

# July 2020

## MTA Board Action Items



# **MTA Board Meeting**

**2 Broadway  
20th Floor Board Room  
New York, N.Y. 10004  
Wednesday, 7/22/2020  
10:00 AM - 5:00 PM ET**

## **1. PUBLIC COMMENT PERIOD**

## **2. APPROVAL OF MINUTES**

### **MTA and MTA Agencies Committee & Regular Meeting Joint Minutes - June 24, 2020**

MTAHQ

NYCT/MaBSTOA/SIRTOA/MTA Bus Company

MTA Metro-North Railroad

MTA Long Island Rail Road

MTA B&T

MTA Construction & Development

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## **3. CFO PRESENTATION TO A JOINT SESSION OF THE BOARD & FINANCE COMMITTEE (Materials Distributed Separately)**

**2020 Mid-Year Forecast**

**2021 Preliminary Budget**

**July Financial Plan 2021-2024**

## **4. MTA OTHER BUSINESS**

### **Pension Plan Amendments**

*Pension Plan Amendment - Page 27*

### **Debarment Regulations**

*Debarment Regulations Staff Summary - Page 38*

*Debarment Regulations - Page 41*

## **5. COMMITTEE ON METRO-NORTH RAILROAD & LONG ISLAND RAIL ROAD**

### **MNR Procurements Report**

*MNR Procurements - Page 47*

**i. Non-Competitive (no items)**

**ii. Competitive**

*MNR Competitive - Page 51*

**iii. Ratification (no items)**

**LIRR Procurements Report (no items)**

**MTA C&D Procurements Report (no items)**

## **6. COMMITTEE ON NYCT & BUS**

### **NYCT & Bus Procurements Report**

*Procurements Cover, Staff Summary, Resolution - Page 53*

**i. Non-competitive (no items)**

**ii. Competitive**

*Competitive - Page 57*

**iii. Ratifications (no items)**

**iv. C&D Procurements**

*C&D Procurement Package (Updated 7/20/20) - Page 63*

## **7. COMMITTEE ON MTA BRIDGES & TUNNELS OPERATIONS**

### **B&T Procurements**

*B&T Procurements - Page 76*

**i. Non-Competitive (no items)**

**ii. Competitive**

*B&T Competitive - Page 79*

**iii. Ratification (no items)**

## **8. COMMITTEE ON FINANCE**

### **Action Item**

**i. 2020 State PWEF Assessment**

*2020 State PWEF Assessment - Page 82*

### **MTAHQ Procurements Report**

*MTAHQ Procurement Report - Page 83*

**i. Non-Competitive (no items)**

**ii. Competitive**

*MTAHQ Competitive Procurements - Page 86*

**iii. Ratification (no items)**

### **Real Estate Items**

**i. Real Estate Agenda and Staff Summaries**

*Real Estate Agenda and Staff Summaries - Page 95*

## **9. COMMITTEE ON CORPORATE GOVERNANCE**

### **Action Items**

**i. Mission Statement and Performance Measurement Report**

*Staff Summary Mission Statement and Measurement Report 2019 - Page 121*  
*2019 Mission Statement and Performance Indicators Report - Page 122*

**ii. Procurement Guidelines**

*Staff Summary All Agency Procurement Guidelines - Page 157*  
*All Agency General Contract Procurement Guidelines - Page 159*

**iii. MTA Policies in connection with Provisions of the Public Authorities Law**

*Staff Summary Public Authorities Law Required Policies - Page 174*

**10. FIRST MUTUAL TRANSPORTATION ASSURANCE CO (FMTAC) (no items)**

**Joint Committee and Board Meeting of the Metropolitan Transportation Authority,  
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 Company, the Metro-North Commuter Railroad Company,  
MTA Construction & Development, the MTA Bus Company and  
the First Mutual Transportation Assurance Company**

**Minutes**

**2 Broadway**

**New York, NY 10004**

**Wednesday, June 24, 2020**

**10:00 a.m.**

**The following Board Members were present in person or by videoconference:**

**Hon. Patrick Foye, Chairman & CEO**

**Hon. Jamey Barbas**

**Hon. Frank Borelli**

**Hon. Victor Calise**

**Hon. Lorraine Cortés-Vázquez**

**Hon. Michael Fleischer**

**Hon. Randolph Glucksman**

**Hon. Rhonda Herman**

**Hon. David Jones**

**Hon. Linda Lacewell**

**Hon. Kevin Law**

**Hon. Robert W. Linn**

**Hon. David Mack**

**Hon. Susan Metzger**

**Hon. Haeda B. Mihaltses**

**Hon. Robert F. Mujica**

**Hon. Lawrence Schwartz**

**Hon. Vincent Tessitore, Jr.**

**Hon. Neal Zuckerman**

**The following alternate non-voting members were present by videoconference:**

**Hon. Andrew Albert**

**Hon. Norman Brown**

The following staff members attended in person or by videoconference:

Mario Péloquin, Chief Operating Officer, Thomas J. Quigley, General Counsel, Robert Foran, MTA Chief Financial Officer, Patrick Warren, MTA Chief Safety Officer, Sarah E. Feinberg, Interim President, NYCT, Craig Cipriano, Acting President, MTA Bus/Senior Vice President, NYCT Department of Buses, Abbey Collins, Chief Communications Officer, Monica Murray, Chief Administrative Officer, NYCT President's Office, Anthony McCord, Chief

Transformation Officer, Janno Lieber, MTA Chief Development Officer, MTA Construction & Development, Phillip Eng, President, Long Island Rail Road, Catherine Rinaldi, President, Metro-North Railroad, Daniel DeCrescenzo, Acting President, TBTA, Carolyn Pokorny, MTA Inspector General, Kuvershen Ayer, Chief Procurement Officer, David Florio, Director, R.E. Operations, Leasing & Acquisitions, Valerie Bannon, Chief Investment Officer, Michael Garner, Chief Diversity Officer, Alan Putre, Executive Director, New Fare Payment Program and Subash Iyer, Special Counsel for Ethics, Risk and Compliance.

The Board of the Metropolitan Transportation Authority also met as the Boards 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 Company, the Metro-North Commuter Railroad Company, MTA Construction & Development, the MTA Bus Company, and the First Mutual Transportation Assurance Company.

Unless noted otherwise, votes reflected in these minutes are those of each Committee and that of the MTA Board.

## **1. CHAIRMAN FOYE'S OPENING REMARKS.**

Chairman Foye called the meeting to order, and he announced that the MTA regular Board meeting is being held jointly with the Joint Metro North Railroad and Long Island Rail Road Committee, New York City Transit Committee, Bridges and Tunnels Committee, Finance Committee, and Capital Program Oversight Committee.

Chairman Foye stated that the meeting is being conducted remotely via videoconference. The Chairman explained that Governor Cuomo's Executive Order 202.1 suspends the Open Meetings Law requirements and accordingly any requirements in the MTA By-Laws that meetings are open to in-person attendance by the public and that Board members may participate only in person are also suspended.

Thomas Quigley, MTA General Counsel, conducted the roll-call and confirmed for the Chairman the presence of a quorum. Mr. Quigley subsequently re-confirmed the attendance of Board Members Lorraine Cortés-Vázquez and Haeda Mihaltses.

Chairman Foye noted that speakers for the public comment period were able to register on Monday, June 22, 2020 and send in their video or voice comments.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Chairman Foye's opening remarks.

## **2. PUBLIC SPEAKERS SESSION.**

The MTA Moderator announced that forty-nine (49) speakers registered to speak. The first thirty minutes of speakers' comments were delivered at today's meeting and comments made by other speakers will be published to the MTA website. Speakers were reminded of the two

(2) minute speaking limit and that the speakers will be alerted when thirty (30) seconds remain to conclude their remarks.

The following sixteen (16) speakers commented by videoconference during the public speakers session. Refer to the video recording of the meeting produced by the MTA and maintained in MTA records for the content of speakers' statements, and to MTA.info for comments made by other public speakers.

Senator Brad Hoylman  
Linda Cohen, private citizen  
Matt Kamper, Passengers United  
Roy Fischman, Staten Island Bicycle Association  
Aleta Dupree, private citizen  
Rachael Fauss, Reinvent Albany  
Andrew Pollack, Passengers United  
Jose DeJesus, ATU, Local 1179  
Bradley Brashears, PCAC  
Christina Lampropoulos, TBTA, SOBA  
Mark Henry, ATU, Local 1056  
Lisa Daglian, PCAC  
Matt Lelou, CWA  
Tim Dubnau, CWA  
Miranda Nelson, Jobs to Move America  
Vincent Modafferi, Transit Supervisors Organization

### **3. CHAIRMAN FOYE'S REMARKS.**

Chairman Foye welcomed the newest members of the MTA Board to their first meeting: - Commissioners Jamey Barbas, Frank Borelli, Victor Calise, Lorraine Cortés-Vázquez, and Michael Fleischer. Chairman Foye stated that the new members are joining the organization at a particularly unique and challenging time in the MTA's history. Chairman Foye stated that he looks forward to the new members' insights and contributions, and he thanked the members for agreeing to serve the MTA and its customers.

Chairman Foye acknowledged the resignation of Dr. Susan Metzger, who he stated is present today for her last MTA Board meeting. Dr. Metzger will be leaving the Board on July 15<sup>th</sup> after 15 years of dedicated service. The Chairman stated that during Dr. Metzger's tenure as an MTA Board Member she chaired several committees, including Metro-North Railroad and Diversity, and has been a key member of the Transit, CPOC, Corporate Governance and, Safety and Security Committees. Chairman Foye further stated that Dr. Metzger has worked tirelessly to help guide the agency on critical projects, especially in overseeing Positive Train Control implementation across both railroads.

Chairman Foye stated that Dr. Metzger has been a long-time champion of the MTA's Department of Diversity & Civil Rights initiatives, working closely with Chief Diversity Officer Michael Garner. Over ten years ago the MTA began building what is now the most successful MWDBE program in the nation – a huge credit to Mr. Garner and his team, the

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support of Dr. Metzger and colleagues on the Board, the Governor, and the New York State Senate and Assembly, which enacted the MTA Small Business Development Program. Chairman Foye noted that Governor Cuomo recently extended the program for another ten years. Chairman Foye extended his gratitude to Dr. Metzger for her support of the program and other MWBE programs at the agency, which he stated have been critical to the MTA's success in these areas; and have created significant economic opportunity for the communities that the MTA serves; as a result.

Chairman Foye thanked Dr. Metzger for her thoughtful insights and wisdom during her time on this Board, and he wished her well in all future endeavors.

The Chairman noted that at last month's meeting, he asked for a moment of silence to acknowledge members of the MTA family who passed away due to the COVID-19 pandemic.

Chairman Foye stated that the entire MTA family grieves and mourns each loss. The Chairman asked for a moment to recognize and honor those who were lost in the past month, with a reading of their names.

Interim NYCT President Sarah Feinberg recognized the following New York City Transit employees:

- Mark Davis, Maksym Ganopolskyi, Nevie Lacayo, Jeanetta M. Riley, Graveney Severin, Lafayette Terrell, and Alain Walker.

Craig Cipriano, Acting President, MTA Bus, recognized the following New York City Transit and MTA Bus employee:

- Lawrence Nieuenkirk

Metro-North Railroad President Catherine Rinaldi recognized the following Metro-North Railroad employee:

- Orestes Torres

Following the reading of the employees' names, Chairman Foye asked everyone to join him in a moment of silence to honor these employees and their service and sacrifice. The Chairman stated that the MTA will never forget the dedication, service and sacrifice of these brave men and women.

Chairman Foye stated that these last few months have undoubtedly been the toughest in the MTA history, as the agency has navigated an unprecedented public health crisis, and the City and State hit pause on life as we knew it. However, Chairman Foye stated that throughout it all the hardworking women and men of the MTA kept this region moving – for the essential workers and first responders during the height of the crisis, and now, as we welcome back more and more customers as the region reopens.

Chairman Foye noted that a major milestone was marked at the MTA and for the City itself this week, with 2 million subway and bus customers returning to the system.

On Monday subway ridership rose to 997,000 customers, roughly 19 percent of ridership compared to this time last year. On buses, MTA served more than 1 million riders on day one of Phase 2, 48 percent of the normal ridership. Chairman Foye stated that these numbers are right around where the agency expected to be for subways, and that the agency has certainly exceeded expectations for buses. Chairman Foye stated that the fact that more people are coming back to the system sooner is a note of optimism for New York, as the City starts to return to a new normal.

Chairman Foye stated that protecting the health and safety of customers and employees will continue to be at the core of everything the MTA does, as it has always been the goal. Research and reports from around the world suggest that high rates of wearing face coverings are critical in minimizing risk of transmission. Wearing a mask or face covering continues to be mandatory on the MTA system, as per the Governor's Executive Order, and the MTA is pleased to see almost all its customers doing their part. Chairman Foye stated that the MTA's surveys show that 95% of customers are wearing masks, when riding on the system, and if customers forget their mask, they can stop by a subway station agent and pick one up. MTA will continue to remind customers of this critical practice, along with other recommended public health practices – with reminders to frequently wash hands or use the hand sanitizer in MTA stations, mind the decals throughout the system and if sick, stay home.

Chairman Foye extended tremendous credit and thanks to Sarah Feinberg, NYCT Interim President, Sally Librera, Senior Vice President, Department of Subways, Craig Cipriano, Acting President, MTA Bus/Senior Vice President, NYCT Department of Buses, and their teams at subways and buses, who have done a fantastic job during the City's reopening, and a truly amazing job throughout the crisis. The Chairman also extended credit to Sarah Meyer, SVP & Chief Customer Officer, Joseph Chan, Senior Director, Digital Content, and their team for their creative messaging campaigns.

Chairman Foye commended President Phil Eng and President Catherine Rinaldi and their teams for their excellent work. Long Island Rail Road and Metro-North have been increasing service to meet growing ridership as the Long Island and Westchester regions continue to progress through reopening, and ensuring a safe return for all railroad customers. Chairman Foye noted that on Monday, LIRR served 16 percent of the agency's pre-pandemic ridership, and Metro-North served 13 percent.

Chairman Foye stated that none of the progress made would be possible without the hard work and dedication of the MTA's incredible workforce – the heroes moving heroes of this crisis. The workforce has not only continued to keep the region moving, but they have kept the system clean and safe, which requires an ongoing, herculean effort, in the words of Governor Cuomo, by MTA workers. MTA's 472 subway stations have been disinfected over 94,000 times; subway cars have been disinfected over 497,000 times; buses more than 254,000 times; and Access-A-Ride vehicles more than 131,000 times. Chairman Foye stated

that the hard work of the MTA's employees has a tangible impact for customers. In a recent survey, 70 percent of subway customers said the system looks cleaner than ever.

The MTA's railroad team is also working tirelessly on this front. Long Island Rail Road stations have been cleaned more than 26,000 times to date and LIRR train cars more than 75,900 times during this time. Metro-North stations have been cleaned more than 26,000 times, while train cars have been cleaned nearly 40,000 times.

Additionally, the Chairman stated that the MTA's innovative pilot, testing the use of ultraviolet C light for disinfecting purposes, is moving full speed ahead. The MTA is also partnering with the U.S. Environmental Protection Agency to research the long-term effectiveness of antimicrobials, to evaluate if they can provide protection for weeks or even months after application. Validation that these products kill the COVID-19 virus over time would be a gamechanger, as the agency works to restore public trust in mass transit. MTA will continue to seek new technologies and techniques to help achieve its goals of ensuring the system is as clean and safe as possible.

Chairman Foye stated that a big part of the MTA's initiative to keep the system clean and safe is to ensure that everyone has the right equipment and protection to stay safe – especially face coverings and cleaning supplies. Since March, the MTA has distributed 3.4 million masks, 5.7 million pairs of gloves, 3.3 million sanitizing wipes and 36,000 gallons of hand sanitizer to its heroic workforce. Since the start of Phase 1, the MTA has been providing masks, including 2 million masks contributed by the State and City, and hand sanitizer to customers as well.

Chairman Foye stated that while the MTA has spared no expense in its response to COVID-19 to ensuring the health and safety of its customers and employees, the agency also has to be realistic in acknowledging the shocking financial impact this health crisis has had – as the MTA fare and toll revenues have tanked, as ridership sinks to unimaginable lows, and as the MTA's dedicated taxes and subsidies are declining substantially as the general economy is mired in uncertainty. Chairman Foye stated, to be clear, this pandemic is a four-alarm fire. The MTA is facing the most acute financial crisis in its history.

The Chairman stated that CFO Robert Foran will provide a more comprehensive update on the MTA's finances later in the meeting. Chairman Foye stated, however, that he wanted to be crystal clear and upfront—the MTA's COVID-19 response efforts, while critical, also come at a high cost, and he stated that the economic damage to the MTA's finances is enormous.

Chairman Foye stated that the total COVID-19 related losses thus far this year represent 45% of the MTA's 2020 adopted budget. The deficits the MTA faces in 2020 and 2021 are without precedent in the history of the MTA. The MTA has faced large deficits before, and made changes to the organization to become more efficient or reduce expenses in order to meet the legislative requirement to balance its budget. Chairman Foye stated that this situation, however, is entirely different—the projected deficit is orders of magnitude greater than any financial crisis the MTA has ever faced. The MTA cannot cut its way out of this crisis. Without additional federal funding, the MTA's options are limited – and none of them

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are good. Chairman Foye stated that the MTA is going to feel the impacts of this crisis for many, many years to come.

Chairman Foye stated, based on the MTA's dire financial situation due to this crisis, the agency continues to urgently press Congress to deliver significant additional federal aid to the MTA to offset the dramatic declines in revenue and increased operating costs it has experienced this year—and will experience next year and in the years to come.

The MTA is grateful for the funds it has received from the CARES Act, and thanks Speaker Pelosi, Minority Leader Schumer, Chair Lowey, Congressman Jeffries, and Congressman Espaillat for their support in securing this critical funding, which has made all the difference these past months. Chairman Foye stated that he would like to especially thank John Samuelsen, Tony Utano, Anthony Simon and Bill DeCarlo and all of the MTA's partners in labor who helped the agency advocate for the importance of transit, and helped secure this support.

Chairman Foye stated that the CARES Act was signed into law in late March – nearly three months ago, before the full impact of the pandemic was clear. The \$4 billion in funding from the CARES Act will not be enough to offset the MTA's losses, to replace lost revenue that it needs just to keep the lights on and the organization running in 2020 and beyond.

The New York congressional delegation has again supported the MTA's request for another \$3.9 billion in federal funding, to help the agency get through the next six months. The congressional delegation is working hard to get the MTA funding at the level it so desperately needs. Chairman Foye stated that the agency is now calling on the Senate to act to provide another \$3.9 billion in funding to the MTA to cover the massive deficits it faces through December 31, 2020.

New York needs a strong public transportation system to power its economic recovery, and that of the country. Chairman Foye noted that New York is also the top donor state in the nation to Washington, DC, providing \$29 billion more in funding than it gets back from the federal government annually. The MTA urgently needs federal aid to keep service running and protect its historic Capital Program, which will put New Yorkers back to work and deliver the upgrades needed to bring the MTA into the 21st century. Chairman Foye stated that there is no time to waste, MTA needs help and it needs it now.

Chairman Foye stated that he wanted to take a moment today to recognize what has been happening in the City and in the country, at this particular moment, as everyone reckons yet again with the lasting legacy of systemic racism that remains embedded in the fabric of the Nation's daily reality, and as we reflect deeply and honestly about the long and hard work we all need to do to create a more just and equitable society.

The Chairman stated that he recognizes that the MTA has a responsibility and role in this moment, as one of the largest employers in the region, and as the region's mass transit service provider. It is the MTA's responsibility to not only affirm its commitment to diversity, inclusion and equity to all employees, but to reflect deeply and honestly about how it, as an agency, can enact and embrace these values in all that it does. The Chairman stated

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that it is the agency's responsibility not only to reflect, but also to take critical, thoughtful and responsive action to make meaningful change. Some of these actions include identifying, confronting and addressing inequities that may exist within the MTA organization, to acknowledge the agency's shortcomings in both the past and the present, and to come up with a concrete plan to do better, and to get it right.

Chairman Foye noted that, as he stated in a letter to employees the previous Friday that was the Juneteenth commemoration day, the MTA will start this process by hearing from its employees, with a series of employee listening and engagement sessions facilitated by the Conference of Minority Transportation Officials (COMTO). The agency will take employees' feedback from these listening sessions, supplement it with data, benchmark against other organizations, and create actionable initiatives that its leadership team will commit to by the end of the year, for implementation. Chairman Foye stated that the MTA is also continuing to explore additional ways to engage its employees, hear from them, and come together to figure out the meaningful changes it can make together.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Chairman Foye's remarks.

#### **4. CHIEF SAFETY OFFICER'S PRESENTATION.**

Patrick Warren, MTA Chief Safety Officer, provided an update on the MTA's response to COVID-19.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Mr. Warren's presentation and Board Members' comments and discussion.

#### **5. COVID-19 GLOBAL PRACTICES REVIEW.**

Chairman Foye stated that, as heard discussed in May, the MTA partnered with WSP USA to develop a global practices report. The Chairman stated that, based on a comprehensive international review of actions that transit agencies can consider that will help to protect employees and customers' health, this report, which was released on Monday, signals the MTA's commitment to continuing to innovate at every turn as New York reopens and the City recovers from the COVID-19 pandemic.

The MTA is leaving no stone unturned in its efforts to ensure customer safety. Chairman Foye stated that, as a follow-up to the Global Practices Report, WSP is currently finalizing a pandemic response review, comparing MTA's response to COVID-19 against prevailing public health guidance, which has evolved over time. This review will also benchmark the MTA's actions against pandemic response practices described in the APTA COVID-19 Guidebook. Chairman Foye stated that today the WSP team will provide a summary of their findings and discuss their review while the full document undergoes final revisions. WSP previously partnered with APTA and faculty from the Johns Hopkins Bloomberg School of Public Health to develop a transit industry guide, the COVID-19 Pandemic Public Transportation Response Safeguarding Riders and Employees, which was issued in April.

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Chairman Foye introduced the WSP project leaders who joined the meeting by videoconference. Mike Marino, WSP's Managing Director of Transit and Rail Engineering, is an expert on transit and rail whose extensive railroad experience includes assignments for Amtrak, Long Island Rail Road, New Jersey Transit, SEPTA, Metro-North Railroad and NYCT – with deep knowledge of rail operations in the region. He concluded his career as the person running PATH for Port Authority of New York and New Jersey. John Gasparine is WSP's Mid-Atlantic Transit and Rail Services Leader, whose background includes a comprehensive understanding of transit operations and public health. Mr. Gasparine has coordinated projects for many agencies, including the Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and the Federal Railroad Administration (FRA), serving as the lead on the APTA Report. Chairman Foye also introduced Dr. Aisha Rivera, an independent advisor to WSP, who is board certified in Occupational and General Preventative Medicine and Public Health.

Mr. Gasparine presented an overview of the work done by WSP, WSP's Global Practice Review Report, and the MTA's pandemic response review and findings.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of the Chairman Foye's remarks, WSP's presentation, and Board Members' comments and discussion.

## **6. CHIEF FINANCIAL OFFICER'S PRESENTATION.**

Robert Foran, MTA Chief Financial Officer, provided an update on the MTA's financial status and highlighted key points of the Budget Watch report.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Mr. Foran's presentation.

## **7. CHIEF DEVELOPMENT OFFICER'S PRESENTATION.**

### **A. MTA Construction and Development Report and CPOC**

MTA Chief Development Officer ("CDO") and Construction and Development ("C&D") President Janno Lieber reported on the consequences the financial situation that Chief Financial Officer Robert Foran had previously discussed have had on the 2020-24 MTA Capital Program.

Lieber stated that in January and February of this year, after the adoption of the MTA's historic and ambitious 2020-24 Capital Program, he provided detail on a quarter by quarter plan to commit more than \$13.5 billion of urgent work this year. This included projects in both the 2015-19 and 2020-24 Capital Programs. Lieber noted that, due to the COVID-19 pause on the award of new projects and the uncertainty of the amount of funds that will actually be available, the MTA has awarded only \$2.3 billion in total this year and remains without a clear path to move forward on much of the balance of the Capital Program funds.

He further noted that, although there have been some projects that the MTA has been able to accelerate at this time – primarily because they are underway and with the low ridership situation the agency was able to get more access to work areas and extended outages – both the 2020-24 Capital Program and much of the remaining 2015-19 Capital Program are essentially on hold.

Lieber went on to point out a number of the agency’s flagship projects that are delayed or on hold including:

- ADA accessibility at 23 stations, which was in the procurement process prior to when the COVID-19 crisis hit;
- High priority state of good repair work, such as the replacement of elevator and escalator apparatus around the MTA system;
- Infrastructure and station improvements on the Flushing Line, which included major structural work and major upgrades to seven stations; and
- Design work that was inexpensive and that the agency tried to progress to ensure that construction work was ready to start when the COVID-19 crisis abated.

Lieber stated that the simple fact is that the MTA’s Capital Program is frozen due to the uncertainty regarding the amount of funds that will actually be available.

Lieber then responded to a previous question raised by Board Member Law during Chairman Foye’s earlier discussion. The question related to the MTA’s efforts to work with the elected officials in Washington, DC to secure funding for the agency. Lieber responded that, in addition to the HEROES Act, which, to the credit of the House of Representatives and especially outgoing Appropriations Chair Nita Lowey, contains provisions in it for \$3.9 billion for the MTA and for the first time has a formula in it that does not short-change New York, the MTA is fighting for an Appropriations Bill that will govern future investment in transportation by Congress. Lieber noted that the MTA is fighting for the bill to contain formulas that will reverse the historic reduction in New York’s share, which has been ongoing since Senator Daniel Patrick Moynihan’s Intermodal Surface Transportation Efficiency Act of 1991 (“ISTEA”) was enacted. Lieber further stated that, after four reductions in New York’s share by Republican Houses, the MTA is very much hoping that a Democratic House will change the direction and, instead of decreasing, will increase New York’s share. He went on to note that decreasing the share is, unfortunately, the direction of the House Bill thus far.

Lieber added that the MTA is fighting in the background of true bipartisanship in New York on behalf of the MTA’s Capital Program needs. He pointed out that Senator Chuck Schumer has been very vocal and participated in a Riders Alliance webinar last week where it was reported that Senator Schumer stated that no further COVID-19 relief bill will pass through Congress without adequate funding for mass transit. Lieber further stated that, of equal importance, eighteen of New York State’s most prominent Republican elected officials signed and sent a letter to Senate Leader Mitch McConnell arguing that the HEROES Act and any COVID-19 relief bill must include adequate funding for the MTA. Lieber reiterated that this is truly a bipartisan issue and that it should be, as we are talking

about existential issues for the MTA. Lieber reminded the Board of what CFO Foran made clear earlier—that if we don't get HEROES funding or something similar soon, we are moving closer and closer to a fiscal cliff for the MTA's Capital Program. Lieber further noted that the financial issues that the MTA previously experienced during the last fiscal crisis in 2009 cut the Capital Budget dramatically and resulted in an erosion in service for the decade that followed. Lieber pointed out that the fiscal situation today is worse. He went on to remind the Board that cuts to investments, especially in an old system that requires state of good repairs, have dramatic long-term consequences, service becomes unreliable, things break down and customers feel the consequences.

Lieber concluded his remarks by stating that if our leaders in Washington fail to act, the MTA's Capital Program – the historic capital plan that this Board adopted less than a year ago, which was enacted with so much effort and leadership by Governor Cuomo and the State Legislature – will be at major risk.

Chairman Foye stated that he endorses Janno Lieber's comments completely and added that Republican-leaning business and real estate leaders in the New York area have weighed in and the MTA continues to stay in touch with them.

Board Member Albert inquired if the delay in many of these capital projects also affect the repairs to the Rutgers Tube project. Lieber replied that the MTA is able to advance the Rutgers Tube project in large part because the project is federally funded under a grant for Sandy Rehabilitation Projects. As a result, the MTA is able to manage the cash flow implications of proceeding with the project and maintain the required funding source. Lieber further noted that the Rutgers Tube project will allow the MTA to get in front of outages that will be necessary for the Eighth Avenue Line CBTC Project. He also reminded the Board that, broadly speaking, the MTA is in dire straits and that this project is an exception.

Board Member Brown inquired as to how one can tell when we get from the point of trying to save the Capital Plan to trying to save the station accessibility program to just keeping the lights on. He inquired as to how we can tell when we cross that threshold if Senator Mitch McConnell refuses to bring these bills to the Senate floor.

Lieber responded that Robert Foran is working every day to figure out how to preserve the MTA's ability to continue operations, even at a minimal level without sacrificing other important goals. Lieber noted that this is an evolving situation and that the Legislature and Congress have given flexibility to use capital funds for operating needs. He went on to state that not all of the funding sources for capital are available, though, and provided the example that the MTA has not been able to enact congestion pricing. Lieber went on to note that one of the struggles that the MTA is facing is how much money that is designated for capital will have to be re-designated for operating needs.

Board Member Calise requested clarification regarding the accelerated station announcement made by Governor Cuomo on June 8, 2020, specifically as to whether the accessibility work on those eleven stations that were part of that announcement are on hold.

Lieber responded that the eleven accessible stations mentioned on June 8<sup>th</sup> are projects where work is already underway and is being accelerated to take advantage of lower ridership, thereby allowing the MTA to obtain greater access and outages. Lieber further noted that these eleven accessible stations are not part of the 23 stations projects that he mentioned in his earlier remarks that are on hold. The 23 stations projects are a subset of the 70 stations that are in the 2020-24 Capital Program's accessibility initiative.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for further details of Mr. Lieber's report

A copy of the Presentation is filed with the records of the Regular Board Meeting of the MTA of this date.

## **8. APPROVAL OF MINUTES.**

Upon motion duly made and seconded, the Board approved the Minutes of the Joint Committee and Board meeting of the MTA and MTA Agencies held on May 20, 2020.

## **9. METRO-NORTH RAILROAD AND LIRR JOINT COMMITTEE**

### **Metro-North President Catherine Rinaldi's Report.**

Metro-North is accelerating capital work on several fronts, including the completion of two bridge replacements in Mount Vernon, the Mount Kisco substation project, and initial survey work to support the Park Avenue Viaduct replacement project.

Reporting on Positive Train Control ("PTC"), President Rinaldi stated that Metro-North remains on schedule and has 202 route miles, or 82%, operating in full PTC with the complete Harlem Line, the complete Hudson Line, and part of the New Haven Line from Grand Central Terminal to Greenwich, Connecticut, as well as the New Canaan and Danbury Branches all operating in full PTC functionality. With field work and testing continuing, Metro-North is on schedule to have the section between Bridgeport and New Haven operating in PTC by the end of the month and the final segment from Greenwich to Bridgeport anticipated by the end of July. The Amtrak boundaries at New Haven and New Rochelle are expected to be completed by September.

In closing, President Rinaldi thanked everyone at Metro-North for their true dedication and determination throughout the pandemic and as the region continues to re-open. President Rinaldi stated that she was proud to lead Metro-North and proud of all her colleagues.

The video recording of the meeting produced by the MTA and maintained in the MTA records contains a complete record of President Rinaldi's report and comments made by Board Members. Additionally, the details of the following Metro-North Committee items are contained in reports filed with the records of this meeting:

#### **A. Joint Information Item:**

- Long Island Rail Road/Metro-North PTC Status Report  
**MTA and Agencies' Joint Committee and Regular Board Meeting**  
June 24, 2020

B. Metro-North Information Items:

- Progress on Way Ahead Strategic Plan

C. Metro-North Procurements:

The Board was presented with the following non-competitive procurement:

- Board approval to award a four-year contract (two-year base with two-year option) to the firm Albatros North America, Inc. (d/b/a SepsaMedha North America) in the not-to-exceed amount of \$6,500,000 (Metro-North \$3,500,000 and Long Island Rail Road \$3,000,000) for the purchase of auxiliary power system parts, on-board cameras, components, assemblies, and repairable items which reside on Metro-North's M-3, M-7, and M-8 electric railcars and coach railcars and Long Island Rail Road's M-7 electric cars.

The Board was presented with the following competitive procurement:

- Board approval for a contract modification, in the negotiated no-to-exceed amount of \$2,740,000 under the current competitively solicited contract awarded in January 2018 to the firm WDF, Inc., for the installation of Heating Ventilation Air Conditioning equipment for cooling spaces critical to Metro-North's operations within Grand Central Terminal.

Upon motion duly made and seconded, the Board approved the above procurements. The details of the procurements are contained in staff summaries and reports filed with the records of this meeting.

D. Other Metro-North Committee Items:

- Minutes of the Joint Metro-North and Long Island Rail Road Committee of May 20, 2020
- Metro-North 2020 Work Plan
- Metro-North Safety Report
- MTA Police Report
- Metro-North Operations, Performance Metrics, Finance, Ridership, and Capital Program Reports

The video recording of the meeting produced by the MTA and maintained in the MTA records contains a complete record of President Rinaldi's report, and the details of the Metro-North Committee items are contained in reports filed with the records of this meeting.

Chairman Foye announced that before President Eng's presentation, Commissioner Glucksman has asked to say a few words about the passing of Mark Epstein, who served as President and Chair of the Long Island Rail Road Commuter Council (LIRRCC)

Board member Glucksman stated that, as many have probably heard, Mark Epstein, Chair of LIRRCC, passed away the week before last week. Mr. Epstein was a member of the Council since 2009, and he was known for making all riders' issues his issues.

As Chair of the Long Island Rail Road Commuter Council, Mr. Epstein worked to improve the commute for his neighbors throughout Long Island. He focused on issues that riders cared about deeply, ranging from on-time performance, to parking, to safety, about which he cared deeply. He was extremely active in his community and was always meeting with elected officials to present his unique perspective as a rider and commuter, and to call for improvements.

Mr. Epstein rode the LIRR regularly and everything he spoke about was from that perspective: simply, he represented riders passionately because he was one. He will be missed.

Board Member Glucksman stated that, in the coming weeks, the LIRRCC will elect a new chair. The Council will continue Mr. Epstein's legacy and continue to be advocates for riders, while working closely with the LIRR to address issues that affect all riders.

### **LIRR President Phillip Eng's Report.**

President Eng began his report by welcoming the new Board Members and thanking Dr. Metzger for her leadership and dedicated service. President Eng stated that Dr. Metzger has left a lasting mark here and wished her all the best.

President Eng stated that as we continue to move through this pandemic, he is proud to see the workforce rise to the occasion every single day, delivering essential service in support of our economy's revitalization. President Eng assured everyone that we remain vigilant in our safety practices, which include continuing our robust disinfecting measures that better support riders as they gradually return.

President Eng noted that on Monday, June 22, when NYC Phase 2 began, we saw ridership rise to 16% of our normal weekday travel. Today marks another major milestone as Long Island enters Phase 3. President Eng stated that the dedication of our workforce, both managers and represented, along with the support of our labor leaders, has enabled us to continually staff and execute our service plan with an On-Time Performance of 98.5% for the month of May.

President Eng stated that as the region continues to reopen, keeping the public informed with real-time information is essential for returning riders as they make decisions as to when and how they travel. He reported that on June 16<sup>th</sup>, we launched an updated and improved TrainTime app. President Eng stated that this major accomplishment provides real-time seating availability, real-time train location, and real-time train status on each of our M-7 and M-9 cars.

President Eng noted that this is *a rail industry first* in North America and that we're thrilled for the MTA to once again be leading the way with technology to empower the

rider and improve the customer experience. President Eng thanked Will Fisher, LIRR's Chief Innovation Officer, and his team, MTA IT and everyone at LIRR who played a role in making this initiative happen.

President Eng stated that we continue to deliver critical infrastructure projects that are helping to fortify our system and ensure continued reliability, reporting that:

- Earlier this week, our new Meadowbrook Substation in Freeport became operational. This substation replaces the existing one built in 1972, and provides upgraded electric traction power to the Babylon branch.
- On the weekend of June 6<sup>th</sup>, we installed a new switch in Great Neck as part of the new Pocket Track project. This East Side Access readiness effort will provide greater flexibility and support additional opening day service on the Port Washington Branch.
- Further improving operations, on the weekend of June 13<sup>th</sup>, we installed a new switch in Harold Interlocking.

President Eng highlighted how proud he is of how our track, signal, and power team and flaggers have continued to execute during this pandemic, rebuilding and improving the LIRR for today and for the future.

Regarding PTC, President Eng reported that this critical project remains on schedule. He stated that we're continuing field testing and installations: 89% of our rolling stock is updated with the latest software; all New York & Atlantic Railway fleet are now qualified to operate in PTC; and Amtrak remains on schedule as they address interoperability through Harold Interlocking.

Regarding the LIRR Expansion Project, President Eng reported that we are supporting the replacement of the Glen Cove Road Bridge with a Main Line closure between Mineola and Hicksville beginning this Saturday, June 27<sup>th</sup>, with service resuming on Monday, June 29<sup>th</sup>. President Eng stated that we are supporting the effort by using the diesel fleet and offering train shuttle service between Hicksville and Babylon. Additionally, NICE Bus will cross honor between Mineola and Hempstead and between Mineola and Hicksville.

President Eng urged everyone during these summer months and beyond to continue doing the things we know work to stop the spread of COVID-19: washing our hands, staying home if we don't feel well, social distancing and wearing some type of face covering *always* when riding public transportation, including while at our stations or waiting for your train. President Eng stated that the public's adherence to these safety measures has been crucial to slowing the spread, saving lives, and restarting the economy, and that their continued support will help us keep moving in the right direction.

President Eng also reported that earlier this month, our Corporate Safety Department launched a special edition of our annual Safety Along the Tracks art contest to help get our youth involved. Students from K-12 are invited to create their own face covering graphic with a creative safety message about this public health initiative. This safety

contest is running through Tuesday, June 30<sup>th</sup>, and details can be found on the MTA.info website.

In closing, President Eng stated that we are working towards our new normal in a smart and prudent way and that LIRR workers and all of those in the MTA family are heroes moving heroes.

The video recording of the meeting produced by the MTA and maintained in the MTA records contains a complete record of President Eng's report. Additionally, the details of the following Long Island Rail Road Committee items are contained in reports filed with the records of this meeting:

A. Joint Information Item:

- LIRR/MNR PTC Project Update

B. LIRR Information Items:

- July Timetable Change & Special Programs

C. LIRR Procurement:

The Board was presented with the following competitive procurement:

- Board approval to award a competitively bid contract to Myers Controlled Power, LLC in the amount of \$7,659,654.00 (\$5,430,168.00 Base Work, \$959,195.00 Option #1 Work and \$1,270,291.00 Option #2 Work) for the construction, testing and delivery of a mobile substation.

President Eng stated that the primary objective of this project is to improve LIRR preparedness and post-event recovery from future extreme weather events like Superstorm Sandy. This will allow LIRR to be better prepared for emergency situations and will help to minimize service disruptions due to power and communication failures along the Right-of-Way with availability of mobile emergency management equipment. This equipment will be protecting us system-wide and better support safety and operations.

Upon motion duly made and seconded, the Board approved the above procurement. The details of this procurement are contained in a staff summary and reports filed with the records of this meeting.

D. Other LIRR Committee Items:

- Minutes of the Joint Metro-North and Long Island Rail Road Committee of May 20, 2020
- LIRR 2020 Work Plan
- LIRR Safety Report

- LIRR Police Report
- LIRR Operations, Performance Metrics, Finance, Ridership, and Capital Program Reports

The video recording of the meeting produced by the MTA and maintained in MTA records, contains a complete record of President Eng’s presentation. Additionally, the details of the LIRR Committee items are contained in reports filed with the records of this meeting.

