

STATE PROPERTIES REVIEW BOARD

**Minutes of Meeting Held On November 12, 2019
450 Columbus Boulevard, Hartford, Connecticut**

The State Properties Review Board held a Meeting on November 12, 2019 in Suite 2035, 450 Columbus Boulevard, Hartford, Connecticut.

Members Present:

Edwin S. Greenberg, Chairman
Bruce Josephy, Vice Chairman
John P. Valengavich, Secretary
Jack Halpert
Jeffrey Berger
William Cianci

Members Absent:

Staff Present:

Dimple Desai
Thomas Jerram

Guests Present

Chairman Greenberg called the meeting to order.

Mr. Valengavich moved and Mr. Halpert seconded a motion to enter into Open Session. The motion passed unanimously.

OPEN SESSION

1. ACCEPTANCE OF MINUTES

Mr. Valengavich moved and Mr. Halpert seconded a motion to approve the minutes of the November 7, 2019 Meeting. The motion passed unanimously.

2. COMMUNICATIONS

3. REAL ESTATE- UNFINISHED BUSINESS

PRB #	19-145
Transaction/Contract Type:	RE/ Administrative Settlement
Origin/Client:	DOT/DOT
Project Number:	301-176-021
Grantor:	City of Norwalk
Property:	Norwalk, Water St (10)
Project Purpose:	Walk Railroad Bridge
Item Purpose:	Administrative Settlement

October 8, 2019 Update:

At its meeting held on August 1, 2019 the State Properties Review Board voted to suspend this item pending a response to the following issues raised by the Board:

1. Please provide project description that outlines the components that were funded by DOT under the "Initial Statement" and to be funded under "Final Statement". Basically, outlining any and all changes between two statements including associated increase in the costs of these components.

- *DOT Response: (Initial Statement) reference the attached Administrative Settlement Agreement (ASA) 5th & 6th WHEREAS; (Final Statement) See attached ASA Amendment Section 3 for referenced changes.*

Staff Response: The 5th WHEREAS clause in the Administrative Settlement Agreement approved by the Board under PRB #18-078 included the following 'Referenced Improvements' to be removed and replaced via the Functional Replacement process: Deck/ramp/dock; IMAX Theater; Meerkat Exhibit; Dragon Exhibit; Go Fish Exhibit; Harbor Seal Exhibit; and Fire Escape. The 6th WHEREAS clause states the Department (DOT) has agreed to pay for the functional replacements (Project Expenses). The total project expense for the entire Functional Replacement Property approved by the Board was \$34,552,395.

Within the First Amendment to Administrative Settlement Agreement the 5th WHEREAS clause was replaced to include the acknowledgement that the Walk Bridge project will result in the removal of the following Referenced Improvements: Deck/ramp/dock; IMAX Theater; Meerkat Exhibit; Dragon Exhibit; Go Fish Exhibit; Harbor Seal Exhibit; and Fire Escape. And the language goes further stating that the Department will compensate the City via the Functional Replacement option of paying/reimbursing the City to reconstruct the aforementioned improvements.

In Section 3 of the First Amendment to Administrative Settlement Agreement, Exhibit B was completely replaced.

Please clarify why the amended Agreement requires DOT to incur all costs and expenses, from initial planning, project management, architectural, engineering, staging and construction phases, for the demolition of all of the previously listed 'Referenced Improvements.' And, clarify why all DOT costs and expenses attributable to the demolition are not counted against the proposed \$40 million cap. This is a significant change from the original Administrative

Settlement Agreement. At the time this cost was estimated at \$826,700 (2017) not counting for cost associated with the demolition of fire escape.

- *DOT Response:* The demolition costs associated with the \$40 Million settlement are related to the demo needed to buildout the respective replacements. The new Theater location will require demo to the existing Aquarium building, the new Seal Exhibit will require related demo to the existing building.

Those are the cost referenced in the Functional Replacement cost estimate. The demo cost associated with removing structures within the acquired right of way i.e. (The existing IMAX and Annex building, Fire Escape, Vessel Dock & Ramp) are paid for as part the Walk Bridge construction cost.

