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Construction NEWS

Vol. 36 No. 11 NOVEMBER 2020 $1.50

President-Elect Biden Outlines New Infrastructure Spending

BY GEORGE DRAPEAU III

WASHINGTON—Infrastructure has again moved to center stage as a major priority for both the White House and Congress. However, if you pay any attention to disclaimers—about past performance being no guarantee of future results—anything getting passed in 2021 is anyone's guess.

Both President-elect Joe Biden and House Speaker Nancy Pelosi (D–CA) have come out swinging after the Nov. 3 election to support bold, new spending initiatives. In the spirit of bipartisanship, Senate Republicans have pointed to infrastructure as a place where policymakers in both parties can unite.

If there is one thing some Democrats and Republicans appear to agree on is that Americans are getting tired of waiting for another federal COVID-relief stimulus package, and infrastructure may be the next best salve. The bipartisan Problem Solvers Caucus—led on the right by New York Upstate Republican Rep. Tom Reed—is calling for Congress to finally pass another stimulus measure, State of Politics reports. In mid-November, Rep. Pelosi and Sen. Schumer called on Senate Majority Leader Mitch McConnell to "join us at the negotiating table this week so that we can work towards a bipartisan, bicameral COVID-19 relief agreement to crush the virus and save American lives."

Looming ahead is the expiration of the multi-year surface transportation programs this coming September 2021. A successor to the "FAST Act" will be necessary to provide core funding for all modes of surface transportation: highways, bridges, mass transit, passenger rail, and ports.

"In terms of priorities for New York, we continue to emphasize the urgency of federal support for funding to state and local governments in any COVID relief

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MTA Facing 'Fiscal Tsunami'

To address the billions of dollars in revenue shortfalls because of the pandemic, MTA is warning it may have to cut Metro North service by 50% if no further federal funding is forthcoming. The plan would also involve the elimination of West of Hudson service on the Port Jervis line. The Port Authority has also warned of significant funding budget cuts due to the coronavirus (see stories on pages 6 and 24).

Thruway Tolling Goes Cashless Systemwide As Part of $355-Million High-Tech Project

ALBANY—The mission of the New York State Thruway—to increase transportation mobility efficiency—took a giant leap forward on Sat., Nov. 14, when the entire tolling system on the 570-mile New York State Thruway went cashless. The Authority called it a major advancement in the long march to reduce travel time, accidents and environmentally harmful emissions.

The historic conversion that ended a 66-year tradition took place simultaneously at 58 tolling locations shortly after 1:00 am throughout the system that runs from the New York City line with the City of Yonkers and extends to the Pennsylvania state line at Ripley by way of major cities including Albany, Syracuse and Buffalo.

The ticketed system is the final section of the Thruway to be converted to cashless tolling, meeting a goal Gov. Andrew M. Cuomo set in his 2018 State-of-the-State address. The first section of the Thruway, between Utica and Rochester, opened in mid 1954.

The official switch took place in the overnight hours to limit impact on traffic. Now that cashless tolling has gone live, cash will no longer be accepted as a form of payment at toll booths and printed toll tickets will not be handed out.

The $355-million design-build project was awarded in June 2019 to the design-build team Cashless Tolling Constructors, LLC, which submitted the Best Value proposal. The Cashless Tolling Constructors LLC group is made up of: A. Servidone, Inc./B. Anthony Construction Group JV (based in Castleton, NY and in New Jersey); Rifenburg Construction Corp. of Troy, NY and Economy Paving Co., Inc. of Cortland, NY.

The winning design firms include: Stantec Consulting Services, Inc. and KC Engineering and Land Surveying PC (New York-based). The construction inspection firm is M & J Engineering, PC of New Hyde Park, NY.

"The completion of this exciting new project will help Thruway travelers save time, as well as reduce traffic, cut greenhouse gas emissions and improve air quality all along the system," Gov. Cuomo said. "Getting this cashless tolling system

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Final Exit for Toll Booths

Crews setting open road tolling gantries at Exit 21B of the New York State Thruway. The all-cashless system, with gantries that arch over the highway to scan E-ZPass transponders and photograph license plates of cars without transponders, are assembled at the Harriman Exit in Orange County in mid-November. More photos, page 13.

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NRC Approves Indian Point License Transfer to Holtec

$2B Decommissioning Plan Likely Completed by 2033

Indian Point Energy Center, Buchanan, NY

By JOHN JORDAN

BUCHANAN, NY—The full Nuclear Regulatory Commission on Mon., Nov. 23, approved the license transfer to Holtec International, which plans to demolish the plant by the end of 2033 in a decommissioning program projected to cost in excess of $2 billion.

The staff of the Nuclear Regulatory Commission earlier in November approved the license transfer of the Indian Point Energy Center here from Entergy Corp. to Camden, NJ-based decommissioning firm Holtec International.

Multiple published reports also note that the NRC staff also approved Holtec's request for an exemption to use a portion of $2.1 billion set aside for the plant's decommissioning to manage spent nuclear fuel housed in dozens of cement-and-steel canisters. Those canisters will remain on the 240-acre property after the shutdown of Indian Point 3 scheduled for April 2021, according to a report in the *Journal News*. Indian Point 2 was shut down by Entergy in April 2020.

Holtec spokesman Joe Delmar told the *Journal News* that the company is awaiting the formal decision approving the license transfer from the commission.

"We remain committed to our ongoing efforts to engage officials at the state and local levels as well as other stakeholders, so we can ensure the safe and prompt decommissioning of Indian Point if Holtec becomes the owner," Mr. Delmar said.

The apparent NRC license transfer approval has come despite some objections by New York State lawmakers and environmental groups.

New York State Assemblywoman Sandra Galef prior to the NRC announcement, requested the NRC hold a public meeting before a final decision is rendered in the license transfer proceedings for Indian Point Energy Center.

Assemblywoman Galef in a letter to the NRC, said, "A public meeting to hear constituent concerns about Holtec International and the decommissioning process is necessary because Indian Point is in my constituency's backyard. We must hear the views of the community members who live here and use these views to impact the decommissioning process, as these community members are the ones who will face the immediate effects of this nuclear closure and decommissioning project."

Riverkeeper, in a statement, said it was "troubled" by the NRC staff's recommendation. "Since the NRC has once again neglected its responsibility to properly scrutinize Holtec's qualifications, Riverkeeper calls upon New York State to step in to fill this gap and ensure the decommissioning of Indian Point is conducted safely, prudently, and in the best interests of New Yorkers."

Last November, when Entergy and Holtec first applied to the NRC for the Indian Point license transfer, the companies requested it receive approval for their plan by November 2020.

