vice President, New York City Transit Department of Buses, President, MTA Bus and Anthony D'Amico, Vice President and Chief Financial Officer, 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.

**1. Public Speakers**

There were ten (10) public speakers. Charles Brecher, research co-director for the Citizens Budget Commission (“CBC”), discussed the recommendations in a recent CBC report regarding how to pay for the MTA’s next five year Capital Program to support the mass transit network, which endorsed a vehicle miles traveled (VMT) tax and Move NY, a congestion pricing plan.

Refer to the video recording of the meeting produced by the Metropolitan Transportation Authority and maintained in MTA records, and to the other agencies’ minutes of this date, for the content of the speakers’ statements.

**2. Approval of the Minutes of the Regular Meeting February 25, 2015**

Upon a motion duly made and seconded, the minutes of the Regular Board Meeting held on February 25, 2015 were approved.

**3. Committee on Finance**

Upon a motion duly made and seconded, the Board approved the following recommended to it by the Committee on Finance that pertained to the Triborough Bridge and Tunnel Authority:

(a) Action Item:

- Authorize the filing of the 2014 MTA All Agency Procurement Report for the period January 1, 2014 to December 31, 2014 as required by Public Authorities Law §2879.

Copies of the staff summaries, resolutions and documents setting forth the details of the above item and the other items discussed are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

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

**Procurements**

Commissioner Cappelli stated that there are four (4) procurements totaling \$295.4 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 \$295.4 million.

**Competitive Procurements**

**Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)**

Judlau Contracting, Inc.	Contract No. QM-40S Perform Sandy Restoration, Mitigation and Rehabilitation of the Tunnel and Manhattan Exit Plaza at the Queens Midtown Tunnel (QMT).	\$236,500,000.00
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**Miscellaneous Procurement Contracts**

Telvent USA, LLC	Contract No. 14-OPS-2924X Maintenance and Repair of the Electronic Toll Registry System.	\$50,300,121.00
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### Personal Service Contracts

HAKS Engineers, Architects & Land Surveyors, P.C.	Contract No. PSC-14-2963A - D Provide biennial bridge inspection and miscellaneous design services at the Throgs	\$2,221,592.00
Ammann & Whitney Consulting Engineers, P.C.	Neck, Bronx Whitestone, Marine Parkway/Cross Bay, Henry Hudson, and	\$1,610,918.00
WSP USA Corporation	Queens Midtown Tunnel Approach	\$1,738,832.26
Hardesty & Hanover, LLC	Bridges.	<u>\$2,072,545.00</u>
		\$7,643,887.26

Beth Israel Medical Center	Contract No. PSC-14-2951X	\$921,175.00
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In 2014 the Authority issued a solicitation for a Consultant to provide 24-hour/7-day medical consultation services consisting of: (i) determining the fitness for duty of Authority employees who may be absent due to illness or injury; (ii) ensuring that absences are related to the medical condition claimed by the employee; (iii) determining whether employees are obtaining proper treatment; and (iv) advising the Authority concerning medical issues raised. The duration of this contract is five years. The service requirements were publicly advertised. The solicitation notice was sent to 88 firms. Five firms requested copies of the solicitation. Three proposals were submitted as follows: JuriSolutions, Inc.; Beth Israel Medical Center (BIMC) and Occupational Health Decisions (OHD).

After evaluation of the proposals against established criteria set forth in the RFP including experience, qualifications, understanding of the services, record of performance and cost, the committee unanimously waived oral presentations and recommended that Best and Final Offers (BAFOs) be requested from the two highest ranked firms: BIMC and OHD. After discussions with both vendors regarding pricing, both firms were then requested to submit BAFOs.

Based on the evaluation of BAFOs, the committee selected BIMC based on its superior record of service, availability of resources and its lower cost proposal. BIMC's BAFO of \$921,175 offered reductions in both examination costs and

after-hours examination costs, and the final proposal is 26% less than the user's estimate of \$1, 242,956. The rates are fixed for the five year term and are approximately 7% less than those under the current contract. As such, the rates are deemed to be fair and reasonable. BIMC has performed satisfactorily under current and previous Authority contracts. After review BIMC was determined to be a responsible consultant. No M/WBE goals were established by the MTA Department of Diversity and Civil Rights for this contract.

Commissioner Cappelli stated that the Committee members who were present at the Committee Meeting considered and voted in favor of the procurements although a Committee Quorum was not present. Upon a motion duly made and seconded, the Board approved the procurements recommended to it by the Committee for MTA Bridges and Tunnels Operations.

Commissioner Cappelli stated that there are no ratifications.

**5. Governance Committee**

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

- Authorize the submission for the MTA 2014 Mission Statement, Measurements and Performance Indicators report to the Independent Authorities Budget Office;
- Approve MTA and Agency Drug and Alcohol Policies;
- Authorize the proposed revisions to the All Agency Travel and Business Expense Policy;
- Ratify and approve existing MTA and Agency policies requiring Board approval pursuant to the Public Authorities Law; and
- Approve the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement of Services.

Copies of the 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.

**6. 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)(d) to discuss proposed, pending or current litigation and §105(1)(e) to discuss matters relating to collective negotiations.

**7. Public Session**

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

8. **Adjournment**

Upon a motion duly made and seconded, the Board unanimously voted to adjourn the meeting at 11:30 a.m.

Respectfully submitted,



Julia R. Christ  
Acting Assistant Secretary

**Regular Board Meeting  
MTA Capital Construction Company  
2 Broadway  
New York, NY 10004  
Wednesday, March 25, 2015  
10:00 PM**

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. Allen P. Cappelli  
Hon. Jeffrey A. Kay  
Hon. Susan Metzger  
Hon. Charles G. Moerdler  
Hon. John J. Molloy  
Hon. Mitchell H. Pally  
Hon. James L. Sedore, Jr.  
Hon. Vincent Tessitore  
Hon. Polly Trottenberg  
Hon. Iris Weinshall  
Hon. Carl V. Wortendyke

The following members were absent:

Hon. Robert C. Bickford  
Hon. Andrew M. Saul

Donna Evans, Chief of Staff, Jerome F. Page, General Counsel, Stephen J. Morello, Counselor to the Chairman, Board Member Norman Brown, Board Member Ira Greenberg, Board Member Neal Zuckerman, Carmen Bianco, President, NYCTA, David Kubicek, Sr. V.P.-Operations, Long Island Rail Road, Joseph J. Giulietti, President, Metro-North Railroad, James Ferrara, President, TBTA, Darryl Irick, SVP, NYCTA/DOB, President MTA Bus and Anthony D'Amico, V.P. and CFO, 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 ("Chairman") Prendergast called the meeting to order.

**Public Comment Period**

There were ten public speakers, none of whom spoke on MTA Capital Construction Company matters. The names of the speakers and the subject matter of their comments are filed with the minutes of the meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

**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 and the MTA Capital Construction Company held on February 23, 2015.

## **Committee on Finance**

### **Action Item**

Upon motion duly made and seconded, the Board:

Authorized the filing of the annual MTA All Agency Procurement Report for the period of January 1, 2014 – December 31, 2014 with the State of New York

A copy of the Staff Summary and details of the above item is filed with the records of the Regular Meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

### **Procurements**

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

1. Award of an option to the MTA Business Service Center PeopleSoft 9.2 Upgrade Contract (14049-0100) for additional funding in the amount of \$12,490,000 for Phase One of MTA's Pension Module upgrade.
2. Award of an amendment to the All-Agency Enterprise Asset Management Consultant Services contracts (12021-0100 through 12021-0900) for an additional \$14,000,000 to continue to provide All-Agency Asset Management Consulting Services.

A copy of the Staff Summary and details of the above item is filed with the records of the Regular Meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

## **Committee on NYCT & Bus**

### **Combined Action and Procurement Item**

Upon motion duly made and seconded, the Board approved the following combined action and procurement item:

Assumption of a portion of a contract between the Port Authority of New York and New Jersey and the Downtown Design Partnership for Architectural and Engineering Services for the World Trade Center Path Terminal as that contract relates to the design and reconstruction of the Cortlandt Street No. 1 Line Station. This item also includes a modification to the Contract in the amount of \$3,788,671 to provide additional design support and construction phase services with regard to the reconstruction of the Cortlandt Street No. 1 Line Station.

A copy of the Staff Summary and details of the above item is filed with the records of the Regular Meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

### **Procurement**

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

1. A modification to the Second Avenue Subway Project's 86<sup>th</sup> Street Station Finishes contract (C-26012) in the amount of \$1,420,000 to address additional costs associated with the replacement of rigid galvanized steel conduit for fire-rated circuits.
2. A modification to the Second Avenue Subway Project's 96<sup>th</sup> Street Station Finishes contract (C-26010) in the amount of \$1,275,000 in order to address acceleration of Ancillary 2 Work.
3. A modification to the Second Avenue Subway Consultant Construction Management Services contract (CM1338) in the amount of \$54,380,770 in order to extend the services provided under that contract for 36 months.

A copy of the Resolution, Staff Summaries and details of the above item is filed with the records of the Regular Meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

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

### **Procurement**

Upon motion duly made and seconded, the Board ratified the following competitive procurement item:

A modification to the East Side Access Project's General Engineering Consultant Services contract (98-0040-01R) for additional design services required to address changes to signal and supervisory control equipment at eight central instrument locations in the amount of \$1,197,544.

A copy of the Resolution, Staff Summaries and details of the above item is filed with the records of the Regular Meeting of the Board of the Metropolitan Transportation Authority held on March 25, 2015.

### **Committee on Governance**

Upon motion duly made and seconded, the Board:

1. Approved the MTA's Mission Statement and authorized the submission of the 2014 Mission Statement, Measurements and Performance Indicators Report to the Independent Authorities Budget Office.
2. Approved the MTA and Agency's Drug and Alcohol Policies.
3. Approved revisions to the All-Agency Travel and Business Expense Policy to (1) require employees to submit their travel reimbursement report within 30 days from the conclusion of travel, (2) establish procedures for the use of the MTA Corporate Card and (3) allow the MTA Chief Compliance Officer to grant a waiver of this Policy Directive in the best interest of the MTA.
4. Ratified and approved revisions to certain existing policies of the MTA and its Agencies that are contained in the March 2015 Governance Committee Exhibit Book.
5. Approved the MTA's All Agency Procurement Guidelines and All Agency Guidelines for Procurement Services.

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 25, 2015.

### **Executive Session**

Upon motion duly made and seconded, the Board voted to convene into Executive Session to discuss matters relating to potential or current litigation in accordance with Section 105(1)(d) and to discuss matters relating to collective bargaining negotiations in accordance with Section 105(1)(e) of the New York State Public Officers Law.

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 11:30 a.m.

Respectfully submitted,





David K. Cannon  
Assistant Secretary

# Staff Summary

<b>Subject</b> Authorization to execute a Financing Agreement with the Federal Railroad Administration for a loan to finance the Positive Train Control Project and to deliver an MTA Transportation Revenue Bond in repayment of the loan
<b>Department</b> Finance
<b>Department Head Name</b> Robert E. Foran, Chief Financial Officer
<b>Department Head Signature</b> 
<b>Project Manager Name</b> Patrick J. McCoy, Director of Finance 

<b>Date</b> April 29, 2015
<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.	4/27/15			
2	Board	4/29/15			

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

## PURPOSE:

To obtain Finance Committee and MTA Board approval of the annexed Financing Agreement between MTA and the Federal Railroad Administration ("FRA") to secure a loan from FRA under the Railroad Rehabilitation and Improvement Financing Program ("RRIF") in an amount not to exceed \$967,100,000 to finance the installation of Positive Train Control ("PTC") technology on the MTA Commuter Railroads. As evidence of the MTA's obligation to repay the loan, the MTA will deliver to FRA a like aggregate principal amount of MTA Transportation Revenue Bonds issued in accordance with the provisions of the annexed Series 2015X (RRIF Loan – Positive Train Control Project) Transportation Revenue Bond Supplemental Resolution.

## BACKGROUND:

In 2008, Congress passed the Rail Safety Improvement Act of 2008 ("Act"), which requires, among other things, the installation of PTC on all commuter railroad main-line tracks. PTC is a technology that is intended to prevent train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through an improperly aligned switch. The MTA Commuter Railroads (Metro-North Railroad and Long Island Rail Road) are currently working toward the implementation of PTC on mainline tracks not otherwise subject to an exemption.

On January 27, 2014, MTA filed an amendment to its April 21, 2011 Application for \$3 billion of RRIF Funding for East Side Access to request \$967 million for installation of PTC. MTA Finance, working with Metro-North and LIRR staff, have undertaken the necessary steps to negotiate the terms and conditions of the loan and provide FRA with project information necessary for review and approval of the loan. No further consideration of ESA is being made by FRA under the current application.

On December 18, 2014, the FRA submitted MTA's application for the RRIF loan to the U.S. Department of Transportation Credit Council for approval. The Credit Council approved the loan subject to resolution of certain matters, including the determination of a credit risk premium and approval of a waiver of certain Buy America requirements. FRA, in consultation with the U.S. Department of Transportation Credit Council and the Office of Management and Budget determines the credit risk premium. MTA Finance has recently been informed by FRA that there will be no credit risk premium in connection with the MTA Transportation Revenue Bond credit as principal security for the loan.

On February 19, 2015, MTA submitted a formal request for waiver of Buy America requirements in connection with a limited number of non-U.S. sourced components. FRA has granted the waiver request.

## Key Loan Provisions:

- Term: November 15, 2037
- Rate: 2.38%
- Security: MTA Transportation Revenue Bond
- Credit Risk Premium: 0.00%
- Prepayment: Allowed anytime at no cost.
- Assignment: FRA may assign its rights as a bondholder to an additional holder.

The following provisions are available only to the FRA and not to any additional holder.

- Conversion right: Future MTA issuance of structurally senior debt gives right to FRA to exchange the TRB bond for such structurally senior bond within 90 days.
- Advance Suspension Event: Occurrence of any resolution default, Material Adverse Effect (significant change in MTA's operations or financial condition), misrepresentation, insolvency, or action by New York State in violation of its pledge and agreement that the State of New York will not limit or alter the denial of bankruptcy by the MTA or any of its subsidiaries or affiliates.
- Rating Requirement: MTA must maintain at least two ratings at the "A-", or "A3" level. Failure to maintain such ratings for a period of 180 days or more results in a Ratings Downgrade Event, increasing interest cost by 2.00%.
- Overdue Rate: Applies to uncured Advance Suspension Events and increases cost of loan by an additional 2.00% above the prevailing rate; which can be either the base rate or Ratings Downgrade Rate.

## RECOMMENDATION

It is recommended that the Board approve the annexed Financing Agreement and Supplemental Resolution in connection with the RRIF loan.

**METROPOLITAN TRANSPORTATION AUTHORITY**

**SERIES 2015X  
(RRIF LOAN – POSITIVE TRAIN CONTROL PROJECT)  
TRANSPORTATION REVENUE BOND  
SUPPLEMENTAL RESOLUTION**

**Adopted \_\_\_\_\_, 2015**

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## TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I DEFINITIONS AND STATUTORY AUTHORITY .....	1
<b>Section 1.01.</b> Supplemental Resolution .....	1
<b>Section 1.02.</b> Definitions.....	1
<b>Section 1.03.</b> Authority for this Supplemental Resolution .....	3
ARTICLE II AUTHORIZATION OF SERIES 2015X BONDS .....	3
<b>Section 2.01.</b> Authorized Principal Amount, Designation and Series .....	3
<b>Section 2.02.</b> Purposes .....	4
<b>Section 2.03.</b> Dates, Maturities, Principal Amounts and Interest .....	4
<b>Section 2.04.</b> Interest Payments .....	5
<b>Section 2.05.</b> Denominations, Numbers and Letters.....	5
<b>Section 2.06.</b> Places of Payment and Paying Agent .....	6
<b>Section 2.07.</b> Redemption Prices and Terms .....	6
<b>Section 2.08.</b> Transfers to Additional Holders.....	7
<b>Section 2.09.</b> Delegation to an Authorized Officer.....	7
<b>Section 2.10.</b> Forms of Series 2015X Bonds and Trustee’s Authentication Certificate .....	8
<b>Section 2.11.</b> Appointment of Trustee and Paying Agent .....	8
ARTICLE III DISPOSITION OF ADVANCES .....	9
<b>Section 3.01.</b> Disposition of Advances .....	9

Exhibit One – Form of Series 2015X Bond delivered to Additional Holders

**SERIES 2015X  
(RRIF LOAN – POSITIVE TRAIN CONTROL PROJECT)  
TRANSPORTATION REVENUE BOND  
SUPPLEMENTAL RESOLUTION**

WHEREAS, the United States of America represented by the Secretary of Transportation (the “Transportation Secretary”) acting through the Federal Railroad Administration (the “Lender”) is authorized, pursuant to Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 *et seq.* (the “Federal Act”), to provide financial assistance for such purposes consistent with the Federal Act as may be approved by the Transportation Secretary and the Transportation Secretary has duly delegated the Transportation Secretary’s authority under the Federal Act to the Federal Railroad Administrator or the Federal Railroad Administrator’s designee (the “Administrator”);

WHEREAS, pursuant to the Federal Act, the Metropolitan Transportation Authority (the “Issuer”) has submitted an application, as updated and amended, to the Administrator requesting a loan (the “Loan”) in the amount of Nine Hundred Sixty Seven Million One Hundred Thousand Dollars (\$967,100,000);

WHEREAS, the proceeds of the Loan will finance Allowable Costs (as such term is defined in the Financing Agreement between the Issuer and the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator (as the same may be amended or supplemented, the “Financing Agreement”)) incurred by the Issuer in connection with its Positive Train Control Project capital project which will install Positive Train Control on The Long Island Rail Road Company and Metro-North Commuter Railroad Company tracks as and where required by applicable laws and regulations; and

WHEREAS, the Issuer’s obligation to repay the Loan will be evidenced by the issuance of the Series 2015X Bonds hereunder and secured by a pledge of the Trust Estate on a parity basis with the holders of the Issuer’s Obligations;

NOW, THEREFORE, BE IT RESOLVED by the Metropolitan Transportation Authority, as follows:

**ARTICLE I**

**DEFINITIONS AND STATUTORY AUTHORITY**

**Section 1.01. Supplemental Resolution.** This resolution is supplemental to, and is adopted, in accordance with Article II and Article A-VIII of, a resolution of the Issuer adopted on March 26, 2002, entitled “General Resolution Authorizing Transportation Revenue Obligations” (the “Resolution”).

**Section 1.02. Definitions.**

(a) All capitalized terms which are used but not otherwise defined in this Series 2015X (Positive Train Control Project) Transportation Revenue Bond Supplemental

Resolution (the “Supplemental Resolution”) shall have the same meanings, respectively, as such terms are given by Section 102 of the Resolution.

(b) The following terms shall have the meanings set forth in the Financing Agreement:

“Additional Holder”  
“Administrator”  
“Advance”  
“Allowable Costs”  
“Advance Suspension Event”  
“Base Rate”  
“Commitment Termination Date”  
“Lender”  
“Loan”  
“Maximum Aggregate Principal Amount of the Loan”  
“Overdue Rate”  
“Ratings Downgrade Event”  
“Ratings Downgrade Rate”  
“RRIF Loan Obligations”

(c) In this Supplemental Resolution:

“Authorized Officer” shall include the officers of the Issuer designated as such in the Resolution, and the Chairman and Chief Executive Officer, the Chair of the Finance Committee, the Vice Chairman, the Chief Financial Officer or the Director, Finance, as well as any officer duly designated as “Acting” in said officer’s capacity, except that, for the purposes of any delegation set forth herein that does not expressly include any Assistant Secretary, “Authorized Officer” shall not include any Assistant Secretary of the Issuer.

“Board” shall mean the members of the Issuer acting as such pursuant to the provisions of the Issuer Act.

“Bond Counsel” shall mean 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 obligations by state and municipal entities selected by the Issuer.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and regulations thereunder.

“Federal Act” shall mean Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 et seq.

“Federal Government Holder” shall mean an Owner of any Series 2015X Bond that is an agency or instrumentality of the federal government.

“Financing Agreement” shall have the meaning given in the recitals hereof.

“Interest Payment Date” shall mean each May 15 and November 15 occurring after the date of issue of the Series 2015X Bonds until such Series 2015X Bonds are paid in full or, if any such day is not a Business Day, then the next succeeding Business Day.

“Principal Payment Date” shall mean each November 15 or, if any such day is not a Business Day, then the next succeeding Business Day, in the years determined as provided in Section 2.2 of the Financing Agreement.

“Transportation Secretary” shall mean the Secretary of Transportation of the United States of America, and his or her successors or assigns.

**Section 1.03. Authority for this Supplemental Resolution.** This Supplemental Resolution is adopted pursuant to the provisions of the Issuer Act and the Resolution.

## **ARTICLE II**

### **AUTHORIZATION OF SERIES 2015X BONDS**

**Section 2.01. Authorized Principal Amount, Designation and Series.** Pursuant to the provisions of the Resolution and in order to finance Allowable Costs, a Series of Transportation Revenue Obligations, which for purposes of this Supplemental Resolution shall collectively be referred to herein as the “Series 2015X Bonds”, constituting Taxable Bonds and Capital Cost Obligations, entitled to the benefit, protection and security of such provisions of the Resolution, are hereby authorized to be issued in an aggregate principal amount not exceeding the Maximum Aggregate Principal Amount of the Loan, the execution and delivery of the Financing Agreement being conclusive evidence of the amount of the Maximum Aggregate Principal Amount of the Loan permitted hereunder. The Series 2015 X Bonds shall be issued as evidence of the Issuer’s obligation to repay the Loan. Series 2015X Bonds shall be designated as, and shall be distinguished from the Obligations of all other Series by the title, “Transportation Revenue Bonds, Series 2015X (RRIF Loan – Positive Train Control Project)” or such other title or titles set forth in one or more Certificates of Determination.

The Series 2015X Bonds shall be initially issued as one interim bond certificate (the “Series 2015X Interim Bond”), authenticated by the Trustee, in substantially the form attached to the Financing Agreement as Exhibit G-I thereto in the Maximum Aggregate Principal Amount of the Loan, bearing interest at the Base Rate, subject to adjustment as provided in the Financing Agreement, and made payable to the Lender. The Lender is authorized to enter on the grid attached to the Series 2015X Interim Bond the amount of each Advance of the Loan made under the Financing Agreement, all as provided in the Financing Agreement.

As provided in Section 2.1 of the Financing Agreement, the Issuer shall deliver or cause to be delivered to the Administrator, in substitution for the Series 2015X Interim Bond as provided in the Financing Agreement, one final bond certificate (the “Series 2015X Final Bond”), authenticated by the Trustee, in substantially the form attached to the Financing Agreement as Exhibit G-II thereto in a principal amount equal to the aggregate outstanding principal amount of all Advances made under the Financing Agreement.

The Lender shall have the right at any time to assign its interest in the Series 2015X Bond, in whole or in part, to any Additional Holder as provided in Section 2.6 of the Financing Agreement; provided, however, that (i) the Administrator shall give the Issuer written notice of any such assignment and (ii) in the event that Lender intends to assign any interest in the Series 2015X Bond to any Additional Holders which are not a Qualified Institutional Buyers (as defined in the federal securities laws), then the Administrator shall give the Issuer not less than thirty (30) days prior written notice and shall provide such Additional Holders with any information disclosure document concerning the Issuer and the Series 2015X Bond which is delivered by the Issuer to the Administrator within such thirty-day period.

At any time after the issuance of the Series 2015X Final Bond, if requested in writing by the Administrator, Issuer shall, within a reasonable period of time and at its sole expense, register the Series 2015X Final Bond (in which case the Series 2015X Final Bond may be reissued in the form of Exhibit One to this Supplemental Resolution but without change to the essential terms of the Series 2015X Bond other than the deletion of provisions thereof not applicable to any Series 2015X Bond held by an Additional Holder as provided in Section 2.7 of the Financing Agreement) with The Depository Trust Company or its nominee (or such other depository as is then being employed generally for Issuer's Obligations) as a fully-registered security so as to provide for payments under and transfers of ownership interests in the Series 2015X Final Bond through The Depository Trust Company's Book-Entry-Only System (or such equivalent system as is then in use generally with respect to Issuer's Obligations).

As provided in the Financing Agreement, certain terms and conditions of the Series 2015X Bonds held by Additional Holders are different from the terms and conditions of the Series 2015X Bonds held by a Federal Government Holder. The Issuer shall deliver to each Additional Holder a Series 2015X Bond in substantially the form of Exhibit One hereto.

**Section 2.02. Purposes.** The Series 2015X Bonds are being issued to evidence the Issuer's repayment of the Loan in order to finance Allowable Costs under the Financing Agreement which are Capital Costs under the Resolution, all to the extent and in the manner provided in the Financing Agreement and this Supplemental Resolution.

**Section 2.03. Dates, Maturities, Principal Amounts and Interest.** The Series 2015X Interim Bond shall be dated the date of execution and delivery of the Financing Agreement. Unless otherwise provided in a Certificate of Determination, the Series 2015X Final Bond shall be dated as of the first Interest Payment Date falling after the Commitment Termination Date. Unless otherwise provided in a Certificate of Determination, each Series 2015X Bond issued in exchange or replacement for the Series 2015X Final Bond or in exchange or replacement for other Series 2015X Bonds other than the Series 2015X Final Bond and the Series 2015X Interim Bond shall be dated as of the most recent Interest Payment Date to which interest has been paid in full.

The outstanding principal amount of the Series 2015X Bonds, which shall be determined in accordance with the provisions of Section 2.2 of the Financing Agreement upon the delivery of the Series 2015X Final Bond, shall be paid in twenty (20) annual installments on each Principal Payment Date commencing on the Principal Payment Date determined upon the delivery of the Series 2015X Final Bond in accordance with the provisions of the Financing

Agreement. The Series 2015X Bonds shall mature on November 15, 2037, or such later date as may be agreed to by the Lender, it being understood that the Lender is under no obligation to extend the maturity date of the Loan. Principal on the Series 2015X Bonds shall be paid on each November 15 in accordance with the schedule attached to the Series 2015X Final Bond and determined as provided in Section 2.2(b) of the Financing Agreement.

Except as provided in the next paragraph, the outstanding principal amount of the Series 2015X Bonds shall bear interest at the Base Rate.

For Series 2015X Bonds that are owned by a Federal Government Holder only, in the event that an Advance Suspension Event under Section 6.1(a) of the Financing Agreement occurs and is continuing, the outstanding principal amount of each Series 2015X Bond and any past-due amount of interest shall bear interest at the Overdue Rate commencing on the thirtieth day after the relevant payment was due and continuing until such Advance Suspension Event is cured. For Series 2015X Bonds that are owned by a Federal Government Holder only, upon the occurrence and during the continuance of a Ratings Downgrade Event, the outstanding principal amount of each Series 2015X Bond shall bear interest at the Ratings Downgrade Rate. For the avoidance of doubt, if at any time both Ratings Downgrade Rate and the Overdue Rate apply, the outstanding principal amount of each Series 2015X Bond held by a Federal Government Holder and any past-due amount of interest shall bear interest at the rate per annum equal to the Base Rate plus four percent (4.00%). The Overdue Rate and the Ratings Downgrade Rate shall be calculated as provided in Section 2.2 of the Financing Agreement. Additional Holders shall not be entitled to receive interest at either the Overdue Rate or the Ratings Downgrade Rate.

**Section 2.04. Interest Payments.** The Series 2015X Bonds shall bear interest from their date or dates and be payable on each Interest Payment Date. Interest on the Series 2015X Bonds shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the date of each applicable Advance or last Interest Payment Date, as the case may be, to but excluding the Interest Payment Date on which such interest is due.

In the case of Series 2015X Bonds held by a Federal Government Holder, the Record Date for the payment of principal of and interest on the Series 2015X Bonds shall be the day prior to the Interest Payment Date or the Principal Payment Date, as the case may be. In the case of Series 2015X Bonds held by an Additional Holder, the Record Date for the payment of principal of and interest on the Series 2015X Bonds shall be the November 1 or May 1 immediately preceding such payment date.

**Section 2.05. Denominations, Numbers and Letters.** Unless otherwise provided in any Certificate of Determination, the Series 2015X Bonds shall be issued in fully registered form without coupons and, if issued to any Additional Holder, in the denomination of \$5,000 or any integral multiple thereof.

The Series 2015X Bonds shall be lettered and numbered as provided in any Certificate of Determination.

**Section 2.06. Places of Payment and Paying Agent.** With respect to Series 2015X Bonds owned by a Federal Government Holder, all payments of RRIF Loan Obligations shall be made, irrespective of any claim or right of counterclaim or set-off, on or before the date such payment is due by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time under the Financing Agreement for such purposes (subject, in the case of payments specified in clause (a) of the definition of RRIF Loan Obligations, to any requirements of The Depository Trust Company in the event of a transfer to an Additional Holder). The Federal Government Holder shall not be required to present or surrender the Series 2015X Bonds to the Issuer, the Trustee or the Paying Agent as a condition to the payment of any RRIF Loan Obligations.

Except as otherwise provided in any Certificate of Determination, with respect to Series 2015X Bonds owned by an Additional Holder, payment of principal and Redemption Price of the Series 2015X Bonds shall be payable to the Additional Holder that is the registered owner of each Series 2015X Bond when due upon presentation of such Series 2015X Bond at the principal corporate trust office of the Trustee.

Except as otherwise provided in any Certificate of Determination, interest on the registered Series 2015X Bonds owned by Additional Holders will be paid by check or draft mailed on the Interest Payment Date by the Paying Agent, to the registered owner at his address as it appears on the registration books or, at the option of any Owner that is an Additional Holder of at least one million dollars (\$1,000,000) in principal amount of the Series 2015X Bonds, by wire transfer in immediately available funds on each Interest Payment Date to such Owner thereof upon written notice from such Owner to the Trustee, at such address as the Trustee may from time to time notify such Owner, containing the wire transfer address (which shall be in the continental United States) to which such Owner wishes to have such wire directed, if such written notice is received not less than twenty (20) days prior to the related Interest Payment Date (such notice may refer to multiple interest payments).

**Section 2.07. Redemption Prices and Terms.** With respect to Series 2015X Bonds owned by a Federal Government Holder, the Series 2015X Bonds are subject to redemption in whole or in part at any time or from time to time, without penalty or premium, as provided in Section 2.4 of the Financing Agreement. With respect to each redemption, the Issuer shall deliver written notice of such redemption to the Federal Government Holder no less than ten (10) nor more than thirty (30) days prior to the date set for redemption. All partial prepayments of principal prior to the delivery of the Series 2015X Final Bond shall be recorded by the Administrator on Schedule A to the Series 2015X Interim Bond or, if made after the delivery of the Series 2015X Final Bond, shall be applied to future installments of principal due on the Series 2015X Bonds in the inverse order of maturity.

With respect to Series 2015X Bonds owned by Additional Holders, the Series 2015X Bonds are subject to redemption in whole or in part at any time or from time to time, without penalty or premium, at a Redemption Price equal to 100% of the principal amount thereof plus interest accrued thereon to the redemption date. With respect to each redemption, the Issuer shall deliver written notice of such redemption to the Owners (or to the Securities Depository as provided in a Certificate of Determination) no less than twenty (20) nor more than ninety (90) days prior to the date set for redemption.

**Section 2.08. Transfers to Additional Holders.** Except as provided in the next sentence, neither the Series 2015X Interim Bond nor the Series 2015X Final Bond delivered to the Lender or any other Federal Government Holder will be registered with a Securities Depository. As provided in Section 2.6(b) of the Financing Agreement, the Administrator may request that the Issuer register the Series 2015X Bonds held by a Federal Government Holder with a Securities Depository.

As provided in Section 2.6 of the Financing Agreement, the Lender has the right at any time to assign its interest in the Series 2015X Bonds, in whole or in part, to any Additional Holder. In connection with the delivery of Series 2015X Bonds to Additional Holders, the Issuer may provide for the registration of such Series 2015X Bonds to a Securities Depository, as provided in a Certificate of Determination.

Any Additional Holders of an interest in the Series 2015X Bonds shall have only the rights and benefits conferred on Owners by the Resolution, this Supplemental Resolution and the related Certificates of Determination, and the Series 2015X Bonds, and shall have none of the additional rights and benefits conferred by the Financing Agreement (including, without limitation, those conferred under Articles IV, V and VI of the Financing Agreement and any right to receive the Ratings Downgrade Rate or the Overdue Rate). The additional rights and remedies under the Financing Agreement shall belong to and be exercisable solely by and for the benefit of Lender and the Administrator and the other Federal Government Holders. Nothing contained in this Supplemental Resolution or the Financing Agreement shall confer upon any Additional Holder any such rights or remedies under the Financing Agreement or the right to enforce any such rights or remedies. Interest on the Series 2015X Bonds payable to any Additional Holder shall not be excludable from gross income for federal income tax purposes.

**Section 2.09. Delegation to an Authorized Officer.** (a) There is hereby delegated to each Authorized Officer, subject to the limitations contained in this Supplemental Resolution, the following powers with respect to the Series 2015X Bonds:

(i) to execute and deliver for and on behalf and in the name of the Issuer, to the extent determined by such Authorized Officer to be necessary or convenient, the Financing Agreement, substantially in the form presented to the Board at this meeting, with such changes, omissions, insertions and revisions as such officer shall deem advisable, said execution being conclusive evidence of the approval of such changes, omissions, insertions and revisions;

(ii) to determine the terms and conditions relating to the Loan and the issuance of the Series 2015X Bonds as evidence of the obligation of the Issuer to repay the Loan, including the Maximum Aggregate Principal Amount of the Loan, and to take all steps necessary or convenient to satisfy the conditions precedent necessary to close the Loan, including the determination by the Chairman and Chief Executive Officer or the Vice Chairman of the amount of the credit risk premium, if any, that may be assessed against the Issuer in order to make the total cost of the Loan to the Issuer economically beneficial when compared to the cost of other available borrowings for the Allowable Costs; such determination by the Chairman and Chief Executive Officer or the Vice Chairman to be evidenced by a certificate of such officer attached to the Certificate of Determination.

(iii) to determine the amortization of the principal of the Loan and the Series 2015X Bonds consistent with the requirements of Section 2.2 of the Financing Agreement; and

(iv) to take all actions required for the Series 2015X Bonds to be eligible, where appropriate under the terms of the Financing Agreement, under the rules and regulations of The Depository Trust Company (“DTC”) for investment and trading as uncertificated securities, to execute and deliver a standard form of letter of representation with DTC and, notwithstanding any provisions to the contrary contained in this Supplemental Resolution, to include in any Certificate of Determination such terms and provisions as may be appropriate or necessary to provide for uncertificated securities in lieu of Series 2015X Bonds issuable in fully registered form.

(b) Any Authorized Officer shall execute any Certificate of Determination evidencing the determinations made pursuant to this Supplemental Resolution and such Certificate of Determination shall be conclusive evidence of the determinations of such Authorized Officer, as stated therein. More than one Certificate of Determination may be delivered to the extent necessary or advisable from time to time to comply with the provisions of the Financing Agreement, or other authority is exercised under this Supplemental Resolution from time to time and each such Certificate of Determination shall be delivered to the Trustee prior to the authentication and delivery of the respective Series 2015X Bonds by the Trustee or other documentation. Determinations set forth in any Certificate of Determination shall have the same effect as if set forth in this Supplemental Resolution. Any such Authorized Officer may exercise any authority delegated under this Supplemental Resolution from time to time following issuance of any Series 2015X Bonds, as appropriate for any purposes.

(c) Any Authorized Officer shall take all steps necessary or convenient to comply with the terms and conditions of the Loan and the Financing Agreement through the termination thereof, including the submission of the documentation necessary to request Advances and complying with the covenants set forth in the Financing Agreement.

**Section 2.10. Forms of Series 2015X Bonds and Trustee’s Authentication Certificate.** The forms of the Series 2015X Interim Bond and the Series 2015X Final Bond, and the Trustee’s certificate of authentication, shall be substantially the forms set forth as Exhibit G-I and Exhibit G-II, respectively, of the Financing Agreement. Subject to the provisions of the Resolution, the form of registered Series 2015X Bonds delivered to Additional Holders, and the Trustee’s certificate of authentication, shall be substantially in the form set forth in Exhibit One to the Resolution including, if necessary, any changes to comply with the requirements of DTC or the provisions of this Supplemental Resolution or any Certificate of Determination.

**Section 2.11. Appointment of Trustee and Paying Agent.** Unless otherwise provided by Certificate of Determination, The Bank of New York Mellon, as successor in interest to JPMorgan Chase Bank, N.A., shall be the Trustee under the Resolution and the Paying Agent for the Series 2015X Bonds.

## ARTICLE III

### **DISPOSITION OF ADVANCES**

**Section 3.01. Disposition of Advances.** Any proceeds of the Advances under the Financing Agreement, if not immediately used to reimburse the Issuer for Allowable Costs under the Financing Agreement that are Capital Costs under the Resolution previously paid, shall be deposited, simultaneously with the delivery of the proceeds of the Advance, in the Proceeds Account which is deemed to be established for the Series 2015X Bonds in the Proceeds Fund to be applied to the payment of Allowable Costs under the Financing Agreement that are Capital Costs under the Resolution.

**Exhibit One**

**FORM OF SERIES 2015X FINAL BOND  
DELIVERED TO ADDITIONAL HOLDERS**

**THE OBLIGATIONS 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 Series 2015X Bond may be paid or redeemed without surrender hereof to the Paying Agent. DTC or a nominee, transferee or assignee of DTC of this Series 2015X 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  
TRANSPORTATION REVENUE BOND, SERIES 2015X  
(RRIF Loan – Positive Train Control Project)**

**NO. 15X-RRIF-R-\_\_**

**Principal Amount: \$\_\_**

**Interest Rate**

Base Rate

**Maturity Date**

November 15, 2037

**Dated Date**

\_\_\_\_, 20\_\_

Registered Owner:

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 Trust Estate defined below, as provided in the hereinafter defined Financing Agreement, the Principal Amount set forth above, as such Principal Amount may be decreased as provided in the Financing Agreement, 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 The Bank of New York Mellon, as Paying Agent, from the Interest Payment Date (as defined in the hereinafter defined Financing Agreement) immediately preceding the date hereof at the Base Rate, payable on each Interest Payment Date until the MTA's obligation with respect to the payment of such Principal Amount shall be discharged. Interest on this Series 2015X Bond shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the last Interest Payment Date to but excluding the Interest Payment Date on which such interest is due.

INTEREST PAID UNDER THIS SERIES 2015X BOND IS NOT EXCLUDABLE FROM GROSS INCOME FOR UNITED STATES FEDERAL INCOME TAX PURPOSES.

"Financing Agreement" means the Financing Agreement, dated as of \_\_\_\_, 2014, between MTA and the United States of America (the "Lender"), represented by the Secretary of Transportation, acting through the Federal Railroad Administrator (the "Administrator").

"Interest Payment Date" means each May 15 and November 15 occurring after the Dated Date set forth above.

"Base Rate" means the rate of \_\_\_\_% per annum.

Payments of principal and interest will be paid by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time under the Financing Agreement.