The reference to the DOT paying the demo cost for the structures within the acquired ROW was incorporated into the amended agreement language for clarification purposes; however, it was always understood that those costs were part of the DOT's Walk Bridge Project budget; and not a Functional Replacement cost.

Staff Response:

From the Administrative Settlement Agreement approved under PRB #18-078:

2. Provide a copy of the “complete assessment” done by DOT as referenced in the DOT’s Final Statement.

- DOT Response: See attached accounting statement

Staff Response:

a). Please provide a copy of each contract or authorization of services and any subsequent amendments identifying the scope of work to be completed and a schedule of fees for the expenditures listed below (taken from ‘TMA Summary Expenses’). And please clarify which “Referenced Improvements” listed in the amended Administrative Settlement Agreement benefitted from the expenditures.

Carmody Torrance	-\$57,845	William Seymour	-\$4,720
Carmody ck # 1008	-\$4,910	Seymour ck # 1009	-\$1,350
Carmody Torr ck# 1023	-\$931	William Seymour ck # 1021	-\$1,903
Total Invoices	-\$63,685	Total Invoices	-\$7,973
Shipman & Goodwin	-\$253,529	CSG Norwalk ck #1020	-\$135,000
Michael Horton	-\$9,263	Arc ck # 1010	-\$1,949
Michael Horton ck # 1022	-\$2,520		
Total Invoices	-\$11,783		
Associated Borings	-\$22,765	Special Testing	-\$9,730
Existing Conditions	-\$40,000		

- DOT Response: Contracts and amendments/additions to contractors are scanned into IRMS and hard copies stored in ROW project files.

Staff Response: DOT has the contract information but did not provide to the Board.

b). Please confirm that the entries identified as ‘Plus Interest’ reflect interest earned from the financial institutions and please clarify what transpired during the project that resulted in the four ‘credit’ entries.

Plus Interest as of 12-3-18, FDIC	\$1,644
Plus Interest as of 12-3-18, Checking	\$27,135
Plus interest as of 12-31-18, Checking	\$1,265
Plus interest as of 12-31-18, FDIC	\$6,376
Plus legal expenses paid, credit back	\$100,000
Credit 2672.11 on 1-30-19	\$5,130
Credit 2672.10 on 1-30-19	\$15,818
Plus Interest as of 1-31-19, Checking	\$1,078
Plus Interest as of 1-31-19, FDIC	\$6,384
Plus Interest as of 2-28-19, Checking	\$1,469
Plus Interest as of 2-28-19, FDIC	\$4,123
Credit 2672.06	\$47,755

- DOT Response:

The credit interest is verified by bank statements and FDIC statements which are scanned into IRMS and hard copies stored in ROW project files

The credit entries were items identified as non-participating in Functional Replacement and the TMA was required to “pay back” the money into the FR account. These are documented and itemized in the IRMS and hard copies stored in ROW project files.

Staff Response: OK

- 1) Please clarify what services were provided by BBB to account for the additional \$217,495 expended and which "Referenced Improvements" listed in the amended Administrative Settlement Agreement benefitted from the expenditure.
- 2) If this contract was amended after 3-2017 please provide a copy of the amendment(s).
- 3) Please provide a copy of the BBB consultant contract with the City of Norwalk executed in late March 2019 (early April) in the amount of \$1,514,033.16 and clarify what additional design/CA services are being provided in light of the remaining balance of BBB's contract with TMA (\$363,226 balance).

• *DOT Response: No response*

Staff Response: DOT did not provide responses to the prior three inquiries.

d). The Program Management Services Agreement (PMSA) between O&G/AP and TMA (11-30-2016) and subsequent amendments provided Program Management Service for three distinct phases of the project. Phase 1 (Definition of Scope of Program) provides for pre-design services at a cost of \$77,680. The second amendment (May 2018) to the PMSA authorized Phase 2 (Development of Program Plan) and Phase 3 (Implementation of Program Plan) providing Program Management services through the completion of construction documents and bidding. The fee for Phase 2 and Phase 3 is \$779,582. The total fee is \$857,262. The PMSA was assigned from O&G/AP to Karp Builders, LLC in May 2018.

