

**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**THE STATE OF NEW YORK,**  
Acting by and through the Director of the Budget of the State of New York

**and**

**POWER AUTHORITY OF THE STATE OF NEW YORK,**  
A corporate municipal instrumentality and political subdivision of the State of New York

Dated as of February 23, 2009

THIS MEMORANDUM OF UNDERSTANDING (the "MOU"), dated as of February 23, 2009, by and among the STATE OF NEW YORK, acting by and through the Director of the Budget of the State of New York (the "State") and the POWER AUTHORITY OF THE STATE OF NEW YORK, a corporate municipal instrumentality and political subdivision of the State ("NYPA"), is intended to provide a formal framework for the mutual understandings of the parties set forth herein.

WITNESSETH:

WHEREAS, the nation is facing an economic downturn that is severe and widespread as evidenced by the recent wave of unprecedented financial sector shocks that began in September 2008 and are continuing through today; and

WHEREAS, the financial and liquidity crisis has materially weakened the State's economy and in particular the financial services industry that is key to the State's tax revenue base; and

WHEREAS, as a result of the financial and liquidity crisis, the State is facing unprecedented budgetary challenges including significant projected reductions in State tax receipts that have resulted in projected budget gaps as of January 2009 of \$1.5 billion in Fiscal Year 2008-09, \$12.5 billion in Fiscal Year 2009-10, \$15.7 billion in Fiscal Year 2010-11, and \$17.2 billion in Fiscal Year 2011-12; and

WHEREAS, the State finds it necessary to explore a broad range of financial initiatives to close projected budget gaps for its 2008-09 and 2009-10 Fiscal Years; and

WHEREAS, NYPA has determined that it has certain funds described herein which it may transfer to the State as contemplated by this MOU; and

WHEREAS, NYPA, as a corporate municipal instrumentality and political subdivision of the State has indicated its desire to assist the State in addressing the current fiscal crisis;

NOW THEREFORE, and in recognition of the foregoing, the parties state their mutual understanding as follows:

**ARTICLE I**

**DEFINITIONS**

"**Asset Transfer**" means the temporary transfer by NYPA of the Available Monies to the State as described in this MOU.

"**Available Monies**" means collectively (a) \$103,000,000 of cash determined by NYPA to not be required for the purposes specified by Sections 503(1)(a)-(c) of NYPA's general bond resolution securing its outstanding bonds ("**Asset A**"), and (b) \$215,000,000 of cash presently on

deposit in NYPA's Spent Fuel Account which NYPA, pending the establishment by the federal government of a federal repository for nuclear waste and an operative, legal requirement to pay the funds in such Account, has reserved for such purpose. ("Asset B").

"**Executive Budget**" means the constitutionally mandated annual submission of the Governor of the State of New York to the New York State Legislature containing the Governor's recommended program, expressed in dollar terms, for a forthcoming Fiscal Year.

"**Fiscal Year**" means the fiscal year of the State of New York commencing on April 1 of each year, or such other period of time hereafter adopted by the State of New York as its fiscal year.

"**MOU**" means this Memorandum of Understanding dated as of February 23, 2009.

"**NYPA**" means the Power Authority of the State of New York, a corporate municipal instrumentality and political subdivision of the State with its principal office located at 30 South Pearl Street, Albany, New York 12207.

"**State**" means the State of New York.

## ARTICLE II

### AVAILABLE NYPA ASSETS

**Section 2.1. NYPA Resources.** As a result of NYPA's operations, NYPA has established reserves and designated cash and investment accounts. NYPA has determined that it may transfer the Available Monies to the State as contemplated by this MOU. From time to time NYPA has made voluntary contributions to the State for use by the State for various purposes.

To assist the State in closing its budget gaps for the 2008-09 and 2009-10 Fiscal Years, NYPA hereby agrees to make an Asset Transfer to the State (i) of an amount equal to Asset A within 180 days of the enactment of the 2009-10 State budget, and (ii) of an amount equal to Asset B by March 27, 2009.

The implementation of the Asset Transfers by NYPA is being undertaken pursuant to the legislation attached as Appendix A and in reliance upon the action contemplated to be taken by the State set forth in Section 3.1 hereof.

## ARTICLE III

### SPECIAL COVENANT

**Section 3.1. Appropriation Covenant.** The State hereby agrees to include in the Executive Budget for each Fiscal Year commencing with the 2009-10 Fiscal Year and continuing, in the case of Asset A, through the 2014-15 Fiscal Year, and in the case of Asset B, through the 2017-18 Fiscal Year, as requested appropriations substantially in the form attached

hereto as Appendix B, an amount equal to any portion of either Asset Transfer that has not been returned to NYPA.

