

June 2010

MTA Board Action Items



MEETING AGENDA
METROPOLITAN TRANSPORTATION AUTHORITY BOARD
June 23, 2010 9:30 a.m.

347 Madison Avenue
Fifth Floor Board Room
New York, NY

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Date of next MTA Board meeting: Wednesday July 28, 2010 at 9:30 a.m.

The legal and popular names of the Metropolitan Transportation Authority operating agencies are used throughout this agenda package. The following table displays the official name and corresponding legal name for each agency.

<u>Popular</u>	<u>Legal Name</u>	<u>Abbreviation</u>
MTA New York City Transit	New York City Transit Authority	NYC Transit
MTA Long Island Rail Road	The Long Island Rail Road Company	LIRR
MTA Long Island Bus	Metropolitan Suburban Bus Authority	LI Bus
MTA Metro-North Railroad	Metro-North Commuter Railroad Company	MNR
MTA Bridges and Tunnels	Triborough Bridge and Tunnel Authority	B&T
MTA Capital Construction	MTA Capital Construction Company	MTA CC
MTA Bus Company	MTA Bus Company	MTA Bus

The Staten Island Rapid Transit Operating Authority is a subsidiary of the Metropolitan Transportation Authority. Its popular name is MTA Staten Island Railway, abbreviated as SIR.

Manhattan and Bronx Surface Transit Operating Authority, abbreviated MaBSTOA, is a subsidiary of the New York City Transit Authority.

**Metropolitan Transportation Authority
Minutes of the
Regular Board Meeting
347 Madison Avenue
New York, NY 10017**

**Wednesday, May 26, 2010
9:30 a.m.**

The following members were present:

**Hon. Jay H. Walder, Chairman & CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. Lebow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James L. Sedore, Jr.
Hon. Carl V. Wortendyke**

The following members were absent:

**Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr.**

Fredericka Cuenca, Chief of Staff, James B. Henly, General Counsel, Catherine A. Blue, Acting Corporate Secretary, Board Member James F. Blair, Board Member Norman Brown, Thomas Prendergast, President of NYCTA, Helena E. Williams, President of Long Island Railroad, Howard Permut, President of Metro-North, James Ferrara, President of TBTA, Joseph A. Smith, President of LI Bus, MTA Bus & Sr. V.P. NYCT Department of Buses, Michael Horodniceanu, President of MTA Capital Construction, and Douglas Sussman, Director, Community Affairs 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 agencies' minutes of this date for items on the agendas of the Boards of the other agencies.

Chairman Walder called the meeting to order.

1. **PUBLIC SPEAKERS.** The following speakers addressed MTA agenda items. Refer to the video recording of the May 26, 2010 meeting for the contents of these speakers' statements. Refer to the MTA Agencies' minutes for the list of other speakers.

Norman Winston Pou, TWU Local 100 member
Zack Condrat, TWU Local 100 member
Darryl K. Sweeney, TWU Local 100 member
Sabrina Greenwood, TWU Local 100 member
Terrance Burroughs, TWU Local 100 member
Derick Echevarria, TWU Local 100 member
Murray Bodin, Concerned Grandparents
Elizabeth Lowe, TWU Local 100 member
Sandra Eaddy, private citizen
Marty Goodman, TWU Local 100 member
John Ferretti, TWU Local 100 member
Arthur Clement, TWU Local 100 member
Narinder Singh, TWU Local 100 member
Joseph Sobrido, TWU Local 100 member
Francine Galvez, private citizen
Tobias Lickerman, private citizen
Matthew P. Shotkin, private citizen
Maurice Jenkins, TWU Local 100 Station Agent Supervisor
George Gruenthal, private citizen
Sylvia Ancrum, representing Assemblymember Matthew Titone
Peggy Heaton, private citizen
James Branch, private citizen
Christine Williams, TWU Local 100 member

2. **MINUTES.** Upon motion duly made and seconded, the Board approved the minutes of the regular Board meeting held on April 28, 2010.
3. **COMMITTEE ON FINANCE.**
 - A. **Action Items.** Upon motion duly made and seconded, the Board approved the following action items. The specifics are set forth in the attached staff summaries and documentation. Vice Chairman Saul noted that Board action was not sought at

this time with respect to the swap advisory services contract proposal described in the financial advisory services staff summary.

1. 2010C New Money Bond Issuance Authorization. Approved the necessary documentation to issue new money bonds, notes or other obligations to provide net proceeds (exclusive of premiums) sufficient to fund up to \$600 million of capital projects contained in approved capital programs of the transit and commuter systems (including MTA Bus), in connection with the proposed issuance of Transportation Revenue Bonds.
2. Financial Advisors Contract. Approved a contract with Lamond Financial Services Corporation for financial advisory services in connection with the issuance of MTA and TBTA bonds.
3. MTA Refunding Policy and Supplemental Resolutions Authorizing Refunding Bonds. Approved the Refunding Policy, which is to be followed in the execution from time-to-time of refundings of outstanding fixed rate bonds and other debt obligations issued by MTA and its affiliates and subsidiaries with other fixed rate bonds or other debt obligations.
4. 2009-2010 Station Maintenance Billing. Approved the issuance of the station maintenance billing to New York City and the counties for the period April 1, 2009 to March 31, 2010.
5. Outside Counsel Panel Addition. Approved the designation of the law firm of Griffin, Coogan, Blose & Sulzer, P.C. to provide specialized legal services to the MTA, its agencies and affiliates.

B. Procurement Items. Upon motion duly made and seconded, the Board approved the following procurement items. The specifics are set forth in the attached staff summary and documentation.

1. Oracle USA, Inc. – Maintenance and Support for Oracle Linux Operating System Software and VM Software – No. 03158-0100, S/A #13. Approved an amendment to a non-competitive all-agency master contract with Oracle USA, Inc. to add Open Source Oracle Enterprise Linux (OEL) and Oracle Virtual Machine (OVM) annual maintenance and support.
2. Amy Bennet and Bernard Greenwald – AFT Projects – Nos. 10079 and 10080, respectively. Approved competitive contracts with Amy Bennet and Bernard Greenwald to provide technical design, fabrication, crating, storage, delivery and oversight of installation of project materials at the 86th Street Station, NYCTA and the Port Chester Station, M-N, respectively.
3. NPA Computer, Inc. – Computer Equipment Maintenance – Nos. 09229-0100 and 09229-0200. Approved competitive contracts with NPA Computer, Inc.

to provide labor, material and parts to provide preventive and routine maintenance of personal computer equipment, including full support for MAC/Apple at MTAHQ facilities (341, 345, 347 Madison Avenue and 2 Broadway, and at remote MTAPD locations); and to provide services on an as-needed basis to the Business Service Center.

4. James Garvey – AFT Project – No. 06168-0100. Approved Supplement No. 1 of a competitive contract with James Garvey for fabrication, delivery and installation of lariat taper seating at the Wall Street Station – NYCTA. The base contract included design only.

C. **Real Estate Items.** Upon motion duly made and seconded, the Board approved the following real estate items. The specifics are set forth in the attached staff summaries and documentation.

New York City Transit Authority:

1. Reservation of easement rights and an easement agreement with Benjamin-Beechwood LLC for (i) a perpetual easement for the operation, maintenance, repair and reconstruction of NYCTA's existing "A Train" elevated railroad structure (the "Structure"), and appurtenances connected thereto, from Beach 67 Street to Beach 69 Street; and (ii) perpetual easement adjacent to the Structure, from Beach 67 Street to Beach 69 Street, for staging for maintenance, repair and reconstruction of the Structure and the signal tower at the 67th Street Station (Block 15917 – portion of ("p/o") Lot 1, Lot 14, and p/o Lot 18, and Block 15918 – p/o Lot 10 and p/o Lot 18), Queens, N.Y.

Metro-North Railroad:

2. Lease agreement with Cornelia Street Group Inc. d/b/a Murray's Cheese for the retail sale of high-quality domestic and imported cheeses, charcuterie and artisan smoked and cured meats that will complement the quality and unique nature of the Grand Central Market located at Retail Spaces MKT-3,4,5,6,7 and Storage Spaces BS-9 and BS-10, Grand Central Terminal, N.Y.
3. Lease agreement with Eli's Bread (Eli Zabar) Inc. d/b/a Eli's Bread for the retail operation of a locally-based bakery selling high-quality tenant-produced artisan bread, fine pastries and other bakery products that will complement the quality and unique nature of the Grand Central Market located in Retail Spaces MKT-15 and MKT-16 and Storage Space BS-2, Grand Central Terminal, N.Y.
4. Temporary Easement agreements with Janice Perry Giardina, Central Hudson Gas and Electric Corporation and Dale S. Cunningham for property located at 23 Main Street (Block 7, Lot 566), 38 Bridge Street (Block 7, Lot 553) and 15 Main Street (Block 7, Lot 531), respectively; and the fee acquisition from the

Town of Poughkeepsie of property located at 15 Bridge Street (Block 7, Lot 547), in connection with the project to replace the bridge over the Hudson Line at Bridge Street in the hamlet of New Hamburg in the Town of Poughkeepsie.

5. License agreement with Putnam County for the construction, operation and maintenance of bicycle and pedestrian paths on portions of Metro-North's Beacon Line and a portion of the Putnam Line Spur ("Maybrook I" Section 3.91 miles from Holmes Road to Route 164, Town of Patterson; "Maybrook II" Section 5.4 miles from Pumphouse Road to the Connecticut border, Village of Brewster; and "Putnam IV" Section 0.9 miles from Putnam Avenue to Main Street, Village of Brewster),

4. **FIRST MUTUAL TRANSPORTATION ASSURANCE COMPANY (FMTAC).**

This meeting serves as FMTAC's twelfth annual Board meeting held to advise the Board of FMTAC's activities in the prior year. The Board approved FMTAC's Actuarial Loss Reserve Certification, as required by the New York State Insurance Department.

5. **EXECUTIVE SESSION.** Upon motion duly made and seconded, the Board voted to convene an executive session to consider matters concerning collective negotiations. The Board approved labor contracts between (a) the MTA Bus Company and the Amalgamated Transit Unit, Local 1179; and (b) MTA Triborough Bridge and Tunnel Authority and Local 1655, District Council 37 (Board members Kay, Lebow and Page abstaining from the vote on the latter contract). The Board also approved a Memorandum of Understanding between MTA Staten Island Rapid Transit Operating Authority, New York City Transit Authority and the American Train Dispatchers Association.

6. **PUBLIC SESSION.** Upon motion duly made and seconded, the public session resumed.

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 12:04 p.m.

Respectively submitted,

Victoria Clement
Assistant Secretary

**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 the MTA Bus Company**

**347 Madison Avenue
New York, NY 10017**

**Wednesday, May 26, 2010
9:30 a.m.**

The following members were present:

**Hon. Jay H. Walder, Chairman & CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. Lebow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James L. Sedore, Jr.
Hon. Carl V. Wortendyke**

The following members were absent:

**Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr.**

Fredericka Cuenca, Chief of Staff, James B. Henly, General Counsel, Catherine A. Blue, Acting Corporate Secretary, Board Member James F. Blair, Board Member Norman Brown, Thomas Prendergast, President of NYCTA, Helena E. Williams, President of Long Island Railroad, Howard Permut, President of Metro-North, James Ferrara, President of TBTA, Joseph A. Smith, President of LI Bus, MTA Bus & Sr. V.P. NYCT Department of Buses, Michael Horodniceanu, President of MTA Capital Construction, and Douglas Sussman, Director, Community Affairs 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. **CHAIRMAN JAY WALDER CALLED THE MEETING TO ORDER**

Details of Chairman Walder's opening remarks 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 NYC Transit/SIR/MTA Bus Company.

2. **PUBLIC COMMENT PERIOD**

22 public speakers addressed NYC Transit/MTA Bus issues.

Norman Winston Pou, TWU Local 100, spoke against layoffs, the elimination of free student metrocards and service cuts.

Zack Condrat, TWU Local 100, protested the layoffs of station agents.

Darryl K. Sweeney, TWU Local 100, advocated on employees' behalf and spoke against layoffs.

Sabrina Greenwood, TWU Local 100, spoke against layoffs of station agents and discussed the impact of working conditions.

Terrance Burroughs, TWU Local 100, urged the Board to reconsider layoffs and drastic cuts.

Derick Echevarria, TWU Local 100, spoke against layoffs and discussed work rules concerning overtime.

Murray Bodin expressed sympathy for the Board and extended his thanks to the MTA staff.

Elizabeth Lowe, TWU Local 100, urged the Board to reconsider the layoffs of station agents.

Sandra Eaddy protested the discontinuation of various bus routes in the Bronx and spoke against other major service cuts.

Marty Goodman, TWU Local 100, advocated against service cuts and layoffs.

John Ferretti, TWU Local 100, protested the layoffs of station agents and discussed various reasons for the budget deficit faced by the MTA.

Arthur Clement, TWU Local 100, discussed MTA spending and the Fulton Street entrance.

Narinder Singh, TWU Local 100, advocated against the pending layoffs.

Joseph Sobrido, TWU Local 100, addressed the impact the closing of station booths and layoffs will have on the riding public.

Francine Galvez urged the Board to reconsider eliminating the X16 and discussed the impact it will have on the north shore of Staten Island.

Tobias Lickerman urged the Board to reconsider the proposed elimination of the X16 bus.

Matthew P. Shotkin commented on layoffs, student MetroCards and bus service.

Maurice Jenkins, TWU Local 100, spoke against the layoffs of station agents and commented on the importance of security within the subway system.

George Gruenthal advocated against the layoffs of workers as well as service cuts and fare hikes.

Sylvia Ancrum, representing Assemblymember Matthew Titone, urged the Board to reconsider the elimination of the X16 and discussed the impact it will have on the north shore of Staten Island.

Peggy Heaton urged the Board to reconsider the elimination of the X16.

Christine Williams, TWU Local 100, discussed the impact the service cuts and layoffs will have on the riding public.

3. MINUTES

Upon motion duly made and seconded, the Board unanimously approved the minutes of the regular board meeting of MTA New York City Transit, the Manhattan and Bronx Surface Transit Operating Authority, the Staten Island Railway Transit Operating Authority, and MTA Bus Company held on April 28, 2010.

4. COMMITTEE ON FINANCE

Action Items

2010C New Money Bond Issuance Authorization: Upon motion duly made and seconded, the Board voted to approve documents and activities in connection with the issuance of bonds in an aggregate principal amount necessary to provide net proceeds (exclusive of premiums) sufficient to fund up to \$600 million of capital projects of the transit and commuter systems (including MTA Bus). Details of the discussion surrounding the vote, and of the above item, 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 NYC Transit/SIR/MTA Bus Company.

Approval of Financial and Swap Advisors/Contract Authorization: Upon motion duly made and seconded, the Board voted to approve a contract with Lamont Financial Services Corporation for financial advisory services in connection with the issuance of MTA and TBTA bonds, and a contract with Swap Financial Group, LLC for swap advisory services in connection with managing the existing portfolio of derivative contracts and for execution of new derivatives. 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 the NYC Transit/SIR/MTA Bus Company.

Approval of MTA Refunding Policy and Supplemental Resolutions Authorizing Refunding Bonds: Upon motion duly made and seconded, the Board voted to approve a refunding policy which is to be followed in the execution from time to time of refundings of outstanding fixed rate bonds and other debt obligations issued by MTA and its affiliates and subsidiaries with other fixed rate bonds or other debt obligations, and supplemental resolutions authorizing the issuance of refunding bonds from time to time to the extent that such refunding bonds conform to the above referenced policy and provided that the MTA Chief Financial Officer or the MTA Director of Finance makes a determination that the refunding of such bonds or other obligations will be beneficial to the obligors thereof and/or their affiliates and subsidiaries. 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 the NYC Transit/SIR/MTA Bus Company.

2009-2010 Station Maintenance Billing: Upon motion duly made and seconded, the Board voted to approve station maintenance billing to New York City and the counties for the period April 1, 2009 to March 31, 2010. 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 the NYC Transit/SIR/MTA Bus Company.

Outside Counsel Panel Addition: Upon motion duly made and seconded, the Board voted to approve the designation of the law firm of Griffin, Coogan, Blöse & Sulzer, P.C. to provide specialized legal services to MTA, its agencies and affiliates. 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 the NYC Transit/SIR/MTA Bus Company.

5. **COMMITTEE ON TRANSIT OPERATIONS**
NYC Transit

Procurements

Non-Competitive Procurements: None

Competitive Procurements: Upon motion duly made and seconded, the Board approved the competitive procurements requiring a majority vote (Schedules F, H, I and L 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 the NYC Transit/SIR/MTA Bus Company.

Procurement Ratifications: Upon motion duly made and seconded, the Board ratified the procurements 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 the NYC Transit/SIR/MTA Bus Company.

6. BUS OPERATIONS COMMITTEE

Procurements

Non-Competitive Procurements: Upon motion duly made and seconded, the Board approved the non-competitive procurements requiring a majority vote (Schedules A 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 the NYC Transit/SIR/MTA Bus Company.

Competitive Procurements: None

Procurement Ratifications: None

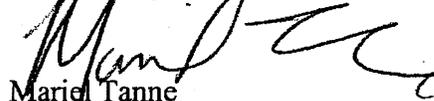
7. EXECUTIVE SESSION

Upon motion duly made and seconded, the Board voted to convene an executive session to consider matters concerning collective negotiations. In executive session, the Board approved labor contracts between the MTA Bus Company and the Amalgamated Transit Unit, Local 1179. The Board also approved a Memorandum of Understanding between MTA Staten Island Rapid Transit Operating Authority, New York City Transit Authority and the American Train Dispatchers Association. Upon motion duly made and seconded, the Members voted to resume public session.

8. ADJOURNMENT

Upon motion duly made and seconded, the Members unanimously voted to adjourn the meeting at 12:04 p.m.

Respectfully submitted,



Mariel Tanne
Assistant Secretary

Minutes of the Regular Meeting
Metro-North Commuter Railroad Company

Wednesday, May 26, 2010
9:30 a.m.

The following members were present:

Hon. Jay H. Walder, Chairman & CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. Lebow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James L. Sedore, Jr.
Hon. Carl V. Wortendyke

The following member was absent:

Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr.

Fredericka Cuenca, Chief of Staff, James B. Henly, General Counsel, Catherine A. Blue, Acting Corporate Secretary, Board Member James F. Blair, Board Member Norman Brown, Thomas Prendergast, President of NYCTA, Helena E. Williams, President of Long Island Railroad, Howard Permut, President of Metro-North, James Ferrara, Acting President of TBTA, Joseph A. Smith, President of LI Bus, MTA Bus & Sr. V.P. NYCT Department of Buses, Michael Horodniceanu, President of MTA Capital Construction, and Douglas Sussman, Director, Community Affairs also attended the meeting.

1. Public Comment:

There were 23 public speakers. The details of the comments made are contained in the minutes of the meeting of the Board of the Metropolitan Transportation Authority held this day.

2. Approval of Minutes – Upon motion duly made and seconded, the minutes of the Regular Board Meeting of April 28, 2010 meeting were unanimously approved.

3. Committee on Finance

Upon motion duly made and seconded, the Board unanimously approved the following items recommended to it by the Committee on Finance.

- 2009-2010 Station Maintenance Billing
- Outside Counsel Panel Addition

Real Estate Action Items:

Upon motion duly made and seconded, the Board, among other items, approved the following real estate items recommended to it by the Committee on Finance.

- Lease agreement with Cornelia Street Group, Inc, d/b/a Murray's Cheese for the retail sale of high quality and imported cheeses, charcuterie and artisan smoked and cured meats; retail spaces MKT-3,4,5,6,7 Grand Central Terminal, New York.
- Lease agreement with Eli's Bread (Eli Zabar) Inc. d/b/a Eli's Bread for the retail operation of a locally-based bakery selling high-quality tenant-produced artisan bread, fine pastries and other bakery products; retail spaces MKT-15 and MKT-16 , Grand Central Terminal, New York.
- Acquisition of temporary and permanent property interests to facilitate bridge replacement at Bridge Street over MTA Metro-North's Hudson Line in New Hamburg, Town of Poughkeepsie, New York.
- License agreement with Putnam County for the construction, operation and maintenance of bicycle and pedestrian paths on the Beacon and Putnam Line rights-of-way, Putnam County, New York.

Staff summaries and reports setting forth the details of the above items are filed with the records of this meeting.

4 Committee on Metro-North Railroad Operations:

Mr. Sedore reported that on-time performance in April was 97.9% and that Metro-North achieved 100% on-time performance, east and west of Hudson, on April 29, 2010.

Procurements:

Upon motion duly made and seconded, the Board approved the following non-competitive procurement requiring two-thirds vote by the Board.

Non-Competitive Purchase and Public Work Contracts

- Diversified Metal Fabricators, Inc. – Purchase agreement – repair/maintenance parts for hi-rail equipment.

Upon motion duly made and seconded, the Board approved the following competitive procurements requiring majority vote by the Board.

Miscellaneous Service Contracts

- East Coast Railroad Services (MNR) and Ecology Sanitation (LIRR) – Disposal of ties, tie stubs and other wooden items throughout MNR and LIRR property.

Upon motion duly made and seconded, the Board approved of the following ratification requiring two-thirds vote by the Board.

Ratification of Completed Procurement Actions

- Wright Express – Off-site fuel card services – Paratransit, subways, buses and MTA Police (MNR Lead Agency).

MTA Capital Construction Procurements

Upon motion duly made and seconded, the Committee present unanimously recommended to the Board approval of the following competitive procurement requiring two-thirds vote by the Board.

Competitive Requests for Proposals – Award of Purchase and Public Work Contracts

- Henry Brothers Electronics – IESS/C3 Contract wrap-up support services.

Staff summaries and reports setting forth the details of the above items are filed with the records of this meeting.

5. Executive Session: Upon motion duly made and seconded, the Committee unanimously voted to convene in Executive Session to discuss specific collective negotiations. Upon motion duly made and seconded, the Committee unanimously voted to re-convene in Public Session.
8. Next Meeting – June 23, 2010 at 9:30 a.m.
9. Upon motion duly made and seconded, the Board unanimously voted to adjourn the meeting at 12:04 p.m.

Respectfully submitted,



Linda Montanino
Assistant Secretary

**MINUTES OF MEETING OF THE BOARD OF
THE LONG ISLAND RAIL ROAD COMPANY**

**Meeting Held At
347 Madison Avenue
New York, New York
Wednesday, May 26, 2010
9:30 A.M.**

The following members were present:

Hon. Jay H. Walder, Chairman and CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. Lebow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James L. Sedore, Jr.
Hon. Carl V. Wortendyke

The following members were absent:

Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr.

Fredericka Cuenca, Chief of Staff, James B. Henly, General Counsel, Catherine A. Blue, Acting Corporate Secretary, Board Member James F. Blair, Board Member Ira R. Greenberg, Board Member Norman Brown, Thomas Prendergast, President of NYCTA, Helena E. Williams, President, Long Island Rail Road, Howard Permut, President, Metro-North Railroad, James Ferrara, President TBTA, Joseph J. Smith, President of LI Bus, MTA Bus & Sr. V.P. NYCT Department of Buses, Michael Horodniceanu, President of MTA Capital Construction, and Douglas Sussman, Director, Community Affairs, also attended the meeting.

1. **PUBLIC SPEAKERS**

There were 23 public speakers, none of whom addressed issues specific to the Long Island Rail Road.

2. **APPROVAL OF MINUTES**

Upon motion duly made and seconded, the Board unanimously approved the minutes of the Board meeting held on April 28, 2010.

3. **COMMITTEE ON FINANCE**

Upon motion duly made and seconded, the Board approved items from the Committee on Finance. Included among these items was an amendment to an existing Board-approved, competitively awarded, all-agency master contract with Oracle USA, Inc., to add Open Source Oracle Enterprise Linux and Oracle Virtual Machine annual maintenance and support. The details of this item are contained in the minutes of the meeting of the Metropolitan Transportation Authority and the staff summaries and materials filed with those minutes.

4. **COMMITTEE ON NEW YORK CITY TRANSIT AUTHORITY/MA BSTOA/SIR/MTA BUS OPERATIONS**

Upon motion duly made and seconded, the Board approved items from the Committee on New York City Transit Authority/MA BSTOA/SIR/MTA Bus Operations. Included among those items was the modification of an existing Board-approved, competitively awarded, all-agency master contract with IBM to provide Data Center Support Services to all MTA agencies. The details of this item are contained in the minutes of the meeting of the Committee on New York City Transit Authority/MA BSTOA/SIR/MTA Bus Operations held this day.

5. **LONG ISLAND COMMITTEE**

Upon motion duly made and seconded, the Board approved the following competitive and non-competitive procurements recommended to it by the Long Island Committee. Item #3 of the competitive procurements is an MTA Capital Construction procurement related to the East Side Access project. Board Member Lebow abstained from the vote on item #3.

Competitive Procurements

1. **TBD** **STBD**
Competitive
Contract No. TBD

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 Request for Proposal ("RFP") procurement method pursuant to section 1265-a of the Public Authorities law to award a design/build contract for replacement of the direct fixation track fastener system on the Merrick and Bellmore viaducts with an option for the Massapequa Park track slab segment.

2. **SAVKOM, Inc.** **\$146,040 – LIRR**
Competitive **\$60,550 – MNR**
Contract No. TBD **\$30,787 – MTAHQ**
\$237,377 Not-to-Exceed

LIRR, on behalf of itself, Metro-North and MTA HQ, requests MTA Board approval to award three separate contracts to SAVKOM, Inc. ("SAVKOM") to serve each respective agency for scheduled and unscheduled elevator and escalator inspection services for a three-year period with two one-year renewal options. SAVKOM will provide certified elevator and escalator inspection services in accordance with ASME Safety Codes, on a scheduled, fixed price basis, and provide as-needed inspection services, based on estimated hours and fixed labor rates, for repairs and replacements of a combined 100 elevators and 45 escalators ("units"). LIRR has 89 units located within NYC boroughs and Nassau and Suffolk

counties. MNR has 40 units, and MTAHQ has 16 units, all located in Manhattan. The solicitation was advertised in the NY State Contract Reporter and the NY Post on November 2, 2009. The solicitation contained one Price Schedule for LIRR/MNR combined requirements and a separate schedule for MTAHQ, which included additional requirements. Five bids were opened on March 2, 2010. SAVKOM was the low bidder on both schedules. SAVKOM's aggregate bid of \$227,377 is \$84,198, or 27% less than the next low bidder. In conjunction with the LIRR Engineering Department, and after verification of SAVKOM's references and a site visit of their facility, LIRR, with participating agency concurrence, has determined SAVKOM to be the lowest responsive and responsible bidder. MNR funding includes an additional \$10,000 for its unscheduled inspection services, based on competitively bid fixed hourly rates. Funding includes option years and will be provided through each Agency's operating budget.

3. **Perini Corporation** **\$150,713,836.40**
Competitive
Contract No. CH053

This contract is for the construction of various civil infrastructure elements in Harold Interlocking and to expand the exiting LIRR/Amtrak right-of-way to enable mainline track diversions and to facilitate the future construction of tunnels for the East Side Access project.

Non-Competitive Procurement

1. **Transtechnik Corporation** **\$850,000**
Sole Source **Not-to-Exceed**
Contract No. TBD

LIRR requests MTA Board approval to award a sole source blanket purchase order for a 36-month period in an amount not to exceed \$850,000 to Transtechnik Corporation to (i) provide spare parts required to perform scheduled and unscheduled maintenance on Auxiliary Power System Inverters on LIRR's fleet of 160 M-3 cars and (ii) perform off-site repairs on printed circuit boards and other Original Equipment Manufacturer components, as required.

2. **Heidelberg USA, Inc.** **\$60,000**
Three-year contract **Not-to-Exceed**
Contract No. BP03583

LIRR requests MTA Board approval to award a sole source Miscellaneous Service renewal contract to Heidelberg USA, Inc. ("Heidelberg") for the maintenance and repair of Heidelberg equipment. Heidelberg is the only authorized provider of parts and service for their equipment. This renewal contract will be for a twenty-four (24) month term, from June 1, 2010 through May 31, 2012. The Railroad explored whether there were opportunities to "piggy-back" existing contracts with other MTA agencies rather than solicit a renewal contract. The sister agencies responded that they either did not have a print shop or did not have Heidelberg equipment. The not-to-exceed contract value is based on Heidelberg's Published rates, projected repair and maintenance hours and related parts. The bid price schedule is based on fixed hourly rates and discounts off manufacturer's list pricing for parts. Heidelberg utilizes published, non-negotiable rates, which are the same rates offered to all NY State Agencies. Heidelberg's 2010-2011 average labor rates represent a 2% annual increase over the 2007-2009 labor rates and are therefore considered to be fair and reasonable. LIRR's operating budget will fund this contract.

Details of the above items are set forth in staff summaries, copies of which are on file with the records of this meeting.

6. **COMMITTEE ON METRO-NORTH OPERATIONS**

Upon motion duly made and seconded, the Board approved items from the Metro-North Committee. Included among these items were the following: (1) a request to award two individual five-year competitively solicited miscellaneous service contracts to East Coast Railroad Services (Metro-North) and Ecology Sanitation (LIRR) for the on-going removal and lawful disposal of railroad ties, stubs, telephone poles, cable reels and third rail protection boards throughout Metro-North's and LIRR's operating territories; and (2) a request by the MTA Capital Construction Company to ride MTA Bridges and Tunnels Contract 08-MNT-2827, Maintenance of IESS System, with Henry Brothers Electronics for various IESS/C3 Contract Wrap-Up Support Services, including providing material and performing installation and/or repair and testing at certain LIRR facilities, including but not limited to the installation of conduit cable, rack equipment, devices and panels. The details of these items are contained in the minutes of the meeting of the Committee on Metro-North Operations held this day.

7. **EXECUTIVE SESSION**

Upon motion duly made and seconded, the Board unanimously voted to convene in Executive Session to discuss matters related to collective bargaining negotiations. Upon motion duly made and seconded, the Board unanimously voted to reconvene in public session.

8. **ADJOURNMENT**

Upon motion duly made and seconded, the Board unanimously voted to adjourn the meeting. The meeting was adjourned at 12:04 P.M.

Respectfully submitted,



Catherine A. Rinaldi
Secretary

**Minutes of the Regular Meeting
Triborough Bridge and Tunnel Authority
May 26, 2010**

Meeting Held at
347 Madison Avenue
New York, New York 10017

9:30 A.M.

