

This **STATE SERVICE CONTRACT**, dated as of May 15, 2002, is made by and between Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York (the “MTA”), and the State of New York (the “State”), acting by and through the Director of the Budget of the State.

RECITALS

1. The “State Service Contract Legislation,” comprised of

- Section 16 of Chapter 314 of the Laws of 1981,
- Section 42 of Chapter 929 of the Laws of 1986, and
- Section 34 of Part O of Chapter 61 of the Laws of 2000,

as each of such laws may have been amended to the date hereof, authorizes the Director of the Budget, acting on behalf of the State, to enter into long-term Service Contracts with the MTA (“State Service Contracts”) for the purposes of financing and refinancing transportation facilities, as defined in subdivision 14 of Section 1261 of the Public Authorities Law (the “Projects”) and refunding obligations issued by it or another Related Entity.

2. Under those State Service Contracts, in consideration of the MTA’s undertaking the Projects and of the benefits to be derived by the people of the State, the State would agree to make annual payments to the MTA over a period of years, with the obligation of the State subject in each year to the making of annual appropriations by the State Legislature.

3. The State Service Contract Legislation authorizes the MTA to pledge and assign the annual payments to be made by the State as security for obligations issued by the MTA for the purposes set forth in Recital 4.

4. The State Service Contract Legislation authorizes the MTA to issue from time to time one or more series of its Obligations (the “State Service Contract Obligations”) to

- (i) finance and refinance Projects;
- (ii) refund obligations issued by it or another Related Entity; and
- (iii) refund obligations secured in whole or in part by any or all of the State Service Contracts authorized by the State Service Contract Legislation.

5. The mutual public purposes and the best interests of the State and the MTA will be promoted by the execution of this State Service Contract, as the same may be from time to time modified or amended (the “Contract”).

AGREEMENT

Unless otherwise agreed to by the parties from time to time, the parties mutually agree as follows:

I. ISSUANCE OF OBLIGATIONS BY THE MTA

- 1.1 (a) Subject to the provisions of this Contract, the State Service Contract Legislation, the MTA Act, and the State Service Contract Obligation Resolution adopted by the MTA on March 26, 2002, or any other resolution pursuant to which State Service Contract Obligations are issued (a "State Service Contract Resolution"), the MTA may:
 - (i) issue one or more series of State Service Contract Obligations;
 - (ii) secure State Service Contract Obligations in whole or in part by this Contract and the payments to be made by the State hereunder; and
 - (iii) issue State Service Contract Obligations in such principal amounts and at such times that it may realize net proceeds sufficient to pay Capital Costs and to refund obligations issued by it or another Related Entity.
- (b) The MTA may apply to the payment of any Obligations described in this Section 1.1 or to the payment of Capital Costs, any amounts received or held by it in connection with bonds or notes issued by it or another Related Entity,
 - (i) for the payment of principal of or sinking fund installments or interest on such bonds or notes, or
 - (ii) as a debt service reserve fund or other reserve for such bond or notes.
- 1.2 The MTA may only issue the State Service Contract Obligations subject to the following conditions and limitations:
 - (a) The Metropolitan Transportation Authority Capital Program Review Board shall have approved the State Service Contract Resolution, prior to the adoption thereof, in accordance with the provisions of subsection 9 of Section 1269-b of the Public Authorities Law.
 - (b) No Bond (other than a refunding Bond) shall be issued after March 31, 2003.

- (c) No Bond shall mature later than the Expiration Date.
- (d) The aggregate amount of debt service on all State Service Contract Obligations (plus debt service amounts on all previously issued and Outstanding State Service Contract Obligations) shall not exceed, in any State fiscal year, (i) \$165,000,000 or (ii) such greater amount as may be permitted by applicable law and agreed to by the parties hereto.
- (e) Subject to Section 5.3 hereof, and unless the parties hereto shall agree otherwise, the MTA shall not issue:
 - (i) notes in anticipation of the issuance of any State Service Contract Obligations;
 - (ii) State Service Contract Obligations bearing interest at a variable rate; or
 - (iii) any Parity Debt under the State Service Contract Resolution.

