

111025

DATE: April 22, 2024

TO: Board of Acquisition and Contract

FROM: Hugh J. Greechan, Jr., P.E.
Commissioner, Department of Public Works and Transportation

SUBJECT: Authority to amend an agreement with the New York City Transit Authority (the "NYCTA") regarding the County's use of the NYCTA's MetroCard and MetroCard Automated Fare Collection System for the purposes of fare collection on the County's Bee-Line bus routes, as well as the County's receipt of ancillary services provided by the NYCTA in support of such fare collection, by, (a.) adding provisions concerning the transition to the NYCTA's 'New Fare Payment System', known as 'OMNY', (b.) extending its term through December 31, 2025, with the NYCTA having the sole right to extend the term by up to twelve (12) additional months beyond the new expiration date, and (c.) adding a provision restricting assignment of the agreement. (Agreement No. DOTOP04-17, as amended)

By a resolution approved on June 8, 2017, your Honorable Board authorized the County of Westchester (the "County") to enter into an agreement with the New York City Transit Authority (the "NYCTA") regarding the County's use of the NYCTA's MetroCard and MetroCard Automated Fare Collection System (collectively, the "MetroCard System") for the purposes of fare collection on the County's Bee-Line bus routes, as well as the County's receipt of ancillary services provided by the NYCTA in support of such fare collection, for a period commencing upon execution and continuing through March 31, 2021, and on all of the other terms specified in Exhibit "1" to that resolution, which was attached thereto and made a part thereof (the "Original Agreement"). The Original Agreement was subsequently executed.

By a resolution approved on February 18, 2021, as amended by a resolution approved on April 29, 2021, your Honorable Board authorized the County to amend the Original Agreement by extending its term through June 30, 2023, or the earlier of completion of final reconciliation and payments, with the NYCTA reserving the right to shut off MetroCard System operations and fare collection based on the MetroCard on December 31, 2022, while reconciliation and payments would then still continue through June 30, 2023, or earlier as needed (the "First Amendment"). The First Amendment was subsequently executed.

The County has continued to require the use of the MetroCard System for the collection of fares on its Bee-Line bus routes and the receipt from the NYCTA of the ancillary services necessary to support the County's fare collection. However, the County has also continued to be subject to the NYCTA's decisions regarding the discontinuation of the MetroCard System.

At the time of the execution of the First Amendment, the NYCTA anticipated that the

MetroCard System would be scheduled to be decommissioned by the end of 2022. However, that anticipated decommissioning date has now been pushed back until at least December 31, 2025.

These changes in the anticipated decommissioning date for the MetroCard System lead the County to become engaged with the NYCTA in negotiations, over a significant period, regarding the provisions for an extension of the term of the Original Agreement, as amended by the First Amendment (the “Agreement”).

As a result of the recent conclusion of those negotiations, the County now respectfully requests authority from your Honorable Board to amend the Agreement by, (a.) adding provisions concerning the transition to the NYCTA’s ‘New Fare Payment System’, known as ‘OMNY’, (b.) extending its term through December 31, 2025, with the NYCTA having the sole right to extend the term by up to twelve (12) additional months beyond the new expiration date, and (c.) adding a provision restricting assignment of the Agreement, all as shown in the draft amendment in Exhibit 1, which is attached hereto (the “Second Amendment”).

Except as specifically described above, all terms and conditions of the Agreement shall remain in full force and effect.

The proposed Second Amendment will serve a public purpose by allowing the County to continue using the MetroCard System for the collection of fares on its Bee-Line bus routes, and to continue receiving from the NYCTA the ancillary services the County needs to receive to support its fare collection.

The goal and objective of the proposed Second Amendment is to allow the County to continue using the MetroCard System for the collection of fares on its Bee-Line bus routes, and to continue receiving from the NYCTA the ancillary services the County needs to receive to support its fare collection.

The goal and objective of the proposed Second Amendment is in the best interests of the County in terms of fiscal responsibility, as the County’s use of the MetroCard System, and the County’s receipt of ancillary services in support of that system, is a cost-efficient way for the County to collect fares on the County’s Bee-Line bus routes.

The goals and objectives of the proposed Second Amendment will be tracked and monitored by the staff of the Department of Public Works and Transportation.

I respectfully recommend the adoption of the attached resolution.