The following members were present:

Hon. Jay H. Walder, Chairman & CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. LeBow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James E. Sedore, Jr
Hon. Carl V. Wortendyke

Not Present:

Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr

Frederick Cuenca, Chief of Staff; James B. Henly, General Counsel, MTA; Catherine A. Blue, Acting Corporate Secretary; Board Member James Blair; Board Member Norman Brown; James Ferrara, President, MTA Bridges and Tunnels; Michael F. Horodniceanu, President MTA Capital Construction Company; Howard R. Permut, President, Metro-North Commuter Railroad; Thomas Prendergast, President, New York City Transit; Joseph A. Smith, President Long Island Bus, MTA Bus & Senior Vice President, New York City Transit Department of Buses; Helena E. Williams, President, Long Island Rail Road; and Douglas R. Sussman, Director, Community Affairs, MTA 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 twenty three public speakers. None of the speakers specifically commented on issues regarding the Triborough Bridge and Tunnel Authority. The subject matter of the public comments is contained in the minutes of the meeting of the Board of the Metropolitan Transportation Authority.

2. **Approval of the Minutes of the Regular Meeting April 28, 2010**

The Minutes of the meeting held April 28, 2010 were unanimously approved.

3. **Committee on Finance**

- Upon a motion duly made and seconded, the Board unanimously authorized and approved in connection with the issuance of Transportation Revenue Bonds, the necessary documentation to issue new money bonds, notes or other obligations to provide net proceeds (exclusive of premiums) sufficient to fund up to \$600 million of capital projects contained in approved capitals programs of the transit and commuter systems (including MTA Bus).
- Upon a motion duly made and seconded, the MTA and TBTA Board approved a contract with Lamont Financial Services Corporation (“Lamont”) for financial advisory services in connection with the issuance of MTA and TBTA bonds, and a contract with Swap Financial Group, LLC (“Swap Financial”) for swap advisory services in connection with managing the existing portfolio of derivative contracts and for the execution of new derivatives.

A copy of the staff summaries and details of the above items are filed with the minutes of the Board of the Metropolitan Transportation Authority.

- Upon a motion duly made and seconded, the MTA and TBTA Board approved the following items:
 - Supplemental resolutions authorizing the issuance of refunding bonds from time to time to the extent that such refunding bonds conform to the attached refunding policy and provided that the MTA Chief Financial Officer or the MTA Director of Finance makes a determination that the refunding of such bonds or other obligations will be beneficial to the obligors thereof and/or their affiliates and subsidiaries. Any such refunding shall be in addition to the continuing existing approval of the MTA Board to bond out the commercial paper program from time to time, as necessary or convenient, and to continue rolling over or reissuing the commercial paper under the Transportation Revenue commercial paper program up to its existing authorization of not to exceed \$750 million and renewed or new Credit Facilities or program documentation related thereto. It is understood that, within any year, the full \$750 million in commercial paper notes may be issued, bonded out, and reissued again.
 - Delegation of authority to the Chairman and Chief Executive Officer, the Vice Chairman, the Chief Financial Officer of MTA, and the Director of Finance of

MTA to award the obligations either pursuant to competitive bid or to members (or entities related to such firms) of the MTA underwriting syndicate to execute and/or deliver in each case, where appropriate:

- Notices of Sale and bid forms,
- Purchase agreements with underwriters,
- Official Statements and other disclosure documents,
- Continuing Disclosure Agreements and related filings,
- Dealer Agreements,
- Related Subordinate Contract Obligations,
- Escrow Agreements, and
- Investment Agreements.

Any such documents will be in substantially the form of any document previously entered into by MTA or TBTA for previous issues and programs, with such changes as approved by any one or more of the foregoing officers. In addition, such officers are hereby authorized to terminate, amend, supplement, replace or extend any such documents (and related Parity Reimbursement Obligations and Parity Debt) and other documents related thereto, as they shall deem advisable. The MTA and TBTA Boards hereby further delegate to such officers authority to take such other actions as may be necessary or desirable to effectuate such transactions.

A copy of the staff summary, amended and restated resolutions, and details of the above items are filed with the minutes of the Board of the Metropolitan Transportation Authority.

- Upon a motion duly made and seconded, the Board approved the addition of Griffin, Coogan, Blose & Sulzer, P.C. to the MTA Group's outside counsel list.

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

Procurements

Commissioner Lebow stated that there are no non-competitive procurements this month.

Competitive Procurements

Commissioner Lebow stated that there are four competitive procurements totaling \$4.386 million.

Upon a motion duly made and seconded, the Board unanimously approved the following competitive procurement items recommended to it by the Committee for MTA Bridges and Tunnels Operations.

Personal Service Contracts

Ammann & Whitney Consulting Engineers, P.C.	Contract No. PSC-09-2861 Provide construction administration and inspection services for Project D607-VN-88, Painting of Towers Below Roadway Level at the Verrazano-Narrows Bridge.	\$2,235,986.30
Beth Israel Medical Center	Contract No. PSC-09-2853 Consultant to provide licensed health care professionals to administer Influenza and Hepatitis B vaccinations and post-exposure evaluations and follow-up personnel in accordance with OSHA regulations.	\$149,097.00

Modifications to Purchase & Public Works Contracts

American Bridge Company	Contract No. BW Task 23/C-52052 Additional work under BW Task 23/C-52052, Miscellaneous Structural Retrofits at Authority Facilities.	\$406,572.06
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Modifications to Miscellaneous Procurement Contracts

Telvent Caseta, Inc.	Contract No. 07-OPS-2809 Additional work to develop components of B&T's All Electronic Tolling pilot program at the Henry Hudson Bridge.	\$1,593,828.00
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Ratifications

Commissioner Lebow stated that there is one ratification totaling \$363,000.

Upon a motion duly made and seconded, the Board unanimously approved the following ratification recommended to it by the Committee for MTA Bridges and Tunnels Operations.

Ratification of Completed Procurement Actions (Involving Schedule E-J)

Conti of New York, LLC

Contract No. BW-89

\$362,646.20

Additional civil and site work to remedy the impacts of an unforeseen site condition under the Bronx Approach of the Bronx-Whitestone Bridge.

5. **Executive Session**

Upon a motion duly made and seconded, the Board unanimously voted to convene in Executive Session to discuss a labor matter.

Upon a motion duly made and seconded, the Board approved the following item:

- Collective Bargaining Agreement between MTA Bridges and Tunnels and Local 1655, District Council 37, covering the period March 3, 2008 through March 2, 2010.

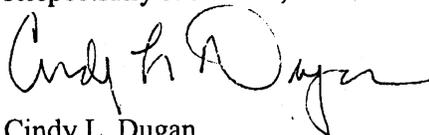
6. **Public Session**

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

7. **Adjournment**

Upon a motion duly made and seconded, the Board unanimously voted to adjourn the meeting 12:04 p.m.

Respectfully submitted,



Cindy L. Dugan
Assistant Secretary

Regular Board Meeting
MTA Capital Construction Company
347 Madison Avenue
New York, NY 10017

Wednesday, May 26, 2010
9:30 a.m.

The following members were present:

Hon. Jay H. Walder, Chairman & CEO
Hon. Andrew M. Saul, Vice Chairman
Hon. Andrew Albert
Hon. Robert C. Bickford
Hon. Donald Cecil
Hon. Doreen M. Frasca
Hon. Jeffrey A. Kay
Hon. Mark D. Lebow
Hon. Susan Metzger
Hon. Mark Page
Hon. Mitchell H. Pally
Hon. Norman Seabrook
Hon. James L. Sedore, Jr.
Hon. Carl V. Wortendyke

The following member was absent:

Hon. John H. Banks, III
Hon. Allen P. Cappelli
Hon. Nancy Shevell
Hon. Vincent Tessitore, Jr.

Fredericka Cuenca, Chief of Staff, James B. Henly, General Counsel, Catherine A. Blue, Acting Corporate Secretary, Board Member James F. Blair, Board Member Norman Brown, Thomas Prendergast, President of NYCTA, Helena E. Williams, President of Long Island Railroad, Howard Permut, President of Metro-North, James Ferrara, President of TBTA, Joseph A. Smith, President of LI Bus, MTA Bus & Sr. V.P. NYCT Department of Buses, Michael Horodniceanu, President of MTA Capital Construction, and Douglas Sussman, Director, Community Affairs also attended the meeting.

Chairman Walder called the meeting to order.

Public Comment Period

There were no public speakers on any issues regarding MTA Capital Construction.

Approval of Minutes

Upon motion duly made and seconded, the MTA Board unanimously approved the minutes of the regular Board meeting held on April 28, 2010.

MTA Capital Construction Action Items

There were no Capital Construction Items for the Board members to consider.

MTA Capital Construction Procurements

Upon motion duly made and seconded, the MTA board approved the following procurement items:

- A modification to the Fulton Street Transit Center construction management services contract with Parsons Brinckerhoff Quade & Douglas and Bovis Lend Lease LMB, Inc., Joint Venture, to add a new sub-consultant to perform scheduling work
- A ratification of a modification to the Second Avenue Subway 96th Street Station Structure contract with E.E. Cruz and Tully Construction Company, Joint Venture, to perform additional instrumentation and monitoring between 93rd and 97th Streets
- A modification to the East Side Access Harold Structures Part I contract with Perini Corporation for the relocation of 60 Hz feeder lines that are attached to three catenary structures and an existing retaining wall that are being demolished as part of the contract.

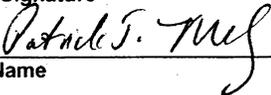
Adjournment

Upon motion duly made and seconded, the MTA Board voted to adjourn the public meeting.

Respectfully submitted,

Miriam Cukier
Secretary

Staff Summary

Subject Approval of Swap Advisor / Contract Authorization
Department Finance
Department Head Name Patrick McCoy, Director of Finance
Department Head Signature 
Project Manager Name

Date June 23, 2010
Vendor Name Swap Financial Group, LLC
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Comm.	6/21	X		
2	Board	6/23	X		

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

PURPOSE:

To obtain MTA and TBTA Board approval of a contract with Swap Financial Group, LLC (“Swap Financial”) for swap advisory services in connection with managing the existing portfolio of derivative contracts and for execution of new derivatives. The execution of new swaps will require specific Board approval.

DISCUSSION:

The Swap Advisor is responsible for providing expert advice on the timing, structure, terms and conditions and on-going monitoring of the MTA’s (including TBTA) outstanding portfolio of interest rate swaps. Swap Financial specializes in advising governmental municipalities and public benefit corporations on structuring and managing swap exposure.

BACKGROUND:

The Finance Department issued a formal Request for Proposals from qualified firms to serve as Financial and/or Swap Advisor to the MTA and TBTA on June 15, 2009.

A total of 15 proposals were received by the submission deadline of August 4, 2009. Proposals were received from the following firms:

1. Andrew Kalotay
2. The PFM Group
3. Lamont Financial Services Corporation
4. Phoenix Capital Partners
5. Scott Balice Strategies (joint proposal with Intuitive Analytics)
6. Mesirow Financial
7. NW Financial
8. ButcherMark Financial (joint proposal with Stifel, Nicolaus & Company and Cityview Capital Solutions)
9. First Southwest Co.
10. Goldman, Sachs & Co.
11. AC Advisory
12. KPMG
13. Public Resources Advisory Group
14. Swap Financial Group, LLC
15. Backstrom McCarley Berry & Co., LLC

After initial screening and review by the selection committee, eight proposers were invited to participate in oral interviews for further evaluation in August 2009. These interviews provided the selection committee the opportunity to ask questions about

particular ideas presented in the written response, and to meet the key advisory team members that would be assigned to the MTA account. Recognizing significant changes in the capital markets resulting from the market dislocation beginning in late 2008, the selection committee unanimously determined that it was in the best interest of the MTA to divide the scope of services into two parts: (1) strategic financial advisor; and, (2) swap advisor.

Due to the passage of time since the initial proposals were received, the selection committee asked for updated and renewed price proposals from the proposers deemed most qualified in April of this year. Proposers were asked to provide updated pricing for strategic financial advisory services that included a per bond fee as well as an annual cap on such compensation. Proposers were also asked to provide updated pricing for swap advisory services based on a monthly retainer, together with a schedule of hourly fees for professionals assigned to work on MTA and TBTA interest rate swaps.

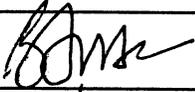
The selection committee was unanimous in its recommendation of Swap Financial as swap advisor. Such determination was based upon the quality of the written proposals, the oral interviews, the experience and expertise of the key members of the respective advisory teams, and the updated price proposals.

Swap Financial proposed a monthly fee of \$5,000 for swap advisory services and an hourly fee schedule ranging from \$200/hour to \$600/hour for assignments outside the scope of services not covered by the monthly fee. Such assignments which are not expected to be frequent will be subject to a negotiated cap. Further, negotiations with Swap Financial have resulted in a lowering of the monthly fee to \$4,500 for the first contract year and also a lowering of the hourly fees on special assignments to a new range of \$200/hour to \$450/hour.

RECOMMENDATION:

After considering each firm's qualifications and updated price proposal, the selection committee is recommending the appointment of Swap Financial Group, LLC to serve as an advisor on interest rate swap transactions for a period of three years. Recommendation is also made to include up to two annual renewals.

Staff Summary

Subject 2010 State PWEF Assessment
Department Chief Financial Officer
Department Head Name Bob E. Foran
Department Head Signature 
Project Manager Name Douglas F. Johnson 

Date June 9, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Comm.	6/21	X		
2	Board	6/23	X		

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

Purpose:

To authorize actions relating to the payment of the State assessment on the MTA and its constituent agencies for the Public Work Enforcement Fund for calendar 2010.

Discussion:

Chapter 511 of the Laws of 1995, as amended, requires State agencies and authorities to pay to the State Comptroller an assessment on the amount of each public work (construction) contract entered into (excluding rolling stock contracts). The assessments are deposited in the State Public Work Enforcement Fund to reimburse the State Department of Labor for its costs in enforcing the State's prevailing-wage law. The State and the MTA have entered into a simple annual estimate-and-settlement procedure agreement. Payments are made each year based upon the estimated amount of public works contracts as adjusted to reflect actual experience.

Actual figures show that the estimated 2009 assessment was less than required by the actual results, with the underpayment amounting to \$503,547. This underpayment is added to the estimated 2010 assessment, which is described below. Based on the actual average spending rates, it is assumed that in calendar year 2010, MTA's constituent agencies are projected to let \$1,128,134,698 worth of construction contracts. This represents a \$617 million reduction in contract values over the actual 2009 level. This anticipated reduction is caused by (1) the MTA having reached the end of the 2005-2009 Capital Program, where the majority of contracts associated with it were awarded prior to 2010; and (2) lower projected commitment activity in 2010 associated with the new 2010-2014 Capital Program. Based on this projection of construction contract values for 2010, the estimated assessment charge is \$1,128,135.

Taking into account the 2009 underpayment of \$503,547, the total 2010 assessment requires a payment of \$1,631,682.

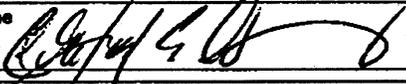
Financial Implications:

The 2010 MTAHQ Budget contains sufficient funds for this payment.

Recommendation:

The Board should authorize staff to remit the 2010 assessment including the adjustment for the 2009 underpayment, to the State Department of Labor.

Staff Summary

Subject Request for Authorization to Award Various Procurements
Department Administration
Department Head Name Linda Kleinbaum
Department Head Signature 
Division Head Name Clifford Shockley 

Date June 11, 2010
Vendor Name Various
Contract Number Various
Contract Manager Name Various
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	6/21/10			
2	Board	6/23/10			

Internal Approvals			
Order	Approval	Order	Approval
			Office of Civil Rights
	Executive Director		Legal
3	Financial Management		EITG
1	Procurement	2	Administration

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

Schedule F: Personal Service Contracts				
• U2 Labs International, LLC	= \$30,000			
			<u>1</u>	\$ 30,000
			SUBTOTAL	1 \$ 30,000

MTAHQ proposes to award Competitive procurements in the following categories:

Schedules Requiring Majority Vote

Schedule E: Miscellaneous Procurement Contracts			1	\$ 265,402
Schedule F: Personal Service Contracts			3	\$ 12,616,447
Schedule G: Miscellaneous Service Contracts			1	\$ 116,000
			<u>5</u>	<u>\$ 12,997,849</u>
			SUBTOTAL	5 \$ 12,997,849

MTAHQ presents the following procurement actions for Ratification:

			None	\$ -0-
			<u>6</u>	<u>\$ 13,027,849</u>
			TOTAL	6 \$ 13,027,849

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, JUNE 2010
NON-COMPETITIVE PROCUREMENTS

METROPOLITAN TRANSPORTATION AUTHORITY

Procurements Requiring Majority Vote:

F. Personal Service Contracts

Staff Summaries required for items greater than: \$100K Sole Source; \$250K Other Non-Competitive, \$1M Competitive)

- | | |
|--|-----------------|
| 1. U2 Labs International, LLC | \$30,000 |
| Consulting and Managing Services for Summer Intern Technology-Related Research Projects | (not-to-exceed) |
| Contract No. 10101-0100 | |

Contractor to provide consulting and supervisory services for the administration and management of three (3) technology related research projects as stated below.

- 1) Provide cell phone service on MTA Subways using wireless mesh network. This project will explore an alternative way to provide cell phone service to New York City Transit (NYCT) underground stations that may be less expensive and quicker to implement.
- 2) Provide credit card services for paying fares on MTA Buses. This project will evaluate the New York City NYCWIN network to provide the wireless link from buses to the servers that process credit and debit transactions.
- 3) Provide dead reckoning to determine location of buses. This project will determine the accuracy of the bus location information and resolve problems encountered.

These research projects will be carried out by seven (7) graduate students (4 from Columbia University and 3 from City College of New York) who are currently enrolled in the electrical engineering department. The projects will last approximately ten (10) weeks. Dr. Uyar, a full-time professor, will delegate, manage and supervise the work of the graduate interns and will provide the MTA with detailed reports on the undertaking and findings of each project.

Dr. Umit Uyar is a Professor in the Electrical Engineering Department and at the Computer Science Department of the Graduate Center at the City College of New York (CCNY). Prior to joining CCNY, Umit was a Distinguished Member of Technical Staff at AT&T Bell Labs. He holds a Ph.D. in electrical engineering from Cornell University. Prof. Uyar's research interests include design and implementation of bio-inspired algorithms for robotics and financial applications, telecommunication network protocols design, modeling, testing and verification, mobile ad hoc networks design and analysis, VoIP (SIP, H.323) applications specification, design, verification, hardware/software verification tool development in C++, C#, VB.Net and JAVA. His qualifications, achievements and research interests make him uniquely qualified to provide the consulting and management services required by MTA.

Prof. Uyar hourly rate of \$100 falls below the range of rates from \$280 to \$380 per hour for similar technology consulting and management services. Based on this comparison, the hourly rate of \$100, for a total not-to-exceed amount of \$30,000 is considered fair and reasonable.

LIST OF PROCUREMENTS FOR BOARD APPROVAL, JUNE 2010
COMPETITIVE PROCUREMENTS

METROPOLITAN TRANSPORTATION AUTHORITY

Procurements Requiring Majority Vote:

E. Miscellaneous Procurement Contracts

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive)

- | | |
|---|------------------|
| 1. The Open Planning Project | \$265,402 |
| Development of a Pilot Project for an Open Standards Bus Customer Information System | (Total) |
| Contract No. 10077-0100 | |

Competitively negotiated – 6 proposals – 12 months

The MTA has successfully tested (on 34th Street) a proprietary single-vendor real-time Bus Customer Information System (Bus CIS), including on-board bus announcements and signs, display signs at bus stops and hubs (in partnership with the New York City Department of Transportation), and a web application for desktops, handheld devices, and smart phones. It is estimated that implementation of this system across New York City Transit's and MTA Bus Company's fleets will cost the MTA over \$140 million and take at least 5 years to complete. Because of the extremely high estimated cost and financial risk associated with dependence on a single vendor, MTA is currently developing a different approach for providing a Bus CIS.

The MTA seeks to test and prove the concept that standard equipment being used for its Phase 2 Smart Card pilot (3G wireless modem, GPS, and contactless card reader) can be used securely to provide accurate real-time bus location information to our customers. In addition, a commercial off-the-shelf "dead reckoning" unit will use additional sensors such as the bus odometer to provide accurate GPS locations even in dense Manhattan "urban canyons" where typical GPS can have problems (a unit has already been tested with satisfactory results).

By developing a solution that is based on industry standard hardware technologies and open source software, the MTA will be able to more easily integrate on-board equipment and add additional functionality in the future than would be possible with a proprietary solution. Using standard equipment and open source software will place the MTA in a better negotiating position with vendors as the vendor market for these standard technologies is larger than the transit-focused market.

The pilot project currently under development requires new Bus CIS server software be developed to integrate with the on-bus equipment using industry standard interfaces. This pilot will help the MTA create a system that when ultimately deployed will cost tens of millions of dollars less than other available proprietary systems. If the pilot is successful, the MTA will also be able to deliver real-time information to its customers much sooner and at much lower operating and maintenance cost because the system will be simpler and consist of less equipment.

The pilot will not include on bus announcements and display signs at bus stops. The pilot will, for a single bus route, make bus location information available through a web interface on customers' desktops and web-enabled mobile devices, as well as by text messaging. Additional functionalities, such as on-board visual information, on-board announcements, and displays at bus stops will be phased in over time as funding permits.

METROPOLITAN TRANSPORTATION AUTHORITY
COMPETITIVE PROCUREMENTS

Page

If this pilot is successful, MTA will issue a competitive RFP to acquire this technology for deployment to the entire bus fleet.

As result of negotiations, the proposed cost of \$270,436 was negotiated down to \$265,402, a savings of \$5,034 or 1.86 %. There is no prior contract for these services with which cost can be compared; however, the MTA is receiving the vendor's best customer pricing and believes this pricing is fair and reasonable.

F. Personal Service Contracts

Staff Summaries required for items greater than: \$100K Sole Source; \$250K Other Non-Competitive, \$1M Competitive)

2. **American Arbitration Association** **\$45,000**
Mediation Services for Disputes with **(not-to-exceed)**
Construction Contractors and Equipment Vendors
Contract No. 09240-0100

Competitively negotiated – 5 proposals – 48 months
Mediation services in support of the Contractual Disputes Review Board ("CDRB") process managed by MTA's General Counsel in connection with MTA NYC Transit Authority ("NYCTA") and Triborough Bridge and Tunnel Authority ("TBTA") equipment procurement and/or construction contracts. The CDRB was established as a part of the Alternative Disputes Resolution ("ADR") procedure that is included in many NYCTA and TBTA contracts. Under the standard ADR provision, either party has a right to request non-binding mediation in an effort to settle disputes. As a result of negotiations, the rates submitted by the proposed provider, \$225 per hour for Roster Mediators and \$125 per hour for Staff Mediators, were negotiated down to \$185 per hour and \$115 per hour respectively, representing a reduction of \$40/per hour or 17.78% for Roster Mediators and \$10/per hour or 8% for Staff Mediators (actual mediation costs are shared 50% by the Authority and the contractor). These rates are lower than the rates (\$200 per hour for Roster Mediators and \$125 for Staff Mediators) that MTA is paying under the expiring contract. Based on the above, the overall cost is considered fair and reasonable.

3. **TDX Construction Corporation** **\$12,416,447** **Staff Summary Attached**
Construction Manager for MTAHQ **(not-to-exceed)**
Small Business Mentoring Program
Contract No. 10009-0100

Competitively negotiated – 8 proposals – 48 months
Contractor to provide mentoring and construction management (CM) services for the MTA's new Small Business Mentoring Program (SBMP). The goal of the SBMP is to address the major impediments small businesses face in competing for MTA capital construction projects and to expand the pool of qualified and diverse contractors who compete for MTA's business. The small businesses admitted into the program will receive training, technical assistance and mentoring assistance from TDX Construction Corporation, a professional construction management firm. As result of negotiations, the proposed cost of \$12,810,581 was negotiated down to \$12,416,447, a savings of \$394,134 or 3.1%. The fully-loaded hourly rates proposed by TDX which ranged from \$42 to \$158 were negotiated down to a range of \$41 to \$155 for the first year of the contract. These rates are equal to or lower than the rates TDX charges other government entities. Additionally, TDX proposed an annual escalation of 3.5% which was negotiated down to a maximum of 2.9% per year (increase will be at MTA's sole discretion) or CPI, whichever is lower, for each of the subsequent four years including the two option years. Based on the above, the negotiated hourly rates are deemed to be fair and reasonable.

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METROPOLITAN TRANSPORTATION AUTHORITY
COMPETITIVE PROCUREMENTS

4. **AFT Project at MNR Station on the New Haven Line.** AFT to provide technical design, fabrication, crating, storage, delivery and oversight of installation of materials at the station specified below:
Competitively negotiated – 115 proposals – 24 months
Matt Mullican, Rye Station – MNR (Contract No. 10091 – \$155,000)

G. Miscellaneous Service Contracts

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; SIM RFP;
No Staff Summary required if Sealed Bid Procurement)

5. **PC Helps, LLC** **\$116,000**
Help Desk Support Services (not-to-exceed)
Contract No. 09293-0100

Competitively negotiated – 4 proposals – 24 months

Contractor to provide 24-hour/seven days per week help desk coverage to continue to supplement MTA's and LIRR's technical help-desk support for their employees. This support consists of expert "how-to" assistance with all Microsoft applications (Excel spreadsheets, Word, Access database, Power Point), and includes E-support, client extranet services, remote access support; etc. These services enable the MTA's Help Desk to manage and respond to all help-desk related calls from employees ranging from everyday technical issues to emergency support. The total not-to-exceed amount of \$116,000 consists of a fixed fee of \$76,000 for MTAHQ and a not-to-exceed amount of \$40,000 for the LIRR. The annual proposed fixed fee of \$38,000 is lower than the average annual fee of \$47,463 that MTA is paying under the current contract. LIRR's not-to-exceed cost of \$40,000 is based on a unit cost of \$3.24/min, which is lower than the fee that MTAHQ is paying under its existing contract. Based on the above, the overall cost is considered fair and reasonable.

Staff Summary

Schedule F: Personal Service Contracts



Item Number:						SUMMARY INFORMATION	
Dept & Dept Head Name: Administration/L. Kleinbaum <i>OK</i>						Vendor Name: TDX Construction Corporation	
Division & Division Head Name: Office of Construction Oversight/R. Saporita						Contract Number: 10009-0100	
Board Reviews						Description: Construction Manager for MTAHQ Small Business Mentoring Program	
Order	To	Date	Approval	Info	Other	Total Amount: \$12,416,447	
1	Finance	6/21/10				Contract Term (including Options, if any): June 24, 2010 thru June 23, 2016	
2	Board	6/23/10				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	
Internal Approvals						Procurement Type: <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
Order	Approval	Order	Approval			Solicitation Type: <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
1	Procurement <i>OK</i>	4	DDCR <i>OK</i>			Funding Source: <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
2	Administration <i>OK</i>	5	Legal <i>OK</i>				
3	Office of Construction Oversight <i>OK</i>	6	Financial Management <i>OK</i>				

Narrative

I. PURPOSE/RECOMMENDATION

To recommend that the Board approve the award of a competitively negotiated, personal services contract to TDX Construction Corporation to provide mentoring and construction management (CM) services for the MTA's new Small Business Mentoring Program (SBMP), for a four-year period from June 24, 2010 through June 23, 2014, with options to renew for two additional one-year periods at MTA's sole discretion, at a not-to-exceed cost of \$12,416,447 for the initial four years. The execution of this contract is subject to enactment into law of the MTA mentoring program bill, which is expected shortly and may occur by the time this Staff Summary is voted upon. This contract is funded by each agency from within its capital program. The 2005-2009 Capital Program funds will be used for the first year of this contract. Funding for years two through six will be obtained from the 2010-2014 capital program.

II. DISCUSSION

The goal of the SBMP is to address the major impediments small businesses face in competing for MTA capital construction projects, and to expand the pool of qualified and diverse contractors who compete for MTA's business. The small businesses admitted into the program will receive training, technical assistance and mentoring assistance from TDX Construction Corporation, a professional construction management firm.

The construction manager will be responsible for:

- i) providing mentoring services that will ensure the SBMP contractors receive adequate training and hands-on technical assistance to improve the skills necessary to compete for and perform MTA construction contracts and, where a SBMP contractor has been awarded an SBMP contract, to ensure s/he provide a quality project, safely, on time and within an established budget; and
- ii) providing construction management services to the MTA agency, in conjunction with the MTA Agency's project manager(s) support for a specific SBMP contract, including oversight and assistance with respect to all procurement and construction matters involving the SBMP contract. This includes: the SBMP contractor's performance and invoicing; payment of approved contractor invoices in accordance with SBMP procedures for expedited payment; contractor submittals, requests for information and change orders; contractor bank loan repayment administration; construction and information technology training; confirmation that contractor and subcontractor workers, and contractor subcontractors and suppliers have been paid.

Staff Summary

The MTA expects the CM to be aware of, and sensitive to, the potential for friction between the mentoring and construction management roles, and to resolve such concerns based on the overriding principle that the SBMP contractor is obligated to provide a quality project, safely, on time and within budget. The agencies will be responsible for awarding an SBMP contract in accordance with competitive procedures authorized by the legislation, approving payment requisitions and change orders, and inspection and acceptance of the work.

The Office of Construction Oversight and the Department of Diversity and Civil Rights will administer the CM contract and will work with a designated representative at each agency to timely resolve issues and to implement, manage and improve the SBMP. In order to obtain the CM services, a Request for Proposals (RFP) was conducted. The RFP was publicly advertised and letters advising potential proposers of the RFP's availability were sent to eighty-six (86) firms, of which twenty (20) were WBE/MBE firms. Eight (8) proposals were received. A Technical Committee comprised of representatives from MTAHQ, B&T, LIRR, MNR, MTA Bus and NYCT evaluated the proposals and determined that four (4) firms (Bovis, TDX, URS and STV) should be submitted for final consideration to an Executive Selection Committee, which was composed of representatives from MTAHQ Administration, Department of Diversity and Civil Rights and Office of Construction Oversight. Subsequently, the Executive Committee reviewed the four (4) proposals and recommended TDX Construction Corporation as best qualified to perform the required CM services. TDX Construction Corporation brings impressive depth and experience in construction management and implementing Small Business Mentoring Programs. TDX is the only CM firm that has continuously provided CM services to the NYC School Construction Authority's comparable program, which is the genesis for MTA's program. MTA has conducted a responsibility review and other due diligence on TDX Construction Corporation and has deemed them to be responsible for award

As result of negotiations, the proposed cost of \$12,810,581 was negotiated down to \$12,416,447, a savings of \$394,134 or 3.1%. The fully-loaded hourly rates proposed by TDX which ranged from \$42 to \$158 were negotiated down to a range of \$41 to \$155 for the first year of the contract (TDX proposed the lowest rates of the four short-listed firms). These rates are equal to or lower than the rates TDX charges other government entities. Additionally, TDX proposed an annual escalation of 3.5% which was negotiated down to a maximum of 2.9% per year (increase will be at MTA's sole discretion) or CPI, whichever is lower, for each of the subsequent four years including the two option years. Based on the above, the negotiated hourly rates are deemed to be fair and reasonable.