**MTA Chief Development Officer Janno Lieber Report on MTA C&D Metro-North Railroad, LIRR and NYCT Procurements.**

**Metro-North Railroad and LIRR Procurements**

Chief Development Officer (“CDO”) Lieber presented five C&D procurement items totaling \$20.9M for consideration. All five items were ratifications.

One ratification is in the amount of \$3.1M and seeks to accelerate the installation and local testing of equipment so that the East Side Access Project can meet the scheduled date for the commencement of Integrated Systems Testing. Lieber noted that this ratification is necessitated by the need to mitigate delays that were caused by water infiltration.

He stated that the remaining four ratifications are to the East Side Access Facilities Systems Package, totaling \$17.8M. The four ratifications relate to the decision to consolidate the IT functions of the various MTA agencies into a single MTA Corporate IT. This decision was made several years ago, but after the underlying contract was awarded. As a result of this decision, many of the IT functions originally designed for the project now have to be reconfigured and reprogrammed to interface and coordinate with the new centralized MTA IT structure and additional equipment. In addition, various upgrades and security issues and security standards have changed and are being addressed by these ratifications as well. Funding for this item is within the East Side Access Project’s contingency, which is the budget that has been outlined for the Board previously; however, since these late design changes were not intended to be paid for from the East Side Access budget, the expectation is that the East Side Access contingency will be replenished from other sources. Lieber noted that this will take a while and will be dependent on resolution of the issues associated with the MTA’s Capital Program.

Upon a motion duly made and seconded, the Board ratified the following C&D railroad procurement items:

1. A unilateral modification (No. 334) to Contract CS179 to change the programming and design of the centralized traffic control system, public address and variable message sign systems for the amount of \$6,671,000.
2. A unilateral modification (No. 353) to Contract CS179 to implement significant changes to the Project’s networking infrastructure and revised ESA network security architecture to conform with LIRR Office of Security standards for the amount of \$5,018,255.
3. A unilateral modification (No. 340) to Contract CS179 to provide the networking infrastructure, programming, and testing that are necessary for communications and data

exchange between the Project's Backbone Communication System and the MTA IT network for the amount of \$4,557,900.

4. A modification (No. 269) to Contract CS179 to add new Main Display Panels and MTA IT workstations in the Terminal Operations Center, Terminal Management Center and Incident Control Center, make associated changes to the software of the existing network management systems, and revise the room layouts of these centers for the amount of \$1,572,500.
5. A modification (No. 32) to Contract CS084 to accelerate the equipment installation and local testing of the traction power substations and adjust the Contract Milestones for the amount of \$3,100,000.

A copy of the Resolution and the Staff Summaries for the above items are filed with the records of the Regular Board Meeting of the MTA of this date.

#### New York City Transit and Bus Committee Procurements

Lieber presented one C&D procurement item for consideration.

The item is competitive and requests approval of a contract modification for the replacement of Supervisory Control Systems including Programmable Logic Controllers at two additional fan plants in the Steinway Tube totaling \$2.3M. Lieber noted that this work is being performed as a modification instead of as a new procurement because it is cost effective - the work can begin immediately to take advantage of the period of low ridership, thereby mitigating cost and inconvenience to passengers while leveraging existing GOs.

Board Member Albert commented that it is a great idea but noted that the description of the item in the Staff Summary mentions the adjacent station as "Vernon-Junction" instead of "Vernon-Jackson".

Lieber responded that the description will be corrected and subsequently the official version of the Staff Summary was corrected.

Upon a motion duly made and seconded, the Board approved the following C&D procurement item:

A modification (No. 7) to Contract E-32627 for the replacement of Supervisory Control Systems including Programmable Logic Controllers at two additional fan plants (#7203 and #7204) in the Steinway Tube for the amount of \$2,300,000

A copy of the Resolution and the Staff Summary for the above item is filed with the records of the Regular Board Meeting of the MTA of this date.

## **10. NYCT INTERIM PRESIDENT SARAH FEINBERG'S PRESENTATION.**

### **A. NYCT's President's Report:**

Interim President Feinberg thanked the men and women of NYCT for a smooth transition to Phase 1 and from Phase 1 to Phase 2. She noted that an enormous amount of work went into the planning for reopening, from the distribution of products to every station to the testing of various cleaning products and dispensers, to contemplation of what was the right policy for us to take on for Phase 1 and Phase 2. Interim President Feinberg commended the incredible and admirable planning and schedule work that went into scaling back when NYCT was short on crews for essential service and the work that went into the return to regular service, and also praised the work being done on marketing and signage in our system along with the decals and stencils in every single station across the system. She continued to strongly commend the ongoing cleaning in the system which occurs multiple times a day in stations and multiple times a day in railcars. Interim President Feinberg also thanked the riders including those who have been in the system throughout the pandemic, our essential workers, and those who have just returned to the system who have been absent for months – she said it has been an honor to welcome them back. She stated that those who have yet to return will return to a system that is clean and feels safe and that is ready to welcome them back and she looked forward to seeing everyone.

Please refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for details of Interim President Feinberg's presentation.

### **B. Procurement Report**

**Ratifications:** Upon motion duly made and seconded, the Board approved ratifications 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 MTA NYC Transit /Staten Island Rapid Transit Operating Authority /MTA Bus Company.

## **11. TBTA ACTING PRESIDENT DANIEL DeCRESCENZO'S REPORT.**

### **A. B&T's President's Report:**

Mr. DeCrescenzo opened his remarks by stating that the safety of employees, customers and contractors has been, and remains, a top TBTA priority, especially during the COVID-19 pandemic, and he thanked them for working and traveling safely. TBTA traffic rebounded from a low of 65% below pre-pandemic levels, and it continues to grow as COVID-19 restrictions are lifted in the region. Mr. DeCrescenzo stated that on June 15, 2020, TBTA completed an important safety improvement at the Bronx-Whitestone Bridge that reconfigured the southbound roadway to reduce the need for motorists to change lanes near the exit to the Whitestone Expressway and the Cross Island Parkway. This project was

completed one month ahead of schedule to improve performance in an area that has been a focus of customer safety efforts.

B. Procurements

Mr. DeCrescenzo stated that there is one (1) competitive procurement totaling approximately \$94.2 million for a two-year extension of the Conduent State and Local Solutions contract to provide back office services for the New York E-ZPass Customer Service Center, which is jointly operated by TBTA, the New York State Thruway, and the Port Authority of New York and New Jersey. The extension will also provide support of the federally mandated split-tolling at the Verrazzano-Narrows Bridge.

Upon a motion duly made and seconded, the Board approved this procurement.

**12. MTA COMMITTEE ON FINANCE.**

A. Procurement Items. MTA Chief Procurement Officer Kuvesh Ayer presented a summary of the following procurement items for Board approval.

Upon motion duly made and seconded the Board approved the procurement items listed below. The specifics are set forth in the staff summaries and documentation filed with the meeting materials. Board Members Linda Lacewell and Victor Calise recused themselves from the vote on procurement item #1 below.

1. Cigna Health & Life Insurance Company (“Cigna”) – New York City Transit Authority’s Dental Benefits Plan – No. 15430. Approved the award of a competitively-negotiated personal services contract to Cigna to provide dental benefits services to the MTA on behalf of the NYCT and the Manhattan and Bronx surface Transit Operating Authority (MaBSTOA) for represented active employees, retirees and their dependents from various unions including SSSA and TSO Local 106.
2. Cubic Transportation systems, Inc. – Bus CIS hardware In-Depot Warranty and Maintenance Services – No. 11043-0200, Modification No. 3. Approved the extension of a services agreement with Cubic Transportation Systems, Inc. for an additional 24 months to provide in-depot warranty services for the Bus CIS Hardware Subsystem (BHS) and to purchase spare hardware for maintenance.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for details of Mr. Ayer’s summary of the procurement item.

B. Real Estate Items. David Florio, Director, R.E. Operations, Leasing & Acquisitions, presented a summary of the real estate items for Board approval.

Upon motion duly made and seconded the Board approved the real estate items listed below. The specifics are set forth in the staff summaries and documentation filed with the meeting materials.

### **Metropolitan Transportation Authority**

1. License agreement with Compass Group USA, Inc. for the installation, operation, repair, replacement and maintenance of vending machines/micro-market concepts located at 141 locations (65 public, 74 employee, 2 part-public/part-employee) throughout the MTA system.
2. Amendment of Board Policy #24 (Policy Governing Licensing and Leasing of Employee Swing Room and Restroom Facilities for NYCT, MTA Bus and MaBSTOA Employees) to increase the maximum compensation, as set forth in the staff summary, without the need to obtain further Board approval

### **New York City Transit Authority**

3. Lease agreement with K & K Newsstand, Inc. for the operation of three travel/convenience retail units located at Delancey/Essex Street Station, New York, N.Y.

### **Long Island Rail Road**

4. Disposition of real property and a masonry building to Alphapointe, Inc., located on a segment of LIRR property along the main line in Queens (Block 9331, Lot 50), N.Y.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for details of Mr. Florio's summary of the real estate item.

- 13. MTA's ANNUAL PENSION REPORT.** Valerie Bannon, MTA's Chief Investment Officer, provided the Annual Pension Fund Report.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Ms. Bannon's report.

**14. CPOC REPORT.**

- A. Alan Putre, Executive Director, MTA/Vice President & Chief Revenue Office, NYCT, provided an update on the New Fare Payment Program ('OMNY')

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Mr. Putre's report.

- B. Michael Garner, Chief Diversity Officer, provided an overview of the annual Disadvantaged Business Enterprise (DBE) Program goals and the Minority, Women-Owned Business Enterprise and the Service-Disabled Veteran-Owned Business (M/WBE/SDVOB) participation on MTA capital projects.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for further details of Mr. Garner's presentation.

**15. INSPECTOR GENERAL'S REPORT.** MTA Inspector General, Carolyn Pokorny, presented the MTA IG's activities report.

Refer to the video recording of the meeting, produced by the MTA and maintained in MTA records, for the details of Inspector General Pokorny's report.

**16. ADJOURNMENT.**

Upon motion duly made and seconded, the Board voted to adjourn the meeting at 1:26 p.m.

Chairman Foye announced that the next Board meeting will be held on July 22, 2020.

Respectfully submitted,

\_\_\_\_\_  
Richard Gans  
Vice President,  
General Counsel and Secretary  
Metro-North Railroad

\_\_\_\_\_  
Paige Graves  
Vice President,  
General Counsel and Secretary  
Long Island Rail Road Company

\_\_\_\_\_  
Mariel A. Thompson  
Assistant Secretary  
NYCTA

\_\_\_\_\_  
David K. Cannon  
Assistant Secretary  
MTA C&D

\_\_\_\_\_  
Adana Savery  
Assistant Secretary  
TBTA

\_\_\_\_\_  
Victoria Clement  
Assistant Secretary  
MTAHQ

# Staff Summary

<b>Subject</b> MTA Pension Plan Amendments
<b>Department</b> Human Resources
<b>Department Head Name</b> Margaret M. Connor
<b>Department Head Signature</b>
<b>Project Manager Name</b>

<b>Date</b> July 22, 2020
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
	Finance	7/22/20			
	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal
3	Chief Financial Officer	2	Labor Relations

## I. PURPOSE

To obtain Board approval of the attached resolutions providing for:

- A.** An amendment to the Metropolitan Transportation Authority (“MTA”) Defined Benefit Pension Plan (the “MTA DB Plan”) Twenty-Year Police Program (“Police Program”) to provide a COVID-19 Accidental Death Benefit;
- B.** An amendment to the Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”) Pension Plan (“OA Plan”) to provide a COVID-19 Accidental Death Benefit;
- C.** Amendments to the MTA DB Plan to provide a COVID-19 Accidental Death Benefit for members in articles covering the commuter rails, Long Island Bus, the Staten Island Rapid Transit Operating Authority (“SIRTOA”), MTA Bus and the Long Island Rail Road Company Pension Plan; and
- D.** An amendment to the Long Island Rail Road Company Plan for Additional Pensions to provide a COVID-19 Accidental Death Benefit.

## II. DISCUSSION

### **Legislation**

Chapter 89 of the Laws of 2020 (“Chapter 89”) was passed by the Legislature, and signed by the Governor, on May 30, 2020. Chapter 89 enacted Sections 361-b, 509-a and 607-i of the Retirement and Social Security Law (“RSSL”) and Section 13-149.1 of the New York City Administrative Code, to provide a special line-of-duty Accidental Death Benefit to eligible members of the New York State Police and Fire Retirement System (“PFRS”), the New York State and Local Employees’ Retirement System (“NYSLERS”) and the New York City Employees’ Retirement System (“NYCERS”), as well as other provisions covering plans for teachers and other municipal employees. The law provides that a death from COVID-19 is considered to constitute an “accident.” An Accidental Death Benefit is payable under such circumstances and is paid as a pension. At the election by the surviving beneficiary, the pension would be in lieu of an ordinary death benefit, which is a lump sum multiple of final salary.

Most MTA New York City Transit and MTA Bridges and Tunnels employees participate in NYCERS, and are eligible for the special benefit. The OA Plan is designed to provide benefits similar to the benefits provided by NYCERS to similarly situated New York City Transit employees.

Chapter 89 also amended the Public Authorities Law, adding subdivision 1266-h(8), requiring the MTA to provide a temporary line-of-duty Accidental Death Benefit to eligible members of the MTA DB Plan's Police Program. Currently, the Police Program has a provision for an Accidental Death Benefit. The change would allow death from COVID-19 to constitute an "accident," as described more fully, below.

### **The MTA Twenty-Year Police Program**

Section 1266-h of the Public Authorities Law created the MTA Police, from forces located at the commuter rails. MTA adopted the Twenty-Year Police Program in lieu of participation in NYSLERS. Chapter 89 adds a new subdivision 8, providing for an Accidental Death Benefit where:

- (i) a member reported in person to his/her usual place of employment at the direction of such member's employer or to any alternate worksite (other than home or residence), on or after March 1, 2020;
- (ii) such member contracted COVID-19 within 45 days after reporting to work, as confirmed by a positive laboratory test or as diagnosed before or after such member's death by a licensed, certified, registered or authorized physician, nurse practitioner, or physician's assistant currently in good standing in any state or the District of Columbia, or a physician, nurse practitioner, or physician's assistant authorized to practice in New York by executive order during the declared COVID-19 state of emergency; and
- (iii) such member died on or before December 31, 2020, and COVID-19 caused or contributed to such death, as documented on the death certificate, or as certified by a physician, nurse practitioner, or physician's assistant who determines with a reasonable degree of medical certainty that COVID-19 caused or contributed to the death,

such member's statutory beneficiary shall receive an Accidental Death Benefit, unless such beneficiary elects to receive an ordinary death benefit.

Where a member retired on or after March 1, 2020, and before July 1, 2020; and satisfied the above criteria, such beneficiary shall receive an Accidental Death Benefit if he/she elects conversion of the member's service or disability retirement benefit into an Accidental Death Benefit.

The retirement system is authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment. Administrators will implement the new benefit without requiring further Board approvals.

This benefit will be paid in the same manner as the current Accidental Death Benefit under the Police Program – a pension of one-half (50%) of the member's final average salary. The beneficiary may elect an ordinary death benefit of a lump sum of three times final salary.

### **The MaBSTOA Pension Plan**

Similarly, Chapter 89 adds Retirement and Social Security Law §§ 509-a, 607-i and Administrative Code of the City of New York § 13-149.1, providing similar benefits to participants in NYCERS and NYSLERS. (Other provisions amended all the other public pension plans in New York.) Collective bargaining obligations require MaBSTOA to follow suit. The benefit will be paid in the same manner as the current Accidental Death benefits in the OA Plan.

### **Certain Articles of the MTA DB Plan and the Long Island Rail Road Company Plan for Additional Pensions**

The COVID-19 Accidental Death Benefit also shall be extended to members of the MTA DB Plan in articles covering the commuter rails, Long Island Bus, SIRTOA, MTA Bus articles other than 13 and 14 and the Long

Island Rail Road Company Pension Plan. The Long Island Rail Road Company Plan for Additional Pensions provides an integrated benefit with the Long Island Rail Road Company Pension Plan, and must be amended to make similar changes. The COVID-19 Accidental Death benefit will be paid in the same manner as the current accidental death benefit in those programs.

MTA Bus employees represented by TWU 100, ATU 1181, ATU 1179, and TSO 106 participate in Article 14 of the MTA DB. Unlike other Articles of the Plan, and unlike NYCERS and NYSLRS, Article 14 provides a monthly survivor benefit (a Qualified Preretirement Survivor Annuity [QPSA]), to the spouse of an employee who dies while in active service. The proposed MTA Bus COVID-19 Accidental Death Benefit would use the current benefit structure and enhance the existing QPSA benefit. The COVID-19 enhancements would increase in the base QPSA benefit, accelerate the QPSA benefit payments, apply additional service where the participant had not yet attained 20 years of service, and the eliminate joint and survivor option factors.

These special benefits expire December 31, 2020.

The attached Resolutions A, B, C and D would incorporate these changes into the Twenty-Year Police Program, the MTA DB Plan, the OA Plan, and the Long Island Rail Road Company Plan for Additional Pensions.

### **III. IMPACT ON FUNDING**

The impact on funding cannot be readily determined. It is not possible to predict how many eligible members will pass away from COVID-19 from March 1, 2020 through December 31, 2020. Costs will depend on the age of the member and final average salary on the date of death.

### **IV. RECOMMENDATION**

The Board approve the amendments in accordance with the attached resolutions. State law and collective bargaining obligations require adoption of the benefits for the MaBSTOA Plan and the Police Program. The benefit should be extended to members of the MTA DB Plan in articles covering the commuter rails, Long Island Bus, SIRTOA, certain MTA Bus programs and the Long Island Rail Road Company Pension Plan, and to the Long Island Rail Road Company Plan for Additional Pensions. MTA Bus employees in Article 14 should receive a COVID-19 accidental death benefit in accordance with collective bargaining.

# ATTACHMENT A

**MTA BOARD RESOLUTION  
TO AMEND THE  
METROPOLITAN TRANSPORTATION AUTHORITY  
DEFINED BENEFIT PENSION PLAN TWENTY-YEAR POLICE PROGRAM**

**WHEREAS**, pursuant to Section 9.04 of the Metropolitan Transportation Authority (“MTA”) Defined Benefit Pension Plan (the “Plan”), the MTA reserves the right to amend the Plan; and

**WHEREAS**, the MTA desires to amend the Plan to provide an Accidental Death Benefit consistent with Chapter 89 of the Laws of 2020 (“Chapter 89”); and

**WHEREAS**, the amendment would apply only to members of the Twenty-Year Police Program dying prior to December 31, 2020;

**NOW, THEREFORE**, after due consideration be it:

**RESOLVED**, that the Twenty-Year Police Program of the Metropolitan Transportation Authority Defined Benefit Pension Plan shall be amended, consistent with Sections 7, 12 and 14 of Chapter 89; and

**RESOLVED**, the Plan is authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment; and be it

**FURTHER RESOLVED**, that this amendment shall be effective immediately, and shall expire December 31, 2020.

# ATTACHMENT B

**MTA BOARD RESOLUTION  
TO AMEND THE  
MANHATTAN AND BRONX SURFACE TRANSIT OPERATING AUTHORITY  
PENSION PLAN**

**WHEREAS**, pursuant to Section 12.08 of the Manhattan and Bronx Surface Transit Operating Authority (“MaBSTOA”) Pension Plan (“MaBSTOA Plan”), MaBSTOA reserves the right to amend the MaBSTOA Plan; and

**WHEREAS**, the Metropolitan Transportation Authority Board, sitting as the MaBSTOA Board, desires to amend the Plan to provide an Accidental Death Benefit consistent with Chapter 89 of the Laws of 2020 (“Chapter 89”); and

**WHEREAS**, the amendment would apply only to members of the MaBSTOA Plan dying prior to December 31, 2020;

**NOW, THEREFORE**, after due consideration, be it:

**RESOLVED**, that the MaBSTOA Pension Plan shall be amended consistent with Sections 3, 4, 8, 12 and 14 of Chapter 89; and

**RESOLVED**, the Plan is authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment; and be it

**FURTHER RESOLVED**, that this amendment shall be effective immediately, and shall expire December 31, 2020.

# ATTACHMENT C

**MTA BOARD RESOLUTION  
TO AMEND THE  
METROPOLITAN TRANSPORTATION AUTHORITY  
DEFINED BENEFIT PENSION PLAN**

**WHEREAS**, pursuant to Section 9.04 of the Metropolitan Transportation Authority (“MTA”) Defined Benefit Pension Plan (the “Plan”), the MTA reserves the right to amend the Plan; and

**WHEREAS**, the MTA desires to amend the articles of the Plan covering members of the commuter rails, Long Island Bus, SIRTOA, MTA Bus programs other than Articles 13 and 14, and the Long Island Rail Road Company Pension Plan to provide an Accidental Death Benefit consistent with Chapter 89 of the Laws of 2020 (“Chapter 89”); and

**WHEREAS**, MTA Bus employees represented by TWU 100, ATU 1181, ATU 1179, and TSO 106 (collectively, the “Unions”) participate in Article 14 of the Plan; and

**WHEREAS**, Article 14 provides a monthly survivor benefit (a Qualified Preretirement Survivor Annuity [“QPSA”]), to the spouse of an employee who dies while in active service; and

**WHEREAS**, MTA and the Unions have entered into an agreement with the Unions as of July 20, 2020 (“Stipulation”) providing for a COVID-19 Accidental Death Benefit that would use the current benefit structure and enhance the existing QPSA benefit, increase the base QPSA benefit, accelerate the QPSA benefit payments, apply additional service where the participant had not yet attained 20 years of service, and eliminate joint and survivor option factors; and

**WHEREAS**, the amendments would apply only to members of the Plan dying prior to December 31, 2020;

**NOW, THEREFORE**, after due consideration, be it:

**RESOLVED**, that the articles of the Plan covering the commuter rails, Long Island Bus, SIRTOA, MTA Bus programs other than Articles 13 and 14, and the Long Island Rail Road Company Pension Plan shall be amended consistent with Sections 4, 12 and 14 of Chapter 89; and

**RESOLVED**, that Article 14 be amended provide a COVID-19 Accidental Death Benefit and to use the current benefit structure and enhance the existing QPSA benefit, increase in the base QPSA benefit, accelerate the QPSA benefit payments, apply additional service where the participant had not yet attained 20 years of service, and the eliminate joint and survivor option factors, all in accordance with the Stipulation; and

**RESOLVED**, the Plan is authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment; and be it

**FURTHER RESOLVED**, that this amendment shall be effective immediately, and shall expire December 31, 2020.

# ATTACHMENT D

**AMENDMENT TO  
THE LONG ISLAND RAIL ROAD COMPANY  
PLAN FOR ADDITIONAL PENSIONS**

**WHEREAS**, pursuant to Article VII, Section I of the Long Island Rail Road Company Plan for Additional Pensions (the “LIRR Additional Plan”), the Long Island Rail Road Company (“LIRR”) has the right to amend the LIRR Additional Plan; and

**WHEREAS**, the MTA Board, sitting as the LIRR Board, desires to amend the articles of the LIRR Additional Plan to provide an Accidental Death Benefit consistent with Chapter 89 of the Laws of 2020 (“Chapter 89”); and

**WHEREAS**, the amendment would apply only to members of the LIRR Additional Plan dying prior to December 31, 2020;

**NOW, THEREFORE**, after due consideration, be it:

**RESOLVED**, that the articles of the LIRR Additional Plan shall be amended consistent with Sections 4, 12 and 14 of Chapter 89; and

**RESOLVED**, the Plan is authorized to promulgate rules and regulations to administer this benefit including, but not limited to, requiring a statement to be filed confirming the member contracted COVID-19 and the dates and locations of such member's employment; and be it

**FURTHER RESOLVED**, that this amendment shall be effective immediately, and shall expire December 31, 2020.

# Staff Summary

<b>Subject</b> Debarment Guidelines
<b>Department</b> MTA Office of the General Counsel
<b>Department Head Name</b> Thomas J. Quigley
<b>Department Head Signature</b>
<b>Project Manager Name</b> Thomas J. Quigley

<b>Date</b> JULY 22, 2020
<b>Vendor Name</b> N/A
<b>Contract Number</b> N/A
<b>Contract Manager Name</b> N/A
<b>Table of Contents Ref #</b> N/A

Board Action					
Order	To	Date	Approval	Info	Other
1	Board				

Internal Approvals			
Order	Approval	Order	Approval
1	Chief Development Officer, C&D		
2	Chief Financial Officer		
3	Chief Compliance Officer		

## Purpose:

Finalize and adopt regulations setting forth an all-agency procedure for debarment of contractors, as required by Public Authorities Law §1279-h.

## Discussion:

For the reasons described in this Staff Summary, the Board is requested to finalize and adopt regulations setting forth an all-agency procedure for the debarment of contractors, as required by Public Authorities Law §1279-h. On April 12, 2019, the Governor signed PAL §1279-h into law, authorizing the MTA to debar, for a five-year period, contractors that either have delayed in completing contract performance by more than 10% of the contract term or have submitted invalid claims in excess of 10% of the contact value. The statute became effective immediately upon signing. It further requires the MTA to adopt regulations establishing a debarment process that includes, among other things, an opportunity for the contractor to present defenses.

On May 22, 2019, the MTA filed proposed regulations with the New York Secretary of State to implement PAL §1279-h, in accordance with New York’s State Administrative Procedure Act (“SAPA”). They were filed with a Notice of Emergency Adoption and Proposed Rule Making. Under this emergency procedure, the emergency regulations became effective immediately upon filing, pending their finalizing and adoption following the 60-day public comment period required by SAPA, during which the public was permitted to file comments to the regulations. Comments were received in August 2019 from multiple contractors, trade associations and interested parties.

At its May 20, 2020 meeting, the Board authorized staff to begin the process of replacing the emergency regulations with adopted final regulations. Specifically, the Board authorized staff to publish the proposed final regulations, incorporating many of the prior public comments received, in the New York State Register for a 45-day public comment period and also to substitute the proposed final regulations in place of the original emergency regulations in the interim, pending the board’s adoption of final regulations. The proposed final regulations were published in the New York State Register on June 3, 2020, and this public comment period closed on July 18, 2020. No significant comments to the proposed final regulations, which incorporated many of the prior public comments, were received.

As the board was advised prior to its May 20 vote, the proposed final regulations modify the original proposed regulations in four ways.

First, the proposed final regulations narrow their scope, as follows:

- eliminate retroactive application of the debarment regulations by making them applicable only to contracts entered into after the statute took effect in April 2019; and awarded in connection with a capital element in an approved capital program plan or a non-capital plan contract with value more than \$25 million. [Section 1004.2(b)]
- apply only to those with whom the MTA has *directly* entered into a contract, not subcontractors. [1004.2(c)]
- do not apply to routine inventory purchases or contracts awarded as part of the MTA's Small Business Mentoring Program. [1004.2(b)]
- define "invalid claim" as a claim for payment that cannot be supported by the facts or a nonfrivolous argument that it is warranted by the contract or existing law. [1004.3(a)(2)]
- provide that an invalid claim for payment that the contractor is contractually obliged to submit to the MTA for a subcontractor does not affect the contractor. [1004.2(b)]

Second, the proposed final regulations inject flexibility into the determination as to whether to initiate a debarment proceeding in the first instance by providing that:

- the MTA Board may, but is not required to, debar a contractor. [1004.3(a)].
- the MTA may defer initiating or pursuing a debarment (1) if the contractor has made a good faith request to extend the contract because of excusable delay and, if granted, the contractor would not be late, or (2) for good cause shown. MTA Board must ratify or nullify any determination not to initiate or pursue a debarment proceeding. [1004.3(a)(3)]
- contractors may assert any and all defenses at a debarment hearing including unforeseen circumstances, good faith efforts to take remedial, corrective action; lack of bad faith, and excusable delay. [1004.5(e)]

Third, the proposed final regulations change the composition of the three-member hearing panel, from three MTA employees to a panel that includes only two MTA employees and one neutral party from the American Arbitration Association who is independent of any State agency or public authority. [1004.5(c)]

Finally, the proposed final regulations address concerns relating to debarment of a contractor's related parties and individuals by providing that:

- the panel may debar a contractor's related entities or individuals only if (i) the contractor was created as a single or limited purpose entity to execute and perform the contract, or (ii) the related entity or individual had a material and knowing causal connection to the contractor's conduct. [1004.6(b)]
- the panel must send written notice of intent to debar to any related entity or individual it seeks to debar

and provide a reasonable opportunity to be heard. [1004.6(b)]

The Board is now being requested to complete the process it began at the May 20 meeting by adopting the proposed final regulations, a copy of which are attached (redlined to show changes from the original proposed regulations), as the MTA's debarment regulations as required by PAL § 1279-h.

A new Part 1004 is added to read as follows:

#### Section 1004.1 Purpose

(a) This Part establishes rules and regulations governing the debarment of contractors by the Metropolitan Transportation Authority and its subsidiaries and affiliates, as required by Section 1279-h of the Public Authorities Law, which was enacted on and made effective immediately as of April 12, 2019. Once adopted, it shall apply to all contracts that were in effect on, or entered into after, April 12, 2019.

(b) Nothing in this Part shall preclude or otherwise limit the Authority, as defined below, from assessing the responsibility of any bidder, contractor, subcontractor, or supplier pursuant to its All-Agency Responsibility Guidelines or from prohibiting any bidder, contractor, subcontractor, or supplier found to be not responsible from responding to new and future contract solicitations or from being awarded new and future contracts or subcontracts.

#### Section 1004.2 Definitions

As used in this Part, the following terms shall have the following meanings unless otherwise specified:

(a) *Authority* means the Metropolitan Transportation Authority, the Long Island Rail Road Company, the Metro-North Commuter Railroad Company, the Staten Island Rapid Transit Operating Authority, MTA Bus Company, MTA Construction & Development ~~Capital Construction~~ Company, the New York City Transit Authority, the Manhattan and Bronx Surface Transit Operating Authority, or the Triborough Bridge and Tunnel Authority, or any combination thereof, ~~as the case may be.~~

(b) *Contract* means an enforceable agreement including a task order entered into by a contractor and the Authority for goods or services, ~~including without limitation construction services~~ entered into after April 12, 2019, in connection with a capital element in an approved capital program plan or a non-capital related agreement, having a value in excess of \$25 million. A contract does not include routine inventory purchases or any contract entered into by the Authority with a participant in the Authority's Small Business Mentoring Program.

(c) *Contractor* means any person, partnership, firm, corporation, or association, including any consultant, supplier or vendor, with whom the Authority has directly entered into a ~~construction, consultant, equipment, supply, or services~~ contract, but shall not include the federal government, a state agency, any public authority or public benefit corporation, or any unit of local government.

(d) *Debar* or *debarment* means the prohibition of a contractor from responding to any contract solicitation of or entering into any contract with the Authority for five years from ratification of a ~~final~~ debarment determination as provided in section 1004.6 of this Part.

(e) *Contract Modification* means amendments, change orders, additional work orders, or modifications with respect to a contract that are executed in accordance with the terms and conditions of such contract including without limitation extensions of deadlines for excusable delay.

(f) *Substantially Complete*, unless otherwise defined in the contract at issue, means the contractor's completion of the work as necessary for the Authority's beneficial use of the applicable project or improvements or the Authority's acceptance of those goods or services required to be delivered by a deadline.

(g) *Total adjusted time frame* means ~~(1) with~~ the period that a contract provides for a contractor to substantially complete its obligations under the contract. With respect to ~~all work under~~ a contract, ~~the period of that includes both design and/or construction services and operation and /or maintenance services, the total adjusted time frame includes only the~~ time that ~~at~~ the contract provides for ~~at~~ the contractor to substantially complete the ~~work, as may have been extended or reduced by one or more contract modifications, and (2) with~~ design and/or construction services. With respect to contracts for ~~goods or services, as to or for manufacture or supply of materials, equipment, or rolling stock,~~ any ~~portion of the goods or services that~~ portion of the goods or services which must be delivered by a deadline, the total adjusted time frame applies to each ~~period of time~~ that the contract provides for such delivery, ~~as may have been extended or reduced. In all cases, the total adjusted time frame shall include any adjustments required by one or more~~ the contract modifications for excusable delays, accelerations, scope increases and reductions, or unforeseen circumstances.

(h) *Total adjusted contract value* means the original awarded amount of the contract plus or minus the aggregate net amount of all contract modifications.

(i) *Unforeseen circumstance* means an unexpected event or situation that is not reasonably anticipated by a contractor exercising due diligence given existing knowledge of industry practice.

### Section 1004.3 Grounds for Debarment

(a) The board of the Authority, ~~including all contracting personnel therein, must~~ may debar a contractor pursuant to section 1004.6 if it ~~makes~~ approves a ~~final determination~~ recommendation to debar by a hearing panel made pursuant to section 1004.5 and 1004.6, including that the contractor has:

(1) (i) failed to substantially complete all the work within the total adjusted time frame by more than ten percent of the total adjusted time frame, or (ii) failed to progress the work in a manner so that it will be substantially complete within ten percent of the total adjusted time frame and has refused or in the opinion of the Authority is unable to accelerate the work so that it will be substantially complete within ten percent of the total adjusted time frame, and such refusal or failure is an event of default under the contract; or (iii) with respect to contracts for ~~goods or services, or for manufacture or supply of materials, equipment, or rolling stock,~~ as to any ~~portion of the goods or~~ such services, materials, equipment or rolling stock that must be

delivered by a deadline, materially failed to deliver such ~~goods or services~~, materials, equipment, or rolling stock by more than ten percent of the total adjusted time frame.

(2) asserted a claim or claims for payment of additional amounts beyond the total adjusted contract value and one or more of such claims are determined in whole or in part to be invalid under the contract's dispute resolution process or if no such process is specified in the contract in a final determination made by the chief engineer or otherwise by the Authority, and together the sum of any such invalid claims exceeds by ten percent or more the total adjusted contract value. An invalid claim is a claim or claims that cannot be supported by the facts or a nonfrivolous argument that it is warranted by the contract or existing law. A claim for payment of additional amounts to a subcontractor that a contractor is contractually obliged to submit to the Authority on behalf of such subcontractor that is determined to be invalid, shall not be deemed to be an invalid claim asserted by the contractor, and shall be deemed an invalid claim submitted by the subcontractor.

~~(3) The Authority, including all contracting personnel therein, must commence a debarment procedure where there is any evidence that any specific provision referenced in provision (a)(1) and (a)(2) have been violated, and the Authority and its contracting personnel have no discretion to excuse or justify violations of any provision referenced in provision (a)(1) and (a)(2).~~

(3) The Authority shall initiate a debarment proceeding upon determining that one or more grounds for debarment exist under sections 1004.3(a)(1) or (a)(2), except that (i) if a contractor has made a good faith request for an extension of the total adjusted time frame because of excusable delay or otherwise, which request, if granted by the Authority, would eliminate grounds for debarment under provision (a)(1), the Authority shall defer initiating a debarment proceeding until it has evaluated and determined such request; and (ii) the Authority may defer initiating, or determine not to initiate or pursue, a debarment proceeding for good cause shown, provided that the determination to defer or to not initiate or pursue a debarment proceeding after grounds for debarment have been determined to exist is presented to the Authority's Board for ratification or nullification at the next regularly scheduled meeting thereof. The Authority's Finance Committee shall be notified immediately upon a determination to defer initiating or not initiate or pursue a debarment proceeding, and all such determinations to defer initiating or to not initiate or pursue a debarment proceeding for good cause shown shall be presented to the Authority's Finance Committee for recommendation before submission to the Board. In the event that a determination to defer initiating or to not initiate or pursue a debarment proceeding is rejected by the Board, Authority personnel shall immediately commence a debarment proceeding.

#### Section 1004.4 Notice of Intent to Debar and Written Response

(a) ~~Upon the occurrence of one or both of the circumstances set forth in section 1004.3 of this Part~~ To commence a debarment proceeding, the Authority shall provide a written notice of intent to debar to the contractor, advising the contractor that it will hold a hearing to make a final determination as to whether a ground for debarment exists. At a minimum, the notice of intent to debar shall:

(1) state the facts upon which the Authority made its preliminary finding that one or both statutory grounds for debarment exists, including the basis for determining as provided in section ~~1004.4~~1004.3 of this Part that the contractor failed to timely Substantially Complete or the Authority's calculation of costs arising from claims determined to be invalid, and

(2) provide the contractor 30 calendar days after the date of the notice of intent to debar to respond.

(b) A contractor's written response must address each of the factual statements made by the Authority in its notice of intent to debar and state in detail any defenses including but not limited to force majeure.

(c) After submission by the contractor of a written response within the time permitted, or after the failure by the contractor to submit a written response within such time, a debarment hearing will be held, as provided in section 1004.5 of this Part.

(d) Subject to section 1004.1(b) of this Part, a contractor who has received a notice of intent to debar may respond to other contract solicitations issued by the Authority pending the ~~hearing and ratification of~~ a ~~final~~ debarment determination by the board of the Authority, if any; provided, however, that if the Authority awards such contractor a new contract or contracts after having provided the contractor a notice of intent to debar, and such contractor is later debarred by the Authority pursuant to such notice, the Authority must view such debarment as cause for termination under such new contract or contracts ~~and thereupon terminate any such new contracts for cause.~~

#### Section 1004.5 Debarment Hearing

(a) A debarment hearing shall be conducted within:

(1) 21 calendar days from the Authority's receipt of a contractor's written response to a notice of intent to debar or within such further reasonable time that the authority shall proscribe; or

(2) 14 calendar days after the date the contractor's response was due, if no response is received from the contractor within the deadline, or within such further reasonable time that the authority shall proscribe.

(b) A recording or transcript of the debarment hearing shall be made.

(c) The debarment hearing shall be conducted by a panel of at least ~~three~~two managerial level employees of the MTA designated by majority vote of the Authority's board; provided that no employee who has taken part in the award of ~~any Authority~~ or was otherwise directly involved in the contract to such contractor that is the subject of the debarment hearing, or overseen such contractor's performance on any Authority contract, may serve on a panel considering the debarment of such contractor. The debarment panel also shall include at least

one neutral party drawn from the American Arbitration Association and independent of any state agency or authority to be chosen by the board of the Authority.

(d) A contractor shall have the right to appear by and be represented by counsel at the debarment hearing and any hearings in connection with other proceedings conducted pursuant to this Part.

(e) A contractor at the debarment hearing may assert any and all defenses ~~to~~in the debarment including without limitation force majeure~~proceeding~~. Such defenses that may be asserted by the contractor include but are not limited to force majeure; unforeseen circumstances; good faith efforts to take remedial, corrective or disciplinary action; a lack of bad faith in connection with the contractor's conduct and other mitigating factors. The contractor may assert excusable delay and such other defenses at a debarment hearing irrespective of whether the Authority has previously ruled on such defenses.

(f) If a contractor fails to appear at a debarment hearing, the panel may proceed with the hearing based on~~the basis of~~ the record before it and reach a ~~final~~ determination without providing for any further appearance or submission by the contractor.

#### Section 1004.6 ~~Final~~ Debarment Determination and Ratification

(a) After consideration of the defenses raised by the contractor, and after the hearing is completed, the panel shall ~~determine if one or both of the grounds for debarment as set forth in section 1004.3 of this Part exists~~make a recommendation as to whether all of the facts and circumstances reasonably justify debarment.