- 1) Please clarify what services were provided by O&G/AP in exchange for \$392,984.
- 2) Please clarify what services were provided by Karp in exchange for \$85,696.
- 3) Please confirm the status of Karp. Are they actively providing consulting services, or have they been removed from the project.

• *DOT Response:*

AP/O&G contract and scope of services are scanned into IRMS and hard copies are stored in ROW project files. Payments were verified by billing and cancelled checks or transfers by TMA.

KARP contract and scope of services are scanned into IRMS and hard copies are stored in ROW project files. Payments were verified by billing and cancelled checks or transfers by TMA.

We no longer have KARP providing services for the project as they were replaced by CSG.

Staff Response: DOT has the contract information but did not provide to the Board.

e). The Agreement between L. Holzner Electric Company and TMA (10-5-2017) involved the construction of an expanded exhibit space and habitat for the Meerkats. Section 3 of the Agreement provided for a Contract Sum of \$572,000 (Stipulated Sum). Holzner fees paid in the 'TMA Summary Expenses' total \$684,579.

- 1) Please clarify what changes were made to the Agreement resulting in TMA approving \$112,579 in additional expense beyond the original Stipulated Sum.
- 2) Please clarify why in Section 3 (replaced Exhibit B of original agreement) of the amended Administrative Settlement Agreement states that the Meerkat Exhibit is part of the Referenced Improvements to be completed during Phase 2.
- 3) Please confirm the construction status of the Meerkat Exhibit.

- DOT Response:

Due to the age of the existing building, there were additional items that came up during the buildout of the second floor for the Meerkat exhibit. There was a change in the timbers used (Douglas fir), added framing to existing windows, a change order for 1" X 3" ledger to a 6" X 12" ledger, correct the change in existing floor thickness, additional steel and timber reinforcement and through bolts. These items were necessary for the safe installation of the floor.

The Meerkat exhibit has not been constructed.

Staff Response: Seems like the DOT response 'the build out of the second floor for the Meerkat exhibit' is contradictory to 'The Meerkat exhibit has not been constructed.' No further explanation was provided regarding what work was completed at a cost of \$684,579.

Under PRB #18-078 DOT provided the Board with a copy of the Holzner contract specifically identifying the following:

L. Holzner Electric Company
596 John Street
Bridgeport, CT 06604

for the following Project:
(Name, location and detailed description)

Meerkat Platform Project
Maritime Aquarium at Norwalk
10 North Water Street
South Norwalk, CT 06854

The Architect:
(Name, legal status, address and other information)

Beyer, Blinder Belle Architects & Planners LLP
120 Broadway, 20th Floor
New York, NY 10271

The Owner and Contractor agree as follows.

The Project involves the construction of an expanded exhibit space and habitat for the Meerkats.

DOT has acknowledged the Black Dragon Exhibit was replaced with the use of funds thus far. However, no contract for this work was provided to the Board under PRB #18-078.

3. Under the existing approved initial statement dated June 25, 2018, DOT was going to conduct auditing and provide project control oversight of the TMA's design and construction effort. Also, DOT was expected to conduct reviews of the design at 60 and 100 percent of design, as well as construction schedules and schedule of values, etc. In the final statement, DOT states the following:
 - a. "TMA and their Owner Rep went to bid with incomplete design documents" -- did DOT review and approve this arrangement?

- DOT Response: *We hired Baker Engineering to review the plans prior to advertising. However, the plans were not complete resulting in the large amount of addendums.*

Staff Response:

- 1) Please clarify who issued the Notice to Proceed to the Architect with the bidding of this project prior to 100% CD and whether DOT approved of advertising this project with incomplete plans.
- 2) Did the 'excessive addendums to the bid packages' expand the Architect's scope of work and did the Architect seek additional compensation?

- DOT Response:

This was the result of a fast track effort to meet the vacancy deadlines in connection with Department's Walk Bridge Project schedule. As such, the plans that were put out to bid were incomplete resulting in a large number of addendums.

Staff Response: DOT did not respond to inquiries #1 & #2 above.

- b. "TMA's owner representative never provided updated cost estimates during the design phase" - did DOT review the 60 and 100% design? Did DOT ask for updated cost estimates?