III. D/M/WBE INFORMATION

The MTA's Department of Diversity and Civil Rights established a 10% goal for MBE and 10% goal for WBE participation.

IV. IMPACT ON FUNDING

The 2005-2009 capital program funds will be used to finance the costs of the CM contract and other administrative training costs of the first year of the SBMP. Funding for years two through six will be obtained from the 2010-2014 capital program.

V. ALTERNATIVES

1. **Perform all services in-house.** This alternative is not practical. The Authority does not have the resources or the trained personnel to perform mentoring construction management (CM) services.
2. **Do not approve award of this contract.** This alternative is not feasible. MTAHQ will implement a Small Business Mentoring Program in accordance with the approved NYS Legislation.

JUNE 2010
MTA REAL ESTATE
LIST OF REAL ESTATE ACTION ITEMS FOR BOARD APPROVAL

ACTION ITEMS

MTA NEW YORK CITY TRANSIT

Determination and Findings Pursuant to a Public Hearing for Acquisition of Various Property Interests in Connection with Contracts 3, 4 and 5 of Phase 1 of the Second Avenue Subway Project, Manhattan, New York

Sale of 166 Smith St., Brooklyn, Kings County Block 390 Lot 40, to Lexington Avenue Associates, LLC

MTA METRO-NORTH RAILROAD

Lease Agreement with Central Station Groceries Corp. d/b/a Frankie's Dogs on the Go for retail sale of beef hot dogs, chicken sausages, a variety of toppings and side dishes and cold beverages including NY egg creams; Retail Space K-03, Grand Central Terminal, New York

Lease Agreement with Tri Tip City LLC d/b/a Tri Tip Grill for the retail sale of grilled steak and chicken sandwiches, salads, and breakfast menu items; Retail Space LC-25, Grand Central Terminal, New York

Lease Agreement with Golden Krust Franchising Inc. d/b/a Golden Krust for the retail sale of Jamaican-style patties, lunch and dinner entrées, Caribbean-inspired dessert items, and cold beverages; Retail Space K-05, Grand Central Terminal, New York

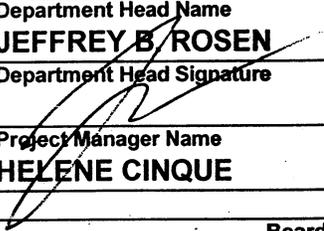
Lease modification agreement with CPG Partners L.P. for mall employee parking during certain holiday weekends at Metro-North's Harriman Station parking facility, Harriman, New York

MTA LONG ISLAND RAIL ROAD

License Agreement and Easement Purchase Option with Consolidated Edison, Inc., for a portion of LIRR Property Located at Block 183, Lot 160, Queens, New York

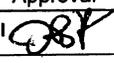
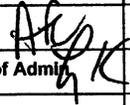
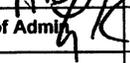
License Agreement with the Village of Island Park for commuter parking at the Island Park Station, Island Park, New York

Staff Summary

Subject DETERMINATION AND FINDINGS
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name HELENE CINQUE

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Adm. 		
	Civil Rights		

Narrative	
AGENCY:	MTA Capital Construction Company ("MTACC")
ACTIVITY:	Acquisition of a Fee Interest and Permanent and Temporary Easements and Terminations of Rights for Sidewalk Encroachments in Properties Listed on the Attached Determination and Findings for Contracts 3, 4 and 5 of Phase 1 of the Second Avenue Subway Project.
ACTION REQUESTED:	Approval of Determination and Findings Under the New York Eminent Domain Procedure Law.
COMMENTS:	<p>MTACC requires various property interests in order to complete the work in the Contract 3 (63rd St. Station), 4 (72nd Street Station) and 5 (86th Street Station) packages for Phase 1 of the Second Avenue Subway Project (the "Project"). The property interests to be acquired are listed in the attached Determination and Findings Pursuant to Article 2 of the Eminent Domain Procedure Law ("EDPL"). Efforts will be made to acquire these property interests by negotiated agreements. In those instances where MTA cannot reach agreements with the affected property owners, legal proceedings must be commenced under the EDPL.</p> <p>On April 20, 2010, the MTA held an EDPL public hearing to describe the public use, benefit and purposes of the work covered by Contracts 3, 4 and 5; the property interests to be acquired; and the general impact of the property acquisitions and related construction work on the environment. This public hearing only addressed property acquisition needs that had not been addressed in MTA's prior EDPL public hearings. Notices of this public hearing were published in newspapers, as required by the EDPL. Property owners, affected tenants and other interested parties also were given advance notice of the hearing by mail. Both immediately before and after the hearing, representatives of the MTA, the MTACC and MTA New York City Transit met with attendees to answer their questions.</p> <p>Following a presentation by the MTA's hearing officer, 15 speakers made statements about the proposed property acquisitions and/or construction impacts. In addition, MTA received 13 written submissions about the proposed property acquisitions and/or construction impacts prior to the end of the written submission period on April 30, 2010. The oral statements and written comments are summarized as follows:</p>

FINANCE COMMITTEE MEETING DETERMINATION AND FINDINGS- SECOND AVENUE SUBWAY (Cont'd)

STATEMENTS, WRITTEN COMMENTS AND RESPONSES THERETO:

- Concerns about construction-related impacts to property owners, residents and businesses on E. 63rd Street. (5 public hearing comments and 6 written comments.)
- Objections by or on behalf of the parking garage owner at 124 E. 63rd Street about the impacts, location and extent of MTA's proposed property acquisitions in such garage for cooling towers and ventilation shafts that will serve the 63rd Street Station. (2 public hearing comments and 1 written comment.)
- Concerns of nearby property owners and tenants about the operational impacts of the MTA cooling towers and ventilation shafts that will be installed in the parking garage at 124 E. 63rd Street. (3 public hearing comments and 4 written comments.)
- Objections by various commercial condominium owners to the proposed acquisition by the MTA of permanent and temporary easements to construct a station entrance and underground pedestrian passageway for the 72nd Street Station and to the termination by the MTA of various sidewalk encroachments. (2 written comments.)
- Objections and concerns of the owners of a residential coop building at 301 E. 69th Street to the MTA's construction plan for a station entrance and underground pedestrian passageway for the 72nd Street Station, which will require additional easement acquisitions in such building. (1 written comment.)
- Concerns about construction-related impacts to property owners, residents and businesses on E. 86th Street. (8 public hearing comments and 2 written comments.)

Many of the issues raised at the EDPL public hearing and comment period have been addressed during the detailed public review of the Project, including the Final Environmental Impact Statement for the Project issued by the FTA and MTA in April 2004, and in prior Community Board 8 meetings and in individual meetings with property owners and tenants. Before and after the public hearing, MTA staff and consultants have also met and communicated with property owners, tenants and other potentially affected parties, and will continue to do so as the Project moves forward in an effort to mitigate Project-related impacts as much as reasonably possible.

After due consideration of all statements and comments received during and after the EDPL public hearing on April 20, 2010, MTA staff recommends Board approval of the acquisition, by eminent domain, if necessary, of the property interests described in the attached Determination and Findings. MTA staff hereby requests Board approval of the attached Determination and Findings. This action will authorize MTA staff and counsel to continue with the Eminent Domain proceedings to acquire the required property interests by eminent domain, if necessary.

**DETERMINATION AND FINDINGS PURSUANT TO ARTICLE 2
OF THE NEW YORK EMINENT DOMAIN PROCEDURE LAW**

SECOND AVENUE SUBWAY PROJECT

Contract Packages 3 (63rd St. Station), 4 (72nd St. Station) and 5 (86th St. Station)

In accordance with Section 204 of the New York Eminent Domain Procedure Law ("EDPL"), the Board of the Metropolitan Transportation Authority ("MTA") hereby approves the acquisition of property interests described below by eminent domain, if necessary, and adopts the following statutory findings:

1. EDPL Public Hearing. On April 20, 2010, MTA held an EDPL public hearing to inform the public and to receive the public's comments on proposed property acquisitions for contract packages 3, 4 and 5 of Phase 1 of the Second Avenue Subway Project (the "Project"). These property acquisitions are in addition to those addressed in MTA's prior EDPL public hearings and previously approved for acquisition by the MTA Board. All oral comments received at the hearing and all written comments received by the end of the written submission period following the hearing have been reviewed, made part of the record, and given due consideration.

2. Location and Nature of Property Interests. The location and nature of the property interests described in the April 20, 2010 public hearing and hereby approved for acquisition are as described in the chart below.

At the April 20, 2010 public hearing and in letters and maps mailed to property owners and interested parties prior to the hearing, MTA provided more detailed descriptions of the required property interests and estimated time frames when the property interests would be needed.

MTA reserves the right to acquire a lesser interest in any of the properties described below, or to refrain from acquiring any of such property interests, as dictated by the needs of the Project.

3. Public Use, Purpose and Benefits. The Second Avenue Subway will be a new, two-track, approximately 8.5-mile rail line with 16 new stations extending the length of Manhattan's East Side corridor from a terminal station at 125th Street and Lexington Avenue in Harlem to Hanover Square in Lower Manhattan. The new line will make the neighborhoods of the East Side more accessible not only to those who live there, but to visitors and workers traveling from other parts of New York City as well.

There are 4 construction phases for the Project. Phase 1 consists of various contracts covering construction of the subway line under Second Avenue from East 105th Street to East 63rd Street. Phase 1 of the Project will include 3 new stations at 96th, 86th, and 72nd Streets; an additional build-out and refurbishing of the existing F Line Station at 63rd Street; entrances and ancillary facilities to support the stations and new tunnels; and track storage in an existing tunnel that extends to 105th Street. When completed, passenger service for Phase 1 will operate from the 96th Street station to the existing 63rd Street Station and continue downtown on the existing Broadway line.

The Second Avenue Subway will provide more flexibility for passengers traveling along the eastern side of Manhattan, where subway service is currently limited to one line — the severely overcrowded Lexington Avenue Line — for much of the area. The new Second Avenue service thus will provide a needed alternative to the Lexington Avenue Line in the event of shutdowns to that service due to emergencies or breakdowns.

4. Reasons for Selecting the Location of Property Interests Needed for Contracts 3, 4 and 5. The Project's specific location and alignment were determined after years of detailed planning, environmental review, and public outreach. MTA and the Federal Transit Administration ("FTA") fully evaluated alternatives during that process, as set forth in detail in the Final Environmental Impact Statement for the Second Avenue Subway ("FEIS") issued in

April 2004. Proposed locations for stations, station entrances and ancillary facilities also were evaluated and discussed in the FEIS. In July 2004, FTA issued a Record of Decision for the Project, which signifies that the project is eligible for continued federal funding and support. Since that time, MTA has prepared additional environmental and planning studies to evaluate design modifications to the Project, including a Supplemental Environmental Assessment ("EA") issued in June 2009. The EA reviewed alternative locations for certain station entrances for the 72nd and 86th Street Stations and among other things, identified the preferred alternative for a 72nd Street station entrance as the property located at 300 E. 72nd Street, which is proposed herein for full fee acquisition.

5. Displacement and Relocation. Some of the property acquisitions as listed below will require permanent or temporary displacement of commercial or residential occupants. These locations are as follows:

The station entrance at 200 East 63rd Street will require permanent and temporary easements in the ground floor and basement that will permanently displace the tenant in the space currently leased by a women's' clothing store, and possibly the temporary displacement of one or more ATMs in the adjacent bank lobby. MTA requires temporary easements in the entire building, including the upper floor residential spaces, for periodic inspections and possible utility relocations, but those activities are not expected to displace any residents, either permanently or temporarily.

The ancillary facility in the parking garage at 124 East 63rd Street will result in some permanent and temporary displacement of parking and office space within the garage and could result in temporary closures of all or part of the garage operations while work is underway in the easement areas. While parking spaces and activities may be temporarily suspended during the construction phase, permanent relocation of the business is not anticipated.

The privately-owned public plaza at the northwest corner of East 63rd Street and Third Avenue will be closed to the public and used as a staging area during construction of the ancillary facility in the plaza and the new subway entrance located in the adjacent sidewalk on the north side of East 63rd Street. This ancillary structure will permanently displace a portion of a public plaza that is privately owned and a corner of a garage structure. The subsurface temporary easements for the ancillary facility will impact the subsurface garage ramp and private supermarket spaces during construction but are not anticipated to result in any permanent or temporary displacements of uses.

The new subway entrance facility at 300 East 72nd Street will require MTA to demolish the existing 4-story building and therefore require, before that time, the permanent relocation of the 2 ground floor commercial spaces, currently occupied by a pizzeria and a wireless store, and all residential occupants in the 3 apartments upstairs.

At 301 East 69th Street, the permanent and temporary easements required in connection with the new subway entrance at the northeast corner of Second Avenue and East 69th Street will require the permanent displacement of a pizzeria and an Off-Track Betting facility and the temporary displacement of some parking garage space. In addition, the residential condominium at that location will lose some common area in the basement. Although MTA will need periodic access to all areas of the building during construction for inspections and possible utility work, there will be no permanent impact on the residential apartments in the condominium.

In connection with underpinning work at 1322 Second Avenue to support an underground pedestrian passageway for the new subway entrance at the northeast corner of Second Avenue and East 69th Street, MTA also may need to vacate all commercial and residential occupants in the building, as a precautionary measure, for up to 4 separate 4-hour intervals while the subsurface underpinning of the building is performed. MTA will schedule this work, if needed, to minimize disruptions to everyone who must temporarily leave the building during those times

The termination of various sidewalk encroachments, including vaults, cellar doors, and canopies will impact various business and residential uses but are not anticipated to require any business or residence to be displaced.

MTA will provide relocation assistance and financial benefits to all eligible commercial and residential occupants who are displaced by Contracts 3, 4 and 5 in accordance with the federal Uniform Relocation Assistance and Real Property Acquisition Policies Act and applicable federal relocation regulations, which ensure that commercial and residential occupants displaced by a federally funded project are treated fairly and consistently.

6. General Effects of Contract Packages 3, 4 and 5 on the Environment and Residents of the Locality. The environmental impacts of the Project as a whole are thoroughly covered in the FEIS, ROD and EA, all of which have been made available for public review and are incorporated herein by reference. The general environmental impacts of Contract packages 3, 4 and 5 are summarized as follows:

Construction activities will result in unavoidable increases in traffic, truck movements, dust, noise, and vibration in and around the Contract 3, 4 and 5 construction areas. Roadways and sidewalks will be narrowed to facilitate construction, deliveries and removal of spoils and other materials from construction areas. Up to half the width of the Second Avenue roadway will be closed at the construction work zones for the 86th Street Station (approximately between 83rd and 88th Streets) and the 72nd Street Station (approximately between 69th and 74rd Streets). A minimum of four lanes will be maintained on Second Avenue for vehicular traffic adjacent to work zones by prohibiting curbside parking, pick-ups/drop-offs and deliveries, relocating bus stops and narrowing sidewalks to a minimum of 7 feet. A minimum of four lanes will also be maintained on 72nd and 86th Streets, and a minimum of one lane will be maintained on one-way side streets. For the construction of new entrances and ancillary facilities for the existing 63rd Street Station, Third Avenue and 63rd Street will need to be narrowed. A minimum of four lanes will be maintained on Third Avenue and a minimum of one lane will be maintained on 63rd Street.

Certain construction activities could require restricting access to buildings for several hours. In most cases, safe access to buildings, including street-level businesses, will be maintained throughout the construction period, although pedestrian and vehicular access will be altered or restricted by the construction of sidewalk sheds and the removal of parking and travel lanes, and the visibility of some businesses will be reduced. To help minimize potential impacts, MTA will make every reasonable effort to maintain access; control dust, noise and vibration; screen construction activities; control rodents and pests; and minimize other disruptions, where practicable. MTA has developed an Interagency Traffic Management Task Force to implement and monitor traffic mitigation for the Project. The traffic mitigation will be refined as needed to accommodate traveler and community needs while maintaining the safe and efficient construction of the subway in as timely a manner as possible.

Residents and businesses could be adversely affected by the disruptions associated with construction activities, such as reduced pedestrian and vehicular access, removal of parking, and reduction in the visibility of some businesses, particularly retail establishments with outdoor activities on the sidewalk, which may have to be removed when construction is occurring nearby. Though temporary, these disruptions could affect the businesses' revenue streams and could make the areas in the vicinity of construction activities less desirable locations while construction is underway. To help mitigate these impacts, MTA will promote high-quality design of sidewalk sheds, such as the addition of windows, better lighting, and good store signage around construction sites. MTA will coordinate with residents and businesses in each phase to address access/delivery issues; and provide special loading and unloading areas on nearby side streets to locations where access will be curtailed in front of buildings during construction. In those designated side street areas, parking may be prohibited to allow more reliable deliveries and pick-ups. MTA will employ an extensive community outreach program throughout construction to keep the affected neighborhoods informed about construction activities taking place. MTA will use the outreach program to work closely with business organizations, community groups, schools, houses of worship, and other organizations to share information about project-related construction activities.

The FEIS concluded that the Project's construction activities, including truck trips, congestion, and diversions to existing traffic, will not result in significant adverse impacts to air quality. MTA's contractors will be required to follow measures to reduce construction-related air pollution to the maximum extent practicable. These measures include dust covers for trucks, spray misting exposed areas, and using safe chemical dust suppressants to treat and control spoils at construction areas. In addition, a fence of an appropriate height will surround the construction sites to reduce wind-borne dust. To reduce emissions from construction equipment, diesel emission controls for non-road equipment will be required. These controls will require that all heavy equipment use ultra-low sulfur diesel fuel and diesel particulate filters, or other retrofit technology, in accordance with MTA policies. In addition, idling time for all diesel equipment will be limited to 3 consecutive minutes, except in certain limited circumstances.

With respect to noise and vibration, construction activities will result in increased noise and vibration impacts. These impacts were fully evaluated in the FEIS, and measures will be taken to mitigate the noise and vibration levels, including: establishment of performance standards and their inclusion in contract documents that must be met by all contractors; establishment of 24-hour monitoring stations to ensure compliance with the performance standards; requiring contractors to develop noise monitoring and reporting protocols and to obtain certificates of equipment noise compliance from MTA or its designee; and determination on a site-specific basis of maximum permissible vibration levels to ensure that no architectural or structural damage will occur due to construction activities.

With respect to utility relocation impacts, utility services will be maintained throughout construction, except for planned temporary outages. Outages during the day will be limited to a few hours. If utility work requires the complete closure of the roadway and shutting off utility services for several hours, it will occur overnight. Residents and businesses will be notified in advance of these disruptions.

With respect to contaminated materials impacts, there is a potential that during construction, contaminated soil, soil gas, or groundwater could be uncovered, either in locations where research indicated a potential problem or in other unexpected locations. Preventive measures will be undertaken to protect the safety of the public, community residents, and construction workers, as well as subway workers and the larger environment where the preliminary investigation has indicated that construction has the potential to encounter contaminated materials. Work will be coordinated with the New York State Department of Environmental Conservation as appropriate and in accordance with applicable requirements.

In sum, all practical means to avoid or minimize environmental harm from the work covered by Contracts 3, 4 and 5 will be adopted. MTA and NYCT will incorporate into design, construction, and operation all mitigation measures identified in the FEIS and in the Record of Decision as well as any additional measures identified during final design. These measures constitute all practicable mitigation measures and will address Contracts 3, 4 and 5 related impacts to the fullest extent practicable.

ANYONE SEEKING JUDICIAL REVIEW OF THE ABOVE DETERMINATION AND FINDINGS MUST COMMENCE LEGAL ACTION IN ACCORDANCE WITH EDPL § 207 NO LATER THAN 30 DAYS AFTER MTA COMPLETES ITS TWO-DAY PUBLICATION OF THIS DOCUMENT, OR A SYNOPSIS THEREOF.

Acquisition of fee interests and permanent and temporary easements for construction of two new subway stations as well as entrances and ancillary facilities for those stations (Contract 4B and Contract 5A and 5B) and construction of new entrances and ancillary facilities for an existing subway station (Contract 3):

Contract 3

Block	Lot / Condo #	Address & Alternate Addresses	Type of Interest
1397	60	128 E. 63 rd St.	Temporary Easement
1397	61	124 E. 63 rd St. / 124-126 E. 63 rd St.	Permanent Easement Temporary Easement
1398	Former 33 / Condo #345	188 E. 64 th St. / 169-175 E. 63 rd St. / 186-188 E. 64 th St. / 1066-1080 3 rd Ave.	Permanent Easement Temporary Easement
1417	45	200 E. 63 rd St. / 1065-1069 3 rd Ave. / 200-204 E. 63 rd St.	Permanent Easement Temporary Easement

MTA also seeks the termination of all vaults & of all rights to cellar doors, sidewalk cafes, canopies, residential awnings longer than 5', & commercial awnings longer than 8' along:

- (1) North side of E. 63rd St. from the west side of Lexington Ave. to the east side of Park Ave.;
- (2) South side of E. 63rd St. starting at the west side of Lexington Ave. & extending west toward Park Ave. for approx. 216 feet;
- (3) East side of Lexington Ave. starting at the north side of E. 63rd St. & extending north toward E. 64th St. for approx. 116 feet.

Contract 4B

Block	Lot / Condo #	Address & Alternate Addresses	Type of Interest
1419	Former 20 / Condo #197	250 E. 65 th St. / 1225-1239 2 nd Ave. / 248-260 E. 65 th St. / 237-241 E. 64 th St.	Permanent Subsurface Easement Temporary Subsurface Easement
1420	Former 1 / Condo #1951	1241-1259 2 nd Ave. / 1111 3 rd Ave. / 1111-1129 3 rd Ave. / 200 E. 66 th St. / 200-260 E. 66 th St. / 201-257 E. 65 th St.	Permanent Subsurface Easement Temporary Subsurface Easement
1421	21	1261-1281 2 nd Ave. / 222-242 E. 67 th St. / 244-250 E. 67 th St. / 251-265 E. 66 th St.	Temporary Subsurface Easement
1422	21	1283-1297 2 nd Ave. / 231-235 E. 67 th St. / 254-256 E. 68 th St.	Temporary Subsurface Easement

Block	Lot / Condo #	Address & Alternate Addresses	Type of Interest
1428	21	1403 2 nd Ave. / 241 E. 73 rd St.	Temporary Subsurface Easement
1428	22	1405 2 nd Ave.	Temporary Subsurface Easement
1428	23	1407 2 nd Ave.	Temporary Subsurface Easement
1442	1	300 E. 68 th St. / 1278-1292 2 nd Ave. / 301 E. 67 th St. / 302-324 E. 68 th St. / 303-325 E. 67 th St.	Temporary Subsurface Easement
1444	Former 1 / Condo #377	301 E. 69 th St. / 301-307 E. 69 th St. / 1312-1320 2 nd Ave.	Temporary Easement
1444	51	1322 2 nd Ave.	Temporary Easement for temporary vacation of building occupants
1446	51	300 E. 72 nd St. / 1390A 2 nd Ave.	Full Fee Acquisition
1446	Former 149 / Condo #950	308-314 E. 72 nd St.	Termination of any rights that would restrict MTA's use & construction in adjacent Block 1446 Lot 51 (300 E. 72 nd St.)
1446	151	1390 & ½ 2 nd Ave.	Termination of any rights that would restrict MTA's use & construction in adjacent Block 1446 Lot 51 (300 E. 72 nd St.)

MTA also seeks the termination of all vaults & of all rights to cellar doors, sidewalk cafes, canopies, residential awnings longer than 5', & commercial awnings longer than 8' along both sides of E. 69th St. between First Ave. & Second Ave. starting at a point approx. 100 feet east of the east side of Second Ave & extending east toward 1st Ave. for 50 feet (covering the areas in front of Block 1443, Lots 148, 48, 47, & part of 146 & Block 1444, part of former Lot 1, Condo #377).

Contracts 5A & 5B

Block	Lot / Condo #	Address & Alternate Addresses	Type of Interest
1546	1	303 E. 83 rd St. / 1602-1612 2 nd Ave. / 301-303 E. 83 rd St.	Permanent Easement

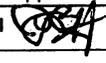
MTA also seeks the termination of all vaults & of all rights to cellar doors, sidewalk cafes, canopies, residential awnings longer than 5', & commercial awnings longer than 8' along both sides of E. 86th St. between Second Ave. & Third Ave. starting at a point approx. 200 feet west of the west side of Second Ave. & extending west towards Third Ave. for 100 feet.

Staff Summary

Subject DISPOSITION OF PROPERTY
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name PETER HINE

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10			

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA New York City Transit ("NYCT")
 PURCHASER: Lexington Avenue Associates LLC ("LAA")
 LOCATION: 166 Smith Street, Cobble Hill, Brooklyn, Block 390 Lot 40
 ACTIVITY: Disposition of Property
 SPACE: 2-Story Wood & Masonry Building on 5,000 sq. ft. corner lot
 COMPENSATION: \$3,500,000, subject to \$500,000 credit
 COMMENTS:

In January of 2000, NYCT acquired for \$2 million the two-story building at the corner of Wyckoff & Smith Streets in Brooklyn, adjacent to its Bergen St. station, as a site for the communication-based-train-control equipment needed to replace an IND switch facility that had been severely damaged by fire. NYCT needed the entire site in order to perform the necessary work, but the NYCT equipment is located exclusively in the basement of the building. Once the new NYCT facility was completed, MTA Real Estate issued a request for proposals to solicit purchase offers for the unused above-grade portion of the property.

The winning proposal was submitted by Lexington Avenue Associates LLC, which offered a purchase price of \$3.5 million. (See the attached 11/17/08 Staff Summary). However, subsequent due diligence by LAA revealed that, unbeknownst to the parties, various utilities serving NYCT's facility, although constructed to NYCT's construction specifications and meeting New York State code, do not meet NY City Building Code requirements, and require modification in order for a developer of the private portion of the building to obtain a NY City certificate of occupancy. The above-grade portion of the property was appraised at \$3,254,400 in 2007, prior to the financial downturn. That appraisal did not take into account the expenditure that a purchaser would have to make to address the building code issues. Moreover, the appraiser has advised MTA that property values in the subject area have declined by approximately 20% since the appraisal was performed.

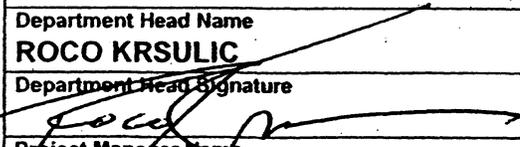
Follow-on negotiations, based on design work undertaken by LAA and reviewed and approved by NYCT, have resulted in a proposed contract of sale that provides for a \$500,000 credit against the purchase price in consideration of the design and construction by LAA (at LAA's cost) of a separate new water service and sanitary sewer connection for the NYCT space, and reconfigured ventilation fans and a new vent extending to the roof of the rehabilitated building that will mitigate noise, vibrations and electromagnetic field interference relating to NYCT's equipment, in compliance with applicable NYC building code requirements.

FINANCE COMMITTEE MEETING**Lexington Avenue Associates LLC (Cont'd)****COMMENTS: (Cont'd)**

In light of the need for this unforeseen work, LAA was unwilling to proceed with the transaction unless provision was made for the work relating to NYCT's space to be performed by NYCT at NYCT's cost or by LAA in consideration of the aforementioned credit. NYCT Capital Program Management has advised that, if it were itself to make the required modifications, it would cost NYCT in excess of \$500,000 for NYCT to complete such work.

Based on the foregoing, MTA Real Estate requests authorization to enter into a contract of sale with LAA on the above-described terms and conditions.

Staff Summary

Subject DISPOSITION OF PROPERTY
Department REAL ESTATE
Department Head Name ROCO KRSULIC
Department Head Signature 
Project Manager Name PETER HINE

Date NOVEMBER 17, 2008
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

**FOR REFERENCE
PURPOSES
ONLY**

Board Action						Internal Approvals			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	CC/PRE Committee	11/17/08	X				Executive Director	2	Civil Rights 
2	Board	11/20/08	X				Chief of Staff	1	Legal 
							Director of B&FM		
							Dep Exec Dir of Admin 		

Narrative

AGENCY: MTA New York City Transit ("NYCT")

PURCHASER: Lexington Avenue Associates LLC

LOCATION: 166 Smith St., Cobble Hill Brooklyn; Block 390 Lot 40

ACTIVITY: Disposition of Property

ACTION REQUESTED: Approval of Terms

SPACE: 2-Story Wood-&-Masonry Building on 5,000 sq.ft. corner lot

COMPENSATION: \$3,500,000.⁰⁰

COMMENTS:

In January 2003 NYCT acquired for \$2 million the two-story building at the corner of Wyckoff & Smith Streets, adjacent to the Bergen St Station, as a site for placement of Computer-Based-Train-Control (CBTC) equipment needed to replace an original IND switch facility severely damaged by fire in late 1999. NYCT needed the entire site in order to perform the necessary work. Once the new facility was completed, and NYCT had no other identified need for the unused portion of the building, it requested that Real Estate dispose of the excess property.

A Request For Proposals (RFP) for disposition of the unused portion of the building – reserving easements for the facility constructed in the basement – was released in Spring 2008. Twelve (12) offers were received. The highest offer of \$5 million from the Beacon Group was almost immediately withdrawn. The next best offer of \$3.55 million was submitted by Metropolitan Properties, but their proposal deposit check was returned for insufficient funds. The next offer with a purchase price of \$3.5 million was submitted by Lexington Avenue Associates LLC.

The other proposers were: Matthew Scherr -\$3.15 Million; Lee Kai Group - \$2.8 Million; Brown Hill Developers - \$2.5 Million; M. Mishal - \$2.3 Million; Smith St. Partners -\$2.15 Million; Old Chelsea LLC - \$1.8 Million; The Kretchmer Companies - \$1.51 Million; Blaufeux, Caquias, Harris & Simon - \$1.1 Million; Yuco Real Estate Co. - \$500,000.