Following regulatory approvals and transaction close, Holtec would assume ownership of the site, the Nuclear Decommissioning Trust Funds, real property and used nuclear fuel. Decommissioning activities would then begin using an early engagement strategy.

"This key regulatory filing is an important first step to beginning a new future for Indian Point and the local community," said Holtec's President and Chief Executive Officer Dr. Kris Singh in November 2019. "By beginning decommissioning earlier, Holtec will be able to maintain and create new jobs and work towards releasing the plant site earlier so it can be repurposed, generating replacement tax revenue on an earlier schedule."

"Holtec's plan to accelerate the decommissioning schedule, which provides the potential for site redevelopment decades sooner than if Entergy continued to own the facility, is good news for the local community," added Chris Bakken, Entergy Executive Vice President Nuclear Operations and Chief Nuclear Officer. "As part of the agreement between the companies, Holtec will begin the decommissioning process promptly upon taking ownership and will provide job opportunities for more than 300 of our current employees who want to remain in the region and continue to work at the site."

Holtec estimates decommissioning would be completed in the 2030s. Holtec plans to submit additional required decommissioning-related filings before the end of the year with the NRC, including its Post-Shutdown Decommissioning Activities Report (PSDAR) and Decommissioning Cost Estimate (DCE), which provide a detailed schedule and cost estimate.

Study: New York State Highway Ranking Improves; Places 44th in Performance, Cost-Effectiveness

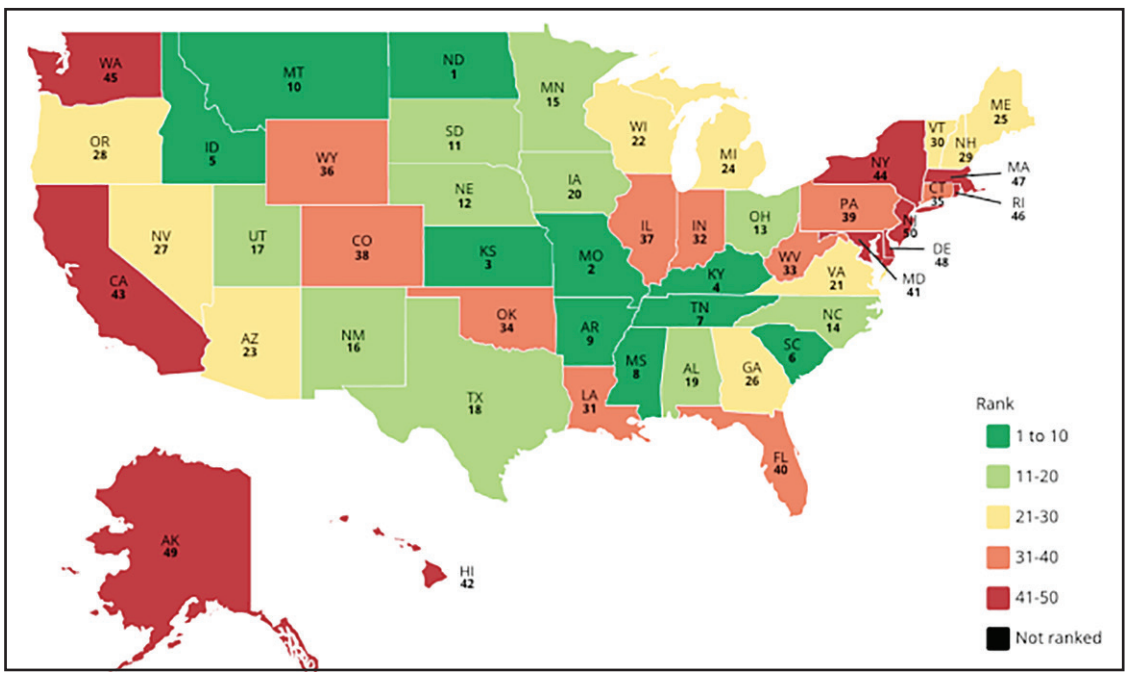
LOS ANGELES—New York's highway system ranks 44th in the nation in overall cost-effectiveness and condition, according to the 25th Annual Highway Report by Reason Foundation.

This year's ranking is a one-spot improvement from the previous report, where New York ranked 45th overall. New Jersey ranked last (50th) overall in highway performance and cost-effectiveness.

In safety and performance categories, New York ranks fifth in overall fatality rate, 39th in structurally deficient bridges, 29th in traffic congestion, 42nd in urban Interstate pavement condition, and 40th in rural Interstate pavement condition.

On spending, New York ranks 44th in total spending per mile and 39th in capital and bridge costs per mile.

"To move up in the rankings, New York needs to improve pavement conditions on urban and rural roads, reduce structurally deficient bridges, and reduce rural fatality rates. Because of the state's high costs and high spending per mile figures, which are lower than New Jersey's, but high compared to many other states, New York needs to improve its highway condition and performance to improve in the overall cost-effectiveness rankings," said Baruch Feigenbaum, lead author of the Annual Highway Report and senior managing director of transportation policy at Reason Foundation.



A color coded map detailing the Reason Foundation's state highway rankings. New York State ranked 44th in the nation, while New Jersey had the dubious distinction of ranking last.

SOURCE: REASON FOUNDATION

He added, "If it doesn't improve its conditions and performance in these categories—like pavement conditions—then cutting its costs and reducing spending would be another way for the state to try to improve its place in the overall cost-effectiveness rankings."

New York's best rankings are in overall fatality rate (5th) and its urban fatality rate (5th).

New York's worst rankings are due to its high spending per mile, including maintenance disbursements per mile (48th) and urban arterial pavement condition (46th).

New York's state-controlled highway mileage makes it the 16th largest highway system in the country.

In the overall rankings of state highway performance and cost-effectiveness, Reason Foundation's 25th Annual Highway Report found North Dakota, Missouri, and Kansas have the nation's best state-owned road systems. In terms of return on investment, New Jersey, Alaska, Delaware and Massachusetts have the worst-performing state highway sys-

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New Effort to Repeal Scaffold Law Launched

ALBANY—Congressman Chris Jacobs (NY-27) sent a letter to Gov. Andrew Cuomo urging him to include Scaffold Law reform in his next budget proposal. Specifically, Rep. Jacobs (D-Buffalo) called for implementing a comparative liability standard for gravity-related injuries.

Currently, New York is the only state in the nation with a liability regime like the Scaffold Law (Sec. 220 of the NYS Labor Law), which imposes an absolute liability standard for gravity-related injuries on construction sites on property owners and prime contractors. This means that contractors are 100% liable for workplace injuries eve if they are found to be completely absent of negligence.