This Bond is one of a duly authorized issue of obligations of the MTA designated as its "Transportation Revenue 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 March 26, 2002, entitled "General Resolution Authorizing Transportation Revenue Obligations," as supplemented. Said resolution, as supplemented and amended, is herein called the "Resolution." This Bond is one of a series of Bonds designated as "Transportation Revenue Bonds, Series 2015X" (herein called the "Series 2015X Bonds"), issued in the principal amount of \$\_\_\_\_ under said Resolution. All capitalized terms used but not otherwise defined herein or in the Financing Agreement 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 The Bank of New York Mellon, 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 2015X Bond, 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 2015X Bond with respect thereto, and the terms and conditions upon which the Bonds are issued and 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 "Trust Estate," being (i) all Revenues and Net Proceeds of Qualified Agreements, (ii) the proceeds of the sale of the Obligations, (iii) all Funds, Accounts and Subaccounts established by the Resolution (subject to specified provisions of the Resolution) including the investments, if any, thereof, (iv) the Interagency Agreement, and (v) all funds, moneys and securities and any and all other rights and interest in property, whether tangible or intangible, from time to time hereafter received by the Trustee as additional security under the Resolution.

Any Additional Holders of an interest in this Series 2015X Bond shall have only the rights and benefits conferred on owners by the Resolution, and shall have none of the additional rights and benefits conferred by the Financing Agreement (including, without limitation, those conferred under Articles IV, V and VI of the Financing Agreement and any right to receive the Ratings Downgrade Rate and the Overdue Rate, as each is defined in the Financing Agreement). The additional rights and remedies under the Financing Agreement shall belong to and be exercisable solely by and for the benefit of Lender and the Administrator and other federal government holders. Nothing contained in the Financing Agreement shall confer upon any Additional Holder any such rights or remedies under the Financing Agreement or the right to enforce any such rights or remedies.

"Additional Holder" means any individual or entity other than an agency or instrumentality of the federal government, to which all or a portion of this Series 2015X Bond may be transferred by the Lender or by any transferee of Lender.

To the extent provided in the Resolution, the Bonds may be issued from time to time pursuant to Supplemental Resolutions in one or more series, 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 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 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 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 basis with the Bonds with respect to all right, title and interest of the MTA in the 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.

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 2015X Bond or Series 2015X 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.

This Series 2015X Bond may be transferred in accordance with the provisions of Section 2.6 of the Financing Agreement.

The Series 2015X Bond is subject to redemption prior to maturity on any date, at the option of MTA, in whole or in part, without penalty or premium, upon not less than twenty (20) nor more than ninety (90) calendar days' prior written notice to the owners, at 100% of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date. Any partial payments of principal shall be applied to future installments due on this Series 2015X Bond in the inverse order of maturity, and Schedule A hereto shall be revised to reflect such redemption.

Pursuant to the MTA Act, the State, upon providing sufficient funds, may require MTA to redeem the Series 2015X Bond, prior to maturity, as a whole, on any Interest Payment Date not less than twenty years after the date of issue of the Series 2015X Bond, at 105% of their face value and accrued interest or at such lower redemption price provided for the Series 2015X Bond in the case of redemption as a whole on the redemption date. The MTA Act further provides that the City, upon furnishing sufficient funds, may require MTA to redeem the Series 2015X Bond, as a whole, but only in accordance with the terms upon which the Series 2015X Bond is otherwise redeemable.

If the Trustee gives an unconditional notice of redemption, then on the redemption date the Series 2015X Bond will become due and payable. If the Trustee gives a conditional notice of redemption and holds money to pay the redemption price of the Series 2015X Bond, then on the redemption date the Series 2015X Bond will become due and payable. If on the redemption date the Trustee holds money to pay the Series 2015X Bond, thereafter, no interest will accrue on the

Series 2015X Bond, and the bondholder's only right will be to receive payment of the redemption price upon surrender of the Series 2015X Bond.

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 2015X Bond, 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 of Finance

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

**THE BANK OF NEW YORK MELLON,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_, 20\_\_

## ASSIGNMENT

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

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[PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER OF ASSIGNEE]

---

[PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE]

the within Bond of the Metropolitan Transportation Authority and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

In the Presence of:

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

NOTE: The signature to this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

## Schedule A

### Schedule of Redemptions or Payments of Principal

<u>Interest Payment Date</u>	<u>Beginning Balance</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>Total Amount Due</u>	<u>Ending Balance</u>
5/15/2018			--		
11/15/2018					
5/15/2019			--		
11/15/2019					
5/15/2020			--		
11/15/2020					
5/15/2021			--		
11/15/2021					
5/15/2022			--		
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5/15/2033			--		
11/15/2033					
5/15/2034			--		
11/15/2034					
5/15/2035			--		
11/15/2035					

5/15/2036			--		
11/15/2036					
5/15/2037			--		
11/15/2037					

**FINANCING AGREEMENT**

dated as of [●], 2015

between

The METROPOLITAN TRANSPORTATION AUTHORITY,  
a public benefit corporation of the State of New York

and

The UNITED STATES OF AMERICA,  
represented by the  
SECRETARY OF TRANSPORTATION  
acting through the  
FEDERAL RAILROAD ADMINISTRATOR

Positive Train Control Project

PO#: RRIF-2015-0036

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## TABLE OF CONTENTS

	Page
<b>Article I DEFINITIONS AND INTERPRETATION.....</b>	<b>2</b>
Section 1.1    Definitions.....	2
Section 1.2    Interpretation.....	7
<b>Article II ISSUANCE OF DEBT .....</b>	<b>8</b>
Section 2.1    Issuance of Debt.....	8
Section 2.2    Terms of the Series 2015X Bond.....	9
Section 2.3    Disbursement Conditions.....	10
Section 2.4    Prepayment. ....	13
Section 2.5    Effect of Other Loan Documents.....	13
Section 2.6    Transfer of Series 2015X Bond. ....	14
Section 2.7    Obligations Surviving Transfer.....	14
<b>Article III REPRESENTATIONS AND WARRANTIES OF BORROWER.....</b>	<b>15</b>
Section 3.1    Organization, Authority and Good Standing. ....	15
Section 3.2    Validity and Enforceability of Loan Documents. ....	16
Section 3.3    No Bankruptcy of Current Authorized Officers and Directors; No Felony Conviction or Securities Law Violation. ....	17
Section 3.4    No Changes Since Most Recent Financial Statements. ....	17
Section 3.5    Material Contracts, Judgments, Decrees, Obligations or Liabilities. ....	17
Section 3.6    Material Litigation. ....	17
Section 3.7    Defaults Under Existing Agreements. ....	18
Section 3.8    Completeness of Information.....	18
Section 3.9    Tax Returns.....	18
Section 3.10    Related Persons.....	18
Section 3.11    Allowable Costs.....	19
Section 3.12    Public Benefit.....	19
Section 3.13    No Debarment or Suspension. ....	19
Section 3.14    Committed Funding. ....	19
Section 3.15    Restriction On Use of Funds.....	20
<b>Article IV AFFIRMATIVE COVENANTS OF BORROWER.....</b>	<b>20</b>
Section 4.1    Further Documentation. ....	20
Section 4.2    Use of Proceeds.....	21
Section 4.3    Completion of Project; Compliance with Grant Agreements. ....	21
Section 4.4    Pay Taxes and Other Claims.....	21
Section 4.5    Maintenance of Insurance. ....	21
Section 4.6    Operation, Maintenance and Repair of Rail Properties. ....	21
Section 4.7    Financial Statements; Notice of Certain Events. ....	22
Section 4.8    Project Reports.....	22
Section 4.9    Single Audit Act. ....	22
Section 4.10    Signed Statement Regarding Breach. ....	22
Section 4.11    Compliance with Applicable Laws.....	22
Section 4.12    Additional Information on Borrower's Performance.....	23

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 4.13 Audit and Inspection Rights.....	24
Section 4.14 Budgets. ....	24
Section 4.15 Minutes of Meetings. ....	24
Section 4.16 Notification of Events. ....	24
Section 4.17 Competitive Contracting. ....	25
Section 4.18 Debarment and Suspension. ....	25
Section 4.19 Small and Disadvantaged Businesses. ....	26
Section 4.20 Cargo Preference.....	27
Section 4.21 Domestic Buying Preference .....	27
Section 4.22 Employee Protection and Prevailing Wages.....	27
Section 4.23 Expenses. ....	28
Section 4.24 Project Funding.....	28
<b>Article V NEGATIVE COVENANTS OF BORROWER.....</b>	<b>28</b>
Section 5.1 Indebtedness.....	28
Section 5.2 Purchase of Investment Securities, Lending or Advancing Funds. ....	29
Section 5.3 Purchase or Lease of Assets.....	29
Section 5.4 Deployment of Assets.....	30
Section 5.5 Prohibited Interest. ....	30
Section 5.6 Merger, Acquisition, or Sale of Assets. ....	30
Section 5.7 Encumbrances. ....	31
Section 5.8 Curtailment or Discontinuance of Business.....	31
Section 5.9 Abandonment of Rail Lines.....	31
Section 5.10 Change of Control.....	31
<b>Article VI ADVANCE SUSPENSION EVENTS AND REMEDIES .....</b>	<b>31</b>
Section 6.1 Advance Suspension Events. ....	31
Section 6.2 Remedies.....	33
<b>Article VII MISCELLANEOUS PROVISIONS.....</b>	<b>35</b>
Section 7.1 Entire Agreement. ....	35
Section 7.2 Term.....	35
Section 7.3 Amendments and Waivers. ....	35
Section 7.4 Parties Bound; Right to Assign.....	35
Section 7.5 Table of Contents and Headings. ....	35
Section 7.6 Notices; Action to be Taken. ....	35
Section 7.7 Release of Information.....	36
Section 7.8 No Waiver by Administrator. ....	37
Section 7.9 Waiver of Jury Trial.....	37
Section 7.10 Governing Law. ....	37
Section 7.11 Indemnification. ....	37
Section 7.12 Representatives. ....	38
Section 7.13 Counterparts.....	38

**TABLE OF CONTENTS**  
(continued)

	<b>Page</b>
Section 7.14 Severability. ....	38
Section 7.15 No Third Party Rights. ....	38
Section 7.16 Remedies Not Exclusive. ....	38
Exhibit A: Form of Advance Certificate	
Exhibit B: RRIF Project Description	
Exhibit C: Form of Incumbency Certificate	
Exhibit D: Interagency Agreement	
Exhibit E: RRIF Certificate of Determination	
Exhibit F: RRIF Supplemental Resolution	
Exhibit G: Form of Series 2015X Bond	
Exhibit H: Transportation Resolution	
Exhibit I: Form of Interest Payment Date Certificate	
Exhibit J: Employee Protection Appendix	
Schedule 1: Legal Opinions	
Schedule 2: Material Litigation	

## FINANCING AGREEMENT

This FINANCING AGREEMENT (this “Agreement”) is made and entered into on this [●] day of [●], 2015, in Washington, D.C., by and between the UNITED STATES OF AMERICA represented by the SECRETARY OF TRANSPORTATION (the “Secretary”) acting through the FEDERAL RAILROAD ADMINISTRATOR (“Lender”) and the METROPOLITAN TRANSPORTATION AUTHORITY, a public benefit corporation of the State of New York (“Borrower”).

### RECITALS

WHEREAS, the Secretary is authorized, pursuant to the Act, to provide financial assistance for such purposes consistent with the Act as may be approved by the Secretary and the Secretary has duly delegated the Secretary’s authority under the Act to the Administrator;

WHEREAS, pursuant to the Act, Borrower has submitted an Application to the Administrator requesting a Loan in the amount of Nine Hundred Sixty Seven Million One Hundred Thousand Dollars (\$967,100,000);

WHEREAS, the proceeds of the Loan will finance Allowable Costs incurred by Borrower in connection with certain capital projects, including its Positive Train Control Project which will install Positive Train Control on The Long Island Rail Road Company and Metro-North Commuter Railroad Company tracks as and where required by applicable regulations;

WHEREAS, Borrower’s obligation to repay the Loan will be secured by a pledge of certain of Borrower’s gross revenues on a parity basis with the holders of Borrower’s Obligations;

WHEREAS, Borrower’s Board of Directors has authorized the execution and delivery of this Agreement and the issuance of the Series 2015X Bond pursuant to the Transportation Resolution by duly adopting the RRIF Supplemental Resolution;

WHEREAS, Borrower has committed to utilize the savings in debt service expense associated with the Loan in its programs to maintain its transportation systems in a state of good repair; and

WHEREAS, the Administrator has made all findings under the Act required to issue the Loan and, therefore, is willing to enter into this Agreement and provide the Loan pursuant to the Act in accordance with the terms and conditions hereof.

NOW, THEREFORE, in consideration of the premises and the mutual undertakings hereinafter set forth, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS AND INTERPRETATION

#### Section 1.1 Definitions.

(a) “Act” means Title V of the Railroad Revitalization and Regulatory Reform Act of 1976, as amended, 45 U.S.C. 821 et seq.

(b) “Additional Holder” means any individual or entity other than an agency or instrumentality of the federal government, to which all or a portion of any Series 2015X Bond may be transferred by Lender or by any transferee of Lender.

(c) “Administrator” means the Federal Railroad Administrator or the Administrator’s designee.

(d) “Advance” means an advance of proceeds of the Loan made by the Administrator to Borrower pursuant to Section 2.1.

(e) “Advance Certificate” means, with respect to each Advance, a certificate duly executed by an Approved Officer of Borrower and issued to the Administrator pursuant to Section 2.3(a) which shall: (i) be in substantially the form of Exhibit A; (ii) specify the amount to be advanced and the proposed Advance Date; (iii) be accompanied by or include as attachments thereto documentary evidence reasonably satisfactory to the Administrator of the costs proposed to be financed with proceeds of the Loan which are the subject of such Advance and of their eligibility as Allowable Costs (which may include final invoices due but not yet paid); (iv) certify that all such costs are Allowable Costs; and (v) certify that, as of the Advance Date, all conditions precedent set out in Article II will be satisfied and no Material Adverse Effect, Breach or Advance Suspension Event has occurred and is continuing or will occur as the result of the Advance.

(f) “Advance Date” means, with respect to any Advance, the Business Day on which such Advance is made after satisfaction of all conditions thereto set out in Section 2.3.

(g) “Advance Suspension Event” has the meaning given in Section 6.1.

(h) “Agreement” means this Financing Agreement together with all Exhibits (except for other Loan Documents) and Schedules hereto.

(i) “Allowable Costs” means those costs which (i) were incurred by Borrower (whether directly or indirectly through another Related Entity) in furtherance of the RRIF Project within the parameters of the budget provided as a part of the RRIF Project Description, (ii) are eligible to be financed under Section 822(b) of the Act and Section 4.17 hereof, (iii) have not previously been financed by any prior Advance or from any other source of federal funds; and (iv) were approved by the Metropolitan Transportation Authority Capital Program Review Board and all other required corporate action of the Borrower.

(j) “Application” means the application, dated April 21, 2011, as updated and amended on January 27, 2014 to include the Positive Train Control Project, submitted by Borrower to the Administrator to support Borrower’s request for the Loan, including all exhibits, attachments and revisions thereto and supplementary materials submitted in support thereof.

(k) “Approved Officer” means an Authorized Officer with respect to whom an Incumbency Certificate has been delivered by Borrower to the Administrator.

(l) “Authorized Investments” has the meaning given in the Transportation Resolution.

(m) “Authorized Officer” means an “Authorized Officer” as defined in the Transportation Resolution.

(n) “Base Rate” means the rate of 2.38% per annum.

(o) “Board of Directors” means the Borrower’s duly appointed and confirmed board of Directors.

(p) “Borrower” means the Metropolitan Transportation Authority, a public benefit corporation of the State of New York.

(q) "Borrower's Knowledge" means to the actual knowledge of any Authorized Officer, Borrower's chief regulatory compliance officer or Borrower's general counsel, it being agreed that, within the thirty (30) days immediately preceding the date of this Agreement some one of the foregoing individuals has undertaken, and not less often than annually during the term of this Agreement some one of the foregoing individuals shall undertake, a reasonable investigation of the relevant matters.

(r) “Breach” means any event, circumstance or condition which with the lapse of time or the giving of notice or both would constitute an Advance Suspension Event.

(s) “Business” means the transportation related services and activities conducted by the Related Entities as of the date hereof in accordance with the MTA Act, the TA Act and the TBTA Act (including the ownership and operation of certain real estate assets and investment in certain financial assets intended to provide revenue to support such transportation related services and activities) together with such future expansions of such transportation related services and activities as may be approved by the Board of Directors.

(t) “Business Day” has the meaning given in the Transportation Resolution.

(u) “Commitment Termination Date” means the earliest of: (i) May 14, 2018 (or such later date as the Administrator may agree in writing in his or her sole discretion upon the request of the Borrower), (ii) the Advance Date on which the Maximum Principal Amount of the Loan has been advanced, and (iii) in the event an Advance Suspension Event

has occurred and is continuing, the date on which the FRA notifies the Borrower of the termination of its commitment to make Advances.

(v) “Credit Risk Premium” means a fee that shall be paid by Borrower in accordance with the Act as a condition precedent to each Advance of proceeds of the Loan in an amount equal to [●]% of the Advance amount.

(w) “Director” means any person duly appointed by the Governor of the State of New York with the advice and consent of the New York State Senate serving from time to time as a “member” of the Borrower (within the meaning of Section 1263 of Title 11 of Article 5 of the New York Public Authorities law) who is entitled to a vote (whole or fractional) on resolutions of the Board of Directors.

(x) “Grant Agreements” means (i) the Grant/Cooperative Agreement (FR-TEC-0005-11-01-00), dated on or about January 14, 2011, between the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator and the Borrower and (ii) each other grant or cooperative agreement entered into from time to time between the United States of America, represented by the Secretary of Transportation, and the Borrower or any other Related Entity relating to the Positive Train Control Project, each as amended and supplemented from time to time.

(y) “Incumbency Certificate” means, with respect to any Approved Officer, a certification executed by the Secretary of Borrower in the form of Exhibit C.

(z) “Interagency Agreement” has the meaning given in the Transportation Resolution; a copy of the Interagency Agreement is attached as Exhibit D.

(aa) “Interest Payment Date” means each May 15 and November 15 beginning after the first Advance Date and in any event not before November 15, 2015 until such Series 2015X Bond is paid in full or, if any such day is not a Business Day, then the next succeeding Business Day.

(bb) “Lender” means the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator.

(cc) “Loan” means a loan made by Lender to Borrower pursuant to the terms and conditions of the Act, this Agreement and the other Loan Documents in an amount not to exceed the Maximum Aggregate Principal Amount.

(dd) “Loan Documents” means this Agreement, the Transportation Resolution, the Interagency Agreement, the RRIF Supplemental Resolution, the RRIF Certificate of Determination and the Series 2015X Bond, each as the same may be amended, supplemented or restated in accordance with the terms thereof and hereof.

(ee) “Material Adverse Effect” means:

- (i) a material adverse change after the date hereof in (a) the Business, facilities, property, operations or financial condition of the

Borrower and its Related Entities taken as a whole, (b) the ability of Borrower or any other Related Entity to perform or comply with any of its material obligations under the Loan Documents, (c) the validity, priority or enforceability of the liens on the Trust Estate in favor of the Trustee or (d) the rights or benefits available to the Lender under the Loan Documents; or

- (ii) a change after the date hereof in applicable law or regulations thereunder or interpretations thereof by any court of competent jurisdiction that, in the opinion of the Administrator or his counsel, would (a) allow any Related Entity to obtain protection from its creditors under chapter 9 of title 11 of the United States Code or any other state or federal bankruptcy or insolvency law, or (b) make it illegal or contrary to public policy for Borrower or any other Related Entity to enter into or perform any material obligation under this Agreement or any other Loan Document.

(ff) “Maximum Aggregate Principal Amount” means Nine Hundred Sixty Seven Million One Hundred Thousand Dollars (\$967,100,000)) which shall be the maximum total principal amount of the Series 2015X Bond.

(gg) "MTA Act" has the meaning given in the Transportation Resolution.

(hh) “Obligation” has the meaning given in the Transportation Resolution.

(ii) “Overdue Rate” means the sum of (i) whichever of the Base Rate or the Ratings Downgrade Rate is applicable at the relevant time and (ii) two percent (2.00%) per annum.

(jj) “Owner” has the meaning given in the Transportation Resolution.

(kk) “Principal Payment Date” means each November 15 beginning November 15, 2018 to and including November 15, 2037 or, if any such day is not a Business Day, then the next succeeding Business Day.

(ll) “Positive Train Control Project” means the Borrower’s Positive Train Control Project as described in the Application.

(mm) “Rail Lines” means the railroad systems of The Long Island Rail Road Company and Metro-North Commuter Railroad Company.

(nn) “Rating Agency” means each nationally recognized and federally accredited statistical credit rating organization then maintaining a rating at the request of Borrower on the Borrower’s Obligations issued under the Transportation Resolution, including, without limitation, the Series 2015X Bond.

(oo) "Ratings Downgrade Event" means the Borrower's failure for any reason, during any period of one hundred eighty (180) consecutive days or more, to maintain

the following unenhanced long-term credit ratings, or higher ratings, issued by at least two Rating Agencies on Borrower's Obligations under the Transportation Resolution, including, without limitation, the Series 2015X Bond: (i) A- in the case of Standard & Poor's Rating Services; (ii) A3 in the case of Moody's Investors Service, Inc.; (iii) A- in the case of Fitch Ratings, and; (iv) in the case of any other Rating Agency, such rating level as is generally recognized to be equivalent to the foregoing ratings.

(pp) "Ratings Downgrade Rate" means the sum of the Base Rate and two percent (2.00%) per annum.

(qq) "Related Entity" means each of the Borrower, the Triborough Bridge and Tunnel Authority (TBTA), the Manhattan and Bronx Surface Transportation Operating Authority (MaBSTOA), the New York City Transit Authority (Transit Authority), the Metro-North Commuter Railroad Company (MNCRC), The Long Island Rail Road Company (LIRR), the Staten Island Rapid Transit Operating Authority (SIRTOA) and the MTA Bus Company (MTA Bus) (as further defined, in each case, in the Transportation Resolution) and any successor entity to any thereof, or any material affiliate or subsidiary of any thereof now or hereafter established the revenues of which constitute any part of the Trust Estate.

(rr) "RRIF Certificate of Determination" means the certificate of an Authorized Officer of Borrower fixing the terms, conditions and other details of the Loan by reference to the terms and conditions of this Agreement in accordance with the delegation of power to do so under a the RRIF Supplemental Resolution, a copy of which is attached as Exhibit E, as the same may be supplemented in connection with each Advance.

(ss) "RRIF Loan Obligations" means (a) all unpaid principal of and accrued and unpaid interest on the Loan (whether at the Base Rate, Ratings Downgrade Rate or Overdue Rate and including interest which accrues during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) and (b) all accrued and unpaid fees and all expenses, reimbursements, indemnities and other payment and performance obligations of the Borrower arising under any of the Loan Documents and owed to the Lender, the Administrator or any party indemnified under this Agreement.

(tt) "RRIF Project" means, collectively, those portions of the Positive Train Control Project which are identified in Exhibit B.

(uu) "RRIF Supplemental Resolution" means the Supplemental Resolution adopted by Borrower on [●], 2015 authorizing the Loan and Borrower's entry into this Agreement pursuant to the Transportation Resolution a copy of which is attached as Exhibit F.

(vv) "Rule 15c2-12" means Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (17 CFR 15c2-12), as amended from time to time, or any successor law, rule or regulation thereto.

(ww) "Secretary" means Secretary of the Department of Transportation.

(xx) "Series 2015X Bond" means (i) the Series 2015X Interim Bond or Bonds issued pursuant to Section 2.1(a) evidencing each Advance of proceeds of the Loan by Lender to finance Allowable Costs and (ii) the Series 2015X Final Bond for the full amount of the Loan to be issued pursuant to Section 2.1(d) after the Commitment Termination Date.

(yy) "Series 2015X Final Bond" means a Series 2015X Bond or Bonds issued pursuant to Section 2.1(d) after the Commitment Termination Date in the initial principal amount equal to the aggregate outstanding principal amount of all Advances made under this Agreement which may be either in the form attached hereto as Exhibit G-II or, in the event Lender exercises its right under Section 2.6(b), in substantially the form provided as Exhibit One to the Transportation Resolution revised *mutatis mutandis* to reflect the economic terms and conditions of this Agreement.

(zz) "Series 2015X Interim Bond" means a Series 2015X Bond or Bonds issued pursuant to Section 2.1(a) in the form attached hereto as Exhibit G-I evidencing each Advance of proceeds of the Loan by Lender to finance Allowable Costs.

(aaa) "TA Act" has the meaning given in the Transportation Resolution.

(bbb) "TBTA Act" has the meaning given in the Transportation Resolution.

(ccc) "Transportation Resolution" means the Metropolitan Transportation Authority General Resolution Authorizing Transportation Revenue Obligations, adopted on March 26, 2002, including Annex A thereto (Standard Resolution Provisions), as amended and supplemented from time to time in accordance with the terms thereof, a copy of which is attached as Exhibit H.

(ddd) "Trustee" has the meaning given in the Transportation Resolution.

(eee) "Trust Estate" has the meaning given in the Transportation Resolution.

## **Section 1.2 Interpretation.**

Unless the context shall otherwise require, the words "hereto," "herein," "hereof" and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and *vice versa*. Words importing the singular number shall include the plural number and *vice versa* unless the context shall otherwise require. Unless the context shall otherwise require, references to sections, subsections and provisions are to the applicable sections, subsections and provisions of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement or other document shall be deemed to include any amendments to, or modifications or restatements of, such documents that are approved in accordance with the terms thereof and hereof. Unless the context shall otherwise require, all references to statutes and regulations shall be deemed to include any amendments, supplements or successors thereto or re-codifications thereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder

by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 7.5 and signed by a duly authorized representative of such party.

## ARTICLE II

### ISSUANCE OF DEBT

#### Section 2.1 Issuance of Debt.

(a) Subject to the provisions of the Act and the terms and conditions hereof, including, without limitation, the conditions set out in Section 2.3, on each Advance Date: (i) Borrower shall borrow from Lender the amount equal to the Allowable Costs evidenced by the applicable Advance Certificate delivered by Borrower to the Administrator pursuant to Section 2.3(b) and (ii) Lender shall lend such amount to Borrower by making an Advance thereof in immediately available funds to the bank and account specified by Borrower in the Advance Certificate. The amount of any Advance, when added to all prior such Advances, shall not exceed a Maximum Aggregate Principal Amount.

(b) No Advance shall be made after the Commitment Termination Date, at which date, the commitment of Lender to make Advances hereunder, unless extended in writing by the Administrator, shall terminate whether or not the full amount of the Loan has been advanced. No more than one Advance may be requested by Borrower to be made in any period of thirty (30) consecutive calendar days. No Advance, except the final Advance, may be requested by Borrower for an amount of less than \$25 million.

(c) Lender's obligation to make Advances shall be automatically suspended upon the occurrence of, and shall remain suspended for the duration of: (i) any Advance Suspension Event or (ii) a cessation of operations of the Federal Railroad Administration resulting from the lack of appropriation of funds from the United States Congress to continue to operate unless the Federal Railroad Administration's Railroad Rehabilitation and Improvement Financing Program has been specifically delegated or re-assigned to another agency of the Federal government having express authority and appropriated funds to carry out such program, including the issuance of the Loan.

(d) As evidence of the Borrower's obligation to repay the Loan, on or prior to the date of this Agreement, Borrower shall issue and deliver the Series 2015X Interim Bond in the Maximum Aggregate Principal Amount of the Loan and bearing interest at the rate specified in Section 2.2. The Lender is hereby authorized to enter on the grid attached to the Series 2015X Interim Bond as Schedule A thereto the amount of each Advance of the Loan made under this Agreement. Absent manifest error, the Administrator's determination of the amounts set out on Schedule A to the Series 2015X Interim Bond shall be conclusive evidence thereof.

(e) Not later than thirty (30) calendar days after the Commitment Termination Date, Borrower shall deliver to the Administrator a proposed Series 2015X Final Bond, including a completed Schedule A thereto, and the Administrator shall thereafter notify Borrower of any disagreement with the form or of his acceptance thereof. Within fifteen (15)

days from receipt of the Administrators acceptance, Borrower shall deliver to the Administrator in Washington, D.C., at the address specified in Section 7.7, a duly executed original Series 2015X Final Bond in the principal amount equal to the aggregate outstanding principal amount of all Advances made under this Agreement on or prior to the Commitment Termination Date. Upon receipt of the Series 2015X Final Bond, the Administrator shall return the Series 2015X Interim Bond to Borrower marked cancelled.

## **Section 2.2    Terms of the Series 2015X Bond.**

(a) Subject to clause (d) below, the outstanding principal amount of the Series 2015X Bond shall bear interest at the Base Rate. Accrued interest shall be due and payable on each Interest Payment Date. Interest shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the applicable Advance Date or last Interest Payment Date, as the case may be, to but excluding the Interest Payment Date on which such interest is due. For the avoidance of doubt, interest shall be payable on the amount of each Advance from and including its Advance Date to but excluding the next Interest Payment Date, and interest shall be payable on the principal amount of the Series 2015X Bond outstanding at the close of each Interest Payment Date (without double counting any Advance made on such date) from and including such Interest Payment Date to but excluding the next Interest Payment Date.

(b) The outstanding principal amount of the Series 2015X Bond shall be paid in twenty (20) annual installments on each successive Principal Payment Date. The principal amount to be paid on each such Principal Payment Date shall be calculated such that, when added to the amount of interest due and payable, as provided in Section 2.2(a), during the twelve months ending on such Principal Payment Date, the total amount of interest and principal due and payable during each such twelve-month period will be approximately equal.

(c) The Series 2015X Final Bond shall include (as Schedule A thereto) a schedule prepared by the Administrator setting out the principal (if any), interest and total amounts payable on each Interest Payment Date. Absent manifest error, the Administrator's determination of the amounts set out on such Schedule A shall be conclusive evidence thereof. The Administrator will deliver a copy of Schedule A to Borrower. Any increase in the amount of interest payable by Borrower resulting from application of the Ratings Downgrade Rate or Overdue Rate shall not affect Schedule A but shall be paid by Borrower as an additional amount on each relevant Interest Payment Date.

(d) In the event that an Advance Suspension Event under Section 6.1(a) occurs and is continuing, the outstanding principal amount of each Series 2015X Bond and any past-due amount of interest shall bear interest at the Overdue Rate commencing on the thirtieth day after the relevant payment was due and continuing until such Advance Suspension Event is cured. Upon the occurrence and during the continuance of a Ratings Downgrade Event, the outstanding principal amount of each Series 2015X Bond shall bear interest at the Ratings Downgrade Rate. For the avoidance of doubt, if at any time both Ratings Downgrade Rate and the Overdue Rate apply, the outstanding principal amount of each Series 2015X Bond and any past-due amount of interest shall bear interest at the rate per annum equal to the Base Rate plus four percent (4.00%).

(e) Each payment shall be applied first to pay accrued interest (whether at the Base Rate, Ratings Downgrade Rate or Overdue Rate) and then to outstanding principal.

(f) All payments of RRIF Loan Obligations shall be made, irrespective of any claim or right of counterclaim or set-off, on or before the date such payment is due hereunder or thereunder by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time for such purposes (subject, in the case of payments specified in clause (a) of the definitions of RRIF Loan Obligations, to any requirements of The Depository Trust Company in the event of a transfer pursuant to Section 2.6). The Lender shall not be required to present or surrender the Series 2015X Bond to the Borrower as a condition to the payment of any RRIF Loan Obligations.

(g) Prior to the issuance of the Series 2015X Final Bond (including Schedule A thereto) and thereafter if either or both of the Ratings Downgrade Rate or the Overdue Rate apply, the Borrower shall calculate the amount of interest due and payable on each Interest Payment Date and deliver such calculation to the Administrator in writing not later than ten (10) Business Days prior to each such Interest Payment Date. The Administrator shall promptly notify the Borrower of any disagreement with the calculation and, absent manifest error, the Administrator's determination of the amount of interest owed shall be conclusive.

### **Section 2.3 Disbursement Conditions.**

(a) Lender's commitment to make an Advance of proceeds of the Loan (including the first Advance) on any Advance Date shall be subject to the satisfaction on or before the first Advance Date hereunder of the following conditions precedent:

- (i) The Transportation Resolution and the RRIF Supplemental Resolution shall have been duly adopted by the Board of Directors, shall be in full force and effect and, to the full extent provided for therein, shall be binding on the Borrower, and current and complete copies of each thereof shall have been duly delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to their authenticity;
- (ii) The Interagency Agreement shall have been duly authorized, executed and delivered by each of the Related Entities party thereto, shall be in full force and effect and, to the full extent provided for therein, shall be binding on each such Related Entity; Section 4.12 thereof shall constitute a legal, valid and binding obligation of the State of New York in favor of the Lender, enforceable against the State of New York in accordance with its terms; and a current and complete copy thereof shall have been duly delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to its authenticity;

- (iii) The RRIF Certificate of Determination and this Agreement shall have been duly authorized, executed and delivered by Borrower to the Administrator, shall be in full force and effect and, to the full extent provided for therein, shall be binding on the Borrower, and current and complete copies of each thereof shall have been delivered by Borrower to the Administrator together with the certification of an Approved Officer of Borrower attesting to their authenticity;
- (iv) The Series 2015X Bond shall have been duly authorized, executed and delivered by Borrower to the Administrator and shall be in full force and effect.
- (v) The Administrator shall have received an Incumbency Certificate with respect to the Approved Officers (1) executing and delivering this Agreement, RRIF Certificate of Determination, the Series 2015X Interim Bond, and the other certificates called for in this Section 2.3(a) and (2) who are authorized to execute and deliver Advance Certificates or other notices or documents to be delivered to the Administrator under the terms of this Agreement. Borrower shall promptly notify the Administrator if, during the term of this Agreement, any such individual is no longer an Approved Officer and shall promptly provide the Administrator with an Incumbency Certificate with respect to any additional or replacement Approved Officer;
- (vi) The Administrator shall have received a favorable opinion, dated the date hereof, from Nixon Peabody LLP, counsel to Borrower in connection herewith, in form, scope and substance reasonably satisfactory to the Administrator covering each of the matters set out in paragraphs 1 through 8 of Schedule 1;
- (vii) The Administrator shall have received ratings confirmation letters from each of Standard and Poor's Rating Services, Moody's Investor Services, Inc. and Fitch Ratings to the effect that, all other relevant matters being assumed unchanged, the issuance by Borrower of the Series 2015X Bond in an amount equal to the Maximum Aggregate Principal Amount of the Loan as contemplated by this Agreement will not result in the withdrawal, downgrade, placement on credit watch for potential downgrade, adverse change in outlook as to either default or recoverability, or any other action by such rating agency equivalent to any of the foregoing with respect to such rating agency's rating as of the date hereof on Borrower's Obligations, including the Series 2015X Bond when issued; and.

- (viii) The Administrator shall have received such other documents and evidence with respect to the Loan Documents as the Administrator, or his counsel, may reasonably request in order to establish the authority of any Related Entity to consummate the transactions contemplated by the Loan Documents and the taking of all necessary corporate proceedings in connection therewith.

(b) Lender's commitment to make an Advance of proceeds of the Loan (including the first Advance) on any Advance Date shall be subject to the satisfaction of the following conditions precedent as of such Advance Date:

- (i) Borrower shall have submitted an Advance Certificate to the Administrator not less than thirty (30) calendar days prior to the proposed Advance Date. The requested Advance shall not be made unless and until the Administrator is reasonably satisfied that the requested Advance relates solely to Allowable Costs;
- (ii) Not less than three (3) Business Days prior to each Advance Date, Borrower shall have paid the Credit Risk Premium due in respect of such Advance by wire transfer of immediately available funds in accordance with written payment instructions provided by Lender from time to time for such purposes. No Advance shall be made unless and until the Credit Risk Premium has been received by Lender;
- (iii) On such Advance Date: (a) the representations and warranties of Borrower contained in Article III of this Agreement or any other Loan Document shall be true and correct as though made on and as of such Advance Date except to the extent that such representations and warranties explicitly related solely to an earlier date (in which case such representations and warranties shall have been true and correct on and as of such earlier date); and (b) no event or circumstance shall have occurred and be continuing, or would result from such Advance, as would constitute a Breach or an Advance Suspension Event;
- (iv) To the knowledge of any Authorized Officer, no action or proceeding shall have been instituted nor shall governmental action be threatened before any court or governmental agency, nor shall any order, judgment or decree have been issued or proposed to be issued by any court or governmental agency as of such Advance Date, to set aside, restrain, enjoin or prevent the completion and consummation of any material act required to be taken under this Agreement or any other Loan Document; and

- (v) The Commitment Termination Date shall not have occurred and Lender's obligation to make Advances shall not have been suspended pursuant to Section 2.1(c).

#### Section 2.4 Prepayment.

(a) Borrower may prepay the Series 2015X Bond in whole or in part at any time or from time to time, without penalty or premium, by paying to the Lender such principal amount of the Series 2015X Bond to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to but excluding the date of such prepayment. Each prepayment shall be specified by Borrower in a written notice delivered to the Lender not less than ten (10) nor more than thirty (30) calendar days prior to the date set for prepayment.

(b) All partial prepayments of principal made before the Commitment Termination Date shall be recorded by the Administrator on Schedule A to the Series 2015X Interim Bond or, if made after the Commitment Termination Date, shall be applied to future installments due on the Series 2015X Bond in the inverse order of maturity, such that the latest principal installment or installments are thereby satisfied first and Schedule A to the Series 2015X Final Bond shall be revised accordingly by the Administrator. In either case, a copy of the revised Schedule A shall be provided to the Borrower by the Administrator.

#### Section 2.5 Effect of Other Loan Documents.

(a) In accordance with the RRIF Supplemental Resolution, the Series 2015X Bond constitutes an Obligation under the Transportation Resolution and Lender (and any Additional Holder in the event of a transfer in accordance with Sections 2.6 and 2.7) is the Owner of such Obligation entitled to all the rights and benefits conferred to Owner under and subject to the terms and conditions of the Transportation Resolution.

(b) Borrower's obligations to repay the Loan evidenced by the Series 2015X Bond shall rank *pari passu* with its obligations under all other senior unsubordinated Obligations and Parity Debt and are secured by a lien on the Trust Estate in accordance with (and subject to the qualifications set out in) Section 501 of the Transportation Resolution. Lender acknowledges and agrees that the Series 2015X Bond is a special limited obligation of Borrower payable solely from the Trust Estate and is not an obligation of the State of New York or of The City of New York.

(c) The rights and benefits of Lender and the Administrator under this Agreement are in addition to, and are not in any respect to the exclusion of or in substitution for, those rights and benefits conferred on Lender as Owner of an Obligation under the Transportation Resolution and RRIF Supplemental Resolution, and the obligations of Borrower under this Agreement are in addition to, and are not in any respect to the exclusion of or in substitution for, those obligations imposed by the Transportation Resolution and RRIF Supplemental Resolution on Borrower for the benefit of Owners of Obligations.

## Section 2.6    Transfer of Series 2015X Bond.

(a)     The Administrator represents that Lender is not acquiring the Series 2015X Bond with a view to, or in connection with, any distribution thereof. The Administrator acknowledges that the Series 2015X Bond has not been registered with The Depository Trust Company or any other securities depository. Lender nonetheless shall have the right at any time to assign its interest in the Series 2015X Bond, in whole or in part, to any Additional Holder; provided, however, that (i) the Administrator shall give Borrower written notice of any such assignment and (ii) in the event that Lender intends to assign any interest in the Series 2015X Bond to any Additional Holders which are not a Qualified Institutional Buyers (as defined in the federal securities laws), then the Administrator shall give the Borrower not less than thirty (30) days prior written notice and shall provide such Additional Holders with any information disclosure document concerning the Borrower and the Series 2015X Bond which is delivered by the Borrower to the Administrator within such thirty-day period.