II. PAYMENTS BY THE STATE

- 2.1 Subject to Sections 1.2(d) and 2.5 hereof, commencing on or before the Business Day next preceding January 1, 2003, and concluding on the Expiration Date (inclusive of the payment, if any, to be made on or before the Business Day next preceding that date), the State shall pay to the MTA, on or before the Business Day next preceding each January 1 and July 1 of each calendar year, an amount equal to the current year's debt service on all State Service Contract Obligations in two substantially equal semi-annual installments, less any amounts payable by the State to the MTA as debt service on bonds issued pursuant to prior State Service Contracts.
- 2.2 The State may, at any time in its sole discretion, prepay all or any part of the amounts payable under Section 2.1, which shall be credited in the order in which those amounts become due.
- 2.3 The State may, at any time in its sole discretion, make payments to the MTA for the purpose of:
 - (i) redeeming State Service Contract Obligations under the State Service Contract Resolution; and
 - (ii) defeasing State Service Contract Obligations under the State Service Contract Resolution;

provided, however, that any payments made pursuant to this Section 2.3 shall not reduce or otherwise affect the obligations of the State to make payments to the MTA under Section 2.1.

- 2.4 Subject to the provisions of Section 2.5, the State's obligation to make the payments provided for in this Contract shall be absolute and unconditional, without any rights of set-off, recoupment or counterclaim the State may have against the MTA or any other person or entity having an interest in this Contract or the payments made hereunder.
- 2.5 Notwithstanding anything in this Contract to the contrary:
- (a) the obligation of the State or of the Director of the Budget to pay the amounts herein provided for is subject to annual appropriation by the State Legislature;
 - (b) the obligation of the State or of the Director of the Budget to pay the amounts herein provided for shall not constitute a debt of the State within the meaning of any constitutional or statutory provision and shall be deemed executory only to the extent of monies available and no liability shall be incurred by the State beyond the monies available for the purpose; and
 - (c) the MTA may use the amounts paid by the State pursuant to this Contract solely in accordance with this Contract, the State Service Contract Legislation, the State Service Contract Resolution, and the MTA Act.

III. DUTIES OF THE MTA

- 3.1 In accordance with the applicable provisions of the MTA Act and the State Service Contract Legislation, the MTA shall undertake to accomplish the purposes set forth in Recital 4.
- 3.2 Upon the adoption of the State Service Contract Resolution and the appointment of the Trustee, the MTA shall establish and retain under the State Service Contract Resolution the following funds, in addition to such other funds and accounts which may be required or permitted by the State Service Contract Resolution:
- State Service Contract Proceeds Fund; and
 - State Service Contract Debt Service Fund.
- 3.3 The MTA shall deposit all payments made by the State pursuant to Section 2.1 of this Contract in the State Service Contract Debt Service Fund, except that amounts not needed for debt service in accordance with paragraph 1 of Section 504 of the State Service Contract Resolution shall be deposited, with the written

consent of the Director of the Budget, to the State Service Contract Proceeds Fund or applied to the payment of Subordinated Indebtedness, as appropriate.

- 3.4 The MTA shall cause investment earnings on monies in the State Service Contract Proceeds Fund and the State Service Contract Debt Service Fund to remain in the applicable Fund unless and until transferred in accordance with the State Service Contract Resolution.
- 3.5 Upon the State's payment to the MTA of the amount required therefor and the State's direction to the MTA so to do, the MTA shall exercise any option it may have under the State Service Contract Resolution to redeem all or any portion of the State Service Contract Obligations, and the MTA shall deposit into the State Service Contract Debt Service Fund or any other escrow or other fund, as appropriate, all payments received from the State and designated for such purpose.
- 3.6 The MTA (or the Trustee, as provided in the State Service Contract Resolution) shall hold and administer monies in each fund or account established pursuant to the State Service Contract Resolution, and shall not commingle such funds with any other funds of the MTA.
- 3.7
 - (a) In addition to its duties with respect to the audit powers granted the State under the Public Authorities Law or of any other law, the MTA shall keep accounts and records which clearly identify the purposes for which monies received by the MTA, including the proceeds of State Service Contract Obligations, pursuant to this Contract have been expended.
 - (b) The MTA shall make available for inspection by the State its accounts and records as may be determined necessary or desirable by the State.
- 3.8 Within ten days after the issuance of each series of State Service Contract Obligations, the MTA shall furnish to the State a schedule of the aggregate of all debt service payments to be made on each date in respect of all State Service Contract Obligations then being issued and then otherwise Outstanding.
- 3.9 Upon the request of the State, the MTA shall use its best efforts to issue Obligations to refund or otherwise repay, in accordance with the terms of the State Service Contract Resolution, all or any portion of the State Service Contract Obligations then outstanding. Such refunding Obligations shall be deemed State Service Contract Obligations for all purposes of this Contract.
- 3.10 After (i) all State Service Contract Obligations issued under the State Service Contract Resolution have been paid within the meaning of the State Service Contract Resolution and (ii) the two-year period provided for in Section A-1101(3) of the State Service Contract Resolution has passed, if applicable, the MTA shall request the Trustee to pay over to it any monies remaining in the State