Earlier this fall, Rep. Jacobs also introduced the Infrastructure Expansion Act, legislation that would exempt federally funded projects from the Scaffold Law and instead require a comparative liability standard for gravity-related injuries. Because the Scaffold Law is a state law, a bill passed by the New York State Legislature and signed into law by Gov. Cuomo would be the most direct way to repeal or reform it.

"Reforming the burdensome Scaffold Law is long-overdue in New York State. As we are staring down a massive budget deficit and a stalled economy, reforming this archaic law is an excellent first step," Rep. Jacobs said.

The federal bill seeks to supersede New York State Scaffold

U.S. Rep. Chris Jacobs (NY-27)

Law. Under state law, property owners are liable when a construction employee is injured while working in an elevated setting such as on a ladder or scaffold. The law was passed in 1885, long before federal workplace safety standards became common in the 1970s.

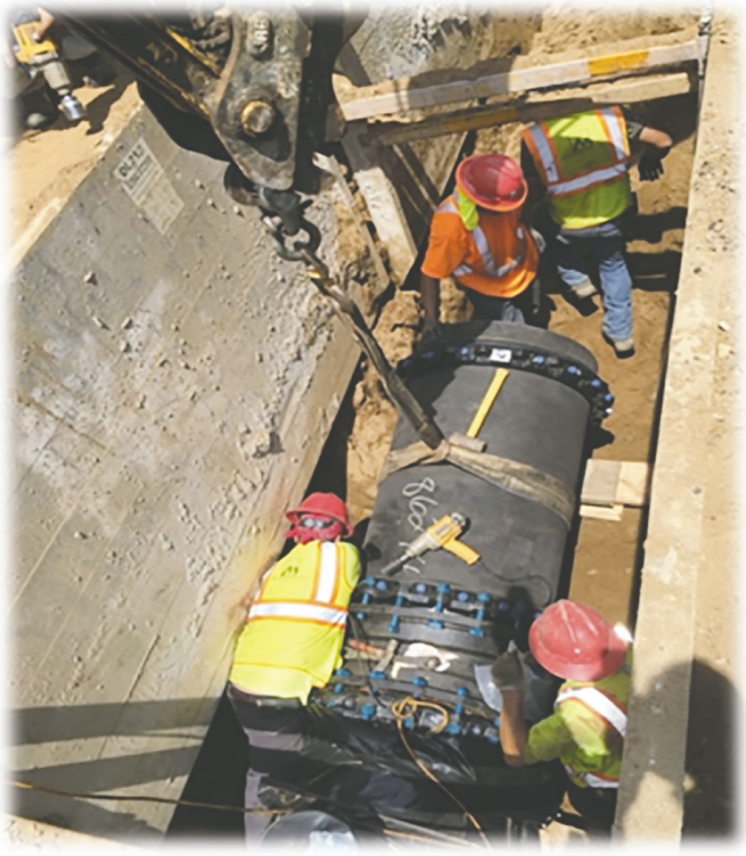
"The Scaffold Law is an outdated 19th century law that burdens our taxpayers and hurts our ability to provide critical infrastructure for New Yorkers across the state," Rep. Jacobs said. For projects that use federal money, the bill would require a comparative liability standard to be used, which he said would reduce the cost of insurance policies for public and private construction projects. The bill also calls for accidents to be investigated to determine liability in the cause of the injury.

The Scaffold Law has resulted in a projected 8%-10% increase to all construction costs—a cost that is handed down to taxpayers and deters investment in New York State, according to the Scaffold Law Reform Coalition (SLRC), of which the region's Construction Industry Council and Building Contractors Association are members. For example, complying with the Scaffold Law is expected to add hundreds of millions of dollars to major infrastructure renewal programs in New York State that are needed, such as the Gateway transportation project. In terms of actual hard costs to New Yorkers, studies have shown the Scaffold Law costs taxpayers $750 million annually, and it costs the private sector an estimated $1.49 billion annually. New York's general liability insurance cots, the highest in the nation for construction, are directly correlated to the Scaffold Law, and the number of insurance carriers that write general liability policies in New York State is declining.

"New York's regulations have held back our state for far too long," Rep. Jacobs added. "Instead of wasting our tax dollars on excessive and unnecessary insurance costs, our money can be better used to fund critical infrastructure projects and good-paying jobs."

Joseph Benedict, executive director of the Buffalo Construction Exchange, has advocated for the change over the years. "Just because there's an injury doesn't necessarily mean that (the worksite) wasn't safe," he said in 2019 in a *Buffalo Law Journal* article that weighed both sides of the debate.

Laborers' International Union of North America, Local 60



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NEW YORK CITY UPDATE

Port Authority Cuts Capital Program By $2.2B from Pre-COVID Budget

NEW YORK—The Port Authority of New York and New Jersey released on Nov. 19 the agency's proposed $7.3-billion 2021 Operating, Capital and Debt Service Budget, a 15% reduction from pre-COVID plans and well below the amount necessary to deliver the projects in its 10-year Capital Plan.

In particular, the $2.4 billion provisionally allocated for capital construction spending is 33%, or $1.2 billion, below the level contemplated in the agency's Capital Plan for the year 2021. The proposed 2021 Budget is comprised of $3.3 billion for Operating expenses, $2.4 billion for Capital expenditures, and $1.6 billion for Debt Service and other expenses.

As a result of the projected $3 billion in lost revenues over 24 months due to COVID-19, the 2021 proposed budget is $1.3 billion, or 15% lower, when compared to the 2020 Budget adopted by the Board of Commissioners in December of 2019. The agency also reported that it slowed capital spending in 2020 by $1 billion to align with reduced capital capacity, which has been significantly impacted by the historically low volumes across Port Authority facilities during the pandemic.

When combined with the projected capital underspending in 2020 of $1 billion that is also a result of COVID-19, the two-year reduction in capital spending is $2.2 billion. Additional capital spending reductions in 2022 will follow if federal aid is not forthcoming.

"I want to thank agency staff for crafting a recommended spending plan that reflects the realities of operating the agency in the midst of a global pandemic and supports our most important strategic initiatives," said Port Authority Chairman Kevin O'Toole. "The proposed 2021 budget shows the Port Authority, as it has for almost a century, is adapting to face new challenges while continuing to provide safe, secure and efficient movement of people and goods throughout the region."