(b) The panel's determination shall be by majority vote and set forth in writing. If the ~~final~~ debarment determination is that ~~one or both of the grounds for debarment exist~~, the contractor shall be debarred ~~for~~, the panel shall recommend that the term of the contractor's debarment shall be five years from the date of the ~~final~~ratification of the debarment determination. The panel may, in its discretion, also seek to debar any of the following related entities or individuals: (i) if the panel finds that the contractor was created as a single or limited purpose entity to execute and perform the contract which is the subject of the debarment hearing; or (ii) if the panel finds a material and knowing causal connection between such entity or individual and the ground for the contractor's debarment:(1) the contractor's parent(s), subsidiaries and affiliates; (2) any joint venture (including its individual members) and any other form of partnership (including its individual members) that includes a contractor or a contractor's parent(s), subsidiaries, or affiliates of a contractor, (3) a contractor's directors, officers, principals, managerial employees, and any person or entity with a ten percent or more interest in a contractor; (4) any legal entity controlled, or ten percent or more of which is owned or controlled, by a contractor, or by any director, officer, principal, managerial employee of contractor, or by any person or entity with a 10 percent or greater interest in contractor, including without limitation any new entity created after the date of the notice of intent to debar. If the panel seeks to debar any such related entity or individual, it shall issue a written notice of intent to debar to each such entity or individual and provide each a reasonable opportunity to be heard

on the issue of whether they had a material and knowing causal connection to the conduct and circumstances underlying the contractor's debarment.

(c) The panel's determination to debar any contractor and any related entity or individual shall be timely submitted to the board of the Authority for ratification. The board of the Authority shall review such determination and either: (i) ratify the determination or, (ii) remit the determination to the panel for further consideration of facts or circumstances identified in the remission. The facts or circumstances identified in the remission shall be reviewed by the panel who shall then, after reconsideration, make a determination. Such determination shall then be resubmitted to the Authority board for ratification or nullification. Upon initial Authority board ratification of a panel determination, or Authority board ratification or nullification of a panel determination made after reconsideration, such determination shall be deemed final.

(d) Timely and complete compliance with each and all of the requirements of this Part shall be a precondition to any legal challenge that the contractor or any related entity or individual may be permitted to bring arising out of its debarment pursuant to Section 1279-h of the Public Authorities Law.

(e) Pursuant to Executive Order No. 192, the Authority shall notify the New York State Office of General Services of any final debarment determination within five days of the date ~~thereof~~ it is ratified by the board of the Authority.



**Metro-North Railroad**

# Procurements

<b>Subject</b>	Request for Authorization to Award Various Procurements
<b>Department</b>	Procurement and Material Management
<b>Department Head Name</b>	Anthony Gardner, Sr. Director
<b>Department Head Signature</b>	
<b>Project Manager Name</b>	

<b>Date</b>	July 15, 2020
<b>Vendor Name</b>	Various
<b>Contract Number</b>	Various
<b>Contract Manager Name</b>	Various
<b>Table of Contents Ref #</b>	

Board Action					
Order	To	Date	Approval	Info	Other
1	MNR Comm. Mtg.	7-22-20	X		
2	MTA Board Mtg.	7-22-20	X		

Internal Approvals			
	Approval		Approval
X	President	X	Executive Director Management & Budget
X	Executive Vice President	X	V.P. Capital Programs
X	Sr. V.P. Operations		
X	V.P. & General Counsel		

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

**PURPOSE:**

To obtain approval of the Board to award various contracts/contract modifications and purchase orders, and to inform the MTA Metro-North Railroad Committee of these procurement actions.

**DISCUSSION:**

**MNR proposes to award non-competitive procurements in the following categories:**

# of Actions      \$ Amount

Schedules Requiring Two-Thirds Vote (or more, where noted)

NONE

Schedules Requiring Majority Vote

NONE

SUB TOTAL:

**MNR proposes to award competitive procurements in the following categories:**

<u>Schedules Requiring Two-Thirds Vote (or more, where noted)</u>	<u># of Actions</u>	<u>\$ Amount</u>
Schedule B: Competitive Requests for Proposals (Solicitation of Purchase and Public Work Contracts)	NONE	
Schedule C: Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)	NONE	
<u>Schedules Requiring Majority Vote</u>		
Schedule G: Miscellaneous Service Contracts	1	\$9,400,000
• Sperry Rail, Inc. \$9,400,000		
SUB TOTAL:		

**MNR presents the following procurement actions for Ratification:**

<u>Schedules Requiring Two-Thirds Vote (or more, where noted)</u>		
Schedule D: Ratification of Completed Procurement Actions	NONE	
<u>Schedules Requiring Majority Vote</u>		
Schedule K: Ratification of Completed Procurement Actions	NONE	
SUB TOTAL:		
TOTAL:		1 \$9,400,000

The contractors noted above and on the following Staff Summary Sheets have been found in all respects responsive and responsible, and are in compliance with State laws and regulations concerning procurements.

**BUDGET IMPACT:** The purchases/contracts will result in obligating MNR operating and capital funds in the amount listed. Funds are available in the current MNR 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.



**Schedule G: Miscellaneous Service Contracts**



Item Number: G

<b>Vendor Name (&amp; Location)</b> Sperry Rail, Inc. 5 Research Drive Shelton, CT 06484
<b>Description</b> Ultrasonic Rail Testing & Joint Bar Detection Services
<b>Contract Term (including Options, if any)</b> Two Years
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:

<b>Contract Number</b> 287818	<b>AWO/Modification #</b>
<b>Renewal?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Total Amount:</b>	\$9,400,000 (not-to-exceed)
<b>Funding Source</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
<b>Requesting Dept./Div. &amp; Dept./Div. Head Name:</b> Procurement & Material Management, Anthony Gardner, Sr. Director	

**Discussion:**

Metro-North Railroad, on behalf of itself and Long Island Rail Road (“the Railroads”), requests Board approval to award a two-year competitively solicited, negotiated miscellaneous service contract (Invitation for Bid process, one bid received), to the firm Sperry Rail, Inc. (Sperry) in the not-to-exceed amount of \$9,400,000 (MNR \$3,400,000/ LIRR \$6,000,000). Under the contract, Sperry will provide FRA mandated quarterly ultrasonic rail testing and joint bar detection services that are performed along the right of way throughout both Railroads’ operating territories.

Ultrasonic rail testing equipment scans the rail for defects based on FRA standards for track anomalies, providing detection/evaluation of rail flaws, dimensional measurements, and track material disposition. Joint bar detection is an optical inspection system that performs automated crack detection of joint bars (fish plates); measures rail gap, joints and rail sides; detects missing bolts and corrosion, detects problems with electric bonding and generates joint bar inventory reports. These are key elements that need to be inspected to ensure track safety in support of the railroads’ routine scheduled maintenance program. At this time, Sperry provides the only means available to the railroads to meet FRA requirements.

In accordance with MTA procurement guidelines, an advertisement was placed in October 2019 in the New York State Contract Reporter, the New York Post, El Diario and Daily Challenge, and posted on the Metro-North website. Additionally, the solicitation was forwarded to seven vendors and in December 2019 one bid was received.

Sperry is a recognized industry expert and is the incumbent under the existing joint procurement contract with MNR and LIRR. During the pendency of this two-year agreement the railroads will reach out to encourage greater participation by other vendors. However, our relatively small commuter systems are in competition with the freight railroads, which operate huge nationwide systems, and therefore the freights are able to attract and retain the relatively few vendors in this field of expertise.

Metro-North completed a responsibility review of Sperry Rail, Inc. as defined in the All Agency Responsibility Guidelines in connection with this award recommendation, which yielded no significant adverse information (SAI).

This procurement is to be funded by each Railroad’s Operating Budget.

PROCUREMENTS

The Procurement Agenda this month includes 2 actions for a proposed expenditure of \$261.0M.

<b>Subject</b>	Request for Authorization to Award Various Procurements				
<b>Department</b>	Procurement & Supply Chain – NYCT				
<b>Department Head Name</b>	Louis A. Montanti				
<b>Department Head Signature</b>	<i>Louis A. Montanti</i>				
<b>Project Manager Name</b>	Rose Davis				
<b>Board Action</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	Committee	7/22/20			
2	Board	7/22/20			

July 17, 2020			
<b>Department</b>			
<b>Department Head Name</b>			
<b>Department Head Signature</b>			
<b>Internal Approvals</b>			
	<b>Approval</b>		<b>Approval</b>
<i>57</i>	President NYCT		Pres. MTA Bus/SVP DOB
	SVP Operations Support	X	Subways
	Capital Prog. Management	X	Diversity/Civil Rights
X	Law		

**Internal Approvals (cont.)**

<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>

**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 Noncompetitive procurements in the following categories: NONE**

**MTA Bus Company proposes to award Noncompetitive procurements in the following categories: NONE**

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

<u>Procurements Requiring Two-Thirds Vote:</u>	<u># of Actions</u>	<u>\$ Amount</u>
Schedule C: Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)	2	\$ 261.0 M
SUBTOTAL	2	\$ 261.0 M

**MTA Bus Company proposes to award Competitive procurements in the following categories: NONE**

**NYC Transit proposes to award Ratifications in the following categories: NONE**

**MTA Bus Company proposes to award Competitive procurements in the following categories: NONE**

**NYC Transit proposes to award Ratifications in the following categories: NONE**

**MTA Bus Company proposes to award Ratifications in the following categories: NONE**

SUBTOTAL	2	\$ 261.0 M
TOTAL	2	\$ 261.0 M

**COMPETITIVE BIDDING REQUIREMENTS:** The procurement actions in Schedules A, B, C, and D are subject to the competitive bidding requirements of PAL 1209 or 1265-a relating to contracts for the purchase of goods or public work. Procurement actions in the remaining Schedules are not subject to these requirements.

**BUDGET IMPACT:** The purchases/contracts will result in obligating 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 Sections 1265-a and 1209 of the Public Authorities Law and the All-Agency General Contract Procurement Guidelines, the Board authorizes the award of certain noncompetitive 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 Service Contract Procurement Guidelines and General Contract Procurement Guidelines the Board authorizes the award of certain noncompetitive miscellaneous service and miscellaneous procurement contracts, certain change orders to purchase, public work, and miscellaneous service and miscellaneous procurement contracts, and

**WHEREAS**, in accordance with Section 2879 of the Public Authorities Law and the All-Agency Service Contract Procurement Guidelines, 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.

**JULY 2020**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

***Procurements Requiring Two-Thirds Vote:***

**C. Competitive Requests for Proposals (Award of Purchase and Public Work Contracts)**  
(Staff Summaries required for items requiring Board approval.)

1. **Cad Railways Industries, Ltd.**                      **\$27,957,413**                      ***Staff Summary Attached***  
Contract term: 6 Years  
Contract# R34257  
Contract award for the conversion and upgrade of ten R77E locomotives.
  
2. **Motive Power**    **\$233,000,000**                      ***Staff Summary Attached***  
Contract term: 10 Years  
Contract# R34255  
Contract award for the purchase of 25 diesel-battery hybrid locomotives with an option for the purchase of an additional 45 diesel-battery hybrid locomotives.

# Staff Summary

<b>Item Number</b> 1			
<b>Department, Department Head Name:</b> Procurement & Supply Chain, Louis A. Montanti  <i>Louis A. Montanti</i>			
<b>Internal Approvals</b>			
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>
1 <del>R7</del>	Matériel	6 <del>S7</del>	President
2 X	Law		
3 X	DDCR		
4 X	Subways		
5 <del>SP</del>	CFO		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> Cad Railway Industries, Ltd.	<b>Contract No.</b> R34257
<b>Description</b> Conversion and Upgrade of Ten R77E Locomotives	
<b>Total Amount:</b> \$27,957,413	
<b>Contract Term (including Options, if any)</b> Six Years	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Noncompetitive	
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Immediate Operating Need	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

**Purpose**

It is requested that the Board approve the award of contract R34257 to Cad Railway Industries, Ltd. (“CADRI”) for the conversion and upgrade of ten R77E locomotives at a total price of \$27,957,413, pursuant to the declaration of an Immediate Operating Need (“ION”), requested by Department of Subways, waiving competitive bidding pursuant to Article III of the All-Agency Procurement Guidelines and New York State Public Authorities Law, Section 1209, subsection 9(a).

**Discussion**

This contract will provide for the upgrade and conversion of 10 NYC Transit R77E single-cab locomotives from third-rail powered direct current (“DC”) propulsion to diesel-electric powered DC propulsion. This upgrade will increase the number of locomotives that will be readily available for critical work within the NYC Transit subway system. Locomotives are required to enable NYC Transit to conduct critical in-house track maintenance and work in support of the Capital Plan by transporting flatcars bearing materials to, and debris from, the work sites, and to provide support for work performed within the transit system by outside contractors. In addition to flatcars, locomotives transport various other work cars throughout the transit system such as vacuum trains, pump trains, and snow throwers. The availability of locomotives is a critical element in NYC Transit’s success in maximizing the efficiency of the work performed in the system during shutdowns and General Orders.

Utilizing the ION procedure, this project was solicited informally, and the contract documents were sent to 20 firms. Following a pre-proposal conference attended by five firms, three submitted proposals: Knoxville Locomotive Works, Inc. (“KLW”); Cad Railway Industries (“CADRI”); and Brookville Equipment Corporation (“BEC”). The technical proposals were evaluated by the Selection Committee (“SC”) in accordance with the evaluation criteria. The criteria included experience in relevant areas such as (1) experience in overhauling, upgrading, and converting existing rail work equipment such as locomotives; (2) provision of the most aggressive and achievable delivery schedule; (3) compliance with technical requirements; (4) management approach, quality assurance program, diversity practices and providing quality drawings and manuals; (5) overall project cost and value to NYC Transit; and other relevant matters such as (6) compliance with, and acceptance or willingness to negotiate NYC Transit’s terms and conditions, and (7) the overall quality of the written proposal.

# Staff Summary

Following the initial review of the technical proposals, the SC determined that KWL’s proposal did not meet the minimum submission requirements of the Request for Proposal and, as a result, unanimously recommended that KWL’s proposal be eliminated from further consideration. The SC also unanimously determined that while both CADRI and BEC were both technically qualified BEC had a higher technical ranking than CADRI. Based on the fact that both were technically qualified, NYC Transit proceeded with oral presentations with CADRI and BEC, and subsequently entered negotiations with both proposers. Negotiations centered on exceptions/clarifications to the technical specifications, schedule and terms and conditions.

Best and Final Offers (“BAFOs”) were received from both CADRI and BEC. After review of the BAFOs in accordance with the evaluation criteria, the Selection Committee, by a majority vote, chose CADRI for award of this contract. The majority determined that since the proposers were both technically qualified, the combination of the lower price and more aggressive delivery schedule offered by CADRI provided the best overall value to NYC Transit.

The final negotiated price is \$27,957,413. The pricing compares favorably to the engineer’s estimate of \$26,861,678. BEC’s price of \$36,009,423 is 28.8 percent higher than CADRI’s price. Based on the foregoing, the pricing has been found to be fair and reasonable.

Founded in 1968, CADRI is a machinery company that specializes in repairing, building, and refurbishing rail cars and locomotives. CADRI is based in Canada, with facilities in Montreal, Toronto, and Calgary. The conversion work on the locomotives for this contract will be performed in Montreal. The delivery schedule for the first locomotive is 22 months after notice of award, with the delivery of all 10 being completed by 11 months later.

A review of CADRI’s financial documents by the NYC Transit Controller’s Office found that CADRI is financially qualified to perform work under this contract.

## **M/W/DBE Information**

The MTA Department of Diversity and Civil Rights (DDCR) has established a zero percent M/WBE and zero percent SDVOB goals on this contract as, historically, there has been limited M/WBE attainment due to the lack of subcontracting availability. CADRI has not completed any MTA contracts with goals; therefore, no assessment of the firm’s M/W/DBE performance can be determined at this time.

## **Impact on Funding**

The contract will be funded with 100 percent MTA funds. Funding is available in the 2015–2019 Capital Program. A WAR certificate will be secured prior to award.

## **Alternatives**

There are no alternatives as not awarding this contract will seriously undermine NYC Transit’s fleet plan and its need to make locomotives available for service. There is no reason to believe that conducting another solicitation will result in a better outcome.

## **Recommendation**

It is recommended that the Board approve the award of contract R34257 to CADRI in the amount of \$27,957,413 for the conversion and upgrade of ten R77E locomotives, and related non-car items such as spare parts, special tools, diagnostic test equipment, technical documentation and training.

# Staff Summary

<b>Item Number</b> 2			
<b>Department, Department Head Name:</b> Procurement & Supply Chain, Louis A. Montanti			
<i>Louis A. Montanti</i>			
<b>Internal Approvals</b>			
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>
1 <i>R7</i>	Materiel	<i>S7</i>	President
2 X	Law		
3 X	DDCR		
4 X	Subways		
5 <i>JP</i>	CFO		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> Motive Power, Inc.	<b>Contract No.</b> R34255
<b>Description</b> Purchase of 25 Diesel-Battery Hybrid Locomotives with an Option for 45 Additional Hybrid Locomotives	
<b>Total Amount</b> \$233,000,000	
<b>Contract Term (including Options, if any)</b> 10 Years	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Noncompetitive	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	

**Purpose**

It is requested that the Board approve the award of contract R34255 to Motive Power, Inc. (“MPI”) for the purchase of 25 diesel-battery hybrid locomotives at a total price of \$233,000,000, including related non-car items such as spare parts, special tools, diagnostic test equipment, technical documentation and training, pursuant to the declaration of an Immediate Operating Need (“ION”), requested by Department of Subways, waiving competitive bidding pursuant to Article III of the All-Agency General Contract Procurement Guidelines and New York State Public Authorities Law, Section 1209, subsection 9(a). The contract includes an option for the purchase of an additional 45 diesel-battery hybrid locomotives at a total price of \$286,700,000. If the option is exercised, Board approval will be sought.

**Discussion**

Pursuant to subdivision 9(f) of Section 1209 of the Public Authorities Law, an Authorizing Resolution to issue a Request for Proposals (“RFP”) was approved by the Board in June 2017 for the purchase of diesel locomotives. After the Authorizing Resolution, it was determined that a diesel-battery hybrid locomotive would be the best approach for reducing exposure to diesel emissions during NYC Transit tunnel operations, especially during extended periods at a work site.

NYC Transit locomotives are required to conduct critical in-house track maintenance and work in support of the Capital Plan, as they transport flatcars bearing materials to, and debris from, the work sites; and provide support for work performed within the transit system by outside contractors. In addition to flatcars, locomotives transport various other work cars (e.g. crane cars, pump trains, etc.) throughout the transit system. These R34255 locomotives will replace R37, R41, R43, R47, R52, and R77 locomotives (all were built between 1966 and 1983 and are beyond their useful lives of 35 years) in the NYC Transit fleet. The need to address diesel engine exhaust in the tunnels has become a significant priority. As a result, NYC Transit developed a diesel-battery hybrid technical specification. The diesel-battery hybrid propulsion will be configured to optimize battery usage in order to minimize diesel emissions, while also providing the tractive effort required for any job in the NYC Transit operating environment.

## Staff Summary

An extensive market outreach was conducted, including an internationally advertised Request for Information and industry review, which supported the decision to pursue the diesel-battery hybrid locomotive design for the R34255 contract.

The RFP was solicited for the purchase of 20 diesel-battery hybrid locomotives with an option to purchase an additional 50 hybrid units. (Subsequent to the notice of solicitation, the quantities were modified to 25 hybrid units in the base and 45 units in the option.) The RFP package was sent to 19 companies that expressed interest in the diesel-battery hybrid locomotive RFP through the industry review process. Thirteen companies attended site visits at NYC Transit, with six expressing interest in potentially submitting proposals as a prime contractor. Four firms submitted proposals: MPI, a Wabtec Corporation company; CRRC Times Electric USA LLC (“CRRC”); Knoxville Locomotive Works, Inc. (“KLW”); and Clayton Equipment Ltd. (“Clayton”).

The evaluation of the proposals was conducted in accordance with evaluation criteria that reflect the critical needs of the agency. The evaluation criteria included the proposer’s: experience; compliance with the technical specifications; plan for the most aggressive and achievable schedule; ease of maintenance and operation; management approach; quality assurance; diversity practices; experience in providing quality training, manuals, drawings, and aftermarket support; overall project cost and value to NYC Transit; other relevant matters such as compliance with and acceptance of the RFP terms and conditions or willingness to negotiate same; and overall quality of the written proposal.

The process involved the review of the written technical proposals, requests for clarifications, and oral presentations made by all four proposers. After evaluating the four proposals received, the Selection Committee (“SC”) determined that MPI’s proposal was the most compliant, and that CRRC’s, KLW’s, and Clayton’s proposals demonstrated an inability to meet certain basic requirements for a locomotive that can operate in the NYC Transit environment. The SC recognized that each of these three proposers has experience with locomotives of varying applications. However, despite having been given additional opportunities to address NYC Transit’s concerns, CRRC, KLW, and Clayton were unable to adapt their approaches to successfully mitigate the risks in their proposals and address areas of technical noncompliance.

Based on the technical evaluations, the SC unanimously recommended that CRRC, KLW, and Clayton be eliminated from further consideration for the R34255 procurement and that NYC Transit proceed with negotiations with MPI only. Regarding MPI, the SC’s high degree of confidence was based primarily on two facets of its proposal: MPI’s use of its existing R156 locomotive frame and carbody design, and MPI’s proposed use of subcontractors that have NYC Transit service-proven systems (e.g. Alstom propulsion and Kawasaki trucks are currently in operation on NYC Transit revenue subway cars). The SC viewed these as key factors in assessing a lower design risk for MPI’s proposal when compared to the others. Furthermore, during the course of the RFP process at the start of 2019, Wabtec Corporation merged with General Electric (“GE”) Transportation, which established MPI/GE as the largest locomotive manufacturer in the US and as a result, MPI offered a GE propulsion battery (in lieu of the originally proposed battery from Proterra), which mitigates risks associated with a vertical integration of locomotive systems.

NYC Transit’s negotiation team worked with MPI from a technical and pricing perspective in an effort to obtain from MPI the most competitive, technically acceptable proposal. Negotiation sessions centered on all of the pricing elements. Technical negotiations centered on locomotive design and structure, as well as the propulsion and battery technology to be employed in this hybrid locomotive. All aspects of the proposed pricing were thoroughly examined and discussed, including locomotive prices and prices for other non-locomotive items.

Wabtec/GE is a global transportation leader by combining Wabtec’s broad range of freight and transit products with GE Transportation’s equipment, services, and digital solutions in the locomotive industry. The locomotives and the GE propulsion batteries for this contract will be manufactured in Erie, Pennsylvania, a major locomotive manufacturing facility for GE Transportation.

The proposed delivery schedule from MPI for the 25 locomotives in the base contract is expected to be completed within five years from notice of award, with the first two locomotives being delivered within 38 months from notice of award. The timing for the commencement of the option period and the delivery of those locomotives under that option is being finalized and will be memorialized in the executed contract.

The final negotiated price for the Base Order of 25 Locomotives is \$233,000,000. MPI’s total price for the Option is \$286,700,000. The total price of \$519,700,000 for the base and option is \$24,836,433 (4.5 percent) less than the engineer’s estimate of \$544,536,433. Based on the foregoing, the base and option pricing have been found to be fair and reasonable. Option pricing is subject to a price adjustment based on a price index set forth in the contract.

A review of MPI’s financial documents by the NYC Transit Controller’s Office found that MPI is financially qualified to perform work under this contract.

## Staff Summary

### **M/W/DBE Information**

The MTA Department of Diversity and Civil Rights (DDCR) has established a zero percent M/WBE and zero percent SDVOB goals on this contract as, historically, there has been limited M/WBE attainment due to the lack of subcontracting availability. MPI has not completed any MTA contracts with goals; therefore, no assessment of the firm's M/W/DBE performance can be determined at this time.

### **Impact on Funding**

The base contract will be funded with 100 percent MTA funds. Funding is available for these 25 diesel hybrid locomotives in the 2015–2019 Capital Program. A WAR certificate will be secured prior to award. The option for up to 45 additional locomotives, if exercised, will be funded in the 2020–2024 Capital Program.

### **Alternatives**

There are no alternatives as not awarding this contract will seriously undermine NYC Transit's fleet plan and its ability to retire older locomotives. There is no reason to believe that conducting another solicitation will result in a better outcome.

### **Recommendation**

It is recommended that the Board approve the award of contract R34255 to MPI for the purchase of 25 diesel-battery hybrid locomotives at a total price of \$233,000,000, including related non-car items such as spare parts, special tools, diagnostic test equipment, technical documentation and training.

## Contracts

Stephen Plochochi, Senior Vice President, Contracts

### F Line Rutgers Tube



The Rutgers Tube Project, part of the July Board agenda, will rehabilitate systems and components within the Rutgers Tube that were damaged by Superstorm Sandy, as well as systems and components that are at the end of their useful lives and provide long-term resiliency measures to protect against extreme weather events. The Tube work applies lessons learned from the Canarsie Project and includes the installation of a cable management rack system for new cables and also includes the installation of cellular infrastructure to support future cellular service, and required improvements to mechanical, track and signal components.

## PROCUREMENTS

The Procurement Agenda this month includes eleven procurement actions for a proposed expenditure of \$237.2M

**Staff Summary**

<b>Subject</b> Request for Authorization to Award a Procurement					
<b>Department</b> Contracts					
<b>Department Head Name &amp; Title</b> Steve Plochochi, Sr. Vice President					
<b>Department Head Signature</b> 					
Board Action					
Order	To	Date	Approval	Info	Other
1	NYCT & Bus Committee	7/22/2020	X		
2	Board	7/22/2020	X		

<b>Date:</b> July 15, 2020			
Internal Approvals			
Approval		Approval	
 2	Executive Vice President & General Counsel	X 3	President
X 1	Deputy Chief Development Officer, Development		

**PURPOSE**

To obtain the approval of the Board to award various procurement actions and, to inform the New York Transit and Bus Committee of these procurement actions.

**DISCUSSION**

MTA Construction & Development Company proposes to award Competitive Procurements in the following category:

	<u># of Actions</u>	<u>\$ Amount</u>
<u>Schedules Requiring Two-Thirds Vote</u>		
C. Competitive Requests for Proposals (Award of Purchase Public Work Contacts)	10	\$233,709,726
SUBTOTAL	10	\$233,709,726

Schedules Requiring Majority Vote

MTA Construction and Development Company proposes to award a Ratification in the following category:

K. Ratification of Completed Procurement Actions	1	\$ 3,500,000
SUBTOTAL	1	\$ 3,500,000
TOTAL	11	\$237,209,726

**Budget Impact:**

The approval of procurement actions will obligate the MTA Construction & Development Company capital funds in the amount listed. Funds are available in the capital budget for this purpose.

**Recommendation:**

The procurement actions be approved as proposed. (The item is included in the resolution of approval at the beginning of the Procurement Section.)

**MTA Construction And Development Company**

**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 works 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;

**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; 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.

**JULY 2020**  
**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**Schedule C. Competitive request for Proposal (Award of Procurement/Public Works Contract)**

- |            |   |                                      |                                      |
|------------|---|--------------------------------------|--------------------------------------|
| <b>1-8</b> | <b>Multiple Vendors<br/>Contract Nos. C-30844 thru C-30851<br/>Four Year Term</b> | <b>Est. \$50,000,000 (Aggregate)</b> | <b><u>Staff Summary Attached</u></b> |
|------------|---|--------------------------------------|--------------------------------------|

MTA Construction and Development seeks Board approval for the award of eight Indefinite Quantity contracts to perform Asbestos Abatement and Other Environmental Remediation Services at all MTA facilities. Two contracts will be awarded to each of the four selected firms, one federally funded and one state funded. These will be zero dollar-based contracts with no minimum guarantee of any assignments.

- |           |  |                     |                                      |
|-----------|--|---------------------|--------------------------------------|
| <b>9.</b> | <b>TC Electric, LLC/J-Track, LLC (JV)<br/>Contract No. P-36444<br/>Thirteen Month Term</b> | <b>\$90,500,000</b> | <b><u>Staff Summary Attached</u></b> |
|-----------|--|---------------------|--------------------------------------|

MTA Construction and Development seeks Board approval to award a competitively solicited contract for the design and construction of the Rutgers Tube Rehabilitation Project to rehabilitate systems and components within the Rutgers Tube, to achieve a State of Good Repair and, make those systems and components more resilient to extreme weather events.

- |            |   |                     |                                      |
|------------|---|---------------------|--------------------------------------|
| <b>10.</b> | <b>Tully Construction Company Inc.<br/>Contract No. A-37150E<br/>Thirty-Five Month Term</b> | <b>\$93,209,726</b> | <b><u>Staff Summary Attached</u></b> |
|------------|---|---------------------|--------------------------------------|

MTA Construction and Development seeks Board approval to award a competitively solicited contract for the design and construction of accessibility upgrades at the 149th Street Grand Concourse Complex on the Jerome Avenue and White Plains Road Lines and the Tremont Avenue Station on the Grand Concourse Line in the Borough of the Bronx.

<b>Item Numbers</b>		1 - 8			
<b>Dept &amp; Dept Head Name:</b> Evan M. Eisland, EVP & General Counsel					
<b>Department Head Signature</b> 					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	NYCT & Bus Committee	7/22/2020	X		
2	Board	7/22/2020	X		
<b>Internal Approvals</b>					
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>		
2	Deputy Chief, Development 	4	President 		
	SVP, Contracts	3	Deputy Chief, Delivery 		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b> See below list.	<b>Contract Number</b> C-30844 thru C-30851
<b>Description</b> Indefinite Quantity Asbestos Abatement and Other Environmental Remediation Services	
<b>Total Amount</b> \$50 million (Estimated Aggregate)	
<b>Contract Term</b> Four years	
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
<b>Renewal?</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: State	

**I. PURPOSE/RECOMMENDATION**

To obtain approval of the Board to award eight Indefinite Quantity (“IQ”) contracts (the “Contracts”) to four contractors to perform Asbestos Abatement and Other Environmental Remediation Services at all MTA facilities. Two contracts will be awarded to each firm, one federally funded, and one state funded, within a total estimated aggregate budget of \$50 million over a four-year duration. These will be zero dollar-based contracts with no minimum guarantee of any assignments. The four firms and their respective contracts are:

Contractors

1. ETS Contracting, Inc. (“ETS”)
2. New York Environmental Systems, Inc. (“NYES”)
3. PAL Environmental Services (“PAL”)
4. Pinnacle Environmental Corp. (“Pinnacle”)

Contract Nos.

- C-30844 (Federal) / C-30848 (State)
- C-30845 (Federal) / C-30849 (State)
- C-30846 (Federal) / C-30850 (State)
- C-30847 (Federal) / C-30851 (State)

**II. DISCUSSION**

MTA Construction & Development (“MTA C&D”) is seeking to award the Contracts for asbestos abatement, lead disturbance, battery removal, mercury-containing bulb removal, PCB-containing fluorescent light fixture ballast removal, and other environmental remediation services. Asbestos and other hazardous contamination in MTA agency facilities represent a risk to the health and safety of the general public as well as other MTA employees. In order to minimize that risk, qualified contractors have been on call for abatement and disposal of asbestos and other hazards when found.

Combining the federal and state funded requirements into one solicitation results in four contractors being retained to perform all services, regardless of the funding source. This will provide for a more efficient task order management and issuance process. Work orders under these Contracts will be assigned on the basis of price, contractor staff availability at the time of assignment and performance on current and prior work orders. The cost of each work order will be based on the unit prices established in the respective Contracts. These Contracts will replace six contracts (three federally and three state-funded contracts) currently in place for these services.

In September 2019, the Board approved an Authorizing Resolution to issue a Request For Proposal (RFP). Past experience has shown that utilizing the RFP process provides MTA best value while also being more efficient than utilizing the Invitation for Bids (IFB) process.

### **III. PROCUREMENT PROCESS**

In response to the RFP, seven firms submitted technical and cost proposals: ABC Construction Contracting, Inc. (“ABC”); Empire Control Abatement Inc. (“Empire”); ETS; NYES; PAL; Pinnacle; and Trio Asbestos Removal Corp. (“TRIO”). The Selection Committee (“SC”) reviewed the technical proposals based on the established criteria, including relevant experience and qualifications; approach to the work; diversity practices (for the state-funded contracts); other relevant matters (including oral presentation). As a result of the review of the technical proposals, all seven firms were invited for oral presentations. After oral presentations, five of the seven firms (Empire, ETS, NYES, PAL, and Pinnacle) were recommended for negotiations based on their technical qualifications, relevant experience, understanding of the scope requirements, quality of their technical proposals, oral presentations, and demonstrated overall understanding of the required services. ABC and TRIO were eliminated from further consideration as ABC lacked sufficient experience and qualified personnel to perform crucial aspects of the required services, and TRIO did not submit a complete technical proposal and was not as technically proficient as the firms recommended for negotiations.

Initial cost proposals were based on estimated quantities of various tasks/materials and received as follows: Empire - \$8,650,348, ETS – \$7,808,920, NYES - \$7,253,932, PAL – \$9,466,660, Pinnacle – \$12,265,394. MTA C&D’s initial in-house estimate was \$6,231,383 per contract. Negotiations were held with the five selected firms, focusing on unit prices and total cost. Cost proposals were also evaluated based on a comparison with previous contracts for asbestos abatement and other environmental remediation services, and the current market for these services. MTA C&D’s estimated quantities were based on workload projections and are for evaluation purposes only.

After negotiations were completed Best and Final Offers (“BAFO”) were requested and received as follows: Empire - \$7,912,613, ETS – \$7,410,032, NYES - \$7,136,437, PAL – \$8,126,720; Pinnacle – \$7,717,738. NYC Transit’s revised in-house estimate is \$7,988,685. Through negotiations the firms lowered their unit prices which were then re-evaluated based on consistent estimated quantities. These revised unit prices are reflected in the contracts we are seeking to award.

The Selection Committee unanimously recommended ETS, Pinnacle and PAL for award. ETS, Pinnacle and PAL are incumbents in the current IQ asbestos abatement and other environmental remediation services contract series and have extensive satisfactory experience and work performance. Although PAL’s BAFO pricing is the highest among the five competing firms and slightly higher than the in-house estimate, PAL’s technical ranking as demonstrated by its technical expertise and track record of relevant experience more than offset its slightly higher priced proposal. PAL’s BAFO pricing is well within the fair and reasonable range of the in-house estimate. The SC also recommended NYES for award, ranking them fourth overall, based on their relevant experience in asbestos abatement work and their very competitively priced BAFO.

### **IV. D/M/WBE and SDVOB**

The Department of Diversity and Civil Rights (“DDCR”) has established a goal of 10% DBE for the federal contracts. Goals of 4% MBE, 4% WBE and 0% SDVOB were established for the State contracts. DDCR has approved the M/W/DBE Utilization Plans for all four recommended contractors. ETS and PAL have achieved their M/W/DBE goals on previous completed MTA contracts.

### **V. IMPACT ON FUNDING**

These Contracts will be funded with both federal and MTA funds on a task order basis by the individual capital project requiring these services. Task orders will not be issued until an approved WAR Certificate is received.

### **VI. ALTERNATIVES**

Perform the work using in-house personnel. Currently, MTA C&D lacks available in-house personnel to perform this work.

<b>Item Number</b>		9			
<b>Dept &amp; Dept Head Name:</b>					
Delivery/Mark Roche					
<b>Department Head Signature</b>					
					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	NYCT & Bus Committee	7/22/2020	X		
2	Board	7/22/2020	X		
<b>Internal Approvals</b>					
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>		
2 X	Deputy Chief, Development		President		
1 	Vice President, Contracts		Executive Vice President & General Counsel		
<b>SUMMARY INFORMATION</b>					
<b>Vendor Name</b>			<b>Contract Number</b>		
TC Electric, LLC/J-Track, LLC (JV)			P-36444		
<b>Description</b>					
Design-Build Services for Rutgers Tube Rehabilitation					
<b>Total Amount</b>					
\$90,500,000					
<b>Contract Term</b>					
13 Months					
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A					
<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
<b>Procurement Type</b>					
<input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive					
<b>Solicitation Type</b>					
<input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:					
<b>Funding Source</b>					
<input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: State					

**PURPOSE**

To obtain approval of the Board to award a contract for the design and construction of the Rutgers Tube Rehabilitation Project to rehabilitate systems and components within the Rutgers Tube to achieve a State of Good Repair and make those systems and components more resilient to extreme weather events to TC Electric, LLC/J-Track, LLC (JV) in the amount of \$90,500,000 and a total duration of 13 months. In accordance with MTA policy regarding the use of design-build, and to enhance competition and defray proposal costs, this solicitation includes a stipend of \$72,000 to be paid to the two unsuccessful proposers for a total amount of \$144,000.

**DISCUSSION**

The Rutgers Tube is a set of twin tubes that runs between the East Broadway Station in the Borough of Manhattan and York Street Station in the Borough of Brooklyn on the New York City Transit ("NYCT") 6th Avenue IND F Line. One tube contains the southbound track and the second tube contains the northbound track. The Project will rehabilitate systems and components within the Rutgers Tube that were damaged by Superstorm Sandy, as well as systems and components that are at the end of their useful lives, to achieve a State of Good Repair and to provide long-term resiliency measures to protect against extreme weather events. The work applies lessons learned from the Canarsie Project and includes the installation of a cable management rack system for new cables, the installation of cellular infrastructure in the Rutgers Tube to support future cellular service, and required improvements to mechanical, architectural, and track and signals components. At the East Broadway Station, the work includes the installation of ADA components, tile work, and other structural repairs.

In response to the RFP, three proposals were received from the following proposers: E-J Electric/Railroad Construction Company (E-J/RCC JV) – \$142,412,000, L.K. Comstock & Company, Inc. (LKC) – \$97,297,000 and TC Electric, LLC/J-Track, LLC (TC-JT JV) – \$102,375,000.

## Staff Summary

Item No. 9

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The proposals were evaluated by a Selection Committee utilizing the following preestablished selection criteria: project schedule, project management plan, qualifications of key personnel, prior experience and organizational structure, understanding of the design and construction, commissioning, past performance, safety and quality, subcontractors and suppliers, diversity practices and other relevant matters. A Technical Committee, comprised of members of the RFP Design Team, Construction Management Team, and technical experts of various backgrounds, supported the Selection Committee. Although EJ/RCC JV submitted a strong technical proposal demonstrating an in-depth knowledge of the work, EJ/RCC's price proposal was significantly higher than the in-house estimate. The Selection Committee also determined that LKC was the least technically preferred as its proposal lacked sufficient detail regarding its approach to scheduling this project. The proposal submitted by the TC-JT JV was the strongest technical proposal as it provided specific details that incorporated its experience from the Canarsie project regarding its approach to sequencing the work and the procurement of long-lead procurement items. The Selection Committee was particularly impressed by TC-JT JV's strong design and construction approach, its analysis of potential risks and proposed mitigation measures, and the qualifications and experience of its proposed key personnel. After review and consideration of all three proposals, the Selection Committee unanimously recommended to invite TC-JT JV for negotiations.

Negotiations were conducted with TC-JT JV and included discussions of the project schedule and overall cost, including pricing assumptions and scope clarifications. At the conclusion of negotiations, MTA C&D and TC-JT JV agreed on a lump sum price of \$90,500,000, which represented a reduction of \$11,875,000 (11.6 percent) from TC-JT JV's initial proposal. Additionally, the agreement includes an early completion date of February 16, 2021 for the work at the East Broadway Station, which represents a schedule reduction of 56 days, and an early completion date of March 29, 2021 for the work within the Rutgers Tube, which represents a schedule reduction of 14 days. In addition to the early completion dates, MTA C&D and TC-JT JV also agreed on a reduction of Substantial Completion from 14 months to 13 months. The agreement includes early completion incentive payments for the work at the East Broadway Station and for the work within the Rutgers Tube as well as liquidated damages resulting from contractor delays.