(b)     At any time after the issuance of the Series 2015X Final Bond, if requested in writing by the Administrator, Borrower shall, within a reasonable period of time and at its sole expense, register the Series 2015X Final Bond (in which case the Series 2015X Final Bond may be reissued in the form of Exhibit One to the Transportation Resolution but without change to the essential terms of the Series 2015X Bond other than the deletion of provisions thereof not applicable to any Series 2015X Bond held by an Additional Holder as provided in Section 2.7) with The Depository Trust Company or its nominee (or such other depository as is then being employed generally for Borrower's Obligations) as a fully-registered security so as to provide for payments under and transfers of ownership interests in the Series 2015X Final Bond through The Depository Trust Company's Book-Entry-Only System (or such equivalent system as is then in use generally with respect to Borrower's Obligations).

(c)     Lender's interest in the Series 2015X Bond may be held by any agency or instrumentality of the federal government and the Administrator shall have the right at any time to assign or delegate the Administrator's rights and obligations under this Agreement, in whole or in part, to any other agency or instrumentality of the federal government; provided, however, that (i) the Administrator shall give Borrower written notice of any such delegation or assignment and (ii) if prior to the Commitment Termination Date, such agency or instrumentality has the authority to issue the Loan.

## Section 2.7    Obligations Surviving Transfer.

(a)     Any Additional Holders of an interest in the Series 2015X Bond shall have only the rights and benefits conferred on Owners by the Transportation Resolution, the RRIF Supplemental Resolution and the Series 2015X Bond, and shall have none of the additional rights and benefits conferred by this Agreement (including, without limitation, those conferred under Articles IV, V and VI and any right to receive the Ratings Downgrade Rate or the Overdue Rate). The additional rights and remedies under this Agreement shall belong to and be exercisable solely by and for the benefit of Lender and the Administrator.

Nothing contained in this Agreement shall confer upon any Additional Holder any such rights or remedies under this Agreement or the right to enforce any such rights or remedies.

(b) Any transfer by Lender of its interest in the Series 2015X Bond, in whole or in part, to an Additional Holder or Additional Holders notwithstanding, this Agreement and Borrower's additional obligations hereunder to Lender shall remain in full force and effect except to the extent the continued obligation of Borrower to comply with any provision of this Agreement is terminated, released or waived in writing by the Administrator in his sole discretion.

(c) Interest on the Series 2015X Bond payable to any Additional Holder shall not be excludable from gross income for federal income tax purposes.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES OF BORROWER

Borrower hereby makes the following representations and warranties to Lender:

##### Section 3.1 Organization, Authority and Good Standing.

(a) Borrower is a public benefit corporation of the State of New York organized and existing under Title 11 of Article 5 of the New York Public Authorities law, as amended, and is eligible to receive the Loan under Section 822(a) of the Act. Lender acknowledges that the powers and authority of the Borrower are governed by the laws of the State of New York.

(b) Borrower is duly authorized and created and is in good standing under the laws of the State of New York, has full legal right, power and authority to enter into this Agreement and each of the other Loan Documents to which it is a party, to issue the Series 2015X Bond and to carry out and consummate all transactions contemplated by the Loan Documents, and has duly authorized the execution, delivery and performance of each of the Loan Documents to which it is a party.

(c) Each of the Related Entities other than the Triborough Bridge and Tunnel Authority has full legal right, power and authority to enter into the Interagency Agreement and to carry out and consummate all transactions contemplated by the Interagency Agreement, and has duly authorized the execution, delivery and performance of the Interagency Agreement.

(d) The Approved Officers executing this Agreement and the Series 2015X Bond are duly authorized to execute the same on behalf of Borrower.

(e) Each Related Entity is duly authorized and created and is in good standing under the laws of the State of New York and has full power and authority to own, lease, hold, and operate its property, and to conduct the Business (as now operated and conducted or presently proposed to be operated and conducted) in conformity in all material respects with all applicable federal, state, and local laws, statutes, and regulations. No new or

additional authorization from any governmental agency or body is required to permit the Related Entities to operate the Business as now conducted or presently proposed to be conducted.

(f) The Borrower has the lawful right and authority to cause each of the Related Entities to undertake or refrain from the activities specified with respect to them in this Agreement and in the Interagency Agreement.

### Section 3.2 Validity and Enforceability of Loan Documents.

The execution, delivery and performance of this Agreement and the other Loan Documents and any other document executed by Borrower in connection with the transaction contemplated herein, and the issuance, sale and delivery of the Series 2015X Bond:

(a) have been duly authorized by all necessary governmental and corporate action;

(b) do not and will not conflict with, violate, or contravene any rights of other creditors of any Related Entity, any statute, law, rule, regulation, order, writ, injunction or decree or other order of any court or governmental authority, or any mortgage, lien, lease or agreement of any Related Entity, nor is any Related Entity subject to any provision of any constitution, statute, regulation, their articles of incorporation and by-laws, mortgage, lien, lease, agreement, order, judgment or decree, or any other restriction of any kind or character, which would prevent any Related Entity from performing any of its material obligations under any Loan Document;

(c) constitute valid and legally binding obligations of the Related Entities which are party thereto enforceable against them in accordance with their terms, except as enforceability may be affected by any applicable laws affecting creditors' rights generally and the application of equitable principles;

(d) do not require the consent or approval of any trustee, holder of any indebtedness of any Related Entity or any other person, and no consent, permission, authorization, order or license of, or filing or registration with, any governmental entity is necessary in connection with the execution and delivery of the Loan Documents, the consummation of any transaction herein or therein described, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect and except filing and/or recordation requirements imposed by this Agreement; and

(e) create in favor of the Trustee for the benefit of Lender a lien on the Trust Estate in accordance with (and subject to the qualifications set out in) Section 501 of the Transportation Resolution securing the principal of and interest on the RRIF Loan Obligations described in clause (a) of the definition of RRIF Loan Obligations which rank *pari passu* with Borrower's obligations under all other senior unsubordinated Obligations and Parity Debt. Payments of RRIF Loan Obligations described in clause (b) of the definition of RRIF Loan Obligations are payable from amounts transferred to the Borrower pursuant to clause (d) of Section 504 of the Transportation Resolution or other legally available funds of the Borrower.

**Section 3.3    No Bankruptcy of Current Authorized Officers and Directors; No Felony Conviction or Securities Law Violation.**

For the period commencing ten (10) years prior to the date hereof and ending on the date hereof, to the Borrower's Knowledge as of the date hereof:

(a) except as previously notified by Borrower in writing to the Administrator, no current Authorized Officer or Director, has been involved (either in his personal capacity or in the capacity of a corporate officer, director or stockholder owning in excess of ten (10) percent of issued and outstanding shares of any class of such corporation's stock) in a bankruptcy or similar type proceeding; and

(b) no current Authorized Officer or Director has been convicted of a felony or violation of securities laws.

In the event that, after the date hereof, any Authorized Officer, Borrower's chief regulatory compliance officer or Borrower's general counsel learns of any such occurrence (i) within such 10-year period with respect to an Authorized Officer or Director as of the date hereof or (ii) during the term of this Agreement with respect to any then current Authorized Officer or Director, Borrower shall promptly notify the Administrator of the relevant facts and circumstances of such occurrence.

**Section 3.4    No Changes Since Most Recent Financial Statements.**

Borrower maintains its records of account, and will issue its financial statements, in accordance with accounting principles generally accepted in the United States of America and consistently applied as promulgated or otherwise allowed by the Governmental Accounting Standards Board. There has been no material change in the capital structure or the condition (financial, business, labor or operational) of the Related Entities as a whole, since the date of their most recent annual audited financial statements or unaudited consolidated interim financial statements delivered to the Administrator, except as previously disclosed by Borrower to the Administrator in writing.

**Section 3.5    Material Contracts, Judgments, Decrees, Obligations or Liabilities.**

Neither Borrower nor any other Related Entity is a party or subject to any existing or contingent contract, agreement, debt, mortgage, indenture, instrument, judgment, decree, obligation or other liability which currently is having or could reasonably be expected in the future to have a Material Adverse Effect except as previously disclosed by Borrower to the Administrator in writing.

**Section 3.6    Material Litigation.**

Except (i) as set out on Schedule 2 or (ii) as notified in writing to the Administrator and as to which the Administrator has, in his or her discretion, waived in writing the applicability of this representation, there is no litigation, legal or administrative proceeding, investigation or other action of any nature pending or, to the Borrower's Knowledge, threatened against or

affecting any Related Entity which could reasonably be expected to result in a Material Adverse Effect.

### Section 3.7 Defaults Under Existing Agreements.

No Related Entity is:

- (a) in default under either of the Grant Agreements or any other agreement with any agency or instrumentality of the federal government of the United States of America;
- (b) in default under any Loan Document;
- (c) in default under or in violation of (i) any indenture, contract, mortgage, franchise, lease, agreement or instrument, (ii) any applicable law material to the Business as it is presently conducted, (iii) any judgment, order, writ, injunction or decree of any court or (iv) any permit, license or regulation of any federal, state, municipal or other government agency which, individually or in the aggregate, has resulted in a Material Adverse Effect specified in clause (i) of the definition of such term.

### Section 3.8 Completeness of Information.

To the best of the knowledge and belief of Borrower after due inquiry and investigation, the information set forth in the Application, and all related submissions to the Administrator, is true and complete in all material respects as of the date of this Agreement.

### Section 3.9 Tax Returns.

All federal, state, and other tax returns and reports of Borrower or the other Related Entities required by law or regulation to be filed have been duly filed except those for which the filing date has been duly extended; and other governmental charges (other than those presently payable without penalty) imposed upon Borrower or any other Related Entity with respect to any of their properties, assets or income that are due and payable have been duly paid, except those governmental charges for which payment is being contested in good faith and by appropriate means.

### Section 3.10 Related Persons.

Except as has otherwise been disclosed in writing by the Borrower to the Administrator prior to the date hereof, to the Borrower's Knowledge no Director or Authorized Officer any relative thereof, i.e. parent, spouse or child (a) is retained or employed, directly or indirectly in a material position for, or is a director or officer of any supplier, customer (other than by bill of lading or transportation contract), contractor or any other entity with which Borrower does business in connection with the Positive Train Control Project, other than affiliates of Borrower; or (b) is a stockholder owning in excess of ten (10) percent of the issued and outstanding shares of any supplier, customer (other than by bill of lading or transportation contract), contractor or any other entity with which Borrower does business in connection with the Positive Train Control Project other than affiliates of Borrower.

### Section 3.11 Allowable Costs.

All amounts proposed to be financed with proceeds of the Loan will have been incurred prior to the submission of the relevant Advance Certificate solely to fund Allowable Costs.

### Section 3.12 Public Benefit.

The extension of the Loan by Lender, and the terms under which the Loan is extended when compared to financing that may be available to the Related Entities as of the date hereof from other sources, will better enable the Borrower and the other Related Entities to meet their operating, maintenance and repair obligations under Section 4.6.

### Section 3.13 No Debarment or Suspension.

No Related Entity and, to the Borrower's Knowledge, no current Authorized Officer or Director:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) has, within the preceding three-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust laws or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) has, within the preceding three-year period, had one or more public transactions (federal, state or local) terminated for cause or default.

### Section 3.14 Committed Funding.

Borrower has available (as specified in the Borrower's 2010-2014 Capital Program (as amended to the date hereof) including funding available under the Grant Agreements and this Agreement) funding which is sufficient to complete the Positive Train Control Project based on Borrower's current projection of the necessary capital expenditures consisting of amounts specified in the Borrower's 2010-2014 Capital Program (as amended to the date hereof) including funding available under Grant Agreements and this Agreement, the Borrower's anticipated 2015-2019 Capital Program, and amounts permitted to be borrowed as Subordinated Indebtedness under the Transportation Resolution.

### Section 3.15 Restriction On Use of Funds.

The Borrower certifies, to the best of its knowledge and belief, to the following additional representations and warranties pursuant to 49 C.F.R. Part 20:

(a) No Federal appropriated funds have, to the Borrower's Knowledge, been paid or will be paid by or on behalf of the Borrower to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(b) If any funds other than Federal appropriated funds have been paid or will be paid by or on behalf of the Borrower to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) The Borrower shall require that the language of this Section 3.15 be included in the award document for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify accordingly.

This certification is a material representation of fact upon which reliance is placed by the Lender in entering into this Agreement and in making each Advance. Submission of this certification is a prerequisite for entering into this Agreement and making each Advance imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

## ARTICLE IV

### AFFIRMATIVE COVENANTS OF BORROWER

Borrower hereby makes the following covenants to Lender which shall apply throughout the term of this Agreement, subject only to Section 2.7(a) and (b):

#### Section 4.1 Further Documentation.

Borrower shall execute and cause to be delivered to the Administrator such other certificates, documents, statements, agreements, or opinions as may be reasonably requested by the Administrator in furtherance of this Agreement.

#### Section 4.2 Use of Proceeds.

Borrower shall use the proceeds of the Loan solely to finance Allowable Costs in accordance with the terms of this Agreement. In no event shall the Borrower use the proceeds of the Loan (i) to fund costs that are not Allowable Costs or (ii) for any purpose prohibited under 45 U.S.C. § 822(b)(2) and 49 C.F.R. 260.5 including, without limitation, for the payment of any railroad operating expenses.

#### Section 4.3 Completion of Project; Compliance with Grant Agreements.

Borrower shall, and shall cause the relevant Related Entities to, complete the Positive Train Control Project within the timeframe and budget provided for in the Grant Agreements as in effect from time to time. Borrower shall timely comply in all material respects with its other obligations under the Grant Agreements.

#### Section 4.4 Pay Taxes and Other Claims.

Borrower shall, and shall cause each other Related Entity to, file all federal, state, and other tax returns and reports of Borrower required by law or regulation to be filed and pay and discharge or cause to be paid and discharged all taxes, withholdings, assessments, fees and other governmental charges lawfully levied or imposed upon its property or in connection with the Business before the date on which penalties attach thereto. Borrower shall, and shall cause each other Related Entity to, pay when due all lawful claims for labor, materials, supplies, and rents, and pay all other debts and liabilities, any of which, if unpaid, would by law result in a lien or charge upon the Trust Estate; provided, that, nothing herein shall require any payment so long as (a) such nonpayment is being diligently contested in good faith and by appropriate proceedings, (b) such reserve as may be required by generally accepted accounting principles has been made therefor; and (c) failure to pay when due would not result in the forfeiture or loss of property of Borrower having a Material Adverse Effect specified in clause (i) of the definition of such term.

#### Section 4.5 Maintenance of Insurance.

Borrower, for itself and each of the other Related Entities, shall maintain property, liability and other insurance coverage, including self-insured retentions, with respect to their property, the Business and the Positive Train Control Project which is equivalent in all material respects as to scope and amounts to the coverage maintained on the date hereof as described in Borrower's most recent Combined Annual Continuing Disclosure Filings Pursuant to Rule 15c2-12, as supplemented May 1, 2014 as such coverage may be adjusted from time to time by the Borrower Directors in the exercise of its reasonable judgment, or which is otherwise required by applicable law.

#### Section 4.6 Operation, Maintenance and Repair of Rail Properties.

Anything to the contrary in the exception provided for by the second sentence of section 609 of the Transportation Resolution notwithstanding, (a) Borrower shall, and shall cause The Long Island Rail Road Company and Metro-North Commuter Railroad Company to (i) comply with the requirements of Section § 822(h)(1)(B) of the Act (ii) operate common or contract carrier rail services over the Rail Lines, and (iii) maintain the Rail Lines and associated

locomotives and rolling stock in accordance with the maintenance standards described in 49 CFR 260.39(a) and (b) Borrower shall, and shall cause each of the Related Entities to, maintain their rail and public transportation infrastructure and properties in good repair and operating condition, normal wear and tear excepted, and make all necessary repairs and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

#### Section 4.7 Financial Statements; Notice of Certain Events.

Borrower shall (i) comply with the information and disclosure provisions of Rule 15c2-12, (ii) enter into and maintain, for the benefit of Lender and any Additional Holder, a written continuing disclosure agreement with the Trustee implementing Borrower's compliance with Rule 15c2-12 the terms and conditions of which shall be equivalent in all material respects with those disclosure agreements maintained for the benefit of other Owners of Obligations, and (iii) provide the Administrator with copies of all documents and notices required to be disclosed or delivered under Rule 15c2-12 or such disclosure agreement when required to be so disclosed or delivered thereunder. Borrower shall, in addition, provide the Administrator with access to all information posted by Borrower on the Electronic Municipal Market Access (EMMA) system maintained by the Municipal Securities Rulemaking Board (MSRB) or any equivalent successor or replacement electronic system.

#### Section 4.8 Project Reports.

Borrower shall provide the Administrator with copies of all reports, budgets, notices and other documents relating to the Positive Train Control Project or the Business as and when delivered after the date hereof to *[insert reference to appropriate federal/state/financial oversight entities]*.

#### Section 4.9 Single Audit Act.

Borrower shall, at its own cost and expense, obtain all financial and compliance audits as required by the Single Audit Act Amendments of 1996, 31 U.S.C. § 7501, et seq.

#### Section 4.10 Signed Statement Regarding Breach.

On each Interest Payment Date, Borrower shall furnish to the Administrator the certification of an Approved Officer, substantially in the form of Exhibit I, stating that, other than as notified to the Administrator pursuant to Section 4.16, no Material Adverse Effect, Breach or Advance Suspension Event has occurred since, in the case of the first Interest Payment Date, the date hereof and, thereafter, the date on which the most recent such certification previously was delivered.

#### Section 4.11 Compliance with Applicable Laws.

(a) Borrower shall, and shall cause each of the other Related Entities, as applicable, to undertake the RRIF Project and conduct the Business in conformity in all material respects with all federal, state, and local laws, statutes, ordinances, regulations and orders of governmental authorities and all requirements of such foreign jurisdictions as may be

applicable and will promptly comply, in all material respects, with any such laws, statutes, ordinances, regulations and orders non-compliance with which could reasonably be expected to have a Material Adverse Effect specified in clause (i) of the definition of such term.

(b) Without limiting the generality of the foregoing, but regardless of whether non-compliance would have a Material Adverse Effect, Borrower shall, and shall cause each of the other Related Entities to, comply in all material respects with the following federal laws applicable to the Related Entities or the RRIF Project:

- (i) the Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. 12101 et seq.; 28 C.F.R. Part 35; 29 C.F.R. Part 1630);
- (ii) Title VI of the Civil Rights, Act of 1964, as amended (42 U.S.C. 2000d et seq.; and United States Department of Transportation regulations, 49 C.F.R. Part 21;
- (iii) the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 et seq.);
- (iv) Equal Employment Opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (41 C.F.R. Part 60);
- (v) restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. 1352; 49 C.F.R. Part 20);
- (vi) the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604);
- (vii) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including the environmental mitigation requirements and commitments made by Borrower that result in Lender's approval of the Final Environmental Impact Statement (issued pursuant to 42 U.S.C. 4332(2)(C)), Environmental Assessment, or Categorical Exclusion Determination, as applicable;
- (viii) the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500); and
- (ix) the Endangered Species Act (16 U.S.C. 1531, et seq.).

#### Section 4.12 Additional Information on Borrower's Performance.

On request of the Administrator, Borrower shall furnish promptly to the Administrator such information as may be reasonably necessary to determine whether (i) Borrower is fulfilling

its warranties, covenants and agreements contained in this Agreement or (ii) any Breach or Advance Suspension Event has occurred under any Loan Document.

#### Section 4.13 Audit and Inspection Rights.

(a) Borrower shall, and shall cause each other Related Entity to, give representatives of the Administrator and the Comptroller General of the United States free access during normal business hours and upon reasonable advance notice to examine and inspect all books, accounts, records, reports, files, inventories, equipment, facilities, and other papers, things, facilities or property relating to this Agreement. Such access shall be granted to the extent deemed necessary (as reasonably determined by such representatives) to facilitate any audit to determine compliance by Borrower with the Loan Documents, or to inspect any equipment or facilities relating to Borrower's obligations under the Loan Documents.

(b) Borrower agrees to cooperate, and to cause each other Related Entity to cooperate, with such representatives in connection with any audits and/or inspections pursuant to Section 4.13(a).

(c) Such representatives shall have the right to discuss with the Authorized Officers and other knowledgeable representatives of the Related Entities the Business and affairs of the Related Entities and Borrower's performance of the RRIF Project, and Borrower shall use its best efforts to obtain for such representatives the right with respect to its contractors and subcontractors to discuss their business and affairs relating in any way to the Business or the RRIF Project.

#### Section 4.14 Budgets.

Borrower shall submit to the Administrator (i) upon adoption by Borrower or the relevant Related Entity, the program description and operating budget referred to in section 611 of the Transportation Resolution for each such Related Entity and any subsequent revision thereto, and (ii) upon receipt by Borrower, each certificate or other notice issued by the Independent Engineer referred to in such section 611.

#### Section 4.15 Minutes of Meetings.

Upon the Administrator's request, Borrower shall provide the Administrator copies of minutes, or portions thereof, of the meetings of its Board of Directors or any committee thereof relating in any material way to the Loan Documents or the RRIF Loan Obligations.

#### Section 4.16 Notification of Events.

(a) Borrower shall, within ten (10) Business Days after its occurrence, provide the Administrator with written notice, signed by an Approved Officer, of any of the following events, circumstances or conditions, setting forth the details thereof:

(i) any Breach or Advance Suspension Event;

- (ii) any event or circumstance required to be disclosed pursuant to Rule 15c2-12;
- (iii) the filing of any litigation, suit, action or arbitration of which the Borrower has actual notice, the delivery to Borrower of any written claim or demand, the initiation of any governmental investigation, or any adverse development in connection with any of the foregoing which in any such case could reasonably be expected to have a Material Adverse Effect specified in clause (i) of the definition of such term;
- (iv) the adoption of any law, rule or regulation by the State of New York, any political subdivision thereof or any other governmental entity the adoption of which could reasonably be expected to have a Material Adverse Effect;
- (v) the failure by the State of New York, any political subdivision thereof or any other governmental entity to adopt any law, rule or regulation proposed or actively supported by the Borrower where such failure could reasonably be expected to have a Material Adverse Effect; or
- (vi) the occurrence of any other event, circumstance or condition having a Material Adverse Effect.

(b) Each such notice shall be accompanied by a written statement signed by an Approved Officer setting forth in detail the remedial actions Borrower is taking or proposes to take with respect thereto.

#### Section 4.17 Competitive Contracting.

Costs for any work performed on the Positive Train Control Project by an outside contractor, rather than by Borrower or another Related Entity with its own employees, shall be considered Allowable Costs only if the contractor is selected in accordance with the procurement standards set forth in 49 C.F.R. § 18.36.

#### Section 4.18 Debarment and Suspension.

(a) Borrower agrees in connection with the use of Federal funding to comply with the provisions of Order No. 4200.5E issued by the Secretary of the U.S. Department of Transportation on March 15, 2010, Executive Orders Nos. 12549 and 12689, “Debarment and Suspension,” 31 U.S.C. § 6101 note, and U.S. DOT regulations “Nonprocurement Suspension and Debarment,” 2 C.F.R. Part 1200, which adopts and supplements the provisions of U.S. Office of Management and Budget “Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” 2 C.F.R. Part 180 and specifically Subpart C of the OMB guidance in 2 CFR Part 180 and 2 C.F.R. 180.435.

(b) In connection with entering into any lease, third party contract, or other arrangement in connection with the RRIF Project and prior to entering into such transaction, Borrower shall verify that the parties thereto are not barred, suspended or otherwise excluded by (i) obtaining certifications of debarment and suspension from its contractors and subcontractors, (ii) reviewing the System for Award Management site at [www.sam.gov](http://www.sam.gov) or (iii) adding a clause or condition to any such lease, third-party contract, or other arrangement requiring compliance with Subpart C of the OMB guidance in 2 CFR Part 180, and specifically 2 C.F.R. 180.300.

(c) Borrower agrees to inform the Administrator in writing when Borrower or any other Related Entity suspends or debars a contractor in connection with the use of Federal funding.

(d) The Borrower shall cause each of the other Related Entities to comply with the requirements of this Section 4.18 in connection with the use of Federal funding.

#### Section 4.19 Small and Disadvantaged Businesses.

(a) Borrower in connection with the Positive Train Control Project agrees to, and shall cause each other Related Entity to: (i) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, and (ii) implement best practices, consistent with our nation's civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.

(b) An example of a best practice under (a)(ii) above would be to incorporate key elements of the Department of Transportation's Disadvantage Business Enterprise (“DBE”) program (see 49 C.F.R. Part 26) in contracts funded under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that Borrower would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by Borrower, the contract would be awarded only to a bidder/offer that has met or made (or in the case of a design/build project, is committed to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement that, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal or other requirement.

(c) Borrower must provide the Administrator with a plan for incorporating best practices in accordance with clause (a)(ii) above into its implementation of the RRIF Project within thirty (30) calendar days following execution of this Agreement. If Borrower is not able to substantially incorporate 49 C.F.R. Part 26 elements in accordance with the above-described best practice, Borrower agrees to provide the Administrator with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

#### Section 4.20 Cargo Preference

Pursuant to U.S. Department of Transportation, Maritime Administration regulations, “Cargo Preference – U.S.-Flag Vessels,” 46 C.F.R. Part 381, Borrower shall, and shall cause each other Related Entity to, insert the following clauses in contracts in which equipment, materials, or commodities may be transported by ocean vessel in carrying out the Positive Train Control Project:

*As required by 46 C.F.R. Part 381, the contractor agrees:*

(a) *To utilize privately owned United States-flag commercial vessels to ship at least fifty (50) percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners and tankers) involved whenever shipping any equipment, materials, or commodities pursuant to this contract to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.*

(b) *To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated “on-board” commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (a) above to the recipient (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of Cargo Preference and Domestic Trade, Maritime Administration, 1200 New Jersey Avenue, S.E., Washington, DC 20590, marked with appropriate identification of the RRIF Project as follows: “FRA MTA East Side Access RRIF Financing”.*

(c) *To insert the substance of the provisions of the clause in all subcontracts issued pursuant to this contract.*

#### Section 4.21 Domestic Buying Preference

The Borrower shall comply with the provision to purchase steel, iron and other manufactured goods produced in the United States for the Positive Train Control Project, as set forth in the Federal Railroad Administration’s Notice Regarding Consideration and Processing of Applications for Financial Assistance under the Railroad Rehabilitation and Improvement Financing (RRIF) Program, 75 Federal Register 60165, 60166 (2010).

#### Section 4.22 Employee Protection and Prevailing Wages.

(a) Borrower shall make fair and equitable arrangements to protect the interests of any railroad employees who may be adversely affected by actions taken in connection with the RRIF Project financed pursuant to this Agreement in accordance with the provisions of the Appendix, attached here to as Exhibit J, prescribed by the Secretary of Labor on July 6, 1976 pursuant to 45 U.S.C. § 836.

(b) In accordance with 45 U.S.C. § 822(h)3(A), Borrower shall, and shall cause each of the other Related Entities to, comply with the standards of 45 U.S.C. § 24312 with respect to the RRIF Project in the same manner that the National Railroad Passenger

Corporation is required to comply with such standards for construction work financed under an agreement made under 45 U.S.C. § 24308(a).

#### Section 4.23 Expenses.

To the fullest extent chargeable by the Administrator pursuant to applicable statute and regulation, Borrower shall, upon demand, pay all expenses (including, without limitation, the reasonable fees of counsel or any financial or industry advisor) incurred by the Administrator or otherwise on behalf of the Lender in connection with the evaluation, consideration, investigation, analysis, exercise or enforcement of any of Lender's rights under the Loan Documents, including, without limitation, in connection with any request by Borrower for an amendment or waiver of any provision of the Loan Documents or any action to recover amounts due under any Loan Document or to compel Borrower's compliance with its obligations under any Loan Document.

#### Section 4.24 Project Funding.

The Borrower shall provide funds (including, without limitation, funds available under the Grant Agreements and this Agreement) in amounts sufficient to assure timely and full payment of the Project Costs (as defined in the Grant Agreements) necessary to Complete (as defined in the Grant Agreements) the Positive Train Control Project.

### ARTICLE V

#### NEGATIVE COVENANTS OF BORROWER

Borrower hereby makes the following additional covenants to Lender which shall apply throughout the term of this Agreement, subject only to Section 2.7(a) and (b):

#### Section 5.1 Indebtedness.

In the event that Borrower or any of the other Related Entities at any time issues, incurs, creates, assumes, guarantees or in any manner becomes liable for Structurally Senior Debt, the Borrower shall provide the Administrator with not less than fifteen (15) days prior written notice of such occurrence and the following shall apply:

(a) in the case of each First Issuance after the date of this Agreement of any Structurally Senior Debt, either:

(i) the Borrower shall deliver with its notice to the Administrator ratings confirmation letters from each Rating Agency then rating Borrower's Obligations under the Transportation Resolution to the effect that, all other relevant facts and circumstances being assumed unchanged, the issuance of such Structurally Senior Debt will not result in the suspension, withdrawal, downgrade, or placement on credit watch for potential downgrade (in each case as to probability of either default or recoverability) or any other action by such rating agency equivalent to any of the foregoing with respect to any of such rating agency's then current unenhanced ratings on Borrower's Obligations under the Transportation Resolution, including, without limitation, the Series 2015X Bond; or

(ii) the Lender shall have the option, exercisable at its sole discretion by the Administrator's delivery of written notice to the Borrower within ninety (90) days from receipt of the Borrower's notice, to exchange the entire outstanding amount of the Series 2015X Bond for such Structurally Senior Debt having an interest rate and remaining amortization schedule identical to the Series 2015X Bond. If Lender exercises such option then: (1) the Borrower shall issue such Structurally Senior Debt to the Lender on the later of the closing date of such First Issuance or ten (10) days after receipt of the Administrator's notice and the Administrator shall deliver the cancelled 2015X Bond to Borrower; (2) this Agreement shall remain in full force and effect except that references to the Transportation Resolution shall be deemed to be references to the resolution of the Borrower (or equivalent indenture or other agreement) under which such Structurally Senior Debt is issued, and all references in this Agreement to the 2015X Bond shall be deemed replaced with references to such Structurally Senior Debt; (3) future Advances, if any, shall be evidenced by such Structurally Senior Debt; and (4) any Ratings Downgrade Event resulting in whole or in part from such issuance of Structurally Senior Debt shall not result in the application of the Ratings Downgrade Rate.

(b) For purposes of this Section 5.1: "Structurally Senior Debt" means any payment obligation of Borrower or any other Related Entity secured by, or with respect to which the payee of such obligation (or any agent) has any security interest in or right to receive revenues or receipts of Borrower or such Related Entity (whether operating revenues, tax receipts, governmental subsidies, or other earnings, rents or payment rights of any nature) which revenues or receipts, but for such payment obligation, would reasonably be expected (based on the law, agreements, policies and practices relating to Borrower in effect or existing on the date hereof) to become part of the Trust Estate; except that Structurally Senior Debt shall not include obligations of the Triborough Bridge and Tunnel Authority or any refinancing or additional issuance of Borrower's Dedicated Tax Fund Bonds or Subordinated Indebtedness; and "First Issuance" means the first issuance of Structurally Senior Debt secured or otherwise supported by revenues or receipts which, prior to such issuance, either constituted part of the Trust Estate or were not previously available to become a part of the Trust Estate, but does not include subsequent issuances of Structurally Senior Debt secured or otherwise supported by the same such revenues or receipts.

## Section 5.2 Purchase of Investment Securities, Lending or Advancing Funds.

Borrower shall not invest any operating, construction or debt service reserves other than (i) in the case of funds held pursuant to the Transportation Resolution, in Authorized Investments and (ii) in the case of all other funds, in accordance with the Borrower's All-Agency Investment Guidelines as duly adopted from time to time by the Board of Directors. In addition, Borrower shall not lend or advance any funds generated in or received for purposes of the operation of the Business to any person, corporation, firm or other entity, except in the ordinary course of business, or to a Related Entity.

## Section 5.3 Purchase or Lease of Assets.

Borrower shall not use any funds generated in or received for the purpose of the operation of the Business to purchase or lease any chattel, real estate, fixture or other capital

asset unless such asset will be used in the operation of the Business and is acquired in the ordinary course of business.

#### Section 5.4 Deployment of Assets.

The Borrower shall comply with Section 822(h)(1)(A) of the Act.

#### Section 5.5 Prohibited Interest.

Except as between Borrower and its affiliates:

(a) Borrower shall not, after the date of this Agreement, enter into any contract, subcontract, or arrangement in excess of \$50,000 in connection with the financing of, or the carrying out of, work related to the Positive Train Control Project in which any Officer or Director of any Related Entity, during his or her subsequent tenure or more recently than two years before the date of such contract (if his or her tenure is continuing), shall have or shall have had any personal interest, direct or indirect, in the other party to such contract, subcontract or arrangement unless such contract, subcontract or arrangement is entered into on a publicly advertised, sealed-bid basis, the recipient is the lowest qualified bidder on such basis, such officer or director recuses himself or herself from further dealings with respect to such contract, subcontract or arrangement, and written records of the entire transactions are sufficient to satisfy the Administrator upon inspection.

(b) Borrower shall not knowingly allow any contractor or subcontractor of Borrower or of any Related Entity to enter into any contract, subcontract, or other arrangement in excess of \$50,000 related to the Positive Train Control Project if any of their Officers or Directors or any members of the immediate family of one of the foregoing has any material interest in the contract, subcontract or arrangement, unless the other party (or parties) to such contract, subcontract or arrangement is the lowest qualified bidder on a publicly advertised, sealed-bid basis and written records of the entire transaction are sufficient to satisfy the Administrator upon inspection.

(c) Borrower shall not allow any member of or delegate to Congress to share any benefit that may arise from this Agreement; but this provision shall not restrict the making of any contract with a publicly held entity for the general benefit of such entity.

(d) Borrower shall not pay any full-time employee of the federal government (unless on leave without pay) any consulting fees, salaries, or travel expenses from any federal funds provided under this Agreement except where specifically authorized by statute.

#### Section 5.6 Merger, Acquisition, or Sale of Assets.

Borrower shall not, and shall not permit any other Related Entity to: (i) consolidate or merge with or transfer its assets or control of itself to any entity other than another Related Entity; or (ii) anything to the contrary in the exception provided for by the second sentence of section 609 of the Transportation Resolution notwithstanding, sell, lease or otherwise transfer any of its operating assets except for any sale, lease or transfer undertaken in the ordinary course

of its Business or as would not reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

#### Section 5.7 Encumbrances.

Borrower shall not place, create, incur, assume or permit to exist any mortgage, pledge, lien or encumbrance on the Trust Estate other than (i) the lien created in favor of the Owners under Section 501 of the Transportation Resolution and (ii) any other lien permitted under the Transportation Resolution as to which no enforcement, collection, levy, attachment or foreclosure proceeding has been commenced; it being understood that the Borrower may issue Obligation Anticipation Notes or Revenue Anticipation Notes (each as defined in the Transportation Resolution) as permitted by the Transportation Resolution.

#### Section 5.8 Curtailment or Discontinuance of Business.

Borrower shall not, except as may be required as the consequence of force majeure, curtail, discontinue or abandon any substantial part of its Business if such curtailment, discontinuance or abandonment would reasonably be expected to have a Material Adverse Effect specified in clause (i)(a) of the definition of such term.

#### Section 5.9 Abandonment of Rail Lines.

The exceptions provided for by the second sentence of section 609 of the Transportation Resolution and Section 5.8 notwithstanding, Borrower shall not abandon (within the meaning of 49 U.S.C. § 10903) the Rail Lines or file an application with the Surface Transportation Board for the abandonment of the Rail Lines.

#### Section 5.10 Change of Control.

Borrower shall not permit (i) itself to cease to be a public benefit corporation the Directors of which are appointed by the Governor of the State of New York with the advice and consent of the New York State Senate or (ii) any other Related Entity to cease to be a public benefit corporation of the State of New York; provided, however, that nothing shall prohibit any Related Entity from consolidating or merging with or transfer its assets or control of itself or of any other Related Entity to another Related Entity.

### ARTICLE VI

#### ADVANCE SUSPENSION EVENTS AND REMEDIES

##### Section 6.1 Advance Suspension Events.

The following shall be Advance Suspension Events:

- (a) Payment Default. A failure to pay any interest on or principal amount of the Series 2015X Bond within five (5) Business Days after the same becomes due and payable;

(b) Covenant Defaults. (i) Borrower's breach in the due observance or performance of any covenant or condition contained in Article V; or (ii) Borrower's breach in the due observance or performance of any other covenant or condition contained in this Agreement if Borrower fails to remedy such breach within thirty (30) calendar days of the earlier of (x) an Authorized Officer obtaining actual knowledge of such breach or (y) the receipt of written notice from Lender or the Administrator of its occurrence.

(c) Misrepresentation. Any representation or warranty made by Borrower herein proving to be untrue or incomplete in any material respect as of the date hereof or when deemed repeated hereunder, or any written statement, certificate or information delivered by or on behalf of Borrower to Lender in or in furtherance of the Application or pursuant to this Agreement proving to be untrue or incomplete in any material respect as of the date on which the things therein set forth were stated or certified.

(d) Material Adverse Effect. The occurrence of a Material Adverse Effect and the continuance thereof for a period of thirty (30) calendar days.

(e) Default Under Other Loan Documents. The occurrence of an Event of Default as defined under the Transportation Resolution.

(f) Cross Default. The occurrence of a default under any other indebtedness of Borrower or any other Related Entity in an aggregate principal amount exceeding \$100,000,000 which would permit the holders thereof to declare such principal amount immediately due and payable.

(g) Insolvency Events. Any Related Entity's (i) making a general assignment for the benefit of creditors, or (ii) applying for or consenting to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets, or (iii) being adjudicated a bankrupt or insolvent, or (iv) filing a voluntary petition in bankruptcy or filing a petition or answer seeking reorganization or an arrangement with creditors who are seeking to take advantage of any other law (whether federal or state) relating to relief of debtors or admitting by answer (by default or otherwise) the material allegations of a petition filed against it in any bankruptcy, reorganization, arrangement, insolvency or other proceeding (whether federal or state) relating to relief of debtors, or (v) suffering or permitting to continue unstayed and in effect for sixty (60) calendar days or more any judgment, decree or order entered by a court of competent jurisdiction which approved a petition seeking reorganization of such Related Entity or appoints a receiver, trustee or liquidator of all or a substantial part of its assets;

(h) Actions by the State of New York. The taking of any action by the State of New York in violation of its pledge and agreement with each Related Transportation Entity and the Owners of Obligations (including the Lender) that State of New York will not limit or alter the denial of authority under subdivision 9 of Section 1269 of the MTA Act and, in the case of the Transit Authority and MaBSTOA, subdivision 11 of Section 1207-m of the TA Act, or the rights and powers vested in any of them by the MTA Act and TA Act to fulfill the terms of any agreement made by any of them with such Owners (whether directly or as

third-party beneficiaries), or in any way impair their rights and remedies until such agreements, bonds, notes and obligations, including this Agreement and the 2015X Bond, together with the interest thereon and all costs and expenses in connection with any action or proceedings by or on behalf of such Owners, are fully met and discharged. As used in this paragraph (h), the terms “Transit Authority,” “MaBSTOA,” and “Related Transportation Entity” have the meanings given to them in the Transportation Resolution.