"Overall, the proposed 2021 Budget is an austerity budget," said Port Authority Executive Director Rick Cotton. "In the absence of federal aid, our $3 billion revenue loss has forced us to slash our capital spending allocation for 2021 by 33%. That is simply not enough to deliver the rebuilding projects contemplated in our Capital Plan. On the operating side, we have aggressively but prudently cut costs, while we maintain our commitment to high standards of cleanliness and customer service to ensure the safety and security of our employees and customers, all while maintaining high levels of service at all of our facilities."

2021 Total Projected Revenues

The agency's ability to make capital investments as originally envisioned in the $37 billion 2017-2026 Capital Plan is severely reduced as a result of COVID-19 unless substantial federal assistance is provided to the Port Authority. The agency estimates a revenue loss of approximately $3 billion for the 24-month period beginning in March 2020 compared to budgeted amounts—this is in-line with the revenue losses of $1.4 billion the Port Authority has incurred through October 2020, as well as the assumptions in the proposed 2021 Budget. The Port Authority projects a $980-million revenue loss in 2021 with lower Gross Operating Revenues as a result of lower activity levels continuing through 2021 and significantly reduced Passenger Facility Charge collections as a result of lower aviation activity. The Port Authority continues to advocate for federal support to offset its unprecedented loss of revenue; however, the proposed 2021 Budget does not assume any new federal COVID-19 stimulus aid to the Port Authority.

2021 Operating Expense Budget

The proposed 2021 Operating Expense Budget of $3.3 billion responds to the changed environment, reducing operating expenses to 2018 levels to balance operational needs with significantly decreased revenues and activity. This budget carries forward approximately $190 million of the cost reductions instituted in 2020 as well as other reductions necessary to offset unavoidable contractual increases elsewhere in the budget—while also providing the necessary funds to respond to the COVID-19 pandemic, maintain current service levels, and adjust to projected increases in activity across facilities in 2021.

The Port Authority's 2021 cost-saving initiatives include significantly reducing contract, consultant, and materials and supplies spending; reducing operating overtime hours 15% (253,000 hours) below the 2020 Budget; and reducing 626 positions, a 7% headcount reduction, achieved primarily through the elimination of vacancies created by a 2020 hiring freeze that will carry forward to 2021, targeted voluntary severance programs completed in the last six months of 2020, expected retirements through the first quarter of 2021, completion of time-limited assignments, and efficiencies that result in the elimination of certain positions.

The proposed 2021 Operating Expense Budget preserves funding for the agency's operational, safety and security priorities, including several enhanced cleaning measures and technologies across facilities:

• $911 million to support overall agency operations, which includes customer service, facility operations and utility expenses, represents a decrease of $46 million below the 2020 Budget

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President-Elect Biden Outlines New Infrastructure Spending

Continued from page 1

package from Washington," explained Steve Stallmer, an advisor to the New York Roadway & Infrastructure Coalition (NYRIC). "Our other priority is to prepare our newly elected delegation members for a new federal transportation bill and potentially a broad infrastructure package. President-Elect Biden is expected to utilize infrastructure investment as an economic stimulus during the pandemic."

"Efforts to craft a major bill repeatedly fell apart during the Trump Administration, and disagreements on the scope of the legislation and how to pay for it will no doubt persist under a Biden administration," Mr. Stallmer added. "But a fresh push from both the Congress and the next White House could break the logjam, even if control of the House and Senate continues to be split between the two parties."

"It would seem to be something that we can work together on in a productive way," Sen. John Barrasso (R–Wy.) told *The Wall Street Journal*, though he threw cold water on the Democrats' most profligate spending plans. Sen. Barrasso, who chairs the Senate's Environmental and Public Works Committee, proposed a $287-billion surface transportation bill, with most of that money going toward roads and bridges. That's about half of what Democrats are looking to spend.

How much is spent and how it is spent will no doubt be a subject of debate in the coming months. The American Society of Civil Engineers' issues a comprehensive report every four years, the most recent one in 2017, on 16 types of infrastructure in the U.S. including roads, bridges, drink water, dams and rail systems. For surface transportation alone, according to the latest data from the ASCE, it will take at least $1.5 trillion, in 2019 dollars, to close the gap between current spending and what is needed to bring roads, rail and bridges into a state of good repair.

The costs of deficient U.S. road networks, according to the ASCE, could reach more than $4 trillion over the next 20 years, even with the expected efficiency gains from connected and autonomous vehicle technology. From a deteriorating transit tunnel to a high-risk dam and unhealthy drinking water brought on by aging infrastructure, among the projects that exemplify a worst-case scenario if serious infrastructure issues are ignored span highways and bridges, tunnels, rails and airports. Here are at least five to consider:

The Hudson River Tunnel between New York/New Jersey $11.6 Billion

The Hudson River Tunnel, built in 1910, sees 450 Amtrak and New Jersey Transit trains with 200,000 riders pass through its dual tubes each day. The 10-mile tunnel system is an integral part of travel through the Northeast Corridor, which extends from Washington, D.C., to Boston. The project, dubbed "Gateway," is to be overseen by officials from New York and New Jersey who wrote in an environmental impact study submitted to the federal Department of Transportation that the new tunnels must be constructed before the old ones can be repaired.

In 2012 salt water the result of Superstorm Sandy flooded the aging tunnels and accelerated deterioration. Reports that the corrosive chlorides that the salt water left behind continue to inflict damage on the tunnel's concrete liner and bench walls, home to electrical and signaling systems that are critical to train operations. Only because of ongoing emergency maintenance has the Hudson River Tunnel been able to remain operable.

Trains are moving through it today with Amtrak stating the tunnel is safe for passengers. The Trump administration refused to make good on the Obama administration's commitment to pay for half of the project's $11.6 billion price tag, delaying progress.

New York Penn Station $1.6 Billion

Prior to the pandemic and surge in COVID cases, the station saw 650,000 people a day—a mass of people that is nearly the entire population of the City of Boston. Penn Station has deteriorated into an urban nightmare, with its cramped, inefficient and maddening transportation maze for commuters to endure. The USA Today Network New Jersey described condition at Penn Station as cramped and low-ceilinged corridors, bottlenecks of stairways onto holding-pen-like platforms and overcrowded trains.

Gov. Andrew Cuomo recently stated he wants to ramp up efforts to create an eventual Penn campus, with a Penn South Station with new tracks below 31st Street, a master plan to fix Penn and the addition of the Moynihan Train Hall at the old Farley Post Office site across Eighth Avenue. Moynihan will serve mostly Long Island Railroad and Amtrak riders, according to the plan forwarded by the Empire State Development Corp.