Subject to appropriation by the New York State Legislature, the State hereby agrees to return Asset A to NYPA not later than September 30, 2014, and agrees to return Asset B to NYPA not later than September 30, 2017. Any appropriation of monies for the return of an amount equal to or less than Asset A or Asset B to NYPA prior to September 30, 2014 and September 30, 2017, respectively, shall be made only upon a certification by the Director of the Budget, following a certification by NYPA to the Director of the Budget, that monies available to NYPA are not sufficient to meet NYPA's obligations with respect, (i) in the case of Asset A, to its operating or capital programs or to pay debt service on its debt obligations, provided that in no event shall such certification by NYPA exceed in the aggregate an amount equal to \$103,000,000; and (ii) in the case of Asset B, compliance with the Authority's payment obligations related to the transfer and disposal of nuclear spent fuel as required by federal or state statute, provided that in no event shall such certification by NYPA exceed in the aggregate an amount equal to \$215,000,000.

Notwithstanding the foregoing, prior to the return to NYPA of amounts equal to Asset B, the State will seek additional appropriations of monies for transfer to NYPA and may take other actions, which together will be sufficient, as determined by the Director of the Budget in consultation with NYPA, to enable NYPA to maintain the asset value on its financial statements at the current value of Asset B or at a higher amount.

#### ARTICLE IV

#### NOT A BORROWING

**Section 4.1. Nature of Asset Transfer.** In recognition of the fact that NYPA is a corporate municipal instrumentality and political subdivision of the State and a component unit of the State in the Comprehensive Annual Financial Report of the State prepared each year by the Office of the State Comptroller, the parties hereby agree that (A) the Asset Transfer contemplated by this MOU shall, to the maximum extent possible, be treated for accounting purposes as a temporary intra-governmental transfer of assets, and (B) the obligation of the State to return all or a portion of an amount equal to the Asset Transfer (i) shall be subject to annual appropriation by the State Legislature, (ii) shall not constitute a debt of the State within the meaning of any constitutional or statutory provision, and (iii) shall be deemed executory only to the extent of monies available to the State and no liability shall be incurred by the State beyond monies available for such purpose.

**Section 4.2. No Payments of Interest.** In accordance with the understandings set forth in Section 4.1 hereof, no payment of interest or other charges or consideration shall be due or payable by the State with respect to the Asset Transfer.

**Section 4.3. No Service Contract.** The Asset Transfer by NYPA, and any return to NYPA by the State of any amount representing all or a portion of the Asset Transfer, shall not be deemed to be a payment for services rendered by either the State or NYPA.

**Section 4.4. Legislative Authorization.** Nothing in this MOU shall preclude either party hereto from having legislation introduced in the New York Legislature relating to the Asset Transfer that is not inconsistent with the mutual understandings contained in this MOU.

**ARTICLE V**  
**MISCELLANEOUS**

**Section 5.1. Exculpatory Provisions.** (A) No provision contained in this MOU shall constitute or give rise to or impose on any party hereto a pecuniary liability or a charge upon its general credit.

(B) Any agreements contained in this MOU of either the State or NYPA shall be deemed to be agreements of the State or NYPA and not of any member, director, officer, employee, or agent in his or her individual capacity, and no recourse shall be had for any claim hereunder against any member, director, officer, employee, or agent of the State or NYPA.

(C) The parties to this MOU have executed this document as indicated below as evidence of approval of the mutual understandings set forth herein.

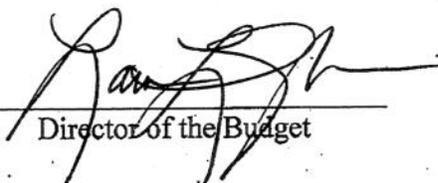
**Section 5.2. No Third Party Beneficiaries.** Nothing in this MOU shall be construed to confer upon or to give notice to any person or corporation other than the State and NYPA, of any right, remedy or claim under or by reason of this MOU.

**Section 5.3. Section Headings.** All section headings contained in this MOU are for convenience of reference only and are not intended to define or limit the scope of any provision of this MOU.

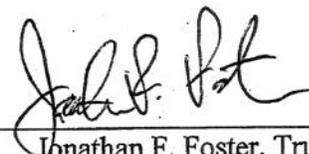
[Balance of page intentionally left blank]

**Section 5.4. Governing Law.** This MOU shall be construed and interpreted in accordance with, and shall be governed by, the laws of the State of New York.