(i) Unenforceability. Any material provision of any Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms or any Related Entity challenges the enforceability of any Loan Document or asserts in writing, or engages in any action or inaction based on any such assertion, that any material provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms.

(j) Judgments. There is entered against the Borrower or any other Related Entity (i) one or more judgments or orders for the payment of money in an aggregate amount (as to all such judgments and orders) of \$25,000,000 or more in excess of available third party insurance coverage (which shall be deemed to include coverage provided by or through First Mutual Transportation Assurance Corporation, the Borrower’s captive insurance company subsidiary) or (ii) any one or more non-monetary judgments or orders which, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect and, in either case, (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of thirty (30) consecutive calendar days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, is not in effect.

## **Section 6.2**    [Remedies](#).

During the term of this Agreement, Lender and the Administrator shall have the following rights and remedies:

(a) Upon the occurrence of an Advance Suspension Event specified in Section 6.1(e), Lender shall have those rights and remedies conferred on Lender under the other Loan Documents as Owner of an Obligation under the Transportation Resolution and RRIF Supplemental Resolution.

(b) Following the occurrence and during the continuance of an Advance Suspension Event specified in Section 6.1(a), the outstanding principal amount of each Series 2015X Bond shall bear interest at the Overdue Rate in accordance with Section 2.2(d).

(c) Upon the occurrence and during the continuance of any Advance Suspension Event, the Administrator's obligation to make further Advances shall be suspended.

(d) Upon the occurrence of any Advance Suspension Event, Lender and the Administrator may exercise any and all available rights and remedies, whether specified herein or inherent in law or equity, which shall not be exclusive and shall be cumulative, including enforcement through an injunction or order for specific performance of each of

Borrower's obligations underlying any such Advance Suspension Event, and Borrower agrees not to contest the applicability of specific performance as a remedy, notwithstanding that an action at law for damages may be available, it being understood and agreed that, the remedy of acceleration being unavailable, Lender may have no adequate remedy at law.

(e) The Administrator may require that Borrower, within thirty (30) calendar days from receipt of notice from the Administrator, provide a detailed written description of the facts and circumstances which gave rise to the Advance Suspension Event, a detailed statement of steps Borrower is taking or proposes to take to resolve the issues giving rise to the Advance Suspension Event, and a proposed timeline for resolving the issues giving rise to the Advance Suspension Event. The Administrator may accept Borrower's proposal and permit Borrower time to resolve the issues giving rise to the Advance Suspension Event. If permitted to resolve the issues giving rise to the qualification, Borrower shall, at its own cost and expense and in a custom and manner satisfactory to the Administrator, act in accordance with the proposal and, within fifteen (15) calendar days of completing the proposed steps, provide the Administrator with the certification of an Authorized Officer that all such steps have been fully completed and the issues resolved. If Borrower does not propose a plan for resolving the issues giving rise to the Advance Suspension Event, if the Borrower does not act in accordance with the plan to resolve the issues in a custom and manner satisfactory to the Administrator, or if the Borrower does not timely provide the required certification, then the Administrator may exercise any other remedies available under this Agreement.

(f) To the extent permitted by applicable law, Borrower shall be liable for all the Lender's legally assessed or reasonably incurred expenses of its counsel and other external experts, including financial advisors, incurred in the consideration, investigation, analysis, evaluation, development, negotiation or documentation of any amendment, modification, loan workout, or in any litigation to enforce payment or performance of the RRIF Loan Obligations, including, without limitation, any litigation costs and court costs in connection with any proceeding considered, brought or threatened to enforce payment or performance of the RRIF Loan Obligations, regardless of whether such expenses are incurred in connection with enforcement of this Agreement or any other Loan Document, and Borrower shall pay all such amounts promptly upon receipt of written demand from the Administrator.

(g) As a consequence of an Advance Suspension Event, Lender or the Administrator may suspend or debar the Related Entities, as permitted by applicable statute, regulation, order or guidance, from participation in any federal program including, without limitation, the Railroad Rehabilitation and Improvement Financing Program. The Administrator may notify other federal departments and agencies of the Advance Suspension Event and such departments and agencies may have the right to suspend or revoke the Related Entities' eligibility to receive federal financial assistance in accordance with 31 U.S.C. 3720B and 31 CFR 285.13 and 901.6 (with respect to loans and loan insurance or guarantees) and 2 CFR Part 180 and 2 CFR Part 1200 (with respect to federal financial assistance), including, without limitation, federal financial assistance otherwise available under the Transportation Infrastructure Finance and Innovation Act and the Urbanized Area Formula Funding Program.

## ARTICLE VII

### MISCELLANEOUS PROVISIONS

#### Section 7.1 Entire Agreement.

This Agreement together with the other Loan Documents embodies the entire agreement and understanding between Borrower and the Administrator with respect to the subject matter hereof and thereof and supersedes all prior agreements and understandings relative to the same.

#### Section 7.2 Term.

This Agreement shall terminate upon the satisfaction of the RRIF Loan Obligations in their entirety in accordance with the provisions herein and thereof or, if earlier, in accordance with the provisions of Section 2.7(b).

#### Section 7.3 Amendments and Waivers.

No amendments, waivers or modifications to this Agreement are to be effective unless executed by Borrower and the Administrator or his authorized designee in a writing referring to this Agreement.

#### Section 7.4 Parties Bound; Right to Assign.

All the terms and conditions of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by and against, each of the parties hereto and their legal representatives and assigns (other than any Additional Holders) to the extent of their respective interest and obligations hereunder; provided, however, that this Agreement may not be transferred or assigned by Borrower without the prior written consent of the Administrator.

#### Section 7.5 Table of Contents and Headings.

The table of contents and headings of the articles and sections of this Agreement are inserted for convenience only and shall not be deemed to constitute a part hereof or in any manner limit or define the terms of this Agreement.

#### Section 7.6 Notices; Action to be Taken.

(a) Any notice required or submitted hereunder shall be deemed given if delivered in person or mailed by registered or certified mail, return receipt requested and postage prepaid, to the following addresses of the parties hereto or at such addresses as either Borrower or the Administrator shall from time to time designate by written notice:

If to the Borrower:

Attn: Patrick J. McCoy, Director of Finance  
Metropolitan Transportation Authority  
2 Broadway

New York, NY 10004

With a copy to:

Attn: Jerome F. Page, General Counsel  
Metropolitan Transportation Authority  
2 Broadway  
New York, NY 10004

If to Administrator:

Attn: Associate Administrator for Railroad Policy and Development  
Federal Railroad Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590  
Re: New York MTA RRIF Loan

With a copy to:

Attn: Chief Counsel  
Federal Railroad Administration  
1200 New Jersey Ave., S.E.  
Washington, D.C. 20590  
Re: New York MTA RRIF Loan

All notices mailed shall be deemed given on the date received at the office of the party to whom notice is to be given as evidenced by a personal delivery receipt or the registered or certified mail return receipt. Each notice provided by the Borrower hereunder shall include a reference to this Agreement and the Section hereof pursuant to which such notice is given.

(b) The Administrator may rely upon as authoritative, binding and valid any notice, certification or other document delivered by Borrower if signed by an Approved Officer.

#### **Section 7.7**    [Release of Information.](#)

The Administrator shall not disclose any Confidential Information (as defined below) to any person without the consent of the Borrower, other than (a) to the Administrator's officers, directors, employees, agents and advisors, to other federal agencies and to actual or prospective assignees and then only on a confidential basis, (b) as required by any law (including the Freedom of Information Act ("FOIA") (5 U.S.C. 552)), rule or regulation or judicial process, (c) as requested or required by any state or federal authority or examiner regulating the Administrator or Congress, and (d) in connection with the exercise of any remedies hereunder or under any other Loan Document or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder. "Confidential Information" means information designated as confidential that the Borrower furnishes to the

Administrator, but does not include any such information that is or becomes generally available to the public or that is or becomes available to the Administrator from a source other than the Borrower or which the Administrator determines is not confidential information in accordance with applicable law. For purposes of the FOIA, confidential information shall have the meaning applied through FOIA exemption 4 (5 U.S.C. § 552(b)(4)).

#### Section 7.8 No Waiver by Administrator.

No course of dealing on the part of the Administrator, nor any failure or delay by the Administrator with respect to exercising any right, power, or privilege with respect to the RRIF Loan Obligations shall operate as a waiver thereof, or of any other right, power or privilege, nor shall the Administrator's failure to exercise any rights granted with respect to the RRIF Loan Obligations in the event of a Breach or Advance Suspension Event, or the Administrator's exercise of any single or partial exercise of any such right, power or privilege hereunder, operate as a waiver thereof, or of any other right, power or privilege.

#### Section 7.9 Waiver of Jury Trial.

EACH OF THE BORROWER AND THE LENDER HEREBY WAIVE ANY AND ALL RIGHTS IT MAY NOW OR HEREAFTER HAVE TO TRIAL BY JURY IN ANY ACTION, SUIT OR COUNTERCLAIM ARISING IN CONNECTION WITH, OUT OF OR OTHERWISE RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREUNDER. EACH OF THE BORROWER AND THE LENDER HERETO REPRESENTS THAT EACH HAS REVIEWED THIS WAIVER AND CONSENT AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHT AND CONSENTS TO JUDICIAL REFERENCE FOLLOWING CONSULTATION WITH LEGAL COUNSEL ON SUCH MATTERS.

#### Section 7.10 Governing Law.

THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE FEDERAL LAW OF THE UNITED STATES. TO THE EXTENT THAT FEDERAL LAW DOES NOT SPECIFY THE APPROPRIATE RULE OF DECISION FOR A PARTICULAR MATTER AT ISSUE, IT IS THE INTENTION AND AGREEMENT OF THE PARTIES HERETO THAT THE SUBSTANTIVE LAW OF THE STATE OF NEW YORK SHALL BE ADOPTED AS THE GOVERNING FEDERAL RULE OF DECISION.

#### Section 7.11 Indemnification.

(a) Borrower shall promptly upon demand, to the full extent permitted by applicable law, indemnify and hold the United States harmless from and against, and shall otherwise reimburse it for, any claim, demand, cause of action, damage, liability, cost or expense (including reasonable attorneys' fees and court costs) incurred by the United States and arising out of, or in any way resulting from this Agreement, the Series 2015X Bond, the other Loan Documents, the RRIF Project, or the RRIF Loan Obligations, including, but not limited to, the use, operation or condition of any equipment or facilities to which the proceeds of financial assistance have been applied hereunder (except if the claim, demand, cause of

action, damage, liability, cost or expense is asserted against the United States in its governmental capacity or results from the willful act or negligence of the United States).

(b) The provisions of this section shall survive the issuance, execution, delivery and termination of the other RRIF Loan Obligations.

#### Section 7.12 Representatives.

References to the Administrator or the Comptroller General of the United States include their subordinates, employees, agents and servants. The Administrator and the Approved Officers act hereunder in their official and not personal capacities.

#### Section 7.13 Counterparts.

This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith, may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall constitute but one and the same instrument.

#### Section 7.14 Severability.

If any provision of this Agreement shall be invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall not be affected or impaired in any way thereby. A provision held to be unenforceable as applied to any party or circumstance remains applicable to other parties and circumstances.

#### Section 7.15 No Third Party Rights.

The parties hereby agree that this Agreement creates no third party rights against the United States or the Administrator, solely by virtue of the obligation to make Advances hereunder and that no third party creditor or creditors of Borrower shall have any right against the Administrator with respect to the obligation to make Advances hereunder.

#### Section 7.16 Remedies Not Exclusive.

No remedy conferred herein or reserved to the Lender is 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 hereunder or now or hereafter existing at law or in equity or by statute.

*[Remainder of page intentionally left blank]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first entered above.

METROPOLITAN TRANSPORTATION  
AUTHORITY

By:

\_\_\_\_\_  
Patrick J. McCoy  
Director of Finance

The UNITED STATES OF AMERICA,  
represented by the  
SECRETARY OF TRANSPORTATION  
acting through the  
FEDERAL RAILROAD ADMINISTRATOR

By:

\_\_\_\_\_  
[Sarah Feinberg]  
[Acting] Administrator

## **LIST OF EXHIBITS AND SCHEDULES**

Exhibit A: Form of Advance Certificate  
Exhibit B: RRIF Project Description  
Exhibit C: Form of Incumbency Certificate  
Exhibit D: Interagency Agreement  
Exhibit E: RRIF Certificate of Determination  
Exhibit F: RRIF Supplemental Resolution  
Exhibit G: Form of Series 2015X Bond  
Exhibit H: Transportation Resolution  
Exhibit I: Form of Interest Payment Date Certificate  
Exhibit J: Employee Protection Appendix

Schedule 1: Legal Opinions  
Schedule 2: Material Litigation

## EXHIBIT A

### FORM OF ADVANCE CERTIFICATE

To: Federal Railroad Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Attn: Chief of Credit Programs Division

Re: Request for Advance

Pursuant to Section 2.1 of the Financing Agreement, dated [•], 2015 (the "Financing Agreement"), between the Metropolitan Transportation Authority ("Borrower") and to the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator (the "FRA"), the undersigned hereby requests an Advance in the amount of \$\_\_\_\_\_ (the "Requested Amount"). Capitalized terms used but not otherwise defined herein have the meaning set forth in the Financing Agreement. In connection with this Advance Certificate, the undersigned does hereby represent and certify the following:

1. I am an Approved Officer of Borrower duly authorized to execute and deliver this Advance Certificate behalf of Borrower;

2. The proposed Advance Date to which this Advance Certificate relates is \_\_\_\_\_, 20\_\_;

3. The Requested Amount has not been previously funded by any prior Advance and has been incurred by Borrower solely for Allowable Costs.

4. The documents [attached to *or* accompanying] this certificate [and the summary schedule describing their contents]<sup>1</sup> reflect all of the costs proposed to be financed with the proceeds of the Advance;

5. All conditions precedent set out in Section 2.3 have been or (absent prior written revocation of this certification) will be satisfied as of the Advance Date;

6. The Requested Amount together with all prior Advances does not exceed the Maximum Aggregate Principal Amount;

7. The representations and warranties of Borrower contained in Article III of this Agreement are true and correct on and as of the date hereof and (absent prior written revocation of this certification) will be true and correct on the Advance Date except to the extent that such representations and warranties explicitly related solely to an earlier date (in which case such representations and warranties are true and correct on and as of such earlier date); and

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<sup>1</sup> Include where appropriate and useful.

8. As of the date of this certificate and (absent prior written revocation of this certification) as of the Advance Date, no Material Adverse Effect, Breach or Advance Suspension Event has occurred and is continuing and the Commitment Termination Date has not occurred.

The Requested Amount should be remitted on the Advance Date by wire transfer of immediately available funds to the following Bank and Account:

Bank Name: \_\_\_\_\_  
ABA Routing No: \_\_\_\_\_  
F/B/O: Metropolitan Transportation Authority  
Account Number: \_\_\_\_\_  
Reference: MTA RRIF Loan Advance

The undersigned acknowledges that if he or she makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the United States Government in connection with the Financing Agreement, the Borrower and the undersigned may be subject to penalties under 18 U.S.C. § 1001.

\_\_\_\_\_  
Name:  
Title:

## EXHIBIT B

### RRIF PROJECT DESCRIPTION

#### Long Island Rail Road

LONG ISLAND RAIL ROAD				
Element	Total	Total Amount Disbursed prior to this Advance	Amount Drawn this Advance	Remaining Amount Available to Draw
<b>PTC - System Integrator &amp; Force Account Construction</b>				
System Integrator (Design, Integrate, & Furnish)	\$232,405,904.54			\$232,405,905
Force Account	\$87,485,190.00			\$87,485,190
ESA & Harold Hut Changes	\$6,882,534.00			\$6,882,534
Design & Construction Phase Services	\$19,896,485.00			\$19,896,485
Radio Frequency Purchase (Spectrum)	\$4,935,625.00			\$4,935,625
PM / Support Departments	\$19,238,229.00			\$19,238,229
<b>Subtotal</b>	<b>\$370,843,967.54</b>	<b>\$0</b>	<b>\$0</b>	<b>\$370,843,968</b>
<b>Speonk to Montauk Signalization - Design, Furnish, &amp; Construction</b>				
Design & Furnish Signal System (Automatic Speed Control)	\$21,866,348.00			\$21,866,348
Other 3rd Party Work	\$3,476,034.00			\$3,476,034
Force Account	\$47,657,618.00			\$47,657,618
<b>Subtotal</b>	<b>\$73,000,000.00</b>	<b>\$0</b>	<b>\$0</b>	<b>\$73,000,000</b>
<b>Ronkonkoma to Yaphank - Design, Furnish, &amp; Construction</b>				
Design & Furnish Signal System (Automatic Speed Control)	\$9,876,799.94			\$9,876,800
Force Account	\$22,247,391.44			\$22,247,391
Project Support / Project Management / Other	\$4,802,786.63			\$4,802,787
<b>Subtotal</b>	<b>\$36,926,978.00</b>	<b>\$0</b>	<b>\$0</b>	<b>\$36,926,978</b>
<b>Babylon to Patchogue - Design, Furnish, &amp; Construction</b>				
Design & Furnish Signal System (Automatic Speed Control)	\$17,409,392.79			\$17,409,393
Force Account	\$30,908,809.66			\$30,908,810
Project Support / Project Management / Other	\$6,410,851.55			\$6,410,852
<b>Subtotal</b>	<b>\$54,729,054.00</b>	<b>\$0</b>	<b>\$0</b>	<b>\$54,729,054</b>
<b>Contingency</b>	<b>\$32,409,668.66</b>	<b>0</b>	<b>0</b>	<b>\$32,409,669</b>
<b>Project Subtotal</b>	<b>\$567,909,668.20</b>	<b>\$0</b>	<b>\$0</b>	<b>\$567,909,668</b>
<b>Less Other Federal Funding (FTA/FRA Grants)</b>	<b>(\$49,848,939.20)</b>	<b>\$0</b>		
<b>Loan Request</b>	<b>\$518,060,729.00</b>		<b>\$0</b>	<b>\$518,060,729</b>

## Metro-North Railroad

METRO NORTH						
Element	3rd Party	In-House	Total	Total Amount Disbursed prior to this Advance	Amount Draw n this Advance	Remaining Amount Available to Draw
<b>Design/Provisioning Phase</b>						
<b>PTC BASE</b>						
System Integrator (Design, Integrate, & Furnish)	\$126,320,000	\$0	\$126,320,000			\$126,320,000.0
System Integrator (Design, Integrate, & Furnish) (M8 Option)	\$25,090,000	\$0	\$25,090,000			\$25,090,000.0
System Integrator (Design, Integrate, & Furnish) (PHW Option)	\$4,910,000	\$0	\$4,910,000			\$4,910,000.0
Furnish and Install Communication Equipment	\$29,830,000	\$0	\$29,830,000			\$29,830,000.0
Post Warranty Software Maintenance	\$1,130,000	\$0	\$1,130,000			\$1,130,000.0
Radio Frequency Purchase (Spectrum)	\$4,910,000	\$0	\$4,910,000			\$4,910,000.0
Design & Construction Phase Services	\$14,200,000	\$2,999,000	\$17,199,000			\$17,199,000.0
PHW Procurement	\$4,609,000	\$0	\$4,609,000			\$4,609,000.0
<b>West of Hudson Port Jervis Line Cab Signal/PTC</b>						
Construction Phase Services Signal System (ASC)/PTC	\$902,000	\$165,000	\$1,067,000			\$1,067,000.0
Furnish Signal System (Automatic Speed Control)/PTC	\$47,130,000	\$0	\$47,130,000			\$47,130,000.0
<b>Hudson Line (Croton-Harmon to Poughkeepsie)</b>						
Design & Furnish Signal System (Automatic Speed Control)	\$48,400,000	\$1,100,000	\$49,500,000			\$49,500,000.0
<b>Harlem Line (Woodlawn to North White Plains)</b>						
Design & Furnish Communication System	\$3,932,500	\$550,000	\$4,482,500			\$4,482,500.0
<b>Design/Provisioning Subtotal</b>	<b>\$311,363,500</b>	<b>\$4,814,000</b>	<b>\$316,177,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$316,177,500</b>
<b>Less Other Federal Funding (FTA/FRA Funding)</b>	<b>\$25,170,948</b>	<b>\$150,000</b>	<b>\$25,320,948</b>	<b>\$0</b>		
<b>Design/Provisioning Subtotal (Less Other Fed Funding)</b>	<b>\$286,192,552</b>	<b>\$4,664,000</b>	<b>\$290,856,552</b>		<b>\$0</b>	<b>\$316,177,500</b>
<b>Installation Phase</b>						
<b>PTC BASE</b>						
Right of Way Infrastructure	\$0	\$55,759,000	\$55,759,000			\$55,759,000.0
Rolling Stock	\$0	\$24,531,000	\$24,531,000			\$24,531,000.0
<b>West of Hudson Port Jervis Line Cab Signal/PTC</b>						
Right of Way Infrastructure	\$0	\$24,403,000	\$24,403,000			\$24,403,000.0
<b>Hudson Line (Croton-Harmon to Poughkeepsie)</b>						
Right of Way Infrastructure	\$27,500,000	\$22,000,000	\$49,500,000			\$49,500,000.0
<b>Harlem Line (Woodlawn to North White Plains)</b>						
Right of Way Infrastructure	\$6,723,750	\$6,723,750	\$13,447,500			\$13,447,500.0
<b>Installation Subtotal</b>	<b>\$34,223,750</b>	<b>\$133,416,750</b>	<b>\$167,640,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$167,640,500</b>
<b>Less Other Federal Funding (FTA/FRA Funding)</b>	<b>\$0</b>	<b>\$21,662,781</b>	<b>\$21,662,781</b>	<b>\$0</b>		
<b>Installation Subtotal (Less Other Fed Funding)</b>	<b>\$34,223,750</b>	<b>\$111,753,969</b>	<b>\$145,977,719</b>		<b>\$0</b>	<b>\$167,640,500</b>
<b>Design/Provisioning &amp; Installation Total</b>	<b>\$345,587,250</b>	<b>\$138,230,750</b>	<b>\$483,818,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$483,818,000</b>
<b>Less Other Federal Funding (FTA/FRA Funding)</b>	<b>\$25,170,948</b>	<b>\$21,812,781</b>	<b>\$46,983,729</b>			
*\$43,325,562 for West of Hudson; \$3,658,167 for PTC ACSES FRA grant.						
<b>Contingency</b>			<b>\$12,205,000</b>			<b>\$12,205,000</b>
<b>Loan Request</b>	<b>\$320,416,302</b>	<b>\$116,417,969</b>	<b>\$449,039,271</b>			
<b>Notes:</b> 1) Includes Contingency to provide for potential higher costs associated with an accelerated implementation schedule.						
2) Does not include the Connecticut Department of Transportation's \$157.3 million share of Metro-North Railroad's PTC project costs.						

## EXHIBIT C

### FORM OF INCUMBENCY CERTIFICATE

To: Federal Railroad Administration  
1200 New Jersey Avenue, S.E.  
Washington, D.C. 20590

Attn: Associate Administrator for Railroad Policy and Development

Re: Certification as to Incumbency

I, the undersigned, Secretary of the Metropolitan Transportation Authority, a public benefit corporation of the State of New York (the “MTA”), do hereby certify to the United States of America, represented by the Secretary of Transportation acting through the Federal Railroad Administrator (“Lender”), that:

1. Each of the below-named individuals has been duly qualified as an Authorized Officer (as such term is defined in of the Metropolitan Transportation Authority General Resolution Authorizing Transportation Revenue Obligations, adopted on March 26, 2002, including Annex A thereto, as amended and supplemented from time to time in accordance with the terms thereof) holding the office opposite such individual’s name;

2. Each such Authorized Officer has been duly authorized by all necessary corporate action to execute and deliver on behalf of the MTA that certain Financing Agreement, dated [●], 2015, between the MTA and Lender and all notes, certificates, notices, agreements and other documents to be issued pursuant to or in connection with such Financing Agreement; and

3. The signature set forth opposite each such individual’s name is his or her genuine signature.

Name	Title	Signature

4. To the best of my knowledge and belief after due inquiry, no such Authorized Officer:

(a) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

(b) has, within the preceding three-year period, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust laws or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) is presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses enumerated in paragraph (b) above; or

(d) has, within the preceding three-year period, had one or more public transactions (federal, state or local) terminated for cause or default.

The undersigned acknowledges that if he or she makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the United States Government in connection herewith, the Borrower and the undersigned may be subject to penalties under 18 U.S.C. § 1001.

WITNESS my hand this \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

Name:

Title: Secretary

STATE OF NEW YORK     )  
  ) ss. :  
COUNTY OF NEW YORK )

Sworn to before me this \_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT D**  
**INTERAGENCY AGREEMENT**

**EXHIBIT E**  
**RRIF CERTIFICATE OF DETERMINATION**

**EXHIBIT F**  
**RRIF SUPPLEMENTAL RESOLUTION**

**EXHIBIT G-I**

**FORM OF SERIES 2015X INTERIM BOND**

**THE OBLIGATIONS 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.**

**METROPOLITAN TRANSPORTATION AUTHORITY  
TRANSPORTATION REVENUE BOND, SERIES 2015X  
(RRIF Loan – Positive Train Control Project)**

**NO. 14X-RRIF-R-1 Maximum Principal Amount: \$967,100,000**

<u>Interest Rate</u>	<u>Maturity Date</u>	<u>Dated Date</u>
Base Rate, except as herein provided	November 15, 2037	____, 2015

Registered Owner: UNITED STATES OF AMERICA, represented by the Secretary of  
Transportation, acting through the Federal Railroad Administrator

Maximum Principal Amount: Nine Hundred Sixty Seven Million One Hundred Thousand  
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 Trust Estate defined below, as provided in the hereinafter defined Financing Agreement, the Principal Amount (up to the Maximum Principal Amount set forth above), as such Principal Amount may be increased or decreased as provided in the Financing Agreement, 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 The Bank of New York Mellon, as Paying Agent, from the first Advance Date (as defined in the hereinafter defined Financing Agreement) at the Base Rate, except as provided herein, payable on each Interest Payment Date until the MTA’s obligation with respect to the payment of such Principal Amount shall be discharged. Interest on this Series 2015X Bond shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the applicable Advance Date or last Interest Payment Date, as the case may be, to but excluding the Interest Payment Date on which such interest is due.

“Financing Agreement” means the Financing Agreement, dated as of \_\_\_\_, 2015, between MTA and the United States of America (the “Lender”), represented by the Secretary of Transportation, acting through the Federal Railroad Administrator (the “Administrator”).

Each Advance by the Lender to MTA under the Financing Agreement shall increase the Principal Amount of this Series 2015X Bond and the Lender shall record the amount of each Advance on Schedule A hereto. The Lender shall also record the amount of any redemptions or payments of the Principal Amount of this Series 2015X Bond on Schedule A hereto. The failure to record any such amount on such Schedule A shall not, however, affect the obligations of the MTA under this Series 2015X Bond or the Financing Agreement.

“Interest Payment Date” means each May 15 and November 15 beginning after the first Advance Date and in any event not before November 15, 2015 until this Series 2015X Bond is paid in full or, if any such day is not a Business Day, then the next succeeding Business Day.

“Base Rate” means the rate of 2.38% per annum.

In the event that an Advance Suspension Event under Section 6.1(a) of the Financing Agreement occurs and is continuing, the outstanding Principal Amount of this Series 2015X Bond and any past-due amount of interest shall bear interest at the Overdue Rate commencing on the thirtieth day after the relevant payment was due and continuing until such Advance Suspension Event is cured. Upon the occurrence and during the continuance of a Ratings Downgrade Event (as defined in the Financing Agreement), the outstanding Principal Amount of this Series 2015X Bond shall bear interest at the Ratings Downgrade Rate. For the avoidance of doubt, if at any time both the Ratings Downgrade Rate and the Overdue Rate apply, the outstanding Principal Amount of this Series 2015X Bond and any past-due amount of interest shall bear interest at the rate per annum equal to the Base Rate plus four percent (4.00%). If and to the extent this Series 2015X Interim Bond is transferred to any Additional Holder (as such term is defined in the Financing Agreement) then (i) neither the Ratings Downgrade Rate nor the Overdue Rate shall apply and (ii) interest paid on this Series 2015X Interim Bond shall not be excludable from gross income for United States federal income tax purposes.

“Ratings Downgrade Rate” means the sum of the Base Rate and two percent (2.00%) per annum.

“Overdue Rate” means the sum of (i) whichever of the Base Rate or the Ratings Downgrade Rate is applicable at the relevant time and (ii) two percent (2.00%) per annum.

Prior to the delivery of a Series 2015X Final Bond in accordance with the provisions of Section 2.1(e) of the Financing Agreement, the MTA and the Lender shall agree upon the form and substance of Schedule A attached thereto relating to the payment of the Principal Amount hereof and interest hereon, taking into consideration the provisions of Section 2.2 of the Financing Agreement.

Payments of principal and interest will be paid by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time under the Financing Agreement.

This Bond is one of a duly authorized issue of obligations of the MTA designated as its “Transportation Revenue 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 March 26, 2002, entitled “General Resolution Authorizing Transportation Revenue Obligations,” as supplemented. Said resolution, as supplemented and amended, is herein called the “Resolution.” This Bond is designated as “Transportation Revenue Bond, Series 2015X” (herein called the “Series 2015X Bond”), issued in the maximum principal amount of \$967,100,000 under said Resolution. All capitalized terms used but not otherwise defined herein or in the Financing Agreement 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 The Bank of New York Mellon, 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 2015X Bond, 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 2015X Bond with respect thereto, and the terms and conditions upon which the Bonds are issued and 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 “Trust Estate,” being (i) all Revenues and Net Proceeds of Qualified Agreements, (ii) the proceeds of the sale of the Obligations, (iii) all Funds, Accounts and Subaccounts established by the Resolution (subject to specified provisions of the Resolution) including the investments, if any, thereof, (iv) the Interagency Agreement, and (v) all funds, moneys and securities and any and all other rights and interest in property, whether tangible or intangible, from time to time hereafter received by the Trustee as additional security under the Resolution.

To the extent provided in the Resolution, the Bonds may be issued from time to time pursuant to Supplemental Resolutions in one or more series, 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 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 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 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 basis with the Bonds with respect to all right, title and interest of the MTA in the 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.

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 2015X Bond or Series 2015X 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.

This Series 2015X Bond may be transferred in accordance with the provisions of Section 2.6 of the Financing Agreement.

As provided in Section 2.4(a) of the Financing Agreement, the Series 2015X Bond is subject to redemption prior to maturity on any date, at the option of MTA, in whole or in part, without penalty or premium, upon not less than ten (10) nor more than thirty (30) calendar days' prior written notice to the Lender, at 100% of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date. Any partial payments of principal shall be applied to future installments due on this Series 2015X Bond in the inverse order of maturity, and Schedule B hereto shall be revised to reflect such redemption.

Pursuant to the MTA Act, the State, upon providing sufficient funds, may require MTA to redeem the Series 2015X Bond, prior to maturity, as a whole, on any Interest Payment Date not less than twenty years after the date of issue of the Series 2015X Bond, at 105% of their face value and accrued interest or at such lower redemption price provided for the Series 2015X Bond in the case of redemption as a whole on the redemption date. The MTA Act further provides that the City, upon furnishing sufficient funds, may require MTA to redeem the Series 2015X Bond, as a whole, but only in accordance with the terms upon which the Series 2015X Bond is otherwise redeemable.

The Lender hereby waives the provisions relating to notices of redemption as set forth in the Resolution; all notices relating to redemption shall be as provided in the Financing Agreement. If the Trustee gives an unconditional notice of redemption, then on the redemption

date the Series 2015X Bond will become due and payable. If the Trustee gives a conditional notice of redemption and holds money to pay the redemption price of the Series 2015X Bond, then on the redemption date the Series 2015X Bond will become due and payable.

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 2015X Bond, 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 of Finance

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

**THE BANK OF NEW YORK MELLON,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_, 2015

## ASSIGNMENT

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

---

[PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE]

---

[PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE]

the within Bond of the Metropolitan Transportation Authority and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

In the Presence of:

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

NOTE: The signature to this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

## Schedule A

### **Schedule of Advances and Redemptions or Payments of Principal**

[illegible]

**EXHIBIT G-II**

**FORM OF SERIES 2015X FINAL BOND**

**THE OBLIGATIONS 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.**

**METROPOLITAN TRANSPORTATION AUTHORITY  
TRANSPORTATION REVENUE BOND, SERIES 2015X  
(RRIF Loan – Positive Train Control Project)**

**NO. 14X-RRIF-R-2**

**Principal Amount: \$967,100,000**

**Interest Rate**  
Base Rate, except  
as herein provided

**Maturity Date**  
November 15, 2037

**Dated Date**  
\_\_\_\_, 20\_\_

Registered Owner: UNITED STATES OF AMERICA, represented by the Secretary of  
Transportation, acting through the Federal Railroad Administrator

Principal Amount: Nine Hundred Sixty Seven Million One Hundred Thousand 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 Trust Estate defined below, as provided in the hereinafter defined Financing Agreement, the Principal Amount set forth above, as such Principal Amount may be decreased as provided in the Financing Agreement, 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 The Bank of New York Mellon, as Paying Agent, from the Interest Payment Date (as defined in the hereinafter defined Financing Agreement) immediately preceding the date hereof at the Base Rate, except as provided herein, payable on each Interest Payment Date until the MTA’s obligation with respect to the payment of such Principal Amount shall be discharged. Interest on this Series 2015X Bond shall be calculated based on a 365-day or 366-day year, as appropriate, and the actual number of calendar days elapsed from and including the last Interest Payment Date to but excluding the Interest Payment Date on which such interest is due.

“Financing Agreement” means the Financing Agreement, dated as of \_\_\_\_, 2015, between MTA and the United States of America (the “Lender”), represented by the Secretary of Transportation, acting through the Federal Railroad Administrator (the “Administrator”).

“Interest Payment Date” means each May 15 and November 15 beginning after the first Advance Date and in any event not before November 15, 2015 until this Series 2015X Bond is paid in full or, if any such day is not a Business Day, then the next succeeding Business Day.

“Base Rate” means the rate of 2.38% per annum.

In the event that an Advance Suspension Event under Section 6.1(a) of the Financing Agreement occurs and is continuing, the outstanding Principal Amount of this Series 2015X Bond and any past-due amount of interest shall bear interest at the Overdue Rate commencing on the thirtieth day after the relevant payment was due and continuing until such Advance Suspension Event is cured. Upon the occurrence and during the continuance of a Ratings Downgrade Event (as defined in the Financing Agreement), the outstanding Principal Amount of this Series 2015X Bond shall bear interest at the Ratings Downgrade Rate. For the avoidance of doubt, if at any time both the Ratings Downgrade Rate and the Overdue Rate apply, the outstanding Principal Amount of this Series 2015X Bond and any past-due amount of interest shall bear interest at the rate per annum equal to the Base Rate plus four percent (4.00%). If and to the extent this Series 2015X Final Bond is transferred to any Additional Holder (as such term is defined in the Financing Agreement) then (i) neither the Ratings Downgrade Rate nor the Overdue Rate shall apply and (ii) interest paid on this Series 2015X Final Bond shall not be excludable from gross income for United States federal income tax purposes.

“Ratings Downgrade Rate” means the sum of the Base Rate and two percent (2.00%) per annum.

“Overdue Rate” means the sum of (i) whichever of the Base Rate or the Ratings Downgrade Rate is applicable at the relevant time and (ii) two percent (2.00%) per annum.

Payments of principal and interest will be paid by wire transfer of immediately available funds in accordance with written payment instructions provided by the Administrator from time to time under the Financing Agreement.

This Bond is one of a duly authorized issue of obligations of the MTA designated as its “Transportation Revenue 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 March 26, 2002, entitled “General Resolution Authorizing Transportation Revenue Obligations,” as supplemented. Said resolution, as supplemented and amended, is herein called the “Resolution.” This Bond is one of a series of Bonds designated as “Transportation Revenue Bonds, Series 2015X” (herein called the “Series 2015X Bonds”), issued in the principal amount of \$967,100,000 under said Resolution. All capitalized terms used but not otherwise defined herein or in the Financing Agreement 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 The Bank of New York Mellon, 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 2015X Bond, 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 2015X Bond with respect thereto, and the terms and conditions upon which the Bonds are issued and 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 "Trust Estate," being (i) all Revenues and Net Proceeds of Qualified Agreements, (ii) the proceeds of the sale of the Obligations, (iii) all Funds, Accounts and Subaccounts established by the Resolution (subject to specified provisions of the Resolution) including the investments, if any, thereof, (iv) the Interagency Agreement, and (v) all funds, moneys and securities and any and all other rights and interest in property, whether tangible or intangible, from time to time hereafter received by the Trustee as additional security under the Resolution.

To the extent provided in the Resolution, the Bonds may be issued from time to time pursuant to Supplemental Resolutions in one or more series, 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 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 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 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 basis with the Bonds with respect to all right, title and interest of the MTA in the 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.

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 2015X Bond or Series 2015X 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.

This Series 2015X Bond may be transferred in accordance with the provisions of Section 2.6 of the Financing Agreement.

As provided in Section 2.4(a) of the Financing Agreement, the Series 2015X Bond is subject to redemption prior to maturity on any date, at the option of MTA, in whole or in part, without penalty or premium, upon not less than ten (10) nor more than thirty (30) calendar days' prior written notice to the Lender, at 100% of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date. Any partial payments of principal shall be applied to future installments due on this Series 2015X Bond in the inverse order of maturity, and Schedule A hereto shall be revised to reflect such redemption.

Pursuant to the MTA Act, the State, upon providing sufficient funds, may require MTA to redeem the Series 2015X Bond, prior to maturity, as a whole, on any Interest Payment Date not less than twenty years after the date of issue of the Series 2015X Bond, at 105% of their face value and accrued interest or at such lower redemption price provided for the Series 2015X Bond in the case of redemption as a whole on the redemption date. The MTA Act further provides that the City, upon furnishing sufficient funds, may require MTA to redeem the Series 2015X Bond, as a whole, but only in accordance with the terms upon which the Series 2015X Bond is otherwise redeemable.

The Lender hereby waives the provisions relating to notices of redemption as set forth in the Resolution; all notices relating to redemption shall be as provided in the Financing Agreement. If the Trustee gives an unconditional notice of redemption, then on the redemption date the Series 2015X Bond will become due and payable. If the Trustee gives a conditional notice of redemption and holds money to pay the redemption price of the Series 2015X Bond, then on the redemption date the Series 2015X Bond will become due and payable.

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 2015X Bond, 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 of Finance

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

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

**THE BANK OF NEW YORK MELLON,**  
as Trustee

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

Date of Authentication: \_\_\_\_\_, 20\_\_

## ASSIGNMENT

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

---

[PLEASE INSERT SOCIAL SECURITY NUMBER OR OTHER IDENTIFYING NUMBER  
OF ASSIGNEE]

---

[PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS OF TRANSFEREE]

the within Bond of the Metropolitan Transportation Authority and hereby irrevocably constitutes and appoints \_\_\_\_\_ attorney to transfer the said Bond on the books kept for registration thereof, with full power of substitution in the premises.

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

In the Presence of:

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

NOTE: The signature to this assignment must correspond with the name as written on the face of the within Bond in every particular, without alteration or enlargement or any change whatsoever.