Len Resto, president of the New Jersey Railroad Passenger Association, called for a better plan than the one presented by the ESDC, which is in charge of the restoration project. The alternate options suggested by some of the region's transit experts now see "a silver lining in the coronavirus cloud, a window of opportunity to finally fix Penn Station."

As part of the renovations, the neighboring James A. Farley Post Office building will become the Moynihan Train Hall, and will include new platforms, better passenger flow, and a sky-lit atrium. The development group—which includes Related Companies, Vornado Realty LP, and Skanska USA—are reportedly pitching in $630 million, with the rest cobbled together by the once-flush MTA, the Port Authority and Amtrak.

Protect New York City with a Storm Surge Barrier $119 Billion

As New York continues to rebuild from the ravages of Superstorm Sandy in 2012, climate change is predicted to increase the number of hurricanes each year and their severity. In response, the Army Corps of Engineers has developed options for protecting the city from a future hurricane, and a six-mile long storm surge barrier in New York Harbor. Chronicled in mainstream and engineering journals, a network several man-made islands in New York Harbor would house retractable flood gates. The plan has been labeled as "insufficient for dealing with the full effects of climate change or rising tides." Perhaps, but others have pointed out that building the barrier could greatly limit the damage incurred from future major storms, which all agree are inevitable.

Build the LGA AirTrain $2 Billion

If LGA ever gets an AirTrain, you can thank then Vice President Joe Biden for characterizing the Queens-based airport upon a visit to the Queens complex as he "must be in some third-world country." With LGA's desperately needed renovations finally making travel better for airport passengers, the next chapter would be improving access to and from the terminals. The proposed AirTrain running from midtown Manhattan to the Queens airport would solve a multitude of congestion and delays issues, putting travelers at security gates in 30 minutes. Plans are for the No. 7 train to stop at Willets Point where air travelers would board the AirTrain to Terminal B.

New Yorkers should stand together and argue that if you propose it, you own it. Let the Biden administration find the funds to make LGA transformation one of his legacy accomplishments as the 46th President of the United States of America.

The Brooklyn Bridge $238 Million (in progress)

The Brooklyn Bridge connecting the New York City boroughs of Manhattan and Brooklyn is just one of more than 46,000 bridges in the U.S. that are structurally deficient, according to the American Road & Transportation Builders Association's annual bridge report released earlier this year. Although 2019's structurally deficient bridge inventory numbered about 900 fewer than in 2018, at the current rate of repair, it would take 50 years and $164 billion to reduce that list to zero.

The Brooklyn Bridge, which has spanned the East River between the boroughs of Brooklyn and Manhattan since 1883, might soon come off that list. The bridge is undergoing a $238-million rehabilitation, led by Navillus Contracting and the MLJ Contracting Corp. The work, part of an ongoing effort by the New York City DOT to maintain the bridge, will include the cleaning and restoration of the bridge's granite towers and arch blocks, rehab of the Brooklyn and Manhattan arch interiors, reinforcement of the Manhattan arches foundations and reconstruction/rehab of brick infill walls and stone features.

The Challenge Ahead: President-elect Biden is a decades-long commuter on Amtrak between his homes in Delaware and Washington, earning him the nickname "Amtrak Joe." As a strong advocate of public transit, he campaigned on the challenges major transit agencies across the country now face, having been decimated as ridership collapsed during the pandemic.

—With CIC industry reports

Key Elements of Biden's Infrastructure Proposal

President-Elect Biden is expected to pursue transportation and infrastructure policies designed to support transportation efficiency and job growth. As part of it, clean energy and mitigating climate change will be part of the plan. He has proposed a $2-trillion infrastructure plan to promote clean energy and modernize current U.S. systems. House and Senate Republicans also support significant infrastructure investments, but there is no bipartisan consensus on how to fund comprehensive legislation.

- **Roads and Bridges:** $50 billion in the first year to repair existing roads, highways, and bridges; expedited permitting; boost long-term surface transportation funding to states that adopt smart climate design and pollution reduction options.
- **Electric Vehicles:** Build a national system with 500,000 charging stations and restore full electric vehicle tax credit; $5 billion over five years at DOE for battery and storage technology.
- **High Speed Rail:** Expand Northeast Corridor to southern states; develop California High Speed Rail; connect coasts through the Midwest and great west; further electrify Amtrak and freight rail lines and reduce diesel fuel emissions.
- **Light Rail, Urban Transit:** Install systems in metro areas of 100,000 or greater by 2030 and invest in pedestrian, cyclist, and micro-mobility vehicles
- **Airports:** Double funding for the FAA Airport Improvement Program.
- **Freight Infrastructure:** $3.5 billion for competitive BUILD grants and INFRA funding; invest in inland waterways, freight corridors, freight rail, transfer facilities, and ports and increase Army Corps of Engineers funding by $2.5 billion for lock modernization.
- **Climate Resiliency Job Training:** Invest and train in coastal restoration and resilient infrastructure design, construction, and evaluation; natural solutions.
- **Electric Grid:** Build a "21st century power grid" to distribute clean energy and expand regional electric markets to promote renewables and demand response.
- **Energy Efficiency:** Restore residential, business efficiency tax credits; funding for low-income weatherization, expansion of Property Assesses Clean Energy (PACE) Program and restore solar investment tax credit; construct net zero carbon federal buildings
- **Drinking Water:** Double funding for clean drinking water and water infrastructure programs and focus on low-income areas, with decreased local match requirement to repair existing systems.
- **Broadband:** $20 billion for rural broadband and support for build out of municipally-owned broadband networks.
- **Public Schools:** $100 billion to address health risks and improve energy efficiency.

Former Macy's in Nanuet Qualifies To Host Film and TV Productions

NANUET, NY—Rockland County Executive Ed Day and Director of Economic Development and Tourism Jeremy Schulman announced recently that RTL Nanuet, owners of the former Macy's store located next to the Shops at Nanuet, has been approved to operate as Rockland's fifth NYS Qualified Film Production Facility under the regulations governed by the Empire State Film Production Tax Credit Program.

A rendering of the new At Home retail location at the former Macy's store at the Shops at Nanuet.

"As a major economic driver in Rockland, film production has been yielding a steady stream of revenue and jobs," said Rockland County Executive Day. "This is yet another example of how the county works collaboratively with private investors by helping to identify adaptive use opportunities which will attract new business and foster economic growth in Rockland County. For every $1 spent on film production, $4.50 is invested in New York State's economy."