MTA C&D unanimously recommended TC-JT JV for award, determining that its proposal offered the best overall value considering their proposed reductions to the schedule to minimize the impact of the work on MTA's customers, demonstration of their ability to meet or exceed project milestones, the strength and qualifications of their key personnel, and their past performance. TC-JT JV's price is considered fair and reasonable. Bonds, financial, and insurance approval are pending. No award will be made until all such approvals are received.

**DBE**

The MTA Department of Diversity and Civil Rights has established a goal of 20% DBE. Award will not be made until the Department of Diversity and Civil Rights' approval is obtained.

**IMPACT ON FUNDING**

This contract is FTA/MTA funded under both Superstorm Sandy Repairs/Resiliency and 2020 – 2024 MTA Capital Programs. The contract will not be awarded until a WAR Certificate is received.

**ALTERNATIVES**

None recommended. Currently, MTA lacks available in-house technical personnel to perform the scope of work.

**RECOMMENDATION**

That the Board approve the award of a contract for the design and construction of the work for the Rutgers Tube Rehabilitation Project to TC-JT JV in the amount of \$90,500,000 and a duration of 13 months. The Board is also requested to approve the payment of a total stipend of \$144,000 to LKC and EJ/RCC JV.

<b>Item Number</b>		10			
<b>Dept &amp; Dept Head Name:</b>					
Delivery/ Mark Roche					
<b>Department Head Signature</b>					
					
<b>Board Reviews</b>					
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>
1	NYCT & Bus Committee	7/22/2020	X		
2	Board	7/22/2020	X		
<b>Internal Approvals</b>					
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>		
2 X	Deputy Chief, Development	4	President		
	Senior Vice President, Contracts	3	Executive Vice President & General Counsel		

<b>SUMMARY INFORMATION</b>	
<b>Vendor Name</b>	<b>Contract Number</b>
Tully Construction Company Inc.	A-37150E
<b>Description</b>	
Design and Construction of Accessibility Upgrades at 149 <sup>th</sup> Street-Grand Concourse Complex on the Jerome Avenue and White Plains Road Lines and Tremont Avenue Station on the Grand Concourse Line in the Borough of the Bronx (Design-Build)	
<b>Total Amount</b>	
\$93,209,726	
<b>Contract Term</b>	
35 Months	
<b>Option(s) included in Total Amount?</b>	
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
<b>Renewal?</b>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Procurement Type</b>	
<input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Solicitation Type</b>	
<input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:	
<b>Funding Source</b>	
<input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input checked="" type="checkbox"/> Other: State	

**Purpose**

To obtain approval of the Board to award a contract for the design and construction of accessibility upgrades at the 149th Street Grand Concourse Complex on the Jerome Avenue and White Plains Road Lines and the Tremont Avenue Station on the Grand Concourse Line in the Borough of the Bronx to Tully Construction Company Inc. ("Tully") in the amount of \$93,209,726 and a duration of 35 months. In accordance with MTA policy regarding the use of design-build, and to enhance competition and defray proposal costs, this solicitation includes a stipend of \$97,500 to be paid to the two unsuccessful proposers for a total amount of \$195,000.

**Discussion**

An Authorizing Resolution requesting the use of a two-step competitive RFP procurement process was approved by the Board to award multiple design/build contracts for the design and construction of Americans with Disabilities Act ("ADA") improvements, including the installation of elevators in stations. A request for letters of interest and qualification packages was advertised, resulting in the submission of 14 responses. The Step 1 qualification packages were evaluated against preestablished selection criteria addressing relevant experience, general responsibility, financial resources, and safety record. Six teams were selected based on their favorable experience on design-build projects, ADA improvements, and other relevant work. They are: Citnalta-TAP, Joint Venture ("CTJV"); ECCO III Enterprises, Inc. ("ECCO III"); Halmar International, LLC ("Halmar"); John P. Picone ("Picone"); Skanska USA Civil Northeast, Inc. ("Skanska"); and Tully Construction Co., Inc. ("Tully").

Pursuant to the Authorizing Resolution, a Step 2 RFP was issued to the six pre-qualified teams. The scope of work includes design-build services to provide full vertical ADA accessibility at both stations. This will be achieved through the restoration of an existing historic elevator headhouse at 149<sup>th</sup> Street with a three-stop elevator connecting the street, upper platform, and lower mezzanine, as well as installation of two new elevators connecting the upper platform, lower mezzanine, and lower platform. At the Tremont Avenue

**Staff Summary**

Item No. 10

Page 2 of 2

Station, one street-to-mezzanine elevator and two mezzanine-to-platform elevators will be installed. Work at both stations will also include reconstruction of stairs and other required improvements.

In response to the RFP, three proposals were received: CTJV – \$104,575,000; ECCO III – \$121,807,000; and Tully – \$91,609,726. Proposals were evaluated by a Selection Committee (“SC”) utilizing preestablished selection criteria addressing the proposers’ design and construction approach; overall project schedule; project management, safety and quality control/quality assurance plans; team experience; current record of performance; qualifications and coordination of subcontractors; other relevant matters; and diversity practices. Supporting the SC evaluation was a subcommittee comprised of members of the RFP Design Team and Construction Management Team.

The SC reviewed the technical proposals, observed the oral presentations, and subsequently reviewed the price proposals submitted by each proposer. All three technical proposals were deemed to include qualified design and construction teams, and each considered project approaches designed to expedite the work and minimize impacts on the travelling public while still achieving project requirements. CTJV offered a schedule reduction of one month for 149<sup>th</sup> Street and two weeks for the Tremont Avenue Station. CTJV also proposed an alternative design concept that was not acceptable to the SC. Tully offered a schedule reduction of two months to 149<sup>th</sup> Street and one month to the Tremont Avenue Station. Both CTJV and Tully also offered significant reductions to the TA Services required for the project. Although ECCO III submitted a strong technical proposal, they only offered a reduction of two weeks to the Tremont Avenue Station and lesser reductions to the TA Services required for the project. In addition, their cost proposal was determined to be outside the competitive range when compared to the other proposals and internal estimate. After review and consideration of all proposals, the SC unanimously recommended that CTJV and Tully be invited for negotiations.

Negotiations included discussions of the project schedule and overall cost, including pricing assumptions and scope clarifications. Because the full extent of the required restoration work of the historic headhouse at the 149<sup>th</sup> Street station cannot be determined until construction is underway, an allowance of \$2 million was added to address unknown conditions discovered during construction. Following negotiations, CTJV’s Best and Final Offer (“BAFO”) was \$104,972,000, which after considering the addition of the \$2 million allowance, represents a reduction of approximately \$1.6 million from its initial proposal. In addition, CTJV’s BAFO further reduced the proposed duration for 149<sup>th</sup> Street by an additional 1.5 months for a total reduction of 2.5 months and reduced the proposed duration for the Tremont Avenue Station by an additional month for a total reduction of 1.5 months. Tully’s BAFO was \$93,209,726, which after considering the addition of the \$2 million allowance, represents a reduction of \$400,000 from its initial proposal. Tully’s BAFO did not offer any additional schedule reductions. Both teams offered additional reductions to TA Services required for the project.

After receipt and review of BAFOs, the SC unanimously recommended Tully for award, determining that its proposal offered the best overall value. In reviewing the strength and experience of each team, their proposed schedules, and TA Services reductions, the SC determined that both CTJV and Tully were technically equivalent. Accordingly, the unanimous recommendation for award to Tully was predominantly based on their BAFO cost proposal being \$11,762,274 (12.6 percent) less than CTJV’s. Tully’s BAFO proposal is considered fair and reasonable. In order to emphasize schedule as a critical component of this ADA project, the contract includes an early completion incentive for reductions to the project duration as well as liquidated damages for extended durations resulting from contractor delays.

Bonds, financial, and insurance approval are pending. No award will be made until all such approvals are received.

**MBE/WBE/SDVOB**

The MTA Department of Diversity and Civil Rights has established goals of 15 percent MBE, 15 percent WBE, and 6 percent SDVOB. Award will not be made until the Department of Diversity and Civil Rights’ approval is obtained.

**Impact on Funding**

This contract is funded by the 2015 – 2019 MTA Capital Program. This contract will not be awarded until funding is in place and a WAR Certificate is received.

**Alternatives**

None recommended. Currently, MTA lacks available in-house technical personnel to perform the scope of work.

**Recommendation**

That the Board approve the award of a contract for the design and construction of accessibility upgrades at the 149th Street Grand Concourse Complex on the Jerome Avenue and White Plains Road Lines and Tremont Avenue Station on the Grand Concourse Line in the Borough of the Bronx to Tully in the amount of \$93,209,726 and a duration of 35 months. The Board is also requested to approve the payment of stipends of \$97,500 to both CTJV and ECCO III.

**JULY 2020**  
**LIST OF RATIFICATIONS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**Schedule K. Ratification of Completed Procurement Actions (Involving Schedules E-J)**  
(Staff Summaries required for items requiring Board Approval)

- |                                      |                    |                                      |
|--------------------------------------|--------------------|--------------------------------------|
| <b>11. Scalamandre – Gramercy JV</b> | <b>\$3,500,000</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Contract No. A-37124.14</b>       |                    |                                      |

MTA Construction and Development requests the Board ratify a retroactive modification for accelerating the in-service date of three elevators at the 59th Street station, located along the 4th Avenue line in Brooklyn, by approximately 11 months to October 31, 2020. In addition to accelerating the in-service date of the elevators, the contractual substantial completion date is accelerated by approximately eight months to January 21, 2021. This modification also provides for an incentive payment of \$630,000 if the October 31, 2020 date is achieved.

**Schedule K - Ratification of Completed Procurement Actions**

**Staff Summary**

**Item Number: 11**

<b>Vendor Name (Location)</b> Scalamandre – Gramercy JV (Freeport, New York)
<b>Description</b> Installation of Three Elevators at 59th St. Station on 4th Ave. Line "B" Division (BMT), Borough of Brooklyn
<b>Contract Term (including Options, if any)</b> November 19, 2018–September 18, 2021
<b>Option(s) included in Total Amt?</b> <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> n/a
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Noncompetitive
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Modification
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input checked="" type="checkbox"/> Federal <input type="checkbox"/> Other:
<b>Requesting Dept./Div., Dept./Div. Head Name:</b> Delivery/Mark Roche

<b>Contract Number</b> A-37124	<b>AWO/Mod. #s</b> 14
<b>Original Amount:</b>	\$ 34,247,000
<b>Prior Modifications:</b>	\$ 713,100
<b>Prior Budgetary Increases:</b>	\$ 0
<b>Current Amount:</b>	\$ 34,960,100
<b>This Request:</b>	
Modification Cost	\$ 2,870,000
Incentive Cost	\$ 630,000
<b>Total Cost</b>	<b>\$ 3,500,000</b>
<b>% of This Request to Current Amt.:</b>	10%
<b>% of Modifications (including This Request) to Original Amount:</b>	12.3%

**Discussion:**

This retroactive modification is for accelerating the in-service date of three elevators at the 59th Street station, located along the 4th Avenue line in Brooklyn, by approximately 11 months to October 31, 2020. In addition to accelerating the in-service date of the elevators, the contractual substantial completion date is accelerated by approximately eight months to January 21, 2021. This modification also provides for an incentive payment of \$630,000 if the October 31, 2020 date is achieved.

The base contract provides for the installation of three new elevators at the 59th Street station along the 4th Avenue line, B division (BMT), in the borough of Brooklyn. The work includes (1) furnishing and installing one street-to-mezzanine ADA-compliant elevator and two mezzanine-to-platform ADA-compliant elevators; (2) reconfiguration of two street stairs and two platform stairs, and rehabilitation of two street stairs and two platform stairs; (3) expansion of the north mezzanine; (4) reconfiguring the fare control area; (5) constructing a new elevator machine room, electrical panel room, ADA-compliant toilet facilities, and cleaner’s room; and (6) providing new ADA compliant sidewalk curb cuts.

The base contract provides for ADA accessibility at the 59th Street Station by September 18, 2021. Taking advantage of the current low ridership levels to minimize inconvenience to the public, this modification provides for the premium time labor required to accelerate the in-service date of the three new elevators, as well as all work in the north mezzanine and all work associated with providing a fully compliant ADA accessible path of travel at the 59th Street station, by October 31, 2020. This acceleration also results in the earlier Substantial Completion date of January 21, 2021, which represents a reduction of approximately eight months from the contractual date of September 18, 2021.

The contractor submitted its revised proposal in the amount of \$3,701,182. Negotiations resulted in the agreed-upon lump-sum price of \$2,870,000, which is considered to be fair and reasonable.

In addition to the direct costs, this modification provides for a \$630,000 incentive payment. To be eligible for the incentive payment, the contractor must provide a complete and fully compliant ADA path of travel, including the three in-service elevators open to the public and complete all mezzanine work on or before October 31, 2020. This incentive payment is contingent upon completion of all work provided for in this modification. If the October 31, 2020 date is not met, the contractor will not receive any portion of the incentive payment.

The costs associated with accelerating this work and providing the incentive is partially offset by projected savings from reducing the contract duration. The eight-month reduction to the Substantial Completion date is expected to yield savings from the Consultant Construction Management contract; Transit Authority Labor; and Engineering Force Accounts. The projected savings is approximately \$2.65M.

The acting SVP Capital Program Management approved a retroactive waiver on July 1, 2020.



# Bridges and Tunnels

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## Procurements July 2020



# Staff Summary



<b>Subject:</b> Request for Authorization to Award Various Procurements
<b>Department:</b> Procurement
<b>Department Head Name</b> Julia R. Christ
<b>Department Head Signature</b> 
<b>Project Manager Name</b> Various

<b>Date</b> 7/1/2020
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	President	7/10/2020			
2	MTA B&T Committee	7/22/2020			
3	MTA Board	7/22/2020			

Internal Approvals			
Order	Approval	Order	Approval
	President		VP & Chief Financial Officer
	SVP & General Counsel		VP Operations
	VP & Chief of Staff		VP & Chief Engineer
			VP & Chief Procurement Officer <i>BB</i>

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>Schedule Requiring Majority Vote:</u>	<u># of Actions</u>	<u>\$ Amount</u>
Schedule I: Modifications to Purchase and Public Works Contracts	2	\$ 15.4M
<b>SUBTOTAL</b>	<b>2</b>	<b>\$15.4M</b>

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

<b>TOTAL</b>	<b>2</b>	<b>\$15.4M</b>
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**BUDGET IMPACT:**

The purchases/contracts will result in obligating MTA B&T and Capital funds in the amount listed. Funds are available in the current MTA B&T 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.)

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; 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.

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**  
**JULY 2020**

**MTA BRIDGES & TUNNELS**

**Procurements Requiring Majority Vote:**

**I: Modifications to Purchase and Public Works Contracts Awarded**

(Staff Summaries requiring Board approval)

- |  |                       |                                      |
|--|-----------------------|--------------------------------------|
| <b>1. Tully Construction Co., Inc.</b> | <b>\$4,627,000.00</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Contract No. RK-21</b>              |                       |                                      |

3 years, 3 months – Competitive RFP

B&T is seeking Board approval under the All-Agency General Contract Procurement Guidelines to modify this public works contract with Tully Construction Co. to design, furnish and install additional new dry fire standpipe sections for the Manhattan to Queens Bound Ramp, Manhattan to Bronx Ramp, Junction Structure Northbound and Southbound.

- |  |                        |                                      |
|--|------------------------|--------------------------------------|
| <b>2. Ahern Painting Contractors, Inc.</b> | <b>\$10,734,474.00</b> | <b><u>Staff Summary Attached</u></b> |
| <b>Contract No. VN-32/VN-49X</b>           |                        |                                      |

2 years, 4 months – Competitive IFB

B&T is seeking Board approval under the All-Agency General Contract Procurement Guidelines to modify this public works contract with Ahern Painting Contractors, Inc. for additional work which includes steel repairs and painting of these repairs including: stringer stiffeners; subfloor beams; maintenance walk channel stringer; and all associated hardware.

## Schedule I: Modifications to Purchase and Public Works Contracts

**Item Number:**

<b>Vendor Name (&amp; Location)</b> Tully Construction Co., Inc., Flushing, New York	<b>Contract Number</b> RK-21	<b>AWO/Modification #</b>
<b>Description</b> Design-Build Services for Installation of Fire Standpipe and Upgrade of Fire Protection Systems at the RFK Bridge	<b>Original Amount:</b>	\$18,500,000
<b>Contract Term (including Options, if any)</b> March 28, 2017 – June, 2020	<b>Prior Modifications:</b>	\$900,000
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Prior Budgetary Increases:</b>	\$0
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	<b>Current Amount:</b>	\$19,400,000
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Design-Build	<b>This Request:</b>	\$4,627,000
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	<b>% of This Request to Current Amount:</b>	23.9%
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Engineering & Construction, Joe Keane, P.E.	<b>% of Modifications (including This Request) to Original Amount:</b>	29.9%

**Discussion:**

B&T is seeking Board Approval under the All Agency General Contract Procurement Guidelines to amend a Design-Build contract, Contract RK-21, with Tully Construction Co., Inc. (Tully) for additional design-build services and funding in the negotiated amount of \$4,627,000.

Pursuant to competitive negotiations and Board approval, the subject Contract was awarded to Tully Construction Co., Inc. (Tully) on March 28, 2017 in the amount of \$18,500,000 and Substantial Completion to be attained in three years. The Work to be performed under this Contract may briefly be described as the design, construction and construction management of a new dry fire standpipe in specified areas of the Robert F. Kennedy Bridge (RFK) including the Bronx Span, Manhattan Harlem River Lift span, Randall's and Ward's Island viaducts, and the Queens Approach Viaduct; and upgrades to existing fire protection systems including new bollards and other approved barriers to protect both new and existing fire department connections from vehicular damage. A previous amendment was issued to modify the design of the standpipe supports mounted on the barrier.

At the time of Contract RK-21 award in 2017, fire standpipe sections were eliminated from the contract scope due to funding constraints. For reasons of customer safety and to be in compliance with National Fire Prevention Association, Standard NFPA-502 and FDNY requirements, B&T deems it necessary at this time to complete portions of the previously eliminated fire standpipe sections. These critical fire prevention safety enhancements are being accelerated as part of the Moving NY Forward Program. The RK-21 Design-Builder is completing punch list work at the RFK Facility, has satisfactorily completed the Contract work and is committed to completing the proposed additional installations in 2020 with testing to be completed in Spring 2021. It is in the Authority's best interest to amend Contract RK-21 for the additional fire standpipe sections. Efficiencies to be realized include: mobilization cost savings; enhanced coordination; benefit of lessons learned; overall reduction of project schedule and risk; minimizing customer impact due to lane closures; and restoring the facility to normal operations in a manner consistent with the Moving NY Forward initiative. The Design-Builder shall design, furnish, install, test and perform commissioning on additional new dry fire standpipe sections for the Manhattan to Queens Bound Ramp, Manhattan to Bronx Ramp, and the Junction Structure Northbound and Southbound.

Tully submitted a proposal in the amount of \$5,756,359. The negotiated amount is \$4,627,000 which is 14.3% below the Engineer's estimate of \$5,288,341 and is considered fair and reasonable. Funding is available in the 2015-2019 Capital Program under Project RK-21 (Task D04863) in the negotiated amount of \$4,627,000. Tully is a responsible Contractor.

## Schedule I: Modifications to Purchase and Public Works Contracts

### Item Number:

<b>Vendor Name (&amp; Location)</b> Ahern Painting Contractors, Inc.	<b>Contract Number</b> VN-32/VN-49X	<b>AWO/Modification #</b> 1
<b>Contract Title:</b> Structural Steel Repairs and Painting at the Verrazzano-Narrows Bridge.		
<b>Contract Term (including Options, if any)</b> July 17, 2019 – November 16, 2021		
<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
<b>Procurement Type</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive		
<b>Solicitation Type</b> <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Bid <input type="checkbox"/> Other:		
<b>Funding Source</b> <input type="checkbox"/> Operating <input checked="" type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:		
<b>Requesting Dept/Div &amp; Dept/Div Head Name:</b> Engineering & Construction, Joe Keane, P.E.		
	<b>Original Amount:</b>	\$73,267,248
	<b>Prior Modifications:</b>	N/A
	<b>Prior Budgetary Increases:</b>	N/A
	<b>Current Amount:</b>	\$73,267,248
	<b>This Request:</b>	\$10,734,474
	<b>% of This Request to Current Amount:</b>	14.7%
	<b>% of Modifications (including This Request) to Original Amount:</b>	14.7%

### Discussion:

B&T is seeking Board approval under the All Agency General Contract Procurement Guidelines to amend a public works contract, Contract VN-32/VN-49X with Ahern Painting Contractors, Inc. (Ahern) for additional structural steel repairs at the Verrazzano-Narrows Bridge (VNB) in a negotiated amount of \$10,734,474 and extend the date of substantial completion an additional 5 ½ months through April 30, 2022.

The Contract was solicited via a competitive A + B bid (cost + time) method and awarded to Ahern in July 2019 in the amount of \$73,267,248 with a substantial completion duration of two years, four months. The Scope of Work requires Ahern to perform structural steel repairs and painting at the VNB, which include: repairs to subfloor beams, stringers, stiffening truss plates, lower chord, catwalks and other structural members; repair and replacement of traveler runway rail beams, splice plates, drainage pans and appurtenances; cleaning and painting of the suspended spans between the Brooklyn and Staten Island Anchorages; lead abatement and maintenance and protection of traffic. However, the bids received for the Project exceeded the budget, and B&T deemed it in its best interest to reject all bids. The Project's steel repair and painting scopes were modified and quantities reduced, it was rebid as Project VN-32/VN-49X.

The scope of this proposed amendment is to add the previously deleted structural steel repair quantities. Deferring these repairs to the future would result in significantly higher pricing due to the additional cost of including another access platform in the future. The Contractor installed a full access platform under the entire lower level roadway of the main span of the bridge to facilitate its steel repairs and painting work. It is deemed in B&T's best interest to utilize this expanded access to cost effectively perform additional structural steel repair quantities to maintain the VNB's state of good repair. Performing this state of good repair work now results in a cost avoidance realized by B&T of approximately \$5.0M as compared to the pricing of the apparent low bidder under the originally bid project. This critical structural state of good repair work is being accelerated as part of the Moving NY Forward Program.

The additional work includes steel repairs quantities and painting that include: stringer stiffeners; subfloor beams; maintenance walk channel stringer; and associated hardware. Ahern proposed an amount of \$13,030,369 and the negotiated amount of \$10,734,474 is 4.4% below the Engineer's estimate of \$11,222,282 and is fair and reasonable. Funding for this amendment is available in the 2015-2019 Capital Program under Project: D701VN32/ D04376.

In accordance with the All-Agency Responsibility Guidelines, Ahern was deemed a responsible contractor notwithstanding the existence of Significant Adverse Information (SAI) by the MTA Managing Director in consultation with the MTA General Counsel on April 18, 2018. No new SAI has been found relating to the Contractor.

# Staff Summary

<b>Subject</b> 2020 State PWEF Assessment
<b>Department</b> Chief Financial Officer
<b>Department Head Name</b> Robert E. Foran
<b>Department Head Signature</b>
<b>Project Manager Name</b> David E. Keller 

<b>Date</b> July 6, 2020
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Comm.	7/22	X		
2	Board	7/22	X		

Internal Approvals			
Order	Approval	Order	Approval
2	Legal		
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 2020.

**Discussion:** Chapter 511 of the Laws of 1995, as amended, requires State agencies and authorities to pay to the State Comptroller an assessment based upon 1/10 of 1% of the value of public work (construction) contracts 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 and are adjusted to reflect the actual experience from the prior year. The 2020 payment, therefore, is based upon a 2020 estimate and an adjustment for 2019.

Based on the actual average spending rates, it is assumed that in calendar year 2020, MTA's constituent agencies are projected to let \$1,706 billion worth of construction and design-build contracts, which is a \$547 million decrease in contract values from the actual 2019 level of \$2,253 billion.

In 2019, the estimated 2019 assessment of \$2,489,367 was more than the actual assessment of \$2,252,888 by \$236,479. This overpayment, when deducted from the estimated 2020 assessment of \$1,706,141 requires a total payment of \$1,469,662.

**Financial Implications:** The 2020 MTAHQ Budget contains sufficient funds for this payment.

**Recommendation:** The Board should authorize staff to remit the 2020 assessment, including the adjustment for the 2019 overpayment, to the State Department of Labor.

## PROCUREMENTS

The Procurement Agenda this month includes 3 actions for a proposed expenditure of \$73.2 M.

# Staff Summary

UPDATED 7-20-20

Page 1 of 1

<b>Subject</b> Request for Authorization to Award Various Procurements
<b>Department</b> MTA Procurement
<b>Department Head Name</b> Kuvershen Ayer
<b>Department Head Signature</b>
<b>Division Head Name</b>

<b>Date</b> July 20, 2020
<b>Vendor Name</b> Various
<b>Contract Number</b> Various
<b>Contract Manager Name</b> Various
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	07/22/20	X		
2	Board	07/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Procurement	3	CFO
2	Legal		

**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 Competitive procurements in the following categories:**

Schedules Requiring Majority Vote:

Schedule F: Personal Service Contracts

	<u># of</u>	<u>\$ Amount</u>
	<u>Actions</u>	
	3	\$ 73,180,187
<b>SUBTOTAL</b>	<b>3</b>	<b>\$ 73,180,187</b>
<b>TOTAL</b>	<b>3</b>	<b>\$ 73,180,187</b>

**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 120 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 works 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.

**JULY 2020**

**LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL**

**Procurements Requiring Majority Vote:**

**F. Personal Service Contracts**

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

- |   |  |   |
|---|--|---|
| <p><b>1. CorVel Healthcare Corporation Inc.</b></p> <p><b>Various Services to Support the MTA Agencies: Medical Bill Review Services; Workers Compensation Preferred Provider Organization; and, Pharmacy Management Services</b></p> <p><b>Contract No. 15379</b></p> <p><b>Competitively negotiated – 8 proposals – 60 months</b></p> | <p><b>\$18,180,187</b></p> <p><b>(not-to-exceed)</b></p> | <p><b><u>Staff Summary Attached</u></b></p> |
|---|--|---|

Board approval is sought to award a competitively negotiated, personal service contract to CorVel Healthcare Corporation (CorVel) to provide various services to support MTA's Workers' Compensation, Federal Employers Liability Act (FELA), No-Fault, General and Auto Liability Programs, including: (1) Medical Bill Review and Payment Services, Medicare Secondary Payer Reporting (MSP) and Compliance and Third-Party Claim Administration (collectively referred to as Medical Bill Review Services); (2) Workers' Compensation Preferred Provider Organization (WCPPO); and (3) Pharmacy Management Services, Diagnostic Testing Network, and Durable Medical Equipment Program (collectively referred to as Pharmacy Management Services) for five years beginning January 2021. The five-year cost is \$16,527,443 plus a 10% contingency in the amount of \$1,652,744 for other related services for a total amount not to exceed \$18,180,187.

- |   |  |   |
|---|--|---|
| <p><b>2. IBM Corporation</b></p> <p><b>Comprehensive Vulnerability and Patch Services</b></p> <p><b>Contract No. 900000000003518</b></p> <p><b>Competitively negotiated – 5 proposals – 36 months plus two one-year options</b></p> | <p><b>\$40,000,000</b></p> <p><b>(not-to-exceed)</b></p> | <p><b><u>Staff Summary Attached</u></b></p> |
|---|--|---|

Board approval is requested to award a competitively negotiated, personal services contract to IBM Corp. (IBM) to assess, design and implement a comprehensive Vulnerability and Patch Management Program across all operational and informational MTA technology systems in the not-to-exceed amount of \$40,000,000 for a period of 60 months, inclusive of two (2) one-year options to be exercised at MTA's sole discretion.

JULY 2020

LIST OF COMPETITIVE PROCUREMENTS FOR BOARD APPROVAL

- |    |  |                                     |                                      |
|----|--|-------------------------------------|--------------------------------------|
| 3. | <b>Various<br/>Cybersecurity Services<br/>Contract No. 308044<br/>Competitively negotiated – 13 proposals – 60 months</b>  | <b>\$15,000,000<br/>(aggregate)</b> | <b><u>Staff Summary Attached</u></b> |
|    | <b>a. International Business Machines Corp.<br/>b. Dell Marketing LP<br/>c. CherryRoad Technologies Inc.<br/>d. DXC Technology Services LLC<br/>e. QED Inc. d/b/a QED National<br/>f. Spruce Technology Inc.<br/>g. GuidePoint Security LLC<br/>h. Protek IT Services, LLC<br/>i. Verizon Business Group<br/>j. INNO4 LLC<br/>k. Beckage PLLC<br/>l. Maureen Data Systems, Inc.<br/>m. Vgroup Inc.</b> |                                     |                                      |

Board approval is sought to award a competitively negotiated, personal services master contract to a panel of 13 vendors to provide the MTA with IT Cyber Security Subject Matter Expert services. These firms will assist the MTA by providing transportation industry focused expert cyber security services across all operational and informational MTA technology systems on an as-needed basis.

# Staff Summary

## Schedule F: Personal Service Contracts

UPDATED 7-20-20

Page 1 of 3

<b>Item Number:</b> 1 <b>Dept &amp; Dept Head Name:</b> Finance / Robert E. Foran <b>Division &amp; Division Head Name:</b> Risk and Insurance Management / Phyllis Rachmuth						<b>SUMMARY INFORMATION</b> <b>Vendor Name:</b> CorVel Healthcare Corporation Inc.		<b>Contract Number:</b> 15379	
<b>Description:</b> Various Services to Support MTA Agencies: 1) Medical Bill Review Services; (2) Workers' Compensation Preferred Provider Organization (WCPPO); and (3) Pharmacy Management Services						<b>Total Amount:</b> \$18,180,187 (not to exceed)			
<b>Board Reviews</b>						<b>Contract Term (including Options, if any):</b> January 1, 2021 thru December 31, 2025			
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>	<b>Option(s) included in Total Amount?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
1	Finance	07/22/20	X			<b>Renewal?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
2	Board	07/22/20	X			<b>Procurement Type:</b> <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive			
<b>Internal Approvals</b>						<b>Solicitation Type:</b> <input checked="" type="checkbox"/> RFP <input type="checkbox"/> Bid <input type="checkbox"/> Other:			
<b>Order</b>	<b>Approval</b>	<b>Order</b>	<b>Approval</b>			<b>Funding Source:</b> <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:			
1	Procurement	4	DDCR						
2	Treasury	5	Legal						
3	Risk & Ins. Mgmt.	6	CFO						

**Narrative**

**I. PURPOSE/RECOMMENDATION**

Board approval is sought to award a competitively negotiated, personal service contract to CorVel Healthcare Corporation (CorVel) to provide various services to support MTA's Workers' Compensation, Federal Employers Liability Act (FELA), No-Fault, General and Auto Liability Programs, including: (1) Medical Bill Review and Payment Services, Medicare Secondary Payer Reporting (MSP) and Compliance and Third-Party Claim Administration (collectively referred to as Medical Bill Review Services); (2) Workers' Compensation Preferred Provider Organization (WCPPO); and (3) Pharmacy Management Services, Diagnostic Testing Network, and Durable Medical Equipment Program (collectively referred to as Pharmacy Management Services) for five years beginning January 2021. The five-year cost is \$16,527,443 plus a 10% contingency in the amount of \$1,652,744 for other related services for a total amount not to exceed \$18,180,187.

**II. DISCUSSION**

MTA and its agencies pay medical expenses for employees injured on duty and no fault medical expenses for customers and third parties injured in motor vehicle accidents involving MTA vehicles. MTA and its agencies are legally required to pay these medical bills on behalf of employees and customers under the workers' compensation and no-fault laws, as applicable. Pursuant to these laws, healthcare providers agree to accept pre-determined fees for specific medical services rendered based on New York State fee schedules. Medical expenses incurred due to on-duty injuries to employees of the commuter railroads may be recoverable under FELA, and the commuter railroads pay such medical expenses pursuant to labor agreements and other related practices. Healthcare provider fees are currently monitored and negotiated to ensure that the MTA pays reasonable and customary rates.

These medical bills are routinely submitted by providers in excess of the scheduled allowable amounts. The MTA requires a contractor to negotiate a reduction in and pay medical bills based on New York State schedules and negotiated usual and customary reviews, and to provide nurse and physician reviews of large or unusual bills. These reviews result in additional savings to the MTA. In addition, the contractor provides and administers the Pharmacy Management Services, and acts as the MTA's reporting agent for all MSP reporting. Additionally, the contractor provides third-party claims administration services for Workers' Compensation, no-fault, general and auto liability claims, and maintains an automated central repository for accident and claims-related data.

CorVel, the incumbent, has been providing these services since 2009, and processed over 1.8 million medical bills valued at about \$1.2 billion. During that period, savings of over \$726 million have been realized, or about 61% of the total value of billings. The annual cost of CorVel's services in 2019 represented about 3% of that year's savings levels.

Based on the success of this program, a continuation of services was sought through a competitive Request for Proposal (RFP). The scope of the new RFP added the administration of a WCPPO certified by the New York State Workers' Compensation Board (WCB) and by the New York State Department of Health for workers' compensation claims. Pursuant to Article 10-A of the New York State Workers' Compensation Law, WCPPO-supplied services are to be provided, at a minimum, for the initial diagnosis and treatment of a covered employee for a work-related injury or illness in the thirty (30) day period following such initial diagnosis and treatment.

Following conclusion of collective bargaining, the MTA and various unions agreed to implement a mandatory WCPPO with the goals of achieving (1) improved services for the diagnosis, treatment, and rehabilitation for employees injured on duty; and (2) associated savings. CorVel's network doctors will be used for the initial diagnosis and treatment of work-related injuries or illnesses, as well as diagnoses, treatment and rehabilitation services in the thirty-day period following such initial diagnosis or treatment. It is anticipated that additional savings above those achieved under the existing program would be realized as a result of the implementation of a mandatory PPO Network with more expansive use of a specified preferred rate made available by in-network providers to employers who use the WCPPO. CorVel currently passes similar savings onto MTA based on random usage of its PPO network. Savings are realized as a cost avoidance, and CorVel receives an administrative fee equal to a percentage of the cost avoidance.

The WCPPO serves a large geographic area closely mirroring where the MTA and its affiliate agencies' workforce resides and includes all counties within the New York State portion of the Metropolitan region (throughout New York City, Long Island and upstate New York) and Connecticut. There are over 35,000 represented employees who will be covered by the WCPPO. It is anticipated that non-represented employees will also be covered, and additional represented employees may be added over time.

The RFP was publicly advertised; nine proposals were received from the following suppliers: Conduent State & Local Solutions (Conduent), CorVel, Coventry Healthcare Workers Compensation (Coventry), Genex Services (Genex), Innovative Claims Strategies, MagnaCare, Rising Medical Solutions, and S1 Medical. CorVel submitted two proposals: one relying on its own PPO network and a second proposal submitted jointly with MagnaCare that uses MagnaCare's certified PPO network and relies on CorVel providing bill review and other services. The Selection Committee consisted of leadership from MTA Headquarters, MNR, LIRR, MTA Bus, MTA Bridges and Tunnels, NYCT Law and Labor Relations Departments. Proposals were evaluated based on the following evaluation criteria – responsiveness to the RFP; quality of proposer's solution; WCPPO knowledge and the proposer's solution; pharmacy management; the proposer's experience, qualifications and capabilities; and cost.

After an initial review of the proposals, the Selection Committee recommended that Conduent, CorVel, Coventry, Genex and MagnaCare be invited to give oral presentations. The shortlisted firms had relevant experience, qualifications and capabilities, overall responsiveness, and demonstrated understanding of the general MTA program requirements. After the oral presentations, the Selection Committee recommended that the MTA proceed to negotiate with CorVel, CorVel/MagnaCare, and MagnaCare and request Best And Final Offers (BAFOs) from them. These proposers demonstrated direct experience managing their own certified PPO networks and have extensive experience as large volume bill reviewers within the required geographic area.

Based on the review of the BAFOs submitted by the final three, CorVel was ultimately recommended for award by the Selection Committee. CorVel was ranked technically highest overall by the Selection Committee. CorVel provides an all-inclusive proposal with the majority of the required services performed by CorVel itself, rather than by third parties, thereby mitigating confidentiality concerns. CorVel was preferred based on the qualifications and capabilities of the specific team to be assigned to the MTA account as well as prior experience in the public transportation industry (including the MTA) involving large volumes of workers' compensation, FELA and no-fault claims processing. In its proposal, CorVel demonstrated a clear understanding of the objectives and constraints of the undertaking, including coordination of services and service providers to ensure regulatory compliance and achieve the goals of the programs. CorVel's proposal also demonstrated successful implementation of interfaces with its internal system and Origami, a new claims handling system that all MTA agencies anticipate transitioning to in 2020.

CorVel has a proven track record of competence, willingness, and flexibility to assist with the MTA's risk mitigation and cost-savings efforts. The Selection Committee found that CorVel will continue to provide the MTA with savings through its diagnostic imaging and pharmacy networks, ensuring reduced rates for pharmaceuticals and savings through its review of medical treatment requests in the workers' compensation arena. According to the Selection Committee, CorVel's proposal delivers a review process that will control costs and ensure that claimants receive the medical treatment they need.

Following negotiations, CorVel's proposed pricing for review and evaluation of medical claims, PPO repricing percentage, utilization review rates and other fees were reduced. While CorVel's BAFO proposal is 17% higher than its competitor, its BAFO translates to estimated savings of \$1.9 million or about 10% less than the current contract spend. Current contract pricing includes rates that were deemed fair and reasonable for award and were further reduced pursuant to a cost reduction initiative in 2019. CorVel's BAFO achieves cost savings for the MTA's risk program on top of those achieved by that 2019 initiative. CorVel has stated it is offering the MTA its most favorable customer managed care services pricing for the pending contract award based on the types and volume of services used by CorVel for other customer(s) with similar types and volume contracts. The estimated contract amount for the five-year term is approximately \$16.5 million. The total not-to-exceed amount of \$18,180,187 includes a 10% contingency of \$1,652,744 to cover potential surge in volume of nurse case review management, diagnostic services, durable equipment, return to work coordination services, and as-needed home health care and medical transportation services. Although CorVel is not the lowest cost proposer, the Selection Committee determined that CorVel's proposal provided the best value to the MTA and rated it highest overall with all evaluation criteria taken into consideration. Based on the foregoing, CorVel's BAFO pricing was found to be fair and reasonable.

A responsibility review of CorVel conducted pursuant to the All-Agency Responsibility Guidelines revealed no significant adverse information and CorVel has been found to be responsible.

### **III. D/M/WBE INFORMATION**

The MTA Department of Diversity and Civil Rights established no MWBE subcontracting goals on this contract because the scope of work falls within the confines of existing collective bargaining agreements and held as highly confidential. CorVel Healthcare has not completed any MTA contracts with goals; therefore, no assessment of the firm's MWDBE performance can be determined at this time.

### **IV. IMPACT ON FUNDING**

The total cost for this contract for the five-year period, is in the not-to-exceed amount of \$18,180,187. This contract will be funded from each agency's operating budget.

### **V. ALTERNATIVES**

1. Do not Approve Award of the Contract. This is not recommended. Failure to provide this review service would prohibit MTA from benefiting from the additional savings afforded by Preferred Provider networks on medical bills as well as efficiencies resulting from uniform review and payment practices that will include industry best practices for evaluating and paying medical bills.
2. Perform the Services In-house. This alternative is neither practical nor cost effective. If these services are performed in-house, MTA would not benefit from the additional cost savings opportunities afforded by Preferred Provider networks.