## Schedule A

### Schedule of Redemptions or Payments of Principal

<u>Interest Payment Date</u>	<u>Beginning Balance</u>	<u>Interest Amount</u>	<u>Principal Amount</u>	<u>Total Amount Due</u>	<u>Ending Balance</u>
5/15/2018			--		
11/15/2018					
5/15/2019			--		
11/15/2019					
5/15/2020			--		
11/15/2020					
5/15/2021			--		
11/15/2021					
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5/15/2035			--		
11/15/2035					

5/15/2036			--		
11/15/2036					
5/15/2037			--		
11/15/2037					

**EXHIBIT H**

**TRANSPORTATION RESOLUTION**

# FORM OF INTEREST PAYMENT DATE CERTIFICATE

Re: Interest Payment Date Certification

WITNESS my hand this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public

**EXHIBIT J**

**EMPLOYEE PROTECTION APPENDIX**

*(See following pages)*

## SCHEDULE 1

### LEGAL OPINIONS

Capitalized terms not otherwise defined below have the meanings given to them on the Section 1.1 of the Agreement.

1. We have examined the Series 2015X Bond as executed and, in our opinion, the form of said Series 2015X Bond and its execution are regular and proper.

2. Borrower is duly created and validly existing under the laws of the State of New York, including the Constitution of the State New York (the “State”) and Title 11 of Article 5 of the New York Public Authorities law as amended from time to time (the “Issuer Act”).

3. Borrower has the right and power under the Issuer Act to adopt the Transportation Resolution and the RRIF Supplemental Resolution (together, the “Resolution”). The Resolution has been duly and lawfully adopted by the Borrower, is in full force and effect, is valid and binding upon Borrower, and is enforceable in accordance with its terms, and no other authorization for the Resolution is required. The Resolution creates the valid pledge which it purports to create of the Trust Estate, 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.

4. Borrower and each of the other Related Entities party to the Interagency Agreement has the right and power under the Issuer Act to enter into and perform the Interagency Agreement. The Interagency Agreement has been duly and lawfully entered into by each such party thereto, is in full force and effect, is valid and binding upon the parties thereto, and is enforceable against each of them in accordance with its terms, and no other authorization for the Interagency Agreement is required.

5. Section 4.12 of the Interagency Agreement sets forth a legal, valid and binding obligation of the State in favor of the Lender, enforceable against the State in accordance with its terms.

6. The Series 2015X Bond has been duly and validly authorized in accordance with the laws of the State of New York, including the Constitution of the State and the Issuer Act, and in accordance with the Resolution, and when issued will be a valid and binding special obligation of Borrower, enforceable in accordance with its terms and the terms of the Resolution, payable solely from the Trust Estate as provided in the Resolution, and is entitled to the benefits of the Issuer Act and the Resolution. Borrower has no taxing power and the Series 2015X Bond is not a debt of the State or any other political subdivision thereof. Borrower reserves the right to issue additional Obligations and to incur Parity Debt (as defined in the Transportation Resolution) on the terms and conditions, and for the purposes, provided in the Resolution, on a parity as to security and payment with the Series 2015X Bond.

7. The Lender, the holders of the Series 2015X Bond, or the holders of any evidence of indebtedness of the Borrower do not and will not have a pledge of or lien on (i) the dedicated


mass transportation trust fund established by Section 89-c of the State Finance Law, (ii) the metropolitan transportation authority finance assistance fund established by Section 92-ff of the State Finance Law, (iii) the metropolitan mass transportation operating assistance account established in the mass transportation operating assistance fund pursuant to Section 88-a of the State Finance Law, or (iv) the taxes or moneys deposited therein.

8. The Series 2015X Bond is a security in which all public officers and bodies of the State and all municipalities and political subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are or may be authorized to invest in bonds or other obligations of the State, may properly and legally invest funds including capital in their control or belonging to them to the extent that the legality of such investment is governed by the laws of the State; and which may be deposited with and shall be received by all public officers and bodies of the State and all municipalities and political subdivisions for any purpose for which the deposit of bonds or other obligations of the State is or may be authorized.

**SCHEDULE 2**  
**MATERIAL LITIGATION**

# Staff Summary

Page 1 of 2

<b>Subject</b> Agreement with Operation Lifesaver, Inc.
<b>Department</b> Safety
<b>Department Head Name</b> David Mayer
<b>Department Head Signature</b> 
<b>Project Manager/Division Head</b>

<b>Date</b> April 29, 2015
<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.	4/27/15			
2	Board	4/29/15			

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

## Purpose:

To obtain Board approval for an agreement (the "Agreement") between Metropolitan Transportation Authority ("MTA") and Operation Lifesaver, Inc. ("OLI") pursuant to which OLI will provide assistance to MTA to ensure that the public awareness, outreach and education program components of MTA's enhanced grade crossing safety initiative are responsive to the unique circumstances found within the MTA system.

## Discussion:

OLI is a non-profit organization providing public education programs in all 50 states to prevent collisions, injuries and fatalities on and around railroad tracks and highway-rail grade crossings. Its programs are co-sponsored by federal, state and local government agencies, highway safety organizations and America's railroads. OLI focuses on promoting the three E's - education, enforcement and engineering - to keep people safe around tracks and railway crossings.

Pursuant to the Agreement, OLI will develop a rail safety educational and media campaign focusing on the safety challenges of urban transportation particularly suited for the MTA service area and in connection therewith:

- MTA staff and OLI staff will meet to discuss ways to improve MTA's grade crossing-and trespass prevention-related public awareness and education program.
- OLI staff will:
  - describe which approaches and programs they believe would be most effective in the MTA environment;
  - recommend ways for MTA to maximize public exposure and positive outcomes;
  - share lessons learned by OLI in the past and going forward;
  - provide commentary on MTA's current programs and MTA's proposals for new initiatives; and
  - provide MTA brochures, literature and other creative material to effectively educate and reach out to the public on the subjects of grade crossing safety and rail trespass prevention.
- MTA will
  - provide staff support to coordinate Operation Lifesaver Authorized Volunteer activities in the MTA system's service area and

- assign at least 24 MTA employees to participate in OLI training and to subsequently use such training to perform outreach focusing on MTA services in the States of New York and Connecticut.


As consideration for OLI's grant of a copyrighted material license and its advice and related services, MTA will pay to OLI a one time royalty payment of \$35,000.

**Recommendation:**

It is recommended that the Board approve the Agreement.



# Staff Summary

Page 1 of 2

<b>Subject</b> 2014 Annual Investment Report and 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 27, 2015
<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.	4/27			
2	Board	4/29			

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 01/01/2014 to 12/31/2014, obtain Board approval of the MTA 2014 Annual Investment Report and obtain Board approval of the MTA All Agency Investment Guidelines ("Investment Guidelines or Guidelines").

## 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 2014 MTA Annual Investment Report contains the following 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

## Recommendation(s):

It is recommended that the MTA Board re-approve the Board adopted Investment Guidelines and approve the MTA's submission of the 2014 Annual Investment Report.

**Metropolitan Transportation Authority  
Investment Performance by Type of Fund  
For the Period Jan. 1, 2014 to Dec. 31, 2014**


<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	\$882,178	\$897,452,783	0.10%
MTA Special Assistance Fund	427,905	406,673,499	0.11%
TBTA Investments	165,219	139,084,709	0.12%
MTA Finance Fund	167,480	262,682,486	0.06%
MTA Transportation Resolution Funds	3,278,828	1,838,780,991	0.18%
State Service Contract Debt Service Fund	702	35,529,000	0.00%
MTA Dedicated Tax Fund Resolution Funds	78,627	154,606,537	0.05%
2 Broadway Certificates' Funds	7,097	17,275,151	0.04%
TBTA General Purpose Resolution Funds	315,569	416,348,462	0.08%
TBTA Subordinate Resolution Funds	22,670	41,691,591	0.05%
Other Restricted Funds	296,717	362,397,873	0.08%
<b>Total</b>	<b>\$5,642,993</b>	<b>\$4,572,523,082</b>	<b>0.12%</b>

Average Yield on 6 month Generic Treasury Bill (1/1/14 – 12/31/14)	0.06%
Average Yield on 12 month Generic Treasury Bill (1/1/14 – 12/31/14)	0.11%



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

<b>Subject</b> Verrazano-Narrows Bridge Rebate Programs
<b>Department</b> Finance
<b>Department Head Name</b> Robert E. Foran, Chief Financial Officer
<b>Department Head Signature</b> 

<b>Date</b> April 29, 2015
<b>Table of Contents Ref #</b>

Board Action						Internal Approvals			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	MTA B&T Comm.	4/27	X			1	Legal 		
2	Finance Comm.	4/27	X			2	Chief of Staff 		
3	Board	4/29	X						

## PURPOSE:

To adopt the annexed resolution revising the two MTA toll rebate programs at the Verrazano-Narrows Bridge which were initially approved by the Board on February 24, 2014 and implemented by TBTA with an effective date of April 1, 2014, as outlined in Exhibit A annexed hereto and summarized below.

## DISCUSSION:

The New York State Legislature has appropriated funds to support the toll rebate programs at the Verrazano-Narrows Bridge, providing \$3.5 million to the MTA for fifty percent of the cost of the 2015-2016 Staten Island Resident Rebate Program (the "2015-2016 SIR Rebate Program") and \$3.5 million for fifty percent of the cost of the 2015-2016 Verrazano-Narrows Bridge Commercial Rebate Program (the "2015-2016 VNB Commercial Rebate Program", and collectively, the "2015-2016 VNB Rebate Programs"), as well as an additional \$3.3 million to keep an effective toll rate of \$5.50 for Staten Island residents under the 2015-2016 SIR Rebate Program (i.e., the effective SIR toll prior to the March 22, 2015 toll increase). Verrazano-Narrows Bridge tolls are collected only in the Staten Island-bound direction in accordance with federal law.

**SIR Rebate Program.** Under the 2015-2016 SIR Rebate Program, the MTA would rebate \$0.74 of the \$6.24 SIR E-ZPass toll paid by Staten Island residents with three or more trips per month across the VNB, and \$1.10 of the \$6.60 SIR E-ZPass toll paid by Staten Island residents with one or two trips per month across the VNB. As a result of these proposed MTA rebates, Staten Island residents would pay \$5.50 per Staten Island-bound trip across the Verrazano-Narrows Bridge. The 2015-2016 SIR Rebate Program would be retroactive to April 1, 2015 and continue through March 31, 2016.

Staten Island residents remain uniquely disadvantaged by the MTA district's transportation network charges in that the VNB is their sole means of vehicular access to the rest of New York City. In the past, the Legislature has recognized this class of citizens in legislation designed to reduce the toll rate which accrues to these residents for crossings over the Verrazano-Narrows Bridge. Using Legislative funds being allocated to the MTA and other appropriate funds to continue the SIR Rebate Program on the Verrazano-Narrows Bridge would help further reduce the burden suffered by geographically isolated Staten Island residents who have little or no practical access to mass transit, in a manner consistent with the MTA's mandate of providing a seamless transportation network for the region and the MTA's statutory purposes to develop and implement a unified transportation policy for the MTA transportation district. Moreover, the SIR Rebate Program's effective reduction of the VNB toll for those Staten Island residents who need to drive for employment and other purposes could increase the use of other TBTA facilities, as well as use of the E-ZPass system, and facilitate travel to points beyond.

**VNB Commercial Rebate Program.** Under the 2015-2016 VNB Commercial Rebate Program, the initial rebate would be 18 percent of the E-ZPass toll for trucks and other commercial vehicles with more than ten (10) trips per month across the Verrazano-Narrows Bridge, using the same New York Customer Service Center (NYCSC) E-ZPass Account. Implementing an 18 percent rebate of the E-ZPass toll for trucks and other eligible commercial vehicles, rather than the 20 percent rebate as specified in the 2014-2015 VNB Commercial Rebate Program, is expected to ensure that the \$7 million allocated for the 2015-2016 VNB Commercial Rebate Program is sufficient to provide funding from April 1, 2015 through March 31, 2016.

While the rebate would be applied to the total amount of eligible tolls, the effective toll rate for each Staten Island-bound trip taken by vehicles receiving the initial 18 percent rebate under the 2015-2016 VNB Commercial Rebate Program would be approximately:

2 axle: Current: \$20.00	With the rebate: \$16.40
3 axle: Current: \$32.78	With the rebate: \$26.88
4 axle: Current: \$41.90	With the rebate: \$34.36
5 axle: Current: \$54.62	With the rebate: \$44.79
6 axle: Current: \$63.74	With the rebate: \$52.27
7 axle: Current: \$76.46	With the rebate: \$62.70

The 2015-2016 VNB Commercial Rebate Program would continue to facilitate regional mobility; support increased economic activity and promote economic growth throughout the region; encourage trucks and other commercial vehicles using the Verrazano-Narrows Bridge to enroll in the E-ZPass system; and might encourage those vehicles to also use *other* TBTA facilities, thereby promoting increased and more effective use of the facilities, services, and systems of the TBTA, and facilitate travel to points beyond.

## FINANCIAL IMPACT:

The projected annualized cost of the 2015-2016 VNB Rebate Programs would be \$17.3 million, with \$10.3 million for the 2015-2016 VNB SIR Rebate Program and \$7 million for the 2015-2016 VNB Commercial Rebate Program. Under the 2015-2016 VNB Rebate Programs, \$7 million of the cost for the 2015-2016 SIR Rebate Program and \$7 million of the cost of the 2015-2016 VNB Commercial Rebate Program are to be funded equally by the State and the MTA, with the State's contribution provided by appropriations to the MTA. An additional \$3.3 million in appropriations is being provided by the State to the MTA to keep an effective toll rate of \$5.50 for Staten Island Residents under the 2015-2016 SIR Rebate Program (i.e., the effective toll prior to the March 22, 2015 toll increase).

As provided in the accompanying resolution, the 2015-2016 VNB Rebate Programs would be implemented as specified herein only for such periods during which both (a) MTA's total financial responsibility, net of State actions or available offsets, does not exceed \$3.5 million for the 2015-2016 SIR Rebate Program (which is half of the \$7 million allocated to such Program) and \$3.5 million for the 2015-2016 VNB Commercial Rebate Program (which is half of the \$7 million allocated to such Program) and (b) the State provides (i) at least \$3.5 million for the 2015-2016 SIR Rebate Program and \$3.5 million for the 2015-2016 VNB Commercial Rebate Program and (ii) such additional funds as are necessary (currently estimated to be \$3.3 million) to keep an effective toll rate of \$5.50 for Staten Island Residents under the 2015-2016 SIR Rebate Program (i.e., the effective SIR toll prior to the March 22, 2015 toll increase). MTA shall apply the \$3.3 million of additional funds provided by the State as necessary to keep an effective toll rate of \$5.50 for Staten Island Residents under the 2015-2016 SIR Rebate Program (i.e., the effective SIR toll prior to the March 22, 2015 toll increase).

If, as a result of unexpected toll transaction activity, TBTA estimates that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs, net of offsets, will be insufficient to fund the 2015-2016 VNB Commercial Rebate Program for the full Program year, TBTA may reduce the rebate amount under such Program to a percentage that is forecast to be payable in full for the remainder of the Program year with the available funds. However, in the event that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs are fully depleted at any time during the 2015-2016 VNB Rebate Programs annual period, the 2015-2016 VNB Rebate Programs will cease and Staten Island residents will be charged the applicable resident discount toll and trucks and other commercial vehicles will be charged the applicable NYCSC E-ZPass toll for the Verrazano-Narrows Bridge.

It is anticipated that the revised 2015-2016 VNB Rebate Programs would require a period of time to implement the required administrative and technical changes but given the use of the E-Pass system, the rebate would be applied retroactively to April 1, 2015. Consequently, the projected financial impact in the MTA's 2015 Budget would be for 3 quarters of the calendar year or \$5.25 million, with the remainder in the MTA's 2016 Budget.

The VNB Rebate Programs shall continue into future years without specific Board approval of such continuation provided that (a) MTA's annual period contribution does not exceed \$7 million, (b) the MTA Board approves a budget that includes MTA's contribution to such program, and (c) the State provides to MTA funds sufficient for at least half the expenses of each continuing annual period.

## POTENTIAL ENVIRONMENTAL IMPACTS:

Pursuant to a delegation from the Chairman and Chief Executive Officer, MTA staff has undertaken a review and analysis of the potential environmental impacts of the proposed revisions to the VNB Rebate Programs and issued a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law, determining that the

implementation of the revised VNB Rebate Programs, as described herein, will have no significant adverse environmental impact.

**RECOMMENDATION:**

It is recommended that the Board adopt the attached resolution revising the SIR Rebate Program and the VNB Rebate Program as described herein, such revised 2015-2016 VNB Rebate Programs to be implemented as soon as practicable and made retroactive to April 1, 2015.

## RESOLUTION

### METROPOLITAN TRANSPORTATION AUTHORITY and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

WHEREAS, the Metropolitan Transportation Authority (the “MTA”) and the Triborough Bridge and Tunnel Authority (the “TBTA”) approved a resolution on February 24, 2014 for the Staten Island Resident (“SIR”) Rebate Program and the VNB Commercial Rebate Program relating to the Verrazano-Narrows Bridge (“VNB”), which were implemented with an effective date of April 1, 2014; and

WHEREAS, the New York State Legislature has appropriated funds to the MTA to support revised VNB Rebate Programs effective April 1, 2015 to March 31, 2016, as each is further described in Exhibit A annexed hereto (collectively, the “2015-2016 VNB Rebate Programs”), providing \$3.5 million to the MTA for fifty percent of the cost of the 2015-2016 SIR Rebate Program and \$3.5 million for fifty percent of the cost of the 2015-2016 VNB Commercial Rebate Program, as well as an additional \$3.3 million to keep an effective toll rate of \$5.50 for Staten Island residents under the 2015-2016 SIR Rebate Program (i.e., the effective toll prior to the March 22, 2015 toll increase); and

WHEREAS, the MTA has a mandate of providing a seamless transportation network for the region and a statutory purpose to develop and implement a unified transportation policy for the metropolitan commuter transportation district (the “MCTD”) served by the MTA subsidiary and affiliated agencies; and

WHEREAS, implementation of the 2015-2016 SIR Rebate Program providing for the rebate of a portion of the tolls charged to Staten Island residents on trips made across the Verrazano-Narrows Bridge, using State Legislative funds and other MTA funds, implemented in a manner that would not materially or adversely affect the rights of TBTA bondholders, would continue to help reduce or eliminate the unique disadvantage, and the appearance thereof, pertaining to travel of such residents between their residences and the rest of New York City; and

WHEREAS, the effective reduction of such tolls, without adversely affecting the rights of TBTA bondholders, is expected to encourage Staten Island residents to enroll in the E-ZPass system and might encourage those residents who need to drive for employment and other purposes to also use *other* TBTA facilities, thereby promoting increased and more effective use of the facilities, services, and systems of TBTA, and could facilitate travel to points beyond; and

WHEREAS, implementation of the 2015-2016 SIR Rebate Program to rebate such tolls charged to such residents, as outlined in Exhibit A, for the foregoing reasons would continue to be a proper component of a unified and efficient mass transportation policy in the MCTD if supported by the allocation of Legislative funds to the MTA for this purpose; and

WHEREAS, implementation of the 2015-2016 VNB Commercial Rebate Program, implemented in the manner set forth in Exhibit A, which through the use of State Legislative funds and other MTA funds would initially provide a rebate of 18 percent of the E-ZPass toll for trucks and other commercial vehicles with more than ten (10) trips per month across the Verrazano-Narrows Bridge using the same New York Customer Service Center (NYCSC) E-ZPass Account, which rebate would be implemented in a manner that would not materially or adversely affect the rights of TBTA bondholders, would facilitate regional mobility; and

WHEREAS, the effective reduction of such tolls, without adversely affecting the rights of TBTA bondholders, would support increased economic activity and promote economic growth throughout the region, and would be expected to encourage trucks and other commercial vehicles using the Verrazano-Narrows Bridge to enroll in the E-ZPass system and might encourage those vehicles to also use *other* TBTA facilities, thereby promoting increased and more effective use of the facilities, services, and systems of the TBTA, and could facilitate travel to points beyond; and

WHEREAS, implementation of the 2015-2016 VNB Commercial Rebate Program to rebate such tolls charged for such trucks and other commercial vehicles for the foregoing reasons would appear to be appropriate to implement as part of a unified and efficient transportation policy for the MCTD if supported by the allocation of Legislative funds to the MTA for this purpose; and

WHEREAS, the 2015-2016 VNB Rebate Programs would be implemented as specified herein only for such periods during which both (a) MTA's total financial responsibility, net of State actions or available offsets, does not exceed \$3.5 million for the 2015-2016 SIR Rebate Program (which is half of the \$7 million allocated to such Program) and \$3.5 million for the 2015-2016 VNB Commercial Rebate Program (which is half of the \$7 million allocated to such Program) and (b) the State provides (i) at least \$3.5 million for the 2015-2016 SIR Rebate Program and \$3.5 million for the 2015-2016 VNB Commercial Rebate Program and (ii) such additional funds as are necessary (currently estimated to be \$3.3 million) to keep an effective toll rate of \$5.50 for Staten Island Residents under the 2015-2016 SIR Rebate Program (i.e., the effective SIR toll prior to the March 22, 2015 toll increase). MTA shall apply the \$3.3 million of additional funds provided by the State as necessary to keep an effective toll rate of \$5.50 for Staten Island residents under the 2015-2016 SIR Rebate Program (i.e., the effective SIR toll prior to the March 22, 2015 toll increase).

WHEREAS, if, as a result of unexpected toll transaction activity, TBTA estimates that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs, net of offsets, will be insufficient to fund the 2015-2016 VNB Commercial Rebate for the full Program year, TBTA may reduce the rebate amount under such Program to a percentage that is forecast to be payable in full for the remainder of the Program year with the available funds; and

WHEREAS, in the event that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs are depleted at any time during the 2015-2016 VNB Rebate Programs' annual period, the 2015-2016 VNB Rebate Programs will cease and Staten Island residents will be charged the applicable resident discount toll without such further rebate and trucks and other commercial vehicles will be charged the applicable NYCSC E-ZPass toll for the Verrazano-Narrows Bridge without such further rebate; and

WHEREAS, the VNB Rebate Programs shall continue into future years without specific Board approval of such continuation provided that (a) MTA's annual period contribution does not exceed \$7 million, (b) the MTA Board approves a budget that includes MTA's contribution to such program, and (c) the State provides to MTA funds sufficient for at least half the expenses of each continuing annual period; and

WHEREAS, pursuant to a delegation from the Chairman and Chief Executive Officer, MTA staff has undertaken a review and analysis of the potential environmental impacts of the proposed revisions to the VNB Rebate Programs and issued a negative declaration, prepared in accordance with Article 8 of the New York State Environmental Conservation Law, determining that the implementation of the revised VNB Rebate Programs, as described herein, will have no significant adverse environmental impact; and

WHEREAS, in order to preserve and protect the financial condition of the MTA itself and of TBTA, no toll rebate program shall include aggregate annual rebates that are projected by the MTA to exceed the average five-year historical monthly variation of TBTA revenues derived from all facilities of TBTA;

NOW, THEREFORE, BE IT RESOLVED, that the Chairman/CEO of the MTA, in consultation with the President of TBTA and other appropriate officers of the MTA and TBTA, is hereby delegated authority to revise the SIR Rebate Program and the VNB Commercial Rebate Program, as described herein, such revised 2015-2016 VNB Rebate Programs to be implemented as soon as practicable, made retroactive to April 1, 2015.

Dated: April 29, 2015

## Exhibit A

### **Proposed Operating Elements of the 2015-2016 Staten Island Resident (SIR) Rebate Program and Verrazano-Narrows Bridge (VNB) Commercial Rebate Program and Subsequent VNB Rebate Programs**

1. Under the 2015-2016 SIR Rebate Program, the MTA would rebate \$0.74 of the \$6.24 SIR E-ZPass toll paid by Staten Island residents with three or more trips per month across the Verrazano-Narrows Bridge (VNB), where tolls are collected only in the Staten Island-bound direction in accordance with federal law, and would rebate \$1.10 of the \$6.60 SIR E-ZPass toll paid by Staten Island residents with one or two trips per month across the VNB.

2. Under the 2015-2016 VNB Commercial Rebate Program, the initial rebate for eligible trucks and other commercial vehicles would be 18 percent of the NYCSC E-ZPass tolls incurred across the VNB during that month, subject to change if there are significant changes in the amount of toll transactions eligible for the 2015-2016 VNB Commercial Rebate Program such that funding would otherwise be depleted before the end of New York State's fiscal year. While the rebate would be applied to the total amount of eligible tolls, the effective toll rate for each Staten Island-bound trip taken by vehicles receiving the initial 18 percent rebate under the VNB Commercial Rebate Program would be approximately:

2 axle:	Current:	\$20.00	With the rebate:	\$16.40
3 axle:	Current:	\$32.78	With the rebate:	\$26.88
4 axle:	Current:	\$41.90	With the rebate:	\$34.36
5 axle:	Current:	\$54.62	With the rebate:	\$44.79
6 axle:	Current:	\$63.74	With the rebate:	\$52.27
7 axle:	Current:	\$76.46	With the rebate:	\$62.70

3. The Legislature is providing \$3.5 million to the MTA for fifty percent of the cost of the 2015-2016 SIR Rebate Program and \$3.5 million for fifty percent of the cost of the 2015-2016 VNB Commercial Rebate Program (collectively, the “2015-2016 VNB Rebate Programs”), as well as an additional \$3.3 million to keep an effective toll rate of \$5.50 for Staten Island residents under the SIR Rebate Program (i.e., the effective toll prior to the March 22, 2015 toll increase). Funding for the costs of subsequent SIR Rebate Programs and VNB Commercial Rebate Programs (collectively, the “VNB Rebate Programs”) would come from Legislative funds allocated to the MTA and other appropriate MTA funds and such funds shall be remitted to TBTA provided that (a) MTA’s annual period contribution does not exceed \$7 million, (b) the MTA Board approves a budget that includes MTA’s contribution to such program, and (c) the State provides to MTA funds sufficient for at least half the expenses of each continuing annual period.

4. Moneys to fund a year’s estimated costs for the VNB Rebate Programs would be transferred by MTA to TBTA prior to implementation of the VNB Rebate Programs each year. The effective date of the 2015-2016 VNB Rebate Program year would be April 1, 2015 and shall continue through March 31, 2016.

5. At the beginning of the VNB Rebate Program year, TBTA would increase its liability for the VNB Rebate Programs by the amount transferred from MTA. Under the 2015-2016 SIR Rebate Program, the E-ZPass New York Customer Service Center would credit E-ZPass accounts for Staten Island Residents with three or more trips per month across the VNB with the amount of \$0.74 for each such trip. The NYCSC would credit E-ZPass accounts for Staten Island Residents with one or two trips per month across the VNB with the amount of \$1.10 for each such trip. Under the 2015-2016 VNB Commercial Rebate Program, the NYCSC would credit E-ZPass Accounts with more than

ten (10) trips per month across the VNB by trucks or other commercial vehicles with an rebate of 18 percent of the NYCSC E-ZPass tolls incurred across the VNB that month, subject to change if there are significant changes in the amount of eligible toll transactions such that the funding for the 2015-2016 VNB Commercial Rebate Program would otherwise be depleted before the end of the State's fiscal year. While the rebate credit would be applied to the total amount of eligible tolls, the amount credited for each Staten Island-bound trip taken by vehicles receiving the initial 18 percent rebate under the 2015-2016 VNB Commercial Rebate Program would be approximately:

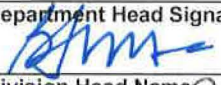
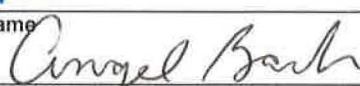
2 axle: \$ 3.60  
3 axle: \$ 5.90  
4 axle: \$ 7.54  
5 axle: \$ 9.83  
6 axle: \$11.47  
7 axle: \$13.76

6. At least monthly, TBTA would draw down on the liability for the VNB Rebate Programs based on the total number of such trips charged against Staten Island resident and NYCSC E-ZPass Accounts. The drawn down amount would be added to TBTA toll revenues. (The TBTA's responsibility to do so would be capped at the amount in the fund for the VNB Rebate Programs.) MTA would use Legislative funds allocated to the MTA and other appropriate MTA funds to reimburse TBTA for the cost of any charges levied by the service center provider in connection with the VNB Rebate Programs.

7. If, as a result of unexpected toll transaction activity, TBTA estimates that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs, net of offsets, will be insufficient to fund the 2015-2016 VNB Commercial Rebate Program for the full Program year, TBTA may reduce the rebate amount under such Program to a percentage that is forecast to be payable in full for the remainder of the Program year with the available funds. However, in the event that such MTA and State funds allocated to the MTA for the 2015-2016 VNB Rebate Programs are fully depleted at any time during the 2015-2016 VNB Rebate Programs annual period, the 2015-2016 VNB Rebate Programs will cease and Staten Island residents will be charged the applicable resident discount toll and trucks and other commercial vehicles will be charged the applicable NYCSC E-ZPass toll for the Verrazano-Narrows Bridge.




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# Staff Summary

<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 20 , 2015
<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	4/27/2015	X		
2	Board	4/29/2015	X		

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:

Schedules Requiring Majority Vote

# of Actions    \$ Amount

None                  None

MTAHQ proposes to award Competitive procurements in the following categories:

Schedules Requiring Majority Vote

Schedule F: Personal Services Contracts	1	\$ 1,640,000.00
Schedule G: Miscellaneous Service Contracts	1	\$ TBD
Schedule H: Modifications to Personal Service/Misc. Service Contracts	2	\$ 7,612,000.00
<b>SUBTOTAL</b>	<b>4</b>	<b>\$ 9,252,000.00</b>

MTAHQ presents the following procurement actions for Ratification:

None                  None

**TOTAL**                  **4**                  **\$ 9,252,000.00**

**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 2015**  
**COMPETITIVE PROCUREMENTS**

**METROPOLITAN TRANSPORTATION AUTHORITY**

*Procurements Requiring Majority Vote:*

**F. Personal Service Contracts**

Staff Summaries required for items greater than: \$100k Sole Source; \$250 other Non-Competitive, \$1 million Competitive

**1. Ann Hamilton** **\$1,640,000**  
**AFT Project at Cortlandt Street Station**

Competitively negotiated – 18 proposals – 48 months

To recommend that the Board approve the award of a competitively negotiated personal service contract to Ann Hamilton to provide design, materials, fabrication, storage, delivery installation and oversight of installation of wall finishes for portions of the north and southbound station platforms at the Cortlandt Street (1) station on the Broadway/7 Ave Line. Pursuant to MTA Policy, a selection process was held for the Cortlandt Street station, and Ann Hamilton was unanimously selected by a panel of design professionals and members of the MTA NYCT project team on July 9, 2014. The contract will enable her to work with the station's design consultant, Downtown Design Partnership, to finalize the design for station finishes which is due to be completed in September 2015. The proposed contract totals \$1.64 million. The funding is allocated within the architectural finishes budget of the Cortlandt Street station project.

**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)

**2. As-Needed Electrical Power Supply Services for** **\$TBD** *Staff Summary Attached*  
**MNR's Connecticut Portion of the New Haven Line**  
**Contract Nos. 15043-0100 thru 0300**

- a. Direct Energy Business Marketing LLC**
- b. Integrity Energy Services, Inc., now Constellation Energy**
- c. Aequis Energy, Inc.**

Competitively negotiated – 3 proposals – 36 months

To recommend that the Board approve the award of up to three (3) competitively negotiated miscellaneous services contracts to provide as-needed electrical power supply services for MTA Metro-North Railroad's Connecticut portion of the New Haven line for a period of thirty-six months commencing May 17, 2015. MTA Metro-North anticipates competitively procuring approximately 160,000 mwhr of electrical power per annum which, at current rates, would cost approximately \$22 million. The base contracts will be issued as zero-dollar- retainer-type agreements. MTA plans to award individual contracts following a mini-competitive bid process among all three firms for a specified period of time. If pricing and contract structure is deemed beneficial to MTA, then an award will be made to the lowest bidder(s). The price will include: (1) power and energy needed to complement MTA MNR's existing resources to serve its load, and (2) all necessary ancillary services required by ISO-New England protocols. The most efficient way to price competitive electricity supply contracts is through same day pricing. Therefore, awards will be made the same day to one or more bidders based on price by issuing an award email to one or more of the three qualified firms, if deemed more cost efficient than utility tariffs.

## **METROPOLITAN TRANSPORTATION AUTHORITY** **COMPETITIVE PROCUREMENTS**

### **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.)

3. **IBM** **\$7,612,000** **Staff Summary Attached**  
**MTA Business Service Center PeopleSoft 9.2 Upgrade** (Fixed)  
**Contract No. 14049-0100, S/A #3**

Base plus previous change order = \$46,889,000

To recommend that the Board approve an amendment to a previously Board-approved, all-agency, competitively negotiated, personal services contract with IBM for additional funding in the amount of \$7,612,000 for professional technical consulting services to enhance MTA's two existing procurement modules, and to implement two new procurement modules and a procurement marketplace. Executive MTA Management has determined that MTA procurement processes should continue to be enabled in PeopleSoft, and that IBM (with KPMG acting as a sub-consultant responsible for business process design) should standardize, and streamline current procurement processes, enhance the currently installed procurement modules, implement 2 new modules for sourcing and supplier self-service, and implement an easy to use procurement marketplace. As a result of negotiations, IBM's proposed price of \$8,105,000 was negotiated down to \$7,612,000 for a savings of \$493,000. Based on the above, the negotiated fixed fee of \$7,612,000 is considered fair and reasonable.

4. **Davis Wright Tremaine (DWT)** **\$TBD** **Staff Summary Attached**  
**Panel of Outside Legal Counsel**

Base Amount = \$19,999

To obtain Board approval to add the law firm of Davis Wright Tremaine LLP ("DWT") to MTA's panel of outside counsel. Although MTA has skilled lawyers with First Amendment litigation experience, it was decided that MTA's interests were best served by retaining a First Amendment expert to assist in the development of the revised Advertising Standards and to provide advice in connection with any related litigation. DWT was retained at the end of March 2015, subject to a cap on compensation of \$19,999 until Board authorization of such retention (there being a statutory requirement that personal services contracts of \$20,000 or more require Board approval). The firm has agreed to a 20% discount from its normal and customary hourly rates and such discounted hourly billing rates for this engagement are \$496 to \$700 for partners and \$408 for an eighth year associate.

# Staff Summary

## Schedule G: Miscellaneous Service Contracts

Page 1 of 1

### Item Number:

<b>Vendor Name (&amp; Location):</b> Various	<b>Contract Number:</b> 15043-0100 thru 0300	<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Description:</b> As-Needed Electrical Power Supply Services for MNR's Connecticut Portion of the New Haven Line	Total Amount: TBD	
<b>Contract Term (including Options, if any):</b> May 17, 2015 thru May 16, 2018	<b>Funding Source:</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> MNRR Operating Capital Projects	
<b>Procurement Type:</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	<b>Contract Manager:</b> Marina Elliot	
<b>Solicitation Type:</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:		

### DISCUSSION:

To recommend that the Board approve the award of up to three (3) competitively negotiated miscellaneous services contracts to provide as-needed electrical power supply services for MTA Metro-North Railroad's Connecticut portion of the New Haven line for a period of thirty-six months commencing May 17, 2015. MTA Metro-North anticipates competitively procuring approximately 160,000 mwhr of electrical power per annum which, at current rates, would cost approximately \$22 million.

- 1) Direct Energy Business Marketing, LLC;
- 2) Integrys Energy Services, Inc now Constellation Energy; and
- 3) Aequitas Energy, Inc.

MTA Metro-North Railroad's electrical power supply services contract for the Connecticut portion of the New Haven line expires May 16th, 2015. In order to continue these services, a Request for Proposals ("RFP") was publicly advertised and the Contract Manager sent letters to eight (8) potential proposers advising each firm of the RFP's availability. Three (3) proposals were received. The Selection Committee, consisting of representatives from MTA Headquarters Legal and Finance Departments and MTA Metro-North Railroad, Operating Capital Projects- Energy Group department evaluated the proposals and determined that the three firms listed above were qualified and suited to perform the services set forth in the RFP. All three firms are licensed by the State of Connecticut Public Utilities Regulatory Authority.

The base contracts will be issued as zero-dollar- retainer-type agreements. MTA plans to award individual contracts following a mini-competitive bid process among all three firms for a specified period of time. If pricing and contract structure is deemed beneficial to MTA, then an award will be made to the lowest bidders. The price will include: (1) power and energy needed to complement MTA MNR's existing resources to serve its load, and (2) all necessary ancillary services required by ISO-New England protocols.

Connecticut is a deregulated electricity market and wholesale electricity transactions are cleared and settled by the market operator New England Independent System Operator. The most efficient way to price competitive electricity supply contracts is through same day pricing. Therefore, awards will be made the same day to one or more bidder(s) based on price by issuing an award email to one or more of the three qualified firms, if deemed more cost efficient than utility tariffs.

MTA has conducted a responsibility review and additional due diligence on the three firms. MTA deemed Direct Energy Business Marketing, LLC and Aequitas Energy, Inc. responsible for award. MTA's due diligence review of Constellation Energy revealed adverse information (AI). An AI waiver request is currently under review. Procurement will not execute this contract with Constellation Energy unless the MTA General Counsel approves this waiver.

# Staff Summary

## Schedule H: Modifications to Personal Service & Miscellaneous Service Contracts

Item Number:

Page 1 of 1

<b>Vendor Name (&amp; Location):</b> IBM	<b>Contract Number:</b> 14049-0100	<b>AWO/Modification #</b> 2
<b>Description:</b> MTA Business Service Center PeopleSoft 9.2 Upgrade		
<b>Contract Term (including Options, if any):</b> August 1, 2014 thru July 31, 2017		
<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 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> Business Service Center / Wael Hibri		
	<b>Original Amount:</b>	\$33,150,000
	<b>Prior Modifications:</b>	\$13,739,000
	<b>Prior Budgetary Increases:</b>	\$
	<b>Current Amount:</b>	\$46,889,000
	<b>This Request:</b>	\$ 7,612,000
	<b>% of This Request to Current Amount:</b>	16%
	<b>% of Modifications (including This Request) to Original Amount:</b>	64%

### I. PURPOSE/RECOMMENDATION

To recommend that the Board approve an amendment to a previously Board-approved, all-agency, competitively negotiated, personal services contract with IBM for additional funding in the amount of \$7,612,000 for professional technical consulting services to enhance MTA's two existing procurement modules, and to implement two new procurement modules and a procurement marketplace.

### II. DISCUSSION

In July 2014, the Board approved the engagement of IBM for a three-year period from August 1, 2014 through August 31, 2017 to provide consulting services to Upgrade MTA's core financial system (PeopleSoft ERP consisting of Human Resources, Capital Management, Financials and EPM), from version 9.0 to 9.2. The Financial component of PeopleSoft houses the procurement modules. This staff summary is intended to use the software upgrade initiative as an opportune time to expand, standardize, and streamline processes so that that they reflect best practices in procurement.