Credit reports for the top three responsible proposers (Lexington Avenue Associates, Mr. Scherr and Lee Kai) were positive and all three appear capable with a verifiable record of development projects similar to this opportunity. All three stated that they had available capital or access to credit sufficient to close the proposed transaction and complete the project despite recent financial upheavals. Lexington Associates, the top responsible proposer, advised that they are prepared to enter into a non-contingent all-cash transaction.

**CAPITAL CONSTRUCTION/PLANNING/REAL ESTATE COMMITTEE MEETING
Lexington Avenue Associates LLC (Cont'd)**

COMMENTS: (Cont'd)

The disposition will be subject to satisfactory completion of any necessary environmental reviews. Given their superior offer and ample experience, the Real Estate Department recommends disposing of the subject property to Lexington Avenue Associate pursuant to the above terms and conditions.

**FOR REFERENCE
PURPOSES
ONLY**

Staff Summary

Subject LEASE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature
Project Manager Name NANCY MARSHALL

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA Metro-North Railroad ("Metro-North")

LESSEE: Central Station Groceries Corp. d/b/a Frankie's Dogs on the Go ("Frankie's Dogs")

LOCATION: Retail Space K-03 and Storage Space LCS-8

ACTIVITY: The retail sale of beef hot dogs, chicken sausages, a variety of toppings and side dishes and cold beverages including NY egg creams

ACTION REQUESTED: Approval of terms

TERM: Ten years

SPACE: Approximately 192 sq. ft. of retail space and approximately 164 sq. ft. of storage space

COMPENSATION: Annual Base Rent plus 10% of gross sales over Breakpoint, as follows:

Year	Annual Base Rent	PSF	Breakpoint
1	\$67,104.00	\$349.50	\$671,040.00
2	\$69,117.12	\$359.99	\$691,171.00
3	\$71,190.63	\$370.78	\$711,906.34
4	\$73,326.35	\$381.91	\$733,263.53
5	\$75,526.14	\$393.37	\$755,261.43
6	\$77,791.93	\$405.17	\$777,919.27
7	\$80,125.69	\$417.32	\$801,256.85
8	\$82,529.46	\$429.84	\$825,294.56
9	\$85,005.34	\$442.74	\$850,053.40
10	\$87,555.50	\$456.02	\$875,555.00

STORAGE RENT: \$75.00 per sq. ft. per year increasing annually by 3%

MARKETING: \$10.00 per sq. ft. per year increasing annually by 3%

TRASH: \$12.00 per sq. ft. per year increasing annually by 5%

COMMON AREA MAINTENANCE: Estimated at \$86.00 per sq. ft.

SECURITY: Three months minimum rent

INSURANCE: Standard

CONSTRUCTION PERIOD: Sixty days

Staff Summary

FINANCE COMMITTEE MEETING

Central Station Groceries Corp. d/b/a Frankie's Dogs on the Go (Cont'd)

COMMENTS: (Cont'd)

In response to a recent MTA Request for Proposals ("RFP") for Retail Space K-03 at Grand Central Terminal, five proposals were received. The proposals were received from Frankie's Dogs, KI Pizzacone, Belgo Waffle Inc. d/b/a Waffles & Dinges, Sigmund Pretzel Shop Inc. and Grand Central Pretzel Inc. d/b/a New York Pretzel.

The RFP established mandatory, preferred, disfavored and prohibited uses as set forth on the attached schedule of permitted uses. Per the Guidelines for Selection of Tenants for Grand Central Terminal approved by the MTA Board in November 2009, Williams Jackson Ewing and Jones Lang LaSalle undertook independent technical evaluations of the proposals, and the proposals were then evaluated by the Director of GCT Development taking into account such technical evaluations. The Guidelines set forth two selection criteria. Selection Criterion A, which accounts for 70% of the score, is the evaluator's determination of the direct economic benefit of a proposal to the MTA; and Selection Criterion B, which accounts for 30% of the score, is the evaluator's determination of the proposal's indirect economic benefit to the MTA.

The proposals were scored as follows:

Scoring	A	B	C	D	E	F	G	H	I	J
	Unadjusted Guaranteed Rent Amount*	Guaranteed Rent Adjustment Factor**	Adjusted Guaranteed Rent Amount (AxB)	Unadjusted Percentage Rent Amount	Percentage Rent Adjustment Factor***	Adjusted Percentage Rent Amount (D*E)	Adjusted Total Rent Amount (C+F)	Selection Criterion A**** (0-70)	Selection Criterion B Score (0-30)	Total Selection Criteria Score (H+I)
Frankie's Dogs	\$558,225	1	\$558,225	94,707	0.00	\$0.00	\$558,225	70.0	18	88.0
Pizza Cone	\$549,041	1	\$549,041	491,953	0.00	\$0.00	\$549,041	68.8	10	78.8
Waffles & Dinges	\$526,799	1	\$526,799	95	0.00	\$0.00	\$526,799	66.1	15	81.1
Sigmund Pretzel	\$493,763	1	\$493,763	0	0.00	\$0.00	\$493,763	61.9	18	79.9
NY Pretzel	\$343,151	1	\$343,151	27,917	0.13	\$3,560.00	\$346,711	43.5	10	53.5

*Present value, calculated using 6% discount rate

**Guaranteed Rent Adjustment Factor: generally, ranges from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0 per guidelines

***Percentage Rent Adjust Factor: ranges from 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)

As indicated in the above chart, the Unadjusted Guaranteed Rent Amount (i.e. the present value of the proposed guaranteed minimum rent, determined using a discount rate of 6%) and the Total Selection Criteria Score for Frankie's Dogs were both higher than the Unadjusted Guaranteed Rent Amount and the Total Selection Criteria Scores for each of the other proposers; consequently a selection committee was not convened. The rent proposed by Frankie's Dogs exceeds the estimated fair market rental value of the subject space, as it was determined by Williams Jackson Ewing prior to the issuance of the RFP.

Frankie's Dogs is a grab-and-go concept that will feature beef hot dogs and chicken sausages with various toppings. The tenant will also sell cold beverages and NY egg creams. The principal of Frankie's Dogs has operated other businesses in the Terminal for a number of years. The operation of Frankie's Dogs in this space is expected to complement other tenants in the Dining Concourse.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease with Frankie's Dogs on the above-described terms and conditions.

Staff Summary

FINANCE COMMITTEE MEETING

Central Station Groceries Corp. d/b/a Frankie's Dogs on the Go (Cont'd)

Permitted Uses – Retail Space K-3

Mandatory:

Retail operation of a locally-based food vendor selling a high-quality tenant-produced single category hand-held snack food product that will complement the quality and unique nature of the Dining Concourse at Grand Central Terminal

Preferred:

A snack item such as pretzels, waffles, empanadas, bulk nuts or candy, cookies, hot dogs, doughnuts, or crepes

Also Permitted:

The incidental sale of beverages, including bottled or canned soft and fruit drinks, and bottled water

Disfavored:

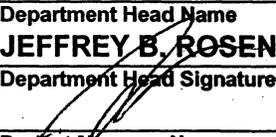
A tenant that proposes, concurrently during the term of the subject lease, to sell similar products using the same brand name at both the subject location and another location in the Terminal

Prohibited:

National chains

Ice cream, frozen yogurt or related dessert items, coffee or hot beverages, fruit or dairy based smoothies, popcorn, factory packaged snack food items or alcoholic beverages

Staff Summary

Subject LEASE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name NANCY MARSHALL

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA Metro-North Railroad ("Metro-North")

LESSEE: Tri Tip City LLC d/b/a Tri Tip Grill ("Tri Tip Grill")

LOCATION: Retail Space LC-25 and Storage Space LCS-1M

ACTIVITY: The retail sale of grilled steak and chicken sandwiches, salads, and breakfast menu items

ACTION REQUESTED: Approval of terms

TERM: Ten years

SPACE: Approximately 406 sq. ft. of retail space and approximately 120 sq. ft. of storage space

COMPENSATION: Annual Base Rent plus 8% of gross sales over Breakpoint, as follows:

Year	Annual Base Rent	PSF	Breakpoint
1	\$175,000.00	\$431.03	\$2,187,500.00
2	\$180,250.00	\$443.97	\$2,253,125.00
3	\$185,657.50	\$457.28	\$2,320,719.00
4	\$191,227.23	\$471.00	\$2,390,340.00
5	\$196,964.04	\$485.13	\$2,462,051.00
6	\$202,872.96	\$499.69	\$2,535,912.00
7	\$208,959.15	\$514.68	\$2,611,989.00
8	\$215,227.93	\$530.12	\$2,690,349.00
9	\$221,684.76	\$546.02	\$2,771,060.00
10	\$228,335.31	\$562.40	\$2,854,191.00

STORAGE RENT: \$75.00 per sq. ft. per year increasing annually by 3%

MARKETING: \$10.00 per sq. ft. per year increasing annually by 3%

TRASH: \$12.00 per sq. ft. per year increasing annually by 5%

COMMON AREA MAINTENANCE: Estimated at \$86.00 per sq. ft. per year

SECURITY: Three months minimum rent

INSURANCE: Standard

CONSTRUCTION PERIOD: Sixty days

Staff Summary

FINANCE COMMITTEE MEETING

Tri Tip City LLC d/b/a Tri Tip Grill (Cont'd)

COMMENTS: (Cont'd)

In response to a recent MTA Request for Proposals ("RFP") for Retail Space LC-25, Grand Central Terminal, four proposals were received. Proposals were received from Tri Tip Grill, Central Station Groceries Corp. d/b/a Central Market Grill, LQQM U.S. Company Inc. d/b/a Kung Fu Bing and Prime Time Cappuccino.

The RFP established mandatory, preferred, disfavored and prohibited uses as set forth on the attached schedule of permitted uses. Per the Guidelines for Selection of Tenants for Grand Central Terminal approved by the MTA Board in November 2009, Williams Jackson Ewing and Jones Lang LaSalle undertook independent technical evaluations of the proposals, and the proposals were then evaluated by the Director of GCT Development taking into account such technical evaluations. The Guidelines set forth two selection criteria. Selection Criterion A, which accounts for 70% of the score, is the evaluator's determination of the direct economic value of a proposal; and Selection Criterion B, which accounts for 30% of the score, is the evaluator's determination of the proposal's indirect benefit to the MTA.

The proposals were scored as follows:

Scoring	A	B	C	D	E	F	G	H	I	J
	Unadjusted Guaranteed Rent Amount*	Guaranteed Rent Adjustment Factor**	Adjusted Guaranteed Rent Amount (AxB)	Unadjusted Percentage Rent Amount	Percentage Rent Adjustment Factor***	Adjusted Percentage Rent Amount (D*E)	Adjusted Total Rent Amount (C+F)	Selection Criterion A**** (0-70)	Selection Criterion B Score (0-30)	Total Selection Criteria Score (H+I)
Tri Tip Grill	\$1,455,791	1	\$1,455,791	\$135,843.27	0	\$0.00	\$1,455,791	70.0	19	89.0
Central Market Grill	\$1,380,963	1	\$1,380,963	\$406,912.22	0	\$0.00	\$1,380,963	66.4	17	83.4
Kung Fu Bing	\$1,114,554	1	\$1,114,554	\$849.06	0.5	\$424.53	\$1,114,979	53.6	11	64.6
Prime Time Cappuccino	\$1,081,446	1	\$1,081,446	\$0.00	0	\$0.00	\$1,081,446	52.0	10	62.0

*Present value, calculated using 6% discount rate

**Guaranteed Rent Adjustment Factor: generally, ranges from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0 per guidelines

***Percentage Rent Adjust Factor: ranges from 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)

As indicated in the above chart, the Unadjusted Guaranteed Rent Amount (i.e. the present value of the proposed guaranteed minimum rent, determined using a discount rate of 6%) and the Total Selection Criteria Score for Tri Tip Grill were both higher than the Unadjusted Guaranteed Rent Amount and the Total Selection Criteria Scores for each of the other proposers; consequently a selection committee was not convened. The rent proposed by Tri Tip Grill exceeds the estimated fair market rental value of the subject space, as it was determined by Williams Jackson Ewing prior to the issuance of the RFP.

Tri Tip Grill is a high-quality steak concept featuring sandwiches made from the tri tip cut of the sirloin, an exceptionally tender, flavorful, and lean cut that is popular on the West coast. The Tri Tip Grill concept, a spinoff of the Buckhorn Restaurant Group, was pioneered by Dave Kassling, who currently operates a Tri Tip Grill location at Rockefeller Center. The Rockefeller Center build-out is of the highest quality and will be replicated in the GCT space. This unique concept is expected to generate excitement and bring variety to the Terminal's food court, to create a new customer base and to complement other tenants in the Dining Concourse.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease with Tri Tip Grill on the above-described terms and conditions.

FINANCE COMMITTEE MEETING
Tri Tip City LLC d/b/a Tri Tip Grill (Cont'd)

Permitted Uses – Retail Space LC-25

Mandatory:

Retail sale of high-quality fresh and grilled sandwiches that will complement the quality and unique nature of the Dining Concourse at Grand Central Terminal

Preferred:

New York City based operator

Inclusion of breakfast menu

On-premises preparation and cooking of menu items

Also Permitted:

Incidental sale of muffins, cookies, fresh fruit, pre-packaged single-serve breakfast cereals and potato chips, freshly prepared yogurt and fruit parfaits, all of which consuming no more than 15% of the display space within the premises

Salads (both pre-made and made-to-order)

Soups (no more than 3 varieties per day)

Hot and iced coffee and tea, hot chocolate, soda, water, juice, domestic and imported beer and wine

Disfavored:

A tenant that proposes, concurrently during the term of the subject lease, to sell similar products using the same brand name at both the subject location and another location in the Terminal

Prohibited:

National chains

Hamburgers, hot dogs, pizza, popcorn, ice cream, pretzels, and commercially packaged products except for single-serve cereals and potato chips as described above

Staff Summary

Subject LEASE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature
Project Manager Name NANCY MARSHALL

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal <i>SOA</i>
3	Chief of Staff <i>Al</i>		
2	Dep Exec Dir of Admin <i>NH</i>		
	Civil Rights		

Narrative

AGENCY: MTA Metro-North Railroad ("Metro-North")

LESSEE: Golden Krust Franchising Inc. d/b/a Golden Krust ("Golden Krust")

LOCATION: Retail Space K-05 and Storage Space LCS-13

ACTIVITY: The retail sale of Jamaican-style patties, lunch and dinner entrées, Caribbean-inspired dessert items and cold beverages

ACTION REQUESTED: Approval of terms

TERM: Ten years

SPACE: Approximately 192 sq. ft. of retail space and approximately 131 sq. ft. of storage space

COMPENSATION: Annual Base Rent plus 10% of gross sales over Breakpoint, as follows:

Year	Annual Base Rent	PSF	Breakpoint
1	\$75,000.00	\$390.63	\$509,757.00
2	\$77,250.00	\$402.34	\$525,522.00
3	\$79,567.56	\$414.41	\$541,775.00
4	\$81,954.60	\$426.85	\$558,531.00
5	\$84,413.28	\$439.65	\$575,806.00
6	\$86,945.64	\$452.84	\$593,614.00
7	\$89,553.96	\$466.43	\$611,973.00
8	\$92,240.52	\$480.42	\$630,900.00
9	\$95,007.72	\$494.83	\$650,413.00
10	\$97,857.96	\$509.68	\$670,529.00

STORAGE RENT: \$75.00 per sq. ft. per year increasing annually by 3%

MARKETING: \$10.00 per sq. ft. per year increasing annually by 3%

TRASH: \$12.00 per sq. ft. per year increasing annually by 5%

COMMON AREA MAINTENANCE: Estimated at \$86.00 per sq. ft. per year

SECURITY: Three months minimum rent

INSURANCE: Standard

CONSTRUCTION PERIOD: Sixty days

Staff Summary

FINANCE COMMITTEE MEETING

GOLDEN KRUST FRANCHISING INC. D/B/A GOLDEN KRUST (Cont'd)

COMMENTS: (Cont'd)

In response to a recent MTA request for proposals ("RFP") for Retail Space K-05 at Grand Central Terminal, three proposals were received. The proposals were received from Golden Krust, Rickshaw Enterprises LLC d/b/a Rickshaw Dumpling Bar and Crepini LLC d/b/a Crepini.

The RFP established mandatory, preferred, disfavored and prohibited uses as set forth on the attached schedule of permitted uses. Per the Guidelines for Selection of Tenants for Grand Central Terminal approved by the MTA Board in November 2009, Williams Jackson Ewing and Jones Lang LaSalle undertook independent technical evaluations of the proposals, and the proposals were then evaluated by the Director of GCT Development taking into account such technical evaluations. The Guidelines set forth two selection criteria. Selection Criterion A, which accounts for 70% of the score, is the evaluator's determination of the direct economic benefit of a proposal to the MTA; and Selection Criterion B, which accounts for 30% of the score, is the evaluator's determination of the proposal's indirect economic benefit to the MTA.

The proposals were scored as follows:

Scoring	A	B	C	D	E	F	G	H	I	J
	Unadjusted Guaranteed Rent Amount*	Guaranteed Rent Adjustment Factor**	Adjusted Guaranteed Rent Amount (AxB)	Unadjusted Percentage Rent Amount	Percentage Rent Adjustment Factor***	Adjusted Percentage Rent Amount (D*E)	Adjusted Total Rent Amount (C+F)	Selection Criterion A**** (0-70)	Selection Criterion B Score (0-30)	Total Selection Criteria Score (H+I)
Golden Krust	\$623,911	1	\$623,911	\$53,610	0	\$0.00	\$623,911	70.0	15	85.0
Rickshaw Dumplings	\$499,128	1	\$499,128	\$17,266	0	\$0.00	\$499,128	56.0	25	81.0
Crepini	\$439,233	1	\$439,233	\$2,279	0	\$0.00	\$439,233	49.3	10	59.3

*Present value, calculated using 6% discount rate

**Guaranteed Rent Adjustment Factor: generally, ranges from 1.00 (no uncertainty about A) to as low as 0.50 (great uncertainty about A); however may be as low as 0 per guidelines

***Percentage Rent Adjust Factor: ranges from 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)

As indicated in the above chart, the Unadjusted Guaranteed Rent Amount (i.e. the present value of the proposed guaranteed minimum rent, determined using a discount rate of 6%) and the Total Selection Criteria Score for Golden Krust were both higher than the Unadjusted Guaranteed Rent Amount and the Total Selection Criteria Scores for each of the other proposers; consequently a selection committee was not convened. The rent proposed by Golden Krust exceeds the estimated fair market rental value of the subject space, as it was determined by Williams Jackson Ewing prior to the issuance of the RFP.

Golden Krust is the incumbent tenant, having operated in this space for the past ten years. Golden Krust offers a variety of Jamaican-style patties, lunch and dinner entrées, an array of Caribbean-inspired dessert items, and cold beverages. Although Golden Krust has recently franchised operations in other states on the Eastern Seaboard, the Real Estate Department has determined that Golden Krust should not be classified as "national chain", within meaning of the RFP, given its modest New York origins, it's 10-years-long association with the Grand Central Dining Concourse (the location of one of its first outlets) and its still-limited footprint. Golden Krust has created a customer base at the Terminal and its operation in this space will continue to complement other tenants in the Dining Concourse.

Based on the foregoing, MTA Real Estate requests authorization to enter into a lease with Golden Krust on the above-described terms and conditions.

FINANCE COMMITTEE MEETING**GOLDEN KRUST FRANCHISING INC. D/B/A GOLDEN KRUST (Cont'd)****Permitted Uses – Retail Space K-5****Mandatory:**

Retail operation of a locally-based food vendor selling high-quality tenant-produced menu items that will complement the quality and unique nature of the Dining Concourse at Grand Central Terminal

Preferred:

Ethnic foods such as Jamaican stews and meat patties; Vietnamese banh mi sandwiches or noodles; Cuban sandwiches; Spanish bocadillos and paellas; Chinese pork buns; a variety of Chili; Mexican tacos, papusas, empanadas, or quesadillas

Also Permitted:

The incidental sale of beverages, including bottled or canned soft and fruit drinks, and bottled water

Disfavored:

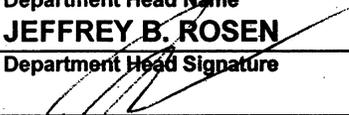
A tenant that proposes, concurrently during the term of the subject lease, to sell similar products using the same brand name at both the subject location and another location in the Terminal

Prohibited:

National chains

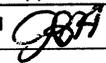
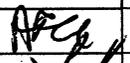
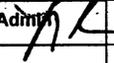
Ice cream, frozen yogurt or related dessert items, coffee or hot beverages, fruit or dairy based smoothies, popcorn, factory packaged snack food items or alcoholic beverages

Staff Summary

Subject MODIFICATION OF LICENSE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name BENSON GOODWYN

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA Metro-North Railroad ("Metro-North")
 LICENSEE: CPG Partners, L.P. ("CPG")
 LOCATION: Harriman Station Parking Facility
 ACTIVITY: Supplementary parking for employees' passenger vehicles during holiday shopping events
 ACTION REQUESTED: Approval of terms
 SPACE: Up to 500 parking spaces per event
 COMPENSATION: Calendar year daily rate as per original agreement
 COMMENTS:

Pursuant to the attached staff summary, in May 2007 Metro-North entered into a five-year license agreement (terminable by Metro-North on 60 days' notice) to allow Woodbury Common Premium Outlet Mall employees to park in otherwise unused portions of the Harriman Station Parking Facility on certain holiday weekends. Recently, CPG has requested that this arrangement be extended to additional holiday weekends not contemplated by the existing agreement.

In order to provide the flexibility necessary to effectuate future requests for holiday weekend employee parking and to reduce MTA Real Estate staff time associated with preparing the additional individual one-time agreements that would otherwise be required, MTA Real Estate proposes to amend the agreement with CPG to allow use on the weekends of Christmas, the 4th of July, and other holidays, subject to the terms in the attached staff summary and to Metro-North prior approval. Any additional holiday weekend employee parking will increase revenue by \$1,160 per day based on the current rate and use of 500 spaces.

Based on the foregoing, MTA Real Estate requests authorization to modify the license agreement with CPG with the above-described terms and conditions.

Staff Summary

Subject
LICENSE AGREEMENT

Department
REAL ESTATE

Department Head Name
ROCO KRSULIC

Department Head Signature
[Signature]

Project Manager Name
STEPHAN J. RUSSO

Date
MARCH 26, 2007

Vendor Name

Contract Number

Contract Manager Name

Table of Contents Ref #

**FOR REFERENCE
PURPOSES
ONLY**

Board Action						Internal Approvals			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	CC/PRE Committee	03/26/07	X				Executive Director	2	Civil Rights <i>[Signature]</i>
2	Board	03/28/07	X				Chief of Staff	1	Legal <i>[Signature]</i>
							Director of B&FM		
						3	Dep Exec Dir of Adm. <i>[Signature]</i>		

Narrative

AGENCY: MTA Metro-North Railroad ("Metro-North")

LICENSEE: CPG Partners, L.P.

LOCATION: Harriman Station Parking Facility

ACTIVITY: Supplementary parking for employees' passenger vehicles during four annual holiday shopping events (individually, the "Event")

ACTION REQUESTED: Approval of Terms

TERM: Five (5) years

SPACE: 500 parking spaces per each Event, on Columbus Day only. The number of parking spaces is reduced to 235.

LOCATION: Northwest portion of the Parking Facility

COMMENTS:

CPG Partners, L.P. ("CPG") owns and operates the Woodbury Common Premium Outlet Mall in Central Valley, New York. During the four major annual shopping holiday events (Memorial Day Weekend, Labor Day Weekend, Columbus Day Weekend, and Thanksgiving Weekend) the retail stores utilize extra seasonal employees. CPG and the Real Estate Department ("RED") have been entering into short-term (three-day) permit agreements, to permit parking at the Harriman Station Parking Facility, under a Board policy approved September 27, 2005, which allows the RED to enter directly into short-term parking facilities agreements with commercial or business entities. RED now seeks to enter into a longer term license agreement to reduce staff time and paperwork associated with preparing four individual agreements per year.

Due to typically reaching parking capacity at its outlet mall during the aforementioned holiday events, CPG requires off-site supplementary parking for store employees. CPG will provide employee security within the Licensed Location and shuttle service between the Harriman Station Parking Facility and the mall. It should be noted that commuter usage of the Harriman Parking Facility is low during these three-day holiday weekends and as a result the use by CPG employees during the Event will not impact Metro-North Commuters.

**CAPITAL CONSTRUCTION/PLANNING/REAL ESTATE COMMITTEE MEETING
License Agreement with CPG Partners, L.P. (Cont'd)**

COMMENTS: (Cont'd)

Compensation was initially established at \$2.00 per parking space per day in the September 27, 2005 staff summary. This has been inflated annually by 3% and under the terms of the agreement, the annual daily compensation per space will increase by 3% per annum.

Based on the above, Real Estate recommends entering into a license with CPG Partners, L.P. pursuant to the terms and conditions outlined above.

**FOR REFERENCE
PURPOSES
ONLY**

Staff Summary

Subject LICENSE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name JOHN COYNE

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA Long Island Rail Road ("LIRR")

LICENSOR: Consolidated Edison, Inc. ("Con Ed")

LOCATION: Approximately 300 sq. ft. on Block 183, Lots 160, Queens, New York

ACTIVITY: Installation of power conduit

ACTION REQUESTED: Approval of terms

TERM: Ten years

SPACE:

COMPENSATION:

Year	Annual	Monthly	% Increase
1	\$1,000.00	\$83.33	
2	\$1,050.00	\$87.50	5.00%
3	\$1,102.50	\$91.88	5.00%
4	\$1,157.63	\$96.47	5.00%
5	\$1,215.51	\$101.29	5.00%
6	\$1,276.28	\$106.36	5.00%
7	\$1,340.10	\$111.67	5.00%
8	\$1,407.10	\$117.26	5.00%
9	\$1,477.46	\$123.12	5.00%
10	\$1,551.33	\$129.28	5.00%

COMMENTS:

In order to ensure that there is sufficient electrical power available to meet the increased demand created by tunnel boring operations associated with the MTA East Side Access project, Con Edison is adding electrical capacity in the Long Island City area. To install the additional conduit needed to provide this increase in capacity, Con Edison must access and occupy an approximately 300 square foot portion of the subject property, which is owned by the LIRR.

Staff Summary

FINANCE COMMITTEE MEETING Consolidated Edison, Inc (Cont'd)

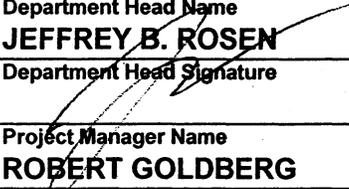
COMMENTS: (Cont'd)

The license area, which is a narrow strip located at the southern perimeter of the subject property, is currently used as an un-mapped roadway and maintained by the New York City Department of Transportation. Any additional maintenance related to Con Edison's use will be the responsibility of Con Ed, and Con Ed will provide LIRR with customary indemnifications. The improvements to be made by Con Edison will not impede the continued current use of the property.

The license agreement will contain a purchase option allowing Con Ed to purchase a permanent non-exclusive easement for the maintenance of its improvements, for \$9,043.00, to be exercised following, and subject to, the making of any required SEQRA findings and MTA's determination that such a disposition would be consistent with New York Public Authorities Law §2897.

Based on the foregoing, MTA Real Estate requests authorization to enter into an agreement with Con Ed on the above-described terms and conditions.

Staff Summary

Subject LICENSE AGREEMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name ROBERT GOLDBERG

Date JUNE 21, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
	Executive Director	1	Legal 
3	Chief of Staff 		
2	Dep Exec Dir of Admin 		
	Civil Rights		

Narrative

AGENCY: MTA Long Island Rail Road ("LIRR")

LICENSEE: Village of Island Park (the "Village")

LOCATION: LIRR's Island Park Station, Island Park, New York

ACTIVITY: Commuter parking

ACTION REQUESTED: Approval of terms

TERM: Ten years

SPACE: Approximately 159,626 sq. ft.

COMPENSATION: One dollar, payment waived

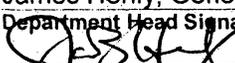
COMMENTS:

The Village of Island Park manages the commuter parking facility at the Island Park Station under two separate parking agreements. As part of a capital project to construct a new substation and demolish an old substation, the commuter parking area is being expanded and reconfigured to add 45 spaces, increasing the total spaces to 564.

Prior to the construction of the substation, 50 parking spaces were added, to replace 30 that are being eliminated to accommodate the new substation. Upon the demolition of the old substation, 25 spaces will be added. For the 50 spaces that were added prior to construction, the Village currently charges a nominal parking fee of \$.25 per three hours, or \$1.00 per twelve hours, which helps support its expense of maintaining the entire parking area. The Village will not change its fee structure without the approval of the LIRR.

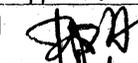
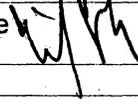
To reflect the increase in parking spaces, the Village and the LIRR have agreed to enter into a new parking agreement that will replace the two existing agreements and incorporate current conditions. The Village will be responsible for the operation and maintenance of the entire commuter parking facility at its sole cost and expense.

Based on the foregoing, MTA Real Estate requests authorization to enter into a license agreement with the Village of Island Park on the above-described terms and conditions. Prior to final execution of the license agreement, it will be confirmed that LIRR's proposed construction and demolition work will not require additional environmental review.

Subject MTA Federal Substance Abuse Policy
Department Legal Department
Department Head Name James Henly, General Counsel
Department Head Signature 
Project Manager Name Rhonda Moll, Special Employment Counsel

Date June 23, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Safety and Security	June 21, 2010			
2	Board	June 23, 2010			

Internal Approvals			
Order	Approval	Order	Approval
1	Legal 		
2	Police 		

PURPOSE:

To obtain MTA Board approval of the revised MTA Federal Substance Abuse Policy (the "Policy"). This Policy covers safety-sensitive employees of MTA, specifically employees of the MTA Police Department who carry a firearm for security purposes. The Policy subjects these employees to alcohol and drug testing under certain specified circumstances.