# Staff Summary

## Schedule F: Personal Service Contracts

UPDATED 7-20-20

Item Number: 2						<b>SUMMARY INFORMATION</b>					
Dept & Dept Head Name: MTA IT / Rafail Portnoy						Vendor Name: IBM Corp.			Contract Number: 900000000003518		
Division & Division Head Name: IT Security/ Tariq Habib						Description: Comprehensive Vulnerability and Patch Services					
Board Reviews						Total Amount: \$40,000,000					
Order	To	Date	Approval	Info	Other	Contract Term (including Options, if any): Three (3) Years with two one-year Options					
1	Finance	07/22/20	X			Option(s) included in Total Amount? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No					
2	Board	07/22/20	X			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:							
1	Procurement	4	DDCR	<input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Immediate Operating Need							
2	IT	5	Legal	Funding Source:							
3	Security	6	CFO	<input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:							

**Narrative**

**I. PURPOSE/RECOMMENDATION**

Board approval is requested to award a competitively negotiated, personal services contract to IBM Corp. (IBM) to assess, design and implement a comprehensive Vulnerability and Patch Management Program across all operational and informational MTA technology systems in the not-to-exceed amount of \$40,000,000 for a period of 60 months, inclusive of two (2) one-year options to be exercised at MTA's sole discretion.

**II. DISCUSSION**

An emergency and immediate operating need was declared by MTA Executive Management to conduct this procurement in an expedited manner to address the heightened alerts due to cybersecurity threats. The MTA plans to strengthen its cybersecurity environment by safeguarding all the Informational Technology (IT) and Operational Technology (OT) assets by first assessing the vulnerabilities, and then patching the assets on an as-needed basis. This will provide efficiencies such as improved automated cyber incident response and enable prioritization of high-risk and advanced threats. IBM will review and analyze existing IT and OT assets, processes and procedures; create an inventory for the software in use at the various MTA sites including cloud sites and implement a comprehensive vulnerability and patch program to maintain a steady state.

In order to provide these essential services, a competitive Request for Proposal (RFP) was issued. Public advertising was waived in order to allow for an expedited procurement process to quickly procure these essential cybersecurity improvements, and letters were sent to nineteen (19) firms considered industry leaders in cybersecurity in order to notify them of the RFP. Five proposals were received. The Selection Committee, consisting of MTA's Director of IT Security, Cybersecurity Monitoring Lead, Technology Solution Lead, and Middleware Technology Architecture Lead, evaluated the proposals based on the criteria set forth in the RFP which included the successful demonstration of the vendor's understanding of the MTA scope of work (SOW), the vendor's experience in cybersecurity transformation, proposed staffing, the expertise of the vendor's project team, and overall cost. After analyzing all proposals, the Selection Committee concluded that only two of the five firms were deemed technically responsive to the RFP. The other three firms failed to provide a detailed process for a comprehensive solution to manage the IT and OT assets. In addition, the Selection Committee determined that these firms did not fully understand the MTA's SOW requirements. The two firms deemed technically responsive were invited to make oral presentations to the Selection Committee. The Selection Committee ultimately determined that IBM was the most technically qualified and best suited firm to provide the services identified in the RFP.

IBM's proposal detailed a clear delivery model that covered all aspects of MTA's vulnerability and patch requirements. IBM demonstrated a solid understanding of MTA's complex OT environment and proposed the best solution to manage all of MTA's assets by utilizing advanced industry solutions. IBM also offered a project team with in-depth experience in all aspects of cybersecurity services. The Selection Committee found that the second proposer's presentation lacked the comprehensive management program needed for the MTA and failed to effectively demonstrate the ability to deliver the patching of OT assets. IBM will provide services pursuant to the four phases of MTA's SOW: (i) assessment, strategies, gap analysis and inventory; (ii) process establishment and solution deployment; (iii) ramping up and addressing alternative host architecture; and, (iv) maintenance process and continuous improvement to manage the program during steady state.

Negotiations yielded an overall price reduction of \$22 million or 36% from IBM's original proposed cost of \$62,498,224 to \$40,000,000. Upon reviewing IBM's negotiated pricing, MTA project management concurred with IBM's approach to IT and OT management and revised its estimate consistent therewith. The cost includes a fixed fee for assessing IT and OT assets, designing the vulnerability program, vulnerability software and patch management software and a per-device rate for patching. Based on the foregoing, IBM's negotiated pricing is considered fair and reasonable.

In connection with a previous contract awarded to IBM, IBM was found to be responsible notwithstanding significant adverse information (SAI) pursuant to the All-Agency Responsibility Guidelines, and such responsibility finding was approved by the MTA Chairman/CEO in consultation with the MTA General Counsel on July 25, 2016. No new SAI has been found relating to IBM and IBM has been found to be responsible.

### **III. D/M/WBE INFORMATION**

The MTA Department of Diversity and Civil Rights has established goals of 0% for MBE, 0% for WBE and 0% for SDVOB due to the lack of certified firms in the marketplace capable of providing the managed security services required for this contract. IBM has not met the MWDBE goals on previously completed MTA projects, but has made good faith effort towards meeting these goals.

### **IV. IMPACT ON FUNDING**

The total cost for this contract is \$40,000,000 and will be funded by MTA IT's Operating Budget.

### **V. ALTERNATIVES**

1. Perform services in-house – This alternative is not feasible since MTA does not have the bandwidth in the existing workforce as compared to leveraging an external firm's best practices to implement a comprehensive vulnerability and patch program for IT of OT assets.
2. Do not approve award – This alternative is not recommended because the MTA would be vulnerable to cyber threats and unable to identify, detect, address and protect critical infrastructure and services which can result in service disruptions, loss of revenue, loss of reputation, and impact public safety.

# Staff Summary

## Schedule F: Personal Service Contracts

UPDATED 7-20-20

Item Number: 3						<b>SUMMARY INFORMATION</b>	
Dept & Dept Head Name: MTA IT / Rafail Portnoy						Vendor Name: Various	
Division & Division Head Name: IT Security / Tariq Habib						Master Contract No: 0000016555	
<b>Board Reviews</b>						Description: Cybersecurity Services	
						Total Amount: \$15,000,000	
<b>Order</b>	<b>To</b>	<b>Date</b>	<b>Approval</b>	<b>Info</b>	<b>Other</b>	Contract Term (including Options, if any): Five (5) Years	
1	Finance	07/22/20	X			Option(s) included in Total Amount? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
2	Board	07/22/20	X			Renewal? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Internal Approvals</b>						Procurement Type: <input checked="" type="checkbox"/> Competitive <input type="checkbox"/> Non-competitive	
<b>Order</b>	<b>Approval</b>		<b>Order</b>	<b>Approval</b>		Solicitation Type: <input type="checkbox"/> RFP <input type="checkbox"/> Bid <input checked="" type="checkbox"/> Other: Immediate Operating Need	
1	Procurement		4	DDCR		Funding Source: <input checked="" type="checkbox"/> Operating <input type="checkbox"/> Capital <input type="checkbox"/> Federal <input type="checkbox"/> Other:	
2	IT		5	Legal			
3	Security		6	CFO			

### I. PURPOSE/RECOMMENDATION

Board approval is sought to award a competitively negotiated, personal services master contract to a panel of 13 vendors to provide the MTA with IT Cyber Security Subject Matter Expert services. These firms will assist the MTA by providing transportation industry focused expert cyber security services across all operational and informational MTA technology systems on an as-needed basis. The contracts are for a period of five years with an aggregate budget of \$15,000,000. The contracts will be awarded to the following 13 firms (of which six awards are to New York State-certified M/WBE firms):

1. International Business Machines Corp.	7. GuidePoint Security LLC
2. Dell Marketing LP.	8. Protek IT Services, LLC. (WBE)
3. CherryRoad Technologies Inc.	9. Verizon Business Group
4. DXC Technology Services LLC.	10. INNO4 LLC.
5. Q.E.D, Inc. dba QED National (WBE)	11. Beckage PLLC. (MWBE)
6. Spruce Technology Inc. (MBE)	12. Maureen Data Systems, Inc. (WBE)
	13. V Group Inc. (MWBE)

### II. DISCUSSION

An emergency and immediate operating need was declared by MTA Executive Management to conduct this procurement in an expedited manner to address the heightened alerts due to cybersecurity threats. The MTA, like many organizations, faces significant challenges in managing system risk across its IT environment and its large array of networks and information systems. Information assets within the Operational Technologies (OT) and Information Technology (IT) networks have become increasingly challenging to protect due to advances in the threat landscape, such as easy-to-use cyber-attack frameworks, advanced threat actor persistence and technologic attack evolution, data obfuscation, and social engineering such as phishing attacks. These threats have resulted in a critical necessity to utilize an innovative and forward-thinking implementation of security throughout the MTA to strengthen its cybersecurity environment by safeguarding all the IT and OT assets. This will provide efficiencies such as improved automated cyber incident response and enable prioritization of high-risk and advanced threats.

A competitive Request for Proposal (RFP) was issued in order to procure these essential services. Public advertising was waived in order to allow for an expedited procurement process to quickly procure these essential cybersecurity improvements. The Selection Committee was comprised of representatives from the MTA IT department and included managers with expertise in cyber security. The MTA intends to award multiple contracts in order to have a pool of firms with diverse expertise available to support the MTA's varying cyber security requirements.

Procurement conducted outreach to 121 vendors considered industry leaders in cybersecurity, of which 48 were minority/women-owned/veteran-owned business enterprises. Vendors were provided sample task orders to determine expertise in various types of work. Thirteen proposals were received and all of these firms offered credible proposals that demonstrated expertise in various cybersecurity categories. The Selection Committee deemed all 13 firms qualified to address the various disciplines required.

Following negotiations, the proposed fully-loaded hourly rates range from \$140 to \$475 for advanced cybersecurity titles, \$130 to \$376 for senior cybersecurity titles and from \$100 to \$300 for intermediate cybersecurity titles. The awardees' negotiated rates are consistent with the rates approved by the US government's General Services Administration for similar cybersecurity expertise. In addition, rates are within 10 % of the market average as established by the proposals received. Based on the foregoing, the rates are considered fair and reasonable.

Each contract will be awarded for zero dollars with an aggregate budget of \$15 million. Individual task orders will be awarded pursuant to a competitive mini-RFP process, where practicable, wherein the awardees will submit technical and cost proposals that will be evaluated by a committee prior to the award of any task.

Responsibility reviews of Beckage, CherryRoad, Dell, DXC, GuidePoint, INNO4, Maureen Data Systems, Protek Information, QED, Spruce Technology, V Group and Verizon conducted pursuant to the All-Agency Responsibility Guidelines revealed no significant adverse information and these ten firms has been found to be responsible. In connection with a previous contract awarded to IBM, IBM was found to be responsible notwithstanding significant adverse information (SAI) pursuant to the All-Agency Responsibility Guidelines, and such responsibility finding was approved by the MTA Chairman/CEO in consultation with the MTA General Counsel on July 25, 2016. No new SAI has been found relating to IBM and IBM has been found to be responsible.

### **III. D/M/WBE INFORMATION**

The MTA Department of Diversity and Civil Rights has established subcontracting goals of 15% for MBE, 15% for WBE and 6% for SDVOB. It should be noted that (6) six of the thirteen (13) firms retained as prime contractors are NYS certified Minority and Women Owned Business Enterprises.

### **IV. IMPACT ON FUNDING**

The total cost for this contract is a not-to-exceed aggregate budget of \$15,000,000; and will be funded by MTA IT's Operating Budget.

### **V. ALTERNATIVES**

1. Perform services in-house – This alternative is not feasible since performing these specialized functions in-house would require additional full- and part-time employees, including associated overhead costs, which would not be cost effective. Currently the MTA does not have the bandwidth within the existing workforce.
2. Do not approve award – This would place the MTA vulnerable to cyber threats and will not be able to identify, detect, address and protect critical infrastructure and services which can result in service disruptions, loss of revenue, loss of reputation, and impact public safety. This alternative is not advisable.

**JULY 2020**  
**MTA REAL ESTATE**  
**LIST OF REAL ESTATE ACTION ITEMS FOR BOARD APPROVAL**

**METROPOLITAN TRANSPORTION AUTHORITY**

- a. Modification of existing board policies governing the licensing of MTA agency properties to permit renewal of agreements under specified conditions
- b. Modification of existing board policies governing the licensing the MTA agency property to permit broad direct marketing for vacant retail space
- c. Eminent domain resolution for the acquisition of property interests for phase 2 of the Second Avenue Subway
- d. Modification to existing board policy governing the licensing of retail space in Grand Central Terminal

**MTA NEW YORK CITY TRANSIT**

- e. Acquisition of easements at NYC Parks' Grand Canal court playground in lower Manhattan to facilitate the construction of a substation in support of the communications based train control program

**MTA LONG ISLAND RAIL ROAD**

- f. Permanent and temporary easements with Vorea Borden LLC and Glen Garden Corporation to facilitate improvement to the Long Island City Yard flood mitigation
- g. Revised lease amendment and extension agreement with Vornado Realty for the back of house office space in One Penn Plaza
- h. Letter agreement and master lease amendment with Vornado Realty to facilitate concourse improvements at Pennsylvania Station

# Staff Summary

<b>Subject</b> <b>AMENDMENT OF NEGOTIATED LICENSE POLICY FOR EXISTING TENANTS</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>ARTURO ESPINOZA</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

AGENCY: All Agencies

PURPOSE: Amendment of Existing Policy Governing Licensing of Agency Properties

ACTION REQUESTED: Approval of an amended policy to (i) renew expiring licenses for existing licensees and (ii) to enter into new license agreements with tenants whose leases are expiring

**COMMENTS:**

The MTA Real Estate Department Policies and Procedures for the Licensing of Real Property, adopted by the MTA Board in 1995, and amended in 2011, includes a policy that authorizes MTA Real Estate to award a new license agreement for up to a ten-year term to an existing tenant in good standing for the space it currently occupies pursuant to a prior public offering (or, in appropriate circumstances, a similar replacement space), without Board approval. This is conditioned upon the total compensation to be paid by the licensee being fair and reasonable and in line with comparable market rents, whose thresholds are commemorated in the policy. Under MTA Real Estate’s licensing policies, a license must be terminable by the MTA upon not more than 60 days’ notice without compensation by the MTA including repayment of any unamortized tenant improvement costs.

That policy, when first adopted in 1995, was based on a consultant’s advice that renewing existing tenants without a request for proposals would increase revenue to the MTA, maintain existing passenger amenities, and would free staff time to market other spaces.

The goal of this revision is to enable the MTA Real Estate to move quickly to renew tenants in good standing, at rent thresholds higher than allowed under existing policy. In addition, the policy would now be limited to licenses, as leases are dispositions of property which are specifically prescribed under the Public Authorities Law. MTA Real Estate intends to deploy this revised policy to: (i) keep existing tenants in place by negotiating license renewals, or alternatively, negotiate and convert expiring leases into new licenses; (ii) avoid further losses of retail revenue through terminations; and (iii) continue uninterrupted valuable customer amenities. The existing policy, however, sets an annual rental cap of \$30,000 for such renewal licenses, which, if adjusted by CPI to the current year, would only be \$37,000.00 annually. These values are restrictive to quickly renewing leases [and do not represent current market rent valuations].

To insure maximum flexibility, now and after COVID-19, MTA Real Estate looked at pre-COVID annual rentals at the high ridership stations for guidance (e.g. Times Square, Jay St - Metrotech) and recommends that the annual threshold be increased to \$500,000.00.

# Staff Summary

## FINANCE COMMITTEE MEETING AMENDMENT TO NEGOTIATED LICENSE POLICY (Cont'd.)

MTA Real Estate recommends adoption of this amendment of its existing policy within the MTA Real Estate Department's Policies and Procedures for Licensing Property as it relates to existing tenants.

# Staff Summary

<b>Subject</b> <b>MODIFICATION TO POLICIES AND PROCEDURES FOR THE LICENSING OF REAL PROPERTY FOR VACANT SPACES</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>ARTURO ESPINOZA</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

**AGENCY:** All Agencies

**PURPOSE:** To obtain MTA Board approval for a temporary modification to Real Estate Policies and Procedures for the Licensing of Real Property, as adopted November 29, 2011.

**EXPIRATION:** The modification will expire August 1, 2022.

**COMMENTS:**

The reduction of the MTA's ridership as a result of the COVID-19 pandemic has had a direct impact on retail tenants within the MTA portfolio that depend on consistent subway and commuter rail ridership to generate sales revenue. Many of the tenants in the NYCT portfolio, in particular those who were already at or near the end of their tenancies have already surrendered their spaces due to the continued uncertainty about future ridership and the retail economy in general. For NYCT the number of customer amenities has decreased from 144 primary retail locations to 117. This is in addition to the over 90 vacancies MTA Real Estate has been addressing through RFP issuance and license negotiation.

The goal of the proposed policy amendment is to address the increased vacancies in our retail portfolio and restore customer amenities and non-farebox revenue. Although New York State is slowly re-opening and ridership is expected to increase, it is contemplated that the severe disruption of the MTA's retail operations will take a long time to overcome. The MTA needs to confront the challenge of attracting new tenants under uncertain conditions.

MTA Real Estate's existing policies and procedures for awarding licenses for retail spaces were designed for conventional market conditions. Under the current, extraordinary conditions, it is believed that they will hamper a speedy retail re-occupancy plan. Offering retail license agreements through competitive requests for proposals is time-consuming. MTA Real Estate believes that directly marketing and negotiating new licenses will speed re-occupation of vacant spaces.

MTA Real Estate's Board-approved licensing policies and procedures already recognize and allow for certain defined "Circumstances" where it is appropriate to award a license without competition where a request for proposals likely would not generate enough competition or revenue to justify the time and effort, though the Board's approval is required. Those Circumstances include (1) where an earlier request for proposals was unsuccessful; (2) the market value rental is below \$5,000 a year; (3) the property is located such that only a single adjacent owner can make use of the property; (4) the property is to be licensed to municipalities for municipal purposes, or to nonprofits for beautification purposes; or (5) the license is a fiber optic or other pole, pipe or wire agreement where occupancy will be non-exclusive.

It is proposed that the Board adopt an additional, temporary Circumstance #6 to allow the award of license agreements by negotiation and without a formal public offering for vacant retail spaces. The spaces eligible would not exceed 500

# Staff Summary

## FINANCE COMMITTEE MEETING MODIFICATION TO POLICIES AND PROCEDURES (Cont'd.)

square feet in size, thereby limiting MTA Real Estate's latitude to smaller, travel/convenience retail in our operating environment and smaller licensed spaces in Grand Central Terminal. It is further recommended that this temporary modification expire on August 1, 2022 (the "Temporary Modification Outside Date") and apply to (a) existing vacant spaces, (b) spaces in which an existing licensee or lessee has already given notice to terminate, or any licensee or lessee that gives notice to terminate between now and Temporary Modification Outside Date.

Temporarily suspending the request for proposal requirement will save substantial time in marketing and consummating new occupancies. MTA Real Estate will still publicly advertise the inventory of vacant retail spaces on the MTA website, keep inquiries in a database, and direct its outside broker to help market the spaces. As currently practiced, MTA Real Estate will employ a governance rigor including performing due diligence, such as credit and background investigations, on all licensees, and selection of the most financially responsible proposers.

Under this proposed temporary modification, the new license term (or extension, as applicable) will not exceed ten years, including any option term (e.g., one 5-year new initial term and one 5-year option term). As with our standard license agreements, those awarded will be terminable by the MTA upon not more than 60 days' notice without compensation paid by the MTA including repayment of any unamortized tenant improvements. Offering a term agreement incentivizes the licensee to invest in improvements to the space thereby rendering the space more marketable in the long-term and providing a superior amenity to the public.

The compensation structure in the agreements may include fixed base rent or a percentage rent derived from the licensee's gross sales, or a combination of the two. An independent valuation will be obtained to assist in determining the rent in the option term for agreements with fixed rent structures. For agreements with percentage rent structures, the rent collected as a percent of gross sales during the initial term will form the basis of a fixed, Minimum Annual Guarantee ("MAG") rent for the option term. MTA Real Estate will ensure that a consistent methodology is applied in these valuations.

The terms of the negotiated transaction will be presented to the MTA Board for approval, if required.

Based on the foregoing, MTA Real Estate recommends adoption of the modification to the MTA Real Estate Policies and Procedures for the Licensing of Real Property on the terms and conditions set forth above.

# Staff Summary

<b>Subject</b> <b>ACQUISITION OF PROPERTY INTERESTS FOR PHASE 2 OF THE SECOND AVENUE SUBWAY PROJECT</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>HELENE CINQUE/ ROBAIR REICHENSTEIN</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

**AGENCY:** Metropolitan Transportation Authority (“MTA”) and MTA New York City Transit (“NYCT”)  
**SELLER:** Various sellers, see attached schedule  
**LOCATION:** Various locations, see attached schedule  
**ACTIVITY:** Acquisition of property interests through negotiated agreement or eminent domain  
**ACTION REQUESTED:** Authorization to acquire various property interests through negotiated agreement or eminent domain  
**SPACE:** Various spaces  
**COMPENSATION:** Various, all to be determined

**COMMENTS:**

In connection with the construction of NYCT’s Second Avenue Subway Project (“SAS”), a number of permanent and temporary acquisitions will be required, for both entrances and for ancillary facilities. These acquisitions will be required in and around the station areas along the entire length of the alignment.

The properties listed on the attachment to this staff summary include certain of the properties that are currently targeted for some type of acquisition for Phase 2 of the project, the portion running approximately from 96<sup>th</sup> Street and 2<sup>nd</sup> Avenue northwards to 125<sup>th</sup> Street, then westwards along 125<sup>th</sup> Street to just past Lenox Avenue.

MTA will endeavor to acquire all property interests for the project through negotiated agreements. But for a project of this magnitude, MTA may not be able to reach agreements with all property owners and will be compelled to acquire some property interests by eminent domain. Thus, Board approval is being sought for MTA to begin taking steps, to satisfy the requirements of Eminent Domain Procedure Law in order to preserve MTA’s rights and lessen the potential for future delays to the project and ensure the timely acquisition of the necessary property interests. If a negotiated agreement to acquire any of the property interests is reached prior to the filing of condemnation papers with the court, the terms of any such agreement will be presented to the Finance Committee and MTA Board for further approval.

Based on the foregoing, MTA Real Estate requests authorization to proceed with the acquisition, by negotiated agreement or condemnation, of the noted property interests, on the above-described terms and conditions.

## **BOARD RESOLUTION**

WHEREAS, the MTA is undertaking the construction of the second phase of the MTA New York City Transit Second Avenue Subway Project ("SAS");

WHEREAS, in connection with SAS, a number of permanent and temporary acquisitions of real property interest will be required set forth on the attachment to this Resolution, for both entrances and for ancillary facilities, in and around the station areas along the entire length of the alignment;

WHEREAS, the MTA will endeavor to acquire the property interests through negotiated voluntary agreements with the affected property owners and tenants, but to preserve MTA's rights and lessen the potential for future delays to the project if agreements cannot be negotiated in a timely manner, MTA must take preliminary steps under the Eminent Domain Procedure Law to secure the property interest needed for SAS.

NOW THEREFORE, BE IT RESOLVED that in accordance with the Eminent Domain Procedure Law and Section 1267 of the Public Authorities Law, the Chairman or designated staff member of the Authority is authorized to proceed with the acquisition of fee interests in the properties described above by negotiated agreements or eminent domain and to schedule and undertake such preliminary steps, including holding a public hearing, as may be required under the Eminent Domain Procedure Law, in connection with these acquisitions.

BE IT FURTHER RESOLVED, that the proposed acquisitions will be subject to prior, satisfactory completion of any required environmental reviews.

See attachment for list of properties.

This resolution shall take effect immediately upon its adoption.

# Staff Summary

## FINANCE COMMITTEE MEETING ACQUISITION OF PROPERTY INTERESTS FOR PHASE 2 OF THE SECOND AVENUE SUBWAY PROJECT (Cont'd.)

### Acquisition of Various Property Interests in Support of the MTA New York City Transit's Second Avenue Subway Project by Negotiated Purchase or Condemnation

<b>Block</b>	<b>Lot(s)</b>	<b>Type of Interest</b>	<b>Property Address</b>	<b>Reputed Owner</b>
1909	44	Permanent Full Taking	120 West 125 <sup>th</sup> Street, NY, NY	M.K.K. Properties, Inc. c/o Alvin & Rosa Hudgins
1773	1 67	Permanent Full Taking	1801-1805 Park Avenue, NY, NY 100-110 East 125 <sup>th</sup> Street, NY, NY/ 101-109 East 124 <sup>th</sup> Street, NY, NY	1801 Park Avenue Acquisition LLC 1801 Park Avenue Acquisition LLC
	69		1815 Park Avenue, NY, NY	1815 Park Avenue Acquisition LLC c/o The Durst Organization
1773	Part of Lot 20	Permanent Full Taking	142-168 East 125 <sup>th</sup> St/ 2051-2061 Lexington Avenue, NY, NY	160 East 125 <sup>th</sup> Owner LLC
	Part of Lot 27	Permanent Full Taking	149-167 East 124 <sup>th</sup> Street, NY, NY	160 East 125 <sup>th</sup> Owner LLC c/o Extell Development
1773	Part of Lot 27	Permanent Partial Taking & Permanent Subsurface Easement	149-167 East 124 <sup>th</sup> Street, NY, NY	160 East 125 <sup>th</sup> Owner LLC c/o Extell Development
1784	23	Permanent Full Taking	2327 Second Avenue, NY, NY	F. & D. 2327Ave., LLC
1784	122	Permanent Full Taking	2325 Second Avenue, NY, NY	Lucky Machine Wash Corp
1784	24	Permanent Full Taking	2329 Second Avenue, NY, NY	Il Macedonian Pentecostal Church
1784	25	Permanent Full Taking	2331 Second Avenue, NY, NY	Pecora Group Development LLC c/o Frank Pecora
1784	26	Permanent Full Taking	2333 Second Avenue, NY, NY	Pecora Group Development LLC c/o Frank Pecora
1784	27	Permanent Full Taking	2335 Second Avenue, NY, NY	Pecora Group Development LLC c/o Frank Pecora
1784	28	Permanent Full Taking	2337 Second Avenue, NY, NY	Pecora Group Development LLC c/o Frank Pecora
1784	120	Permanent Full Taking	N/A East 119 <sup>th</sup> Street, NY, NY	Il Macedonian Pentecostal Church
1784	128	Permanent Full Taking	246 East 120 <sup>th</sup> Street, NY, NY	Pecora Group Development LLC c/o Frank Pecora

# Staff Summary

<b>Subject</b> <b>GRAND CENTRAL TERMINAL RETAIL LICENSING PROGRAM MODIFICATION</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>DAVID FLORIO</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

**AGENCY:** Metropolitan Transportation Authority (“MTA”) and MTA Metro-North Railroad (“Metro-North”)

**PURPOSE:** To obtain MTA Board approval for a modification to Real Estate Policies and Procedures for the Licensing of Real Property, as adopted on April 27, 2009

**EXPIRATION:** The modification will expire August 1, 2022

**COMMENTS:**

By staff summary dated April 27, 2009, the MTA Board approved the attached policy and accompanying resolution, authorizing MTA Real Estate to enter into short term license agreements in Grand Central Terminal for up to two years. The policy was created to address retail vacancies that were occurring in the Terminal before Requests for Proposals (RFPs) were awarded and a new tenant would take possession. The policy sought to keep retail space occupied and maintain customer amenities in order to continue to generate revenue.

With the advent of COVID-19, the overall retail market has suffered and many of our tenants, and proposed tenants with whom we were negotiating, are wavering on remaining in the Terminal as their leases and licenses expire.

MTA Real Estate recognizes these current, retail market challenges and the significant impact it has on businesses, especially the retail tenants at Grand Central Terminal. In an effort to avoid vacant or “dark” spaces during a time when responses to RFPs are unknown, MTA Real Estate requests the following:

1. Modification of the existing policy to increase the maximum term of new short-term license agreements in Grand Central Terminal to three (3) years (including authorization to enter into new short-term license agreements with existing lessees occupying space under expiring leases for up to three (3) years); and
2. Authorization to extend existing, short term, license agreements in Grand Central Terminal for up to an additional three (3) years.

MTA Real Estate seeks authorization to amend the current Grand Central Terminal Retail Licensing Program on the terms and conditions stated above.

# Memorandum



## Metropolitan Transportation Authority

State of New York

**Date** April 27, 2009

**To** Members of the Capital Construction, Planning and Real Estate Committee

**From** Roco Krsulic

**Re** **Proposed Policy for Short Term Retail License Agreements for Grand Central Terminal**

A number of existing lease agreements at Grand Central Terminal, which were initially entered into in 1998-2000, are now expiring, and as Real Estate Department previously advised the Committee and Board, the Department is engaged in an aggressive releasing effort. Recently Real Estate Department has encountered circumstances where the newly designated lessees who were selected pursuant to a Request for Proposal process opted to withdraw from further consideration once they have been recommended for award, other lessees chose to vacate their leased locations once their existing lease terms expired rather than await an opportunity to participate in a public solicitation process, and others chose to vacate their leased locations immediately upon learning that they were not being considered for an award of a new lease, and all of the above often results in a dark storefront and a loss of rental revenue to the MTA Metro North.

In an effort to keep retail spaces occupied, continue to generate revenue for the MTA Metro North, and provide passenger amenities in Grand Central Terminal that our commuters and local residents have become accustomed to, the Real Estate Department proposes to institute a policy enabling it to enter into short term License Agreements in certain circumstances as noted above with retail tenants at the Terminal. These License Agreements will be no longer than two (2) years in duration, and will be cancellable by the MTA on short term notice, generally thirty (30) or sixty (60) days. It is anticipated that Licensees will not be required to perform major improvement work within the space. Selection criteria for Licensees will mirror, as closely as possible, those used in the Request for Proposal process. Efforts will be made to solicit, or identify, three (3) or more potential past or current occupants in good standing in Grand Central Terminal or other MTA location for each space where this policy may be applicable. Real Estate will consider the following criteria in evaluating prospective Licensees:

- \* Proposed Compensation
- \* Record as a prior MTA Agency Tenant
- \* Proposed Concept and Use (and the compatibility of the use within the overall tenant mix at GCT)
- \* Business Experience
- \* Financial Qualifications

The Real Estate Department is requesting authorization to negotiate and enter into short term License Agreements with retail tenants in certain circumstances at Grand Central Terminal as described hereinabove without prior approval from the Committee and Board.

Any License Agreement entered into pursuant to this policy will be reported to the Committee the following month as an Information Item, identifying the Licensee, use and compensation paid.

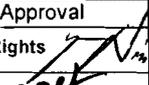
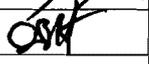
For Reference Purpose Only

# Staff Summary

Subject <b>GCT RETAIL LICENSING POLICY</b>
Department <b>REAL ESTATE</b>
Department Head Name <b>ROCO KRSULIC</b>
Department Head Signature 
Project Manager Name <b>NANCY MARSHALL</b>

Date <b>APRIL 27, 2009</b>
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	CCIP/RE Committee	4/27/09	X		
2	Board	4/29/09	X		

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

BE IT RESOLVED that the Board hereby authorizes the MTA Director of Real Estate to negotiate and enter into License Agreements on behalf of the MTA Metro-North Railroad for the purpose of retaining retail revenues and high occupancy levels, while providing passenger amenities in Grand Central Terminal.

Each License Agreement shall:

- be in a form approved by the MTA Legal Department
- have no significant impact on operations
- provide appropriate indemnification and insurance protections
- provide for fair compensation to the MTA Metro North
- provide for no longer than 2 year duration, cancellable on short term notice by Licensor

This resolution shall take effect immediately upon its adoption.

# Staff Summary

<b>Subject</b> <b>ACQUISITION OF EASEMENTS AT NYC PARKS' GRAND CANAL COURT PLAYGROUND IN LOWER MANHATTAN</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>MICHAEL T. THADATHIL</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

**AGENCY:** MTA New York City Transit ("NYCT")  
**SELLER:** New York City Department of Parks and Recreation ("NYC Parks" or "Parks")  
**PROPERTY:** Permanent perpetual exclusive easement volumes below grade level at NYC Parks' Grand Canal Court playground (Manhattan Block 227, Lot 33)  
**LOCATION:** Intersection of Sixth Avenue with Thompson Street and Canal Street, north of Canal Street Station (Eighth Avenue subway line)  
**PURCHASE PRICE:** TBD  
**ACTION REQUESTED:** Authorization to acquire permanent easements and a temporary construction easement at NYC Parks' Grand Canal Court playground (the "Parks property") pursuant to PAL 1266 (12-a), recently enacted in the 2020-2021 Enacted Budget

**COMMENTS:**

In connection with the installation of its Communications Based Train Control (CBTC) system, NYCT needs to obtain property interests (permanent easements and a temporary easement) at the Parks property (located at intersection of Sixth Avenue, Canal Street, and Thompson Street) in order to build a new electrical substation. This installation and further upgrades (including power and signals) planned for the Eighth Ave subway line tunnel will support increased projected ridership.

NYCT has an existing subsurface easement for the Eighth Ave subway line tunnel along the western extent of the Parks property, which was reserved by the City when the Eighth Ave subway line tunnel was originally constructed. The new proposed subsurface easements would add to the volume of space under the Parks property. However, while the existing easement is part of the 1953 NYCT Master Lease with the City, NYCT will purchase and own the proposed new easements.

# Staff Summary

## FINANCE COMMITTEE MEETING ACQUISITION OF EASEMENTS AT NYC PARKS' GRAND CANAL COURT (Cont'd.)

The Parks property is currently a public playground/basketball court. NYCT's proposed substation will be constructed and located completely below grade. NYCT will require three separate subsurface permanent easement volumes below the Parks property to house the substation and its ancillary facilities (a ventilation flue and ingress/egress stairways). NYCT will also require a temporary construction easement over the entire Parks property during the estimated construction duration (45 months). During construction, public use of the playground will be temporarily discontinued. After NYCT completes construction of the new electrical substation, it will pay to restore the Parks property to its original condition. All impacts to trees will be outside the Parks property on the public sidewalk and NYCT will make a restitution payment to Parks for all such impacts. Future NYCT maintenance access for personnel and equipment to the below grade substation will be through sidewalk hatches located outside the Parks property.

NYCT considered several locations to build the new electrical substation during its design phase. Vacant land is scarce in this densely developed area of lower Manhattan. Purchasing nearby privately owned commercial property would be prohibitively expensive. Constructing the substation under the surrounding streets would require closing off streets in a high traffic area and costly underground utility relocation. After studying the various design options, NYCT determined that constructing under the Parks property was the least disruptive and most cost-effective option.

Recently enacted New York State legislation, included in the 2020-2021 Enacted Budget, added PAL 1266 (12-a) to create a new valuation procedure for transfers to or acquisitions by the MTA of City of New York (the "City") owned real property, or interests in real property, needed by the MTA for certain capital projects in the 2015-2019 and 2020-2024 capital programs. The new legislation was enacted so that the MTA can acquire from the City the real property interests needed for critical MTA capital projects timely, efficiently, and cost-effectively.

The newly enacted PAL 1266 (12-a) requires valuations of the City's real property interests and negotiations with the City to determine fair market value to be conducted after 1) MTA has identified the need for such property interests, and 2) the City has consented to their transfer or acquisition.

MTA has identified to the City the real property interests that MTA needs to build a new electrical substation that will provide additional power to the nearby Eighth Ave subway line tunnel in order to support increased projected ridership with additional trains per hour, and the City has consented to the transfer / sale of said real property interests to the MTA.

The New York State Senate and Assembly in June 2019 approved a bill authorizing this parkland alienation for the MTA acquisition of said real property interests at NYC Parks' Grand Canal Court, and the Governor signed the bill in September 2019. The City Council asked the Legislature to enact the bill.

Pursuant to the newly enacted PAL 1266 (12-a), after the MTA acquires title to the real property interests, the MTA will make a written offer to pay the City the fair market value for the said real property interests, based on an appraisal, and if needed will commence negotiations with the City to determine fair market value.

MTA Real Estate will inform the MTA Board after negotiations with the City have concluded and the fair market value for the said real property interests is determined.

Based on the foregoing, MTA Real Estate requests authorization for NYCT to acquire property interests from NYC Parks on the above described terms and conditions.

# Staff Summary

<b>Subject</b> <b>PERMANENT &amp; TEMPORARY EASEMENT WITH VOREA BORDEN LLC AND GLEN GARDEN CORP FOR LIRR LONG ISLAND CITY YARD FLOOD MITIGATION</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>ANTHONY CAMPBELL</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief Development Officer		
3	Chief Financial Officer		

**AGENCY:** MTA Long Island Rail Road (“LIRR”)

**GRANTOR:** Glen Garden Corp. (Fee Owner) and Vorea Borden LLC (Ground Lessee) (collectively, “Grantors”)

**LOCATION:** 10-04 Borden Avenue, Long Island City, NY  
 Queens Block 37 Lot 7 (the “Property”)

**ACTIVITY:** Acquisition of permanent & temporary easements for the Long Island City Yard Restoration and Resiliency (“the Project”)

**ACTION REQUESTED:** Authorization to enter into permanent and temporary easement agreements

**TEMPORARY EASEMENT SIZE:** ±11,200 square feet (8,000 square feet (320x25) and 3,200 (320x10) buffer zone) (“TE”)

**PERMANENT EASEMENT SIZE:** ±766.13 square feet (“PE”)

**TEMPORARY EASEMENT TERM:** 6 months (3-month base term and 3 months option term)

**PERMANENT EASEMENT TERM:** Perpetual

**COMPENSATION:** \$250,000.00 for the Permanent Easement and \$32,200 per month for the Temporary Easement

**COMMENTS:**

LIRR Program Management is implementing the Long Island City Yard Restoration and Resiliency Project for the Long Island City Diesel Train Yard. To guard against future flooding, the Project will include retention manholes, sump pumps, and drainage systems to be installed together with a flood wall that will surround yard as needed.

# Staff Summary

**FINANCE COMMITTEE MEETING  
PERMANENT & TEMPORARY EASEMENT WITH VOREA BORDEN LLC AND GLEN GARDEN CORP FOR  
LIRR LONG ISLAND CITY YARD FLOOD MITIGATION (Cont'd.)**

Page 2 of 2

The Property is currently owned by Glen Garden Corp., ground leased to Vorea Borden LLC, is currently used as a parking lot and is slated for a mixed-use development. The LIRR requires a ±766.13 square foot permanent easement and a 11,200 square feet temporary easement on the Property for constructing various elements of the Project.

The cost of this acquisition for the PE is consistent with the fair market value ascribed to the easement by MTA Real Estate's independent appraiser. However, the cost of the TE is 10% above the fair market value ascribed by MTA Real Estate's independent appraiser. The cost of the TE acquisition is viewed as fair and reasonable given the need to fast track this important Project and that this is the last property interest to be acquired for the Project.

Therefore, MTA Real Estate seeks authorization for the LIRR to enter into permanent and temporary easement agreements with Glen Garden Corp and Vorea Borden LLC subject to the terms and conditions above.