HJG/HR/bdm/nm

RESOLUTION

Agreement No. DOTOP04-17, as amended

Upon a communication from the Commissioner of Public Works and Transportation, be it hereby:

RESOLVED, that the County of Westchester (the “County”) is hereby authorized to amend an agreement with the New York City Transit Authority (the “NYCTA”) regarding the County’s use of the NYCTA’s MetroCard and MetroCard Automated Fare Collection System (collectively, the “MetroCard System”) for the purposes of fare collection on the County’s Bee-Line bus routes, as well as the County’s receipt of ancillary services provided by the NYCTA in support of such fare collection, for a period commencing upon execution and continuing through June 30, 2023, or the earlier of completion of final reconciliation and payments, with the NYCTA reserving the right to shut off MetroCard System operations and fare collection based on the MetroCard on December 31, 2022, while reconciliation and payments would then still continue through June 30, 2023, or earlier as needed, (the “Agreement”) by, (a.) adding provisions concerning the transition to the NYCTA’s ‘New Fare Payment System’, known as ‘OMNY’, (b.) extending its term through December 31, 2025, with the NYCTA having the sole right to extend the term by up to twelve (12) additional months beyond the new expiration date, and (c.) adding a provision restricting assignment of the Agreement, all as shown in the draft amendment in Exhibit 1, which is attached hereto; and be it further

RESOLVED, that except as specifically hereby authorized to be amended, all terms and conditions of the Agreement shall remain in full force and effect; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions necessary and appropriate to effectuate the purposes hereof.

Agreement No. DOTOP04-17, as amended

Account to be Charged/Credited	Fund	Dept.	Major Program, Program & Phase Or Unit	Object/ Sub Object	Trust Account	Dollars
			N/A			N/A

Budget Funding Year(s): N/A
(must match resolution)

Start Date: 07/01/2023

End Date: 12/31/2025

Funding Source: Tax Dollars _____

State Aid _____

N/A Federal Aid _____
(must match resolution)

Other _____

EXHIBIT 1

[ATTACHED, STARTING ON NEXT PAGE]

[NO FURTHER TEXT ON THIS PAGE]

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/08/2025 - RAYMOND SCULKY, SECRETARY

**NEW YORK CITY TRANSIT AUTHORITY
CONTRACT MODIFICATION/CHANGE
ORDER**

Modification/Change Order No: 2

Agreement Title: **Memorandum of Agreement No. DOTOP04-17 between the Metropolitan Transportation Authority, Acting By The New York City Transit Authority, and County of Westchester for Use of the MetroCard® and MetroCard Automated Fare Collection System**

This Modification No. 2 (“Modification”), when properly executed, constitutes the mutual agreement of the Parties and their mutual authorization to proceed with the changes set forth herein relative to 2017 MOA (as such term is defined below), as amended by Modification No. 1 (as such term is defined below).

**DESCRIPTION
OF CHANGE**

WHEREAS, the County of Westchester, State of New York (the "County") entered into a Memorandum of Agreement with the Metropolitan Transportation Authority (“MTA”) acting by the New York City Transit Authority ("NYCTA") for use of the MetroCard System dated June 26, 2017 (hereinafter the "2017 MOA"); and

WHEREAS, the County and NYCTA entered into Modification No. 1 dated March 31, 2021, that extended the 2017 MOA to June 30, 2023 (“Modification No. 1”); and

WHEREAS, the Article VIII, Section H of the 2017 MOA provides that, for planning purposes, the NYCTA anticipated that the MetroCard System was scheduled to be decommissioned by the end of 2022; and

WHEREAS, NYCTA now estimates that MetroCard will be decommissioned by the end of calendar year 2025; and

WHEREAS, NYCTA is willing to extend the 2017 MOA to the end of calendar year 2025; and

WHEREAS, the County’s fare structure no longer mirrors the MTA’s fare structure.