"The Rockland County Department of Economic Development and Tourism played a key role in both notifying us of this opportunity and facilitating this process," said David Landes of Royal Properties, Inc. "This qualification allows us to reposition RTL Nanuet—a 118,000-square-foot facility—more broadly and adds film production to the list of potential uses for the site—a list which already includes options for retail, fulfillment, and medical uses."

Rockland's industry advantages include its film buffer zone located within 25 miles of Columbus Circle and its 30% New York State film tax credit. The county has become a much sought-after destination for filming in the metropolitan region. In addition to its scenic Hudson River waterfront, magnificent Palisades and charming villages, Rockland's premium location assets include a former hospital, lab space, and ample parking considered a "gold standard" combination in the industry. Add to that the county's growing list of Qualified Film Production Facilities and its clear why filming is back stronger than ever, county officials stated.

The county's film revenue doubled from 2019 to 2020, generating more than $275,000 with another $150,000 estimated for productions underway on county property including Universal Television's FBI: Most Wanted and NBC's Manifest.

With several film projects already scheduled for 2021, the county expects to triple its revenue by the end of this year. Past productions filmed in the county include USA Network's "The Sinner," Amazon Prime Video's "Hunters," and a Stephen King film slated for release next year. Two more popular series just finished filming at the picturesque HNA Palisades Premier Conference Center.

"Rockland County is actively working on private sound stage development to meet the increased demand for enhanced infrastructure within the creative media and film production sector as part of its Reel Rockland campaign," said Economic Development Director Schulman. "Our office works closely with businesses and investors by helping to identify resources and services that will ultimately generate economic growth and encourage the vanguard of industry to plant a permanent flag in Rockland."

The county recently welcomed Skae Stages, a 235,000-square-foot facility located in Orangeburg as another QPF. Situated on 35 corporate acres, the campus joins the county's other QPF's which include 303 Stages in Blauvelt, and Blue Hill Studios and Pearl River Studios in Pearl River.

"Skae Stages offers a dynamic and unoccupied facility located near the NYS Thruway, Palisades Parkway and Garden State Parkway, which makes the location very easy to get to from the tri-state area," said Christopher J. McGee of Skae Properties, LLC. "An Apple TV+ production is already underway at Skae Stages and we thank the Rockland County Economic Development, Tourism and Film team for their assistance with helping us to become a Qualified Film Production Facility. We look forward to a very successful partnership with Rockland County in the years to come."

In 2019, the Mid-Hudson region was host to 40 film and television projects which represented $1 billion in spending and more than 57,700 hires, according to Empire State Development.

Port Authority Cuts Capital Program By $2.2B from Pre-COVID Budget

Continued from page 6

reflecting activity-based and labor expense reductions across all departments.

• $772 million to provide peace of mind through world-class safety and security, which includes both police and civilian security expenses, reflects a decrease of $19 million below the 2020 Budget. This decrease is driven by decreased police overtime and security guard coverage to align with projected activity levels as well as reduced equipment and supply purchases.

• $743 million for maintenance of property, facilities and equipment reflects a decrease of $27 million below the 2020 Budget, primarily reflecting decreased maintenance projects and routines based on projected activity levels and multiple efficiency initiatives.

• $382 million for Management Services, which includes corporate expenses, staff department labor, line business oversight labor, and technology and communications, reflects a decrease of $47 million below the 2020 Budget, driven by a headcount reduction along with reductions in advertising expenses, consulting efforts, technology and management contracts.

2021 Capital Budget

The proposed 2021 Capital Budget reflects a reduction of 33%, or $1.2 billion, in the planned investment in critical infrastructure across all facilities versus the amount planned in the $37 billion 2017-2026 Capital Plan. The significant decrease is a result of reduced capital capacity caused by the impact of COVID-19 on Net Revenues. This planned decrease comes in addition to the $1 billion underspend in 2020 compared to the budgeted capital construction spend for 2020 of $3.6 billion – an underspend also driven by the 2020 revenue collapse caused by the virus crisis. Decisions about how to allocate the $2.4-billion 2021 capital allocation are part of the agency's ongoing reexamination of its Capital Plan. Final decisions will await greater clarity on the federal response post-election and as the new Biden Administration takes office. Further capital spending reductions in 2022 are anticipated in the absence of federal aid.

2021 Debt Service Budget

The proposed 2021 Budget also includes debt service of $1.6 billion, an increase of approximately $160 million compared to the 2020 Budget, due to additional issuances required to fund the proposed 2021 Capital Budget.

The Port Authority is seeking public comment on the proposed budgets, which are available online. The proposed budgets will be on the agenda for action at the Board of Commissioners' Dec. 17 meeting.

Written comments can be submitted here through Dec. 10. Comments also can be made at the Board's Dec. 17 meeting. The agency requests that comments be submitted as early in the comment period as possible. The agency will provide written comments received to the commissioners prior to its meeting.

Study: New York State Highway Ranking Improves; Places 44th in Performance, Cost-Effectiveness

Continued from page 4

tems, the study finds.

Of the nation's most populous states, Ohio (ranked 13th overall), North Carolina (14th)—which manages the largest state-owned highway system, and Texas (18th)—with the second-largest amount of state mileage, are doing the best job of combining road performance and cost-effectiveness. In contrast, along with New York's 44th ranking, California (43rd), and Florida (40th) are in the bottom 10 overall.

The report found the general quality and safety of the nation's highways has incrementally improved as spending on state-owned roads increased by 9%, up to $151.8 billion, since the previous report. Of the Annual Highway Report's nine categories focused on performance, including structurally deficient bridges and traffic congestion, the country made incremental progress in seven of them.

However, the pavement condition of the nation's urban Interstate system worsened slightly. Over a quarter of the urban Interstate mileage in poor condition is in just three states: California, New York, and, perhaps surprisingly, Wyoming.

The study also found drivers in 11 states spent more than 50 hours per year in traffic congestion, with commuters in the three most-congested states—Delaware, Illinois, and Massachusetts—spending over 100 hours per year in traffic congestion in 2019.

Most states—35 out of 50—reduced their overall traffic fatality rates. Massachusetts, Minnesota, and New Jersey reported the overall lowest fatality rates while South Carolina, Mississippi, Louisiana, and Arizona had the highest fatality rates.

In the report's spending categories, Missouri, Mississippi, South Carolina, North Dakota, and Tennessee reported the lowest expenditures per mile. New Jersey, Massachusetts, Alaska, Delaware, and Maryland had the highest costs per-mile. In total, the 50 states disbursed $151.8 billion for state-owned roads, a 9.2% increase from $139 billion in 2016, the previous data available.