# Staff Summary

Subject						Date			
<b>REVISED LEASE AMENDMENT AND EXTENSION AGREEMENT WITH VORNADO REALTY FOR BACK OF HOUSE OFFICE SPACE IN ONE PENN PLAZA</b>						<b>JULY 22, 2020</b>			
Department						Vendor Name			
<b>REAL ESTATE</b>									
Department Head Name						Contract Number			
<b>JOHN N. LIEBER</b>									
Department Head Signature						Contract Manager Name			
Project Manager Name						Table of Contents Ref. #			
<b>ANDREW GREENBERG</b>									
<b>Board Action</b>						<b>Internal Approvals</b>			
Order	To	Date	Approval	Info	Other	Order	Approval	Order	Approval
1	Finance Committee	7/22/20	X			1	Legal		
2	Board	7/22/20	X			2	Chief Development Officer		
						3	Chief Financial Officer		

AGENCY: MTA Long Island Rail Road (“LIRR”), as tenant; provided that MTA Police (“MTAPD”) and MTA Metro-North Railroad (“Metro-North”) will be permitted to co-occupy and use the Demised Premises

LANDLORD: One Penn Plaza LLC (“Landlord”), an affiliate of Vornado Realty Trust

LOCATION: 1 Penn Plaza, New York, NY (the “Building”)

USE: Penn Station Back of House support and operations

ACTIVITY: Modification and extension of the back of house lease serving Penn Station to, among other things, modify and reconfigure the demised premises currently leased from the Landlord aligning with the Concourse and Track levels of Penn Station

ACTION REQUESTED: Authorization to amend and extend a lease

EXTENSION TERM: Approximately 15 years from substantial completion of Landlord’s Work (described below) (August 31, 2036 Expiration Date)

DEMISED PREMISES: Approximately 25,936 Rentable Square Feet (“RSF”) based on a 27% loss factor as follows:

- Existing & Reconfigured Premises
- Lower Level 2 (Concourse) – approximately 23,774 RSF
- Track Level Premises
- Lower Level 3 (Track Level) – 2,162 RSF
- Expansion Option Premises (Track Level)
- Lower Level 3 (Track Level) – up to 38,160 RSF

## FINANCE COMMITTEE MEETING

### REVISED LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

**SWING SPACE:** Landlord will provide complimentary swing spaces comprising approximately 4,021 RSF on the 26<sup>th</sup> floor, approximately 7,493 RSF of Concourse Level retail space and approximately 6,665 RSF of Concourse Level space, to facilitate the reconfiguration and construction of the Demised Premises.

Landlord will perform and provide up to \$2.6 million (\$143 per sq. ft.) towards the cost of construction of the 18,129 RSF of swing space necessary to allow LIRR to continue to operate Penn Station without interruption during the renovation and re-demising of the LIRR's space. The LIRR is responsible for all costs of constructing the swing space in excess thereof.

**RENT:** Existing & Reconfigured Premises (Lower Level 2 Concourse Rent (23,774RSF))

Years 1-5:	\$69.50 per RSF	\$1,652,293.00 per annum
Years 6-10:	\$76.50 per RSF	\$1,818,711.00 per annum
Years 11-EXP.:	\$83.50 per RSF	\$1,985,129.00 per annum

Track Level Premises (Lower Level 3) Rent (2,162 RSF)

Years 1-5:	\$34.75 per RSF	\$75,129.50 per annum
Years 6-10:	\$38.25 per RSF	\$82,696.50 per annum
Years 11-EXP.:	\$41.75 per RSF	\$90,263.50 per annum

**EXTENSION TERM COMMENCEMENT:** Upon substantial completion of Landlord's Work

**EXTENSION RENT COMMENCEMENT:** Four (4) months following Extension Term Commencement

**RENEWAL OPTIONS:** Three renewal options of five (5) years each exercisable upon no less than eighteen (18) months' prior written notice. Rent for each renewal term will be reset to 100% of Fair Market Value ("FMV") as office space.

**EXPANSION OPTIONS:** Landlord will provide up to a maximum of 38,600 rentable square feet of expansion space on the Lower Level 3 Track Level on same terms and conditions as the other Track Level (Lower Level 3) space included in the Demised Premises.

**REAL PROPERTY TAX ESCALATION:** The LIRR shall be responsible for its proportionate share of the increases in real estate taxes over a 2020 Calendar Base Year.

**OPERATING EXPENSE ESCALATION:** The LIRR shall be responsible for its proportionate share of operating expense increases over a 2020 Calendar Base Year.

**UTILITIES:** Electric shall be sub-metered at 102%.

**SERVICES:** As per the existing Lease

**LANDLORD'S WORK:** Landlord, at Landlord's expense, shall perform the following work prior to the Extension Term Commencement:

Demolish and demise the Demised Premises.

## FINANCE COMMITTEE MEETING

### REVISED LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

All Building systems will be brought to the Demised Premises and be fully operational in accordance with agreed upon specifications. Building systems to support providing heat, ventilation and air-conditioning ("HVAC") service in season during Building hours, currently 8am – 8pm Monday – Friday and from 9am – 1pm on Saturday. Landlord shall maintain the Building HVAC systems and the LIRR shall be responsible for all maintenance and repair of the distribution portions of the HVAC systems within the Demised Premises. Condenser water is available for the LIRR's supplemental HVAC at a rate of \$450 per ton, per annum. The Landlord will waive its tap-in fee related thereto. The LIRR reserves the option to provide its own HVAC to service the Premises, including the right to utilize systems from Penn Station.

All exposed structural steel shall be fireproofed.

Deliver to the LIRR a Form ACP-5. If hazardous materials containing asbestos are found in the Demised Premises during Landlord demolition or the LIRR's construction, the Landlord shall manage such hazardous substances as required by law.

The Building shall have a full Class "E" fire system capable of tying in all the LIRR's devices. The Landlord shall provide the LIRR with sufficient points to tie into.

Provide a temporary sprinkler loop.

#### TENANT IMPROVEMENT ALLOWANCE:

Landlord shall provide a Tenant Improvement Allowance of \$50.00 per RSF for the performance of permanent alterations in the Demised Premises following the submission of paid invoices and lien waivers. The LIRR may utilize up to 15% of the Tenant Improvement Allowance for "soft costs" related to its alterations. The LIRR will be responsible for the fit out of the Demised Premises other than Landlord's Work and any cost of such fit out in excess of the Tenant Improvement Allowance.

#### MAINTENANCE AND REPAIRS:

The Landlord, at its sole cost and expense, shall be responsible for the maintenance and repair of the Building systems and all structural components of the Building. The LIRR shall be responsible for all repairs of the distribution portions of the Building systems within and repairs of the Demised Premises. If the LIRR elects, Landlord shall perform such repair at the LIRR's expense.

#### RESTORATION:

No restoration will be required at the end of the lease term for all initial alterations and improvements to the Demised Premises.

#### SUBORDINATION AND NON-DISTURBANCE:

Currently, there is no recorded financing associated with the Building. Landlord will obtain a Subordination Non-Disturbance and Attornment (SNDA) from the fee owner and/or future le

#### SECURITY DEPOSIT:

None

#### COMMENTS:

In February, March and May the Board authorized MTACC (Now MTAC&D) and the LIRR to enter into a Memorandum of Understanding (the "MOU") with the Landlord that will provide for, among other things, widening of and improvements to the 33<sup>rd</sup> Street Penn Concourse and a new entrance from street level into the Concourse on 33<sup>rd</sup> Street (the "Penn Concourse Improvement Project"). This program will renovate and improve LIRR's facilities on the Concourse, improve emergency egress, addresses pedestrian overcrowding and the aging and obsolescence of the operational systems and architectural finishes.

## FINANCE COMMITTEE MEETING

### REVISED LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

Page 4 of 4

Essential to the current and any future use of Penn Station is the LIRR's continued use and occupancy of certain below grade space of the Building aligning with the Concourse (Lower Level 2) and Track Level (Lower Level 3) of Penn Station. LIRR currently uses the space to locate (i) essential operational staff who must be located within Penn Station, (2) LIRR train crews and (3) MTAPD for detectives and canine units. The LIRR's current Concourse Level lease commenced January 1, 2007 and expired on December 31, 2019. The MOU, while primarily non-binding, did however contain a binding provision allowing for the LIRR's continued occupancy of its existing space at an escalated (but not punitive holdover) rent until September 2020 to allow the LIRR to negotiate an extension of term and to accommodate the larger Penn Concourse Improvement Project.

On June 24, 2019, the LIRR received Board approval (see attached June 24, 2019 MTA Board approved staff summary ("Original Staff Summary")), as part of the Penn Concourse Improvement Project, to extend and modify the current lease to, among other things, split back of house (BOH) operations between the Concourse Level (Lower Level 2), where it is currently located, and the less expensive Track Level (Lower Level 3). As a result, the LIRR would surrender approximately 11,519 RSF of Concourse (Lower Level 2) space keeping only essential operations on that level with the remainder of the space (approximately 38,848 RSF, as expanded) to be located on the Track Level (Lower Level 3) for a total of approximately 59,363 RSF. During the re-demising and build out of the Demised Premises, the LIRR would continue to occupy its existing space on a holdover basis with no increase in rent, and track level space would be utilized for construction staging swing space, with Landlord providing up to 4,000 square feet of additional swing space on the 26<sup>th</sup> floor at the Building if required.

However, since receiving Board approval, and in connection with the Concourse Improvement Project, the LIRR has sought to reduce the cost of re-locating the BOH and station-related operations facilities (the "BOH Facilities") and has been attempting to identify additional space within Penn Station that could more cost effectively accommodate BOH Facilities originally slated for the Track Level (Lower Level 3). In the course of negotiations over the lease extension terms and the greater Penn Concourse Improvement Project, the Landlord agreed to the LIRR having a reduced and modified Demised Premises from that contemplated under the Original Staff Summary and to have an option to expand the Demised Premises to the size contemplated under the Original Staff Summary if suitable alternative space could not be identified. In turn, during negotiations, the Landlord negotiated for a different time frame and phasing sequence for the re-demising and reconfiguration of the Demised Premises to better accommodate the Landlord's ongoing renovation work at the Building. As part of such altered phasing and other negotiations relating to the Penn Concourse improvement Project, the Landlord has agreed to provide swing space at no cost while it demises and builds out the Demised Premise; and to perform and contribute up to \$2.6 million toward the build out of the swing space necessary for the LIRR to continue operation of Penn Station while its new space is being built out. During its occupancy of the swing space, the LIRR will continue to pay rent at the rates under the existing lease without increase.

Although the LIRR is reducing its size in the Building from what was originally contemplated, it will still maintain its favorable office rental rates as opposed to more costly retail rental rates the Landlord is applying to adjacent space in the Building.

In addition, and even though the LIRR occupies a small percentage of space in the Building, Landlord has agreed to good faith efforts to implement a condominium structure in order for LIRR to avail itself of its tax-exempt status and realize a significant rent reduction equivalent to the base value of real estate taxes embedded in the base rent. All costs to implement the condominium structure will be at the LIRR's cost and expense.

Finally, as part of the agreement, the space may be utilized by Metro-North train crews and operational staff in connection with Metro-North's Penn Access Project.

Based on the foregoing, MTA Real Estate requests authorization for the LIRR to amend and extend the existing lease on the terms and conditions referenced above.

# Staff Summary

<b>Subject</b> <b>LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b> 
<b>Project Manager Name</b> <b>ANDREW GREENBERG</b>

<b>Date</b> <b>JUNE 24, 2019</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	6/24/19	X		
2	Board	6/26/19	X		

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

**AGENCY:** Metropolitan Transportation Authority ("MTA") (on behalf of MTA Long Island Rail Road ("LIRR"), MTA Police ("MTAPD") and MTA Metro-North Railroad ("Metro-North"))

**LANDLORD:** One Penn Plaza LLC, an affiliate of Vornado Realty Trust

**LOCATION:** 1 Penn Plaza, New York, NY (the "Building")

**USE:** Back of House and station-related operations for MTAPD, LIRR and Metro-North

**ACTIVITY:** Reconfiguration, expansion, modification and extension of the lease for Penn Station concourse and track level offices and support areas

**ACTION REQUESTED:** Authorization to amend and extend a lease

**TERM:** Approximately 15 years commencing on substantial completion of Landlord's Work (no sooner than January 1, 2020) through August 31, 2036

**SPACE:** Total of 59,363 Rentable Square Feet ("RSF") as follows:

Existing & Reconfigured Premises

Lower Level 2 (Concourse) – 20,515 Rentable Square Feet ("RSF"), based on a 27% loss factor is comprised of 10,765 RSF of MTA's Existing Premises and 9,750 RSF of Add-On Space. The MTA is surrendering 11,519 RSF ("Recapture Premises").

Expansion Premises

Lower Level 3 (Track Level) – 38,848 RSF, based on a 27% loss factor is comprised of 19,705 RSF of Kmart's premises and 19,143 RSF of existing parking garage premises.

# Staff Summary

## FINANCE COMMITTEE MEETING

### LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

RENT:	Existing & Reconfigured Premises Rent (20,515 RSF)	
	Years 1-5:	\$69.50 per RSF      \$1,425,792.50 per annum
	Years 6-10:	\$76.50 per RSF      \$1,569,397.50 per annum
	Years 11-EXP.:	\$83.50 per RSF      \$1,713,002.50 per annum
	Expansion Premises Rent (38,848 RSF)	
	Years 1-5:	\$34.75 per RSF      \$1,349,968.00 per annum
	Years 6-10:	\$38.25 per RSF      \$1,485,936.00 per annum
	Years 11-EXP.:	\$41.75 per RSF      \$1,621,904.00 per annum
	Blended Rent (For Total Premises at 59,363 RSF)	
		<u>Approx. \$/RSF</u> <u>Combined Rent per annum</u>
	Years 1-5:	\$46.76 per RSF      \$2,775,760.50 per annum
	Years 6-10:	\$51.47 per RSF      \$3,055,333.50 per annum
	Years 11-EXP.:	\$56.18 per RSF      \$3,334,906.50 per annum

LEASE COMMENCEMENT:      Existing & Reconfigured Premises  
Upon substantial completion of Landlord's Work, but no sooner than January 1, 2020.

Expansion Premises  
Upon the date the MTA gains actual possession of the Kmart premises, parking garage premises, with Landlord's Work substantially completed.

Landlord will provide approximately 4,000 RSF of "swing space" at 1 Penn Plaza to the MTA at \$60.00 per RSF for the duration of the MTA's work within the Expansion Premises.

RENT COMMENCEMENT:      Four (4) months following the respective Lease Commencement Dates for the Existing & Reconfigured Premises and the Expansion Premises.

RENEWAL OPTIONS:      Three (3) five (5) year terms provided (i) the MTA occupies all of the Premises at that time, (ii) the MTA is not in monetary or material non-monetary default under the lease and (iii) the MTA shall furnish Landlord no less than eighteen (18) months prior written notice, the MTA shall have the right to renew the term of the Lease covering the Premises. The renewal rate for each such term shall be 100% of Fair Market Value ("FMV") as office space.

EXPANSION OPTIONS:      None

REAL PROPERTY TAX ESCALATION:      The MTA shall be responsible for its proportionate share of the increases in Real Estate Taxes over a 2020 Calendar Base Year. There shall be no increase due prior to the date which is twelve (12) months from the Lease Commencement Date.

OPERATING EXPENSE ESCALATION:      The MTA shall be responsible for its proportionate share of actual operating expense increases over a 2020 Calendar Base Year. There shall be no increase due prior to the date which is twelve (12) months from the Lease Commencement Date.

UTILITIES:      Electric shall be sub-metered at 102%. The MTA may, at its option, elect to provide its own electricity from Penn Station.

## FINANCE COMMITTEE MEETING

### LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

**SERVICES:** As per the existing Lease, including, without limitation, any charges set forth in the Lease.

**LANDLORD'S WORK:**

Landlord, at Landlord's expense, shall perform the following Pre-Commencement Work to both the Existing and Reconfigured Premises and the Expansion Premises, including the MTA's Existing Premises on Lower Level 2 (Concourse):

- Demolish and demise the Premises.
- All Building systems brought to the Premises and fully operational in accordance with agreed upon specifications.
- All exposed structural steel shall be fireproofed.
- Deliver to the MTA a Form ACP-5. If hazardous materials containing asbestos are found in the Premises during Landlord demolition or the MTA construction, Landlord shall manage such hazardous substances as required by law.
- Provide heat, ventilation and air-conditioning ("HVAC") service in season during building hours, currently 8am – 8pm Monday – Friday and from 9am – 1pm on Saturday. Landlord shall maintain the Building HVAC systems and the MTA shall be responsible for all maintenance and repair of the distribution portions of the HVAC systems within the Premises. Condenser water is available for the MTA's supplemental HVAC at a rate of \$450 per ton, per annum. Landlord will waive its tap-in fee related thereto. The MTA reserves the option to provide its own HVAC to service the Premises, including the right to utilize systems from Penn Station.
- The Building shall have a full Class "E" fire system capable of tying in all the MTA's devices. Landlord shall provide MTA with sufficient points for MTA to tie into.
- Provide a temporary sprinkler loop.
- At MTA's option, as part of Landlord's Post- Commencement Work, Landlord shall install a stairwell and elevator connecting Lower Level 2 (Concourse) and Lower Level 3 (Track Level).

**TENANT IMPROVEMENT ALLOWANCE:**

Landlord shall provide the MTA with a Tenant Improvement Allowance of \$50.00 per RSF for the performance of permanent alterations in the Entire Premises following the submission of paid invoices and lien waivers. The MTA shall be permitted to utilize up to 15% of the Tenant Improvement Allowance for "soft costs" related to the MTA's alterations. Landlord and the MTA will determine during lease negotiations which party shall be responsible for the construction of the Premises.

**TENANT'S ADDITIONAL WORK:**

Any of the MTA's plumbing work (i.e. restrooms, showers, etc.) shall be located on the northwest portion (or other location if available based upon the MTA's requirements) of Lower Level 3 (Track Level). Details to be coordinated.

**MAINTENANCE AND REPAIRS:**

Per the existing Lease. Landlord, at its sole cost and expense, shall be responsible for the maintenance and repair of the Building systems and all structural components of the Building. The MTA shall be responsible for all repairs of the distribution portions of the Building systems within and repairs of the Premises. If the MTA shall elect, Landlord shall

## FINANCE COMMITTEE MEETING

### LEASE AMENDMENT AND EXTENSION WITH ONE PENN PLAZA LLC (Cont'd)

perform such repair at the MTA's expense.

#### RESTORATION:

No restoration will be required at the end of the lease term for all initial alterations and improvements to the Premises.

#### SUBORDINATION AND NON-DISTURBANCE:

Currently, there is no recorded financing associated with the Building. Landlord will obtain a SNDA from the fee owner and or future lenders

#### SECURITY DEPOSIT:

None

#### COMMENTS:

In February, March and May the Board authorized MTACC and LIRR to enter into a Memorandum of Understanding (the "MOU") with Landlord that will provide for, among other things, widening of and improvements to the Concourse and a new entrance from street level into the Concourse on 33<sup>rd</sup> Street. This program will renovate and improve LIRR's facilities on the Concourse, improve emergency egress, addresses pedestrian overcrowding and the aging and obsolescence of the operational systems and architectural finishes.

The LIRR's current Concourse Level lease commenced January 1, 2007 and expires on December 31, 2019. The space is currently utilized by: (1) MTAPD for detectives and canine units, (2) LIRR for essential operational staff who must be located within Penn Station, and (3) LIRR train crews. Metro-North train crews (in connection with Metro-North's Penn Access Project) and operational staff will also be incorporated into the space.

The MTA and Landlord, as part of the Concourse Improvement Project, have agreed that the space will be split between the Concourse Level, where it is currently located, and the Track Level. As a result, the MTA will be surrendering approximately 11,519 rsf of Concourse level space keeping only essential operations on that level with the remainder of the space as expanded (approximately 38,848 rsf) to be located on the Track Level. The Track Level space will consist of space to be surrendered by K-Mart and space from Landlord's parking garage that will be combined. Occupancy will be achieved on a staged basis but no sooner than January 1, 2020. During the construction staging period, occupancy of the existing space will continue on a holdover basis with no increase in rent. Although there is no comparable space within the marketplace, the blended rent for the Existing and Expansion space is approximately 33% less than the renewal rent MTA BSC will be paying at 333 West 34<sup>th</sup> Street.

Based on the foregoing MTA Real Estate requests authorization to amend and extend the existing lease on the terms and conditions referenced above.

<b>Subject</b> <b>PENN STATION CONCOURSE IMPROVEMENTS</b>
<b>Department</b> <b>REAL ESTATE</b>
<b>Department Head Name</b> <b>JOHN N. LIEBER</b>
<b>Department Head Signature</b>
<b>Project Manager Name</b> <b>PETER MATUSEWITCH</b>

<b>Date</b> <b>JULY 22, 2020</b>
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref. #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Committee	7/22/20	X		
2	Board	7/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Legal	1	
2	Chief Development Officer	2	
3	Chief Financial Officer	3	

**AGENCIES:** Metropolitan Transportation Authority ("MTA"), MTA Construction & Development ("MTAC&D"), and MTA Long Island Rail Road ("LIRR" and together with MTA and MTAC&D, the "MTA Parties")

**LOCATION:** The LIRR Main Concourse, running approximately beneath 33rd Street, between Seventh and Eighth Avenues (the "Concourse") and connecting corridors located within a portion of Pennsylvania Station (the "Station").

**ACTIONS REQUESTED:** Authorization to enter into a letter agreement (the "Letter Agreement") with One Penn Plaza LLC ("Vornado") and into an amendment (together with the Letter Agreement, the "Transaction Documents") to the Lease between LIRR and Vornado for Concourse level retail space ("Master Lease") to effectuate portions of the transactions contemplated by the previously authorized Memorandum of Understanding with Vornado (the "MOU") and to further incentivize the creation of a high-quality, transit-oriented retail program on the Concourse level.

**COMMENTS:**

In 2019, the Board authorized MTACC (now MTAC&D) and LIRR to enter into the MOU, which provided for, among other things, a new street level entrance into the Concourse from 33<sup>rd</sup> Street and the widening of, and improvements to, the Concourse, to be delivered in two phases under Development Agreements with Vornado as our developer. The goals of these capital improvements are to improve emergency egress, address pedestrian overcrowding, and improve the passenger experience in the Concourse and Station. The Concourse improvements will also require the reconfiguration and expansion of back-of-house spaces for current LIRR operations and future Metro-North/Penn Access operations.

In May 2019, the Board authorized MTAC&D to enter into the Entrance Development Agreement with Vornado, which was subsequently executed. Vornado then executed a Design-Build agreement with Skanska Civil USA to perform the work. Construction of the new entrance is in progress, on schedule and within budget, with completion expected this December.

MTAC&D has completed preliminary design of the Concourse improvements and Vornado expects design build proposals in July 2020. MTAC&D will seek Board approval to enter into the Concourse Development Agreement with Vornado after a design-build proposer is selected and negotiations are completed (est. Fall 2020).

As contemplated in the MOU, certain real estate actions are necessary to implement the Concourse improvements and further incentivize the creation of a high-quality, transit-oriented retail program on the Concourse. In order to maintain schedule and budget and avoid conflict with Vornado's in-progress development plans for One and Two Penn Plazas, the

# Staff Summary

## FINANCE COMMITTEE MEETING PENN STATION CONCOURSE IMPROVEMENTS

MTA Parties and Vornado desire to enter into the Transaction Documents to effectuate some of those actions. Included with these actions is an amendment to the LIRR back-of-house lease the terms of which are being brought to the Board for approval under a separate staff summary. These real estate actions are to the MTA Parties' benefit even if the Concourse improvements project does not proceed, reflect LIRR's need to acquire real property interests from Vornado and the consideration therefor, and are as follows:

- a. The MTA Parties will acquire an easement from Vornado at One Penn Plaza ("One Penn") for a new elevator to the Concourse at no additional cost. The elevator will improve ADA accessibility to the Concourse.
- b. The MTA Parties will acquire an easement to locate new HVAC equipment and ductwork in One Penn to better service the existing and a widened Concourse at no additional cost to MTA.
- c. Vornado terminated its lease with Kmart in One Penn through a negotiated agreement. Portions of the former Kmart space will be used to widen the Concourse, for HVAC and electrical equipment rooms for the LIRR back-of-house premises and to allow LIRR expansion into Track Level space. Unlike other Vornado leases on the Concourse, the Kmart lease did not provide a termination right to Vornado. Under the MOU, LIRR was responsible for acquiring these portions of Kmart's premises and performing any work necessary to re-configure the remaining Kmart space all at LIRR's cost and risk. Vornado's termination of the Kmart lease (costing Vornado approx. \$34 million) eliminates the risks and immediately makes available those portions of the Kmart premises necessary for the Concourse improvements and LIRR back-of-house expansion. MTA will pay \$10 million to Vornado as MTA's contribution to the termination of Kmart's leasehold. This contribution is roughly in proportion to the percentage of the former Kmart space to be available to LIRR and comparable to the costs that would have been incurred directly to Kmart as contemplated under the MOU.
- d. Vornado will provide and fit-out swing spaces at two locations in One Penn to temporarily house LIRR back-of-house operations while the new LIRR back-of-house operations space adjacent to LIRR's current space is prepared for occupancy and fitted-out. This will provide for less interruption in LIRR operations while the new back of house space is being re-demised. It will also allow for Vornado to meet its schedule of redevelopment of One Penn. Vornado will build out LIRR's temporary swing space and be responsible for the first \$2.6 million of swing space fit-out costs.
- e. MTAC&D will relocate the subway entrance and stairs on the northwest corner of 33<sup>rd</sup> Street and 7<sup>th</sup> Ave to the new elevator easement area to facilitate Vornado's construction of a new pedestrian plaza.
- f. Vornado may reconfigure the West corridor access to One Penn in order to have the ability to provide a more direct connection to the One Penn lobby from the Concourse and 34<sup>th</sup> Street.
- g. LIRR will relinquish its restrictions on the existing East Escalator Well that connects the 34<sup>th</sup> Street Entrance Corridor to the lobby of One Penn and permit Vornado to reduce the width of an egress corridor on the North side of the Concourse to a One Penn elevator bank by two feet so as to create additional retail space on the Concourse. The newly created retail space will be included as income-producing spaces under the Master Lease for which Vornado will have to pay rent to LIRR.
- h. LIRR will permit Vornado to remove at Vornado's expense, and store at LIRR's expense, an artwork ("Corinthian Column" by Andrew Leicester) on the east wall of the 34<sup>th</sup> Street Entrance Concourse so that Vornado may create a retail storefront at that location.
- i. LIRR will permit a modification and simplification of the calculation of percentage rent under the Master Lease such that 10% of income received by Vornado from its retail tenants in the income-producing spaces of the Master Lease will be payable to LIRR.
- j. LIRR will receive a \$7.4 million credit against amounts owed to Vornado for Vornado terminating its lease with Duane Reade on the Concourse required for the new entrance construction.

LIRR has \$170 Million in the capital program to support this project and has executed an MOU with the NYS Dept. of the Budget for the State to provide an additional \$424 million.

Based on the foregoing the MTA Real Estate requests authorization for the MTA Parties to enter into the Transaction Documents based on the above terms and conditions and such other supplemental agreements to effectuate the same.

# Staff Summary

<b>Subject</b> Mission Statement, Measurements, and Performance Indicators Report
<b>Department</b> Chief Operating Officer
<b>Department Head Name</b> Mario Peloquin
<b>Department Head Signature</b>
<b>Project Manager Name</b>

<b>Date</b> July 22, 2020
<b>Vendor Name</b> N/A
<b>Contract Number</b> N/A
<b>Contract Manager Name</b> N/A
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
	Corporate Governance	7/22/20			
	Board	7/22/20			

Internal Approvals			
Order	Approval	Order	Approval
1	Chief Operating Officer		
2	Legal		
3	Chief Compliance Officer		

**Purpose:**

To obtain Board approval of the MTA’s Mission Statement and to authorize submission of the annexed 2019 Mission Statement, Measurements, and Performance Indicators Report (the “Report”) to the Independent Authorities Budget Office (“ABO”) .

**Discussion:**

Section 1269-f and Section 2824-a of the Public Authorities Law require MTA to annually reexamine its mission statement, reassess its stakeholders and selected performance measurement indicators, and to submit a report based on the performance indicator results from the previous year.

The MTA and its Board engage in oversight of agency operating performance throughout the year. The Board, through its transit, rail and bridge/tunnel operating committees, closely monitors agency operating performance. Each operating agency reports its most recent performance data in posted monthly reports and in committee books distributed in advance of public MTA operating committee meetings, which are conducted at least eleven times a year. At these public meetings, operating agency results are reviewed and discussed by Board members and agency senior staff. In addition, presentations focused on particular areas of performance are made by the agency staff to the Board operating committees periodically through the year, in accordance with the work plan schedule of each operating committee. The MTA website also contains a “Performance Dashboard” for each of the MTA operating agencies, updated monthly, summarizing the agencies’ leading performance measurements.

The Report compiles the MTA Mission Statement, Stakeholder Assessment and the performance measurements from 2019. The operating agencies have each submitted, within the Report, a summary that evaluates agency performance on the applicable indicators in the past year.

**Recommendation:**

It is recommended that the MTA Board approve the annexed Report and authorize submission of such Report as required by Section 1269-f and Section 2824-a of the Public Authorities Law to the ABO.



**Metropolitan Transportation Authority**

**Metropolitan Transportation Authority  
Mission Statement, Measurements, and Performance  
Indicators Report Covering Fiscal Year 2019**

**In Compliance with New York State Public Authorities Law §1269-f and §2824-a  
Submitted as Part of the MTA 2019 Annual Report to the Governor**

### **Note**

Because of the timing of this report, some of the agency performance indicators are preliminary and may be subject to reconciliation as data are finalized over the course of the year. For that reason, some of the 2018 data presented in this report may have been updated and differ from those in the 2018 report. The 2019 performance is being measured against this more recent and accurate data, even if it differs only slightly from the data in last year's report. Likewise, the 2019 preliminary data are also subject to subsequent updating, and the 2020 report will measure performance against the most recent and accurate data available. All agency performance metrics are updated regularly on the "Performance Dashboards" under the "Transparency" section at [www.mta.info](http://www.mta.info).

## MTA Mission Statement

The Metropolitan Transportation Authority (MTA) preserves and enhances the quality of life and economic health of the region it serves through the cost-efficient provision of safe, on-time, reliable, and clean transportation services.

## Stakeholder Assessment

The main stakeholders of the MTA are its customers; the businesses, residents, and taxpayers of our service area and the State; the MTA’s employees and unions; and its government partners. A set of goals for each group has been defined, along with performance indicators to measure the attainment of these goals.

<b>Customers</b>			
<b>Our customers are those who ride our trains and buses or cross our bridges and tunnels. They include the residents of our region, as well as visitors. Our customers expect service that is safe, on-time, reliable, and that provides good value for their money.</b>			
<b>MTA Goals</b>	<b>Performance Indicators</b>		
Ensure our customers’ safety	<ul style="list-style-type: none"> <li>✓ Customer injury rates</li> <li>✓ Bus collision rates</li> </ul>		
Provide on-time and reliable services	<table border="0" style="width: 100%;"> <tr> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> <li>✓ Subway major incidents</li> <li>✓ Subway service delivered</li> <li>✓ Customer journey time performance</li> <li>✓ Additional platform time</li> <li>✓ Additional train time</li> <li>✓ On-time performance (subway and commuter railroads)</li> <li>✓ Subway terminal delays</li> <li>✓ Subway wait assessment</li> </ul> </td> <td style="vertical-align: top; width: 50%;"> <ul style="list-style-type: none"> <li>✓ Bus trips completed</li> <li>✓ Bus Customer journey time performance</li> <li>✓ Bus additional bus stop time</li> <li>✓ Bus additional travel time*</li> <li>✓ Bus service delivered *</li> <li>✓ Bus average speeds *</li> <li>✓ Bus wait assessment</li> <li>✓ Mean distance between failures (subway, railroads, buses)</li> </ul> </td> </tr> </table>	<ul style="list-style-type: none"> <li>✓ Subway major incidents</li> <li>✓ Subway service delivered</li> <li>✓ Customer journey time performance</li> <li>✓ Additional platform time</li> <li>✓ Additional train time</li> <li>✓ On-time performance (subway and commuter railroads)</li> <li>✓ Subway terminal delays</li> <li>✓ Subway wait assessment</li> </ul>	<ul style="list-style-type: none"> <li>✓ Bus trips completed</li> <li>✓ Bus Customer journey time performance</li> <li>✓ Bus additional bus stop time</li> <li>✓ Bus additional travel time*</li> <li>✓ Bus service delivered *</li> <li>✓ Bus average speeds *</li> <li>✓ Bus wait assessment</li> <li>✓ Mean distance between failures (subway, railroads, buses)</li> </ul>
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Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>		

Note: \* New NYCT Bus service indicators and Paratransit service indicators were introduced in 2018. All indicators are updated regularly on Performance Dashboards under Transparency at [www.mta.info](http://www.mta.info).

## Businesses, Residents, and Taxpayers

The businesses, residents, and taxpayers in our service area want the MTA to spend its resources efficiently and appropriately, while enhancing the mobility of the region.

MTA Goals	Performance Indicators
Perform services in an efficient manner	<ul style="list-style-type: none"> <li>✓ Farebox operating ratio</li> <li>✓ Operating cost per customer</li> <li>✓ Total support to mass transit</li> </ul>
Maximize system usage	<ul style="list-style-type: none"> <li>✓ Ridership</li> <li>✓ Traffic volume</li> </ul>
Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>

## Employees and Unions

Our employees and unions expect a safe workplace, skills training relevant to their roles, and opportunities for growth.

MTA Goals	Performance Indicators
Ensure our employees' safety	<ul style="list-style-type: none"> <li>✓ Employee lost time and restricted-duty rate</li> </ul>
Maintain a workforce that reflects the regional availability of all races, nationalities, and genders for our industry	<ul style="list-style-type: none"> <li>✓ Female representation in MTA workforce</li> <li>✓ Minority representation in MTA workforce</li> </ul>

## Government Partners (Federal, State, and Local Governments)

Our government partners expect us to enhance regional mobility by providing excellent service, while spending our resources in a cost-effective and appropriate manner.

MTA Goals	Performance Indicators
Provide on-time and reliable services	<ul style="list-style-type: none"> <li>✓ Subway major incidents</li> <li>✓ Subway service delivered</li> <li>✓ Customer journey time performance*</li> <li>✓ Additional platform time</li> <li>✓ Additional train time *</li> <li>✓ On-time performance (subway and commuter railroads)</li> <li>✓ Subway terminal delays</li> <li>✓ Subway wait assessment</li> </ul> <ul style="list-style-type: none"> <li>✓ Bus trips completed</li> <li>✓ Bus Customer journey time performance *</li> <li>✓ Bus additional bus stop time</li> <li>✓ Bus additional travel time*</li> <li>✓ Bus service delivered *</li> <li>✓ Bus average speeds *</li> <li>✓ Bus wait assessment</li> <li>✓ Mean distance between failures (subway, railroads, buses)</li> </ul>
Maximize system usage	<ul style="list-style-type: none"> <li>✓ Ridership</li> <li>✓ Traffic volume</li> </ul>
Perform services in an efficient manner	<ul style="list-style-type: none"> <li>✓ Farebox operating ratio</li> <li>✓ Operating cost per customer</li> </ul>
Repair, replace, and expand transportation infrastructure	<ul style="list-style-type: none"> <li>✓ Capital Program commitments</li> <li>✓ Capital Program completions</li> </ul>

# MTA New York City Transit (“NYCT”)

Performance Indicators	2018 Actual	2019 Actual
<b>NYCT Subway Service Indicators</b>		
Weekday Major Incidents – Subways (monthly average)	68.0	45.5
Customer Journey Time Perf. (% within 5 min of scheduled)	79.4%	83.6%
Additional Platform Time (average beyond scheduled)	0:01:18	0:01:11
Additional Train Time (average beyond scheduled)	0:01:19	0:00:54
Weekday Service Delivered – Subways	94.8%	96.6%
Weekday Terminal On-Time Performance – Subways	67.1%	80.3%
Weekday Terminal Delays – Subways (monthly average)	57,774	34,302
Mean Distance Between Failures – Subways (miles)	121,116	127,743
Weekday Wait Assessment – Subways	70.8%	74.9%
Elevator Availability – Subways	96.5%	96.3%
Escalator Availability – Subways	93.6%	89.4%
Total Ridership – Subways	1,680,060,402	1,697,727,329
Weekday On-Time Performance – Staten Island Railway	95.4%	95.6%
Mean Distance Between Failures – Staten Island Railway (miles)	70,949	77,187
<b>NYCT Bus Service Indicators</b>		
Percent of Completed Trips – NYCT Bus	99.1%	99.3%
Customer Journey Time Perf – NYCT & MTA Bus (% within 5 min of scheduled)	71.7%	72.3%
Additional Bus Stop Time – NYCT & MTA Bus (average beyond scheduled)	0:01:47	0:01:44
Additional Travel Time – NYCT & MTA Bus (average beyond scheduled)	0:00:53	0:00:47
Bus Customer Wheelchair Lift Usage – NYCT Bus	1,382,447	1,412,076
Service Delivered – NYCT & MTA Bus (% scheduled buses, peak hrs.)	96.9%	97.3%
Bus Speeds – NYCT & MTA Bus (average route speed, end-to-end)	7.9 mph	8.0 mph
Total Ridership – NYCT Bus	569,361,238	556,950,541
Mean Distance Between Failures – NYCT & MTA Bus (miles)	6,244	7,967
Wait Assessment – NYCT & MTA Bus	77.5%	77.8%

Notes: Subway 2019 ridership is prior to post-close adjustment. New NYCT Bus service indicators were introduced in 2018. All indicators are updated regularly on Performance Metrics under Transparency at [www.mta.info](http://www.mta.info).

<b>Performance Indicators</b>	<b>2018 Actual</b>	<b>2019 Actual</b>
<b>NYCT Paratransit Service Indicators</b>		
Total Paratransit Ridership – NYCT Bus	9,867,498	10,893,983
AAR On-Time-Performance * Pick up within (30 min) / (15 min)	30 min: 94% 15 min: 83%	30 min: 96% 15 min: 86%
AAR Provider No-Shows (per 1,000 trips)	2.37	1.44
AAR Appointment OTP Trips (30 min early to 1 min late)	38%	40%
AAR Provider No-Shows (per 1,000 trips)	2.37	1.44
AAR Actual Ride Time at or Better than Planed Ride Time	75%	80%
AAR Customer Experience – Frequent Rider Experience *	68%	72%
AAR Call Center (% of calls answered)	96%	96%
AAR Passenger Complaints (per 1000 completed trips)	4.0	5.0
AAR Registrants	153,575	161,526
<b>NYCT Safety Indicators</b>		
Customer Injury Rate – Subways (per million customers)	2.99	2.92
Customer Accident Injury Rate – NYCT Bus (per million customers)	1.51	1.64
Collisions with Injury Rate – NYCT Bus (per million vehicle miles)	6.65	6.39
Employee Lost Time and Restricted-Duty Rate NYCT Subways (per 100 employees)	2.98	3.58
Employee Lost Time and Restricted-Duty Rate NYCT Bus (per 100 employees)	5.90	5.76
<b>NYCT Workforce Indicators</b>		
Female Representatives in NYCT Workforce	18.5%	18.55%
Minority Representatives in NYCT Workforce	78.1%	78.77%
<b>NYCT Financial Indicators</b>		
Farebox Operating Ratio	53.3%	52.8%
Operating Cost per Passenger	4.34	4.51
<b>NYCT Capital Program Indicators</b>		
Commitments in \$ Millions (% of annual goal)	\$6,024(141%)	\$2,302 (62%)
Completions in \$ Millions (% of annual goal)	\$2,965 (82%)	\$4,140 (99%)

Notes: \*These new AAR indicators were introduced in 2018 and first calculated and published in 2019. Financial indicators include NYCT Subways, Buses, and Paratransit and are preliminary. Actual 2019 financial indicators will be updated in April 2020. The Operating Cost per Passenger excludes debt service. The Capital Program Commitments/Completions have been adjusted to include “rollovers” from previous years achieved in 2019. Projects details are available on the Capital Programs Dashboard under Transparency at [www.mta.info](http://www.mta.info).