DISCUSSION:

The Federal Transit Administration ("FTA") drug and alcohol regulations require each covered employer to develop and disseminate a Policy describing its anti-drug and alcohol misuse program, consistent with 49 C.F.R. Part 655. These regulations also require that the local governing board of the employer adopt the Policy. The MTA established and distributed the Policy in January of 2003 and again, with minor revisions, in June of 2004 and in September, 2007. The FTA reviewed the Policy during its April 2010 Triennial Review of MTA Headquarters. As part of the Triennial Review, the FTA requested that MTA revise the Policy to include all required "refusals to test" as modified by the US Department of Transportation regulation in August, 2009. The MTA has amended the Policy to incorporate the FTA's requested changes. Once approved, the Policy will be provided to all employees covered by it.

HISTORICAL INFORMATION:

The MTA Board has previously approved revisions to this Policy in June of 2004 and September of 2007.

IMPACT ON FUNDING:

The revisions to the Policy will have no impact on funding.

ALTERNATIVES:

Do not approve the Policy. This alternative is not recommended because it may result in the FTA finding that MTA has failed to comply with federal regulations.

RECOMMENDATION:

It is recommended that the Board approve the attached Policy entitled "The MTA Federal Substance Abuse Policy."

METROPOLITAN TRANSPORTATION AUTHORITY

BOARD RESOLUTION

WHEREAS, the Federal Transit Administration (“FTA”) drug and alcohol regulations require each employer subject to the regulations to develop and disseminate a policy statement describing its anti-drug and alcohol misuse program consistent with 49 C.F.R. Part 655; and

WHEREAS, the FTA regulations also require that the local governing board of the employer adopt the policy statement; and

WHEREAS, the Metropolitan Transportation Authority (“MTA”) prepared its Federal Substance Abuse Policy (the “MTA Federal Substance Abuse Policy”), which includes the requirements of the FTA regulations; and

WHEREAS, the Metropolitan Transportation Authority adopted the MTA Federal Substance Abuse Policy in 2003 and approved revisions to the policy in June 2004 and September 26, 2007; and

WHEREAS, the MTA Federal Substance Abuse Policy was reviewed by the FTA in the course of an FTA Triennial Review of MTA Headquarters conducted in April 2010 and as part of such Triennial Review, the FTA requested certain modifications to the MTA Federal Substance Abuse Policy based upon August 2009 revisions to the “refusals to test” section of the applicable regulation, and the MTA Federal Substance Abuse Policy was revised in accordance with the FTA’s Triennial Review findings; and

WHEREAS, the FTA notified MTA that the revised policy is responsive to the FTA audit findings; and

WHEREAS, such audit findings required that the policy be adopted by the Board by August 19, 2010.

NOW, THEREFORE, BE IT RESOLVED, effective immediately, that the Board hereby approves the MTA Federal Substance Abuse Policy in the form attached to this Resolution.

**THE
METROPOLITAN
TRANSPORTATION
AUTHORITY**

**FEDERAL SUBSTANCE
ABUSE POLICY**

Approved: June 23, 2010
Effective: June 23, 2010

Supersedes version dated September 26, 2007

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I. POLICY STATEMENT

As discussed in more detail in this Policy, the Metropolitan Transportation Authority ("MTA") is fully committed to operating and maintaining an alcohol and drug-free workplace to provide a safe environment for employees of the MTA who, as part of their job duties, carry a firearm for security purposes ("Members") and other employees of the MTA and the customers they serve.

The purpose of this Policy is to explain the responsibilities of all Members to maintain a drug- and alcohol-free workplace and to comply with applicable laws and MTA rules, as they may be amended. This Policy also describes the resources available to Members with drug and/or alcohol problems and explains the MTA's commitment to encourage voluntary treatment before a Member's substance use compromises his or her or other's safety or jeopardizes the Member's continued employment with the MTA. This Policy also explains the circumstances and the manner in which the MTA may conduct drug and/or alcohol testing of Members in compliance with applicable laws and MTA rules. The MTA will follow the procedures set forth in 49 CFR Parts 40 and 655, unless otherwise stated herein.

The highlights of this Policy are set forth below.

A. Designated Employer Representative

The MTA has designated the responsibility for answering questions about this Policy to Assistant Deputy Chief John D'Agostino, MTA Police Department, Commanding Officer - Support Services Division, 347 Madison Avenue, 3rd Floor, New York, NY 10017. Such questions should be made in writing at the above address.

B. Covered Employees and Prohibited Conduct

This Policy applies to all employees of the MTA who, as part of their job duties, carry a firearm for security purposes ("Members"). A list of those job titles that are covered for purposes of this Policy is attached as Exhibit A.

As discussed more fully in this Policy, the following conduct is prohibited:

1. Reporting to work if under the influence of drugs or alcohol.
2. Using, manufacturing, distributing, selling, dispensing, possessing or using any controlled substances at any time, whether on or off duty, unless medically authorized in the manner set forth in the Policy. Under MTA Authority, a member may, however, possess controlled substances if required in the course of his or her duties.

3. Reporting to work if the Member has consumed alcohol within four hours of his or her duty time. If a Member is on-call, the Member may not consume alcohol during his or her specified on-call hours.
4. Possessing or consuming alcohol in the work place and consuming alcohol during work hours, including meal and break periods, unless such use is required in the course of his or her official duties, consistent with Police Department procedures.
5. Refusing to cooperate or intentionally interfering with the MTA's efforts to enforce this Policy, including but not limited to refusing to submit to a drug and/or alcohol test, leaving the scene of an accident prior to the administration of a drug and/or alcohol test required by the Policy or federal regulations, or tampering with the integrity of a breath or urine sample in connection with such tests or disclosing to an unauthorized person information relating to random drug and/or alcohol testing. A Member's inability to provide sufficient breath to complete an alcohol breath test or sufficient urine to complete a drug test, without an acceptable medical explanation for such inability, also constitutes a refusal.
6. Consuming alcohol for eight hours or until the employee undergoes a post-accident alcohol test following an accident, where the employee is required to take a post-accident alcohol test under this Policy.

C. How and When Testing May Occur

The MTA will perform drug and alcohol testing of Members consistent with the procedures in 49 C.F.R. Part 40 -- "Procedures for Transportation Workplace Drug and Alcohol Testing Programs." Such testing procedures provide for, among other things, urine testing for the presence of narcotics, depressants, stimulants, hallucinogens and cannabis; the use of nationally-certified drug testing laboratories for urine screening; specific training requirements for the collectors of both urine and breath samples; the use of split samples in urine collections; the use of specific chain of custody methods for urine collections; the use of confirmatory tests for both urine and breath samples; and confirmation of a positive drug test result by a certified Medical Review Officer.

A covered employee may be randomly tested while on duty anytime for prohibited use of the five Controlled Substances defined in Section IV of this Policy: Cocaine, phencyclidine ("PCP"), amphetamines, marijuana, and opiates.

Drug and/or alcohol testing will be conducted (1) pre-employment, including after an absence from work of 90 consecutive days or more, (2) where there is reasonable suspicion, (3) randomly, (4) post-accident, (5)

upon return to duty after a positive test, and (6) as a follow-up after return to duty. Members, by accepting or continuing employment, are deemed to have consented to drug and alcohol testing pursuant to this Policy and must submit to testing under federal law.

D. Consequences for Engaging in Prohibited Conduct

A Member violating or suspected of violating any of the prohibitions in this Policy may be subjected to any or all of the following: (1) drug and/or alcohol testing, (2) removal from his or her safety-sensitive position, and (3) administrative or disciplinary action up to and including dismissal. A Member will be considered to have failed an alcohol test if his or her Breath Alcohol Concentration is .02 or higher. MTA will remove such a Member from his or her position and refer him or her to a substance abuse professional. A Member will be considered to have failed a drug test if he or she has a verified positive urine test result. MTA may, in any event and under its own authority, dismiss any Member who violates this Policy. MTA may take such action under its own authority with or without conducting drug or alcohol testing.

E. Testing Performed by MTA

MTA may perform drug and alcohol testing not specifically required under the federal regulations. Such testing may include but is not limited to that required by the States of New York and Connecticut for qualification of individuals to police officer positions. Any such testing will be performed under the MTA's authority and not pursuant to federal law.

Specifically, drug testing required by FTA includes only testing for five controlled substances: Cocaine, phencyclidine ("PCP"), amphetamines, marijuana, and opiates. MTA may conduct testing for additional substances, but if such testing occurs, it is conducted under MTA's own authority and not under FTA authority or pursuant to FTA regulations.

F. Rehabilitative Resources

MTA makes several resources available to Members experiencing difficulties with drug and/or alcohol use. These resources are outlined in detail in this Policy. Members are encouraged to seek the assistance of the MTA's Employee Assistance Program before their job performance deteriorates or the illness affects the safe performance of their job.

II. GENERAL GUIDELINES

A. Members must comply with all laws, agreements, rules, policies and regulations applicable to their employment, including but not limited to the collective bargaining agreement between the MTA

and the Police Benevolent Association ("the PBA Agreement"), and must at all times satisfy the performance standards applicable to their employment.

- B. The MTA states expressly that nothing in this Policy prohibits it from taking administrative or disciplinary action, up to and including dismissal, and under its own authority, with or without conducting drug and/or alcohol testing, when there is a violation of, or reasonable cause to believe that there is a violation of, this Policy. The MTA also states expressly that this Policy does not create a contract, promise or contractual right, express or implied. The MTA reserves the right to change this Policy in whole or in part at any time.**

III. SCOPE

This Policy applies to all Members of the MTA's Police Department. Compliance with this Policy is a condition of employment. Consent to drug and/or alcohol testing pursuant to this Policy is implied by accepting or continuing employment.

IV. DEFINITIONS

A. Substances

1. Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. Controlled Substances: FTA regulations require drug testing for the following five controlled substances: Cocaine, phencyclidine ("PCP"), amphetamines, marijuana, and opiates.
3. Drug: Any substance other than alcohol that has known mind or function-altering effects on humans, including but not limited to, controlled substances.
4. Intoxicant: Any agent that produces intoxication, such as a drug or toxic substance or alcoholic beverages.
5. Over-the-counter drug: Medication that does not require a prescription and that can be purchased from pharmacies or other retail establishments.
6. Prescription drug: Medication prescribed by licensed medical personnel or dentists for a specific course of treatment.

B. Personnel Classifications

1. Designated Employer Representative: An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or causes employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes.
2. Members: Employees of the MTA Police Department who perform a safety-sensitive function and who are required to comply with this Policy and with the alcohol and drug prohibitions and provisions in 49 C.F.R. Part 655 of the Federal Transit Administration ("FTA") regulations. This category includes positions, both represented and non-represented, requiring the Member to carry a firearm for security purposes.
3. Medical Review Officer ("MRO"): A licensed physician who receives laboratory results produced by the laboratory retained by the MTA to evaluate drug and/or alcohol tests, who has knowledge of substance abuse disorders, and who has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his or her medical history and any other relevant biomedical information.
4. Substance Abuse Professional ("SAP"): A licensed physician, or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol- and drug-related disorders.
5. Supervisor: Any employee of the MTA who is responsible for supervising or monitoring the conduct or performance of one or more Members. This definition includes both represented and non-represented Supervisors.

C. Testing

1. Post-Accident: A drug and/or alcohol test administered following an accident as defined in Section VI (D) (1) of this Policy.
2. Pre-Employment: A drug test administered to all Members no more than 90 days before they commence or resume performing safety-sensitive duties for the MTA.

3. Reasonable Suspicion: When a Supervisor believes that a Member has used a prohibited drug and/or engaged in alcohol misuse. The suspicion must be based upon specific, contemporaneous, articulable observations of the appearance, behavior, speech or body odors of the Member.
4. Verified Positive Test Result:
 - a. For a drug test, a test result that was positive on an initial immunoassay test, confirmed by a gas chromatography/mass spectrometry assay and reviewed and verified as positive by a MRO in accordance with the procedures set forth in 49 C.F.R. Part 40 - "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."
 - b. For an alcohol breath test, an initial breath test performed on a Department of Transportation - approved "Evidential Breath Testing" device, with a result of **.02%** or higher, confirmed by a second breath test with a reading of **.02%** or higher.
5. Return to Duty: A test administered to a Member who has refused a test, received a verified positive drug test result, or a confirmed alcohol test result of .02 or more prior to resuming to safety-sensitive duties.
6. Follow-Up: Unannounced drug and/or alcohol testing of a Member who has been returned to service following a violation of this Policy as deemed necessary by the SAP. The number and duration of follow-up testing must be no fewer or shorter than the minimum requirements set forth in the regulations issued by the FTA.
7. Random: Unannounced and unpredictable drug and/or alcohol testing of a percentage of Members as governed by the FTA. Members are placed in a pool and are selected for testing by a scientifically-valid method.

D. Resources

1. Employee Assistance Program ("EAP"): A confidential counseling program provided by the MTA where SAPs qualified by experience, education, and training counsel persons affected by alcohol and/or substance abuse problems and evaluate their progress in recovering from such problems.

2. Substance Awareness Training: A training course given by MTA and required for all Members which provides instruction on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, and on the signs and symptoms that may indicate prohibited drug use. In addition, Supervisors shall receive training on the physical, behavioral, and performance indicators of probable drug and alcohol misuse.
3. Code of Federal Regulations (CFR): The Regulations issued by the United States Department of Transportation, 49 CFR 40, and the Federal Transit Administration, 49 CFR 655, are available for employees to review in the Internal Affairs Bureau by appointment. These regulations are also available via the Internet at:
<http://www.dot.gov/ost/dapc/regulations.html>

V. POLICY

It is the Policy of the MTA to maintain a drug- and alcohol-free workplace. To this end, all sites at which MTA business is conducted, including MTA vehicles used for business purposes, are to be drug- and alcohol-free workplaces. Drug and/or alcohol testing may be performed to ensure compliance with this Policy and with applicable federal regulations. The circumstances when testing may occur are defined in Section VI of this Policy.

A. **Early Intervention, Treatment and Rehabilitation Resources**

The MTA recognizes that alcoholism and drug dependency are treatable illnesses and that the likelihood of successful rehabilitation is substantially increased by early detection and treatment. Therefore, Members are encouraged to voluntarily seek confidential assistance through the EAP by self-referral **before** their job performance deteriorates or the illness affects the safe performance of their job and **before** being charged with a violation of this Policy or of federal or state law.

The MTA complies with all applicable laws concerning reasonable accommodation for treatment and provides the following resources to Members to encourage voluntary and early treatment:

1. EAP: A Member may seek the confidential services of the EAP regarding his or her use of controlled substances or alcohol.

2. Health Insurance Benefits: The MTA's group health insurance plans include coverage for alcohol and/or drug abuse treatment.
3. Substance Awareness Training: A training program in substance awareness for Members and Supervisors.
4. Leaves of Absence: Pursuant to the PBA collective bargaining agreement, the MTA's Family and Medical Leave Policy or other applicable policies, the Member may request and the MTA may approve a leave of absence for purposes of rehabilitation for drug or alcohol misuse. Nothing in this Policy requires the MTA to offer a Member a leave of absence in lieu of taking immediate administrative and/or disciplinary action, up to and including dismissal.

B. Performance Requirements

1. The MTA will hold any Member who engages in the illegal use of drugs or who suffers from an alcohol use disorder to the same qualification standards for employment or job performance and behavior (such as attendance) to which the MTA holds its other Members, even if unsatisfactory performance, behavior, or rule or Policy infractions are related to the Member's drug and/or alcohol use.
2. Past or present involvement in a rehabilitation program, the EAP, or with other treatment practitioners cannot serve as a defense nor mitigate the circumstances of alleged violations of MTA rules, policies or laws, including but not limited to rules applicable to the MTA Police Department.

C. Prohibited Conduct

1. All Members are prohibited from reporting to work if they are under the influence of drugs or alcohol.
2. All Members are prohibited from illegally manufacturing, distributing, selling, dispensing, possessing or using any controlled substances or illegal drug paraphernalia, on or off duty, on or off MTA property. Members may, however, possess controlled substances or illegal drug paraphernalia in the course of taking official police action consistent with Police Department procedures, including, but not limited to, performing undercover assignments or seizing evidence during an arrest. Members are prohibited from using any controlled substance at any time, whether on or off duty,

unless medically authorized as described in paragraph 5 of this section.

3. Members are prohibited from reporting to work if they have consumed alcohol within four hours of their duty time. If a Member is on-call, the Member may not consume alcohol during the specified on-call hours. A Member must, however, advise his or her immediate Supervisor immediately upon being called to report to duty if the Member is unable to perform his or her job. The Member must take an alcohol test if he or she has acknowledged using alcohol but claims to be able to perform his or her job. Notwithstanding these provisions, the MTA, under its own authority, may take administrative or disciplinary action against a Member under these circumstances, up to and including dismissal.
4. All Members are prohibited from possessing or consuming alcohol in the workplace and from consuming alcohol during work hours, including meal and break periods, unless such use is required in the course of taking official police action consistent with Police Department procedures, including, but not limited to, performing undercover assignments or seizing evidence during an arrest. However, in no case may a Member's alcohol concentration equal .02 or greater while on duty.
5. Prescription or Over-the-Counter Drugs: Members may use prescription or over-the-counter drugs while performing safety-sensitive duties if (1) such use is brought to the attention of the MRO by the Member at least two hours before reporting to duty or as soon as is practicable and (2) if the drug is a prescription drug, the drug is prescribed or authorized by a medical practitioner who has determined that such use will not affect the Member's job performance. Prior to the Member submitting such a note, in order to work, the Member must certify that the drug will not affect his or her job performance. The MRO or his or her designee will then determine whether use of the substance as prescribed is consistent with the safe performance of the Member's duties. The determination of the MRO or his or her designee is final and binding.
6. All Members are prohibited from refusing to cooperate or from intentionally interfering with the MTA's efforts to enforce this Policy or related federal regulations, including but not limited to refusing to submit to a drug and/or alcohol test conducted pursuant to this Policy or federal

regulations, leaving the scene of an accident before post-accident drug and/or alcohol testing required by this Policy or federal regulations has been conducted, tampering with the integrity of a breath or urine sample in connection with such tests, or disclosing to an unauthorized person the identity of a Member selected for random testing or the location, time or date for such testing.

7. Refusal to Test

a. The following conduct constitutes a refusal to take a drug test: (1) failure to appear for any test within a reasonable time after being directed to do so by the employer (except for pre-employment tests); (2) failure to remain at the testing site until the testing process is complete; (3) failure to provide a urine specimen; (4) failure to permit observation or monitoring of provision of a urine specimen when authorized by the federal regulations; (5) failure to provide a sufficient amount of urine when directed and it has been determined, through a medical evaluation, that there was no adequate medical explanation for the failure; (6) failure or declining to take an additional test as directed by the MTA or collector; (7) failure to undergo a medical examination, as directed by the MRO or DER, as part of the verification process or "shy bladder" procedures; (8) failure to cooperate with any part of the testing process; (9) for an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process; (10) possess or wear a prosthetic or other device that could be used to interfere with the collection process; (11) your admission to the collector or MRO that you adulterated or substituted the specimen; or (12) a verified adulterated or substituted test result reported by the MRO.

b. The following conduct constitutes a refusal to take an alcohol test: (1) failure to appear for any test within a reasonable time after being directed to do so; (2) failure to remain at the testing site until the testing process is complete; (3) failure to provide an adequate amount of breath for a test; (4) failure to provide a sufficient breath specimen and a physician has determined, through a medical evaluation, that there was no adequate medical explanation for the failure; (5) failure to undergo a medical examination as directed by the MTA as part of the "insufficient breath procedures" in the federal regulations; (6)

failure to sign the certification at Step 2 of the DOT Alcohol Testing Form; (7) failure to cooperate with any part of the testing process; or (8) a verified adulterated or substituted test result reported by the MRO.

D. Consequences of Engaging in Prohibited Conduct

1. A Member suspected of violating any of the prohibitions set forth in this Policy may be subject to (a) drug and/or alcohol testing as defined in this Policy, and/or (b) removal from his or her safety-sensitive position, and/or (c) administrative and/or disciplinary action up to and including dismissal, under the authority of the MTA.
2. A Member will be considered to have failed an alcohol test if his or her Breath Alcohol Concentration is .02 or higher. A Member will be considered to have failed a drug test if he or she has a verified positive urine test result.
3. A Member who has a verified positive drug test result or a confirmed alcohol test result of .04 Breath Alcohol Content (BAC) or greater, or refuses to submit to a required test shall be subject to the following consequences:
 - a. The Member shall immediately cease performing safety-sensitive functions per 49 CFR Part 655.
 - b. The Member shall be disciplined by the MTA, acting under its own authority, in accordance with the Memorandum of Understanding between the MTA and the MTA Police Benevolent Association (PBA) dated November 12, 2002 and attached to this policy as Exhibit B, and any amendments thereto.
 - c. The MTA shall refer the Member to a SAP regardless of whether or not his or her employment is terminated in accordance with 49 CFR §655.62.
 - d. A Member allowed by the MTA to return to safety-sensitive functions shall be required to pass a drug and/or alcohol test before returning to his or her position. In addition, the Member will be subject to unannounced follow-up drug and/or alcohol testing as directed by the SAP. The number and duration of follow-up testing must be no fewer or shorter than the minimum

requirements set forth in the regulations issued by the FTA.

4. A Member with a confirmed positive result of between .02 BAC and less than a .04 BAC shall be subject to the following consequences:
 - a. The Member shall immediately cease performing safety-sensitive functions per 49 CFR Part 655.
 - b. The Member shall be disciplined by the MTA, acting under its own authority, in accordance with the Memorandum of Understanding between the MTA and the MTA Police Benevolent Association (PBA) dated November 12, 2002 and attached to this Policy as Appendix A, and any amendments thereto.
 - c. The Member may return to safety-sensitive functions at the start of the employee's next regularly scheduled duty period, but not less than eight hours after the confirmed test, unless the employee's alcohol concentration measures less than .02 BAC on a retest. Discipline assessed by the MTA, under its own authority, may delay or negate the return of a Member to safety-sensitive duties.
5. In accordance with the Drug-Free Workplace Act of 1988, a Member convicted of violating a criminal drug statute in the workplace or anywhere else must report the conviction to the Chief of Police or his or her designee within five days of the conviction. Members convicted of violating a criminal drug statute or who fail to report such conviction may be subject to disciplinary and/or administrative action, up to and including dismissal.
6. Members may be subject to administrative and/or disciplinary action, up to and including dismissal, should the MTA receive notice of off-duty misconduct relating to alcohol and/or drug abuse (e.g., a drug or alcohol-related conviction) or the Member's illegal manufacturing, distribution, dispensing or possession of controlled substances, under the authority of the MTA.

E. Drug and Alcohol Testing

Subject to federal regulations, nothing in this Policy requires the MTA to conduct drug and/or alcohol testing before taking administrative and/or disciplinary action, up to and including dismissal, for a violation of this Policy, under MTA's own authority.

All Members are subject to drug and/or alcohol testing as required by this Policy and/or applicable federal rules.

In 49 C.F.R. Part 655, the FTA requires the MTA to conduct drug and/or alcohol testing of Members in the following situations: (1) Pre-employment, (2) where there is Reasonable Suspicion, (3) Randomly, (4) Post-accident, (5) Return to Duty, and (6) Follow-up.

VI. CIRCUMSTANCES WHEN TESTING WILL BE PERFORMED

A. Pre-Employment

1. The MTA will schedule a pre-employment drug test for those applicants or transferees who have received conditional offers to perform service for MTA as a Member.
2. Pursuant to 49 C.F.R. Part 655, no Member may perform safety-sensitive duties prior to passing a drug test administered by the MTA.
3. If a Member has not performed a safety-sensitive function for 90 consecutive days regardless of the reason, and the Member has not been in the MTA's random testing pool during that time, the Member may not perform safety-sensitive functions until he or she passes a drug test administered by the MTA.
4. A candidate must produce a negative drug test result prior to first performing safety-sensitive functions. If the test is canceled, the candidate must retake and pass the test before performing safety-sensitive work.
5. An employee or candidate who previously failed or refused a pre-employment drug test under this Policy must provide the MTA proof of having successfully completed a referral, evaluation and treatment plan as described herein.

B. Reasonable Suspicion

1. All Members are subject to drug and/or alcohol testing where Reasonable Suspicion exists.
2. For all Members, the decision to conduct the test must be based on specific, contemporaneous, articulable observations of the appearance, behavior, speech, or body odors of the Member. Testing may only occur when a Supervisor who is trained in detecting the signs and symptoms of drug use and alcohol misuse makes the required observations, which may include the following criteria:
 - a. Staggered gait, difficulty walking
 - b. Slurred speech
 - c. Drowsiness/sleepiness
 - d. Odor of an intoxicant
 - e. Disorientation (time/place/person)
 - f. Rapid mood swings with no apparent reason
 - g. Poor coordination or body control
 - h. Bizarre behavior
 - i. Direct observation of use of an intoxicant or controlled substance.
3. At least one Supervisor who has completed Substance Awareness Training must make the required observations before sending a Member for drug and/or alcohol testing.
4. When Reasonable Suspicion exists, drug and/or alcohol testing is mandatory pursuant to 49 C.F.R. Part 655.
5. **Alcohol testing is authorized under this Policy, only if the observations required above are made and the testing is conducted during, just preceding, or just after the period of the workday that the Member is required to be in compliance with this Policy.**
6. The MTA must make diligent efforts to conduct an alcohol and/or drug test within two hours of the initial observation of the Member. If testing is not conducted within two hours, the Supervisor must provide the Chief of Police or his designee with documentation as to the reason why the test was not promptly conducted. Absolutely no alcohol testing may be performed after the expiration of eight hours from the time of observation. Drug testing, however, may be conducted. If over eight hours has passed since the time of observation and no alcohol testing has been conducted, the Supervisor must provide the Chief of Police with documentation explaining why testing was not performed.

C. Random Testing

1. Random testing of Members is performed by the MTA pursuant to applicable FTA regulations set forth in 49 C.F.R. Part 655. In accordance with those regulations, MTA will:
 - a. Select employees for random testing at the annual rate established by the FTA as published from time-to-time in the Federal Register. Such selection shall be made by a scientifically-valid method, such as a random number table or a computer-based random number generator that is matched with the Members' Social Security Numbers, payroll identification numbers, or other comparable identifying numbers. Under the selection process used, each Member shall have an equal chance of being tested each time selections are made.
 - b. Ensure that random tests are unannounced and that the times and dates for administering random tests are reasonably spread throughout the day and calendar year.
 - c. Require that each Member who is notified of selection for random testing proceeds to the test site immediately. A Member may only be tested while on duty; just before the employee is to go on duty; or just after the employee has gone off duty.

D. Post-Accident Testing

1. Accident: An occurrence associated with the operation of an ancillary service vehicle, which may include an MTA Police vehicle, if as a result:
 - a. An individual dies; or
 - b. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or
 - c. With respect to an occurrence in which the mass transit vehicle involved is a bus, electric bus, van or automobile; one or more vehicles incurs disabling damage as the result of the occurrence and such vehicle or vehicles are transported away from the scene by a tow truck or other vehicle; or

- d. With respect to an occurrence in which the mass transit vehicle involved is a rail car, trolley car, trolley bus, or vessel, the mass transit vehicle is removed from operation.
2. Fatal Accidents: As soon as practicable following an accident involving the loss of human life, MTA will conduct drug and alcohol tests on the surviving Member operating the vehicle at the time of the accident. MTA will also conduct drug and alcohol testing on any other Member whose performance could have contributed to the accident, as determined by the MTA using the best information available at the time of the decision.
 3. Non-fatal Accidents: As soon as practicable following an accident not involving the loss of human life in which a vehicle is involved, the MTA will conduct drug and alcohol testing on each Member operating the vehicle at the time of the accident unless the MTA determines, using the best information available at the time of the decision, that the Member's performance can be completely discounted as a contributing factor to the accident. MTA will also conduct drug and alcohol testing on any other Member whose performance could have contributed to the accident, as determined by the MTA using the best information available at the time of the decision.
 4. The MTA must make diligent efforts to conduct an alcohol and/or drug test within two hours of the accident. If testing is not conducted within two hours, the Member's Supervisor must provide the Chief of Police or his designee with documentation as to the reason why the test was not promptly conducted. Absolutely no alcohol testing may be performed after the expiration of eight hours from the time of observation. Drug testing, however, may be conducted within 32 hours of the accident. If over eight hours have passed since the time of the accident and no alcohol testing has been conducted, or if 32 hours have passed since the time of the accident and no drug testing has been conducted, the Supervisor must provide the Chief of Police with documentation explaining why testing was not performed.
 5. A Member who is subject to post-accident testing but who fails to remain readily available for such testing, including notifying his or her Supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such testing, may be deemed by MTA to have refused to submit to testing.

6. The decision not to administer a post-accident drug or alcohol test must be based on the MTA's determination, using the best available information at the time of the determination that the Member's performance could not have contributed to the accident. Such a decision must be documented in detail by written memorandum to the Chief of Police or his or her designee, including the decision-making process used to reach the decision not to test.
7. Nothing in this section should be construed to delay the necessary medical attention for the injured following an accident or to prohibit a Member from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.
8. The results of a blood, urine, or breath test for the use of prohibited drugs or alcohol misuse, conducted by federal, state or local officials having independent authority for the test, shall be considered to meet the requirements of this section if such test conforms to the applicable federal, state, or local testing requirements, and the test results are available to MTA. MTA will only use such test results where it is unable to perform a post-accident test within the required periods set forth in paragraph 3 of this section.

E. Return to Duty and Follow-up Testing

1. Each Member who has engaged in conduct in violation of the FTA regulations and/or this Policy must pass a drug and/or alcohol test in order to return to his or her position.
2. In addition, the Member is subject to unannounced follow-up drug and/or alcohol testing as directed by the SAP. The number and duration of follow-up testing must be no fewer or shorter than the minimum requirements set forth in the regulations issued by the FTA.

VII. TEST PROCEDURES AND RETESTS

The MTA and any vendors that have been or may be hired by the MTA to perform testing will follow the procedures established by the United States Department of Transportation ("DOT") for all drug and alcohol testing conducted under this Policy. These procedures are set forth in 49 C.F.R. Part 40, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs."

If a drug test is reported by the MRO as both negative and dilute, the MTA shall require the employee to take another drug test immediately. A second drug test result of negative and dilute will not require a third test; the result of the second drug test will become the test of record.