Through focus groups, system walk-throughs, and tool demonstrations conducted by KPMG under a separate contract it was determined that:

- Many issues with the current PeopleSoft 9.0 procurement modules could be attributed to design decisions from the initial PeopleSoft deployment, rather than inherent gaps in PeopleSoft functionality.
- PeopleSoft 9.2 has made significant advances vs. PeopleSoft 9.0 in streamlining the user experience as well as in enabling an architecture that provides more flexibility using configuration without code changes required.
- Alternative tools tended to score slightly higher than PeopleSoft 9.2 across evaluation dimensions, however, the differences were not material enough to warrant a departure from the PeopleSoft platform and the overall MTA IT strategy.

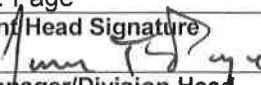
Executive MTA Management has therefore determined that MTA procurement processes should continue to be enabled in PeopleSoft, and that IBM (with KPMG acting as a sub-consultant responsible for business process design) should standardize, and streamline current procurement processes, enhance the currently installed procurement modules, implement 2 new modules for sourcing and supplier self-service, and implement an easy to use procurement marketplace.

As a result of negotiations, IBM's proposed price of \$8,105,000 was negotiated down to \$7,612,000 for a savings of \$493,000. Based on the above, the negotiated fixed fee of \$7,612,000 is considered fair and reasonable.

The MTA Office of Civil Rights established a 10% goal for MBE and 10% goal for WBE participation for this contract.



# Staff Summary

Page 1 of 2

<b>Subject</b> Addition of Outside Counsel to Approved Panel
<b>Department</b> MTA Office of General Counsel
<b>Department Head Name</b> Jerome F. Page
<b>Department Head Signature</b> 
<b>Project Manager/Division Head</b> Jerome F. Page

<b>Date</b> April 29, 2015
<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.	4/27/15			
2	Board	4/29/15			

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

## Purpose:

To obtain Board approval to add the law firm of Davis Wright Tremaine LLP ("DWT") to MTA's panel of outside counsel.

## Discussion:

In a separate Staff Summary being presented to the Board at its April 29, 2015 meeting, the Board is being requested to adopt an MTA Advertising Policy that includes amendments to the Advertising Standards for Licensed Properties of the Metropolitan Transportation Authority. The rationale for such proposed revisions is set forth in such separate Staff Summary.

The revisions to the Advertising Standards were carefully crafted to ensure compliance with all legal requirements, including those relating to the First Amendment. Although MTA has skilled lawyers with First Amendment litigation experience, it was decided that MTA's interests were best served by retaining a First Amendment expert to assist in the development of the revised Advertising Standards and to provide advice in connection with any related litigation. The lead lawyer at DWT working on this matter is Victor Kovner, a former Corporation Counsel for the City of New York and a nationally recognized First Amendment practitioner.

DWT was retained at the end of March 2015, subject to a cap on compensation of \$19,999 until Board authorization of such retention (there being a statutory requirement that personal services contracts of \$20,000 or more require Board approval). The firm has agreed to a 20% discount from its normal and customary hourly rates and such discounted hourly billing rates for this engagement are \$496 to \$700 for partners and \$408 for an eighth year associate.

As in the past, it is requested that the Board's approval of DWT also include (a) the approved use of a successor firm, in the event the firm should subsequently merge into another firm, or a partner or principal lawyer in charge of an MTA matter at the firm moves to a different firm and (b) the approved use of the firm for other matters for which they are qualified.

## Recommendation:

It is recommended that the Board approve the appointment of DWT to the approved outside counsel panel and authorize payment of fees and expenses in excess of the \$19,999 cap in the MTA's current retainer with the firm.

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**APRIL 2015**  
**MTA REAL ESTATE**  
**LIST OF REAL ESTATE ACTION ITEMS FOR BOARD APPROVAL**

**ACTION ITEMS**

**MTA NEW YORK CITY TRANSIT**

Lease with iFlowers, Inc. for the operation of two retail spaces at Jay Street-MetroTech station, Fulton Line, Brooklyn

**MTA LONG ISLAND RAIL ROAD**

License agreement with the Oyster Bay Railroad Museum for the operation of a railroad museum, Oyster Bay, NY

Lease agreement with Brentwood Food Inc. for a restaurant at LIRR's former Brentwood Station, Brentwood, NY

Amendment to License Agreement with Rail Road Café, Inc. at Long Island Rail Road's Great Neck Station in the Village of Great Neck Plaza, NY

**MTA METRO-NORTH RAILROAD**

Memorandum of Understanding with the New York City Department of Transportation for the installation and maintenance of an emergency wireless communication system antennas serving Grand Central train shed and the Park Avenue Tunnel in New York, NY

Lease with PROVA GCT, LLC dba Prova for a full-service restaurant with seating and take-out service selling tenant produced Neapolitan style pizza and other Italian menu items in Retail Space LC-31 at Grand Central Terminal

**METROPOLITAN TRANSPORTATION AUTHORITY**

Revisions to MTA's Advertising Standards

# 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>IAN SALSBERG</b>

Date <b>APRIL 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA New York City Transit ("NYCT")

LESSEE: iFlowers, Inc.

LOCATION: Units 5 and 6, Jay Street-MetroTech Subway Station, Brooklyn

ACTIVITY: Unit 5: Retail sale of flowers and provision of an ATM  
Unit 6: Retail sale of cell phones accessories, gift items, and provision of an ATM

ACTION REQUESTED: Approval of terms

TERM: 10 years

SPACE: Unit 5: 84 sq. ft., Unit 6: 133 sq. ft.

COMPENSATION:

<u>Year</u>	<u>Annual</u>	<u>Monthly</u>	<u>% Increase</u>	<u>Per Sq. Ft.</u>
1	\$17,400.00	\$1,450.00	--	\$80.18
2	\$18,450.00	\$1,537.50	6%	\$85.02
3	\$19,600.00	\$1,633.33	6%	\$90.32
4	\$20,700.00	\$1,725.00	6%	\$95.39
5	\$21,800.00	\$1,816.67	5%	\$100.46
6	\$22,900.00	\$1,908.33	5%	\$105.53
7	\$24,000.00	\$2,000.00	5%	\$110.60
8	\$25,100.00	\$2,091.67	5%	\$115.67
9	\$26,200.00	\$2,183.33	4%	\$120.74
10	\$27,300.00	\$2,275.00	4%	\$125.81

## COMMENTS:

MTA Real Estate issued a request for proposals ("RFP") for the two retail units listed above. The spaces are new to the NYCT retail inventory, created in a recent rehabilitation of the station. MTA Real Estate offered the spaces for general retail use and did not permit newsstands because there is an existing newsstand in the vicinity.

MTA Real Estate received three responsive proposals for Unit 5 and two responsive proposals for Unit 6. Proposers allowed to submit a best and final offer ("BAFO") at both locations. The top proposer for both units after the BAFO was iFlowers, Inc. Details of the BAFO proposals are listed in the chart below.

# Staff Summary


## FINANCE COMMITTEE MEETING iFlowers, Inc. (Cont'd.)

<u>Name of Proposer</u>	<u>First Year Rent</u>	<u>Present value at 9% discount rate</u>
	<b>Unit 5</b>	
iFlowers, Inc.	\$8,400	\$68,532
Bip Patel	\$8,100	\$63,157
Shafika Faruqui	\$4,200	\$32,753
	<b>Unit 6</b>	
iFlowers, Inc.	\$9,000	\$69,903
Shafika Faruqui	\$5,400	\$42,106

Arthur Mavashev is the 100% owner of iFlowers, Inc. Mr. Mavashev has retail experience as an owner of a cell phone store and convenience store. MTA Real Estate performed a background and credit check on Mr. Mavashev and iFlowers, Inc. and results show that he has sufficient resources to build out and operate both units. Mr. Mavashev will sign a limited personal guaranty.




Based on the foregoing, MTA Real Estate requests authorization to enter into a lease agreement with iFlowers, Inc. on the above-described terms and conditions.

# Staff Summary

Subject <b>LICENSE AGREEMENT</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>ROBERT GOLDBERG</b>

Date <b>APRIL 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA Long Island Rail Road ("LIRR")

LICENSEE: The Oyster Bay Railroad Museum, a not-for-profit corporation

LOCATION: Northeasterly portion of Oyster Bay Yard on Bay Avenue near Harbor Place, located in the Town of Oyster Bay, County of Nassau, New York

ACTIVITY: Operation of a railroad museum

ACTION REQUESTED: Approval of terms

TERM: Ten years, terminable at will on 60 days' notice by LIRR

SPACE: Approximately 30,000 square feet

COMPENSATION: One-time \$500 administrative fee

## COMMENTS:

LIRR recently issued an RFP for property that is currently occupied by the Oyster Bay Railroad Museum ("the Museum") under a sublicense from LIRR's licensee, the Town of Oyster Bay. The property is not currently needed by LIRR for operational purposes.

The Museum was the only respondent to the RFP. The licensed area contains a railroad turntable which is listed on the National Register of Historic Places and forms part of the Museum, which also showcases vintage LIRR train cars and equipment on the licensed area. The value of the property as a development site is significantly impaired by the property's irregular shape, proximity to LIRR operations, and the need to maintain the historic roundtable.

The Museum, a 501 (c)(3) not-for-profit corporation, has been operating at this location since November 2002, and pending confirmation of an agreement with LIRR for continued use of the site, expects to obtain a grant from the State of New York with which it will improve the site, including electrifying the turntable, to further its mission of telling the story of the heritage of the railroad in Long Island and showcasing past rail technology.

Based on the forgoing, MTA Real Estate recommends entering into a license agreement with the Oyster Bay Railroad Museum under the above terms and conditions.

# Staff Summary



Metropolitan Transportation Authority

Page 1 of 2

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>ROBERT GOLDBERG</b>

Date <b>APRIL 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA Long Island Rail Road ("LIRR")

LESSEE: Brentwood Food Inc.

PROPERTY: Former Brentwood Station building (approximately 940 square feet) and surrounding property (an irregularly shaped 20,460 sq. ft. parcel), Brentwood, New York (the "Property")

ACTIVITY: Owner-operated restaurant

ACTION REQUESTED: Approval of terms

TERM: 25 years

TERMINATION: On 365 days' notice for transportation purposes through year 15; at will on 180 days' notice in years 16-25.

ASSIGNMENT/  
SUBLETTING/CHANGE  
OF USE: Subject to landlord's consent.

RENT:	<u>Year</u>	<u>Annual</u>	<u>Monthly</u>	<u>% Increase</u>	<u>Per sq. ft.</u>
	1	\$7,000.00	\$583.33		\$7.45
	2	\$7,210.00	\$600.83	3%	\$7.67
	3	\$7,426.30	\$618.86	3%	\$7.90
	4	\$7,649.09	\$637.42	3%	\$8.14
	5	\$7,878.56	\$656.55	3%	\$8.38
	6	\$8,114.92	\$676.24	3%	\$8.63
	7	\$8,358.37	\$696.53	3%	\$8.89
	8	\$8,609.12	\$717.43	3%	\$9.16
	9	\$8,867.39	\$738.95	3%	\$9.43
	10	\$9,133.41	\$761.12	3%	\$9.72
	11	\$18,000.00	\$1,500.00	97%	\$19.15

# Staff Summary

## FINANCE COMMITTEE MEETING

### Subject: Lease Agreement (Cont'd.)

Page 2 of 2

12	\$18,540.00	\$1,545.00	3%	\$19.72
13	\$19,096.20	\$1,591.35	3%	\$20.32
14	\$19,669.09	\$1,639.09	3%	\$20.92
15	\$20,259.16	\$1,688.26	3%	\$21.55
16	\$20,866.93	\$1,738.91	3%	\$22.20
17	\$21,492.94	\$1,791.08	3%	\$22.86
18	\$22,137.73	\$1,844.81	3%	\$23.55
19	\$22,801.86	\$1,900.16	3%	\$24.26
20	\$23,485.92	\$1,957.16	3%	\$24.99
21	\$30,000.00	\$2,500.00	28%	\$31.91
22	\$30,900.00	\$2,575.00	3%	\$32.87
23	\$31,827.00	\$2,652.25	3%	\$33.86
24	\$32,781.81	\$2,731.82	3%	\$34.87
25	\$33,765.26	\$2,813.77	3%	\$35.92

#### COMMENTS:

The Property is the prior Ronkonkoma Branch station building and is not currently required for railroad operations. It is vacant and requires substantial investment from an incoming tenant. However, LIRR desires to retain ownership for possible future use as the property is one of only two “out” parcels remaining on this section of the Ronkonkoma Branch, and has requested MTA Real Estate to obtain a tenant to occupy and care for the Property.

MTA Real Estate therefore issued a request for proposals (“RFP”) to lease the Property “as is”, and received two proposals. BX Healthy Choice LLC submitted a proposal for a convenience store, with an NPV, calculated at a 9% discount rate, of \$155,637.72 for the term. The other proposal was submitted by Shahid Haroon, who offered to establish a self-operated restaurant café or fast food franchise, with a NPV of \$128,909.76 over the term.

As per MTA Real Estate’s standard procedure, a credit and background check was ordered for BX Healthy Choice and its principal, Shahid Rasul. However, repeated requests by our credit agency for documentation from Mr. Rasul to substantiate information in his proposal were ignored, ultimately resulting in his disqualification.

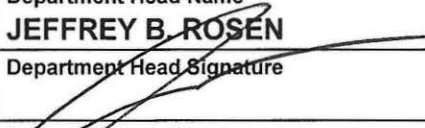
Mr. Haroon, who plans to operate at the property under the newly formed corporate name of Brentwood Food Inc., has been a tenant of the LIRR at several locations over the years, has proven capable of constructing and opening stores, and has been a responsible tenant. An updated LIDA background and credit report indicates Mr. Haroon has satisfactory financial credentials. The rent offered by Mr. Haroon over the first 10 years approximates the fair market rental value of the Property as estimated by MTA Real Estate’s independent consultant, and contains significant rent increases in years 11 and 21.

Mr. Haroon will be responsible for the complete renovation of the old station building and rehabilitation of the balance of the Property as well as for its long-term maintenance and will provide the required insurance coverage.

Based on the forgoing, MTA Real Estate requests authorization to net lease the Property on the above-described terms and conditions.


# Staff Summary



Subject <b>AMENDED LICENSE AGREEMENT</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>STEPHEN BROWN</b>

Date <b>April 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA Long Island Rail Road ("LIRR")  
 LICENSEE: Rail Road Café, Inc. ("Rail Road Café")  
 LOCATION: LIRR's Great Neck Station, 37 Station Plaza, Great Neck, NY (the "Subject Property")  
 ACTIVITY: Amendment of license agreement  
 ACTION REQUESTED: Approval of amended terms  
 SPACE: Approximately 2,184 square feet, including basement and attic  
 COMPENSATION: \$227,000 rent credit, to be applied against future rent charges, shown below.

<u>Year</u>	<u>Annual</u>	<u>Monthly</u>	<u>% Increase</u>	<u>PSF</u>
1	\$78,000.00	\$6,500.00		\$107.14
2	\$81,900.00	\$6,825.00	5	\$112.50
3	\$85,995.00	\$7,166.25	5	\$118.13
4	\$90,295.00	\$7,524.58	5	\$124.03
5	\$94,809.00	\$7,900.75	5	\$130.23
6	\$99,550.00	\$8,295.83	5	\$136.74
7	\$104,527.00	\$8,710.58	5	\$143.58
8	\$109,754.00	\$9,146.17	5	\$150.76
9	\$115,241.00	\$9,603.42	5	\$158.30
10	\$121,003.00	\$10,083.58	5	\$166.21

## COMMENTS:

The Subject Property is a standalone building located adjacent to LIRR's Great Neck Station and ticket office in downtown Great Neck. The building is not used for operational purposes and the prior tenant operated a restaurant/café. The most recent RFP Rail Road Café was awarded a license to operate a restaurant/café for a 10-year term.

# Staff Summary

## FINANCE COMMITTEE MEETING

### Subject (Cont'd.)

Because the prior tenant operated a restaurant/café, the RFP envisioned a turn-key operation with limited improvement costs for the incoming licensee. Rail Road Café planned an investment of \$50,000 for minor improvements and cosmetic alterations, and offered compensation with a nominal value over the term of \$981,074. However, during the plan review process, which involved, in addition to LIRR review, input from the Village of Great Neck and the New York State Historic Preservation Office ("SHPO"), a number of unanticipated and costly improvements were specified for Rail Road Café to complete in order to open the business. These improvements included the design and installation of a new municipal water service, a new fire alarm and suppression system, relocation of an internal staircase, and installation of certain new restaurant fixtures. Ultimately, the costs for a comprehensive final build-out escalated to be approximately \$400,000 higher than the Rail Road Café's original budget.


Rail Road Café requested a credit against future compensation in the amount of \$227,000 to cover a portion of the unforeseen improvement costs. MTA reviewed the request, and agrees that the costs included in the request were unforeseen at the time of the RFP. Rail Road Café agreed to fund the remaining \$223,000 required to complete the improvement work, an amount far above the \$50,000 it had originally planned.

MTA Real Estate believes that it would be unfair to terminate the tenant and reoffer the building, given the significant amount of time and money the tenant has already put into the building in the face of changing build-out requirements and significantly higher than anticipated costs. Moreover, the amendment proposed is also advantageous to LIRR financially, as it would be highly unlikely that offering the building via RFP now would generate more rent than the tenant has committed to. Finally, the improved building will significantly increase in value, as the bulk of the improvements made by Rail Road Café will benefit not only its tenancy but will make the building more marketable at the expiration of the term.

Based on the foregoing, MTA Real Estate requests authorization to amend Rail Road Café's agreement as discussed above.




# Staff Summary



Subject <b>MEMORANDUM OF UNDERSTANDING</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>JEFFREY B. ROSEN</b>
Department Head Signature 
Project Manager Name <b>ALICIA BIGGS</b>

Date <b>APRIL 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA Metro-North Railroad ("Metro-North")

EXTERNAL PARTY: New York City Department of Transportation (the "DOT")

LOCATION: Three street light poles along Park Avenue

ACTIVITY: The installation and maintenance of an emergency wireless communication system to serve Grand Central Terminal and the Park Avenue Tunnel

ACTION REQUESTED: Approval of terms

TERM: April 1, 2015 to January 1, 2040

COMPENSATION: N/A

## COMMENTS:

The New York City Fire Department ("FDNY") determined that its operations require enhancements to the emergency wireless communications network (known as "CCN") located in Grand Central Terminal and the Park Avenue Tunnel. A consortium of cellular carriers, pursuant to a 2010 agreement between the carriers and Metro-North, is installing the CCN in addition to a commercial cellular network in the terminal and tunnel. Pursuant to a 2010 memorandum of understanding between FDNY and Metro-North, the materials and installation costs of the CCN are funded by FDNY, while Metro-North will own and maintain the CCN equipment.

Metro-North has identified three street light poles along Park Avenue at the 59<sup>th</sup> Street, 72<sup>nd</sup> Street and 86<sup>th</sup> Street intersections for additional CCN antennas. The antennas will provide radio coverage for the NYFD's fire response and EMS ground communications between the GCT train shed, Park Avenue Tunnel, and means of egress from the tunnel to the surrounding streets. The light poles in question are controlled by the New York City Department of Transportation ("DOT"). DOT will allow the antenna installations on the street light poles at no cost, with the costs of installation paid for by FDNY and ownership and maintenance with Metro-North.

Based on the foregoing, MTA Real Estate requests authorization to enter into a memorandum of understanding with the New York City Department of Transportation on the above-described terms and conditions.

# 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 27, 2015</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref. #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	4/27/15	X		
2	Board	4/29/15	X		

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

AGENCY: MTA Metro-North Railroad ("Metro-North")

TENANT: PROVA GCT, LLC dba Prova

LOCATION: Retail Space LC-31 and Storage Space MCSE-04

ACTIVITY: A full-service restaurant with seating and take-out service selling tenant produced Neapolitan style pizza and other Italian menu items; including insalate, antipasti, panini, pasta, main entrees, side dishes, desserts and full bar service with wine and alcohol

ACTION REQUESTED: Approval of terms

TERM: 10 years

SPACE: Approximately 1508 sq. ft. of retail space and approximately 104 sq. ft. of storage space

COMPENSATION: Annual Base Rent plus 8% of gross sales over Breakpoint, as follows:

<u>Year</u>	<u>Annual Base Rent</u>	<u>PSF</u>	<u>Breakpoint</u>
1	\$540,000.00	\$358.00	\$3,000,000.00
2	\$540,000.00	\$358.00	\$3,000,000.00
3	\$572,400.00	\$379.57	\$3,180,000.00
4	\$572,400.00	\$379.57	\$3,180,000.00
5	\$606,744.00	\$402.35	\$3,370,800.00
6	\$606,744.00	\$402.35	\$3,370,800.00
7	\$643,149.00	\$426.49	\$3,573,048.00
8	\$643,149.00	\$426.49	\$3,573,048.00
9	\$681,738.00	\$452.08	\$3,787,430.00
10	\$681,738.00	\$452.08	\$3,787,430.00

COMMON AREA MAINTENANCE CHARGE: Estimated at \$110.00 per square foot, increasing annually by three percent. The total square footage to which the common area maintenance charges will apply will be determined after final design review.

STORAGE RENT: \$87.00 per sq. ft. per year, increasing annually by 3%

MARKETING: \$11.00 per sq. ft. per year, increasing annually by 3%

# Staff Summary

## FINANCE COMMITTEE MEETING

### PROVA GCT, LLC dba Prova

TRASH:	\$17.00 per sq. ft. per year, increasing annually by 3%
SECURITY:	Three months minimum rent plus a personal guaranty from Donatella Arpaia Stewart (limited to six months rent after vacating of premises)
INSURANCE:	Standard
CONSTRUCTION PERIOD:	120 days

#### COMMENTS:

MTA Real Estate Department requests Board authorization to enter into a lease agreement with PROVA GCT, LLC dba Prova based on the terms and conditions contained herein.

In response to a recent MTA Request for Proposals ("RFP") for Retail Space LC-31, Grand Central Terminal, eight proposals were received. Such proposals were received from Prova, Two Boots (the incumbent), Artichoke Basille's Pizza, Angry Taco by David Burke, Corso Coffee, Handcrafted Mexican by Simon Oren, Napolini Pizza e Ristorante and Santa Fe Grill.

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 Newmark Grubb Knight Frank 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 benefit of a proposal. Selection Criterion B, which accounts for 30% of the score, reflects the evaluator's estimation of a proposal's indirect economic benefit to the MTA. The Director of GCT Development's independent evaluation gave Prova the highest Total Selection Criteria Score. However, because Two Boots offered a higher guaranteed minimum rent a selection committee was convened.

The selection committee reviewed and scored the eight proposals, and as indicated in the annexed chart, awarded Prova the highest Selection Criterion A Score and the third highest Selection Criterion B Score. The Guaranteed Rent Adjustment Factor of .56 for Two Boots reflects the evaluators' high level of uncertainty that the Unadjusted Guaranteed Rent Amount being offered by Two Boots would be received by MTA, taking into account Two Boots' prior sales, anticipated sales, and rent payment history, and the Adjusted Guaranteed Rent Amount for Two Boots was therefore substantially less than the Unadjusted Guaranteed Rent Amount offered by Prova. The rent to be paid by Prova is higher than the estimated fair market rental value of the subject space as estimated by Newmark Grubb Knight Frank prior to RFP issuance.

Donatella Arpaia Stewart, the managing partner of Prova, is an experienced NY restaurateur and television personality, recognized for her creative cooking. Since opening her first restaurant, Bellini, in 1998, Donatella has lent her expertise to a string of successful NYC restaurants including davidburke & donatella, Anthos and Kefi. These projects have collectively earned her substantial praise, in the form of Michelin Stars, Five Diamond Awards, and James Beard nominations. In developing the concept for Prova, Donatella spent months in Naples studying the strict traditions of the world's finest Neapolitan pizzaiolis. Every aspect of Prova at GCT is designed to safeguard the quality of the food while maintaining an environment where great food can be served quickly. The full range of Prova's menu will be a welcome addition to the Dining Concourse. This space will undergo a full renovation incorporating reclaimed woods and other recycled materials, a fully renovated kitchen and improved lighting.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease agreement with PROVA GCT, LLC dba Prova on the above-described terms and conditions.

# Staff Summary

## FINANCE COMMITTEE MEETING PROVA GCT, LLC dba Prova

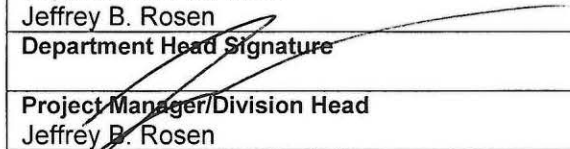
Grand Central Terminal Retail Leasing Evaluation Sheet  
Evaluator: SELECTION COMMITTEE

Space: LC-31 (currently Two Boots)  
Date: February 19, 2015

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>
Prova	\$4,420,599	1.0	\$4,420,599	\$31,803	.50	\$15,901	\$4,436,500	70.0	22.7	92.7
Artichoke Basilie's Pizza	\$3,593,724	1.0	\$3,593,724	\$266,891	0		\$3,593,724	56.7	20.0	76.7
Angry Tao by David Burke	\$3,662,874	1.0	\$3,662,874	-	0	-	\$3,662,874	57.8	16.3	74.1
Corso Coffee	\$2,662,018	1.0	\$2,662,018	\$820,657	.50	\$410,329	\$3,072,346	48.5	19.3	67.8
Two Boots	\$5,017,902	.56	\$2,810,025	-	0	-	\$2,810,025	44.3	16.6	60.9
Handcrafted Mexican by Simon Oren	\$2,038,107	1.0	\$2,038,107	\$24,371	0	-	\$2,038,107	32.2	23.0	55.2
Napolini Pizza e Ristorante	\$1,915,919	1.0	\$1,915,919		0	-	\$1,915,919	30.2	23.6	53.8
Santa Fe Grill	\$2,495,641	1.0	\$2,495,641	\$221,639	.16	\$35,462	\$2,532,581	39.9	7.0	46.9
* 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

Page 1 of 2

<b>Subject</b> Adoption of Advertising Policy with Revised Advertising Standards
<b>Department</b> Real Estate
<b>Department Head Name</b> Jeffrey B. Rosen
<b>Department Head Signature</b> 
<b>Project Manager/Division Head</b> Jeffrey B. Rosen

<b>Date</b> April 27, 2015
<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.	4/27/15			
2	Board	4/29/15			

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

## Purpose:

To obtain Board approval of the MTA Advertising Policy annexed hereto that includes revisions to MTA's Advertising Standards.

## Discussion:

The proposed MTA Advertising Policy would establish uniform, reasonable, and viewpoint-neutral standards for the display of advertising in and on the facilities, vehicles and other property (together "Property") of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (together "MTA") and convert the MTA's Property from a designated public forum into a limited public forum by excluding advertising of a political nature.

The MTA's mission is to provide safe, reliable, and efficient public transportation and crossings within its service area. The MTA's transportation operations are funded by a combination of federal, state, and local funds, including grants and taxes, as well as fare box and toll revenue. Advertising revenues are an important supplemental source of revenue that supports the MTA's transportation operations. The MTA's purpose in allowing paid advertising to be displayed in and on the Property is to maximize such supplemental revenue to support transportation operations.

By accepting paid advertising for display in and on the Property, the MTA is acting in a proprietary capacity as a provider of public transportation and crossings seeking to maximize advertising revenue to support its transportation operations. Starting from the Effective Date of the new Policy (April 29, 2015), the MTA does not intend that the advertising permitted to be displayed in and on the Property be created, designated, or used as a public forum for expressive activities or general discourse or opinions. In furtherance of the MTA's purpose of maximizing advertising revenue, the MTA in its proprietary capacity would be limiting advertisements it will accept for display in and on the Property to paid commercial advertising, certain public service announcements that will help build goodwill for the MTA among its riders and the public, and governmental messages. The MTA would continue to retain control over the advertising that it will allow to be displayed in and on the Property by subjecting all proposed advertisements to the Advertising Standards included in the proposed MTA Advertising Policy. MTA expressly intends that the advertising permitted to be displayed in and on the Property be a limited public forum.

In establishing and enforcing these revised Advertising Standards, the MTA seeks to fulfill the following goals and objectives:

- Maximize advertising revenue
- Maximize ridership and fare revenue
- Maintain a secure and orderly operating environment
- Maintain a safe and welcoming environment for all MTA employees and customers, including minors, who use MTA's subways, buses, commuter trains and crossings
- Minimize the resources and attention that have been expended to resolve disputes relating to the permissibility of certain political advertisements, thus unnecessarily diverting the organization from performing its mission
- Avoid identification of MTA with, and the appearance of MTA endorsement of, the advertisements of non-MTA parties displayed in or on the Property, including the associated messages, products, services, or events being proposed or promoted

MTA received approximately \$138 million in advertising revenues in 2014. It is estimated that the revenue received by MTA in 2014 from advertisements that would not be accepted under the proposed MTA Advertising Policy would have been under \$1 million or less than 1% of total annual revenues.

**Recommendation:**

It is recommended that the Board approve and adopt the annexed MTA Advertising Policy.

## **MTA ADVERTISING POLICY**

### **I. PURPOSE**

- A. To establish uniform, reasonable, and viewpoint-neutral standards for the display of advertising in and on the facilities, vehicles and other property (together “Property”) of the Metropolitan Transportation Authority and its affiliated and subsidiary agencies (together “MTA”).
- B. To convert the MTA’s Property from a designated public forum into a limited public forum by excluding advertising of a political nature after the Effective Date.

### **II. SCOPE**

This policy applies to all advertisements proposed to be displayed in and on the Property on or after the Effective Date set forth below.

### **III. OBJECTIVE**

The MTA’s mission is to provide safe, reliable, and efficient public transportation and crossings within its service area. The MTA’s transportation operations are funded by a combination of federal, state, and local funds, including grants and taxes, as well as fare box and toll revenue. Advertising revenues are an important supplemental source of revenue that supports the MTA’s transportation operations. The MTA’s purpose in allowing paid advertising to be displayed in and on the Property is to maximize such supplemental revenue to support transportation operations.

By accepting paid advertising for display in and on the Property, the MTA is acting in a proprietary capacity as a provider of public transportation and crossings seeking to maximize advertising revenue to support its transportation operations. Starting from the Effective Date, the MTA does not intend that the advertising permitted to be displayed in and on the Property be created, designated, or used as a public forum for expressive activities or general discourse or opinions. In furtherance of the MTA’s purpose of maximizing advertising revenue, the MTA in its proprietary capacity is limiting advertisements it will accept for display in and on the Property to paid commercial advertising, certain public service announcements that will help build goodwill for the MTA among its riders and the public, and governmental messages. The MTA retains control over the advertising that it will allow to be displayed in and on the Property by subjecting all proposed advertisements to the Advertising Standards below. MTA expressly intends that the advertising permitted to be displayed in and on the Property be a limited public forum.

In establishing and enforcing these Advertising Standards, the MTA seeks to fulfill the following goals and objectives:

- Maximize advertising revenue
- Maximize ridership and fare revenue
- Maintain a secure and orderly operating environment

- Maintain a safe and welcoming environment for all MTA employees and customers, including minors, who use MTA's subways, buses, commuter trains and crossings
- Minimize the resources and attention that have been expended to resolve disputes relating to the permissibility of certain political advertisements, thus unnecessarily diverting the organization from performing its mission
- Avoid identification of MTA with, and the appearance of MTA endorsement of, the advertisements of non-MTA parties displayed in or on the Property, including the associated messages, products, services, or events being proposed or promoted

#### **IV. ADVERTISING STANDARDS**

##### **A. Permitted Advertising**

The MTA may display advertisements that fall under one or more of the following categories:

1. Commercial advertising. Paid advertisements that propose, promote, or solicit the sale, rent, lease, license, distribution, or availability of, or some other commercial transaction concerning, goods, products, services, or events for the advertiser's commercial or proprietary interest, or more generally promote an entity that engages in such activities.

2. Governmental advertising. Notices or messages from the MTA that promote the MTA or any of its functions or programs, and also paid notices or messages of the United States government, the State of New York and its agencies, the City of New York and its departments, or of any of the County governments within the Metropolitan Commuter Transportation District that advance specific governmental purposes.

3. Public service announcements. Public service announcements not otherwise prohibited under Section IV.B of this Policy, which are sponsored by either a government entity or a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which are directed to the general public and relate directly to:

- Prevention or treatment of illnesses;
- Promotion of safety or personal well-being;
- Education or training;
- Art or culture;
- Provision of children and family services;
- Provision of services and programs that provide support to low income citizens, senior citizens, or people with disabilities; or
- Solicitation by broad-based contribution campaigns that provide funds to multiple charitable organizations active in the above-listed areas.

**B. Prohibited Advertising**

Notwithstanding the foregoing, the MTA will not accept any advertisement for display in or on the Property if it falls within one or more of the following categories:

1. Promotes or opposes a political party, or promotes or opposes any ballot referendum or the election of any candidate or group of candidates for federal, state, judicial, or local government offices.
2. Is political in nature, including but not limited to advertisements that either:
  - a. Are directed or addressed to the action, inaction, prospective action or policies of a governmental entity, except as permitted in Sections IV.A.2–IV.A.3 of this Policy; or
  - b. Prominently or predominately advocate or express a political message, including but not limited to an opinion, position, or viewpoint regarding disputed economic, political, moral, religious or social issues or related matters, or support for or opposition to disputed issues or causes.
3. Is false, misleading, or deceptive.
4. Promotes unlawful or illegal goods, services, or activities, or involves other unlawful conduct.
5. Falsely implies or declares an endorsement by the MTA of any service, product, or point of view.
6. Encourages or depicts unsafe behavior with respect to MTA’s transportation operations, such as failure to comply with normal safety precautions in awaiting, boarding, riding upon or debarking from MTA vehicles, or is otherwise directly adverse to the commercial, administrative or operational interests of the MTA as a business.
7. Depicts or describes in a patently offensive manner sexual or excretory activities so as to satisfy the definition of obscene material as contained in New York Penal Law § 235.00, as such provision may be amended, modified, or supplemented from time to time.
8. Contains material, which, if sold or loaned to a minor for monetary consideration with knowledge of its character and content, would give rise to a violation of New York Penal Law § 235.21, which prohibits the dissemination of indecent material to minors, as such provision may be amended, modified, or supplemented from time to time.
9. Contains material, which, if displayed with knowledge of its character and content, would give rise to a violation of New York Penal Law § 245.11, which prohibits the public display of offensive sexual material, as such provision may be amended, modified, or supplemented from time to time.
10. Promotes tobacco or any tobacco-related product.

11. Contains an image of a person who appears to be a minor in sexually suggestive dress, pose, or context.

12. Contains material the display of which the MTA reasonably foresees would imminently incite or provoke violence or other immediate breach of the peace, and so harm, disrupt, or interfere with safe, efficient, and orderly transit operations.

13. Contains material that demeans or disparages an individual or group of individuals. For purposes of determining whether an advertisement contains such material, the MTA will determine whether a reasonably prudent person, knowledgeable of the MTA's ridership and using prevailing community standards, would believe that the advertisement contains material that is abusive to, or debases the dignity of, an individual or group of individuals.

14. Contains sexually explicit material that appeals to the prurient interest in sex or is so violent, frightening, or otherwise disturbing as to reasonably be deemed harmful to minors.

15. Promotes an escort service or sexually oriented business.

**C. Additional Provisions Relating to Advertisements**

To avoid identification of the MTA with messages or images contained within advertisements displayed in and on the Property and to avoid the appearance of MTA endorsement of goods, products, services, events by advertisers, advertisements shall readily and unambiguously identify the person, corporation, or entity paying for the advertisement. An advertiser may, at the MTA's discretion, be required to include in the advertisement a statement explicitly identifying the person, corporation, or entity paying for the advertisement. An advertiser may also, at the MTA's discretion, be required to incorporate additional language to avoid the appearance of MTA endorsement.

**V. REVIEW OF ADVERTISING PROPOSED FOR DISPLAY IN OR ON THE PROPERTY**

1. Before accepting an advertisement for display in or on the Property, the advertising contractor shall review such proposed advertisement to determine whether the advertisement complies with the Advertising Standards.

2. If the advertising contractor determines that a proposed advertisement does not, or may not, comply with the Advertising Standards it shall promptly notify the Director of MTA Real Estate (or a designee) in writing of its determination and the reason for its determination.

3. If the Director of Real Estate determines, following receipt and consideration of such recommendation, that a proposed advertisement does not comply with the Advertising Standards, the advertiser shall be notified by the advertising contractor. The advertising contractor, in consultation with the Director of Real Estate, may discuss with the advertiser revisions to the advertisement to try to bring the advertisement into compliance with the Advertising Standards, and the advertiser may submit a revised advertisement to the advertising contractor for review.

3. If the advertiser and the advertising contractor do not reach agreement with regard to a revision of the advertisement, or the Director of Real Estate determines that no appropriate revision would bring the advertisement into compliance with the Advertising Standards, or the advertiser chooses not to submit a revised advertisement, the advertiser may request a final determination from the Director of Real Estate. The Director of Real Estate, in reaching a final determination, may consult with the advertising contractor, or with the MTA General Counsel, and the Chairman and Chief Executive Officer, or their designees, or with any other individuals, and may consider any materials submitted by the advertiser. The Director of Real Estate shall advise the advertiser and the advertising contractor of the final determination in writing.

#### **VI. SEVERABILITY**

If any section, subsection, sentence, clause, phrase or other portion of this Policy is, for any reason, declared invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such invalidity shall not affect the validity of the remaining portions of this Policy, which remaining portions shall continue in full force and effect.

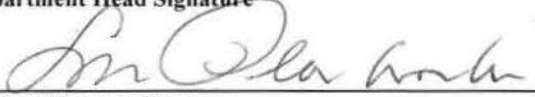
#### **VII. EFFECTIVE DATE**

This Advertising Policy is effective as of April 29, 2015.

# Report

## PROCUREMENTS

The Procurement Agenda this month includes 6 actions for a proposed expenditure of \$651.4M.

<b>Subject</b> Request for Authorization to Award Various Procurements					
<b>Department</b> Materiel Division – NYCT					
<b>Department Head Name</b> Stephen M. Plochochi					
<b>Department Head Signature</b> 					
<b>Project Manager Name</b> Rose Davis					
<b>Board Action</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	Committee	4/27/15			
2	Board	4/29/15			

April 17, 2015			
<b>Department</b> Law and Procurement – MTACC			
<b>Department Head Name</b>  Evan Eisland			
<b>Department Head Signature</b> 			
<b>Internal Approvals</b>			
<b>Approval</b>		<b>Approval</b>	
	President NYCT		President MTACC
	Executive VP		President MTA Bus
X	Capital Prog. Management	X	Subways
	Law	X	Diversity/Civil Rights

<b>Internal Approvals (cont.)</b>							
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>

**PURPOSE:**

To obtain approval of the Board to award various contracts and purchase orders, and to inform the NYC Transit Committee of these procurement actions.

