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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

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In the Matter of the Application of

**NEW YORK PUBLIC INTEREST RESEARCH GROUP,
STRAPHANGERS CAMPAIGN, *et al.*,**

Petitioners,

**For an Order Pursuant to Article 78 of the Civil Practice Law and
Rules**

- against -

**THE METROPOLITAN TRANSPORTATION AUTHORITY
and JETS DEVELOPMENT AUTHORITY, LLC**

Respondents.
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State of New York)
):
County of New York)

ROGER TOUSSAINT, being duly sworn, deposes and says:

1. I am the President of Local 100, Transport Workers Union of Greater New York ("Local 100"). Local 100 represents 36,000 operational and maintenance employees of the NYC Transit Authority. I make this affidavit in support of the petition by Local 100 to force the MTA to rescind its sweetheart agreement with the New York Jets for the development of the West Side Rail Yards and to resubmit this issue for fair competitive bidding. My members are the ones who suffer first from the dangers and inefficiencies of a badly funded and unsafe transit system and it is outrageous that the MTA has given in to political considerations in the sale of what should be a crown jewel.

2. Let me be clear at the outset that I do not care who is the ultimate developer of

this site. If after a fair process the Jets and their stadium becomes the most advantageous and lucrative choice for the MTA's sale of West Side Rail Yards, that is not our concern. What we do reject, however, is a rigged bidding process that was politically motivated and in which the MTA has lost a priceless opportunity to generate the revenue it claims it needs.

3. The MTA frequently complains to the public and to Local 100 that it is underfunded. On January 12, 2005 the agency announced a hiring freeze which it contended was necessary to trim a \$586 million deficit for next year. The MTA raised tolls and subway and bus fares in 2003 and 2005 but nonetheless projects budget gaps of \$813 million in 2006, \$1.1 Billion in 2007 and \$1.4 Billion in 2008. Gaps of this magnitude will represent 17% of MTA revenues by 2008. Comptroller Hevesi has stated that the MTA is facing its worst fiscal crisis since the 1980's because of its over-reliance on debt. The MTA Board approved a five year capital plan in December, 2004 which was valued at \$27.8 Billion and is necessary to repair and modernize the existing system. The proposed capital program, however, has a funding gap of \$16.2 billion. In this sea of red ink, the idea that the MTA could fail to maximise its return from the sale of the West Side Rail Yards is an act of manifest folly that surely meets the legal standard of irrationality, arbitrariness and capriciousness.

4. The recent rash of subway fires and outages are occurring in spite of the daily heroic efforts of the members of Local 100 to keep this system operating on time and safely in accordance with our Agency's mission. The words "deferred maintenance" should be enough to send chills up the spine of any New Yorker old enough to remember the 1970s. At the height of the fiscal crisis at that time, maintenance work in transit screeched to a halt. The system was held together with chewing gum and baling wire. Service delays of all sorts became a daily fact

of life. Derailments soared.

5. Deferring maintenance on a large scale went on for only a few years. But recovering from it went on for many more. In the long-term, deferring maintenance can be far more costly than doing it in a timely fashion. Regrettably, in recent times maintenance is again being deferred. Many but not all of these deferrals date to the 2004 budget. They are found in every aspect of maintenance, but are especially notable on the right-of-way: in the tunnels, on the elevated structures, and in the open cut.

6. But putting off maintenance is not always as dramatic as it was in the mid-70s. Maintenance can be put cut back by lengthening the time for normal maintenance cycles, by budgeting on the basis of reduced expectations for what will be needed, and by other more subtle means. This carries the danger of a decline that becomes visible only when it is too late to readily scramble back up the slope again. Signals are maintained variously on 30-, 60- or 90-day cycles. By moving part of the work from a 30-day cycle to a 60, and other work from a 60-day cycle to a 90, the MTA achieved a 25% extension in the length of the average cycle. In a report released last year, State Comptroller Hevasi pointed out that replacement of signal equipment was lagging two or three years being target. Most of our equipment is several decades old, and needs regular attention. Lengthening the maintenance cycles increases the chances for signal problems.

7. Every inch of track in our system is inspected twice a week by trained, experienced Track Inspectors. Defects are recorded. Emergency conditions are labeled red; serious defects that do not constitute emergencies are labeled yellow. An aggressive program of

track replacement in the 1980s cut the backlog of defects to a low level. But much of our new track is now 20 years old. By 2001, there were 1,800 yellow defects and the TA had 4 dedicated gangs working to repair 600 of them a year. Even so, the number of yellow conditions is growing and the MTA has reduced our inspections even as the backlog of yellow defects hit 6,000.

8. At one time the TA had 72 Track Cleaners, employees whose only work was removing debris from the track bed. But the last exam was 9 years ago. With attrition, there are now 18 left of the 72. The gap has been covered by assigning crews of Track Workers to cleaning the track beds. But due to the soaring number of yellow defects, on any given night, most of those gangs are reassigned to work on the yellow defects. Track bed cleaning is there on the books, but not in fact.

9. It should be evident that the accumulation of debris on the track bed can contribute to fire and smoke conditions, and to delays due to brakes being thrown into emergency. Fire conditions in 2004 were up 14% over 2003. Delays in brakes being thrown due to debris or due to unknown causes - in many cases, unobserved debris - are rising as well. And accumulated debris can also block drains, increasing the risk of flooding at times of heavy rainfall.

10. The direct result of this lack of attention to maintenance has been a reduction of safety in the system. The Authority is planning for 164 more station entrances without personnel stationed there, and without the booths Emergency Communications Systems, which are responsible for roughly 13,000 emergency calls a year. The Authority maintains that it will not reduce Station personnel, but rather assign a growing number of Station Agents to roaming the

stations. We firmly believe they are being less than truthful. Reducing personnel and dismantling booths is their plan.

11. But let me offer one example of the absurdities this leads to. In some high-crime areas, there are booths where, as a matter of policy, Station Agents on night tours do not come out of the booths for their lunch breaks because this has been deemed too dangerous. Six such booths are slated for closing. In locations deemed too dangerous for our members to come out of the booths for lunch breaks, the booths will be shuttered and dismantled leaving passengers to fend for themselves.

12. What of the arrangements intended to replace the booths? High Entry and Exit Turnstiles are disasters waiting to happen. After the tragic death of German Cabrera, the Authority insisted that emergency gates will be installed wherever booths are closed, and that these emergency gates, together with squawk boxes and video cameras will permit emergency personnel physical access to the platforms. Now imagine a police officer holstering his handgun, or a medical technician putting down the medical bag or gurney to fumble through his wallet and get out a MetroCard. Swiping, maybe again and again. Meanwhile, precious moments are lost. Assurances about access based on MetroCards ring hollow. Every New Yorker, all MetroCard users know, the limits of the Card's reliability.

13. This refusal to acknowledge safety issues extends to crime as well. The NYPD's figures on crimes reported in subway jurisdictions shows the incidence of felonies over a multi-year period. The data for all felony complaints reflects a marked upward trend. From the first Quarter of 2003 to the last Quarter of 2004, there was a rise of 83%. If we use the more cautious approach of comparing all of 2003 to all of 2004 we still get an increase of almost 36%. In the

context of rising crime rates, the MTA needs every dollar it can generate to ensure that the system remains safe.

14. I therefore strongly urge this court to grant the relief requested in the petition to require that the MTA award development rights to the West side Rail Yards only after a fair and rational bidding process ensures that the MTA receives the maximum possible return for these valuable rights.

A handwritten signature in black ink, appearing to be the initials 'RT', is written above a horizontal line.

Roger Toussaint