VIII. CONFIDENTIALITY

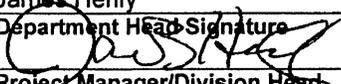
- A. No Member may disclose to any individual any drug or alcohol use or testing information concerning any other Member, including but not limited to random testing selection information, unless such disclosure is necessary for compliance with this Policy or federal law or unless the Member whose records are at issue executes a release specifically authorizing the disclosure of such information.**
- B. All records maintained in the course of carrying out the procedures described in this Policy and under federal drug and alcohol-testing laws must be maintained in a separate file, under lock and key.
- C. If any Member discloses the information or records described in paragraphs A and B to any other individual for any reason, that Member may be subject to administrative or disciplinary action, up to and including dismissal.

EXHIBIT A

SAFETY-SENSITIVE JOB TITLES

Police Officer
Detective
Sergeant
Detective Sergeant
Lieutenant
Captain
Deputy Inspector
Inspector
Assistant Deputy Chief
Deputy Chief
Chief of Department

Staff Summary

Subject Whistleblower Policy
Department General Counsel
Department Head Name James Henly
Department Head Signature 
Project Manager/Division Head

Date June 16, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Governance	6/21	X		
2	Board	6/23	X		

Internal Approvals			
Order	Approval	Order	Approval
			Civil Rights
1	Chief of Staff 		Legal
	Chief Financial Officer		Chief Operating Officer
			Other

Purpose:

To obtain Board authorization of the annexed whistleblower protection policy.

Discussion:

MTA's existing whistleblower protections, contained within the Board-adopted Code of Ethics, protect MTA employees who report violations of laws, regulations, policies or procedures against punitive sanctions, reprisals or other penalties on account of their reporting of such violations.

The Public Authorities Reform Act enacted in December 2009 (the "Reform Act," Chapter 506 of the Laws of 2009) amended the Public Authorities Law to add a new definition of a "whistleblower." Under the new provisions, "whistleblower" is defined specifically to include disclosures of "information concerning acts of wrongdoing, misconduct, malfeasance, or other inappropriate behavior by an employee or board member" relating to an authority's "investments, travel, acquisition of real or personal property, the disposition of real or personal property and the procurement of goods and services" (Section 22, adding PAL Section 2896). The Reform Act also added a provision that expressly prohibits public authorities from taking specific listed retaliatory acts ("fire, discharge, demote, suspend, threaten, harass or discriminate") because of an "employee's role as a whistleblower." (Section 23, adding PAL section 2857).

In view of the amendments contained in the Reform Act, the annexed revised whistleblower policy has been prepared for Board adoption to set forth in greater detail MTA's whistleblower protection policies and procedures and to ensure that they are consistent with the Public Authorities Law as amended.

Recommendation:

It is recommended that the Board adopt the annexed policy with respect to whistleblower protection.

ALL AGENCY POLICY DIRECTIVE
WHISTLEBLOWER PROTECTION

I. PURPOSE

To encourage the reporting by MTA employees of wrongful acts, protect MTA employees from retaliation for whistleblowing and ensure that the MTA complies with applicable law protecting whistleblowers.

II. SCOPE

This policy directive applies to all officers and employees of the MTA including MTA Headquarters (including the Business Service Center); MTA Long Island Rail Road; MTA Capital Construction Company; MTA Bridges and Tunnels; MTA Bus Company; MTA Long Island Bus; MTA Metro-North Railroad; MTA New York City Transit, including the Manhattan and Bronx Surface Transportation Operating Authority and the Staten Island Rapid Transit Operating Authority; and, any future subsidiary or affiliated entity of the Metropolitan Transportation Authority.

III. DEFINITIONS

For purposes of this policy, the following terms shall have the meaning stated below:

Adverse Action means to fire, discharge, discipline, demote, suspend, threaten, harass, or discriminate against an MTA Employee and includes, but is not limited to, an action that adversely affects an MTA Employee's compensation, appointment, promotion, transfer, assignment, reassignment, reinstatement, or evaluation of performance.

MTA Agency means any of the following: MTA Headquarters (including the Business Service Center); MTA Long Island Rail Road; MTA Capital Construction Company; MTA Bridges and Tunnels; MTA Bus Company; MTA Long Island Bus; MTA Metro-North Railroad; MTA New York City Transit, including the Manhattan and Bronx Surface Transportation Operating Authority and the Staten Island Rapid Transit Operating Authority; and, any future subsidiary or affiliated entity of the Metropolitan Transportation Authority.

MTA Codes of Ethics means the All-Agency Code of Ethics, the MTA Board Member Code of Ethics, and the Vendor Code of Ethics.

MTA Employee means any officer or employee of an MTA Agency and includes, but is not limited to, full-time and part-time employees, those employees on probation, temporary employees including persons hired on a seasonal, per diem, or part-time basis.

Whistleblower means an MTA Employee who pursuant to statute or the All-Agency Code of Ethics reports a Wrongful Act or an MTA Employee who discloses information concerning a Wrongful Act, insofar as the actions taken by the MTA Employee are legal.

Wrongful Act means an act by any MTA Employee or MTA Board member, or by a person doing business with an MTA Agency, of fraud or corruption or violating the MTA Codes of Ethics or a law or regulation applicable to an MTA Agency and shall include an act of wrongdoing, misconduct, malfeasance or other inappropriate behavior, concerning any MTA Agency's investments, travel, acquisition of real or personal property, disposition of real or personal property, or procurements of goods or services.

IV. POLICY

A. Reporting of Wrongful Acts.

MTA Employees are encouraged to report any Wrongful Act. Such a report may be made through a number of mechanisms including, but not limited to:

- Direct contact with:
 - the Chief Compliance Officer;
 - the MTA Inspector General;
 - their Agency's Ethics Officer; or
 - any other internal complaint office designated by their Agency President.
- A report to the Hotline maintained by the Chief Compliance Officer: 888-U-ASK-MTA (888-827-5682). Such a report may be made anonymously.
- A report to the New York State Authorities Budget Office.

Reports by an MTA Employee of a Wrongful Act involving corruption, fraud or criminal activity should be made to the MTA Inspector General:

Office of the Inspector General,
Metropolitan Transportation Authority
Two Penn Plaza, 5th Floor
New York, New York 10121
800-MTA-IG4U (800-682-4448)

An MTA Employee should also feel free to discuss concerns about a Wrongful Act with their supervisor, but no supervisor may discourage an MTA Employee from making a report of a Wrongful Act.

B. Investigation of Reported Wrongful Acts

1. Alleged Wrongful Acts that have been reported by MTA Employees to the Chief Compliance Officer, to an Agency's Ethics Officer, or to such other internal complaint office designated by an Agency President shall be promptly investigated by the applicable MTA Agency or, in the case of reports involving alleged corruption, fraud or criminal activity, shall be referred to the MTA Inspector General for investigation.

2. No MTA employee alleged to have been involved in a Wrongful Act shall supervise or conduct the investigation of such Wrongful Act. Each MTA Employee must cooperate fully and honestly with such investigations of alleged Wrongful Acts.

3. The findings of an investigation undertaken by an MTA Agency pursuant to this policy shall be provided to the President of the applicable MTA Agency or his or her designee, or in the case of MTA Headquarters with the Chief Operating Officer or his or her designee (unless a President or Chief Operating Officer is the subject of the investigation, in which case the finding shall be discussed directly with the Chairman), for review and determination of what further action should be taken.

C. No Retaliation for Whistleblowing; Investigation of Adverse Action

1. No MTA Employee shall take any Adverse Action against another MTA Employee because of such MTA Employee's lawful disclosure or reporting of information concerning a Wrongful Act or because of such MTA Employee's role as a Whistleblower. Violations of this policy are subject to disciplinary action up to and including termination from employment.

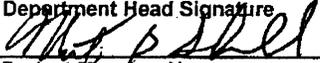
2. An MTA Employee who has reason to believe he or she has been the target of an Adverse Action in violation of Section IV.C.1 of this policy directive, or who has reason to believe that an Adverse Action has been taken against another MTA Employee in violation of Section IV.C.1 of this policy directive, shall immediately report such suspected Adverse Action to the Chief Compliance Officer or such other person as may be designated by an MTA Agency President for the receipt of such a report, and an investigation thereof shall be promptly undertaken.

3. All allegations of Adverse Actions in violation of Section IV.C.1 shall be investigated in the same manner as set forth above for investigation of claims of Wrongful Acts. Each MTA Employee must cooperate fully and honestly with such investigations of alleged Adverse Actions. An MTA Employee alleged to have been involved in an Adverse Action shall not supervise or conduct the investigation of such Adverse Action.

D. False Allegations

No MTA Employee may knowingly and willfully make a false report of a Wrongful Act or of an Adverse Action. Any MTA Employee who knowingly and willfully makes a false report of a Wrongful Act or of an Adverse Action is subject to disciplinary action up to and including termination of employment.

Staff Summary

Subject Appointment of TAB Senior Hearing Officers
Department Law Department
Department Head Name Martin Schnabel
Department Head Signature 
Project Manager Name Dorothy Samuel

Date June 2, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
	NYCT Committee				
	Board				

Internal Approvals			
Order	Approval	Order	Approval
	President 		Assistant to the President
	Executive VP 		Subways
	Capital Prog. Management		Buses
	Operations Support		Customer Service

Internal Approvals (cont.)							
Order	Approval	Order	Approval	Order	Approval	Order	Approval
	Law 		Administration		Labor Relations		Material

Narrative

Purpose

To obtain Board approval for the one-year renewal of retainer agreements between MTA New York City Transit and the below-named attorneys for the provision of legal services to the Transit Adjudication Bureau in the capacity of per diem senior hearing officers. Total expenditures for these agreements will not exceed \$120,000.00.

Discussion

In accordance with Paragraph Two of Section 1209-a of the Public Authorities Law, the Transit Adjudication Bureau (TAB) maintains a roster of per diem hearing officers who are appointed by the President of the Authority. There are currently thirty-three (33) attorneys on our roster. From this group, TAB's Executive Director has appointed two (2) hearing officers to serve in the capacity of senior hearing officers.

In addition to conducting TAB hearings, senior hearing officers are responsible for directly supervising hearing officers, reviewing decisions, advising hearing officers of current substantive and procedural changes in law and TAB policies and procedures. They are also responsible for recruiting and training newly appointed hearing officers, evaluating hearing officer performance, maintaining statistics, and assisting the TAB Executive Director by researching legal issues and writing memoranda. Additionally, TAB senior hearing officers chair the TAB Appeals Board, a panel consisting of three hearing officers that meet weekly to review appeals of hearing officer determinations.

Appointees to the senior hearing officer position serve on a per diem basis, and are paid at a rate of \$49.33 and \$56.75 per hour. (Rebecca Novak, who was appointed in July 1995, and is paid at a rate of \$49.33 per hour, works two (2) days per week. Debra Siedman DeWan, who was appointed in January 1990, and is paid at the rate of \$56.75 per hour, works three (3) days per week.) It is anticipated that the total expenditures under both agreements will not exceed \$120,000.

Staff Summary

Page 2 of 2



NYC Transit requests the Board's approval to renew its agreements with the TAB's senior hearing officers, Ms. Novak and Ms. DeWan, for the period of July 1, 2010 through June 30, 2011. Both are highly competent and reliable attorneys, and have served with excellence as TAB senior hearing officers under their current retainer agreements. Based upon their knowledge and expertise with regard to legal issues affecting TAB, their past performance, and current availability, Ms. Novak and Ms. DeWan are viewed as the best candidates for the senior hearing officer positions.

In May 2010, the roster of TAB hearing officers from which Ms. Novak and Ms. DeWan were selected consisted of 12 male and 21 female attorneys, a total of 33. Of these, 28 (or 84.85%) are white, three (or 9.09%) are black, and two (or 6.06%) are Hispanic. Candidates for TAB hearing officer positions are recruited from a variety of source, including advertisements in the New York Law Journal and New York City law schools, referrals from hearing officers, and unsolicited resumes submitted by interested attorneys.

Alternatives

None.

Impact on Funding

Funding for per diem senior hearing officers has been included in TAB's 2010 operating budget.

Recommendation

That the board approve the renewal of the one-year agreements with Rebecca Novak and Debra Siedman DeWan to serve as per diem Transit Adjudication Bureau senior hearing officers.

Approved:

Thomas F. Prendergast, President

Dated: _____

Subject Request for Authorization to Award Various Procurements					
Department Materiel Division - NYCT					
Department Head Name Stephen M. Plochochi					
Department Head Signature <i>[Signature]</i>					
Project Manager Name Rose Davis					
Board Action					
Order	To	Date	Approval	Info	Other
1	Committee	6/21/10			
2	Board	6/23/10			

June 1, 2010			
Department Law and Procurement - MTACC			
Department Head Name Veronique Hakim			
Department Head Signature <i>[Signature]</i>			
Table of Contents Ref #			
Internal Approvals			
	Approval		Approval
<i>[Signature]</i>	President NYCT	<i>[Signature]</i>	President MTACC
	Executive VP	X	Subways
X	Capital Prog. Management	X	Buses
	Law	X	Dept. of Diversity/Civil Rights

Internal Approvals (cont.)							
Order	Approval	Order	Approval	Order	Approval	Order	Approval

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>	# of Actions	\$ Amount
Schedule A: Non-Competitive Purchases and Public Work Contracts	2	\$ 8.4 M
• Alstom Signaling, Inc. \$ 4.4 M		
• Alstom Transportation, Inc. \$ 4.0 M		
<u>Schedules Requiring Majority Vote</u>		
Schedule E: Miscellaneous Procurement Contracts	1	\$.06 M
• Metafile Information Systems \$.06 M		
Schedule F: Personal Service Contracts	1	2.0 M
• Arinc \$ 2.0 M		
Schedule G: Miscellaneous Service Contracts	1	.06 M
• NYS Industries for the Disabled \$.06 M		
SUBTOTAL	5	\$ 10.5 M

MTACC proposes to award Non-Competitive procurements in the following categories: NONE

NYC Transit proposes to award Competitive procurements in the following categories:

Schedules Requiring Majority Vote

Schedule I: Modifications to Purchase and Public Works Contracts	1	\$	3.2 M
SUBTOTAL	1	\$	3.2 M

MTA Capital Construction proposes to award Competitive procurements in the following categories:

Schedules Requiring Majority Vote

Schedule F: Personal Service Contracts	1	\$	3.0 M
SUBTOTAL	1	\$	3.0 M

NYC Transit proposes to award Ratifications in the following categories:

Schedules Requiring Two-Thirds Vote:

Schedule D: Ratification of Completed Procurement Actions	1	\$	3.2 M
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Schedules Requiring Majority Vote:

Schedule K: Ratification of Completed Procurement Actions:	1	\$.6 M
SUBTOTAL	2	\$	3.8 M

MTA Capital Construction proposes to award Ratifications in the following categories:

Schedules Requiring Majority Vote

Schedule D: Ratification of Completed Procurement Actions	1	\$	6.5 M
SUBTOTAL	1	\$	6.5 M
TOTAL	10	\$	27.0 M

BUDGET IMPACT: The purchases/contracts will result in obligating NYC Transit and MTA Capital Construction Co. 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.

JUNE 2010

LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Procurements Requiring Two-Thirds Vote:

Page

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.

- | | | | | |
|----|--|------------------------------|-------------------------------|----|
| 1. | Alstom Signaling Inc.
Sole Source – Three-year omnibus
Multi-agency omnibus approval request for inventory and non-inventory signal and switch system equipment. | \$4,415,000.00 (Est.) | <u>Staff Summary Attached</u> | 95 |
| 2. | Alstom Transportation Inc.
Sole Source – Three-year omnibus
Omnibus approval request for inventory and non-inventory subway car parts. | \$4,000,000.00 (Est.) | <u>Staff Summary Attached</u> | 96 |

Procurements Requiring Majority Vote:

E. Miscellaneous Procurement Contracts

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M Competitive.)

- | | | | | |
|----|---|--------------------------|--|--|
| 3. | Metafile Information Systems
Non-Competitive – Three-year contract
Req. #U-A275022

This is a three year miscellaneous procurement contract renewal to continue software support of Metafile report viewing software and to purchase 10 additional licenses with corresponding support. NYC Transit requires the renewal of support for 85 MetaViewer software licenses that are used to index department related reports so that authorized users can view, print and copy sections of large reports. The MetaViewer software compresses and indexes computer generated reports and delivers information to various NYC Transit users for online viewing. TIS has 85 concurrent user licenses that allow 85 of the 318 authorized users the capability to run queries and view documents at any one time. With this renewal, an additional 10 concurrent user licenses are being purchased with corresponding support to accommodate 130 additional users from the Division of Supply Logistics and the Department of Buses. With the additional 10 concurrent licenses, at any given time, 95 out of the 448 authorized users can simultaneously access their reports. Metafile is the developer and sole licensor for MetaViewer software, and is the only provider of support. The rates for both the purchase of new licenses and maintenance will remain the same as the prior contract. The contractor's price of \$55,825 was found to be fair and reasonable. | \$55,825.00 (NTE) | | |
|----|---|--------------------------|--|--|

JUNE 2010

LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

			<u>Page</u>
F. <u>Personal Service Contracts</u>			
<i>(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M Competitive.)</i>			
4. ARINC	\$1,953,340.00 (Est.)	<u>Staff Summary Attached</u>	97
Sole-Source – Three-year contract			
Contract #CMM-1613			
Software maintenance and enhancement support for PA/CIS on the Canarsie Line.			
G. <u>Miscellaneous Service Contracts</u>			
<i>(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.)</i>			
5. NYS Industries for the Disabled	\$58,500.00 (Est.)		
Preferred Source - Five-year contract			
Req. # U-A262336			
<p>This contract is for the rental and cleaning of medical coats for approximately 100 NYC Transit employees. The contractor will provide each staff member with three medical coats and weekly laundry services for all soiled garments from all four Medical Assessment Centers. The cleaning of medical coats is performed in order to comply with OSHA requirements. In accordance with Section 162 of the New York State Finance Law, NYC Transit is required to procure designated goods and services from preferred sources, such as New York State Industries for the Disabled (NYSID). NYSID has been providing rental and cleaning of medical coats for NYC Transit since 2001. NYSID's initial price was \$40,035 for three years, plus an additional two year option for \$28,455. Following negotiations, the final price of \$58,500, was agreed upon and is considered fair and reasonable as the cost will decrease by 15.7% from the current contract. A savings of \$9,990 was achieved.</p>			

Schedule A: Non-Competitive Purchases and Public Work Contracts



Item Number: 1

Vendor Name (& Location) Alstom Signaling, Inc. (Rochester, NY)
Description Multi-agency omnibus approval request for inventory and non-inventory replacement signal and switch system parts
Contract Term (Including Options, if any) Three years
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Omnibus Sole Source Approval

Contract Number NONE	Renewal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Total Amount:	
NYC Transit	\$3,795,000.00
LIRR	\$500,000.00
MNR	\$120,000.00
	\$4,415,000.00 (Est.)
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Division of Materiel, Stephen M. Plochochi	

Discussion:

This is a multi-agency omnibus approval request for items identified as obtainable only from Alstom Signaling, Inc. (Alstom) and will eliminate the need to advertise and prepare individual procurement staff summaries for Board approval for each procurement over the \$15,000 small purchase threshold. There is no obligation to generate any purchase orders pursuant to an omnibus approval. There are approximately 802 items for NYC Transit, 66 items for Long Island Rail Road (LIRR) and 16 items for Metro North Railroad (MNR) covered by this approval for the purchase of replacement signal and switch system parts supplied by Alstom. These items are identified as obtainable only from Alstom for the following reasons: sole pre-qualified source on the QPL, and not available from any distributors or other sources; publicly advertised within a twelve month period without an acceptable alternate supplier; or proprietary to Alstom. These items are advertised a minimum of once every twelve months to seek competition. In March 2007, the Board granted the current NYC Transit omnibus approval for \$3,500,000, which expired on April 25, 2010. In July 2007 the Board approved the current three-year LIRR and MNR blanket purchase orders for \$175,000 (subsequently increased by \$500,000) and \$1,500,000, respectively.

The amounts for this request have been arrived at by the respective agencies to reflect anticipated needs. Traditionally, NYC Transit has negotiated a three-year multi-agency pricing agreement with Alstom with specific prices for high usage and/or high dollar items, and a discount off of the price book for non-high usage items. The current pricing agreement was extended through June 30, 2011 pursuant to the Accenture Rapid Procurement Initiative. NYC Transit will take the lead in negotiating a renewal multi-agency pricing agreement for itself and the other agencies. Each agency performed a historical price review on previously purchased sole-source items and determined that the pricing provided by Alstom is fair and reasonable. NYC Transit's expenditures represent 77.8% of the total dollars released for sole source purchases by all three agencies. NYC Transit examined the actual expenditures of NYC Transit items comparing the pricing received against the prior omnibus approval (April 2004 – April 2007) with the current pricing (April 2007 – April 2010) and found that the weighted average price increased by 2.3% per year over the three years. This compares favorably to five applicable U.S. Bureau of Labor Statistics Producer Price Indices (PPIs) for the respective items, which increased from 2.1% to 5.2% per year over the three year period.

Schedule A: Non-Competitive Purchases and Public Work Contracts



Item Number: 2

Vendor Name (& Location) Alstom Transportation, Inc. (Naperville, IL)
Description Omnibus approval request for non-inventory and inventory replacement traction motor, propulsion controller and car body parts
Contract Term (Including Options, if any) Three years
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Omnibus Sole Source Approval

Contract Number NONE	Renewal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Total Amount:	\$4,000,000.00 (Est.)
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Division of Materiel, Stephen M. Plochochi	

Discussion:

This is an omnibus approval request for items identified as obtainable only from Alstom Transportation Incorporated (Alstom) and will eliminate the need to advertise and prepare individual procurement staff summaries for Board approval for each procurement over the \$15,000 small purchase threshold. NYC Transit is not obligated to generate any purchase orders pursuant to an omnibus approval. There are approximately 900 items covered by this approval for the purchase of replacement traction motor, propulsion controller and car body parts supplied by Alstom. These items are identified as obtainable only from Alstom for the following reasons: sole pre-qualified source on the QPL, and not available from any distributors or other sources; publicly advertised within a twelve month period without an acceptable alternate supplier; or proprietary to Alstom. These items are advertised a minimum of once every twelve months to seek competition. These sole source parts will be purchased on an as-required basis. NYC Transit's Division of Car Equipment (DCE) will utilize these sole-source parts on approximately 1,030 R142 and 1,402 R160 subway cars for Scheduled Maintenance System (SMS) and running repair requirements. No other MTA agency purchases material from Alstom Transportation Inc.

In May 2007, the Board granted the current omnibus approval for \$4,000,000 that expired on May 28, 2010. The estimated amount is based on forecasts and projections for upcoming SMS programs, and it is expected that the amount requested under this omnibus approval will be sufficient to cover the material requirements for the next three years. Procurement performed a price analysis on previously purchased sole-source items and found that the most recent prices were either less than or equal to the previous prices. It should be noted that one of the items represented nearly 90% of the dollar amount spent pursuant to this omnibus approval and showed a price decrease of 7.3% per year for a similar order quantity. Overall the weighted average price decreased by 8.4% per year over three years but it is important to note that higher purchase quantities contributed to this overall price decrease. This decrease compares favorably to the U.S. Bureau of Labor Statistics Producer Price Index (PPI) for railroad car parts and accessories, which shows an increase of 5.8% over three years. Each item released from this omnibus approval will be subject to a price analysis and Procurement will determine whether the price offered is fair and reasonable.

Staff Summary

Item Number 4					
Division & Division Head Name: Acting VP Materiel, S. Plochochi					
Division Head Signature & Date 					
Board/Reviews					
Order	To	Date	Approval	Info	Other
Internal Approvals					
Order	Approval	Order	Approval		
1	Materiel	5	Executive VP		
2 X	Law	6	President		
3 X	TIS	7			
4 X	Subways	8			

SUMMARY INFORMATION	
Vendor Name ARINC, Incorporated	Contract Number CMM-1613
Description Software support and enhancements for AIM software	
Total Amount \$1,953,340 (Est.)	
Contract Term (including Options, if any) 5 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 type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive	
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other:	
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

PURPOSE/RECOMMENDATION:

To obtain approval from the Board to award a five year non-competitive personal service contract to ARINC Incorporated (ARINC) to provide software support for Advanced Information Management (AIM) Software used to run the Public Address/Customer Information Sign (PA/CIS) for the Canarsie Line and professional services to implement changes and enhancements to the software on an as-needed-basis in the estimated total amount of \$1,953,340.

DISCUSSION:

The Department of the Executive Vice President - Division of Technology & Information Services, Transportation Applications, (TIS) has requested the award of a five year contract to ARINC to provide software support and enhancements on an as needed basis for AIM software used to run the PA/CIS system on the Canarsie Line. Approximately one third of the contract cost will be for software support and the balance will be available in case any enhancements are needed. ARINC is the developer of the AIM software and is the sole provider of the software and support services and does not authorize any third parties to make changes to their software.

Under Contract W-32620, known as PA/CIS Phase I, awarded in 1994, L.K. Comstock furnished and installed a PA/CIS system at 139 passenger stations, including 14 of the 24 stations on the Canarsie "L" Line. Under Contract S-32701-2, awarded in 1999, Siemens Transportation Systems, Inc., Union Switch & Signal, Inc. and RWKS Comstock designed, furnished and installed a Communication Based Train Control (CBTC) system on the Canarsie Line. The CBTC system automatically sends to the Rail Control Center (RCC) train identification, location and speed information.

The L.K. Comstock PA/CIS I system was designed as a decentralized system and could not interface with CBTC without the installation of a new server and software at the RCC. To achieve this objective, the Board in February 2003, approved the award of a non-competitive three year Contract, W-32662, to ARINC in the amount of \$6.5M to provide PA/CIS to the remaining ten Canarsie stations and their customized AIM software and hardware at the RCC. These enhancements allowed train arrival information generated by the CBTC system to be displayed in the stations. AIM software is used with applications like the PA/CIS system to provide a seamless communication of messages between software components and CBTC. ARINC was selected as the software provider based on their relationship with a key subcontractor from PA/CIS I.

After acceptance of the system on Canarsie, the Board approved in December 2005 the award of non-competitive Contract 05F9219 to ARINC for \$162K to provide test equipment and software required for the testing and maintenance of software furnished under Contract No.W-32662. This contract duplicated a part of ARINC's software test lab in Maryland, which was used in the design of the Canarsie PA/CIS-CBTC interface system. The lab allows NYC Transit to test software changes required for the PA/CIS Canarsie system before being put into production. In addition, the hardware and software procured was used by ARINC to train NYC Transit personnel during the warranty period in administration and operation of the software.

Staff Summary

The work under this contract will be performed on a task order basis, which will be initiated by TIS and will be based on the labor rates contained in the contract. Each task order will be developed based on a scope of work, time period and level of effort utilizing the four titles identified in the contract. ARINC will provide support services on a per diem basis to perform software troubleshooting, fixes and system enhancements for PA/CIS on Canarsie. This support will be both off-site and at NYC Transit. The scope for maintaining the state of good repair is limited to correcting failures and enacting modifications that improve the availability and reliability of the software. Enhancements are also planned and will be requested by the Department of Subways (DOS) and include improving the accuracy of automated announcements. Another enhancement would be to allow the dispatchers at the RCC to have the capability to suspend automated announcements and make their own global/mass call announcement to multiple stations, if there is a problem on the Canarsie Line or that otherwise requires wide notification. This capability currently does not exist. DOS will be responsible to pay/reimburse TIS for these enhancements.

ARINC's initial price proposal in the amount of \$2,130,543 was based on hours estimated by NYCT and identified by ARINC in the price schedule with hourly rates in the first year that range from \$122 to \$228 and \$138 to \$258 for the fifth year. ARINC initially proposed labor rates that are the same as approved by the Defense Contracting Audit Agency, which included a 17% profit and yearly escalations of 3.1%. ARINC was advised that their labor rates and yearly escalations were excessive and was requested to reduce their rates. In addition, ARINC was informed that NYC Transit does not pay for travel time.

As a result of negotiations, ARINC submitted a Best and Final Offer (BAFO) in the amount of \$1,953,340. This amount reflects reductions to their escalation and profit rates. The hourly billing rates for Year One now range from \$112 to \$210 per hour and from \$124 to \$233 per hour in Year Five. ARINC agreed to reduce their yearly escalation rate from 3.1% to 2.6% and their profit rate from 17% to 8.5%. ARINC's BAFO of \$1,953,340 reflects a \$177,203 or 8.3% reduction from their initial proposal of \$2,130,543.

Based on the above, Procurement found ARINC's total price of \$1,953,340 to be fair and reasonable. TIS concurs with this determination and recommends award. TIS estimated usage to maintain the AIM software is \$586,002 and \$1,367,338 for DOS requested changes and enhancements to the software.

Procurement contacted Long Island Railroad (LIRR) and MetroNorth Railroad (MNR) to ask if they wished to participate in this contract and both agencies declined. MNR received Board approval in April 2010 to replace its existing public address system with one that will be provided by ARINC on a fixed price basis. Thus it was not possible to compare hourly rates. The services provided by ARINC to the LIRR and MTA CC do not involve PA/CIS work or the same staffing levels and are therefore not comparable.

A background search and review of documents submitted by ARINC disclosed no significant adverse information within the meaning of the All-Agency Responsibility Guidelines. Having evaluated all of the available facts, Procurement finds ARINC fully responsible for award.

MBE/WBE Participation:

Based on the scope of work and lack of subcontracting opportunities, the MBE/WBE goals established are 0% MBE and 0% WBE for this contract.

IMPACT ON FUNDING:

Approved funding was identified in Requisition No. U-A260451 in TIS' Operating Budget under Account No. 808.22, Responsibility Center No. 7526, Job No. 06086 and Function No. 940.

Approved funding for each enhancement will be identified in DOS' budget whereby they will reimburse TIS upon completion of each task order. TIS is the first instance payer.

ALTERNATIVES:

None, as ARINC does not authorize third parties to make such software revisions.

JUNE 2010

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

			<u>Page</u>
I. <u>Modifications to Purchase and Public Work Contracts</u>			
(Staff Summaries required for individual change orders greater than \$250K. Approval without Staff Summary required for change orders greater than 15% of the adjusted contract amount which are also at least \$50K.)			
1. Granite Construction Northeast, Inc.	\$3,235,184.00	<u>Staff Summary Attached</u>	101
Contract #A-35870.11			
Modification to the contract for the Rehabilitation of Five Stations on the Brighton Line, in order to perform track and signal work.			

JUNE 2010

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Procurements Requiring Majority Vote:

Page

F. Personal Service Contracts

(Staff Summaries required for all items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M Competitive.)