**DISCUSSION:**

**NYC Transit proposes to award Non-Competitive procurements in the following categories:**

<u>Procurements Requiring Two Thirds Vote:</u>	<u># of Actions</u>	<u>\$ Amount</u>
Schedule A: Non-Competitive Purchases and Public Work Contracts	1	\$ 0.1 M
• PRI Technologies, Inc. \$ 0.1 M		
SUBTOTAL 1 \$ 0.1 M		

**MTA Capital Construction proposes to award Non-Competitive procurements in the following categories: NONE**

**MTA Bus Company proposes to award Non-Competitive procurements in the following categories: NONE**

**NYC Transit proposes to award Competitive procurements in the following categories:**

<u>Procurements Requiring Two-Thirds Vote:</u>	<u># of Actions</u>	<u>\$ Amount</u>
Schedule C: Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)	1	\$ 633.3 M
<u>Schedules Requiring Majority Vote:</u>		
Schedule G: Miscellaneous Service Contracts	1	\$ 0.6 M
Schedule H: Modifications to Personal/Miscellaneous Service Contracts	1	\$ 8.5 M
SUBTOTAL	3	\$ 642.4 M

**MTA Capital Construction proposes to award Competitive procurements in the following categories: NONE**

**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: NONE**

**MTA Capital Construction proposes to award Ratifications in the following categories:**

<u>Schedules Requiring Majority Vote:</u>		
Schedule K: Ratification of Completed Procurement Actions	2	\$ 8.9 M
SUBTOTAL	2	\$ 8.9 M
TOTAL	6	\$ 651.4 M

**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 2015**

**LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Two-Thirds Vote:**

**A. Non-Competitive Purchases and Public Work Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive.) 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. PRI Technologies, Inc. d/b/a</b>   | <b>\$101,000</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Power Resources International, Inc.</b>                                       |                  |                                      |
| <b>Contract# To Be Determined</b>  |                  |                                      |
| Purchase of ten Help Point intercom prototypes to conduct a test and evaluation. |                  |                                      |

Item Number: 1

<b>Vendor Name (&amp; Location)</b> PRI Technologies, Inc. d/b/a Power Resources International, Inc. (West Babylon, NY)	
<b>Description</b>  Purchase of 10 Help Point Prototypes	
<b>Contract Term (including Options, if any)</b>	
<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 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: Test and evaluate	

<b>Contract Number</b>  TBD	<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total Amount:</b> \$101,000	
<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> Department of Subways, Joseph Leader Capital Program Management, Frederick E. Smith	

**Discussion:**

It is requested that the Board declare competitive bidding impractical or inappropriate pursuant to Public Authorities Law 1209, Subsection 9(d) and approve the purchase of 10 Help Point (HP) prototypes from Power Resources International, Inc. (PRI), a NY State certified Minority Business Enterprise, for testing and evaluation.

In an ongoing effort to improve NYC Transit customer communications, these illuminated user-friendly digital intercoms known as HPs are intended to enable customers to quickly reach NYC Transit personnel when assistance or information is required.

The Board previously approved a similar test and evaluation procurement in order to qualify NYC Transit's current manufacturer's approved HP. To date, HPs have been installed in 126 stations.

NYC Transit currently has only one manufacturer's product approved. This purchase to test and evaluate PRI's HP is intended to qualify another manufacturer's product so NYC Transit has a second source of supply. In order to advance the test and evaluation process as soon as possible, a letter of intent was issued to PRI indicating NYC Transit's plan to present this test and evaluation procurement request to the Board. Based on this letter of intent, PRI commenced the engineering process leading to manufacturing the HPs.

PRI will deliver one prototype for lab and field testing for 60 days and, if successful, nine additional HPs will be manufactured, inspected & tested upon delivery. The units will then be placed in the field for up to 6 months at the end of which a pass/fail determination will be made. Based upon the schedule and assuming PRI's successful completion of the testing it is anticipated that PRI could participate in a future competitive bid for HPs.

NYC Transit has conducted extensive outreach to identify additional vendors who could potentially supply HP prototypes. However to date, PRI is the only company that has demonstrated the commitment to developing a product for qualification and testing. PRI's \$10,100 unit price is 0.31% lower than the \$10,131 unit price paid on the last procurement for 580 HPs in December 2013. Based on a price analysis of previous procurements, PRI's price is considered fair and reasonable.

In accordance with Public Authorities Law 1209, paragraph 9, this contract will not be awarded earlier than 30 days from the date on which the Board declares competitive bidding to be impractical or inappropriate.

**APRIL 2015**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Two-Thirds Vote:**

**C. Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)**

(Staff Summaries required for items requiring Board approval.)

1. **Sprague Operating Resources, LLC**      **\$633,284,746 (Est.)**      **Staff Summary Attached**  
**RFP# 66522**  
**Five-year contract**

Purchase and delivery of ultra low sulfur diesel bus fuel for NYC Transit and MTA Bus Company.

**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.)

2. **Abilities, Inc.**      **\$557,300 (Est.)**      **Staff Summary Attached**  
**Two Bids/Low Bidder - Three-year contract**  
**RFP# 94699**

Travel training services to recruit, screen and train up to 181 Paratransit customers.


**H. Modifications to Personal Service Contracts and Miscellaneous Service 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.)

3. **AlliedBarton Security Services, LLC**      **\$8,508,468 (Est.)**      **Staff Summary Attached**  
**Contract# 06H9503.9**

Modification to the contract to provide armed and unarmed security guard services, in order to provide additional uniformed armed and unarmed security guard services for NYC Transit and the Department of Security.

# Staff Summary

<b>Item Number</b> 1			
<b>Division &amp; Division Head Name:</b> VP Materiel, Stephen M. Plochochi			
			
<b>Internal Approvals</b>			
<b>Order</b>	<b>Approval</b>	<b>Date</b>	<b>Approval</b>
1	Materiel	6	President
2	X Law		
3	X Budget		
4	X Buses		
5	EVP		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b>	<b>Contract No.</b>
Sprague Operating Resources LLC	RFP #66522
<b>Description</b> Furnish and Deliver Ultra Low Sulfur Diesel #2 Fuel with Additives for use in buses to NYC Transit and MTA Bus Company locations.	
<b>Total Amount</b> \$633,284,746 (Estimated)	
<b>Contract Term (including Options, if any)</b> July 1, 2015 – June 30, 2020	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Renewal?</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

It is recommended that the Board approve the award of a Contract to Sprague Operating Resources LLC (Sprague) for the purchase and delivery of Ultra Low Sulfur Diesel #2 fuel (ULSD) with additives for use in buses for NYC Transit Department of Buses (DOB) and MTA Bus Company (MTABC) for a five year term from July 1, 2015 to June 30, 2020, for the total estimated contract amount of \$633,284,746.

## DISCUSSION

The September 2013 Board adopted a resolution declaring that competitive bidding was impractical and/or inappropriate and that it was in the public interest to use the competitive Request for Proposals (RFP) process, pursuant to Subdivision 9(f) of Section 1209 of the Public Authorities Law, for the purchase and delivery of ULSD for use in buses for DOB and MTABC locations.

This contract is for the provision and delivery of approximately 48M gallons of ULSD delivered annually to 28 locations for the DOB and MTABC revenue bus fleets. The contractor is required to: remotely monitor depot fuel inventory to ensure that adequate replenishment deliveries are made on a timely basis; maintain a two week supply of fuel on hand (approximately 1.8M gallons) to ensure adequate availability; ensure that the fuel conforms to strict requirements of the bus engine manufacturers whose warranties mandate fuel specifications including cetane level and the use of detergency to maintain clean fuel injectors; provide and blend chemical additives with the fuel for conductivity, lubricity, cetane and cold weather operability at specific rates, which vary by the season (and temperature); and conduct rigorous sampling and testing of fuel to ensure consistency in meeting the technical specifications. Bus fuel represents one of the most critical commodities procured whose quality and availability cannot be compromised. NYC Transit/MTABC's specifications delineate the chemical characteristics of the fuel as well as cold weather operability parameters. Failure to meet these exacting specifications can impact operability of bus engines as well as depot on-site fuel tanks and filtration systems.

By utilizing the RFP process, NYC Transit was able to utilize evaluation criteria relating not only to price but to various factors relating to the ability of the proposers to meet contract requirements. The Evaluation Criteria were listed in relative order of importance as follows: Quality Control and Experience, Product Logistics, Proposal Price and Other Relevant Matters.

Procurement maintains an ongoing outreach process to petroleum refiners and distributors to ensure an awareness of the landscape of the industry to understand and encourage potential providers to compete on substantial fuel related requirements. Thirty-four petroleum refiners and distributors were contacted with regard to this procurement.

The RFP price schedule was divided into regions (1. Manhattan/Bronx/Yonkers, 2. Brooklyn/Queens, 3. Staten Island) to permit the ability to propose on a portion or all (Citywide) of the requirements. The RFP and outreach emphasized NYC Transit's desire to obtain cost saving alternatives and was solicited in a timeframe for contract award that would provide the contractor(s) with adequate startup time prior to the end of the current fuel contract. Pricing was solicited based upon a posted market index for ULSD; however, proposers were encouraged to offer alternative indices if there was a potential for savings, with the proposer providing a differential above this posting to cover transportation, risk, administrative expenses, overhead, profit, etc. The RFP document was solicited on January 13, 2014. As a result of this extensive outreach effort, twelve parties requested the RFP and a total of four proposals were received on May 21, 2014 from the following companies: Mansfield Oil Company (Mansfield), Castle Oil Corp. (Castle), United Metro Energy Corp. (UMEC) and the incumbent, Sprague. The other companies that received the RFP indicated that they did not submit proposals as their involvement was as a subcontractor or after reviewing the RFP, they made business decisions not to pursue this work due to geographical, capacity or financial limitations.

# Staff Summary

Page 2 of 2

After a thorough review of the proposals in accordance with the Evaluation Criteria, the Selection Committee invited all four proposers for oral presentations. Topics presented and discussed ranged from the choice of fuel market index publications, ability to meet the fuel technical specifications, quality control, ability to store and deliver ULSD and how the proposer would handle all aspects of the day-to-day deliveries. Castle, Sprague and UMEC were invited to participate in negotiations. After oral presentations the Selection Committee eliminated Mansfield from further consideration based on problems associated with its technical proposal. During negotiations Castle advised NYC Transit that it was withdrawing as a proposer as a potential sale of the company was imminent. Subsequently, on December 8, 2014, Sprague advised NYC Transit that it had acquired Castle.

Negotiations explored aspects of the work to ascertain the best methods of providing fuel at the most competitive pricing. Emphasis was placed on: revisions to the fuel specification to adopt revised cold weather operability characteristics, revised detergency concentrations and periods of application, various fuel market index publications on pricing and terms and conditions with a focus on payment terms. Negotiations also included discussions on storing, handling and terminal requirements, financial responsibility, and differential pricing. Both proposers were encouraged to provide creative alternative proposals with respect to pricing.

Interim proposals were requested from each of the proposers incorporating the aforementioned specification changes and use of Argus market index pricing and other potential cost saving alternatives. Interim pricing received indicated minimal cost for adoption of the fuel specification revisions as well as indicating a potential savings from utilizing Argus pricing. Via addendum, these changes were adopted as well as a revision to the price schedule requesting pricing on a Citywide basis only, as interim proposals demonstrated that this approach provided the most competitive pricing.

The proposers were advised in the Request for Best and Final Offer (BAFO) that as the price of fuel will change over the life of the contract, NYC Transit would apply a pre-established range of ULSD prices to analyze the pricing in the BAFOs. These ULSD prices averaged \$2.480 per gallon and were derived from price projections obtained from the MTA's Forecasting consultant and were established, secured and kept confidential prior to requesting BAFOs. Upon receipt of BAFOs on April 8, 2015, NYC Transit utilized the confidential price projections to evaluate the Price Proposals with results as follows:

## Evaluated BAFO Results (5 year):

	UMEC (Base proposal)	Sprague (Base proposal)	* Sprague Alternative #1	** Sprague Alternative #2
Using MTA Pricing Projections:	\$658,257,289	\$640,093,634	\$636,551,576	\$633,284,746

\*This Alternative proposal incorporates daily electronic invoicing as opposed to a weekly paper invoice. Corresponding delivery tickets are provided to the NYC Transit project manager for validation electronically.

\*\* This Alternative Proposal incorporates a differential which varies based on the posted price per gallon of fuel along with daily electronic invoicing and corresponding delivery tickets.

After a review of the proposers' BAFOs in accordance with the Evaluation Criteria, the Selection Committee voted unanimously to recommend award of the contract to Sprague, based on its superior technical qualifications as well as the lowest price. While both proposers were deemed capable of performing the work, the Selection Committee determined that Sprague demonstrated technical superiority in the area of quality control and experience, product logistics and other relevant matters. Sprague offered a base price proposal as well as two alternative price proposals of which the Selection Committee unanimously recommended award of Alternative #2 as it offered the best overall value and lowest price.

Sprague's Alternative #2 proposal pricing is \$24,972,543 less than UMEC's proposal. As a result of negotiations, pricing from Sprague's initial proposal compared to Sprague's BAFO Alternative #2 was reduced by \$3,638,788. Additionally, as differential pricing proposed by Sprague under Alternative #2 (averaging \$0.1636 for five years) is lower than Sprague's differential pricing on the existing Contract C609B0053 (averaging \$0.1979 for five years), estimated savings of \$8,209,958 will be realized over the term of the contract. Pricing has been determined to be fair and reasonable based on the competitive pricing received and a favorable comparison to the existing competitively awarded contract.

A background search by the Division of Materiel and review of the documents submitted by Sprague disclosed no significant adverse information within the meaning of the All-Agency Responsibility Guidelines. It has been learned that while a wide-ranging investigation into the heating oil industry was recently launched concerning a Sprague terminal acquired from Castle in December 2014, the New York County District Attorney's Office advised that Sprague is not a target of the investigation. The Office of the Controller performed a financial review and found that there is reasonable assurance that Sprague is financially qualified contingent upon its parent providing a letter of guarantee on its performance of this contract. The letter of guarantee was received from its parent prior to requesting BAFOs.

## M/W/DBE

Based on the scope of work and lack of subcontracting opportunities, an MBE goal of zero percent (0%) and a WBE goal of zero percent (0%) were established for this contract.

## IMPACT ON FUNDING

Funds are available under NYC Transit Account No. 706202, Responsibility Center 3531 - 3534, Function No. 120. Funds are available under MTABC Account No.706602, Responsibility Center 5286, Function No. 120.

## ALTERNATIVES

It is not anticipated that a re-solicitation of this requirement would yield a greater degree of competition or more favorable pricing.

## RECOMMENDATION

It is recommended that the Board approve the award of a Contract to Sprague for the purchase and delivery of ULSD with additives for use in buses for DOB and MTABC for a five year term from July 1, 2015 to June 30, 2020, for the estimated total contract amount of \$633,284,746.

Item Number: 2

<b>Vendor Name (&amp; Location)</b> Abilities, Inc. (Albertson, NY)
<b>Description</b> Travel Training Services
<b>Contract Term (including Options, if any)</b> Three years
<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 checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:

<b>Contract Number</b> RFQ 94699	<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Total Amount:</b> \$557,300 (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 Buses, Darryl C. Irick	

**Discussion:**

This three-year estimated quantity, miscellaneous service contract for the provision of travel training services for the Department of Buses, Division of Paratransit (Paratransit), is being recommended for award to Abilities, Inc. (AI) in the estimated amount of \$557,300. The scope of work (SOW) requires the contractor to recruit, screen, and provide thorough instruction to teach up to 140, and to re-train up to 41 Paratransit registrants how to travel safely and independently on NYC Transit buses and/or subways as an alternative to the more costly Paratransit service. Travel Training is a proven strategy that promotes the use of accessible fixed route public transportation among Paratransit registrants.

This contract covers travel training requirements for the five boroughs of New York City. Pricing is based on unit prices for the following categories: a) screening; b) training; c) retraining activities; d) fixed-route orientation events; and e) outreach campaigns. Procurement performed an extensive outreach to 33 companies in the marketplace, resulting in two bids received. AI's price of \$557,300 is 32.8% lower than that of the next low bidder. AI's pricing cannot be directly compared to the previous contract pricing because of enhancements made to the SOW requirements focusing on greater outreach to the community, as well as the requirements for the Contractor to have full time staff administer the service.

AI is a non-profit multi-service organization and has been assessing and training developmentally disabled, physically and/or mentally impaired individuals requesting various services since its founding in 1952. A qualification hearing was conducted and AI was deemed technically qualified, found to have the necessary experience in this field, an established and reliable network of affiliates, and access to multiple service sites within the five boroughs that it can use to carry out travel training activities.

Since late 1999, NYC Transit has been offering travel training services to its Paratransit registrants. Historically, the cost of this type of training has been offset by diverting rides from Paratransit to fixed route service. Paratransit obtained sample data on 184 (54.4%) of its 338 training graduates from 2000 to 2014. The 184 training graduates reported that they took an average of 142 one-way trips by bus or subway during the first year after their graduation. At the fully loaded price of \$3,079 per graduate, 54 trips would need to be taken to reach the break-even point based on the Paratransit Primary Carrier cost of \$56.86 per trip (based on 2014 data). The average annual number of trips taken by past graduates has considerably exceeded the number of trips required to break-even; therefore, if only 38% of the projected 60 annual graduates take the average of 142 trips, it would cover 100% of the annual training costs over the three year period.

Item Number: 3

<b>Vendor Name (&amp; Location)</b> AlliedBarton Security Services, LLC (King of Prussia, PA)	
<b>Description:</b> Armed and Unarmed Security Guard Services	
<b>Contract Term (including Options, if any)</b> April 1, 2008 – April 30, 2015	
<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> Department of Security, Owen Monaghan Division of Revenue, Alan Putre	

Contract Number	AWO/Modification
06H9503	9
<b>Original Amount:</b>	\$ 21,885,332
<b>Option Amount:</b>	\$ 12,043,290
<b>Total Amount:</b>	\$ 33,928,622
<b>Prior Modifications: (excluding options)</b>	\$ 17,567,613
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 51,496,235
<b>This Request: (including option)</b>	
\$4,060,116: Revenue Control	\$ 8,508,468
\$4,448,352: Security	(Est.)
<b>% of This Request to Current Amount:</b>	16.5%
<b>% of Modifications (including This Request) to Total Amount:</b>	76.9%

**Discussion:**

This modification is for an eight month extension of the contract from May 1, 2015 to December 31, 2015, with an option to extend the contract term for up to an additional two months (January 1, 2016 – February 29, 2016).

This contract is for armed guard services. Under the contract, AlliedBarton Security Services, LLC (Allied) provides armed and unarmed security guards who conduct patrols, control access to facilities, monitor activities utilizing closed-circuit television, monitor alarms, and handle emergencies.

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. Allied also provides armed security guard services for the Department of Security at designated NYC Transit locations. The contract included two, one-year options, both of which were exercised. Subsequent modifications, including three which were approved by the Board, extended the contract term to April 30, 2015. Unarmed guard services for the Fulton Center were added through Modification 7, which was approved by the Board in May 2014.

This modification will extend the contract term to continue to provide armed and unarmed security guard services for an additional eight months. Exercise of the two month option, if exercised, will be subject to approval by the Chief Officer, Procurement.

This modification is needed to allow NYC Transit sufficient time to complete the on-going competitive RFP for a new multi-year contract for armed and unarmed security guard services. The RFP was advertised in October 2013. In May 2014, the Department of Security advised Procurement that unarmed guards would be needed for the Fulton Center. The RFP was delayed because the exact scope for the unarmed guards was not finalized until November 2014. This eight month extension is necessary to allow proposers to submit new proposals that include unarmed guard services, to complete the RFP process and to allow for a three month ramp up period, in the event that a new contractor is selected and needs time to obtain the required firearm permits for the guards.

The estimated expenditure for this extension is based on prevailing wage rates. The price for the eight month extension is \$6,806,775, and the price for the up to two month option is \$1,701,693. Aside from any changes in the prevailing wage and supplemental benefit which may be mandated during the term of the extension, all rates are the same as in Modification 8. The price has been found to be fair and reasonable.

**APRIL 2015**

**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.)

- 1. Plaza Schiavone JV** **\$7,500,000** **Staff Summary Attached**  
**Contract# A-36125.487**  
Modification to the contract for the Fulton Center Enclosure, in order to provide additional CCTV cameras and Intrusion Access Control throughout the Fulton Center Complex, as well as a dedicated security office at the mezzanine level.
- 2. Skanska/Railworks JV** **\$1,420,000** **Staff Summary Attached**  
**Contract# C-26505.222**  
Modification to the contract for furnishing and installation of finishes and systems, No. 7 Flushing Line extension, in order to address changes associated with hurricane flood surge protection at Site A and manholes between Sites A and K.

## Schedule K: Ratification of Completed Procurement Actions



**Item Number:** 1

<b>Vendor Name (&amp; Location)</b> Plaza Schiavone JV (New York, NY)
Fulton Street Transit Center Enclosure
<b>Contract Term (including Options, if any)</b> August 5, 2010 – June 16, 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> A-36125	<b>AWO/Mod. #</b> 487
<b>Original Amount:</b>	\$ 175,988,000
<b>Prior Modifications:</b>	\$ 31,519,034
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 207,507,034
<b>This Request:</b>	\$ 7,500,000
<b>% of This Request to Current Amount:</b>	3.6%
<b>% of Modifications (including This Request) to Original Amount:</b>	22.2%

### Discussion:

This retroactive modification is for additional CCTV cameras and Intrusion Access Control throughout the Fulton Center Complex as well as a dedicated Security Office at the Mezzanine Level.

This contract is for the construction of the Fulton Center Enclosure, which is a new structure at the corner of Fulton Street and Broadway in the Borough of Manhattan, including all interior finishes and systems.

As a result of the reprogramming of Fulton Center, which increased the amount of retail space, and the decision that would allow the Master Lessee to operate the facility, different security protocols were required. Meetings held between MTACC, NYC Transit, Department of Subways, NYC Transit Security and the Design Team (ARUP) led to the development of a revised security system.

As part of meeting the requirements of the revised security system, this modification includes furnishing and installation of additional CCTV cameras with associated data cabinets; added Intrusion Access Control hardware; construction of a new security office at the Mezzanine Level including walls, ceilings, floor, doors, door hardware, electrical, mechanical (HVAC), communications, fire alarm and sprinkler system changes, furniture and all finishes associated with the room.

In order to mitigate the impact of this work to the Project Schedule as well as expedite the installation of these additional security measures, it is necessary to start this work immediately. Approval of the decision to proceed with this modification on a retroactive basis was obtained from the MTACC President on April 7, 2015.

The contractor's proposal was \$9,382,432. MTACC's revised estimate is \$7,108,510. Negotiations resulted in a lump sum price of \$7,500,000, which was found to be fair and reasonable. Savings of \$1,882,432 were achieved. Discussions regarding the schedule impact of this modification are ongoing and will be addressed in a subsequent modification along with any associated impact costs.

# Schedule K: Ratification of Completed Procurement Actions



Item Number: 2

<b>Vendor Name (&amp; Location)</b> Skanska/Railworks JV (New York, NY)	
Furnishing and Installation of Finishes and Systems – No.7 Line Extension	
<b>Contract Term (including Options, if any)</b> August 10, 2011 – February 24, 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 type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: HYDC	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> MTA Capital Construction, Dr. Michael Horodniceanu	

<b>Contract Number</b>	<b>AWO/Mod. #</b>
C-26505	222
<b>Original Amount:</b>	\$ 513,700,497
<b>Prior Modifications:</b>	\$ 22,558,395
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 536,258,892
<b>This Request:</b>	\$ 1,420,000
<b>% of This Request to Current Amount:</b>	0.3%
<b>% of Modifications (including This Request) to Original Amount:</b>	4.7%

## Discussion:

This retroactive modification is for changes associated with hurricane flood surge protection at Site A and manholes between Sites A and K. Funding for this modification will be provided by Hudson Yards Development Corporation (HYDC).

This contract includes the completion of the 34<sup>th</sup> Street Station and covers the entire No. 7 Line extension which runs from Times Square to Site A at 26<sup>th</sup> Street and 11<sup>th</sup> Avenue. It includes the furnishing and installation of finishes and systems including elevators and escalators; HVAC, tunnel ventilation and fire protection; plumbing, electrical power and lighting; signal, communications and traction power systems; and track work. The work also includes construction of the ventilation building at Site A.

This modification is the result of a NYC Transit request to protect the subway system against a Category 2 Hurricane SLOSH (Sea, Lake and Overland Surges from Hurricanes) Flood Surge height plus 3 feet. Flooding of Shaft A or the manholes under the 11<sup>th</sup> Avenue viaduct could potentially result in the flooding of a large section of the subway system. This modification includes the construction of a reinforced concrete wall at Site A measuring approximately 18 feet high, by 7 inches thick and 156 feet long; replacement of twelve manhole frame/covers under the 11<sup>th</sup> Avenue viaduct with watertight covers; addition of water seal to all conduits inside the manholes and exterior wall penetrations below 12 feet; filling with concrete and capping of the 2 inch temporary drain line at the B1 level of Site A; and placement of new structural concrete topping with additional top reinforcement at several locations.

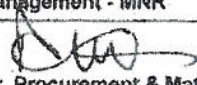
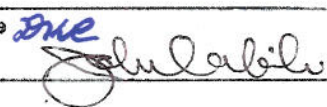
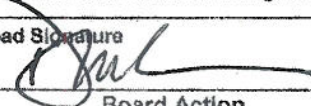
Due to the exposure to potential time impact associated with this additional work, and in order to mitigate delays to the extent possible, it was necessary to proceed with the work immediately. Work started in October 2014. MTACC is currently reviewing the schedule impact of this modification and any resulting delays will be addressed in a subsequent modification.

The contractor's proposal was \$2,152,402. MTACC's estimate is \$1,394,871. Negotiations resulted in a lump sum price of \$1,420,000, which was found to be fair and reasonable. Savings of \$732,402 were achieved.

**METRO-NORTH/LONG ISLAND  
COMMITTEE**

**PROCUREMENTS  
FOR  
BOARD  
ACTION**

**April 27, 2015**

<b>Subject</b> Request for Authorization to Award Various Procurements						<b>Date</b> April 13, 2015			
<b>Department</b> Procurement & Material Management - MNR						<b>Department</b> Law and Procurement - MTACC			
<b>Department Head Name</b> Al Muir, Acting Sr. Director, Procurement & Material Management						<b>Department Head Name</b> Evan M. Elsland, Sr. Vice President & General Counsel			
<b>Department Head Signature</b> 						<b>Department Head Signature</b> <i>Due</i> 			
<b>Department</b> Procurement & Logistics - LIRR									
<b>Department Head Name</b> Dennis L. Mahon, Chief Procurement & Logistics Officer									
<b>Department Head Signature</b> 									
<b>Board Action</b>						<b>Internal Approvals</b>			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	MNR/LIRR Committee	4-27-15	X			X	President, MNR		
2	MTA Board	4-29-15	X			X	President, LIRR		
						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:**

MNR proposes to award Non-Competitive procurements in the following categories: NONE

LIRR proposes to award Non-Competitive procurements in the following categories:

<u>Schedules Requiring Two-Thirds Vote (or more where noted)</u>		# of Actions	\$Amount
Schedule A:	Non-Competitive Purchases and Public Work Contracts	1	\$584,500
<u>Schedules Requiring Majority Vote</u>			
Schedule G:	Miscellaneous Service Contracts	1	\$127,365
SUBTOTAL:		2	\$711,865

MTACC proposes to award Non-Competitive procurements in the following categories: NONE

**MNR proposes to award Competitive procurements in the following categories:**

<u>Schedules Requiring Two-Thirds Vote (or more, where noted)</u>		<u># of Actions</u>	<u>\$ Amount</u>
Schedule B:	Competitive Requests for Proposals	1	TBD
Schedule C:	Competitive Requests for Proposals	1	\$195,000,000
<u>Schedules Requiring Majority Vote</u>			
Schedule F:	Personal Service Contracts	1	\$3,500,000
SUBTOTAL:		3	\$198,500,000

**LIRR proposes to award Competitive Procurements in the following categories:**

<u>Schedules Requiring Two-Thirds Vote</u>		<u># of Actions</u>	<u>\$ Amount</u>
Schedule B:	Competitive Requests for Proposals	2	TBD
SUBTOTAL:		2	TBD

**MTACC proposes to award Competitive Procurements in the following categories:**

<u>Schedules Requiring Majority Vote</u>		<u># of Actions</u>	<u>\$ Amount</u>
Schedule I:	Modifications to Purchase & Public Work Contracts	3	\$8,395,982
SUBTOTAL:		3	\$8,395,982

**MNR proposes to award Ratifications in the following categories:**

		<u># of Actions</u>	<u>\$ Amount</u>
<u>Schedules Requiring Majority Vote</u>			
Schedule K:	Ratification of Completed Procurement Actions	1	\$102,510
SUBTOTAL:		1	\$102,510

**LIRR proposes to award Ratification in the following categories: NONE**

		<u># of Actions</u>	<u>\$ Amount</u>
<b>MTACC proposes to award Ratifications in the following categories:</b>			
<u>Schedules Requiring Majority Vote</u>			
Schedule K:	Ratification of Completed Procurement Actions	2	\$5,679,219
SUBTOTAL:		2	\$5,679,219
<b>TOTAL:</b>		13	\$213,389,576

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 2015**

**METRO-NORTH RAILROAD**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Schedules Requiring Two-Thirds Vote:**

**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)

**1. Request to use RFP Process**

**Staff Summary Attached**

**Solicit Proposals for a Track Geometry Vehicle**

To obtain MTA Board approval to use the Request for Proposals (RFP) process to solicit and evaluate proposals from prospective contractors for the design, manufacture, and delivery of one Track Geometry Vehicle (TGV). A TGV is an automated track inspection vehicle placed on rail and used by commuter and freight transportations systems to test geometric parameters of track without obstructing normal railroad operations.

This project consists of the design, manufacture and delivery of one TGV and will be used on all of MNR's service territories. The track geometry parameters measured with this unit will include; position/location, curvature, alignment of track, smoothness, and the cross-level of the two rails. The vehicle will use a variety of sensors, measuring systems, and data management systems to create a profile and record of the track being inspected. This data will be used in the planning of general repairs and in the preparation of long term capital improvement projects.

In order to assure the selection of the remanufacturer with the necessary experience and expertise, it is in the public interest to use the RFP process to properly evaluate the technical and remanufacturing capabilities of prospective proposers. The Contractor will be selected based on an evaluation of technical capability, past performance, organization resources, experience of team members, and cost.

The estimated cost of this procurement is \$10,000,000 and is to be funded by the MNR Operating Capital Budget.

**C. Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)**

(Staff Summaries required for items requiring Board approval)

**2. Judlau-TC Electric Joint Venture      \$195,000,000 (not-to-exceed)  
Design/Build Power/ C&S Infrastructure Improvements CP-5 to CP-35**

**Staff Summary Attached**

Approval is requested to award a 50-month competitively solicited and negotiated design-build contract (RFP process, 6 proposals received; 4 shortlisted) to Judlau-TC Electric Joint Venture (Judlau-TC Electric) for Phase I and Phase II for the complete design, construction and testing of replacement infrastructure for various MNR power, communication and signal equipment and cabling that was damaged as a result of Superstorm Sandy on MNR's Hudson Line from CP-5 Mott Haven to CP-35 Croton Harmon.

The project's working limits extends from CP-5 through CP-35, approximately 30 mile continual stretch along MNR's Hudson Line. The overall project is being separated into two Phases. Phase I of the project encompasses all of CP-19 Greystone interlocking to the CP-35 Croton-Harmon. Phase II of the project will be an optional bid item for infrastructure replacement from CP-5 Mott Haven up to CP-19 Greystone.

Judlau-TC Electric's Best and Final Offer of \$195,000,000 is 2.5% above the amount of the in-house estimate. An analysis of key bid items of the Design Builder's proposal were within acceptable ranges of the engineer's estimate and deemed overall to be fair and reasonable. At this time, negotiations of an alternate design for cable duct bank is under consideration by MNR which has the potential to further reduce the overall cost to both Phases I and II. The not-to-exceed amount of \$195,000,000 includes any contingency cost that may be realized as a result of continuing negotiations at this time. Funding for the project is expected to be provided by grants from the federal government associated with Superstorm Sandy.

## F. Personal Service Contracts

3.	Day Engineering, P.C. Environmental and Occupational Safety Engineering and Consulting Services	\$3,500,000 (not-to-exceed)	<u>Staff Summary Attached</u>
----	--	-----------------------------	-------------------------------

Metro-North's Environmental Compliance Services and Office of System Safety Departments require a consultant to provide on-call technical and engineering expertise to be executed by and under the supervision of licensed engineers and other technical experts and to provide environmental and occupational health and safety compliance consulting, engineering and training services.

Nine proposals were received and evaluated based on the criteria established in the RFP. Three firms were short-listed and invited for oral presentations. At the conclusion of the evaluation process, the Selection Committee unanimously selected Day Engineering; P.C. Day's hourly rates were the lowest of the short-listed firms. The five year budget estimate is not-to-exceed \$3,500,000. This procurement will be funded by the MNR Operating Budget.

# Staff Summary

<b>Item Number</b> B					
<b>Dept. &amp; Dept. Head Name:</b> Procurement & Material Management, Al Muir, Acting Sr. Director					
<b>Division &amp; Division Head Name:</b> Executive Vice President, Catherine Rinaldi					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	MNR Comm. Mtg.	4-27-15	X		
2	MTA Board Mtg.	4-29-15	X		
<b>Internal Approvals</b>					
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>		
X	President	X	V.P. Engineering		
X	Sr. V.P. Operations	X	V.P. & General Counsel		
X	V.P. Capital Programs				
X	V. P. Finance & IT				

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> TBD	<b>Contract Number</b> TBD
<b>Description</b> Request to use the RFP process to solicit proposals for a Track Geometry Vehicle	
<b>Total Amount</b> TBD	
<b>Contract Term (including Options, if any)</b> TBD	
<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 checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

## Narrative

### I. PURPOSE/RECOMMENDATION:

To obtain MTA Board approval to use the Request for Proposals (RFP) process to solicit and evaluate proposals from prospective contractors for the design, manufacture and delivery of one Track Geometry Vehicle (TGV).

### II. DISCUSSION:

MNR is seeking a firm to design, manufacture, and deliver one TGV. A TGV is an automated track inspection vehicle placed on rail and used by commuter and freight transportations systems to test geometric parameters of track without obstructing normal railroad operations.

The TGV will be used on all of MNR's service territories. The track geometry parameters measured with this unit will include; position/location, curvature, alignment of track, smoothness, and the cross-level of the two rails. The vehicle will use a variety of sensors, measuring systems, and data management systems to create a profile and record of the track being inspected. This data will be used in the planning of general repairs and in the preparation of long term capital improvement projects.

The scope of work for the design, manufacture, and delivery of the TGV will require it to be equipped with the latest technological advancement in rail profiling such as:

- The ability to be self-propelled, test and measure up to speeds of 50 mph and assured positive shunt of track signal circuits
- Inertial Navigational Track Geometry Measuring System non-contact zero speed geometry system.
- Rail Profile/Flange way Measuring System
- Corrugation Measuring System
- Clearance Measuring System: Tunnel and Structure clearance profile
- Both Third Rail and Catenary Geometry Measuring System
- Virtual Track Walk Software Program to allow post processing of inspection runs that have been previously video recorded.
- Video Joint Bar Recognition with cameras
- Video Systems recording and Evaluations systems equipped with LED lighting.

# Staff Summary

In addition, the TGV must be engineered and designed employing the highest applicable industry standard technology and practices, and the turbocharged diesel engine must meet current U.S. government diesel emission standards.

In order to assure the selection of the contractor with the necessary experience and expertise, it is in the public interest to use the RFP process to properly evaluate the technical and remanufacturing capabilities of prospective proposers. The Contractor will be selected based on an evaluation of technical capability, past performance, organization resources, experience of team members, and cost. This procurement will be funded by the MNR Operating Budget.

### III. D/M/WBE INFORMATION:

TBD

### IV. IMPACT ON FUNDING:

Operating Funds

### V. ALTERNATIVES:

MNR does not have the available in-house design or capacity to complete the scope of the specified work.

# Staff Summary

<b>Item Number</b> C					
<b>Dept. &amp; Dept. Head Name:</b> Procurement & Material Management, Al Muir - Acting Sr. Director					
<b>Division &amp; Division Head Name:</b> Executive Vice President, Catherine Rinaldi					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approv</b>	<b>Info</b>	<b>Other</b>
1	MNR Comm. Mtg.	4/27/15	x		
2	MTA Board Mtg.	4/29/15	x		
<b>Internal Approvals</b>					
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>		
X	President	X	V.P. & General Counsel		
	Sr. V.P. Operations		V.P. Planning		
X	V.P. Finance & IT		V.P. Engineering		
X	V.P. Capital Programs				

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> Judlau-TC Electric Joint Venture	<b>Contract Number</b> 39881
<b>Description</b> Design/Build Power/C&S Infrastructure Improvements CP-5 to CP-35	
<b>Total Amount</b> \$195,000,000 (not-to-exceed)	
<b>Contract Term (including Options, if any)</b> 50 months	
<b>Option(s) included in Total Amount?</b> <input checked="" type="checkbox"/> Yes <input 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:	

## Narrative

### I. PURPOSE/RECOMMENDATION:

Approval is requested to award a 50-month competitively solicited and negotiated design-build (DB) contract (RFP process, 6 proposals received; 4 shortlisted) to Judlau-TC Electric Joint Venture (Judlau-TC Electric) for Phase I and Phase II for the complete design, construction and testing of replacement infrastructure for various Metro-North Railroad Power, Communication and Signaling equipment and cabling that was damaged as a result of Super Storm Sandy on MNR's Hudson Line from CP-5 Mott Haven to CP-35 Croton Harmon.

### II. DISCUSSION:

On October 29, 2012 the New York region suffered the devastating effects of Super Storm Sandy. The flooding/storm surge and winds impacted rail infrastructure throughout the MNR right-of-way, in particular the 3rd rail traction power in New York State as well as Communications and Signal (C&S) components and systems. Falling trees resulted in damage to power lines and feeds, as well as physically crushing 3rd rail infrastructure components. Flooding and storm surge impacted over 60 miles of right-of-way along the eastern shore of the Harlem and Hudson Rivers. A significant portion of the Hudson Line right-of-way was completely submerged and Power and C&S infrastructure systems inundated with salt water were significantly damaged.

The project involves the complete design, construction and testing of replacement infrastructure for various MNR Power, Communications and Signaling equipment and cabling that was damaged as a result of Super Storm Sandy. The project's working limits extends from CP5 through CP35, a roughly 30 mile continual stretch along MNR's Hudson Line. The overall project is being separated into two Phases. Phase I of the project encompasses all of CP19 Greystone interlocking to the CP35 Croton Harmon interlocking. Phase II of the project will be an optional bid item for infrastructure replacement from CP-5 Mott Haven up to CP-19 Greystone. The project's requirements for the design/replacement of various MNR Power and C&S Department infrastructure items are being classified into specific categories herein:

# Staff Summary

categories herein:

**Elevated Equipment Platforms** – Throughout the limits of this project, various steel platforms are required to raise the replacement equipment to the MNR designated elevation to prevent future storm water damage. The equipment being elevated includes 3<sup>rd</sup> rail sectionalizing switches, snowmelter cases, signal power transformers, RTU Houses, Communications Pedestals and Negative Return Reactors.

**3<sup>rd</sup> Rail Sectionalizing Switch Replacements** – The DB Contractor is to design/construct all traction power positive power cable replacements to their respective 3<sup>rd</sup> rail, negative reference cable and control cabling to the nearest RTU. The sectionalizing switches are being procured in advance by MNR and will be provided to the DB Contractor for final installation on the elevated platforms, cable interconnections and testing.

**Design Interlocking Snow Melter Systems** – The DB Contractor is to design/construct all conduit routing, cabling, circuit distribution and pull box infrastructure (positive, negative and control cables) for this system. The snowmelter control cases and all heater elements are being procured in advance by MNR and will be provided to the DB Contractor for final installation, interconnections and testing.