- DOT Response: *Yes;*

Staff Response:

- 1) Please provide the Board with the cost estimates.

- DOT Response: *No response*

Also, as part of the agreement with the City, the representative was supposed to give monthly reports, detailing, at a minimum, project progress, issues and financial reports to DOT and the City. Did DOT receive these reports?

- DOT Response: *No, not in a timely manner; which is why the attached amendment was mandated by the Department.*

Staff Response:

- 1) Please clarify if Construction Solutions Group is providing these same reports.

Did DOT review these reports to catch the higher project cost estimates? The information was not provided in its entirety.

- DOT Response: *Our review did not include the addendums.*

Staff Response:

- 1) Please clarify if DOT's consultant, Baker Engineering, was instructed to review the addendums as part of their consultant contract.
- 2) Please clarify who at DOT determined it was unnecessary to review the addendums in light of the overall project scope.

- DOT Response: *No response*

4. Will the City retain existing consultants (Architect, Owner Representative, Construction Manager, etc.) and enter into a contract or hire new consultants via an open process?
- DOT Response: *Architect – yes; Construction Manager – yes; Owner Rep. – no (City hired their own Owner Rep.) See attached ASA Amendment, Section 6*

Staff Response:

- 1) Norwalk hired Construction Solutions Group as their owner-rep. Consultant fee = \$135,000. Approved by Norwalk Common Council on December 11, 2018.
- 2) Norwalk hired BBB as their architect. Consultant fee = \$1,514,011.16. Approved by Norwalk Common Council on March 26, 2019.

OK

5. If the City will retain existing consultants, how will the contractual fees be calculated (meaning will credit be given for the work already completed?).
- DOT Response: *The work that has been completed is still applicable to the project.*

Staff Response:

- 1) Please clarify what work has been completed that is still applicable to the project in light of the new BBB contract with consultant fees totaling \$1,514,011.16 with respect to the BBB consultant contract with TMA that had expended all but \$363,226 of the original \$3,278,500 contract.

- DOT Response: *No response*

6. Provide a schedule to hire these consultants

- DOT Response: *The consultants are already hired.*

Staff Response:

➤ OK

7. Who from the City is going to manage this \$47 million complex project? What are their qualifications? What will be the City's role and responsibilities?

- DOT Response: *The total settlement amount is \$42,165,000.00 (\$12,530,718.00 (\$10,365,718.00/Initial Functional Replacement Payment plus \$2,165,000.00/land value of easements) plus \$29,634,282.00/Balance Payment). The City's Department of Public Works is providing oversight. They have hired CSG (Construction Solutions Group) owner representative.*

Staff Response:

- 1) Norwalk hired Construction Solutions Group as their owner-rep. Consultant fee = \$135,000. Approved by Norwalk Common Council on December 11, 2018. OK

8. Provide a breakdown of \$4,933,187 of the initial payment that is spent including which component of the project these funds were spent on. What percent of the design/bid docs can be re-used by the City?

- DOT Response: *See attached accounting statement*

Staff Response:

- 1) The accounting statement only reveals project expenses. DOT should clearly identify what work was completed to each of the Referenced Improvements within the amended Administrative Settlement Agreement.

- DOT Response:

The \$4,933,187 spent by TMA was reconciled through verification of billing, payments and copies of such items. These items are scanned into IRMS and hard copies are stored in ROW project files.

Staff Response: DOT has the contract information but did not provide to the Board.

9. Is this cap of \$40 Million based on functional replacement of the improvements? Provide a breakdown of these improvements including project schedule and estimates. What happens if the project exceed this cap? What happens if the actual construction cost be below \$40 Million?

- DOT Response: See attached ASA Amendment, Section 3.

Staff Response:

- 1) Section 3 of the First Amendment dictates that the 'Referenced Improvements' be undertaken in two Phases. Phase 1 includes reconstruction of the 4-D Theater, Harbor Seal Exhibit and Fire Escape. Upon completion of Phase 1 DOT and Norwalk will complete an accounting of the remaining funds and "agree upon the scope of the remaining Referenced Improvements within 1 year of the completion of Phase 1, taking into consideration the balance of funds available under the Cap, to be applied toward the second phase ("Phase 2"). The scope of said remaining Referenced Improvements may include the Go Fish Exhibit, Meerkat Exhibit or some modified version thereof."
- 2) The First Amendment does not address the status of any excess funds if the project comes in under budget.
- 3) In the event the \$40 million cap is reached, there is nothing preventing DOT from seeking to amend the Administrative Settlement a second time.