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged by the Parties, and is based on the foregoing recitals which are incorporated into and form an integral part of this Modification, the Parties hereto mutually agree as follows:

1. This Modification shall be effective as of the date of last signature hereto (the “Modification Effective Date”).
2. Capitalized terms used and not otherwise defined herein shall have the same meaning given them in the amended 2017 MOA.
3. All terms and conditions of the amended 2017 MOA that are not modified or amended pursuant to this Modification shall remain in full force and effect and unaffected hereby. This Modification, along with the amended 2017 MOA, constitutes the complete agreement of the Parties concerning the subject matter hereof, and supersedes any other agreements, promises, representations, or discussions whether written or oral concerning such subject matter. After the Modification Effective Date, every reference in the amended 2017 MOA to “this MOA” shall mean the 2017 MOA as amended by this Modification and Modification No. 1.
4. In the event of conflict between the terms of this Modification and the amended 2017 MOA, the terms of this Modification shall be superior and control.
5. This Modification may be executed in counterparts, each of which shall be an original, but all of which shall

constitute one and the same instrument. A binding agreement among the Parties shall exist only if and at such time as the Parties have executed this Modification. This Modification shall be executed manually by wet ink. Counterparts may be delivered manually, by certified mail with return receipt requested, or by electronic transmission. Electronic transmission of any counterparts of this agreement will be deemed acceptable for the purposes of delivery so long as the recipient Party is capable of receiving said counterpart using commonly available technology and such recipient Party is able to read such counterpart using commonly available technology.

6. The Parties acknowledge that, as of the execution of this Modification No. 2, the County's Local and Joint Tariff of Passenger Fares that was issued on April 17, 2019 and was effective April 21, 2019 controls the County's fare structure, and shall continue to control until superseded by a subsequent tariff. The Parties acknowledge that, accordingly, as of August 20, 2023, when the MTA/NYCTA modified its fare structure, the fare structure used by the County no longer mirrors the fare structure of the MTA/NYCTA. Accordingly, applicable step-up charges will be applied on value-based fares (i.e. not monthly or weekly) and such charges are billed to the County at the end of each month. However, the Parties understand, acknowledge, and agree that the differences between the fare structures used by each of the Parties in no way inhibits or hinders the performance of either party under the MOA, and said differences between the fare structures shall not be a valid reason or excuse by either of the Parties for its failure to perform its obligations under the MOA.
7. The Parties mutually agree that amended 2017 MOA shall be further amended as follows:
 - a. Article VIII, Section H shall be deleted in its entirety and replaced with the following language:

H. New Fare Payment System

During the term of this MOA, NYCTA anticipates that the MTA will introduce a New Fare Payment System ("NFPS") that enables the acceptance of contactless smartcards for transit system access. The NFPS will initially be introduced and operated in parallel with the AFC/MetroCard system at NYCTA. It is expected that after the NFPS is introduced and fully operable, NYCTA's AFC/MetroCard system, including MetroCard as a fare collection device, will be phased out and decommissioned at NYCTA.

NYCTA will make every effort to keep the County apprised of developments relevant to NYCTA fare collection, including any planned changes to the AFC/MetroCard system, as well as updates on the developments of NFPS and its potential impact on the continued operation of the AFC/MetroCard system. If the County elects to participate in the NFPS in writing, should the opportunity be made available, such participation shall be the subject of a separate agreement with the MTA as well as, as applicable, one or more separate agreements, as necessary, for the procurement of equipment, services, and the like, from the required NFPS vendor(s).

The County acknowledges and fully understands that NYCTA reserves the sole right to decommission the MetroCard System at any time and for any reason. After date on which the MetroCard System is decommissioned by NYCTA and/or the MTA (the "Decommission Date"), the County fully understands that the County will be unable to use MetroCard or the MetroCard System as a fare collection method. Neither the MTA, NYCTA, nor any MTA affiliated agencies will provide support or services relative to the County's MetroCard fare collections following the Decommission Date.

Until the Decommission Date, the NYCTA shall continue to provide all services that are to be provided under this MOA, including, without limitation, necessary maintenance services and repair services, as well as the replacement of equipment, as may be required by the County for its AFC/MetroCard system. Notwithstanding anything to the contrary in this MOA, the NYCTA shall perform all such services in a timely manner, but with all such services being provided within seven (7) days of the NYCTA having being notified by the County of the need for such services. If any such service(s) cannot be provided to the County by the NYCTA within said period, the NYCTA shall notify the County, in writing, of, (a.) the specific reason(s) for the delay in the provision of such service(s), which reason(s) must be commercially reasonable, and (b.) the anticipated date of completion