Service Contract Debt Service Fund not required for the payment or redemption of State Service Contract Obligations not theretofore surrendered for such payment or redemption; upon its receipt thereof from the Trustee, the MTA shall promptly remit such monies to the State. Any monies remaining in the State Service Contract Proceeds Fund shall be used by the MTA as provided in Section 3.1 of this Contract.

IV. PLEDGE AND ASSIGNMENT

- 4.1 The State hereby consents to the pledge and assignment by the MTA to the holders of any of its State Service Contract Obligations, or to any trustee acting on their behalf, of all or any part of the benefits or rights of the MTA herein, of the payments by the State as provided herein and of the funds established under the State Service Contract Resolution.

V. SPECIAL COVENANTS AND OTHER PROVISIONS

- 5.1 Whenever requested by the MTA with reasonable advance notification, the State shall:
- (i) provide and certify, or cause to be provided and certified, in form satisfactory to the MTA:
 - (a) information set forth in the then most recent Annual Information Statement of the State, and any update or supplement thereto, or comparable information in other disclosure materials, together with such other information as the MTA considers necessary to (a) comply with any of its obligations to an underwriter or other person in accordance with Rule 15c2-12, as amended, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, or (b) enable it to complete and publish an official statement, placement memorandum, or other similar document, relating to the sale or issuance of State Service Contract Obligations, and
 - (b) information concerning the payments to be made by the State as provided herein, or information necessary to enable the MTA to make any reports required by law or government regulations in connection with the State Service Contract Obligations; and
 - (ii) give appropriate undertakings to an underwriter or other person, at the time of the issuance of any Obligations, regarding the provision of the information contained in this Section 5.1.

- 5.2 Neither party shall terminate this Contract for any reason including, without limiting the generality of the foregoing, any acts or circumstances which may constitute failure of consideration or frustration of purpose or the failure of either party to perform and observe any duty, liability or obligation arising out of or connected with this Contract.
- 5.3 This Contract may not be amended, changed, modified or altered so as to adversely affect the rights of the holders of any State Service Contract Obligations without the consent, given in accordance with Section 604 of the State Service Contract Resolution, of such holders, the persons deemed to be such holders, or any trustee acting on their behalf. An adverse change shall not be deemed to occur if this Contract is amended to provide for:
- (i) an increase in the amounts payable under this Contract or in the amount of net proceeds which may be realized by the MTA from the sale of State Service Contract Obligations or in the term of the State's obligations (other than an increase in such term that changes the maturity date or payment date of any outstanding State Service Contract Obligations); or
 - (ii) the issuance by the MTA of:
 - (A) notes in anticipation of the issuance of any State Service Contract obligations;
 - (B) State Service Contract Obligations bearing interest at a variable rate; or
 - (C) Parity Debt under the State Service Contract Resolution.
- 5.4 The State acknowledges and agrees that, subject to Section 1.2, in the event of any conflict between any of the provisions of this Contract and any of the provisions of the State Service Contract Resolution, the provisions of the State Service Contract Resolution shall be controlling; provided, however, that no supplement or amendment to the State Service Contract Resolution shall purport to limit or supercede the provisions set forth in Sections 2.1 and 2.5.
- 5.5 The MTA may cause monies in the funds and accounts established under the State Service Contract Resolution to be invested in Authorized Investments permitted by the State Service Contract Resolution and may restrict such investments, or the yield to be realized therefrom, as it may deem necessary or appropriate in order to maintain the status of Tax-Exempt Obligations.