- | | | | |
|--|-----------------------------|-------------------------------|-----|
| 1. The Louis Berger Group, Inc. | \$3,000,000.00 (NTE) | <u>Staff Summary Attached</u> | 102 |
|--|-----------------------------|-------------------------------|-----|

Contract # PS815-9

On Call Services Contract for Environmental Consultant Services.

Schedule I: Modifications to Purchase and Public Work Contracts



Item Number: **1**

Vendor Name (& Location) Granite Construction Northeast, Inc. (Tarrytown, NY)
Description Rehabilitation of Five Stations – Brighton Line
Contract Term (including Options, if any) October 30, 2008 – December 30, 2011
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:
Requesting Dept/Div & Dept/Div Head Name: Capital Program Management, Frederick E. Smith

Contract Number A-35870	AWO/Modification # 11
Original Amount:	\$ 161,400,000
Prior Modifications:	\$ 1,492,282
Prior Budgetary Increases:	\$ 0
Current Amount:	\$ 162,892,282
This Request:	\$ 3,235,184
% of This Request to Current Amount:	2.0%
% of Modifications (including This Request) to Original Amount:	3.0%

Discussion:

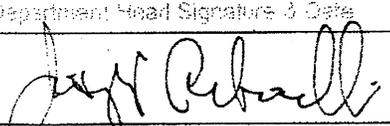
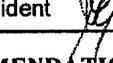
This modification is for track and signal work. This contract is for the rehabilitation of five elevated train stations on the Brighton Line in Brooklyn: Newkirk Avenue, Avenue H, Avenue J, Avenue M and Kings Highway. Improvements will include platform reconstruction; platform canopy replacement; upgraded lighting, electrical, communications, mechanical, plumbing and storm drainage systems; new interior and exterior finishes. The project also includes track re-alignment using Subways in-house forces.

The original project plan provided for Subways to perform all of the track work, specifically to furnish and install the hard-rail connections between the local and express tracks and to perform the tamping and lining of express and local tracks at all the stations on the entire Brighton Line stations rehabilitation project, in conjunction with both the subject five-station contract and with the companion two station contract awarded to Judlau. Subways did perform some of the work, specifically the southbound hard-rail connections and the tamping of the express tracks, and the reconstruction of the station tracks at Avenue H. However, in September 2009, Subways determined it could not perform the remaining work. Simultaneously, it was supposed to perform track work on three projects: the Brighton project; the Rockaway Line negative return restoration and upgrade project; and the ongoing mainline State of Good Repair (SGR) program for which FTA has provided funding specifically for in-house force work. However, Subways lacks the manpower and equipment (work trains, tampers, and hopper cars) needed to do all three simultaneously. Of the three in-house projects, Brighton was the only one for which construction work had already been farmed-out, so the decision was made to reduce the overall Subways workload by means of modifications to the two Brighton contracts.

This modification will include the remaining track work associated with the stations in the base contract, primarily for the tamping and lining of the local tracks alongside the southbound platforms at two stations and the express tracks at one station. It also includes labor to replace ties alongside the southbound platform at two stations and northbound platforms at four stations, which was not part of the original project but is now required due to poor condition of the ties. Finally, it includes a small amount of associated signal work. NYC Transit will furnish tie materials from inventory under the Capital-funded In-House Track Reconstruction Program. The contractor's initial proposal was \$4,449,579; NYC Transit's revised estimate was \$3,381,000. Following negotiations, the lump sum of \$3,235,184 was agreed upon and found to be fair and reasonable. A savings of \$1,068,579 was achieved.

NYC Transit's schedule analysis indicates this modification does not require an extension of time. The contractor does not agree, but neither made a formal request for time nor provided any supporting schedule analysis. Accordingly, NYC Transit will unilaterally direct the contractor to proceed with no schedule impact.

Staff Summary

Item Number 1					
Dept. & Dept. Head Name: Planning/External Relations/ Environmental Department Head Signature & Date					
 6.9.10					
Board Reviews					
Order	To	Date	Approval	Info	Other
Internal Approvals					
Order	Approval	Order	Approval		
1	Director, Procurement 				
2	Chief Financial Officer 				
3	SVP & General Counsel 				
4	MTACC President 				

SUMMARY INFORMATION	
Vendor Name The Louis Berger Group	Contract Number PS815-9
Description On Call Services Contract for Environmental Consultant Services	
Total Amount \$3,000,000	
Contract Term (including Options, if any) 3 Years, with a one-year option	
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 type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	

PURPOSE/RECOMMENDATION:

To obtain the approval of the MTA Board to award a competitive personal service On Call Services Contract to The Louis Berger Group, Inc. ("LBG") to provide environmental consultant services to support MTA Capital Construction projects for an amount not to exceed \$3,000,000 aggregate for a term of three years with a one (1) year option.

DISCUSSION:

In October of 2009 the MTA Board approved the award of on call services contracts to a pool of eight (8) consultants with environmental expertise in the areas of engineering, compliance, archaeology & historic built properties and permitting. Under this arrangement, MTACC will issue Task Orders (a written directive from MTACC to perform a detailed scope of work) which would normally be competitively solicited among the pool of consultants, against the base contracts for the specific consulting services as MTACC's needs are identified.

LBG was one of the firms that were selected for award of this contract, however, award was not recommended at that time due to significant adverse information ("SAI") as defined by the MTA's All Agency Responsibility Guidelines on LBG which required further investigation. Based on these findings, an SAI Memorandum requesting approval to award this Contract to LBG notwithstanding SAI was approved by the MTACC President and the MTA's Chairman and Chief Executive Officer in accordance with the All-Agency Responsibility Guidelines.

The firms' proposed overhead rates, financial statements and independent auditors' reports were submitted to MTA Audit Services for review and acceptability. Services to be provided under this Contract will be awarded on an as-needed basis at a negotiated cost plus fee based on the accepted labor rates and overhead billing rates. The accepted ceiling labor rates will be fixed for a period of one (1) year from the Notice of Award date and subject to MTA Audit's final review.

D/M/WBE

A 10% DBE goal was established for this contract by the MTA Office of Civil Rights.

IMPACT ON FUNDING

Since there is no current order of magnitude and scope of work, the totals cost and funding for these services would be determined upon issuance of a Task Order. The total contract value is based upon projection and is used for budget purposes only. Funding will be available from the Capital Program and possibly the FTA.

ALTERNATIVES

MTACC does not have the in-house personnel to perform the tasks anticipated under this contract.

RECOMMENDATION

MTACC recommends the MTA Board approve the award of a competitive personal services on call services contract to The Louis Berger Group, Inc. to provide environmental consultant services to support MTA Capital Construction projects for an amount not to exceed \$3,000,000 aggregate for a term of three (3) years with an one (1) year option.

JUNE 2010

LIST OF RATIFICATIONS FOR BOARD APPROVAL

<u>Procurements Requiring Two-Thirds Vote:</u>			<u>Page</u>
D. <u>Ratification of Completed Procurement Actions</u>			
(Staff Summaries required for items requiring Board approval.) 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.			
1. Various Contractors	\$3,208,491.00	<u>Staff Summary Attached</u>	105
Immediate Operating Need			
Various supply purchases for H1N1 pandemic preparedness.			

Procurements Requiring Majority Vote:

K. Ratification of Completed Procurement Actions (Involving Schedule E-J)

(Staff Summaries required for items requiring Board approval.)

2. Schiavone – Citnalta, JV	\$560,443.00	<u>Staff Summary Attached</u>	107
Contract #A-35927.59			
Modification to the contract for the rehabilitation of the Jay/Lawrence Street Station Complex, in order to purchase electrical and mechanical equipment for an HVAC upgrade to communication rooms.			

JUNE 2010

LIST OF RATIFICATIONS FOR BOARD APPROVAL

<u>Procurements Requiring Two-Thirds Vote:</u>			<u>Page</u>
D. <u>Ratification of Completed Procurement Actions</u> (Staff Summaries required for items requiring Board approval.) 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.			
1. Henry Brothers Electronics	\$6,500,000.00	<u>Staff Summary Attached</u>	1-108
Emergency Declaration			
Contract # C-10472			
IESS/C3 Contract Wrap-Up Support Services.			

Schedule D: Ratification of Completed Procurement Actions



Item Number: 1

Vendor Name (& Location) Various Contractors
Description Various supply purchases for H1N1 pandemic preparedness
Contract Term (Including Options, if any) Immediate
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Immediate Operating Need

Contract Number Various	Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
NYC Transit	\$2,704,301
MTAB	\$376,103
LIRR	\$48,720
LIB	\$48,056
B&T	\$31,311
Total Amount:	\$3,208,491
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Division of Materiel, Stephen M. Plochochi	

Discussion:

It is requested that the Board formally ratify the declarations of Immediate Operating Need (ION) and the waiver of formal competitive bidding pursuant to Public Authorities Law for the purchase of various H1N1 pandemic preparedness supplies for NYC Transit, MTA Bus, Long Island Rail Road, Long Island Bus and Bridges & Tunnels.

The 2009 H1N1 influenza virus emerged at the end of the 2008-2009 flu season. Prior to the emergence of the H1N1 outbreak in the spring of 2009, the MTA had already organized a Pandemic Committee which was responsible for the development of a MTA-wide pandemic plan that included the development of operating procedures and the identification of pandemic preparedness supplies to be used throughout the agencies. Based on recommendations from the Centers for Disease Control and Prevention in May 2009, the Pandemic Committee determined that employees with unavoidable contact with the public might need to be provided with disposable respirators. In response to that determination, the Vice President, Materiel, issued the first declaration of an ION so that the required quantities of respirators could be obtained in the most expeditious and cost-effective manner possible.

Later, in June 2009, the World Health Organization declared the 2009 H1N1 influenza a pandemic. The Pandemic Committee determined that other pandemic preparedness supplies (hand sanitizers, gloves, disinfectant hand wipes, disinfectant surface wipes) would also be required. As a result of the world-wide demand for pandemic supplies, the products recommended by the Pandemic Committee were in extremely limited supply. Because of this and the fact that these supplies were required immediately, the Vice President, Materiel issued the second declaration of an ION. Materials obtained under both IONs were delivered and are presently on hand in the storeroom.

NYC Transit and the other MTA agencies, under their respective statutes and guidelines, utilized various procurement methods (such as using small purchase procedures and existing competitively awarded contracts) in order to obtain these supplies in the most expeditious and cost-effective manner possible as well. Supplies in the grand total of \$3,614,471 were obtained to support the pandemic preparedness effort by NYC Transit, MTAB, LIRR, MNR, B&T and LIB. Of this amount, purchases totaling \$3,208,491 listed below were above the small purchase threshold or not available from existing contracts and therefore require Board ratification. The significantly large quantities, the need for immediate delivery and the presence of worldwide demand necessitated purchase of the same items from multiple sources at different unit pricing. Every effort was made to obtain the lowest prices possible and all pricing was deemed fair and reasonable under the circumstances. Each of the vendors shown below received one or more awards for the items shown for the aggregate dollar amount.

Vendor	Item	Agency	Amount
Stauffer Glove and Safety	Respirators	NYC Transit, LIRR, MTAB	\$373,523
W.W. Grainger	Respirators	NYC Transit	\$225,000
M.M. Herman	Respirators	NYC Transit, MTAB	\$39,600
Industries for the Blind	Respirators	NYC Transit	\$39,475
Choice	Respirators	MTAB	\$29,240
Finco	Respirators	MTAB	\$3,320
Master Auto	Respirators	MTAB	\$3,058

Schedule D: Ratification of Completed Procurement Actions



W.W. Grainger	Hand Wipes	NYC Transit, MTAB	\$197,342
Allied 100	Hand Wipes	NYC Transit	\$176,948
MMS-A Medical	Hand Wipes	NYC Transit	\$105,059
Henry Schein Inc.	Hand Wipes	NYC Transit	\$66,960
Wishico Corp.	Hand Wipes	NYC Transit, MTAB	\$48,420
Choice	Hand Wipes	MTAB	\$23,232
Redicare Co.	Surface Wipes, Individual	NYC Transit, B&T, MTAB, LIB	\$746,678
MMS-A Medical	Surface Wipes, Individual	NYC Transit	\$544,542
Southland	Surface Wipes, Individual	LIB	\$13,765
Veridien	Surface Wipes, Individual	LIB	\$4,500
Choice	Surface Wipes, Individual	MTAB	\$705
Coast-Line International	Surface Wipes, Canister	NYC Transit, MTAB	\$108,505
T&B Specialties	Surface Wipes, Canister	NYC Transit, LIRR	\$93,132
Choice	Surface Wipes, Canister	MTAB	\$2,625
Industries for the Blind	Gloves	NYC Transit, MTAB	\$362,862
		Total:	\$3,208,491

Schedule K: Ratification of Completed Procurement Actions



Item Number: 2

Vendor Name (& Location) Schiaivone – Citnalta, JV (Secaucus, NJ)
Description Rehabilitation of the Jay/Lawrence Street Station Complex
Contract Term (including Options, if any) March 26, 2007 – March 26, 2011
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:
Requesting Dept/Div & Dept/Div Head Name: Capital Program Management, Frederick E. Smith

Contract Number	AWO/Modification #
A-35927	59
Original Amount:	\$ 108,866,000
Prior Modifications:	\$ 2,510,210
Prior Budgetary Increases:	\$ 0
Current Amount:	\$ 111,376,210
This Request:	\$ 560,443
% of This Request to Current Amount:	0.5%
% of Modifications (including This Request) to Original Amount:	2.8%

Discussion:

This modification is for the purchase and delivery of long-lead equipment needed to provide HVAC and improved ventilation in communications rooms. This contract is for the rehabilitation of the Jay/Lawrence Street Station Complex, including the installation of ADA-compliant elevators and the construction of a passenger transfer connector between the Jay Street Station and the Lawrence Street Station.

As a separate initiative, NYC Transit has begun a program to cool and stabilize the operating environment in communication rooms throughout the system. As new technology projects have come on line, the associated electronic components are often installed in communication rooms. However, although many of these units have internal cooling systems, both the equipment, and its cooling apparatus disperse considerable heat into the room in which they are installed. Forced air fans have proven inadequate in achieving the required cooling. As a result, a program to cool communications rooms is underway. The rooms were ranked by priority, with key locations for network communications operations and security given priority. NYC Transit has employed a variety of procurement methods to contract for the installation of cooling equipment and associated power upgrades. In 2009, Federal Stimulus funds were used to contract for cooling of 37 rooms. In other locations, such as Jay/Lawrence, where a contractor was already working, the communication work will be added to the contract by change order.

The station complex has four communication rooms, none of which are air conditioned. The contract calls for improved ventilation in only one room, by means of the installation of a ventilation duct and fan. After contract award, NYC Transit calculated that the cabinets and equipment presently installed, and to be installed under separate systems contracts, would elevate the rooms' temperature and jeopardize equipment functionality and lifecycle and that these rooms need to be air conditioned. This is being handled under three modifications.

In February 2010, the Board approved the first of the three modifications, a retroactive \$398K modification that covered work that needed to be performed during two weekend 53-hour General Orders (GO's) previously scheduled in January for base contract work. Each weekend GO costs NYC Transit about \$550K, so performing that work as a separate modification saved over \$1M in service costs. That modification consisted primarily of furnishing and installing new electrical cable and conduit over express tracks to the Jay Street rooms

The subject retroactive modification is for the purchase and delivery of HVAC equipment which has an approximate three-month lead time. This equipment had to be purchased immediately in order to allow completion and performance testing of the HVAC systems before the cooling season ends in September. The contractor's initial proposal was \$599,033; NYC Transit's estimate was \$595,100. Following negotiations, the lump sum of \$560,443 was agreed upon and found to be fair and reasonable. A savings of \$38,590 was achieved. On May 5, 2010, the SVP and Chief Engineer approved a retroactive waiver and the contractor was directed to proceed with the purchase of the equipment the next day.

A final modification for equipment installation and remaining work will require Board approval.

Schedule D: Ratification of Completed Procurement Actions



Item Number: **1**

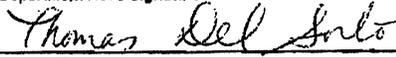
Vendor Name (& Location) Henry Brothers Electronics (Fairlawn, NJ)
Description IESS/C3 Contract Wrap-Up Support Services
Contract Term (Including Options, if any) Immediate
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Emergency Declaration

Contract Number C-10472	Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Total Amount:	\$6,500,000
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: FEMA	
Requesting Dept/Div & Dept/Div Head Name: Security Program, Richard Miras	

Discussion:

As part of the effort to bring the functions of the IESS/C3 system to operational readiness after the default of IESS contract (C-52038) with Lockheed Martin Transportation & Security Solutions (LMTSS), a firm to perform electrical work and to integrate the various IESS subsystems is required. Given the urgent nature of this effort MTACC considers formal competitive bidding related to the wrap-up of the IESS/C3 project to be impractical and inappropriate pursuant to the prior Emergency Declaration. MTACC requires a contractor to provide all necessary labor, equipment, materials and incidentals required to complete the IESS installation at various New York City Transit Communication Rooms. A limited task order Request For Proposal ("RFP") was issued for this work to Five Star Electric ("FSE"), Tap Electric ("TAP"), Emcor, Access Control Technologies (ACT) and Henry Brothers Electric ("HBE"). HBE was the only responsive and responsible respondent and MTACC has determined that HBE has the technical expertise and capability to perform these tasks. HBE submitted a proposal, for \$8,758,616 to perform the work while MTACC's in-house estimate was \$5,961,862. Negotiations were held and the parties reached an agreement of \$6,500,000, which is considered fair and reasonable, as it is within 10% of the in-house estimate. Due to an urgent need to complete this work and with the latitude provided under the prior Declaration of Emergency for security-related contracts, MTACC rode MTA Bridges and Tunnels Contract 08-MNT-2827, Maintenance of the IESS System, and entered into an agreement with HBE for this work.

Staff Summary

Subject Requests for Authorization to Award Various Procurements
Department MTA Bus Company/Long Island Bus/NYCT Department of Buses
Department Head Name Thomas Del Sorbo
Department Head Signature 
Project Manager Name James Curry

Date June 2, 2010
Vendor Name N/A
Contract Number N/A
Contract Manager Name N/A
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Committee	6/21/10	X		
2	Board	6/23/10	X		

Internal Approvals			
Order	Approval	Order	Approval
3	President 		
2	Executive VP 		
1	General Counsel 		

PURPOSE:

To obtain (i) approval of the Board to award various contracts/contract modifications and purchase orders, as reviewed by the MTA Bus Operations Committee, and (ii) ratification of the procurements listed below.

DISCUSSION:

MTA Bus Company proposes to award Non-Competitive procurements in the following categories:

None

Long Island Bus proposes to award Non-Competitive procurements in the following categories:

None

NYC Transit Department of Buses proposes to award Non-Competitive procurements in the following categories:

None

MTA Bus Company proposes to award Competitive procurements in the following categories:

None

Long Island Bus proposes to award Competitive procurements in the following categories:

None

NYC Transit Department of Buses proposes to award Competitive procurements in the following categories:

None

MTA Bus Company seeks Ratifications in the following categories:

None

Long Island Bus seeks Ratifications in the following categories:

None

NYC Transit Department of Buses seeks Ratifications in the following categories:

None

BOARD RESOLUTION

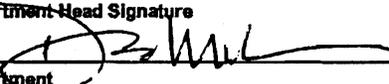
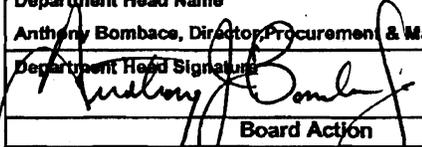
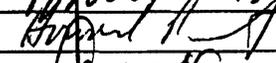
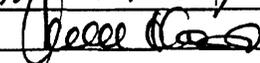
WHEREAS, in accordance with Section § 1265-a and § 1209 of the Public Authorities Law and the All-Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive purchase and public work contracts, and the solicitation and award of requests for proposals in regard to purchase 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.
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.

Subject Request for Authorization to Award Various Procurements						Date June 23, 2010			
Department Procurement & Logistics - LIRR						Department Law and Procurement - MTACC			
Department Head Name Dennis L. Mahon, Chief Procurement & Logistics Officer						Department Head Name Veronique Hakim, Sr Vice President Genl Counsel & Secy			
Department Head Signature 						Department Head Signature 			
Department Procurement & Material Management - MNR									
Department Head Name Anthony Bombace, Director, Procurement & Material Management									
Department Head Signature 									
Board Action						Internal Approvals			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	LIRR/MNR Committee	6.21.10				X	President, LIRR		
2	MTA Board	6.23.10				X	President, MNR		
						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:

LIRR proposes to award Non-Competitive procurements in the following categories:

Schedules Requiring Two-Thirds Vote

	# of Actions	\$ Amount
Schedule A: Non-Competitive Purchase and Public Works Contracts	2	\$11.941M

Schedules Requiring Majority Vote

Schedule G: Miscellaneous Service Contracts	1	\$0.200M
SUBTOTAL:	3	\$12.141M

MNR proposes to award Non-Competitive procurements in the following categories:

Schedules Requiring Majority Vote

Schedule G: Miscellaneous Service Contracts	1	\$0.260M
SUBTOTAL:	1	\$0.260M

MTACC proposes to award Non-Competitive procurements in the following categories: NONE

LIRR proposes to award Competitive procurements in the following categories: NONE

MNR proposes to award Competitive Procurements in the following categories: NONE

MTACC proposes to award Competitive Procurements in the following categories:

Schedules Requiring Majority Vote

Schedule I:	Modifications to Purchase and Public Work Contracts:	2	\$5.229M	
		SUBTOTAL:	2	\$5.229M

LIRR proposes to award Ratifications in the following categories: NONE

MNR proposes to award Ratifications in the following categories: NONE

MTACC proposes to award Ratifications in the following categories: NONE

TOTAL: 6 **\$17.630M**

BUDGET IMPACT:

The purchases/contracts will result in obligating Long Island Railroad, 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.

JUNE 2010

MTA LONG ISLAND RAIL ROAD

LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Procurements Requiring Two-Thirds Vote

Page

Schedule A: Non-Competitive Purchase and Public Works Contracts

(Staff Summaries required for all items greater than: \$100K Sole Source: \$250K Other Non-Competitive)

- | | | | | |
|----|---|---------------------------------------|--------------------------------------|------|
| 1. | New York State Industries
for the Disabled (NYSID) | Renewal: \$10,454,673 FFP | <i><u>Staff Summary Attached</u></i> | 113a |
| | Renewal: BP03504 | Ratification: \$ 1,321,968 FFP | | |
| | Ratification: BP02822 | For Approval: \$11,776,641 FFP | | |

LIRR requests MTA Board approval to award a renewal contract to New York State Industries for the Disabled ("NYSID") to provide janitorial services at LIRR's Penn Station and West Side Yard facilities, for a period of three years, from July 1, 2010 through June 30, 2013, in the fixed price amount of \$10,454,673, and to ratify a four-month extension to the current contract, from March 1, 2010 through June 30, 2010 at the current monthly rate of \$330,492, due to extended negotiations.

- | | | | | |
|----|-------------------------------|---------------------|--------------------------------------|-----|
| 2. | Trans Tech Corporation | \$164,275 | <i><u>Staff Summary Attached</u></i> | 114 |
| | Sole Source | Fixed Amount | | |
| | Contract No. TBD | | | |

LIRR requests MTA Board approval to award a sole source contract to Trans Tech Corporation (Trans Tech) in the fixed amount of \$164,275 for the purchase of 2,500 direct fixation fasteners (DF fasteners). In 1983, 18,700 Landis Industries Inc. (Landis) DF fasteners were installed during the construction of LIRR's West Side Storage Yard (WSSY) facility. Replacement of deteriorated DF fasteners is now required because they have reached the end of their useful life and require replacement. Trans Tech now owns the patented design for the Landis DF Fasteners and serves as the Original Equipment Manufacturer (OEM).

Procurements Requiring Majority Vote

Schedule 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)

- | | | | | |
|----|-----------------------------------|----------------------|--------------------------------------|-----|
| 3. | Mid-Island Electric Supply | \$200,000 | <i><u>Staff Summary Attached</u></i> | 115 |
| | Sole Source | Not-to-Exceed | | |
| | Contract No. TBD | | | |

LIRR requests MTA Board approval to award a three year sole source blanket purchase order contract in a total not-to-exceed amount of \$200,000 to Mid-Island Electric Supply for technical support and services to properly maintain all of LIRR's Allen-Bradley/Rockwell Automation driven equipment. Mid Island Electric Supply is the exclusive regional distributor of Allen-Bradley/Rockwell Automation products and is, therefore, the sole responsible source for providing these services to LIRR.

Staff Summary

Item Number: 1

Vendor Name (& Location) New York State Industries for the Disabled, Inc.
Description Penn Station and West Side Yard Janitorial Services
Contract Term (Including Options, if any) July 1, 2010 – June 30, 2013
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Preferred Source

Contact Number BP03504	Renewal? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Total Amount:	Renewal- \$10,454,673 FFP Ratification- \$ 1,321,968 FFP For Approval- \$11,776,641 FFP
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Transportation Dept. / Rod Brooks, VP, Transportation	
Contract Manager: Donald Riker	

Discussion:

LIRR requests MTA Board approval to award a renewal contract to New York State Industries for the Disabled (“NYSID”) to provide janitorial services at LIRR’s Penn Station and West Side Yard facilities, for a period of three years, from July 1, 2010 through June 30, 2013, in the fixed price amount of \$10,454,673, and to ratify a four-month extension to the current contract, from March 1, 2010 through June 30, 2010 at the current monthly rate of \$330,492, due to extended negotiations.

The Business Service Center reviewed the scope of work and determined that this service was not a candidate for a joint procurement at this time.

This renewal contract is being awarded to NYSID in accordance with Section 162 of the New York State Finance Law (State Finance Law), which states that preferred sources shall be granted the right to provide services to New York State Agencies in order to advance social and economic goals. Under the State Finance Law, a contract award to a preferred source provider such as NYSID is expressly exempt from New York State Statutory competitive procurement requirements provided that (i) the vendor capable of providing the service in the form, function and utility required by LIRR and (ii) the price it offers is as close to the prevailing market prices as is practicable, but in no event greater than 15% above the prevailing market price.

NYSID has been providing these janitorial services at Penn Station and West Side Yard through its certified rehabilitation agency, FedCap Rehabilitation Services, Inc., (FedCap) in a satisfactory manner since 2001. NYSID submitted a proposal to LIRR on September 11, 2009 in the amount of \$13,095,050 that represented an increase of \$1,692,769, or 14.8% above NYSID’s prior three-year negotiated contract of \$11,402,281. Of this 14.8% increase, 11.8% was due directly to higher labor rates and fringe benefits. The remaining 3% was due to increased material and subcontractor costs, including overhead and fees. LIRR’s Transportation Services Department, Procurement & Logistics (P&L) Department, and MTA’s Audit Services Department (“MTA Audit”) evaluated NYSID’s cost proposal as it related to current requirements, facility configurations, including the expanded Penn Station restroom facilities, equipment, and material to identify potential cost savings and to ensure that the proposed manpower and rates were adequate and correct, to support the level of cleaning services required at both locations. Based on these reviews, MTA Audit recommended reducing the offer by \$613,967 from \$13,095,050 to \$12,481,083 and LIRR entered into negotiations that resulted in NYSID reducing its offer further by \$748,857, or 5.7%, from \$13,095,050 to \$12,346,193. This reduction would result in an increase of \$943,912 or 8.3% more than the current three-year contract price of \$11,402,281. The New York State Office of General Services (OGS) determined that the negotiated price was fair and reasonable and within 15% of the prevailing market price. However, after discussions with MTA HQ, both P&L and MTA Audit performed an additional in-depth audit of NYSID’s proposal. At the conclusion of the review of the previous year’s costs and several rounds of negotiations between LIRR, MTA Audit, NYSID and FedCap. LIRR successfully negotiated additional reductions in overhead fees and labor and fringe benefits. NYSID’s final offer reduced its labor and fringe benefits by \$1,543,421, from \$9,883,411 to \$8,339,990, and their overhead fees or operating expenses by \$348,100, from \$1,501,585 to \$1,153,485. When added to the material and insurance cost of \$961,197, this offer satisfies the MTA Audit recommendation of \$10,454,673 and is \$947,608 or 8% less than the current contract value of \$11,402,281.

NYSID has forwarded the negotiated proposal to the New York State Office of General Services (OGS) for review and approval in accordance with the State Finance Law and OGS will provide a written certification that the negotiated NYSID proposal is compliant with requirements of the State Finance Law. Accordingly, the negotiated, fixed price cost of \$10,454,673 for this three-year Preferred Source and renewal contract for janitorial services at Penn Station and the West Side Yard facilities is deemed to be fair and reasonable. Funding will be provided through the LIRR’s operating budget.



Staff Summary

Item Number: 2

Vendor Name (& Location) Trans Tech Corporation (Los Altos, CA)
Description Direct Fixation Rail Fastening System
Contract Term (Including Options, if any) 3 months
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source

Contact Number TBD	Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Total Amount: Not-to-Exceed \$164,275 Fixed Amount	
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Maintenance of Way – Robert Puciloski, Chief Engineer	
Contract Manager: Richard Barone	

Discussion:

LIRR requests MTA Board approval to award a sole source contract to Trans Tech Corporation (Trans Tech) in the fixed amount of \$164,275 for the purchase of 2,500 direct fixation fasteners (DF fasteners). In 1983, 18,700 Landis Industries Inc. (Landis) DF fasteners were installed during the construction of LIRR's West Side Storage Yard (WSSY) facility. Replacement of deteriorated DF fasteners is now required because they have reached the end of their useful life and require replacement. . Trans Tech now owns the patented design for the Landis DF Fasteners and serves as the Original Equipment Manufacturer (OEM).

The new fasteners must be identical to the existing plates in design, installation and function to ensure the plate's seating, strength, and to prevent the shearing of bolt assemblies encased in the track slab concrete structure. Trans Tech, is the sole responsible source to supply these specific replacement DF fasteners. LIRR advertised its intent to award a sole source contract to Trans Tech in the NYS Contract Reporter and in the NY Post. No other manufacturer expressed an interest in competing for this contract.