**STATE OF NEW YORK**, acting by and through the  
Director of the Budget of the State of New York

By   
Director of the Budget

**POWER AUTHORITY OF THE  
STATE OF NEW YORK**

By   
Jonathan F. Foster, Trustee

## Appendix A

7 § 13-b. Section 11-a of part RR of chapter 57 of the laws of 2008,  
8 relating to providing for the administration of certain funds and  
9 accounts related to the 2008-2009 budget, is amended to read as follows:

10 § 11-a. Notwithstanding any provision of law to the contrary, the  
11 power authority of the state of New York, as deemed feasible and advis-  
12 able by its trustees, is authorized to make contributions to the state  
13 treasury to the credit of the general fund as follows: for the fiscal  
14 year commencing April 1, 2008, a total of [~~\$60,000,000~~] \$261,000,000,  
15 not less than \$50,000,000 of which will be paid within thirty days of  
16 the enactment of the state budget for such fiscal year, not less than  
17 \$119,000,000 shall be paid by January 30, 2009 and \$182,000,000 shall be  
18 paid by March 27, 2009; for the fiscal year commencing April 1, 2009, a

19 total of [~~\$35,000,000~~] \$210,000,000, not less than [~~\$25,000,000~~]  
20 \$103,000,000 of which will be paid within [thirty] one hundred eighty  
21 days of the enactment of the state budget for such fiscal year[; and for  
22 the fiscal year commencing April 1, 2010, a total of \$35,000,000, not  
23 less than \$25,000,000 of which will be paid within thirty days of the  
24 enactment of the state budget for such fiscal year] and \$107,000,000  
25 shall be paid prior to March 26, 2010.

Appendix A

12/09/08

1

73053-01-9

DRAFT LBDC

A BUDGET BILL submitted by the Governor  
in accordance with Article VII of the Constitution

AN ACT to require appropriations in the executive budget to the  
New York Power Authority

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. Notwithstanding any other provision of law, the Governor  
2 shall include an appropriation in a budget bill for each state fiscal  
3 year that reflects the value of the assets transferred from the power  
4 authority of the state of New York to the state of New York pursuant to  
5 a memorandum of understanding between the power authority of the state  
6 of New York and the state of New York relating to the transfer to the  
7 state of New York of assets aggregating \$318,000,000 presently held in  
8 certain accounts of the power authority of the state of New York. The  
9 state comptroller shall encumber the amount so appropriated before the  
10 end of the fiscal year for which such appropriation is made. If for any  
11 of the fiscal years commencing during the period from April 1, 2009  
12 until such time as the assets have been returned by the state of New  
13 York to the power authority of the state of New York the Governor fails  
14 to submit a budget bill containing an appropriation of such amount, such  
15 amount appropriated to and encumbered during the preceding fiscal year  
16 shall be payable to the authority on the last day of June of such year.
- 17 § 2. This act shall take effect immediately.

Appendix B

534

CONTINGENT AND OTHER APPROPRIATIONS

NEW YORK POWER AUTHORITY ASSET TRANSFER

STATE OPERATIONS AND AID TO LOCALITIES 2009-10

1 NEW YORK POWER AUTHORITY ASSET TRANSFER PROGRAM ..... 318,000,000  
2  
3  
4 General Fund / State Operations  
5 State Purposes Account - 003  
6  
7 For deposit to the appropriate account or  
8 accounts of the New York power authority  
9 pursuant to a plan submitted by the New  
10 York power authority and approved by the  
11 director of the budget. Notwithstanding  
12 section 40 of the state finance law, this  
13 appropriation shall remain in place until  
14 a subsequent appropriation is made  
15 available. The sum of \$103,000,000 is  
16 hereby appropriated to the New York power  
17 authority for deposit to the appropriate  
18 account or accounts. Such appropriation  
19 shall only be made available upon  
20 certification of the director of the  
21 budget, at the request of the New York  
22 power authority when and to the extent  
23 that the authority certifies to the  
24 director that the monies available to the  
25 authority are not sufficient to meet the  
26 authority's obligations with respect to  
27 its debt service or operating or capital  
28 programs ..... 103,000,000  
29 For deposit to the appropriate account or  
30 accounts of the New York power authority  
31 pursuant to a plan submitted by the New  
32 York power authority and approved by the  
33 director of the budget. Notwithstanding  
34 section 40 of the state finance law, this  
35 appropriation shall remain in place until  
36 a subsequent appropriation is made  
37 available. The sum of \$215,000,000 is  
38 hereby appropriated to the New York power  
39 authority for deposit to the appropriate  
40 account or accounts. Such appropriation  
41 shall only be made available upon  
42 certification of the director of the  
43 budget, at the request of the New York  
44 power authority when and to the extent  
45 that the authority certifies to the  
46 director that such monies are necessary to  
47 comply with the authority's expenses  
48 related to the transfer and disposal of  
49 nuclear spent fuel as required by federal  
50 or state statute ..... 215,000,000  
51  
52