10. What will be the source of these funds? What approvals are required to secure these funds?

- DOT Response: State funds; already budgeted.

Staff Response:

➤ OK

11. Per DOT memo, the bids came in at \$51 Million. Who will pay for the shortfall (\$11 Million), assuming that the bids in the future come in at \$51 Million? Are there any component/s not being built or reduced in scope or expanded in scope to bring down the project cost to \$40 Million?

- DOT Response: See attached ASA Amendment, Section 3.

Staff Response:

➤ See response to #9 above.

12. Has the City council approved this cap? Is there an agreement between DOT and the City for this increased cap? If not, is there a draft agreement and when is it expected to be fully executed? If yes, pl provide a copy of the executed agreement.

- DOT Response: Yes; See Agreements as fully executed.

Staff Response:

- 1). Norwalk Mayor Rilling signed on June 20, 2019 and DOT Terry Obey signed on July 15, 2019.
- 2). Please clarify whether the First Amendment to Administrative Settlement Agreement was presented to the Norwalk Common Council and whether a Resolution by the Common Council approving of the First Amendment is required.

- DOT Response: No response

13. Provide the schedule of release of funds (payment schedule for \$40 Million) to the City.

- DOT Response: See ASA Amendment, Section 12

Staff Response:

% Complete	Interim Payment	Cumulative
Upon execution of the original agreement	\$ 10,365,718.00	\$10,365,718.00
Upon execution of GMP Contract with CM	\$ 10,000,000.00	\$20,365,718.00
Upon completion of 35% of construction	\$ 10,000,000.00	\$30,365,718.00
Upon completion of 70% of construction	\$ 9,000,000.00	\$39,365,718.00
Upon completion of 100% of construction	\$ 634,282.00	\$40,000,000.00

OK

14. Has DOT determined if there was mismanagement of this project? If yes, was that entity held responsible?

- DOT Response: Yes; they are no longer involved with the Project

Staff Response:

- 1). Please clarify whether DOT believes there is a basis to pursue professional liability claims against the entity.

- DOT Response: No response

15. Please clarify if DOT believes December 31, 2020 provides sufficient time to design-bid-build a new IMAX Theater. How was this date derived? What are the consequences if this date is pushed back?

- DOT Response: Yes; The deadlines are in accordance with the current Walk Project schedule

Staff Response:

- a). Please clarify when this new schedule was finalized.
- b). Section 7 of the Iwerks agreement requires TMA to pay increased Licensing and Maintenance Charges if the 4-D attraction is not open to the public by June 30, 2019. Please clarify what is the impact to the Licensing and Maintenance Charges due to the new schedule.
- c). In terms of the Functional Replacement, and the replacement of the 4-D Theatre in Phase I of the amended Administrative Settlement Agreement, please clarify how much, if any, of the \$5,650,000 contract with Iwerks is reimbursable to TMA under the amended agreement.

- DOT Response:

- a). No response.
- b). None, the contract was amended to reflect a new schedule. **OK**
- c). FR covers the costs of the physical items of the theater and the installation only. All costs associated with maintenance and licensing fees are paid by the user which is TMA. The equipment and installation charges total \$1,600,000.00. **OK**

16. Are there any reasons that DOT may come back in the future with a revised settlement agreement with higher cost?

- DOT Response: *No; not to our knowledge.*

Staff Response:

In the event the \$40 million cap is reached, there is nothing preventing DOT from seeking to amend the Administrative Settlement a second time.

17. This settlement agreement must include a section as it relates to DOT's oversight of this project including expenditure of these funds based on what DOT has learned since inception of this project.

- DOT Response: *See attached ASA, Section G*

Staff Response:

1) Section G of the original Administrative Settlement Agreement (ASA) states DOT or its Designee will maintain an oversight role during design and construction of the 'Referenced Improvements.'