The condition of the nation's bridges improved slightly in 2019. Of the 613,517 highway bridges reported, 46,771 (7.6%) were rated deficient. The best rankings go to three states where less than 2% of their bridges are structurally deficient: Texas, Nevada, and Arizona. Meanwhile, Rhode Island reported a whopping 23% of its bridges as structurally deficient.

Five states made double-digit improvements in their overall performance and cost-effectiveness rankings: Arkansas improved from 32nd to 9th overall; Mississippi moved from 25th to 8th; Wisconsin went from 38th to 22nd; South Carolina jumped from 20th to 6th and Iowa improved from 31st to 20th overall.

Reason Foundation's 25th Annual Highway Report measured the condition and cost-effectiveness of state-controlled highways in 13 categories, including pavement condition, traffic congestion, structurally deficient bridges, traffic fatalities, and spending (capital, maintenance, administrative, overall) per mile. The Annual Highway Report is based on spending and performance data submitted by state highway agencies to the federal government for 2018 as well as urban congestion data from INRIX and bridge condition data from the Better Roads inventory for 2019.

Regional Bid Alert

New York State DOT Region 8

Bid Letting Date: Dec. 3, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264246
PIN# 881318
FA Proj.# Z240-8813-183

Project Description: Orange, Rockland, Westchester Cos., ADA sidewalks and ramps at various locations.

Bid Deposit: 5% of Bid (~ $125,000.00)

Goals: DBE: 10.00%

Bid Letting Date: Dec. 3, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264373
PIN# 881540
FA Proj.# Z001-8815-403

Project Description: Ulster Co., pavement resurfacing Route 299 Towns of Lloyd and New Paltz.

Bid Deposit: 5% of Bid (~ $200,000.00)

Goals: DBE: 6.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264286
PIN# 881204
FA Proj.# Z230-8812-043

Project Description: Dutchess, Ulster, Westchester Cos., traffic signal, sidewalk, etc. improvements at 7 locations in Fishkill, Greenburgh, Hyde Park, Kingston and Scarsdale.

Bid Deposit: 5% of Bid (~ $200,000.00)

Goals: DBE: 6.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264390
PIN# 881539
FA Proj.# Z240-8815-393

Project Description: Rockland Co., pavement resurfacing, Rte. 45, Town of Ramapo, Village of Chestnut Ridge.

Bid Deposit: 5% of Bid (~ $125,000.00)

Goals: DBE: 10.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264395
PIN# 881538
FA Proj.# Z001-8815-383

Project Description: Orange Co., 1.3 Miles of asphalt concrete resurfacing on Route 17 in the Town of Newburgh.

Bid Deposit: 5% of Bid (~ $75,000.00)

Goals: DBE: 10.00%

New York State DOT Region 9

Bid Letting Date: Dec. 3, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264342
PIN# 9M1021

Project Description: Broome, Chenango, Delaware, Otsego, Schoharie, Sullivan, Tioga Cos., bridge washing 2020-2021 Broome, Chenango, Delaware, Otsego, Schohaire, Sullivan & Tioga counties.

Bid Deposit: 5% of Bid (~ $125,000.00)

Goals: DBE: 3.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264343
PIN# 9TBP21
FA Proj.# Z240-9TBP-213

Project Description: Broome, Chenango, Delaware, Otsego, Schoharie, Tioga Cos., bridge painting 2021 various locations in Region 9.

Bid Deposit: 5% of Bid (~ $375,000.00)

Goals: DBE: 3.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264366
PIN# 905642

Project Description: Delaware Co., bridge replacement: Route 8 Over East Branch Cold Spring, Town of Deposit.

Bid Deposit: 5% of Bid (~ $125,000.00)

Goals: DBE: 6.00%

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264357
PIN# 904350
FA Proj.# ZS30-9043-504,

Project Description: Broome Co., replacement of Rte. 11 bridge over I-81 with construction of roundabouts at on and off ramp intersections in the Town of Dickinson.

Bid Deposit: 5% of Bid (~ $750,000.00)

Goals: DBE: 8.00%

New York State DOT Region 10

Bid Letting Date: Dec. 3, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264349
PIN# 0DPM20
FA Proj.# Z001-0DPM-203

Project Description: Nassau, Suffolk Cos., durable pavement markings at various locations.

Bid Deposit: 5% of Bid (~ $375,000.00)

Goals: DBE: 10.00%

New York State DOT Region 11

Bid Letting Date: Dec. 17, 2020

New York State Department of Transportation
Contract Management
50 Wolf Road, 1st Floor, Suite 1CM
Albany, NY 12232

Contract# D264375
PIN# XM2050
FA Proj.# Z230-XM20-503

Project Description: Queens Co., ADA requirements contract New York City.

Bid Deposit: 5% of Bid (~ $75,000.00)

Goals: DBE: 7.00%

Westchester County DPW

Bid Due Date: Dec. 9, 2020

Contract: 16-517 ($100.)

Title: Dam Rehabilitation, Sal J. Prezioso Mountain Lakes Park, Town of North Salem, NY

Description: The work under this contract consists of providing all necessary labor, material and equipment required for the rehabilitation of three dams within the limits of Sal J. Prezioso Mountain Lakes Park which includes demolition, excavation, tree removal, spillways, stone and masonry work, drainage piping and valves, and associated site work and landscaping.

Bid Estimate Range: $5.5 million to $6.2 million.

Pre-Bid Inspection: Scheduled for 10:00 a.m. on Nov. 17, 2020; meeting at the Park Office.

Contact: Esther Rivas, 914-995-5584

Bid Due Date: Dec. 9, 2020

Contract 20-501 ($100.)

Title: Infrastructure Rehabilitation, Playland Park, Rye, NY

Description: The work under this contract consists of providing all necessary labor, material and equipment required for the reconstruction of the Playland Towers, restoration of the West Cross Axis Food Facilities, restoration of the Main and West Cross Axis Restroom Facilities and rehabilitation of the North and South Administration Buildings. Work includes all associated mechanical, electrical and site work.

NOTE: The Contractor is directed to the Special Notice regarding Project Labor Agreement (PLA).

Bid Estimate Range: $38 million to $42 million.

Mandatory Pre-Bid Inspection: Scheduled at 11:00 a.m. on Nov. 10, 2020; meeting outside by the Fountain Plaza directly adjacent to the Administration Building, Playland Park, Rye, NY. MANDATORY attendance is required. Bids will be rejected from contractors not in attendance at this meeting, or those who fail to sign the attendance sheet.

Contact: James Antonaccio, 914-995-6343.

Agency contact information may change without notice. Please check with the appropriate contracting agency for the most up-to-date contact information.