Pricing submitted by Trans Tech was compared to the price of other DF fasteners that were purchased by LIRR in 2007 from another manufacturer for maintenance on the concrete viaducts of the Babylon Branch. Adjusting for the changes in the price of steel as reported by the Product Price Index (PPI) the offer by Trans Tech is comparable to previous pricing. LIRR requested Trans Tech to provide a price reduction. However, Trans Tech could not offer a lower price citing an increase in their freight costs since submitting their original quotation. Trans Tech has certified that their prices offered to LIRR are equal to or not greater than the price charged their most favored transit customer or any other commuter railroad or transit agency. Therefore, the price is determined to be fair and reasonable. Funding for this contract is included in LIRR's 2010 Operating budget.

Schedule G: Miscellaneous Service Contracts



Staff Summary

Item Number: 3

Vendor Name (& Location) Mid-Island Electric Supply (Rockwell Automation) - Commack, NY
Description Technical Support and Service Agreement
Contract Term (including Options, if any) 3 Years
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input type="checkbox"/> No
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-Competitive
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source

Contact Number TBD	Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Total Amount: \$200,000 Not-to-Exceed	
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: Maintenance of Equipment , Michael Gelormino	
Contract Manager: Arthur Billotti	

PURPOSE/RECOMMENDATION:

LIRR requests MTA Board approval to award a three year sole source blanket purchase order (BPO) contract in a total not-to-exceed amount of \$200,000 to Mid-Island Electric Supply for technical support and services to properly maintain all of LIRR's Allen-Bradley/Rockwell Automation driven equipment. Mid Island Electric Supply is the exclusive regional distributor of Allen-Bradley/Rockwell Automation products and is, therefore, the sole responsible source for providing these services to LIRR.

DISCUSSION

The LIRR utilizes Allen-Bradley/Rockwell Automation programmable logic controllers (PLC's) and related control components in the majority of its rolling stock support equipment (RSSE) installed in LIRR's maintenance facilities. PLC's are miniature industrial computers that contain hardware and software used to perform the control functions for the equipment. The equipment consists of train washers, wheel truers, wheel presses, wheel borers, car hoists and the recently upgraded automated material handling system. To properly and efficiently maintain and support this equipment, it is in LIRR's best interest to establish a multi year technical support and service contract. This contract provides a cost effective means to maintain the technical and complex shop equipment that utilizes Allen-Bradley PLC's. The high level of complexity and sophistication, the proprietary nature of PLC software, as well as their rapid evolution and advancement, requires the expertise of the Original Equipment Manufacturer, through its exclusive distributor, to ensure maximum asset efficiency and service. The support and services available through this contract will minimize RSSE down time while also maximizing its service life.

The contract will provide for two scheduled service visits each year by Rockwell technicians to assist LIRR in the preventative maintenance of the Allen-Bradley PLC's and training of Plant Equipment Maintenance Department (PEMD) personnel. The contract will also establish set rates for any unscheduled (as needed basis) emergency technical support/troubleshooting/repair assistance in the event of equipment breakdown or failure. The service rates established are inline with those charged to the LIRR by other vendors for similar technical services and are considered fair and reasonable.

LIRR has advertised its intent to award a sole source contract for this work in both the NYSCR and the NY Post. No other firms expressed interest in competing for this work.

D/M/WBE INFORMATION

D/M/WBE goals are not applicable to this contract.

IMPACT ON FUNDING

This contract will be funded by LIRR's Operating Budget.

ALTERNATIVES

There are no other firms that possess the technical expertise for supporting and servicing the Allen-Bradley/Rockwell Automation PLC's.

JUNE 2010

METRO-NORTH RAILROAD

LIST OF NON-COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

Page

Schedules 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.)

- | | | | | |
|----|--------------------------------------|----------------------------------|--------------------------------------|-----|
| 1. | Harris-Stratex Networks, Inc. | \$260,000 (not-to-exceed) | <u>Staff Summary Attached</u> | 117 |
|----|--------------------------------------|----------------------------------|--------------------------------------|-----|

One-time Upgrade to the MNR Network Management System

Non-competitive, negotiated, one (1)-year miscellaneous service contract with Harris-Stratex Networks, Inc. (Harris) for system upgrade services of MNR's "NetBoss" Network Management System (NMS). Harris' NetBoss NMS was customized, integrated and installed into MNR's fiber optic telecommunication network in 2005 and has been maintained by them under a separate agreement since that time. The NetBoss NMS software is one of the key components of MNR's overall fiber optic communication network in that it provides diagnostic information, fault management and trouble reporting related to the entire fiber optic network communication and related subsystems. It monitors and reports real-time status of MNR's overall network condition and drives various applications such as automatic recovery of circuits to back-up systems and on-going network monitoring applications.

This one-time upgrade will expand capacity to integrate new node sites to the network, such as the new Emergency Control Center (ECC), Yankee/E.153rd St. Station, as well as Waterbury and Wallingford fiber node houses in Connecticut. The NetBoss NMS is proprietary to Harris and Harris is the sole provider of all NetBoss hardware, software and upgrade services. Negotiations resulted in a final cost of \$260K which represents an 11.6% discount from Harris' standard commercial price of \$293,990. The price is deemed fair and reasonable. Advertisements placed did not yield any interest from other sources, confirming the sole source status of NetBoss upgrade. This procurement is to be funded by the MNR Capital Budget (73.5% or \$191,100) and the State of Connecticut Department of Transportation (26.5% or \$68,900).

Schedule G: Miscellaneous Service Contracts



Item Number: G

Vendor Name (& Location) Harris-Stratex Networks, Inc.	Contract Number 0000073254	AWO/Modification #
Description NetBoss Network Management System Upgrade	Renewal?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Contract Term (including Options, if any) One Year	Total Amount:	\$ 260,000
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Funding Source	<input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: CDOT
Procurement Type <input type="checkbox"/> Competitive <input checked="" type="checkbox"/> Non-competitive	Requesting Dept/Div & Dept/Div Head Name: Procurement & Material Management, Anthony J. Bombace, Jr.	
Solicitation Type <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Sole Source		

Discussion:

Non-competitive, negotiated, one (1) - year miscellaneous service contract with Harris-Stratex Networks, Inc. (Harris) for system upgrade services of MNR's "NetBoss" Network Management System (NMS). Harris' NetBoss NMS was customized, integrated and installed into MNR's fiber optic telecommunication network in 2005 and has been maintained by Harris under a separate agreement since that time. The fiber optic telecommunications network is a collection of computers and circuits which allow Metro-North to provide: 1) the signaling needed for the movement of trains- ultimately leading to commuter train service; 2) customer communications through telephones, radios, public announcement systems at stations, and selling of tickets via the ticket vending machines and; 3) the monitoring of security-related activities through cameras and recorders. The NetBoss NMS software is one of the key components of the fiber optic communication network in that it provides diagnostic information, fault management and trouble reporting related to the entire fiber optic network communication and related subsystems. It monitors and reports real-time status of MNR's overall network condition and drives various applications such as automatic circuit recovery to back-up systems and on-going network monitoring applications.

Metro-North's NMS was initially designed with a two (2) - server platform configuration- a primary server at Grand Central Terminal and a secondary or backup server at MNR's Emergency Control Center (ECC). The primary server provides fault management and trouble reporting of devices in the network, while the secondary server acts as standby to assume management functions should the primary server fail.

The NetBoss NMS upgrade is necessary as a result of the relocation of the ECC. The upgrade will expand capacity capability to integrate new node sites to the network, such as the new ECC, Yankee/E.153rd St. Station, as well as Waterbury and Wallingford fiber node houses in Connecticut. The upgrade will also facilitate the control and compatibility with other upgraded network elements implemented and currently underway (such as changes to the Synchronous Optical Network and Digital Access Cross-Connect System hardware/software, Adtran channel banks, and switching/routing networks).

Harris' upgrade will replace the two (2) existing servers, primary and secondary, with: 1) two new servers and associated installation of the latest version of NetBoss software; 2) modifications to the failover scripts and transfer of application files from the old to the new servers; 3) support services to install and configure the servers, scripts and displays, and testing and acceptance for operability of the entire NetBoss system.

The NetBoss NMS is proprietary to Harris; Harris is the sole provider of all NetBoss hardware, software, all associated upgrade and support services. Negotiations resulted in an 11.6% discount from Harris' standard commercial price of \$293,990. The total not-to-exceed one-time upgrade cost of \$260K is deemed fair and reasonable. Advertisements placed did not yield any interest from other sources, confirming the sole source status of NetBoss upgrade. This procurement is to be funded by the Metro-North Capital Budgets (73.5% or \$191,100) Security Monitoring and ECC Project No. G414-03-09, Task No. G01663 (C&S Connect to Building), and the State of Connecticut Department of Transportation through administrative assets (26.5% or \$68,900).

JUNE 2010

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

MTA CAPITAL CONSTRUCTION

Page

Procurements Requiring Majority Vote

Schedule I: Modifications to Purchase Contracts and Public Work Contracts

(Staff Summaries required for individual change orders greater than \$250K. Approval without Staff Summary required for change orders greater than 15% of the adjusted contract amount which are also at least \$50K)

- | | | | | |
|----|--|--------------------|-------------------------------|-----|
| 1. | GTF, JV
Competitive
Contract No. CQ031
MTA Capital Construction
This contract is for the construction of four soft-ground bored tunnels, shafts, miscellaneous structures, underpinning and ground pre-treatment to support structures close to or over the tunnels and excavations; and miscellaneous demolition of surface structures for the East Side Access project. MTACC request MTA Board approval to increase the allowance item in the Contract utilized for the repair of an existing slurry wall. | \$5,000,000 | <u>Staff Summary Attached</u> | 119 |
| 2. | TC Electric
Competitive
Contract No. FM216
MTA Capital Construction
This contract to construct a fiber optic-based automation system for the indication and controls of motor-operated disconnect switches as part of the East Side Access Project. MTACC request MTA Board approval to modify the contract for the labor and equipment required to re-route conduit and to install several doors. | \$228,500 | <u>Staff Summary Attached</u> | 120 |

Schedule I: Modifications to Purchase or Public Work Contracts



Item	
Vendor Name (& Location) GTF, JV	
Description Queens Bored Tunnels and Structures	
Contract Term (including Options, if any) 9/28/09 – 4/30/12	
Option(s) included in Total <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> n/a	
Procurement <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
Solicitation <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification	
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: East Side Access, A. Paskoff, P.E.	

Contract Number CQ031	AWO/Modification # 10
Original Amount:	\$ 659,200,700.00
Prior Modifications:	\$ 58,953,487.18
Prior Budgetary Increases:	\$ 0
Current Amount:	\$ 718,154,187.18
This Request	\$ 5,000,000.00
% of This Request to Current Amount:	0.70%
% of Modifications (including This Request) to Original Amount:	9.70%

Discussion:

This contract is for the construction of four soft-ground bored tunnels totaling about 10,500 feet, three shafts designed for the combined purpose of tunnel ventilation and emergency egress, miscellaneous structures, underpinning and ground pre-treatment to support structures close to or over the tunnels and excavations; and miscellaneous demolition of surface structures for the East Side Access project.

An allowance item in the amount of \$2,000,000 was included in the Contract for repair work to the slurry wall constructed under Contract CQ028, Queens Open-Cut Excavation, which was terminated due to the default of the Contractor and against whom we collected the full value of an \$83.7M performance bond. \$5,000,000 was added to the allowance under Modification No. 3 due to the results of a boring and testing program done at the beginning of the CQ031 work which showed the extent of the defects in the wall to be greater than previously envisioned.

As excavation of the CQ031 open cut progresses, additional defects have become visible as the Contractor has excavated to a depth of 50ft. These defects could not be detected during the previous boring and testing program and were not previously assessed so the repair of these defects was not quantified or included in the previous increase to the allowance. To ensure the stability and safety of the slurry wall, additional investigation and repairs need to be undertaken concurrently as the excavation progresses. Therefore the allowance needs to be increased. MTACC estimates that an additional \$5,000,000 will cover the remaining balance of the repairs. The Contractor will be paid the previously negotiated unit prices for the work involved for the repairs.

Schedule I: Modifications to Purchase and Public Work Contracts



Item 2

Vendor Name (& Location) TC Electric (Long Island City, New York)	
Description MNR Traction Power MOD's & 13.2 kV Loop for the ESA Project	
Contract Term (Including Options, if any) 23 Months	
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Procurement Type	<input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
Solicitation Type	<input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification
Funding Source <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:	
Requesting Dept/Div & Dept/Div Head Name: East Side Access, A. Paskoff, P.E.	

Contract Number FM216	AWO/Modification # 13 (Part II)
Original Amount:	\$ 17,930,000.00
Prior Modifications:	\$ 1,909,209.65
Prior Budgetary Increases:	\$
Current Amount:	\$ 19,839,209.65
This Request	\$ 228,500.00
% of This Request to Current Amount:	1.15%
% of Modifications (including This Request) to Original Amount:	11.92%

Discussion:

This contract is for work on the East Side Access Project to construct a fiber optic-based automation system for the indication and controls of motor-operated disconnect switches (for third rail applications, DC traction power feeder modification, and electrical service equipment at M50 Substation). Upon extensive field investigation during construction it was determined that installation of the conduits as designed would be in locations that would not be accessible and/or would interrupt MNR operation during the construction period. A modification is required in order to re-route the thirteen (13) new conduits to another location due to accessibility, installation and integration issues. The new routing will give full access to all conduits and pull boxes and facilitate installation.

The Contractor proposed \$457,669.04 for the work, while MTACC's estimate is for \$435,579.00. Negotiations were held and the parties agreed to a cost of \$451,382.30 which is considered to be fair and reasonable as it falls within an acceptable parameter (3.6%) of the estimate.

The work will be handled as a two-part modification. Part I is for the purchase of the conduit in the amount of \$222,882.30. Due to the lead-time required to fabricate and deliver this material and in order not to impact the schedule, this Modification was executed. Part II for which we seek Board approval since it brings the total cost of the modification over Board threshold, involves providing the labor and equipment required to re-route the conduit and for the installation of two (2) doors and hardware at Switchboard Room "D". The cost for Part II is \$228,500.00 which brings the total modification over the \$250,000 threshold required for Board Approval.

Staff Summary



Subject: Request for Authorization to Award Various Procurements
Department: Procurement & Materials
Department Head Name: Anthony W. Koestler
Department Head Signature: <i>[Signature]</i>
Project Manager Name: Various

Date: June 2, 2010
Vendor Name:
Contract Number:
Contract Manager Name:
Table of Contents Ref #:

Board Action					
Order	To	Date	Approval	Info	Other
1	President	6/2/10	<i>[Signature]</i>		
2	MTA B&T Committee	6/21/10			
3	MTA Board	6/23/10			

Internal Approvals			
Order	Approval	Order	Approval
<i>[Signature]</i>	President		VP Operations
<i>[Signature]</i>	Executive Vice President		Chief Procurement Officer
	VP Staff Services/COS		VP & Chief Engineer
	General Counsel		VP Labor Relations

Internal Approvals (cont.)							
Order	Approval	Order	Approval	Order	Approval	Order	Approval
	Chief Financial Officer		Chief Technology Officer		Chief Health & Safety Officer		Chief EEO Officer
	Chief Security Officer		Chief Maintenance Officer		MTA Office of Civil Rights		

PURPOSE:

To obtain approval of the Board to award various contracts and purchase orders, and to inform the MTA B&T Committee of these procurement actions.

DISCUSSION:

MTA B&T proposes to award Non-Competitive procurements in the following categories: None

MTA B&T 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 (Solicitation of Purchase and Public Work Contracts)	1	TBD
<u>Schedules Requiring Majority Vote</u>			
Schedule E	Miscellaneous Procurement Contracts	1	\$037M
Schedule F	Personal Service Contracts	1	\$750M
Schedule H	Modifications to Personal/Miscellaneous Service Contracts	1	\$597M
SUBTOTAL		4	\$1.384M

MTA B&T presents the following procurement actions for Ratification: None

TOTAL	4	\$1.384M
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BUDGET IMPACT:

The purchases/contracts will result in obligating MTA B&T and other MTA agencies' operating funds in the amount listed. Funds are available in the current MTA B&T and other MTA agencies' operating 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.

The legal name of MTA Bridges and Tunnels is Triborough Bridge and Tunnel Authority.

MTA BRIDGES & TUNNELS
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

WHEREAS, in accordance with §559 and §2879 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 §2879 of the Public Authorities Law and the All Agency Procurement Guidelines, the Board authorizes the award of certain non-competitive miscellaneous procurement contracts, and certain changes orders to procurement, public work, and miscellaneous procurement contracts; and

WHEREAS, in accordance with § 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; and

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. The Board ratifies each action 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; 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.

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL
JUNE 2010

MTA BRIDGES & TUNNELS

Procurements Requiring Two-Thirds Vote:

Page

B: Request to Use RFP for Procurement of Purchase & Public Works in lieu of Sealed Bid
(Staff Summaries only required for items estimated to be greater than \$1 million)

- | | |
|---|------------|
| <p>1. Contractors to be Determined Cost to be Determined <u>Staff Summary Attached</u></p> <p>Contract Nos. GFM-495 (B&T),
C31673 (NYCT), 6061 (LIRR),
10089 (MTAHQ), MC-832 (MTACC)
and 0000074180 (MNR)</p> | <p>126</p> |
|---|------------|

Request that the Board declare competitive bidding to be impractical and/or inappropriate and authorize B&T, NYCT, LIRR, MTAHQ, MTACC and MNR to enter into a competitive Request for Proposal process for a joint solicitation to obtain Miscellaneous Construction Services on an As-Needed Basis at Various Authority Facilities. The budget for these as yet undefined projects is \$36,000,000 for B&T, \$50,000,000 for NYCT, \$10,000,000 for LIRR, \$2,000,000 for MTAHQ, \$30,000,000 for MTACC, and \$5,000,000 for MNR. The duration of these contracts will be three years.

Procurements Requiring Majority Vote:

E: Miscellaneous Procurement Contracts
(Staff Summaries required for items greater than: \$100K Sole Source; \$250K Other Non-Competitive)

- | | |
|---|----------------------------|
| <p>2. Blue Water Group</p> <p>Contract No. 101061</p> | <p>\$ 37,083.87</p> |
|---|----------------------------|

12 mo. contract –Competitive Bid – 2nd Low Bid/ 4 Bids

On April 12, 2010 the Authority issued a solicitation to upgrade its RSA Envision Security hardware and provide 12 months of maintenance support in accordance with New York State Office of General Services (OGS) Contract PT 60953. The RSA Envision Security Appliance is used to collect and analyze designated events from all critical network infrastructure systems. The appliance also improves incident response capabilities, enables real-time event management for IT security operations and allows the user to be more effective in responding to external and internal computer security threats. B&T is requesting an upgrade and hardware maintenance support for 12 months. The OGS Contract identifies RSA - The Security Division of EMC (RSA) as the licensed developer of this system which is also proprietary to RSA. Authorized resellers of RSA may provide the required support under OGS' contract. The solicitation notice was sent to RSA – The Security Division of EMC and three OGS authorized value added resellers under contract PT 60953. On April 18, 2010, four bids were submitted. The low bidder could not provide maintenance support services and is considered non-responsive to the solicitation. After evaluation of the bids, it was determined that Blue Water Group is the lowest responsive, responsible bidder. The bid price is fixed for a 12 month period. The bid is 12% or \$5,086.13 lower than the user's estimate of \$42,170.00. Based on competition, the price is considered fair and reasonable. Funds are available in the Operating Budget under General Ledger 59030.

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL
JUNE 2010

F: Personal Service Contracts

(Staff Summaries required for items greater than: \$100K Sole Source; \$250K Other Non-Competitive; \$1M Competitive)

- | | | |
|----|--|--|
| 3. | Integrated Strategic Resources LLC
NASCO Construction Services Inc.
VJ Associates
Contract Nos. PSC-08-2848 A - C | \$ 750,000.00
(aggregate not-to-exceed amount for the three contracts) |
|----|--|--|

5 yr. contracts – Competitive RFP – 5 Proposals

B&T requires the services of three consulting firms to provide miscellaneous consultant estimating services on an as-needed basis for a duration of five years. The aggregate not-to-exceed amount for the contracts to be awarded is \$750,000. These services are required to provide an independent review of design consultant estimates and prepare new estimates to support current projects as well as the new capital program. The current B&T staff does not have the capacity to provide these services. The contracts are for an indefinite quantity, with the required services being assigned on an as-needed basis by issuing Work Orders. The consultants will compete for assignment of the Work Orders with cost being the predominant factor for selection and utilizing the labor, overhead and profit rates negotiated in each contract. The service requirements were publicly advertised. Twenty-two firms submitted qualification information for review and evaluation by the Selection Committee. Six firms were selected to receive the Request for Proposal (RFP) and five submitted proposals. The proposals were evaluated against established criteria set forth in the RFP including technical work proposed, depth of understanding of the project, qualifications of the firm for specific personnel proposed and cost. The Committee elected to waive oral presentations and review the cost proposals. The consultants, in their base proposals, were asked to quote labor, overhead, profit and escalation rates based on predetermined titles. After evaluating information provided by the consultants and comparing the costs of each proposer, the Committee recommended that negotiations be conducted with NASCO Construction Services Inc. (NASCO), VJ Associates (VJ) and Integrated Strategic Resources LLC (ISR). Based on the committee's detailed review of all submittals and its consideration of proposed costs, three firms were selected as follows:

NASCO has extensive experience providing estimating services for New York City Transit, the City and State of New York, other clients in the metropolitan area and other public Authorities such as the Port Authority of New York and New Jersey. NASCO's proposed project team is comprised of highly experienced individuals who have satisfactorily performed estimating services on various B&T contracts in the past including the most recent miscellaneous estimating services contract. NASCO has proven to be very responsive to B&T needs.

VJ has worked with B&T as a sub-consultant providing cost estimating services on various projects such as, Toll Plaza and Service Building at the Robert F. Kennedy Bridge (formerly the Triborough Bridge) and the Service Building at the Gil Hodges Memorial (aka Marine Parkway) Bridge. It also has experience with other agencies in the New York tri-state area. Its technical proposal and past performance clearly demonstrated that it has the experience and resources necessary to successfully perform this contract. VJ's proposed project team has the experience required to provide quality

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL
JUNE 2010

estimating services for B&T.

ISR has successfully performed estimating services for B&T's QMT Employee Facility Rehabilitation; the Sea Beach line Rehabilitation for New York City Transit Authority; and the World Trade Center Transportation Hub for the Port Authority of New York and New Jersey. ISR's proposed Project Manager has extensive design and construction estimating experience on various bridges, major roadways and tunnels. In addition, ISR's proposed team is headed by six of their top senior estimators and has a number of Professional Engineers and Certified Cost Engineers on staff to support B&T's estimating requirements.

A fully loaded weighted average hourly rate ("FLWAHR") was developed for each consultant, using the consultants' negotiated rates for labor, overhead and profit and historical data on the weight used for each category. The negotiated FLWAHR for the recommended consultants ranged from \$115.20 to \$132.54. After accounting for inflation based on statistics from the U.S. Department of Labor, Bureau of Labor and Statistics, the negotiated FLWAHR rates for this contract average about 2.5% less than the average rates in the previous contracts. Based on this information, the negotiated rates are considered fair and reasonable. Additionally, the consultants will be competing for each task with price being the predominant factor in determining which consultant receives the work. Each firm is considered to be a responsible consultant. Funding is available in 2010 - 2014 Operating Budget under GL 57720.

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)

- | | | | | |
|----|---|----------------------|--------------------------------------|------------|
| 4. | S.E.B. Services of New York, Inc. | \$ 597,163.82 | <u>Staff Summary Attached</u> | 128 |
| | Contract No. 04-ISD-2707X | | | |
| | Extend the contract for six months to provide uniformed armed guard services at various B&T sites in order to revise the scope of work prior to the solicitation of a new contract. | | | |

Staff Summary

Item Number 1 (Final)					
Dept & Dept Head Name: Engineering and Construction, Thomas Bach, P.E. <i>Thomas Bach</i>					
Division & Division Head Name: Technical Services, Barry Silberfarb					
Board Reviews					
Order	To		Approval	Info	Other
1	President	6/2/10			
2	MTA B&T Committee	6/21/10			
3	MTA Board	6/23/10			
Internal Approvals					
Order	Approval	Order	Approval		
1	Chief Financial Officer <i>[Signature]</i>	4	Chief of Staff		
2	General Counsel <i>[Signature]</i>	5	Executive Vice President		
3	Chief Procurement Officer <i>[Signature]</i>	6	President <i>[Signature]</i>		

SUMMARY INFORMATION	
Vendor Name N/A	Contract Number B&T GFM-495 NYCT C31673 LIRR 6061 MTAHQ 10089 MTACC MC-832 MNR 0000074180
Description Miscellaneous Construction on an As-Needed Basis at Various Authority Facilities	
Total Amount	
Contract Term (including Options, if any) Three (3) years	
Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Renewal? <input checked="" type="checkbox"/> Yes <input 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 checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> Other:	

Narrative

I. PURPOSE/RECOMMENDATION

B&T is seeking Board approval under the All-Agency Procurement Guidelines to declare competitive bidding to be impractical and/or inappropriate and authorize B&T, NYCT, LIRR, MTAHQ, MTACC and MNR to enter into a competitive Request for Proposal (RFP) process for a joint solicitation to obtain Miscellaneous Construction Services on an As-Needed Basis at Various Authority Facilities.

II. DISCUSSION

In accordance with the All-Agency Procurement Guidelines, Article III.F. and various Public Authorities Laws, B&T, NYCT, LIRR, MTAHQ, MTACC, and MNR is requesting that the Board declare competitive bidding to be impractical for this joint solicitation and authorize the subject agencies to enter into a competitive RFP process to award contracts for miscellaneous construction services to multiple contractors who could provide competitive bids for various construction projects. B&T has successfully utilized this type of as-needed contract since 2000 to meet certain construction requirements on an expedited basis. The budget for these as yet undefined projects is \$36,000,000 for B&T, \$50,000,000 for NYCT, \$10,000,000 for LIRR, \$2,000,000 for MTAHQ, \$30,000,000 for MTACC, and \$5,000,000 for MNR. The duration of these contracts will be three years.

Staff Summary

The selected contractors are invited to bid on specific construction projects throughout Authority facilities which are awarded to the lowest bidders. Funds from the aggregate amount are allocated to individual contracts to pay contractors for the work they perform. Since most of the projects are relatively small and/or involve urgently needed repairs, such as deck and structural steel repairs, concrete sidewalks and ramps, brick pavers, retaining wall structures, platform canopies, safety railings, demolition, wrap up work for subway stations, minor electrical work, electrical communication room work, fencing, roof repairs, it would be inefficient and time-consuming to conduct a separate competitive bidding process for each project.

The scope of these miscellaneous as-needed construction projects cannot be readily determined at this time. During the contract term, the Scope of Work for each miscellaneous work order will be identified. Each of the contracted firms will then be given the Scope of Work for the prospective work order. Subsequent to a mandatory site tour, bids will be submitted. The contractor submitting the lowest bid price shall be awarded that specific work order.

This competitive RFP method of selection is in the public's interest and provides the Authority with the following benefits:

- i) Immediate response and resolution to potential emergency and other unforeseen situations with a responsible contractor performing the work;
- ii) Price competition between previously selected contractors for each work order.
- iii) Reduces the need and is an alternative for amendments (which are non-competitive) to existing construction contracts.

Therefore, B&T, NYCT, LIRR, MTAHQ, MTACC, and MNR deems it to be in the public interest to request that the Board adopt a resolution to declare competitive bidding impractical in favor of contract award by means of a competitive request for proposal process.

III. D/M/WBE INFORMATION

MTA OCR will assign applicable goals prior to issuance of the Request For Proposals.

IV. IMPACT ON FUNDING

Funding under B&T Contract GFM-495 will be provided in the Operating Budget in the amount of \$36,000,000. Funding under NYCT Contract C31673 will be provided from Federal funds, Capital and Operating Budgets in an amount of \$50,000,000. Funding under LIRR Contract 6061 will be provided from Federal funds, Capital and Operating Budgets in an amount of \$10,000,000. Funding under MTAHQ Contract 10089 will be provided in the Operating Budget in the amount of \$2,000,000. Funding under MTACC Contract MC-832 will be provided from Federal and other funds and Capital Budget in an amount of \$30,000,000. Funding under MNR Contract MNR 0000074180 will be provided from Federal and Other funds, Capital and Operating Budgets in an amount of \$5,000,000.

V. ALTERNATIVES

Utilize a standard competitive bidding process to award each as-needed construction project. This process is impractical due to potential lengthy delays in obtaining construction services from responsible firms for smaller, immediate or unanticipated/emergency needs and would not be in the best interest of the MTA agencies.

Schedule H: Modifications to Personal Service Contracts and Miscellaneous Service Contracts
Item Number: 4 (Final)

Vendor Name (& Location) S.E.B. Services of New York, Inc., Ossining, NY	Contract Number 04-ISD-2707X	AWO/Modification #
Description Armed Guard Services	Original Amount:	\$2,299,953.00
Contract Term (including Options, if any) July 1, 2005 through June 30, 2010	Prior Modifications:	\$1,642,340.11
Option(s) included in Total Amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Prior Budgetary Increases:	N/A
Procurement Type <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	Current Amount:	\$3,942,293.11
Solicitation Type <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	This Request:	\$597,163.82
Funding Source <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	% of This Request to Current Amount:	15.1%
Requesting Dept/Div & Dept/Div Head Name: Internal Security, Donald Look	% of Modifications (including This Request) to Original Amount:	97.4%

Discussion:

B&T is seeking Board approval under the All Agency Guidelines for Procurement of Services to modify this contract with S.E.B. Services of New York, Inc. (SEB) to extend the contract for six months and increase funding in the amount of \$597,163.82 in order to revise the scope of work prior to the solicitation of a new contract. This contract was awarded on July 1, 2005 in the amount of \$2,299,953 over a period of three years for the provision of uniformed armed guard services at various B&T sites. Three amendments have been issued under this contract revising the contract value to \$3,942,293.11.

SEB submitted a cost proposal totaling \$598,389.12. The user's estimate was \$491,971.64. During negotiations the scope of work and the proposal were reviewed, which resulted in a final negotiated amount of \$597,163.82. The variance with the estimate may be attributed to a significant increase in the prevailing wage rates for armed guards set by the New York State Department of Labor compared with the previously negotiated rates. SEB's proposed overhead and profit rates have not changed. The accepted amount is considered fair and reasonable. Consistent with the Procurement Guidelines, this amendment constitutes a substantial change. B&T is continuing to evaluate its armed guard service requirements and plans to issue a new RFP for these services. Funding is available for the prospective amendment in the Operating Budget chargeable to General Ledger 57180.