- a). DOT had an oversight role in the original ASA and is now before the Board seeking approval of an additional \$5,447,605, as well as incurring all costs and expenses with the demolition of the 'Referenced Improvements' estimated in 2017 to cost \$826,700, excluding the cost of the demolition of the fire escape.
- b). Please clarify how the forthcoming DOT oversight role will prevent cost and schedule overruns and why DOT is now undertaking the obligation of demolition and its expense?

- DOT Response:

- a). See response #1 with respect to question 1a)
- b). ???

Staff Response:

- a) DOT returns to its explanation that demolition costs were always a DOT expense.
- b) DOT did not respond.

18. What is the status of State's larger project? Is it on schedule? Will it impact this project/settlement?

- DOT Response: *The project is on schedule.*

Staff Response:

➤ **OK**

19. Per Section 7 of the 1st Amendment, please provide the procurement process undertaken by the Tenant with respect to said Retained Professionals.

- DOT Response:

20. Section 9 of the 1st Amendment, why “design errors or omissions” are included in this section? Why DOT will allow to use “Owner’s contingency” for “design errors or omissions”?

- DOT Response:

21. Section 15, please provide Schedule B

- DOT Response:

Schedule B was attached to the August attachments “TMA Rev 2 Reprogram 4-2-19”

Staff Response: No record of this attachment in Sharepoint or email.

RECOMMENDATION: Board approval is recommended for the following reasons:

- The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
- The functional replacement effort is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and C.G.S. 13a-73, 13b-23 and 13b-36.
- The presentation provided by DOT stated improvements subject to the functional replacement are now prioritized into two phases and acknowledged that a significant portion of the requested funding will be allocated to Phase 1. Any funding remaining after completion of Phase 1 will be allocated to Phase 2 improvements, capped at a total functional replacement cost of \$40,000,000.
- The Board understands that the subject Administrative Settlement Agreement has been approved in the amount of \$40,000,000. Any increase in this amount must be approved by the Board.
- DOT will provide periodic project progress updates to the Board including the use of contingency funds.

At its June 25, 2018 meeting, the Board approved PRB #18-078, an Administrative Settlement consisting of the following:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

Total damages = \$12,530,718

In June 2018, DOT informed the Board that upon completion of the design, retention of the Construction Manager-At Risk, and the bid process complete, DOT will submit a second Administrative Settlement for Board approval reflecting the DOT's final commitment in the Functional Replacement Project.

A note on the SPRB Action Memo stated: "It should be noted that due to unusual circumstances of "functional replacement" provision, the Board is agreeing to approve a portion of the larger settlement without having written contracts in place."

The current proposal before the Board is an Administrative Settlement present by DOT in the amount of \$29,634,282, calculated as follows:

Functional Replacement Estimate (capped)	\$40,000,000
Less:	
PRB #18-078 Administrative Settlement	-\$10,365,718
PRB #19-145 - Current Administrative Settlement	\$29,634,282

Staff inquired with DOT regarding the following:

- Please provide project description that outlines the components that were funded by DOT under the "Initial Statement" and to be funded under "Final Statement". Basically, outlining

20. Section 9 of the 1st Amendment, why “design errors or omissions” are included in this section? Why DOT will allow to use “Owner’s contingency” for “design errors or omissions”?

- DOT Response:

21. Section 15, please provide Schedule B

- DOT Response:

Schedule B was attached to the August attachments “TMA Rev 2 Reprogram 4-2-19”

Staff Response: No record of this attachment in Sharepoint or email.

RECOMMENDATION: It is recommended that the board _____ this proposal, pending DOT response to the previous inquiries.



At its June 25, 2018 meeting, the Board approved PRB #18-078, an Administrative Settlement consisting of the following:

- Approval of monetary damages due to the Easement = \$2,165,000; and
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- Please provide project description that outlines the components that were funded by DOT under the “Initial Statement” and to be funded under “Final Statement”. Basically, outlining

any and all changes between two statements including associated increase in the costs of these components.