In the event the County does not elect in writing to participate in the NFPS ("Failure to Elect"), the MTA, NYCTA, and the MTA's affiliated agencies will not be obligated to (i) assist the County in seeking, procuring, obtaining, or maintaining a substitute fare collection system beyond any opportunity presented to participate in the NFPS; or (ii) delay the Decommission Date to accommodate the County's Failure to Elect or any County efforts to procure or obtain a substitute fare collection system. Neither the MTA, NYCTA, or any of the MTA's affiliated agencies will be liable for the County's loss profits, opportunity to collect fares, or failure to deliver transportation services to the County's customers. The County will fully indemnify and hold harmless the MTA, NYCTA, and all of the MTA's affiliated agencies (each a "MTA Indemnified Party") from and against any claims, demands, suits, settlements, damages, losses, liabilities, costs, and expenses (including, without limitation, attorney's fees) paid or incurred by, or asserted against any MTA Indemnified Party relating to or arising out of or in connection with the County's failure to obtain a substitute fare collection system following the Decommission Date or a Failure to Elect.

In the event the MTA or NYCTA proposes an opportunity to the County to participate in the NFPS as referenced above and the County elects to participate, the County will be obligated to follow all MTA, NYCTA, or NFPS vendor(s)'s programmatic instructions during the transition of services from the MetroCard System to the NFPS. The MTA, NYCTA, and all MTA-affiliated agencies will not be liable for the County's failure to follow such programmatic transition of services instructions including, but not limited to, liability related to the County's loss profits, opportunity to collect fares, or unavailability of the County's transportation services to the County's customers. The MTA, NYCTA, and all MTA-affiliated entities explicitly disclaim all warranties of any kind, either express or implied, relative to the provision of any transition services from the MetroCard System to the NFPS.

Following the Decommission Date, all AFC Equipment and other equipment used within or in conjunction with the MetroCard System that is in the possession of the County will be returned to the MTA or NYCTA if such AFC Equipment or MetroCard System equipment is owned by the MTA or NYCTA. All MTA- or NYCTA-owned AFC Equipment or MetroCard System equipment must be returned to NYCTA within thirty (30) calendar days after the Decommission Date, unless otherwise extended by NYCTA in its sole discretion. The County shall not dispose of any AFC Equipment or MetroCard System equipment owned by the MTA or NYCTA without express written instructions from the MTA or NYCTA.

The MTA and/or the NYCTA reserves the right to issue a modification to this MOA, which may be subject to the mutual agreement of the parties and the receipt of all necessary legal approvals, in order to update Article VIII, Section H in the event additional decommissioning requirements are identified by the MTA and/or NYCTA closer to the Decommission Date.

- b. Article VIII, Section I shall be deleted in its entirety and replaced with the following language:

I. Term and Termination

The term of this MOA shall commence upon the Effective Date and expire on the earlier of December 31, 2025 or the Decommission Date (the "Expiration Date"). The Parties mutually agree and grant the MTA or NYCTA the sole right to extend this MOA beyond the Expiration Date for a period of no more than twelve (12) months upon written notice sent by the MTA or NYCTA to the County.

Either Party can terminate this MOA for convenience for any reason or no reason at all upon seven (7) calendar days prior written notice to the other Party. In the event of an early termination by either Party, the MTA, NYCTA, and all MTA-affiliated agencies will not be liable for the County's loss profits, opportunity to collect fares, or failure to deliver transportation services to the County's customers as a result of such early termination.

This paragraph shall not affect the software sublicense granted by the NYCTA to the County in Article II, Section B.2.

Upon the Expiration Date or termination of this MOA, NYCTA shall have six (6) months from

the Expiration Date or termination date to perform final reconciliation and settlement services that may require actions by either Party including, but not limited to, the issuance of payments to the other Party depending on the outcome of such final reconciliation and settlement services.

- c. Add the following language to the end of Article VIII:

P. Assignment:

Neither Party may assign this MOA without the prior express written consent of the non-assigning Party.

COUNTY OF WESTCHESTER

NEW YORK CITY TRANSIT AUTHORITY

Signature: _____

Signature: _____

Name: Hugh J. Greechan, Jr., P.E.

Name: Michael Ellinas

Title: Commissioner, Westchester County
Department of Public Works & Transportation

Title: VP and Chief Revenue Officer

Date: _____

Date: _____

Approved.

METROPOLITAN TRANSPORTATION AUTHORITY

Senior Assistant County Attorney
The County of Westchester

Signature: _____

Name:

Title:

Date:

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/08/2025 - RAYMOND SCULKY, SECRETARY