VI. EVENTS OF DEFAULT BY THE STATE AND REMEDIES

- 6.1 *If*, for any reason other than a failure by the State legislature to appropriate moneys for such purpose, the State shall fail to pay when due any of the payments

provided for in Section 2.1 or shall fail to observe or perform any other covenant, condition or agreement on its part to be observed or performed, *then* the MTA shall, if such default has not been cured, have the right to institute any action in the nature of mandamus or take whatever action at law or in equity may appear necessary or desirable to collect the payments then due or thereafter to become due or to enforce performance and observance of any obligation, agreement or covenant of the State hereunder.

- 6.2 The remedies conferred upon or reserved to the MTA under Section 6.1 in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include:
- (i) a termination of this Contract,
 - (ii) any amendment, change, modification or alteration of this Contract that is prohibited by Section 5.3, or
 - (iii) the acceleration by the State or the MTA of any payments hereunder by the other.

VII. EVENTS OF DEFAULT BY THE MTA AND REMEDIES

- 7.1 *If* the MTA shall fail to observe or perform any covenant, condition or agreement on its part to be observed or performed and such failure to observe or perform shall have continued for 60 days after written notice, specifying such failure and requesting that it be remedied, is given to the MTA by the State, *then* the State shall, if the default has not been cured, have the right to institute an action in the nature of mandamus or take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of the MTA hereunder.
- 7.2 The remedies conferred upon or reserved to the State under Section 7.1 in respect of any default described therein are not intended to be exclusive of any other available remedy or remedies and shall be in addition to every other remedy now or hereafter existing at law or in equity; provided, however, that such remedy or remedies may in no event include a termination of this Contract or of the obligations of the State to make the payments provided for in Article II, nor may they include any amendment, change, modification or alteration of this Contract that is prohibited by Section 5.3.

VIII. MISCELLANEOUS

- 8.1 The term of this Contract shall extend from the date hereof to the Expiration Date, as defined in this Section 8.1. This Contract shall terminate on the later of (i) July 1, 2031, or such later date as may be agreed upon if the parties hereto extend this Contract, or (ii) the date on which all of the State Service Contract Obligations shall have been paid (such later date, the “Expiration Date”).
- 8.2 Except as the context shall otherwise require, capitalized terms in this Contract that are used but not otherwise defined herein shall have the respective meanings set forth in the State Service Contract Resolution.
- 8.3 The waiver by either party of a breach by the other shall not be deemed to waive any other breach hereunder nor shall any delay or omission to exercise any right or power upon any default impair any such right or power or be construed as a waiver thereof.
- 8.4 In the event that any provision of this Contract shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.
- 8.5 All notices provided for in this Contract shall be in writing and shall be delivered personally to or sent by certified or registered mail to the respective offices of the State and the MTA as follows:

If to the State: Director of the Budget
 State of New York
 Executive Department
 Division of the Budget
 State Capitol, Room 113
 Albany, New York 12224

If to the MTA: Metropolitan Transportation Authority
 347 Madison Avenue
 New York, New York 10017
 Attention: Director of Budgets and Financial Management

The MTA or the State may from time to time designate in writing other representatives with respect to receipt of notices.

- 8.6 This Contract represents the entire agreement between the parties. It may not be amended or modified otherwise than by a written instrument executed by both parties. Such amendments shall not be contrary to the provisions of Section 5.2 or 5.3.

- 8.7 Nothing in this Contract shall be construed to confer upon or to give to any person or corporation other than the State, MTA, another Related Entity, and the holder of any State Service Contract Obligations, or any trustee acting on their behalf, any right, remedy or claim under or by reason of this Contract or any provision thereof.

EXECUTION AND APPROVALS

The State has caused this Contract to be executed in its name by the Director of the Budget, and the MTA has caused this Contract to be executed in its name by its Authorized Officer, all as of the date and year first above written.

STATE OF NEW YORK

METROPOLITAN TRANSPORTATION AUTHORITY

Director of the Budget

Authorized Officer

Approved as to form:
Attorney General

Approved
State Comptroller

By: _____
Date: _____

By: _____
Date: _____