- Provide a copy of the “complete assessment” done by DOT as referenced in the DOT’s Final Statement.
- Under the existing approved initial statement dated June 25, 2018, DOT was going to conduct auditing and provide project control oversight of the TMA’s design and construction effort. Also, DOT was expected to conduct reviews of the design at 60 and 100 percent of design, as well as construction schedules and schedule of values, etc. In the final statement, DOT states the following:
 - “TMA and their Owner Rep went to bid with incomplete design documents” – did DOT review and approve this arrangement?
 - “TMA’s owner representative never provided updated cost estimates during the design phase” - did DOT review the 60 and 100% design? Did DOT ask for updated cost estimates? Also, as part of the agreement with the City, the representative was supposed to give monthly reports, detailing, at a minimum, project progress, issues and financial reports to DOT and the City. Did DOT receive these reports? Did DOT review these reports to catch the higher project cost estimates?
- Will the City retain existing consultants (Architect, Owner Representative, Construction Manager, etc.) and enter into a contract or hire new consultants via an open process?
- If the City will retain existing consultants, how will the contractual fees be calculated (meaning will credit be given for the work already completed?).
- Provide a schedule to hire these consultants
- Who from the City is going to manage this \$47 million complex project? What are their qualifications? What will be the City’s role and responsibilities?
- Provide a breakdown of \$4,933,187 of the initial payment that is spent including which component of the project these funds were spent on. What percent of the design/bid docs can be re-used by the City?
- Is this cap of \$40 Million based on functional replacement of the improvements? Provide a breakdown of these improvements including project schedule and estimates. What happens if the project exceed this cap? What happens if the actual construction cost be below \$40 Million?
- What will be the source of these funds? What approvals are required to secure these funds?
- Per DOT memo, the bids came in at \$51 Million. Who will pay for the shortfall (\$11 Million), assuming that the bids in the future come in at \$51 Million? Are there any component/s not being built or reduced in scope or expanded in scope to bring down the project cost to \$40 Million?
- Has the City council approved this cap? Is there an agreement between DOT and the City for this increased cap? If not, is there a draft agreement and when is it expected to be fully executed? If yes, pl provide a copy of the executed agreement.
- Provide the schedule of release of funds (payment schedule for \$40 Million) to the City.

- Has DOT determined if there was mismanagement of this project? If yes, was that entity held responsible?
- Please clarify if DOT believes December 31, 2020 provides sufficient time to design-bid-build a new IMAX Theater. How was this date derived? What are the consequences if this date is pushed back?
- Are there any reasons that DOT may come back in the future with a revised settlement agreement with higher cost?
- This settlement agreement must include a section as it relates to DOT's oversight of this project including expenditure of these funds based on what DOT has learned since inception of this project.
- What is the status of State's larger project? Is it on schedule? Will it impact this project/settlement?

RECOMMENDATION: Staff recommend suspension of this file to allow DOT to clarify the aforementioned issues.

June 21, 2018 Update

This file PRB # 18-078 continued to be suspended in order to get additional information and clarification of the request from DOT.

At the June 21, 2018 SPRB meeting DOT Transportation Principal Property Agent, James Mason and Terry Obey, Director Rights of Way presented a brief summary of the Functional Replacement project with the City of Norwalk related to the Walk Bridge Replacement. Mason explained that this is a unique project for DOT as the Federal Government has approved the Functional Replacement of portions of the Maritime Aquarium, which is owned by the city of Norwalk. This Functional Replacement project, in lieu of DOT's typical condemnation proceeding, which would have paid the City \$22,520,000 for damages, is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and also incorporated in Connecticut statutes 13a-73, 13b-23 and 13b-36. DOT acknowledged given the complexities of the Functional Replacement, it is very likely that DOT will not undertake this type of project going forward.

DOT's original submission to SPRB sought approval of an Administrative Settlement, seeking \$34,552,395 plus an additional \$2,165,000 for actual damages due to easements. This was unacceptable to the Board without executed contracts in place for the Functional Replacement of the Maritime Aquarium, owned by the City of Norwalk. Board Staff sought a revised settlement providing the Board an opportunity to review contracts in place for the initial design with a subsequent submittal to the Board when actual construction costs were known.