**3<sup>rd</sup> Rail Feeder and Continuity Jumper Replacements** (2000kcmil traction cables with complete pothead assemblies). MNR has procured a specific quantity of 200MCM and 500MCM cable to be provided to the DB Contractor for installation.

**3<sup>rd</sup> Rail Component Replacement** - insulators, brackets, anchors and fasteners.

**RTU House Replacement** – The DB Contractor is to install the MNR provided RTU Houses onto the elevated platform structure in order to replace the existing facilities that were damaged.

**100Hz Transformer Replacement** - The DB Contractor is to install the MNR provided transformers onto the elevated platform structures in order to replace the existing units that supply power to the signal instrument houses, fiber optic node houses and RTU houses.

**Communication Signal Raceway and Signal Power Cable Replacement for 30 Miles along the Hudson Line** (CP-5 thorough CP-35). The DB Contractor Team is to finalize the design of conduits, cable tray and cable trough systems in multiple configurations to be utilized along tracks, through parking lots, over bridges/culverts, through passenger stations, etc. for the final configuration throughout the project.

A Request for Proposal (RFP), dated August 21, 2014, was prepared and advertised in the New York State Contract Reporter, New York Post, El Dario, Daily Challenge and was posted on MNR's website. On September 26, 2014, proposals containing qualifications from six design-build teams were received.

The criteria for selection established in the RFP for the qualification round were as follows:

1. Past experience on similar projects
  - a. Design-Build Projects
  - b. DC Traction Power, Railroad Communications/Signals
  - c. Railroad "related" projects.
  - d. Experience working together as a Design-Build Team
  - e. Performance on Design-Build Projects
2. Confidence level, commitment of relevant resources to the project including the qualifications and experience of key personnel, team qualifications and reliability to perform the Services including Subcontractor Services including Proposer's demonstrated capability and financial resources to perform the work in the time projected
3. Demonstrated understanding of the Work Scope requirements, including but not limited to the quality and completeness of the Work Plan and any required submissions
4. Proposed Staging Plan and Effective Use of Railroad Support Personnel

The Selection Committee was comprised of members representing MNR's Procurement and Material Management, Capital Engineering, Power and Communication & Signal Departments. The Committee evaluated all proposals received in accordance with the selection criteria of the RFP and MNR's procedures. Four firms were short-listed as a result of the Selection Committee meeting: Judlau-TC Electric Joint Venture; Verde-Skanska-ECCO III Joint Venture, L.K. Comstock and Mass Electric Corporation. The four short-listed firms submitted technical proposals, including cost. The Committee invited the four shortlisted firms to meet with MNR to discuss the parameters of the project including construction

# Staff Summary

schedule, track outage schedule, technical issues and possible alternatives proposed or to be proposed to submit a Best and Final Offer.

The criteria for selection established in the RFP for the Phase II selection round were as follows:

1. Cost
2. Organizational Structure/Confidence Level
  - Qualifications and experience of key personnel
  - Commitment of relevant resources
  - Team qualifications
  - Reliability to perform the services including subcontracts
3. Demonstrated Understanding of the work scope
  - Quality and completeness of work plan
  - Means and Methods
  - MNR Force Account/Access/Crews
4. Schedule, Staging & Quality & Innovativeness of design
  - Schedule
  - Innovativeness
5. Technical Approach
  - Design Evaluation & Completion
  - Filed Office Locations/Submittals/PDC Comments

Final BAFO prices (inclusive of option items) were submitted on January 23, 2015. In accordance with the criteria for selection, the Selection Committee unanimously recommended contract award to Judlau-TC Electric Joint Venture. Judlau-TC Electric Joint Venture not only offered the lowest proposal price but proposed design alternatives and construction concepts that are presently under serious consideration by MNR that could further reduce the overall cost for Phase I and Phase II.

An analysis of key bids items of the Design Builder's proposal were within acceptable ranges of the engineer's estimate

### **III. D/M/WBE INFORMATION:**

The MTA Department of Diversity and Civil Rights (DDCR) established a 17% DBE goal for this project. The contract will not be awarded until DDCR requirements have been satisfied.

### **IV. IMPACT ON FUNDING:**

Board approval is requested in the not-to-exceed amount of \$195,000,000, which includes any contingency cost that may be realized as a result of continuing negotiations at this time. Funding for the project is expected to be provided by grants from the federal government associated with Superstorm Sandy.

### **V. ALTERNATIVES:**

MNR does not have the available in-house staff with both the expertise and capability to perform the required design and construction services as specified.

# Staff Summary

Item Number F					
Dept. & Dept. Head Name: Procurement & Material Management, Al Muir, Acting Sr. Director					
Division & Division Head Name: Executive Vice President, Catherine Rinaldi					
<b>Board Reviews</b>					
Order	To	Date	Approval	Info	Other
1	M-N Comm.Mtg.	4-27-15	X		
2	MTA Board Mtg.	4-29-15	X		
<b>Internal Approvals</b>					
Order	Approval	Order	Approval		
X	President	X	V. P. & General Counsel		
X	Sr. V.P. Operations	X	Chief Safety Officer		
X	V.P. Finance & IT				
	V.P. Capital Programs				

<b>SUMMARY INFORMATION</b>	
Vendor Name Day Engineering, P.C.	Contract Number 44751
Description Environmental and Occupational Safety Engineering and Consulting Services	
Total Amount \$3,500,000 (not-to-exceed)	
Contract Term (including Options, if any) Five 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:	

## Narrative

### I. PURPOSE/RECOMMENDATION:

Approval is requested to award a five-year competitively solicited and negotiated professional services contract (RFP process, nine proposals received) to Day Engineering, P.C. to provide on-call environmental and occupational safety engineering and consulting services.

### II. DISCUSSION:

The Metro-North Environmental Compliance Services and Safety Departments require a consultant to provide on-call technical and engineering expertise to be executed by and under the supervision of licensed engineers and other technical experts and to provide environmental and occupational health and safety compliance consulting, engineering and training services. These services include, but are not limited to: (a) timely identification of proposed, new and revised environmental and health and safety laws and regulations, as well as interpretation and compliance assistance; (b) development of plans and programs to meet environmental and occupational health and safety compliance; (c) preparation and delivery of training to MNR personnel; (d) evaluation of operations and facilities for purposes of identifying areas of non-compliance; (e) preparation of design and construction plans and specifications; (f) preparation of environmental site assessments and inspections; and, (g) auditing of regulated waste disposal sites.

A Request for Proposal (RFP), dated December 11, 2014, was prepared and advertised in the New York State Contract Reporter, New York Post, El Diario, Daily Challenge and posted on the MNR website. On January 20, 2015, technical proposals were received from the following firms: Day Engineering, P.C., American Environmental Assessment & Solutions Inc., ARCADIS, HRP Engineering, STV, Tetra-Tech, TRC Solutions, H2M, and URS.

# Staff Summary

The criteria for selection established in the RFP were as follows:

- A. Demonstrated understanding of the work scope requirements
- B. Project Plan (detailed description of how the services will be performed)
- C. Confidence Level (regarding the commitment of relevant sources)
- D. Past Experience on similar projects

A Selection Committee was formed that comprised members representing MNR's Procurement and Material Management, Environmental Compliance and Services and Safety Departments. The Committee evaluated the nine proposals received and shortlisted three consultants for oral presentations: TRC, ARCADIS and Day Engineering, P.C.

Upon completion of oral presentations and in accordance with the criteria for selection, the Selection Committee unanimously recommended contract award to Day Engineering, P.C. Day Engineering scored the highest and was rated the best overall firm to provide the services based on their project team qualifications, superior solutions, capability, and pricing. Day Engineering, P.C. proposed the lowest hourly rates of the short-listed firms.

### **III. D/M/WBE INFORMATION:**

The MTA Department of Diversity and Civil Rights (DDCR) established 10% MBE and 10% WBE goals for this project. DDCR determined Day Engineering, P.C. has responded satisfactorily to the MBW/WBE submission requirements established for this contract.

### **IV. IMPACT ON FUNDING:**

Board approval is requested in the not-to-exceed amount of \$3,500,000. This project is funded from the MNR Operating Budget.

### **V. ALTERNATIVES:**

MNR does not have the available in-house staff with both the technical expertise and experience to provide environmental and occupational safety engineering and consulting services.

**APRIL 2015**

**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. Delta Railroad Construction, Inc.                      \$102,510 (not-to-exceed)**  
**Lease of three Harsco Switch Tampers**

Non-competitive contract to continue the lease of track equipment to be used by MNR's force account in support of the ongoing track maintenance and remedial repairs on MNR's complete service area. These tampers are used to pack (or tamp) the track ballast under railroad tracks for more durability and also ensure the alignment of the rails are parallel and level. Through this maintenance, the Railroad achieves a more comfortable ride for passengers and reduces the mechanical strain applied to the rails by passing trains.

MNR's existing tamper equipment needed for track maintenance is over 15 years old and has reached the end of its useful life. The MNR 2014 Capital Budget for purchase of equipment included two new junior spot tampers. These units have been purchased under MNR Purchase Order No. 1-45724 and are anticipated to arrive at MNR by third quarter 2015.

Due to the current needs of MNR's track maintenance infrastructure and the anticipated delivery of the new equipment, the current lease agreement with Delta Railway Construction Inc. has been extended for an additional six months, and will expire on September 30, 2015.

**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)

- |           |                               |                          |                                      |
|-----------|-------------------------------|--------------------------|--------------------------------------|
| <b>1.</b> | <b>Plasser American Corp.</b> | <b>\$584,500</b>         | <i><u>Staff Summary Attached</u></i> |
|           | <b>Sole Source</b>            | <b>Firm Fixed Amount</b> |                                      |
|           | <b>Contract No. IT07585</b>   |                          |                                      |

LIRR requests MTA Board approval to award a Sole Source Contract to Plasser American Corporation ("Plasser") in the firm fixed amount of \$584,500 for the furnishing of a Laser Scanning System to be installed on LIRR's TC-82 Track Geometry Vehicle. Plasser is the Original Equipment Manufacturer (OEM) and the sole responsible source to supply the Laser Scanning System, which is part of the on-board measuring computing system.

*Procurements Requiring Majority Vote*

**Schedule G: Miscellaneous Service Contracts**

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive)

- |           |                                    |                      |                                      |
|-----------|------------------------------------|----------------------|--------------------------------------|
| <b>2.</b> | <b>Cummins Allison Corporation</b> | <b>\$127,365</b>     | <i><u>Staff Summary Attached</u></i> |
|           | <b>Sole Source</b>                 | <b>Not-to-Exceed</b> |                                      |
|           | <b>Contract No. TBD</b>            |                      |                                      |

Long Island Rail Road, on behalf of itself and Metro-North Railroad ("the Railroads"), requests MTA Board approval to award a sole source, three-year miscellaneous service contract to Cummins Allison Corporation ("Cummins") in the not-to-exceed amount of \$127,365 for preventive/scheduled maintenance and "on-call" repair services of currency sorters and counters located throughout each Railroad's territory.

## Schedule A: Non-Competitive Purchases and Public Works Contracts

### Staff Summary



Item Number: 1

<b>Vendor Name (&amp; Location)</b> Plasser American Corp. (Chesapeake VA.)
<b>Description</b> Plasser Laser Scanning System
<b>Contract Term (including Options, if any)</b> One Time Purchase
<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>Contract Number</b> IT07585	<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total Amount:</b> \$584,500	
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Engineering – M/W Repair Shop/ John Hasley, Chief Engineer	
<b>Contract Manager:</b> Richard Barone	

#### Discussion:

LIRR requests MTA Board approval to award a Sole Source Contract to Plasser American Corporation (“Plasser”) in the firm fixed amount of \$584,500 for the furnishing of a Laser Scanning System to be installed on LIRR’s TC-82 Track Geometry Vehicle. Plasser is the Original Equipment Manufacturer (OEM) and the sole responsible source to supply the Laser Scanning System, which is part of the on-board measuring computing system.

LIRR’s Engineering department requires a new laser scanning system for its TC-82 Plasser Track Geometry Vehicle which measures the distance from the track centerline to surrounding infrastructure (i.e. platforms, signal bridges, canopies, etc.). The laser is used to verify that all new and existing structures are in strict compliance with the LIRR clearance diagrams. Non-compliance creates the potential for a train striking the infrastructure. These inspections are performed in accordance with LIRR’s internal policy criteria.

Plasser is the OEM of the Track Geometry Vehicle and holds proprietary rights to the drawings, specifications and related information. Accessories, software and spare parts for all Plasser vehicle equipment can only be obtained through Plasser. LIRR advertised its intent to award a sole-source procurement to Plasser in the NYS Contract Reporter, the NY Post and on the MTA website. No other manufacturer expressed an interest in competing for this contract.

During negotiations, BART and CSX Transportation, railroads which have purchased similar Plasser Laser systems, were contacted to find out if the pricing offered the LIRR was fair and reasonable. In 2010 BART, and in 2011 CSX Transportation, each bought one laser system at a cost of \$542,000.00. Although these systems are similar, the system to be procured by the LIRR is an upgraded version with greater sensitivity. Plasser offers LIRR the same “most favored customer pricing” as they do for all other Commuter Railroad or Transit Agencies. Therefore, pricing has been determined to be fair and reasonable.

With respect to the MTA All-Agency Responsibility Guidelines, a background investigation of Plasser revealed Significant Adverse Information (SAI) related to its past activities. In 2007, a waiver of the SAI in connection with a LIRR purchase of a Ballast Regulator was granted by MTA’s Executive Director and that waiver was prospective, unless new SAI was discovered. Since no new SAI has been identified since the 2007 waiver was granted, the waiver remains in effect, and Plasser remains a responsible firm.

## Schedule G: Miscellaneous Service Contracts

### Staff Summary



Item Number: 2

<b>Vendor Name (&amp; Location)</b> Cummins Allison Corporation / Kew Gardens, NY
<b>Description</b> Preventive Maintenance / On-Call Repair of Currency Counters
<b>Contract Term (including Options, if any)</b> May 1, 2015 – April 30, 2017
<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: OEM Sole Source

<b>Contact Number</b> TBD	<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Total Amount:</b> \$127,365 NTE	
<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> Customer Service LIRR & MNR (K. Wylie & E. Chin)	
<b>Contract Manager :</b> Robert Kalman	

### Discussion:

Long Island Rail Road, on behalf of itself and Metro-North Railroad (“the Railroads”), requests MTA Board approval to award a sole source, three-year miscellaneous service contract to Cummins Allison Corporation (“Cummins”) in the not-to-exceed amount of \$127,365 for preventive/scheduled maintenance and “on-call” repair services of currency sorters and counters. Cummins will provide semi-annual scheduled inspections, cleanings, lubrications, and adjustments to the equipment, as well as emergency service and “on-call” repairs for the Railroads’ Customer Service departments at various locations throughout each Railroad’s territory.

Cummins, the Original Equipment Manufacturer (OEM) of the currency sorters and counters, does not sell replacement parts and is the only firm qualified to maintain and repair their equipment. Cummins has more than 50 factory-owned service centers with in-house trained service technicians and maintains an inventory of repair parts for the purpose of servicing its equipment.

Cummins’ pricing for both Railroads, which represents their most favored customer rates provides for an hourly labor rate of \$120.00 for “on-call” repairs and a service visit flat rate of \$180.00. In addition, through negotiations, Cummins has agreed to a 2% reduction in the cost of semi-annual preventive maintenance fees and material used for repairs. Pricing, which will remain firm and fixed for the entire three year period, is determined to be fair and reasonable.

Funding for these contracts (\$74,641 – LIRR; \$52,724 - MNR), is included in each Agency’s Operating Budget.

**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)





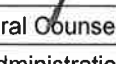
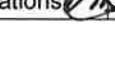

- |           |   |              |                                      |
|-----------|---|--------------|--------------------------------------|
| <b>3.</b> | <b>TBD</b><br><b>Competitive RFP</b><br><b>Contract No. TBD</b> | <b>\$TBD</b> | <i><u>Staff Summary Attached</u></i> |
|-----------|---|--------------|--------------------------------------|

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 competitive Request for Proposal (RFP) procurement method pursuant to Section 1265-a of the Public Authorities Law to award a Contract for the Hicksville Improvements Project. At Hicksville Station, the primary objective is to rehabilitate the substructure, replace the platform and its elements to ensure ADA-compliant accessibility, enhance passenger and employee safety, and provide LIRR passengers with an improved station environment. The North Track Siding (NTS) will improve Main Line service with increased AM & PM peak trains, provide added capacity and ability to recover from disruptions, and reduce congestion in the area. Work includes construction of a new retaining wall, new duct bank systems, new pre-wired signal hut and case, new signal components and removal of an existing signal bridge.

- |           |   |              |                                      |
|-----------|---|--------------|--------------------------------------|
| <b>4.</b> | <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 therefore in the public interest to use the competitive Request for Proposal (RFP) process pursuant to Section 1265-a of the Public Authorities Law to award a contract to design and furnish signal system components for the new Mainline Second Track – Farmingdale to Ronkonkoma on the LIRR Ronkonkoma Branch.

## Staff Summary

<b>Item Number: 3</b>					
<b>Dept &amp; Dept Head Name:</b> Procurement & Logistics, Dennis Mahon					
Department Head Signature & Date 					
<b>Division &amp; Division Head Name:</b> Program Mgmt, Richard Oakley					
Division Head Signature & Date 					
<b>Board Reviews</b>					
Order	To	Date	Approval	Info	Other
1	LI Committee	4.27.15	X		
2	MTA Board	4.29.15	X		
<b>Internal Approvals</b>					
Order	Approval	Order	Approval		
1	President 	4	VP/CFO 		
2	Executive VP 	5	VP/General Counsel 		
3	Sr. VP/Operations 	6	Sr. VP/Administration 		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b>	<b>Contract Number</b>
TBD	TBD
<b>Description</b>	
Hicksville Improvements	
<b>Total Amount</b>	
\$TBD	
<b>Contract Term (including Options, if any)</b>	
41 Months	
<b>Options(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 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 competitive Request for Proposal (RFP) procurement method pursuant to Section 1265-a of the Public Authorities Law to award a contract for the Hicksville Improvements Project. At Hicksville Station, the primary objective is to rehabilitate the substructure, replace the platform and its elements to ensure ADA-compliant accessibility, enhance passenger and employee safety, and provide LIRR passengers with an improved station environment. The North Track Siding (NTS) will improve Main Line service with increased AM & PM peak trains, provide added capacity and ability to recover from disruptions, and reduce congestion in the area. Work includes construction of a new retaining wall, new duct bank systems, new pre-wired signal hut and case, new signal components and removal of an existing signal bridge.

#### II. DISCUSSION

The Long Island Rail Road's Hicksville Station is located on a viaduct and was built in 1961. It has undergone more than 50 years of usage, including platform deterioration resulting from winter weather and freeze-thaw cycles. Platforms and platform-level amenities are well past their useful life and have deteriorated such that replacement is the best option. This project is part of the Railroad's 2005 to 2009 Capital Program Near-Term Capacity Improvements.

Hicksville Station being a heavily traveled station with limited available outages drove the design from conventional platform replacement to a "surgical" construction approach. The contractor must convey an understanding of limited staging areas and safe use of work trains to deliver material and equipment; as well as have the management, experience, expertise, and resources to successfully execute the work. To meet the above challenges, the prospective contractor must demonstrate through the RFP evaluation process the ability to develop a method of construction that

## **Staff Summary**

will mitigate risk, increase efficiency and potentially reduce the 41-month duration of the project, including the use of the new NTS to support construction of the station.

Ensuring that platforms are returned to service for customers each day during peak service periods, the Contractor will be required to carry out the work using a multi-phase approach to reconstruct the station platform using temporary structures and a hybrid platform system consisting of both pre-cast and cast-in-place slabs. Under the RFP procurement method, the project team will have the opportunity to submit questions and scenarios to the proposers for response to determine their understanding of the contract requirements as well as their approach to the work.

### **III. D/M/WBE INFORMATION**

Goals for this Contract are to be determined by the MTA Office of Civil Rights and Diversity.

### **IV. IMPACT ON FUNDING**

Funding for this project is included in LIRR's 2005 – 2009 Capital Program budget.

### **V. ALTERNATIVES**

The alternative is to use the Invitation for Bid (IFB) procurement method. IFB method limits the Railroad's ability to have pre-award discussions with any firm with respect to constructability, additional best value opportunities or shortening construction schedules. Given the complex nature of this project, where significant construction must be accomplished at an active railroad station with limited impacts to rail operations, there is a need to discuss and negotiate with proposers prior to award various equipment uses (ground based cranes vs high rail cranes), access to and from the jobsite and tracks, track outage plans, and phasing and staging the work.

# Schedule B: Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)

## Staff Summary



Item Number: 4					
Dept & Dept Head Name: Procurement & Logistics, Dennis Mahon					
Department Head Signature & Date <i>[Signature]</i> 4/14/15					
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	4.27.15	X		
2	MTA Board	4.29.15	X		
Internal Approvals					
Order	Approval	Order	Approval		
1	President <i>[Signature]</i>	4	VP, Chief Financial Officer <i>[Signature]</i>		
2	Executive VP <i>[Signature]</i>	5	VP, Gen'l Counsel & Sec'y <i>[Signature]</i>		
3	Sr. VP, Operations <i>[Signature]</i>				

SUMMARY INFORMATION	
Vendor Name	Contract Number
TBD	TBD
Description:	
New Signal Equipment - Mainline Second Track, Farmingdale to Ronkonkoma	
Total Amount:	
TBD	
Contract Term (including Options, if any):	
TBD	
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 MTA Board approval to adopt a resolution declaring that competitive bidding is impractical or inappropriate and that it is therefore in the public interest to use the competitive Request for Proposal (RFP) process pursuant to Section 1265-a of the Public Authorities Law to award a contract to design and furnish signal system components for the new Mainline Second Track – Farmingdale to Ronkonkoma on the LIRR Ronkonkoma Branch.

### II. DISCUSSION

Work under this contract includes final design, fabrication, delivery of new pre-wired signal components to support Phase 1 (west of Central Islip to Ronkonkoma) currently funded and under construction, and Phase 2 (Farmingdale to west of Central Islip), to be included as an option to be exercised when funding is available.

The Mainline Second Track Project consists of the construction of 12.6 miles of new second track linked to the existing portions of double track in order to provide a full double track along the 17.9 mile corridor between the Farmingdale and Ronkonkoma LIRR Stations. Upon completion, the project will increase service reliability and on-time performance along the Main Line; allow for faster recovery time following service incidents; and when combined with other infrastructure improvements, provide more peak, off-peak, and mid-day service capacity to meet existing and future service and ridership demands. The first phase of the project, currently in the approved LIRR 2010 to 2014 Capital Program, includes preliminary design of the entire double track and construction of the initial 5 mile segment from just west of Ronkonkoma to just west of Central Islip.

This request addresses the procurement of a signal system to support the entire Second Track, which will require final design, fabrication, delivery, testing and integration of wayside signal and train control equipment, including Central Instrument Locations (CILs); signal huts at crossover, grade crossing, and transmitter locations; with communications to the supervisory control tower. This new signal system will be controlled from Divide Tower, and will have new

## **Staff Summary**



interlockings at Farmingdale, Wyandanch, Deer Park, Central Islip and a modified interlocking at Ronkonkoma, and will include 18 new grade crossing huts, among other features.

The RFP process generally is used in design-furnish and design-build contracts to provide the process for ensuring consistency with the functional requirements that are outlined in the system specifications. With respect to this procurement, the RFP process also gives the LIRR the ability to evaluate terms other than price alone, such as technical approach, staff qualifications, and past performance. Each qualified firm that is capable of designing and furnishing the signal equipment and software system called for under this contract will have the opportunity to present the unique advantages of their system architecture, which can be evaluated under the RFP process.

Adoption of this resolution declaring that competitive bidding is impractical, will allow LIRR to present to the Board a recommendation to award a contract no later than 4<sup>th</sup> quarter, 2015.

### **III. D/M/WBE INFORMATION**

Goals for this contract are to be determined by the MTA Department of Diversity and Civil Rights.

### **IV. IMPACT ON FUNDING**

This contract will be funded through the Capital Budget.

### **V. ALTERNATIVES**

The alternative is to use the Invitation for Bid process. However, this alternative limits communication with any proposer until after award, and as a result the LIRR would lose the ability to thoroughly evaluate proposed systems and to negotiate improvements to the construction schedule and incorporate more efficient means and methods for project delivery.

**METRO NORTH RAILROAD AND LONG ISLAND RAILROAD  
JOINT COMMITTEE**

**MTA BOARD PROCUREMENT PACKAGE**

**APRIL 2015**

**APRIL 2015**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote**

**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)**

- |  |  |                    |                                      |
|--|--|--------------------|--------------------------------------|
| 1.   | <b>Tutor Perini Corporation<br/>Contract No. CQ032<br/>Modification No. 60</b>           | <b>\$1,310,289</b> | <b><u>Staff Summary Attached</u></b> |
| <p>Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board approval to modify the Contract to furnish and install a permanent fire standpipe system in Tunnel A.</p>  |  |                    |                                      |
| 2.   | <b>Schiavone/Kiewit Joint Venture<br/>Contract No. CQ039<br/>Modification No. 30</b>     | <b>\$3,126,651</b> | <b><u>Staff Summary Attached</u></b> |
| <p>Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board approval to modify the Contract to resolve open Contractor claims, reconcile unit quantities and allowance items to reflect actual costs.</p>                              |  |                    |                                      |
| 3.   | <b>Yonkers Contracting Company, Inc.<br/>Contract No. CM014A<br/>Modification No. 50</b> | <b>\$3,959,042</b> | <b><u>Staff Summary Attached</u></b> |
| <p>Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board approval to modify the Contract to provide for acceleration, for interim maintenance of Substation B30 and to compensate the Contractor for impact costs due to delay.</p> |  |                    |                                      |

**Item Number 1**

<b>Vendor Name (&amp; Location)</b> Tutor Perini Corporation (Peekskill, New York)	
<b>Description</b> Plaza Substation and Queens Structures for the ESA Project	
<b>Contract Term (including Options, if any)</b> February 3, 2010 – May 11, 2016 (2,289 days)	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" 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 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 #
CQ032	60
<b>Original Amount:</b>	
	\$ 147,377,000
<b>Prior Modifications:</b>	
	\$ 78,508,574
<b>Prior Budgetary Increases:</b>	
	\$ 0
<b>Current Amount:</b>	
	\$ 225,885,574
<b>This Request</b>	
	\$ 1,310,289
<b>% of This Request to Current Amount:</b>	
	0.58%
<b>% of Modifications (including This Request) to Original Amount:</b>	
	54%

**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 furnish and install a permanent fire standpipe system in Tunnel A.

In order to install the Tunnel A duct bench, the existing temporary fire standpipe system in Tunnel A must be relocated. The previous plan was to relocate the temporary standpipe system under this contract and install the permanent system under Contract CS179, when the CS179 contractor takes over Tunnel A in the future. However, during the negotiation of CS179, the project team realized that it would be more efficient to remove the temporary standpipe system and install the permanent system under the same contract than it would be to relocate the system under one contract and then remove the temporary system and install a permanent system under a subsequent contract. Accordingly, the permanent fire standpipe system for Tunnel A was removed from the CS179 package before that contract was awarded and now must be added to this Contract.

The Contractor submitted a cost proposal in the amount of \$1,375,908 while MTACC's estimate is \$1,310,289. Negotiations were held and the parties agreed to a cost for the Work in the amount of \$1,310,289 which is considered to be fair and reasonable. The addition of this scope of work will not impact the Contract Schedule or Substantial Completion date.

**Item Number 2**

Schiavone/Kiewit, Joint Venture (Secaucus, New Jersey)	
<b>Description</b> Northern Boulevard Crossing for the ESA Project	
<b>Contract Term (including Options, if any)</b>  1,653 days	
<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> East Side Access, W. Goodrich, P.E.	

Contract Number	AWO/Modification #	
CQ039	30	
Original Amount:	\$	84,950,000
Prior Modifications:	\$	14,323,349
Prior Budgetary Increases:	\$	0
Current Amount:	\$	99,273,349
This Request	\$	3,126,651
% of This Request to Current Amount:	%	3.15%
% of Modifications (including This Request) to Original Amount:	%	20.54%

**Discussion**

Under this East Side Access Project Contract, the Contractor mined 130 feet of tunnel, which included installation of ground freeze pipes, freezing of the excavation area under Northern Boulevard and under NYCT's subway system, excavation of the earth under the frozen ground, and installation of the permanent structural tunnel liner. Pursuant to Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board approval of a modification that will resolve open Contractor claims, reconcile unit quantities and allowance items to reflect actual costs, and allow for close-out of this contract.

This modification:

- resolves the Contractor's claims arising from an alleged differing site condition encountered during the installation of freeze pipes;
- resolves the Contractor's claims arising from an alleged differing site condition that delayed the freezing of the excavation arch;
- resolves the Contractor's claims for additional compensation to implement contingency measures during mining excavation;
- includes additional costs arising from contract modifications for dewatering and newly-mandated safety requirements
- resolves all delay claims and associated impact cost issues;
- contains credits for Contract work the Contractor did not perform; and
- reconciles payment allowance items to account for actual costs.

The Contractor submitted proposals which sought a net increase to the Contract Price of approximately \$14M, which included an extension in Contract Time and Impact Costs. MTACC's independent cost and time impact assessment resulted in a net increase of approximately \$2.5M to the Contract Price. The parties met on several occasions to discuss the merits of their respective positions and agreed to a net lump sum increase to the Contract Price in the amount of \$3,126,651, which included a resolution of the claims for time extensions and impact costs. This amount is considered to be fair and reasonable.

**Item Number 3**

<b>Vendor Name (&amp; Location)</b> Yonkers Contracting Company, Inc. (Yonkers, New York)	
<b>Description</b> GCT Concourse and Facilities Fit-Out for the ESA Project	
<b>Contract Term (including Options, if any)</b>  1,037 Days	
<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> East Side Access, W. Goodrich, P.E.	

Contract Number	AWO/Modification #
CM014A	50
<b>Original Amount:</b>	\$ 43,502,000
<b>Prior Modifications:</b>	\$ 8,443,973
<b>Prior Budgetary Increases:</b>	\$ -0-
<b>Current Amount:</b>	\$ 51,945,973
<b>This Request</b>	\$ 3,959,042
<b>% of This Request to Current Amount:</b>	7.6%
<b>% of Modifications (including This Request) to Original Amount:</b>	28.5%

**Discussion:**

The work under this Contract is for the facility fit-out of the lower portion of the new LIRR Concourse located in the lower level of Grand Central Station for the East Side Access project. In accordance with Article IX of the All-Agency Procurement Guidelines, MTACC is requesting Board approval of a modification to the Contract to provide for acceleration, for interim maintenance of Substation B30 and to compensate the Contractor for impact costs due to delay.

As a result of previous modifications to this contract, including modifications to (i) the roof of the Facility Control Room (Modification No. 37), (ii) the Con Edison interlocks (Modification No. 48) and (iii) adjustments to the battery room exhaust system (Modification No. 49), the schedule for this Contract was delayed by a total of 362 calendar days of which 249 calendar days are compensable to the contractor. This modification adjusts the contract milestones and addresses the Contractor's impact costs for delay.

In addition, in order to avoid further delays and potential impact costs to follow-on contracts that could arise from any further delay in energizing the B30 Facility Substation (which will be the source of construction and facilities power for Contract CM014B), this modification establishes a new milestone (Milestone 5) for completing all Work required to be performed before Con Edison will energize the substation. This modification also compensates the contractor to accelerate its work to achieve Milestone 5 by July 2, rather than September 7, 2015, and provides for liquidated damages to be assessed against the contractor for failing to achieve Milestone 5.

Lastly, this modification will provide for compensation to the contractor at a negotiated daily rate to maintain the substation equipment from the date that Milestone 5 is achieved, until the date that Con Edison energizes the substation, for a maximum of 67 days.

MTACC prepared an estimate in the amount of \$3,961,109. The Contractor submitted a cost proposal in the amount of \$3,958,895. Negotiations were held and the parties agreed to a total cost of \$3,959,042 which is considered to be fair and reasonable. The breakdown of costs is as follows:

- Impact Costs for Compensable Time: \$2,197,170
- Acceleration: \$1.6 Million (with associated liquidated damages of \$25,000 per day and capped at \$1.6 million for failure to achieve Milestone 5)
- Maintenance: Not to exceed \$161,872 (based on a daily rate of \$2,416/day)

APRIL 2015

**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)**

- |    |   |                    |                                      |
|----|---|--------------------|--------------------------------------|
| 4. | <b>Parsons Brinckerhoff/STV/Parsons<br/>Transportation Group, JV<br/>Contract No. 98-0040-01R<br/>Modification No. 90</b> | <b>\$1,429,219</b> | <b><u>Staff Summary Attached</u></b> |
|----|---|--------------------|--------------------------------------|

In accordance with Article XIII of the MTA All-Agency Guidelines for the Procurement of Services, MTACC is requesting Board ratification of a contract modification to account for an adjustment of consultant overhead rates based upon the most recent audits performed by MTA Audit Services.

- |    |   |                    |                                      |
|----|---|--------------------|--------------------------------------|
| 5. | <b>Harold Structures Joint Venture<br/>Contract No. CH057A<br/>Modification No. 4</b> | <b>\$4,250,000</b> | <b><u>Staff Summary Attached</u></b> |
|----|---|--------------------|--------------------------------------|

In accordance with Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board ratification of a contract modification for the fabrication and installation of eighteen (18) new steel poles and foundations.

**Item Number 4**

<b>Vendor Name (&amp; Location)</b> Parsons Brinckerhoff/STV/Parsons Transportation Group, JV (NY, NY)	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><b>Contract Number</b> 98-0040-01R</td> <td style="width: 50%;"><b>AWO/Modification #</b> 90</td> </tr> </table>	<b>Contract Number</b> 98-0040-01R	<b>AWO/Modification #</b> 90												
<b>Contract Number</b> 98-0040-01R	<b>AWO/Modification #</b> 90														
<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															
	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"><b>Original Amount:</b></td> <td style="width: 50%; text-align: right;">\$ 140,000,000</td> </tr> <tr> <td><b>Prior Modifications:</b></td> <td style="text-align: right;">\$ 262,054,854</td> </tr> <tr> <td><b>Prior Budgetary Increases:</b></td> <td style="text-align: right;">\$ 0</td> </tr> <tr> <td><b>Current Amount:</b></td> <td style="text-align: right;">\$ 402,054,854</td> </tr> <tr> <td><b>This Request</b></td> <td style="text-align: right;">\$ 1,429,219</td> </tr> <tr> <td><b>% of This Request to Current Amount:</b></td> <td style="text-align: right;">0.36%</td> </tr> <tr> <td><b>% of Modifications (including This Request) to Original Amount:</b></td> <td style="text-align: right;">188%</td> </tr> </table>	<b>Original Amount:</b>	\$ 140,000,000	<b>Prior Modifications:</b>	\$ 262,054,854	<b>Prior Budgetary Increases:</b>	\$ 0	<b>Current Amount:</b>	\$ 402,054,854	<b>This Request</b>	\$ 1,429,219	<b>% of This Request to Current Amount:</b>	0.36%	<b>% of Modifications (including This Request) to Original Amount:</b>	188%
<b>Original Amount:</b>	\$ 140,000,000														
<b>Prior Modifications:</b>	\$ 262,054,854														
<b>Prior Budgetary Increases:</b>	\$ 0														
<b>Current Amount:</b>	\$ 402,054,854														
<b>This Request</b>	\$ 1,429,219														
<b>% of This Request to Current Amount:</b>	0.36%														
<b>% of Modifications (including This Request) to Original Amount:</b>	188%														

**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, MTACC is requesting the Board ratify a Contract modification to account for an adjustment of consultant overhead rates based upon the most recent audits performed by MTA Audit Services.

The current contract amount is based on consultant overhead rates established based upon prior audits performed by MTA Audit Services. The contract is governed by the Safe Accountable Flexible Efficient Transportation Equity Act, which requires audits on a periodic basis with adjustments made based upon actual overhead rates. MTA Audit Services recently completed financial audits of the three joint venture partners that make up the prime consultant (Parsons Brinckerhoff, STV, Inc. and Parson Transportation Group) for the years 2011-2013. The results of the audits are below:

Firm	Recommended Adjustment
STV, Inc.	\$1,291,681
Parsons Brinckerhoff	\$1,017,368
Parsons Transportation Group	\$(879,830)
Total	\$1,429,219

Accordingly, based on the results of the audit, the Guaranteed Maximum Price of the Contract will be increased by \$1,429,219 which is considered to be fair and reasonable.

**Item Number 5**

<b>Vendor Name (&amp; Location)</b> Harold Structures Joint Venture (Secaucus, NJ)	<b>Contract Number</b> CH057A	<b>AWO/Modification #</b> 4
<b>Description</b> Harold Structures Part 3A for the East Side Access Project	<b>Original Amount:</b> \$ 104,300,000	
<b>Contract Term (including Options, if any)</b> 26 Months	<b>Prior Modifications:</b> \$ 92,137	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" 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> \$ 104,392,137	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	<b>This Request</b> \$ 4,250,000	
<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> 4%	
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> East Side Access, W. Goodrich	<b>% of Modifications (including This Request) to Original Amount:</b> 4%	

**Discussion:**

This Contract is for the construction of a jacked shield tunnel, approach structures, direct fixation track and electrical systems for the Westbound Bypass Structure to be located along the mainline tracks at F Interlocking and Harold Interlocking. Contract work also includes the installation of catenary and signal bridges along the Westbound Bypass alignment. In accordance with Article IX of the MTA All-Agency Procurement Guidelines, MTACC is requesting Board ratification of a contract modification for the fabrication and installation of eighteen (18) new steel poles and foundations.

The LIRR and Amtrak currently share power for their signals within the Harold Interlocking Area. As part of the ESA project, signal power is being separated so that LIRR and Amtrak will have independent signal power. As part of the separation work, new communication and signal cables for the LIRR were to be installed on existing lattice towers carrying the cables between Harold Interlocking, Woodside and three Central Instrument Locations (CILs). ESA, the Long Island Railroad and the Design Consultant now agree that the existing 100 year old lattice tower structures are deteriorated and at capacity and, therefore cannot carry the additional loads of the new cables. This Modification is for the fabrication and installation of eighteen (18) new steel poles and foundations which will supplement the existing lattice towers and will be used to carry communication and signal cables for the LIRR between Harold and the Woodside three CILs.

In order to meet the scheduled cutovers to the new switching and signaling systems of the three CILs in the 4th Quarter of 2016, the new steel poles need to be installed by November 2015. This will allow the LIRR approximately 10 months for pre-testing prior to the Cutovers. MTACC has determined that the CH057A Contractor should perform this Work because, presently there is no other Contractor mobilized with the available manpower and equipment that can perform this Work in time for the CIL Cutovers.

The Contractor submitted a cost proposal of \$4,929,201 while the MTACC project estimate was \$4,401,747. Negotiations were held, and both parties agreed to \$4,250,000 which is considered fair and reasonable. There is no time impact associated with this Modification.

In order to maintain the cutover schedule for the three CILs, the President approved a limited Retroactive Memorandum on March 17, 2015 and the Contractor was directed to proceed with the Work up to the not-to-exceed amount of \$912,000. Authorization to proceed with the remainder of the Work under this Modification will be given upon Board ratification of this Modification.