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATORS: Customer Injury Rate**

The “customer injury rate” for NYCT Subways was 2.92 per million customers in 2019, which represents a slight decline from the adjusted 2018 rate of 2.99 per million customers for the same period last year. NYCT Subways continues its efforts to improve customer safety through expanded use of safety messaging, train announcements, incident reports, and the training and deployment of station staff.

For NYCT Bus, the “customer accident injury rate” increased by 8.6 percent in 2019, from 1.51 per million customers to 1.64 per million. Causes of accidents typically include customer trips, slips, and stumbles while boarding or onboard a bus, or customers thrown by bus movement. The agency is studying these trends to improve its accident reduction programs and better define safety goals for agency divisions and depots.

NYCT Bus saw a decrease in its 2019 “collision injury rate” of 3.9 percent over the previous year to 6.39 injuries per million vehicle miles. Throughout the year, NYCT Bus continued to incorporate relevant accident findings into its safety and training initiatives. These initiatives focus on basic operating procedures in bus stop areas, including scanning mirrors, observing all sides of the bus, pulling in and out of bus stops properly, positioning the bus correctly in the bus stop, maintaining a proper following distance, and smooth operation of braking.

In 2019, NYCT Bus continued its Vision Zero III program, an eight-hour training session which emphasizes challenges in dealing with pedestrians and cyclists. In addition, the agency is using indicators such as speed-camera violations, red-light violations, cellphone infractions, and customer complaints as part of its bus operator monitoring program. In Spring 2019, NYCT Bus implemented Vision Zero IV, an enhanced version of the program. This iteration of the course will focus on new bus safety technologies, as well as trends in pedestrian, bicyclist, and customer accidents. All bus operators will be cycled through this new curriculum over a two-year period. Vision Zero III continues to be used as a training component for student operators, while Vision Zero IV is presented to current operators, supervisors, and managers.

In a joint agreement with all labor unions, NYCT Bus continues its “zero-tolerance” policy on use of cellphones and electronic devices while operating a bus. Additionally, NYCT Bus worked with its labor representatives to establish a process whereby operators who receive speed-camera violations are disciplined and must pay the fine. NYCT Bus also continued to use the Accident Review System (ARS) as a corrective safety intervention tool for collision reduction.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures, Major Incidents, Service Delivered, Terminal Delays, Wait Assessment, Bus Trips Completed, Bus Average Speeds, Bus Additional Travel Time**

NYCT Subways saw major improvements in key performance metrics over the course of 2019, largely due to the success of the Subway Action Plan, first launched in 2017, and the “Save Safe Seconds” campaign. Weekday Terminal Delays per month fell dramatically by 40.6 percent from 57,774 to 34,302. On-Time Performance (OTP) rose 13.2 percent to 80.3 percent. Weekday Service Delivered improved to 96.6 percent, up 1.8 percent over the previous year. At the Staten Island Railway (SIR), Mean Distance Between Failures (MDBF) improved 8.8 percent from 70,950 to 77,187.

Other indicators showing significant improvement in 2019 include weekday Major Incidents, which dropped from 68.0 per month on average to 45.5 per month, a 33.1 percent improvement for the year. Subway MDBF improved by 5.5 percent from 121,116 to 127,743 in 2019. Weekday Wait Assessment (WWA) improved from 70.8 percent to 74.9 percent. Subway Additional Train Time also improved from 0:01:19 to 0:00:54. Weekday OTP on the SIR improved slightly by 0.2 percent from 95.4 percent to 95.6 percent.

As indicated on the performance chart above, NYCT Bus and MTA Bus report combined data in some instances. For complete MTA Bus performance data, see page 27 of this report. Separately, NYCT Bus posted a MDBF of 7,967 miles in 2019, a 27.6 percent improvement over the previous year. NYCT continues to replace its remaining over-age bus fleet under the 2015-2019 Capital Program. The percentage of NYCT Bus trips completed increased slightly to 99.3 percent in 2019. Additional Bus Stop Time improved by 2.5 percent compared to the previous year. For both bus

agencies, Additional Travel Time improved by 12 percent in 2019; Customer Journey Time increased by 0.8 percent to 72.3 percent; and Wait Assessment increased by 0.4 percent to 77.8. Service Delivered for both agencies increased by 0.4 percent in 2019 to 97.3 percent, while average bus speeds were unchanged at 8 mph.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability, Bus Passenger Wheelchair Lift Usage, Paratransit Ridership, AAR Service Indicators**

In 2019, NYCT Paratransit made big strides in improving Access-A-Ride (AAR). As part of the Fast Forward Plan, the AAR dashboard was updated to provide increased transparency and more customer-facing metrics. That includes a new Customer Experience metric, which captures the percentage of customer trips that successfully met key service performance standards. Other updates include trends for Actual Ride Time versus Planned Trip Duration; more granular performance goals for OTP; and a revision to the time range for Appointment OTP, which is now between 30 minutes early to 1 minute after the appointment time. These revisions reflect recommendations from the Inspector General.

Overall AAR ridership increased from 9,867,498 to 10,893,983 in 2019, an increase of 10.4 percent, while registrants grew from 153,575 to 161,526 in 2019, a 5.2 percent increase. Pick-up OTP improved from 95 percent to 96 percent within the 30-minute window, and from 83 percent to 86 percent within the 15-minute window. The overall Customer Experience improved from 68 percent to 72 percent. Complaints increased from 4.0 to 5.0 per 1,000 completed trips, due largely to the transition from advanced reservation e-hail to enhanced broker service. It should be noted that from March to December of 2019, broker-related complaints decreased from 5.1 to 4.6 per 1,000 completed trips. These metrics indicate significant service improvements in 2019, as AAR continues to work with customers and advocacy groups to build on this positive trend.

The improvements also reflect several AAR initiatives launched in 2019. A new myAAR, was launched in the MYmta app, giving customers greater ability to schedule and track trips. The agency began the rollout of 700 new lift-equipped vans to replace older vehicles in Primary Carrier fleet. To further improve speed and reliability, the agency collaborated with NYC DOT introduced a new rule allowing Primary Carrier AAR vehicles to travel in dedicated bus lanes.

Also in 2019, AAR introduced Enhanced Broker Service in all five boroughs. This service makes taxis and for-hire vehicles an integral part of the AAR program. It delivers high trip volume at a lower cost than Primary Carrier service, while also providing customers with such benefits as online reservations, broker vehicle tracking, wheelchair-accessible vehicles, and door-to-door assisted service by specially trained operators, where required.

In other transit metrics, Wheelchair Lift Usage at NYCT Buses increased by 2.1 percent in 2019 to a total of 1.41 million customers. The agency's low-floor buses provide easier boarding and more reliable service for customers with wheelchairs. At NYCT Subways, Elevator Availability was 96.3 percent in 2019, a slight decrease from 96.5 percent in 2018 but still an improvement over 95.9 percent in 2017. Meanwhile, subway Escalator Availability dropped from 93.6 percent to 89.4 percent in 2019. Both elevator and escalator availability were challenged by special inspection campaigns and increased preventive maintenance that temporarily reduced availability.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

NYCT committed \$2.3 billion of its Capital Program funds in 2019, or 62 percent of its annual goal. Major commitments included: Communications Based Train Control (CBTC) on the Culver Line in Brooklyn; station reconstruction and ADA accessibility at the Times Square Shuttle; purchase of hybrid-electric standard buses with the latest safety and customer service technologies; mainline track and switch replacement at multiple locations; a structural painting project on the Flushing Line in Queens; renewal of the Central Substation in Manhattan; station improvements and ADA projects at various locations; elevator and escalator replacements at various locations.

Commitments in 2019 also included multiple projects advancing the repairs to NYCT facilities and infrastructure damaged by Superstorm Sandy, along with resiliency projects to prevent potential damage from future storms.

NYCT achieved capital program completions in 2019 of \$4.1 billion, representing 99 percent of its annual goal. Major completions included: repairs and resiliency measures at the Clark Street Tube relating to damage from Superstorm Sandy; Communications Based Train Control (CBTC) on the Flushing (7) Line; a new Bus Command Center in Brooklyn; station renewals and ADA improvements on the Sea Beach Line in Brooklyn; track and switch replacements at various locations; the final delivery and acceptance of the new R179 railcar fleet; station and ADA improvements at various locations; the purchase of articulated buses with new safety and customer service technologies; and the structural rehabilitation of the 4th Ave Line in Brooklyn. Details of all projects can be found at the Capital Program Dashboard at [www.mta.info](http://www.mta.info).

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

The NYCT financial indicators combine NYCT Subways, NYCT Buses, and Paratransit. The farebox operating ratio in 2019 was 52.8 percent, down slightly from 53.2 percent in 2018. Preliminary operating cost per passenger, or cost per ride, is calculated in the second quarter of each year, prior to the July Financial Plan. At the time of this report, the preliminary 2019 cost per passenger was \$4.51, up 3.9 percent from the adjusted figure of \$4.34 for 2018. The operating cost per passenger excludes debt service.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

Total NYCT Subway ridership in 2019 was 1.697 billion rides, an increase of about 1.1 percent from 1.680 billion rides the previous year. By way of context, this increase reverses a three-year downward trend from a record ridership of 1.76 billion in 2015, which was the highest subway ridership since the 1940s. Total NYCT Bus ridership decreased in 2019 by 2.2 percent to around 557 million riders, as compared to just over 569 million riders the previous year.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

The NYCT Subways employee “lost-time and restricted-duty” accident rates increased in 2019 by about 20 percent, from an adjusted rate of 2.98 per 100 employees in 2018 to 3.58 per 100 employees in 2019. NYCT Subways continues to operate a robust safety program for employees, including safety communications, safety audits, training, and accident investigations. In addition, NYCT Subways continues to maximize use of the FASTRACK program, which provides a safer working environment for maintenance and repair crews by curbing train operations in work areas.

At NYCT Bus, the lost time and restricted duty rate decreased to 5.76 per 100 employees from 5.90 the previous year. Both NYCT Bus and MTA Bus continued initiatives aimed at protecting bus operators from assault. These include bus operator shields installed across the entire fleet; the ongoing installation of onboard security cameras; and enhanced training in de-escalation tactics to prevent assaults. Additionally, NYCT Bus and MTA Bus conduct thorough customer complaint reviews to identify employees for additional counseling and/or de-escalation training. Both NYCT Bus and MTA Bus maintain collision-reduction campaigns to disseminate safe driving reminders, defensive driving techniques, and methods to correct unsafe driving habits. Both agencies continue to analyze employee injury data to identify causes and trends in the ongoing effort to reduce lost-time accidents.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

Female representation agency-wide remained essentially unchanged in 2019 at 18.6 percent, continuing to fall below the estimated percentage of women available for work within NYCT's recruiting area. A contributing factor is the low percentage of women who apply for what are generally considered non-traditional jobs. NYCT will continue to increase its outreach and recruitment efforts to improve female representation within its workforce. Minority representation grew slightly from 78.1 percent in 2018 to 78.8 percent in 2019.

## MTA Long Island Rail Road ("LIRR")

Performance Indicators	2018 Actual	2019 Actual
<b>Service Indicators</b>		
On-Time Performance	90.4%	92.4%
Elevator Availability	99.1%	98.8%
Escalator Availability	96.9%	96.7%
Total Ridership	89,766,050	91,086,292
Mean Distance Between Failures (miles)	185,217	185,829
<b>Safety Indicators</b>		
FRA-Reportable Customer Injury Rate (per million customers)	2.18	2.34
FRA-Reportable Employee Lost Time Rate (per 200,000 worker hours)	2.85	3.22
<b>Workforce Indicators</b>		
Female Representatives in LIRR Workforce	14.9%	14.8%
Minority Representatives in LIRR Workforce	36.3%	37.1%
<b>Financial Indicators</b>		
Farebox Operating Ratio	49.1%	49.4%
Operating Cost per Passenger	\$16.82	\$17.11
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of annual goal)	\$389.2 (107%)	\$290.4 (109%)
Completions in \$ Millions (% of annual goal)	\$416.1 (68%)	\$257.4 (122%)

Note: The 2019 Farebox Operating Ratios are preliminary and will be updated by the MTA Division of Management & Budget in April 2020. Capital Program Commitments/Completions include any "slipped" projects from prior years that were achieved in 2019.

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATORS: Customer Injury Rate**

In 2019, LIRR's customer injury rate increased by 7.3 percent compared to the previous year. Penn Station remains the location with the greatest number of customer injuries. This is due to the volume of customers traveling through the busiest terminal in the LIRR system as well as the infrastructure and operating constraints in this location. LIRR's "Let's Travel Safely Together" information campaign, produced in partnership with Amtrak, New Jersey Transit, and NYCT, remained an integral part of LIRR's safety program in 2019.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures**

LIRR's On-Time Performance (OTP) for 2019 was 92.4 percent, an increase of 2.0 percent from the previous year. The increase in OTP was due to favorable weather and progress made on capital projects. The agency's 2019 Mean Distance Between Failures (MDBF) increased slightly by 0.3 percent to 185,829 miles from 185,217 in 2018. The MDBF for diesel coaches and locomotives improved significantly, while the MDBF for the electric M-3 and M-7 fleet declined. The year's decline was due to aging fleets, a decrease in the M-3 and M-7 performance, and delayed M-9 fleet delivery starts. The railroad continues to optimize fleet performance through its Reliability Centered Maintenance (RCM) program, Enterprise Asset Management (EAM) implementation, acquisition of the new M-9 fleet, and other performance initiatives.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability**

Elevator availability decreased by 0.2 percent to 98.8 percent in 2019. Escalator availability decreased to 96.7 percent, also down 0.2 percent from 2018. The decrease in the elevator availability was caused by scheduled equipment upgrades, and equipment issues at Penn Station-handled by Amtrak. The decrease in escalator availability was mainly due to major escalator outages at Penn Station, where an escalator/elevator renewal project is ongoing.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

The LIRR's 2019 capital commitments totaled more than \$290.4 million, or 109 percent of the year's goal. Major commitments for the year included the 2019 Annual Track Program. The railroad's 2019 capital completions totaled more than \$257.4 million, or 122 percent of the year's goal. This includes "slipped" completion goals that were achieved in 2019. Major completions during the year included: the 2019 Annual Track Program; architectural fit-out for Centralized Traffic Control (CTC); Main Line Double Track Force Account construction; and the rehabilitation of 14 LIRR stations. Note that the LIRR Expansion Project and East Side Access fall under MTA Construction & Development. See page 32 of this report.

In addition to annual capital projects, both LIRR and Metro-North are implementing Positive Train Control (PTC) programs to meet the requirements of the Rail Safety Improvement Act of 2008 (the PTC Act). The railroad's existing train-control systems cover a substantial portion of those requirements. The LIRR and Metro-North are overlaying the Advanced Civil Speed Enforcement System II (ACSES II) onto their current train control systems to provide those required safeguards not already covered. LIRR continued "extended revenue service demonstration" on sections of the Montauk, Port Washington, Hempstead, Oyster Bay, Far Rockaway, West Hempstead, Port Jefferson, Central, and Long Beach Branches, and is on schedule to meet the December 2020 deadline.

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

The LIRR's farebox operating ratio remained relatively flat from 49.1 percent in 2018 to 49.4 percent in 2019, as estimated in the "MTA 2020 Final Proposed Budget, November Financial Plan." An increase in farebox revenue due to the 2019 fare increase and higher anticipated ridership growth was offset by higher passenger expenses. The LIRR's operating cost per passenger increased from \$16.82 in 2018 to \$17.11 in 2019. This increase stemmed largely from higher operating expenses, with labor costs being the primary driver.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Ridership**

LIRR remains the busiest commuter railroad in North America, finishing the year with a new record in ridership, carrying 91.1 million customers, just shy of the railroad's postwar high of 91.8 million customers in 1949. This represents a total ridership increase of 1.5 percent in 2019. Significantly, non-commutation ridership grew 4.1 percent over the course of 2019 to 40.5 million customers, outpacing the commutation market, which declined slightly by 0.5 percent in 2019 to 50.6 million customers.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time Case Rate**

The rate of FRA-reportable employee lost-time injuries increased 13 percent in 2019 compared to the previous year. The highest number of employee accidents continues to be in the "slips, trips, and falls" category. Most injuries are soft tissue injuries. To maximize employee safety, LIRR continues its efforts to raise awareness among employees and encourage collaborative problem solving. These efforts have involved many labor-management initiatives, including: a Confidential Close Call Reporting System (C3RS); monthly transportation safety meetings; and on-track safety labor-management partnership meetings.

LIRR also conducts quarterly Safety FOCUS Day meetings. On FOCUS Days, employees across the property stop work and take time to discuss specific safety topics provided by the LIRR Corporate Safety Department and the individual LIRR departments. The aim is to engage employees in conversations about safety in the field and improve safety performance based on their feedback and ideas. As part of the Safety Management Systems approach to safety, LIRR also conducted a risk-based assessment of all LIRR yards to identify hazards. The results are being used to ensure that investments in infrastructure maintenance and repair will enhance safety in each of these locations.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

The percentage of women in LIRR's workforce decreased slightly in 2019 to 14.8 percent from 14.9 percent the previous year. This falls below the estimated percentage of women available for work in LIRR's recruitment area. Many of the positions available in 2019 are considered nontraditional jobs for women, and, as a result, attract a low percentage of women applicants. The percentage of minority representation increased from 36.3 percent in 2018 to 37.1 percent in 2019. This is above the estimated percentage of minorities available in LIRR's recruitment area. LIRR continues to focus on efforts to improve the representation of women and minorities in its workforce.

## MTA Metro-North Railroad ("Metro-North")

Performance Indicators	2018 Actual	2019 Actual
<b>Service Indicators</b>		
On-Time Performance (East of Hudson)	90.1%	94.4%
On-Time Performance (West of Hudson)	90.7%	89.8%
Elevator Availability	98.7%	99.4%
Escalator Availability	94.7%	91.5%
Total Rail Ridership (East & West of Hudson)	86,522,164	86,594,370
Total Ridership on Connecting Services by MNR Contractors	580,232	598,416
Mean Distance Between Failures (miles)	144,017	238,464
<b>Safety Indicators</b>		
FRA-Reportable Customer Injury Rate (per million customers)	1.09	0.95
FRA-Reportable Employee Lost Time Rate (per 200,000 worker hours)	2.46	1.95
<b>Workforce Indicators</b>		
Female Representatives in MNR Workforce	13%	13%
Minority Representatives in MNR Workforce	38%	39%
<b>Financial Indicators</b>		
Farebox Operating Ratio	54.7%	55.8%
Operating Cost per Passenger	\$15.64	\$15.65
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of annual goal)	\$785.5 (100%)	\$424.6 (49.6%)
Completions in \$ Millions (% of annual goal)	\$146.3 (32%)	\$792.3 (185%)

Notes: The 2019 Farebox Operating Ratios are based on preliminary estimates from the "MTA 2019 Adopted Budget, February Financial Plan" and will be updated by the MTA Division of Management & Budget in April 2020. Capital Program Commitments/Completions include any "slipped" projects from prior years achieved in 2019.

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATORS: Customer Injury Rate**

The FRA-reportable customer injury rate at Metro-North decreased in 2019 by 12.8 percent to 0.95 injuries per million customers. To support customer safety, Metro-North expanded its TRACKS (Together Railroads and Communities Keeping Safe) public program on grade-crossing and rail safety, which has now reached more than 340,000 people. Also in 2019, the agency trained 2,048 first responders for rail emergencies through classes and simulations. Other safety efforts included public outreach, events, and messaging through a range of media; employee training in mental health issues and suicide prevention; and a partnership with Waze to alert drivers of Metro-North grade crossings through the Waze GPS navigation app.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: On-Time Performance, Mean Distance Between Failures**

Metro-North's system-wide OTP for 2019 was above goal at 94.4 percent. The railroad modified its operating schedule to accommodate planned work on the Hudson and New Haven lines. The Hudson Line performed at 95.0 percent OTP, the Harlem Line at 95.3 percent, and the New Haven Line at 93.4 percent.

The railroad's MDBF improved to 238,464 miles in 2019, about 45 percent above goal. This was largely due to the warranty correction of new PTC equipment, which had caused equipment failures in 2018. Completion of PTC installations also improved car availability in 2019, resulting in a 99.4 percent "consist compliance rate," which is the percentage of cars required for daily service and customer seating. West-of-Hudson OTP for 2019 was 89.8 percent, below the goal of 93 percent, due mainly to implementation of new PTC equipment on the Port Jervis Line.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Elevator Availability, Escalator Availability**

Elevator availability in 2019 was 99.4 percent, up slightly from 2018. Escalator availability was 91.5 percent, down by 3.3 percent. The decline was caused by two escalators taken out of service for several months for repair work. Both escalators were returned to service during the first quarter of 2019. The agency's escalator replacement project continues in 2020, with four escalators currently out of service during the replacements.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

Metro-North's Capital Program commitments and completions for 2019 came in at 49 percent and 185 percent of the year's goals, respectively. The missed commitments in 2019 were due primarily to projects being redefined for design-build contracts.

Major commitments in 2019 included: Purchase of M8 spare parts; replacement, rehabilitation, or design-build construction of bridges at five locations; DC switchgear systems for nine substations; Improvements of the Ossining Station; rehabilitation of traction power transformers at six locations; priority repairs in the GCT Trainshed; and various station and parking lot projects.

Completions in 2019 included: Engineering services for systemwide flood control design; Harlem – 125th Station improvements; replacement of turnouts across the railroad's New York State territory; Phase 1 of Sandy restoration; the East-of-Hudson overhead bridge program; design-build of the 14th Ave. Bridge on the New Haven Line; GCT turnout and switch renewal; Harlem River Lift Bridge security improvements; purchase of two vacuum trucks; Harmon Shop improvements; and the GCT utilities project.

## **Metro-North, cont.**

In addition to annual capital projects, Metro-North advanced its Positive Train Control (PTC) implementation in 2019, as required by the Rail Safety Improvement Act (PTC Act) of 2008. While the railroad's existing train control systems cover a substantial portion of those requirements, it is overlaying the Advanced Civil Speed Enforcement System II (ACSES II) to provide safeguards not already covered. By the end of 2019, Metro-North met the statutory requirements for the PTC compliance date of Dec. 31, 2018, and qualified for the Alternative Schedule, allowing an extension for full PTC implementation to Dec. 31, 2020. The railroad completed the "revenue service demonstration" (RDD) on its pilot territory and began the "extended revenue service demonstration" (RSDE) on sections of its Hudson Line, Danbury Branch, and Harlem Line. Metro-North is on schedule to meet its December 2020 deadline.

### **MTA GOAL: Perform Services in an Efficient Manner**

#### **PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Passenger**

Metro-North's preliminary 2019 farebox operating ratio was 55.8 percent, representing a 1.1 percentage increase over the previous year. Revenues increased by 2.7 percent, while total expenses decreased by 7.1 percent. The higher revenue was primarily driven by an April 2019 fare increase. Lower expenses were mainly due to a \$124 million decrease in non-operating expenses. The 2019 operating cost per passenger was \$15.65, up slightly from the previous year. This was due to higher labor and non-labor costs, offset by a 0.1 percent increase in ridership.

### **MTA GOAL: Maximize System Usage**

#### **PERFORMANCE INDICATORS: Ridership**

Systemwide Metro-North ridership in 2019 was approximately 86.6 million, about 60,000 rides higher than 2018. East-of-Hudson ridership was up 0.1 percent to about 85.0 million. Ridership was down 0.3 percent on the Harlem Line to 27.37 million; up on the Hudson Line by 1.3 percent to 17.4 million; and down slightly on the New Haven Line to 40.23 million rides. West-of-Hudson ridership was about 1.61 million, 1.7 percent below the previous year. Combined ridership on Metro-North's three connecting services was about 598,416, up by 3.1 percent. Ridership increased by 1.7 percent on the Hudson Rail Link, by 5.5 percent on the Haverstraw-Ossining Ferry, and by 8.2 percent on the Newburgh-Beacon Ferry.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

The FRA-reportable employee lost-time case rate declined by 21 percent, from 2.46 per 200,000 worker hours to 1.95. The railroad continued its Confidential Close Call Reporting System (C3RS), which has logged more than 5,200 calls since 2015. The agency continues to monitor locomotive engineers and conductors for Obstructive Sleep Apnea. Additionally, the railroad implemented an enterprise software system for tracking, analyzing, and reporting safety data, as well as a Safety Management System that supplements safety metrics with a focus on the “human element.” Ongoing safety programs include regular safety meetings, a safety focus week, safety cleanup days, updating safety rules, and an employee awards programs for safety excellence.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

The percentage of minority employees in Metro-North’s workforce increased by 1 percent in 2019, to 39 percent. The percentage of female representation remained constant at 13 percent. The railroad maintains a program aimed at achieving workforce representation based on the availability of women and minorities within the relevant labor markets serviced by the MTA. Through targeted outreach recruitment and developmental programs, Metro-North will continue to focus on improving minority and female representation in our workforce.

## MTA Bridges and Tunnels (“Bridges and Tunnels”)

Performance Indicators	2018 Actual	2019 Actual
<b>Service Indicators</b>		
Paid Traffic	322,289,250	329,396,593*
<b>Safety Indicators</b>		
Collisions with Injury Rate (per million vehicles)	1.01	0.87
Employee Lost Time Injury Rate (per 200,000 work hours)	8.2	6.0
<b>Workforce Indicators</b>		
Female Representation in B&T Workforce	21%	21%
Minority Representation in B&T Workforce	55%	56%
<b>Financial Indicators</b>		
E-ZPass Market Share	94.6%	95.2%**
Total Support to Transit (\$ millions)	\$1,089	\$1.138
<b>Capital Program Indicators</b>		
Commitments in \$ Millions (% of annual goal)	\$699.6 (89.3%)	\$802.8 (91.5%) <sup>†</sup>
Completions in \$ Millions (% of annual goal)	\$1,365.7 (96%)	\$243.7 (123.3%) <sup>††</sup>

Notes: MTA B&T performance data are subject to final audit. Some 2018 data may have been updated subsequent to last year’s report. \*Traffic numbers are preliminary, with actuals available. \*\*Year-end unaudited. <sup>†</sup> Capital Commitments in 2019 include a \$76.9 million project originally forecast for 2018 award. <sup>††</sup> Capital completions in 2019 include a \$57.4 million project originally forecast for 2018 completion.

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATOR: Customer Collision Injury Rate**

Bridges and Tunnels reported 316 customer collisions with injuries in 2019, a decrease from 329 collisions with injuries in 2018. Adjusting for annual traffic, the rate of collisions with injuries per million vehicles decreased from to 0.87 in 2019 from 1.01 for the previous year. The agency's strategy for improving customer safety is primarily focused on maintaining the facilities in a state of good repair. Beyond that, the agency regularly assesses locations with collisions to implement mitigation measures tailored to that location and/or specific driver behaviors. The agency also uses targeted enforcement to address unsafe driving behaviors. To further bolster our efforts, customers are notified of real-time traffic conditions, which aids customers in making informed decisions to prevent secondary collisions.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

In 2019, Bridges and Tunnels made 152 task commitments to Capital Program projects, well above its goal of 71 commitments. The total value of the awards was \$802.8 million, representing 91.5 percent of the 2019 goal. In comparison, \$699.6 million commitments were made in 2018, representing 89.3 percent of the goal. Also in 2019, two commitments with a total value of \$76.9 million were made against the 2018 plan. In aggregate, 154 commitments were made in 2019 totaling \$802.8 million, against an approved plan totaling \$877.5 million. Commitments were \$72.1 million under the approved plan, primarily due to favorable bids. Major project commitments in 2019 included:

- Seismic retrofit/structural rehabilitation of the approach viaduct at Throgs Neck Bridge;
- Reconstruction of the Verrazano Narrows approach ramps – phase I;
- Structural rehabilitation at the RFK Bridge;
- Design-build construction of the new Harlem River Drive Ramp at the RFK Bridge;
- Structural rehabilitation at the Henry Hudson Bridge and replacement of the overcoat system;

- Design-build construction of power resiliency at the RFK Bridge; and
- Design-build construction of tower and pier fender protection and Installation of fire standpipe connections at the Bronx Whitestone Bridge.

In addition, the Design, Build, Operate, and Maintain (DBOM) contract to implement the Central Business District Tolling Program (CBDTP) in New York City was awarded in 2019. The capital commitment for the DBOM contract is \$272.1 million, funded from the 2020-2024 program. Because this project was committed in advance of its 2020 budget year, it is not included in the 2019 actual commitment data.

The value of Capital Program projects completed in 2019 totaled \$243.7 million, which represents 123.3 percent of the 2019 goal. Comparatively, in 2018, a total of \$1,365.7 million in projects were completed, representing 96 percent of the goal for that year. In addition, one completion for \$57.4 million conducted in 2019 was made against the 2018 plan. Major projects completed in 2019 included:

- Main cable and suspension rope investigation at the Verrazano Narrows Bridge, completed one month ahead of schedule;
- Ventilation building electrical upgrades and equipment relocation at the Queens Midtown Tunnel; and
- Electrical/mechanical rehabilitation of the Harlem River Lift Span at the RFK Bridge, completed five months ahead of schedule.

**MTA GOAL: Perform Services in an Efficient Manner**

**PERFORMANCE INDICATORS: Total Support to Transit**

Bridges and Tunnels provided \$1.138 billion in total support for MTA transit services in 2019. This was a 5.7 percent increase over the \$1.089 billion provided in 2018, primarily due to the toll increase implemented on March 31, 2019.

**MTA GOAL: Maximize System Usage**

**PERFORMANCE INDICATORS: Traffic Volume**

Bridges and Tunnels had a record of approximately 329 million paid crossings in 2019, an increase of 2.2 percent or 7 million more crossings than in 2018. E-ZPass usage at year-end 2019 was 95.2% compared to 94.6% at year-end 2018.

**MTA GOAL: Ensure Our Employees' Safety**

**PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

Bridges and Tunnels experienced 75 lost-time injuries in 2019, compared to 104 in 2018. As a result, the 'employee lost-time' injury rate decreased to 6.0 per 200,000 work hours in 2019, from 8.2 in 2018. Among the agency's ongoing safety efforts are:

- Continuing safety training for all field employees, including traffic management safety training for all Bridge and Tunnel Officers (BTOs) and supervisors;
- Identifying ergonomic issues that are major contributors to lost-time injuries and mitigating them using a range of initiatives, including a new wellness program;
- Assisting NYCT's initial 'awareness' training of the Toll Evasion Taskforce;
- Utilizing joint labor/management safety task forces to address safety risks in the new operating environment;
- Intensifying effective case management of 'injuries on duty' to minimize lost work time;
- Renewing focus on incident investigations and condition audits to determine and address the root causes of safety issues; and
- Revising and updating agency "Policies and Procedures" as part of a safety management system for all Bridges and Tunnels facilities.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

Minority employees represented 56 percent of the Bridges and Tunnels workforce in 2019, an increase of 1 percent from the previous year. Women represented 21 percent of agency employees in 2019, which is unchanged from the previous year. Bridges and Tunnels maintains a program aimed at achieving workforce representation, based on the availability of women and minorities within the labor markets serviced by the MTA. The program includes: targeted outreach/recruitment efforts to attract qualified women and minority candidates; a monitoring program to identify and address under-representation of women and minorities; and retention and mobility programs providing the skills and opportunities women and minority employees require for successful career paths within the agency.

## MTA Bus Company (“MTA Bus”)

Performance Indicators	2018 Actual	2019 Actual
<b>Service Indicators</b>		
Percent of Completed Trips	99.1%	98.9%
Bus Passenger Wheelchair Lift Usage	86,501	97,207
Total Ridership	121,448,277	120,426,633
Mean Distance Between Failures (miles)	7,506	7,117
<b>Safety Indicators</b>		
Customer Accident Injury Rate (per million customers)	1.14	1.21
Collisions with Injury Rate (per million vehicle miles)	4.25	5.56
Employee Lost Time Rate (per 100 employees)	6.20	6.05
<b>Workforce Indicators</b>		
Female Representation in MTA Bus Workforce	13%	13%
Minority Representation in MTA Bus Workforce	78%	80%
<b>Financial Indicators</b>		
Farebox Operating Ratio	30.3%	28.4%
Operating Cost per Passenger	\$6.33	\$6.86
<b>Capital Program Indicators*</b>		
Commitments in \$ Millions (% of annual goal)	\$77.5 (74.9%)	\$176.2 (76.6%)
Completions in \$ Millions (% of annual goal)	\$23.7 (79.9%)	\$86.1 (595.5%)

Note: The 2019 Farebox Operating Ratios are based on preliminary estimates and will be updated in April 2019. For the purposes of this report, NYCT Bus and MTA Bus are treated separately, though certain operations and performance indicators are combined, as noted in the NYCT data on page 4 of this report. The Performance Dashboard at [www.mta.info](http://www.mta.info) combines data for both bus operations. \*Capital Program Commitments/Completions include “slipped” projects from prior year goals achieved in 2019. Completions exceed 100%, due to projects completed earlier than forecast.

**MTA GOAL: Ensure Customer Safety**

**PERFORMANCE INDICATOR: Customer Injury Rate**

MTA Bus saw an increase of about 6.1 percent in its customer accident injury rate in 2019, as compared to 2018 due to trips, slips, or stumbles while boarding or onboard a bus. The agency is using these recent trends to improve its customer accident reduction programs and its goals for the divisions and depots.

The collisions with injury rate increased from 4.25 per million vehicle miles in 2018 to 5.56 per million vehicle miles in 2019, up about 30.8 percent from the previous year. This increase was driven largely by several MTA Bus collisions with multiple injuries. MTA Bus continued to incorporate relevant accident findings into its safety and training initiatives. These initiatives focus on basic operating procedures in bus stop areas, including scanning mirrors, observing all sides of the bus, pulling in and out of bus stops properly, and positioning the bus correctly in the bus stop.

In 2019, MTA Bus—in conjunction with NYCT Bus—continued the Vision Zero III program, an eight-hour training session that focuses on current challenges in relation to pedestrians and cyclists. In addition, the two agencies are leveraging indicators such as speed-camera violations, red-light violations, cellphone infractions, and customer complaints as part of an enhanced bus operator monitoring program. In spring 2019, the two bus agencies implemented Vision Zero IV, which deals with new bus safety technologies, recent accident trends, and more. All MTA and NYCT bus operators will be cycled through this new curriculum over a two-year period.

In a joint agreement with all labor unions, the MTA's bus operations continue a "zero-tolerance" policy on use of cellphones and electronic devices while operating a bus. Additionally, the two bus agencies worked with labor partners to establish a process whereby operators who receive speed-camera violations are disciplined and must pay the fine. The agencies continued to use the Accident Review System (ARS) as a corrective safety intervention tool for collision reduction.

**MTA GOAL: Provide On-Time and Reliable Services**

**PERFORMANCE INDICATORS: Mean Distance Between Failures, Bus Trips Completed**

In 2019, the MTA advanced the public outreach and planning for its comprehensive Bus Plan, an initiative launched in 2018 that is reimagining New York’s entire public bus system, including both MTA Bus and NYCT Bus. As part of that plan, the MTA launched a new Bus Performance Dashboard at [www.mta.info](http://www.mta.info) which combines performance data for the two bus agencies. The dashboard also provides new performance metrics to better reflect the customer experience. For combined NYCT and MTA Bus metrics, see page 4 of this report.

MTA Bus had a Mean Distance Between Failures (MDBF) of 7,117 miles in 2019, a decrease of 5.2 percent from the previous year. MTA Bus started delivery of new articulated diesel buses in fourth quarter of 2019 and continues to replace its remaining over-age bus fleet under the 2015-2019 Capital Program. The percentage of bus trips completed decreased slightly to 98.9 percent in 2019.

**MTA GOAL: Provide Services to People with Disabilities**

**PERFORMANCE INDICATORS: Bus Customer Wheelchair Lift Usage**

The “Bus Passenger Wheelchair Lift Usage” for MTA Bus in 2019 was 97,207 customers, an increase of 12.4 percent from 86,501 customers the previous year. The agency’s low-floor buses provide easier boarding and more reliable service for customers who use wheelchairs, contributing to the increase in customers who require the use of a lift.

**MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

**PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

MTA Bus committed \$176.2 million in capital project funds in 2019, representing about 77 percent of goal. Notable 2019 commitments included the purchase of 257 express buses and the HVAC upgrade at the College Point Depot. The latter was a prior year commitment.

## **MTA Bus, cont.**

MTA Bus completed \$86.1 million in capital projects in 2019, which represents about 596 percent of the annual goal, due to a major 2018 project completion and the completion of a number of projects that were forecast to be completed in early 2020. Notable completions for the year included the Bus Command Center (\$17.8 million) from the prior year, the security upgrade at the JFK and Spring Creek depots (\$8.5 million), and the purchase of 53 articulated buses (\$50.2 million) that was originally forecast to be completed in 2020.

### **MTA GOAL: Perform Services in an Efficient Manner**

#### **PERFORMANCE INDICATORS: Farebox Operating Ratio, Operating Cost per Customer**

The farebox operating ratio (which includes farebox revenue, student fares, and senior citizen fares) was 28.4 percent in 2019, down from 30.3 percent in 2018 due to higher average cost per passenger partially offset by higher average fares collected in 2019. The operating cost per customer was \$6.86 in 2019, as compared to \$6.33 in 2018.

### **MTA GOAL: Maximize System Usage**

#### **PERFORMANCE INDICATORS: Ridership**

Total MTA Bus ridership decreased slightly by 0.9 percent in 2019 to 120.4 million riders, as compared to 121.5 million riders in 2018.

### **MTA GOAL: Ensure Our Employees' Safety**

#### **PERFORMANCE INDICATORS: Employee Lost Time and Restricted-Duty Rate**

MTA Bus saw a 2.4 percent decrease in the employee lost-time accident rate in 2019. The agency continued employee reviews and discussions, along with campaigns to promote safe work practices and reduce injuries from over-exertion, such as lifting and pulling. MTA Bus also continued its Vision Zero III training aimed at improving safety, as well as Vision Zero IV training, which focuses on new bus technologies and accident trends. MTA Bus will increase Vision Zero and other collision-reduction campaigns to disseminate safe driving reminders, defensive driving techniques, and methods to correct unsafe driving habits. MTA Bus will continue to analyze employee injury data to identify root causes and trends in the effort to reduce lost-time accidents.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

Female representation agency-wide continues to be below the estimated percentage of women available to work within MTA Bus's recruiting area. The percentage of women in the agency's workforce remained unchanged at 13 percent during this reporting period. MTA Bus will continue to increase its outreach and recruitment efforts to improve female representation within its workforce. The percentage of minority representation increased slightly in 2019 from 78 percent to 80 percent, exceeding the estimated percentage of minorities available to work within MTA Bus's recruiting area.

## MTA Construction & Development (“MTA C&D”)

Performance Indicators	2018 Actual	2019 Actual
<b>Workforce Indicators</b>		
Female Representatives in MTA C&D Workforce	35%	38%
Minority Representatives in MTA C&D Workforce	57%	55%
<b>Capital Program Indicators*</b>		
Commitments in \$ Millions (% of planned value)	\$582 (57%)	\$646 (102%)
Completions in \$ Millions (% of planned value)	\$204 (142%)	\$29.6 (100%)

Note: MTA performance data are subject to periodic adjustment. Some prior year data may have been updated subsequent to the 2018 PAL §1269-f report. \*Capital Program Commitments/Completions include projects that “slipped” from prior year goals, but were that were achieved in 2019.