The revised Administrative Settlement, before the Board for approval, is seeking payment of \$2,165,000 for actual damages due to easements plus an initial payment of \$10,365,718. This initial \$10,365,718 payment will facilitate the functional replacement effort through design, acceptance of a construction

contract via lowest bid and provide initial funding to the City for construction payments in the early stages of construction as materials may have lengthy lead-times for delivery.

Upon completion of the design, retention of the Construction Manager-At Risk, and the bid process complete, DOT will submit a second Administrative Settlement for Board approval reflecting the DOT's final commitment in the Functional Replacement Project.

The Administrative Settlement Statement presented to the Board for approval, as revised, is requesting:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

Total damages = \$12,530,718

RECOMMENDATION: Board approval is recommended for the following reasons:

1. The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
2. The functional replacement effort is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and C.G.S. 13a-73, 13b-23 and 13b-36.
3. All future disbursements by DOT with respect to the functional replacement effort, including the awarding of a construction contract via lowest bid must seek prior SPRB approval.

It should be noted that due to unusual circumstances of "functional replacement" provision, the Board is agreeing to approve the larger settlement without having written contracts in place. It is also recommended that DOT present negotiation terms of this type of projects to the Board early on before signing any agreements with third parties.

At the May 17, 2018 SPRB meeting this file was suspended for the following reasons:

- Submission of the completed proposal with signatures from the City; and
- Conduct site inspection.

The City of Norwalk has since signed the Administrative Settlement on May 22, 2018, and the State DOT will sign upon approval of this Settlement by the State Properties Review Board. And, a site visit was conducted by the Board on May 22, 2018.

In the interim SPRB Staff have requested DOT revise the original Settlement Statement to accurately reflect what the DOT is seeking the Board to approve.

The Administrative Settlement Statement presented to the Board for approval, as revised, is requesting:

- Approval of monetary damages due to the Easement = \$2,165,000; and
- Approval of an initial payment of \$10,365,718 to facilitate the functional replacement effort through design, acceptance of a construction contract via lowest bid and initial construction.

Total damages = \$12,530,718

RECOMMENDATION: Board approval is recommended for the following reasons:

- The acquisition complies with Section 13a-73(c) of the CGS which governs the acquisition of property by the commissioner of transportation required for highway purposes.
- The functional replacement effort is permitted by the Federal Transit Administration pursuant to 23 C.F.R §710.509 and C.G.S. 13a-73, 13b-23 and 13b-36.
- All future disbursements by DOT with respect to the functional replacement effort, including the awarding of a construction contract via lowest bid must seek prior SPRB approval.

4. REAL ESTATE – NEW BUSINESS

Mr. Valengavich moved and Mr. Halpert seconded a motion to go out of Open Session and into Executive Session at 9:46. The motion passed unanimously.

EXECUTIVE SESSION

PRB #: 19-218
Transaction/Contract Type: RE/ New Lease
Origin/Client: DAS/DDS

Statutory Disclosure Exemptions: 4b-23(e), 1-200(6)(D) & 1-210(b)(24)

PRB #: 19-219
Transaction/Contract Type: RE/ New Lease
Origin/Client: DAS/DDS

Statutory Disclosure Exemptions: 4b-23(e), 1-200(6)(D) & 1-210(b)(24)

Mr. Valengavich moved and Mr. Berger seconded a motion to go out of Executive Session and into Open Session at 9:50. The motion passed unanimously.

5. OTHER BUSINESS

6. VOTES ON PRB FILE:

PRB FILE #19-145 – Mr. Valengavich moved and Mr. Berger seconded the motion to approve PRB File #19-145. The motion passed with Chairman Greenberg, Secretary Valengavich, Mr. Halpert, Mr. Berger and Mr. Cianci voting in favor and Vice Chairman Josephy voting against.

PRB FILE #19-218 – Mr. Berger moved and Mr. Valengavich seconded a motion to approve PRB FILE #19-218. The motion passed unanimously.

PRB FILE #19-219 – Mr. Halpert moved and Mr. Berger seconded a motion to approve PRB FILE #19-219. The motion passed unanimously.

7. NEXT MEETING –Thursday, November 14, 2019

The meeting adjourned.

APPROVED: John Valengavich Date: 11/21/19
John Valengavich, Secretary