### **MTA GOAL: Repair, Replace, and Expand Transportation Infrastructure**

#### **PERFORMANCE INDICATORS: Capital Program Commitments and Completions**

MTA C&D had a total commitment goal of \$632.1 million in capital projects for 2019 and committed approximately \$646.1 million, or 102 percent of goal. Significant 2019 commitments included:

- Exercising a \$60.1 million option for the extension of design and engineering services for the Second Ave Subway (SAS), Phase 2 project;
- Contract modifications totaling \$168 million for the Grand Central Concourse and Facilities Fit-Out and the “Systems Package 1–Facilities” contract, both part of East Side Access (ESA);
- Exercising two options totaling \$38.0 million for extension of design-build construction services, along with \$30.5 million in real estate acquisitions, both for the LIRR Expansion project; and

## MTA C&D, cont.

- A \$34.1 million contract for the base General Engineering Consultant Design for the Penn Station Access project, originally scheduled for late 2017 and awarded in January 2019.

MTA C&D achieved 100 percent of its 2019 capital project completions goal of \$29.6 with the completion of the ESA “Harold Interlocking Track—Part 3” project. In addition, two projects, originally forecast for completion in prior years, were completed during 2019. These were the \$250-million ESA “Plaza Substation and Structures” rehabilitation along the 63rd Street Tunnel, and the \$361-million ESA “Manhattan Northern Structures” project. The latter project included the installation of the permanent lining, duct bench, and utilities in all tunnels and structures north of the station caverns; construction of the 50th Street air plenum cavern and the 55th Street ventilation facility; and rehabilitation work at the existing 63rd Street Tunnel.

**MTA GOAL: Maintain a Workforce that Reflects Regional Availability of All Races, Nationalities, and Genders**

**PERFORMANCE INDICATORS: Female and Minority Representation in the Workforce**

The MTA Construction and Development workforce statistics emulate the value we place on diversity and inclusion. Our current workforce consists of 38 percent female and 55 percent minority employees. We are equally proud to report that females represented 29 percent and minorities represented 71 percent of new hires during fiscal year 2019.

## Staff Summary

<b>Subject</b> All Agency General Procurement Guidelines
<b>Department</b> MTA Office of the General Counsel
<b>Department Head Name</b> Thomas J. Quigley
<b>Department Head Signature</b>
<b>Project Manager Name</b> Thomas J. Quigley

<b>Date</b> July 22, 2020
<b>Vendor Name</b> N/A
<b>Contract Number</b> N/A
<b>Contract Manager Name</b> N/A
<b>Table of Contents Ref #</b> N/A

Board Action					
Order	To	Date	Approval	Info	Other
	Corp.Gov.	7/22			
	Board	7/22			

Internal Approvals			
Order	Approval	Order	Approval
1	Legal		
2	Chief of Staff		

### NARRATIVE

#### I. PURPOSE

To obtain Board approval of the revised MTA's All Agency General Procurement Guidelines ("the Guidelines").

#### II. DISCUSSION

The Guidelines were last revised and approved by the Board at its June 26, 2019 meeting.

The major change to the Guidelines is to incorporate the recommendations of the MTA Cost Containment Committee, a committee which consists of several Board members and members of MTA Senior Staff. The purpose of the committee is to increase competition for MTA contracts and to reduce costs of such contracts. The committee has met a number of times during the past year and has reported to the Board on its progress; the committee's recommendations are incorporated in the attached All Agency Procurement Guidelines. The proposed changes include the following: the inclusion of neutral dispute resolution contract provisions; the appointment of Project CEO's for each project, who shall be accountable for the project's budget and schedule; the inclusion of a strategy designed to optimize cost savings and schedule reduction for each project during the development of RFP's or bid documents, including but not limited to a contracting approach that considers factors other than just price in selecting a contractor (such as utilizing a competitive RFP or A+B bidding), optimal turnaround times for submittals and similar documentation, a strategy to allocate risk to the party in the best position to manage it, the inclusion of favorable payment terms to be established in consultation with the CFO, and the use of guidelines to promote the use of off-the-shelf products and components to eliminate customization; as well as the reduction of

bonding requirements, providing that the contracting entity is able to provide adequate alternative security and/or guarantees.

Other changes in the Guidelines include a modification which adds to the circumstances in which change orders require Board approval. Change orders which (a) increase the total contract price by more than ten percent of the original value, or (b) increase the contract duration by more than ten percent of the original contract duration, will now require Board approval.

Another change to the Guidelines is the modification of a provision which states that, except to the extent prohibited by law, the Chairman or Chief Executive Officer, or his/her designee, with prior notice to the Chairman of the Finance Committee, may waive the provisions of the Guidelines in the event of an emergency involving the health or safety of the public. This is more restrictive than the provisions of the current Guidelines for situations in which the Guidelines may be waived.

The Guidelines, once approved, will be implemented by the agencies, as required.

### **III. RECOMMENDATION**

It is recommended that the Board approve the attached revised All Agency General Contract Procurement Guidelines.



## ALL AGENCY GENERAL CONTRACT PROCUREMENT GUIDELINES

Adopted by the Board on ~~June 26~~ July 22, 2020~~19~~

These guidelines (the “**General Contract Guidelines**”) apply to the Metropolitan Transportation Authority (“**MTA**”), the New York City Transit Authority (“**NYCT**”), the Long Island Rail Road Company (“**LIRR**”), The Metro-North Commuter Railroad Company (“**MNR**”), the Staten Island Rapid Transit Operating Authority (“**SIRTOA**”), the Manhattan and Bronx Surface Transit Operating Authority (“**MaBSTOA**”), MTA Capital Construction (“**MTACC**”), MTA Bus Company (“**MTA Bus**”), First Mutual Transportation Assurance Co. (“**FMTAC**”) and the Triborough Bridge and Tunnel Authority (“**Bridges and Tunnels**”) insofar as they are consistent with the provisions of law applicable to Bridges and Tunnels (each of the MTA, NYCT, LIRR, MNR, SIRTOA, MaBSTOA, MTACC, MTA Bus, FMTAC, and Bridges and Tunnels is referred to jointly and severally, as the “**Authority**”).

### Article I - Applicability of General Contract Guidelines

These **General Contract Guidelines** apply to

- A. purchase contracts for supplies, materials, equipment or other goods (“**Purchase Contracts**”);
- B. public work contracts (“**Public Work Contracts**”); and
- C. “**Miscellaneous Procurement Contracts**” are defined as leases of equipment with or without an option to purchase, computer software licenses, including software as a service subscription, software maintenance agreements, printing contracts (where editorial services do not predominate), and any other contract which is not otherwise classified under these General Contract Guidelines or the All Agency Service Contract Procurement Guidelines (the “**Service Contract Guidelines**”, and collectively with these General Contract Guidelines, the “**Guidelines**”).

Purchase Contracts, Public Work Contracts and Miscellaneous Procurement Contracts are collectively referred to herein as “**General Contracts**”.

In the event a proposed contract contains elements of more than one type of General Contract and/or elements of either or both types of Service Contracts (as such term is defined in the Service Contract Guidelines), the elements of the type of contract that predominates shall determine whether the General Contract Guidelines or the Service Contract Guidelines apply and which type of contract within the applicable Guidelines shall apply.

### Article II - Delegation of Authority

The Chairman, the Managing Director, the President, or chief procurement officer (“**CPO**”) of the relevant Authority thereof, and any further delegations that the Chairman or relevant Authority President may make for those specified delegated purposes only (each defined for purposes of these General Contract Guidelines as an “**Authorized Officer**”) are hereby empowered with respect to General Contracts to be entered into by the relevant Authority acting on its own behalf or as agent for MTA, as follows:

- A. to implement these General Contract Guidelines.

- B. to establish procedures for the award of General Contracts (including contracts for a small business concern (“SBC”), a certified minority or women-owned business enterprise (“MWBE”) or a certified service disabled veteran owned business (“SDVOB”)) estimated to involve the expenditure of \$1 million or less, which procedures shall be competitive to the extent deemed practicable by the Authorized Officer;
- C. to do the following for the award of Purchase Contracts and Public Work Contracts estimated to involve the expenditure in excess of \$1 million:
  - 1. to determine the criteria for the evaluation of bids/proposals, which may include, but are not limited to, unit or aggregate amount bid, life cycle costs or savings (including but not limited to costs or savings associated with installation, energy use, maintenance, operation, salvage and disposal), discounts and costs of maintenance and inspection services;
  - 2. to determine whether a Purchase Contract or Public Work Contract required to be advertised in the New York State Contract Reporter (“NYSCR”) is exempt from such requirement due to the need to award such contract on an emergency or other critical basis;
  - 3. to advertise for, solicit and open bids/proposals;
  - 4. to record the name of each bidder and the amounts of the bid/proposal;
  - 5. to determine the lowest responsive and responsible bidder, including, in the event two or more responsible bidders submit identical bids which are the lowest bids, to award the Purchase Contract or Public Work Contract to any of such bidders or obtain new bids from such bidders;
  - 6. to reject all bids when it is determined to be in the public interest to do so; and
  - 7. to award the Purchase Contract or Public Work Contract;
- D. to determine whether a bidder/proposer is responsible pursuant to the All-Agency Responsibility Guidelines; and
- E. in addition to the other authorizations set forth elsewhere in these General Contract Guidelines, to establish guidelines governing the qualifications of bidders for General Contracts, and to fix the standards for the prequalification of bidders entering into such contracts for the East Side Access Project in accordance with Section 1265-a.2(c) of the Public Authorities Law.

**Article III - Selection of General Contractors Without Competitive Sealed Bidding**

- A. A competitively bid Miscellaneous Procurement Contract may be awarded without Board approval. No Board approval shall be required for a Miscellaneous Procurement Contract ride pursuant to Article III.B.5.
- B. Except as otherwise provided in Article III.C. or Article VII., a General Contract estimated to involve the expenditure in excess of \$1 million may be awarded without competitive bidding under the circumstances set forth below, provided that the Authorized Officer recommends such an action and the Board adopts a resolution (i) declaring competitive bidding to be impractical or inappropriate because of the existence of any of the circumstances set forth in Articles III.B.1. to 6., (ii) stating the reasons therefore, and (iii)

summarizing any negotiations that have been conducted. Except in a situation specified in Article III.B.1., such resolution shall be approved by two-thirds of the members of the Board then in office. A resolution under Article III.B.1. shall require approval by a majority of the members of the Board in attendance at a meeting at which a quorum is present.

1. Emergency, Critical Need or Unforeseen Circumstances. The existence of an emergency involving danger to life, safety or property, or a critical need or unforeseen circumstance which requires immediate action and cannot await competitive bidding; or when the item to be purchased is essential to the efficient operation of or the adequate provision of service and, as a consequence of an unforeseen circumstance, such purchase cannot await competitive bidding. Competitive bidding is hereby declared to be impractical and inappropriate in any of the foregoing situations where an Authorized Officer must take appropriate action and cannot await action by the Board; provided, however, that notice of such action shall be given to the Board in a timely manner, together with a statement of the reasons for such action and a request for ratification by the Board.
2. Single Source. The item to be purchased is available only from a single responsible source provided, however, that a notice of the Authority's intent to purchase such item without competitive bidding shall be posted on the Authority's website, and, if bids have not been solicited for such item within the preceding twelve months, a notice must be published pursuant to Article V hereof. Any notices required by this Article III.B.2. shall a. set forth the Authority's intent to purchase the item without competitive bidding because the item is available from only one source, and b. invite any firm which believes it can provide the item to so inform the Authority and to provide the Authority with additional information which confirms that the firm can supply the item.
3. No Bids or One Responsive Bid. Competitive bids are solicited and
  - a. no responsive bid is received; or
  - b. only a single responsive bid is received, and the Authorized Officer rejects the bid.
4. Experiments, Tests and Evaluations. With respect to a product or technology, the Authority wishes to:
  - a. experiment with or test it;
  - b. experiment or test a new source for it; or
  - c. evaluate its service or reliability.

Such a General Contract may not be awarded until at least thirty days after the date the Board has declared competitive bidding to be impractical or inappropriate.

5. Riding an Existing Contract. The item is available through an existing General Contract between a vendor and any of the following and the resolution adopted

by the Board, if Board authorization would otherwise be required under these General Contract Guidelines, includes a determination that, and the reasons, why, it is in the public interest to do so:

- a. Any public authority (not New York State) provided such General Contract had been awarded through a process of competitive sealed bidding or a competitive request for proposals (“RFP”);
- b. A New York State agency or authority (including the New York State Office of General Services (“OGS”)), the City of New York, or Nassau County (except for NYCT, SIRTOA and MaBSTOA, as to Nassau County only).

It is hereby determined that competitive bidding is inappropriate and, because of the likelihood that a competitive process will not result in better commercial terms, that it is in the public interest to purchase an item through an existing General Contract of the State of New York, the City of New York, a different Authority, or any other public authority, where price and other commercial terms specified in such General Contract are satisfactory to the Authorized Officer. Such a determination shall be documented in writing by the Authorized Officer, and included in the contract file.

6. Request For Proposals. The Authority determines that it is in the public interest to award the General Contract through a competitive RFP.

- a. For purposes of this Article III.B.6., an RFP shall mean a method of soliciting proposals and awarding a General Contract on the basis of a formal evaluation of the characteristics which are deemed relevant to the Authority’s operations, such as quality, cost, delivery schedule and financing, against stated selection criteria. Where the RFP involves the purchase or rehabilitation of rail cars, transit cars or buses, the selection criteria may also include the extent to which the performance of all or a portion of the General Contract will involve the use of sites within the State of New York or the use of goods produced or services provided within the State of New York.
- b. For those General Contracts awarded under this Article III.B.6., (1) such contracts may not be awarded until at least thirty days after the Board has declared competitive bidding to be impractical or inappropriate and (2) the Board’s approval resolution must (i) disclose the other proposers and the substance of their proposals, (ii) summarize the negotiation process including the opportunities, if any, available to proposers to present and modify their proposals, and (iii) set forth the criteria upon which the selection was made. The Board’s contract approval resolution may be adopted simultaneously with or subsequent to the Board’s declaration that competitive bidding is impractical or inappropriate, provided that, if the Board’s declaration and the Board’s approval resolution are adopted simultaneously or within less than thirty days of each other, the subject General Contract may be executed by the

Authority no less than thirty days after the adoption of the Board's declaration that competitive bidding is impractical or inappropriate.

- c. In addition to the information required under Article V.C., the public notice of an RFP must include a statement of the selection criteria. Such notice shall also be provided by mail or electronically to professional and other organizations, if any, that represent or regularly notify certified MWBEs or -certified SDVOBs of the type of procurement opportunity that is the subject of the RFP notice.
  - d. The Authority may engage in a selection process involving multiple steps such as requests for interest, requests for qualifications, requests for technical proposals and requests for quotations. After the publication of the notice, any or all of the selection criteria specified in the advertisement may be changed, provided that, if the change is material, proposers and potential proposers who, prior to the deadline for the receipt of proposals, have expressed an interest in the RFP, shall be informed of the change and afforded the opportunity to modify their proposals.
  - e. After receipt of the proposals, an Authority may:
    - i) change the selection criteria provided that, if the change is material, all proposers that have not been eliminated from the competitive process prior to such change, are informed of the change and afforded the opportunity to modify their proposals;
    - ii) request that any of the proposers make a presentation. If it does so, it is not required to afford such opportunity to all proposers;
    - iii) negotiate with any of the proposers. If it does so, it is not required to negotiate with all proposers;
    - iv) reject any proposal at any time; and
    - v) reject all proposals, in which event the Authority may decide to take no further action, solicit new proposals or solicit bids.
- C. Under the MTA Small Business Mentoring Program (the "**SBMP**"), a non-federally funded Public Work Contract that is designated by the Authority as a small business mentoring program contract within the meaning of Section 1265-b(1)(e) of the Public Authorities Law, may be awarded in accordance with the provisions of Section 1265-b of the Public Authorities Law, notwithstanding any other provision of law or these General Contract Guidelines. A Public Work Contract that is partially or wholly federally funded, subject to United States Department of Transportation regulations and estimated to involve an expenditure of not more than \$3 million, may be awarded pursuant to the MTA Small Business Federal Program (the "**SBFP**") established under 49 CFR 26.39 in accordance with the competitive procedures established under the SBFP, notwithstanding any other provision of law or these General Contract Guidelines. Pursuant to the SBMP procedures, the Chairman or Authority President designates members of an SBMP steering committee, which includes diversity, engineering and procurement personnel. Such

SBMP steering committee is authorized to designate which eligible Public Work Contracts shall be SBMP or SBFP Public Work Contracts.

- D. A Purchase Contract or a Miscellaneous Procurement Contract, not estimated to involve the expenditure in excess of \$1 million, that is not federally funded, may be awarded pursuant to Section 1209.7(b) or Section 1265-a.2(b) of the Public Authorities Law without competitive sealed bidding or other formal competitive process, notwithstanding any other provision of law or these General Contract Guidelines where the Purchase Contract or Miscellaneous Procurement Contract involves goods or technology that are recycled or remanufactured.

#### **Article IV - Qualified Products Lists**

The Board hereby determines that for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization as to various supplies, materials and equipment which are purchased by the Authorities and authorizes the establishment of a qualified products list (“QPL”) identifying such supplies, materials and equipment as hereinafter provided. A purchase contract for an item which has been included on a QPL duly established and maintained by an Authority may be entered into by that Authority as hereafter set forth:

- A. An Authorized Officer determines as to a specific item that, for reasons of efficiency, economy, compatibility or maintenance reliability, there is a need for standardization.
- B. The QPL is reviewed no less than two times per year in order to evaluate whether to add or delete items or vendors to or from the QPL.
- C. A notice is published by the Authority no less than one time per year in a general circulation newspaper and in the NYSCR which:
  - 1. advertises the existence of the QPL;
  - 2. states that the QPL is available for public inspection; and
  - 3. specifies the name and address of the Authority’s office which may be contacted in regard to the procedure for the compilation of the QPL.
- D.— A contract for an item on the QPL may be awarded:
  - 1. without competitive sealed bidding if only one source for the item is specified on the QPL;
  - 2. by competitive sealed bidding, but without advertising, provided the invitation to bid is sent to all vendors listed on the QPL for the particular item;
  - 3. by competitive sealed bidding after advertising the bid pursuant to Article V.A. of these General Contract Guidelines.
- E. Two or more Authorities may utilize the same QPL provided that such Authorities jointly comply with the provisions of this Article.

## **Article V – Notice and Advertising**

Except as provided in Article V.C. and Article III.B.2., in those instances where advertising is required under these General Contract Guidelines:

- A.— Regardless of the selection process used, for Purchase Contracts and Public Work Contracts in the actual or estimated amount in excess of \$1 million, an advertisement shall be published at least once in a newspaper of general circulation in the area served by the Authority and in the NYSCR. Such advertisement and notice in the NYSCR must be placed at least fifteen (15) business days prior to the planned date on which a bid/proposal is due; provided that, if the Purchase Contract or Public Work Contract is to be awarded without the solicitation of competitive sealed bids or RFP, the timing of the publication in the NYSCR shall be determined by an Authorized Officer.
- B. The advertisement and the notice in the NYSCR must contain, as applicable, a statement of: 1) the name of the contracting Authority; 2) the contract identification number; 3) a brief description of the goods, supplies, materials, or equipment sought, the location where work is to be performed or goods are to be delivered and the contract term; 4) the address where bids/proposals are to be submitted; 5) the date when bids/proposals are due; 6) a description of any eligibility or qualification requirement or preference; 7) a statement as to whether the contract may be fulfilled by a subcontracting, joint venture (“JV”) or co-production arrangement; 8) any other information which the Authority deems useful to potential contractors; 9) the name, address and the telephone number of the person to be contacted for additional information; and 10) the time and place where bids received will be publicly opened and read. In addition, if a purchase contract is involved, the advertisement in the NYSCR shall also include a statement as to whether the goods, supplies, materials, or equipment sought had, in the immediately preceding three year period, been supplied by a foreign business enterprise as that term is defined in Article 4-C of the Economic Development Law.
- C. Advertisement in a general circulation newspaper and in the NYSCR is not required if the Authority regularly purchases the particular supplies, material or equipment and bids are solicited from a list of potential suppliers for the item which has been established and maintained as set forth in Article VI hereof.
- D. In addition to the above advertisements, the Authority shall provide notice to professional and other organizations, if any, that regularly notify MWBEs of the type of procurement opportunity that is the subject of the solicitation.

## **Article VI - Contractor Outreach**

The Authority shall encourage firms to be interested in competing for Authority contracts. The Authority shall do so in the following manner:

- A. Suppliers Lists for Purchase Contracts: the Authority shall compile a list of potential sources of supplies, materials, equipment, and other goods which it regularly purchases. Such list must be compiled in accordance with the following procedures:

1. Advertisements must be periodically placed in one or more publications which are likely to be read by manufacturers, suppliers and others who deal in the item, including firms which may be MWBEs or SDVOBs, which set forth a general description of categories of items which are regularly procured by the Authority and invites firms to utilize the MTA Business Services Center Vendor Portal to be placed on the suppliers list for specific items or categories of items.
2. — A periodic effort:
  - i) must be undertaken to identify potential bidders for the item who are not on the list, including MWBEs and SDVOBs. Such effort shall include the use of the Authorities' websites, use of appropriate publications, including those, if any, that serve MWBEs and SDVOBs, other sources of information, and cooperation with federal, state and local agencies and other authorities. Where appropriate, a print or electronic letter shall be sent to a new potential supplier which invites it to request that it be added to the list and, if it does not wish to be added, requests that it indicate why; and
  - ii) where appropriate, must be undertaken to identify firms which have not responded to bids or expressed an interest in remaining on a list. An effort should be made to contact such firms to determine why they have not bid, whether they are interested in remaining on the list and, if not, why not. A firm may be deleted from the list where it requests deletion, or where the circumstances indicate that it is unlikely that the firm is interested in remaining on the list.
3. The Authority will maintain lists of certified MWBEs and SDVOBs, including professional firms that have expressed an interest in doing business with the Authority and ensure that such lists are updated regularly. The Authority will also consult the lists of MWBEs maintained by the New York State Department of Economic Development and the lists of SDVOBs maintained by, the OGS Division of Service-Disabled Veterans' Business Development ("OGS DSDVBD").
4. An advertisement must be placed quarterly in the State Register and in the NYSCR.
5. In the event it is not practicable to maintain a suppliers list for a specific item, such item shall be included in a broader category or other appropriate classification which reasonably includes the item, and a suppliers list shall be maintained with respect to the category or classification.

- B. Capital Program Purchase Contracts and Public Work Contracts: the Authority shall establish an Outreach program, to be developed by the Chief Development Officer or his designee, to identify and attract capable U.S. and international firms to compete for MTA contracts. In addition, the Authority shall place an advertisement in the NYSCR no less than four times per year which sets forth a general list of anticipated capital program Purchase Contracts and Public Work Contracts, and the address of the Authority's office which may be contacted in order to be afforded the opportunity to compete for such

contracts and for other Authority contracts. Advertisements will also be placed in publications that serve MWBEs.

#### **Article VII – MWBE, SDVOB, and Disadvantaged Business Enterprise (“DBE”)**

The potential exists for MWBE, SDVOB, and DBE involvement in General Contracts. The Authority shall use its best efforts to maximize the utilization, as applicable, of DBEs under the Authority’s federal program, and MWBEs and SDVOBs under the New York State programs set forth in Public Authorities Law §2879, Article 15-A and Article 17-B of the Executive Law and these General Contract Guidelines.

- A. The MTA Chief Diversity Officer is responsible for ensuring compliance with all applicable laws and regulations and for overseeing the programs established by the MTA to promote and assist: 1) the participation by MWBEs and SDVOBs in procurement opportunities and facilitation of the award of General Contracts to such enterprises; 2) the utilization of MWBEs and SDVOBs as subcontractors and suppliers to Authority prime contractors; and 3) the utilization of partnerships, JVs or other similar arrangements between MWBEs, SDVOBs and prime contractors. The Chief Diversity Officer reports directly to the Chairman in connection with the responsibilities set forth herein, and will participate in the procurement process either directly or through his or her designees.
  
- B. A Purchase Contract or a Miscellaneous Procurement Contract, not estimated to involve the expenditure in excess of \$1 million, that is not federally funded, may be awarded pursuant to Section 1209.7(b) or Section 1265-a.2(b) of the Public Authorities Law without competitive sealed bidding or other formal competitive process, notwithstanding any other provision of law or these General Contract Guidelines where the proposed award is to a SBC, MWBE or SDVOB. The MTA and its agencies will administer set-aside procurements pursuant to the laws, rules and procedures that govern small purchase contracting.

The Authority CPO or his/her designee shall determine which Purchase Contracts or Miscellaneous Procurement Contracts are appropriate for these procurements. In the case of Purchase Contracts or Miscellaneous Procurement Contracts that are eligible pursuant to Section 2879(3)(b)(i) of the Public Authorities Law for award to SBCs, MWBEs or SDVOBs, the CPO may make a determination that any such Purchase Contract or Miscellaneous Procurement Contract may only be awarded to an MWBE, or only to an SDVOB, or only to an MWBE or an SDVOB. The basis for such a determination must be to promote participation of MWBEs and SDVOBs in Authority contracts, as mandated by Articles 15-A and 17-B of the Executive Law, respectively, and to assist the Authorities in achieving their MWBE and SDVOB goals.

Notice of such procurements shall be placed on the Authority website inviting responsive bids/proposals from qualified SBCs, MWBEs and/or SDVOBs. Awards pursuant to this process shall be made to the bidder/proposer determined to have submitted the bid/proposal that is most advantageous to the Authority after considering price and any other relevant factors. The CPO may reject all offers and withdraw the designation of a contract as one to be awarded pursuant to this process if the CPO determines that an award will result in the payment of an unreasonable price or otherwise not be advantageous to the Authority.

The value for SDVOB set aside contracts may be in excess of \$1 million. In these instances, notice of such procurements must also be placed in the NYSCR.

- C. For contracts awarded pursuant to these General Contract Guidelines, other than those whose award process is described in Article VII.B., the Authority shall establish appropriate goals for participation by MWBEs and SDVOBs and for the utilization by prime contractors of MWBEs and SDVOBs as subcontractors and suppliers. Statewide MWBE numerical participation target goals will be established by the Authority based on the findings of the most recent New York State Disparity Study.
  
- D. The Authority will conduct non-federally funded procurements in a manner that enables the Authority to achieve the maximum feasible portion of the goals set pursuant to Article VII.C., including by taking the following actions:
  - 1. establishing measures and procedures to ensure that MWBEs and SDVOBs are given the opportunity for maximum feasible participation in the performance of Authority contracts and to assist in the identification of those contracts that are best suited for MWBE and SDVOB participation so as to facilitate the Authority's achievement of the maximum feasible portion of the MWBE and SDVOB goals;
  - 2. designating the New York State Division of Minority and Women-owned Business Development ("**DMWBD**") to certify and decertify MWBEs, and OGS DSDVBD to certify and decertify SDVOBs, for purposes of these General Contract Guidelines;
  - 3. setting forth in each contract solicitation the expected degree of MWBE and SDVOB participation based on potential subcontracting opportunities and the availability of MWBEs and SDVOBs to respond competitively to those opportunities;
  - 4. providing to prospective contractors in writing, or by identifying a link to a website containing a current list of MWBEs and SDVOBs;
  - 5. with regard to JVs, allowing a bidder/proposer to count toward meeting its MWBE and SDVOB participation goals, the MWBE or SDVOB portion of the JV;
  - 6. waiving a contractor's obligation relating to MWBE or SDVOB participation after a showing of good faith efforts to comply with the participation goal; and
  - 7. verifying that MWBEs and SDVOBs listed in a successful bid/proposal are actually participating to the extent listed in the project for which the bid/proposal was submitted.
  
- E. - The Authority will also consider, where practicable:
  - 1. the severability of construction projects and other bundled contracts;
  - 2. with respect to MWBEs, the implementation of a program that will enable the Authority to evaluate each contract to determine the appropriateness of the goal pursuant to the most recent New York State Disparity Study; and

3. compliance with the requirements of any federal law or regulations concerning opportunities for any DBEs, MWBEs and SDVOBs that effectuates the purposes of this Article VII.
- F. The Chief Diversity Officer or his/her designee is responsible for ensuring compliance with all applicable laws and regulations with regard to the utilization of DBEs on federally funded General Contracts.

**Article VIII - Change Orders**

- A. A change order to a General Contract which (a) exceeds \$1 million, (b) increases the total contract price by more than ten percent of the original value, or (c) increases the contract duration by more than ten percent of the original contract duration, may be entered into by an Authorized Officer, upon the approval of the Board pursuant to a resolution adopted in accordance with Article IX hereof. The submission to the Board shall include an explanation of the need for the change order. In order to avoid splitting change orders to below \$1 million for the purpose of avoiding the Board approval requirements of this Article VIII.A., the CPO of the relevant Authority must approve multiple change orders to the same contract and for the same scope of work, if all such change orders for any rolling 12-month period would equal to or be more than \$1 million. For example only, if change order #1 is issued in March Year 1 for \$600,000, change order #2 is issued in June Year 1 for \$300,000 and change order #3 is issued in January Year 2 for \$200,000 (all for the same scope of work), then the CPO would be required to approve change order #3 because the total amount would be \$1.1 million for the rolling 12-month period from March Year 1 to March Year 2, and further the CPO would need to approve any other change order issued during any rolling 12-month period which would bring that 12-month period total to be equal to or greater than \$1 million.
- B. All other change orders shall be approved by an Authorized Officer; provided that a change order over \$250,000 must be approved by the Authority President, CPO, or the Authority President's designee. This provision applies to all contracts subject to these General Contract Guidelines.
- C. Notwithstanding the foregoing, an Authorized Officer may enter into a change order without Board approval in any of the following situations as determined by an Authorized Officer:
1. The existence of an emergency, other critical need or unforeseen circumstance;
  2. There is a risk of a substantial increase in cost or delay if prompt action is not taken; or
  3. The change order does not change the total contract price to exceed the contract budgeted cost, including contingency.

~~D.~~ D. Change orders that do not require Board approval pursuant to Paragraph C above, but that (a) increases the total contract price by more than ten percent of the original value, or (b) increases the contract duration by more than ten percent of the original contract duration, shall require prior written notice to the Chairman of the Finance Committee.

- E. The Chairman shall establish policies with respect to the delegation of responsibilities set forth in this Article.

#### **Article IX - Form of Board Resolution**

- A. Except as otherwise required in Article III, the procedure for the adoption by the Board and the format of a resolution pursuant to these General Contract Guidelines shall be determined by the Chairman and may be in the form of a staff summary or a formal resolution. Provided, however, that any Board resolution or staff summary sought pursuant to these General Contract Guidelines shall 1) identify the contractor by name; 2) briefly describe the substance of the General Contract; 3) specify all the information required under the applicable provisions of these General Contract Guidelines; and 4) specify the estimated or actual cost to the Authority or that the estimated or actual cost shall be within the budget approved by the Board for that purpose.
- B. To the extent practicable, the recommendation of award and the associated resolution or staff summary shall first be submitted to the standing committee of the Board responsible for the Authority.
- C. The Chairman may modify the procedures in this Article for all Authorities.

#### **Article X - Responsibilities of General Contractors**

In each General Contract, a general contractor shall have the following responsibilities:

- A. To perform the contract in accordance with its terms and to remain a responsible contractor;
- B. To provide the public work, goods, supplies, materials, or equipment required under the contract competently, efficiently, in a timely manner, at a fair and reasonable cost and in a manner which is satisfactory to the Authority; and
- C. To cooperate with Authority personnel who are directing, supervising or monitoring the performance of the general contractor or who are assisting in their performance.

#### **Article XI - Contracts Involving Former Officers or Employees of the Authority**

The Authority may enter into contracts with any Authority's former officers, former employees or with firms employing such former officers or former employees only to the extent permitted by Public Officers Law §73.

#### **Article XII - Miscellaneous**

- A. ~~Any provision~~ Except to the extent prohibited by law, the Chairman or Chief Executive Officer, or his/her designee, with prior notice to the Chairman of the Finance Committee, may waive the provisions of these General Contract Guidelines ~~may be waived by the Chairman, an Authority President, or the Board, or such individuals as they may designate,~~

~~except to the extent prohibited by law. A waiver may also be in the form of a ratification event of an emergency involving the health or safety of the public.~~ If a contract is federally assisted, prior to issuing a waiver, consideration should be given to the steps which may be taken to assure that federal assistance is not jeopardized.

- B. No Board Committee action or Authority policy, other than one approved by the Chairman, shall be inconsistent with these General Contract Guidelines.
- C. An Authority may not divide or split any contract or series of contracts for the purpose of avoiding the requirements of these General Contract Guidelines provided that with regard to SBMP and SBFP contracts awarded under Article III.C. and discretionary contracts awarded under Article VII.B., an Authority may divide requirements for the purpose of unbundling contracts to create SBMP, SBFP or discretionary contracting opportunities.
- D. If prior to the commencement of an Authority fiscal year, an Authorized Officer reasonably anticipates that, during the next fiscal year, the Authority will expend, in the aggregate, in excess of \$1 million for a series of Purchase Contracts for the same or substantially similar good or for a series of Public Work Contracts for same or substantially the same type of public work: 1) such requirement shall be met pursuant to a requirements contract awarded pursuant to the applicable provisions of these General Contract Guidelines; 2) each such Purchase Contract shall be awarded pursuant to the provisions of Article II.C., Article III, Article IV, Article VI, or Article VII.B. of these General Contract Guidelines or 3) each such contract shall be awarded pursuant to the provisions of Article II.C., Article III, or Article VII.B. or a procedure determined by an Authorized Officer to be comparable to Article IV or Article VI.
- E. Nothing in these General Contract Guidelines shall preclude the Authority from accepting bids/proposals utilizing an electronic bidding system that may inform bidders whether their bid is the current low bid, and allow bidders to submit new bids before the date and time assigned for the opening of bids. Such procedure shall not constitute disclosure in violation of Section 2878 of the Public Authorities Law.
- F. A General Contract awarded by an Authority pursuant to these General Contract Guidelines may provide that the General Contract includes the requirements of one or more other Authorities.
- G. Each Authority shall maintain records, for each fiscal year, of the all Purchase Contracts in an actual or estimated amount of \$15,000 or more entered into by the Authority at the request of such Division/Department, and such reports shall be prepared pursuant to the specifications located in Article IX.B. and Article IX.C. of the Services Contract Guidelines.
- H. The Authority shall prepare a publicly available report no less frequently than annually, summarizing procurement activity by the Authority for the period of the report in accordance with the reporting requirements of Section 2879(6) of the Public Authorities Law.

- I. ~~I.~~ These General Contract Guidelines are intended for the guidance of officers and employees of the Authority only. Nothing contained herein is intended or shall be construed to confer upon any person, firm or corporation any right, remedy, claim or benefit under, or by reason of, any requirement or provision hereof.
- II. To make MTA work more appealing to contractors and thereby increase competition and reduce the costs that the MTA typically pays for its Capital Program projects, the following Cost Containment Initiatives shall be implemented on all Capital Program projects unless the Chief Development Officer grants a waiver based upon a determination that such Cost Containment Initiative is impractical for a specific project:
1. Neutral Dispute Resolution: Disputes shall be resolved by a neutral arbitrator or panel of arbitrators or in a court of competent jurisdiction.
  2. Project CEOs: The Chief Development Officer or his designee shall appoint a Project CEO ("PCEO") for each project who shall be empowered to make project decisions and shall be accountable for the project's budget and schedule. PCEO decisions affecting scope, budget and schedule can only be overruled or amended by the MTA Chief Development Officer.
  3. In developing the Request for Proposal or Bid documents for a project, and as part of any negotiation and contractor selection process, the PCEO shall develop a strategy designed to optimize the cost and schedule for the project. Such strategy shall be approved by the Chief Development Officer or his designee and shall establish the following:
    - a. A contracting approach that considers factors other than just price in selecting a contractor (e.g., competitive RFP or A+B bidding), even where design-build contracting is not required. Excluded from this requirement are contracts awarded under the Small Business Mentoring Program and the Small Business Federal Program for which a traditional low bid contracting approach is permissible.
    - b. Optimal turnaround times for submittals and similar documentation, which times shall be incorporated into the contract(s).
    - c. A strategy to allocate risk to the party in the best position to manage such risk. Factors to be considered in this category include, but are not limited to: (i) the availability of MTA provided outages, flaggers and other services; (ii) delays by third parties such as Amtrak, utility companies, and government agencies; and (iii) existing conditions, including both structural conditions and interferences and the existence of hazardous materials. The PCEO, in consultation with the Leaders of the MTAC&D Delivery and Contracts groups and the applicable operating agencies, shall establish for each project the optimal method for incorporation of such risk allocation into the contract(s) (e.g. guaranteed number of outages subject to a contractual percentage of cancelations, allowances, etc.).
    - d. Favorable payment terms, to be established in consultation with the MTA Chief Financial Officer. Unless otherwise indicated, payment terms shall be 15 days.
    - e. Guidelines that promote the use of off-the-shelf products and components and eliminate customization to the extent practicable.

4. Reduced Bonding Requirements: Unless otherwise prohibited by law or by MTA funding partners for specific projects (e.g., the Federal Transit Administration), the Request for Proposal or Bid documents for a project shall provide that Payment and Performance bonds on contracts more than \$250 Million may be reduced from 100% of the contract amount provided that the Contracting entity is able to provide adequate alternative security and/or guarantees. The appropriateness of such alternative security and/or guarantees shall be approved by the MTA Chief Development Officer and/or the MTA Chief Financial Officer or his/her designees.

K. Nothing in these General Contract Guidelines shall preclude the Authority from offering stipends to proposers on Design-Build contracts as part of an RFP process. The request for Board approval to use the RFP process for a specific Design-Build contract may include a request for approval of the use of stipends in connection with such RFP.

~~K~~L. Nothing contained in these General Contract Guidelines shall be deemed to alter, affect the validity of, modify the terms of or impair any contract or agreement made or entered into in violation of, or without compliance with, the provisions of these General Contract Guidelines.

~~M~~M. Where applicable federal, state or local laws, ordinances, codes, rules or regulations contain requirements which are in conflict with or which impose greater obligations upon the Authority than these General Contract Guidelines, then such requirements shall take precedence over those contained herein.

~~M~~N. For those General Contracts for which the Office of the State Comptroller (“**OSC**”) has requested review and approval pursuant to Public Authorities Law §2879-a, if the Authority has not received OSC approval or disapproval within thirty days of submission to the OSC, the Authority may enter into such General Contract without further waiting for such review and approval.

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# Staff Summary

Subject <b>Public Authorities Law Required Policies</b>
Department <b>Corporate Compliance</b>
Department Head Name <b>Lamond W. Kearse</b>
Department Head Signature
Project Manager Name <b>Darrel Byer</b>

Date <b>July 22, 2020</b>
Vendor Name <b>N/A</b>
Contract Number <b>N/A</b>
Contract Manager Name <b>N/A</b>
Table of Contents Ref # <b>N/A</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Governance	07/22/20	X		
2	Board	07/22/20	X		

Internal Approvals			
Order	Approval	Order	Approval
1	Corporate Compliance		
2	Legal		

**Purpose:**

To obtain Board approval for revisions to certain existing policies of the MTA and its Agencies, in order to comply with Public Authorities Law Section 2824 (“PAL 2824”).

**Discussion:**

PAL 2824 requires formal Board adoption of certain policies. Corporate Compliance has provided an exhibit book that includes the relevant policies for your review. The policies in the exhibit book are new or revisions to existing policies which have been approved by their respective Agencies.

**Recommendation:**

It is recommended that the Board approve the policies contained in the exhibit book.