Attorney's Column

Lenders are Not Trustees Under the Lien Law But They May be Liable for Receiving Diverted Trust Assets

By THOMAS H. WELBY, P.E., ESQ. and GREGORY J. SPAUN, ESQ.

It is widely known in the construction industry that New York is a "trust fund" state, meaning that trustees of a construction trust fund have specific responsibilities under the Lien Law, and that there are significant penalties for diverting trust funds—including criminal penalties. While owners, contractors and subcontractors are universally acknowledged to be trustees, and payments made downstream are acknowledged to be trust funds, questions often arise as to a construction lender's role in the trust fund scheme. In the recent case of *ECD NY, Inc. v 616 First Avenue Developer, LLC*, an appellate court shed some light on the lender's role in the process, and when it may be able to be held liable under Article 3-A of the Lien Law.

Background

In 2014, ECD NY entered into a contract with 616 First Avenue Developer where ECD was to perform excavation, sitework, foundation and structural concrete work for the construction of a 47-story mixed use building in Manhattan. 616 financed the construction through construction loans with various lender entities, and signed a building loan agreement on Dec. 22, 2016. 616 secured the loan by assigning its leases and rents to the lenders. The lenders filed their Notices of Lending on Jan. 27, 2017.

ECD undertook its work, and ultimately sued to collect what it claimed was its outstanding balance. ECD also sued 616's lenders, alleging they were trustees of the statutory trust, and they improperly received trust fund assets such that they would be directly liable to the contractor on a diversion claim. The lenders moved to dismiss the lawsuit as against them, arguing they were not trustees under the statute, and they were insulated by the fact that they filed a Notice of Lending against the project.

ECD undertook its work and ultimately sued to collect what it claimed was its outstanding balance. ECD also sued 616's lenders, alleging they were trustees of the statutory trust, and they improperly received trust fund assets such that they would be directly liable to the contractor on a diversion claim.

Decision

The motion court denied the lenders' motion (and also, it should be noted, granted 616's motion to dismiss an unjust enrichment claim on the grounds that such a claim is precluded where, as here, there is a written contract governing the subject matter of the claim), finding generally that there were disputes that had to be the subject of discovery before dismissal could be assessed.

On the lenders' appeal, the appellate court dismissed the cause of action for diversion of trust funds, noting that the statutory list of trustees includes owners, contractors and subcontractors, but not lenders. As to the cause of action for receipt of diverted trust funds, the appellate court was more nuanced. While holding that lease payments are not listed in the lien law as trust assets, the court was compelled to deny the motion because the Notice of Lending was filed five weeks after the building loan agreement, and there was no evidence that payments weren't made by the owner between the signing of the building loan agreement and the date on which the Notice of Lending became effective. Accordingly, so held the court, discovery was necessary to flesh out this issue.

Comment

While the court was clear that the lender was not liable as a trustee, it did highlight that there are circumstances when lenders could be deemed to have improperly received trust funds based on the date of its filing of a Notice of Lending (which insulates the payments made to a lender, even though these payments are technically outside of those otherwise permissible under the trust statute). If payments are made to the lender before the Notice of Lending is effective, then a potential trust fund diversion exists.

There are often collectability issues on construction projects. For instance, your upstream contractor may not be solvent, there may not be a sufficient lien fund available

Please turn to page 17

WHICH FUTURE MAKES SENSE FOR WESTCHESTER?

Indian Point will shut down by April 2021, and federal law allows for up to 60 years for it to be dismantled and removed.

But we don't have to wait that long.

There's a smarter plan for Indian Point currently under review. It calls for major work to be completed in just 12-15 years.

The plan will provide hundreds of local jobs. It means opportunity for redevelopment of the land decades sooner. And it results in predictable tax revenue for local schools and governments.

Indian Point will close soon after operating for nearly 60 years. We don't have to wait another 60 years for it to be dismantled.

Learn about the smarter plan at **indianpointdecommissioning.com**

The illustration above is an artist's depiction of the Indian Point property after the completion of major decommissioning work.

Indian Point Energy Center

Entergy | HOLTEC INTERNATIONAL

Behind the Scenes:

A Closer Look at the Thruway Project To Switch to All Cashless Tolling

By JOHN JORDAN

WODDBURY, NY—In the late evening on Friday, Nov. 13, executives with Cashless Tolling Constructors, LLC invited CONSTRUCTION NEWS to the New York State Thruway Woodbury toll area to witness the firm and their construction workers finalize preparations for the Thruway's entire toll system's new Cashless Tolling system to go live.

At 1:00 a.m. on Sat., Nov. 14, the switch over to systemwide cashless tolling at all 58 toll sites went off without a hitch thanks to the work of the Best Value Cashless Tolling Constructors (CTC) team, which consists of: A. Servidone, Inc./B. Anthony Construction Group JV (based in Castleton, NY and Old Bridge, NJ); Rifenburg Construction Corp. of Troy, NY, and Economy Paving Co., Inc., of Cortland, NY.

From left, contractor Mark Servidone and members of the joint-venture project team (Cashless Tolling Constructors, LLC) on the $355 million design-build Thruway Authority project in Harriman, NY.

The design firms on the project are Stantec Consulting Services, Inc. and KC Engineering and Land Surveying PC (New York-based). The construction inspection firm is M & J Engineering, PC of New Hyde Park, NY. KC Engineering took the lead on the structural component of the project that included the design of the gantries and the communication buildings. Stantec took the lead on the civil side of the project that involved highway design, although both firms worked on both components of the job.

The preparations for the successful switch over took months of planning and were completed a month ahead of schedule and on budget despite the tremendous logistical and topographical issues the project entailed. Work will continue on the project in the months ahead and will include the demolition of toll booths and road improvement work at 55 mainline and exit locations from the Woodbury toll to the Pennsylvania state line at Ripley, NY by way of Albany, Syracuse and Buffalo.

A total of approximately 170 craft labor employees were working at the New York State Thruway toll locations on the "Go Live" night, not including management. A total of approximately 200 craft labor workers have participated in the Cashless Tolling project thus far and will continue going forward to completion. The project is being performed under a "Prevailing Wage" contract.

At the Woodbury mainline location, CTC has utilized workers from Laborers Local No. 17; Operating Engineers Local 825; Ironworkers Local 417 and the International Brotherhood of Electrical Workers Local 363.

The $355-million design-build project was announced in June 2019 but work on the project did not begin until a few months later due to a contest of the award.

Mark Servidone, managing member of Cashless Tolling Constructors and president of A. Servidone Inc., related that the design-build contract covered approximately 500 miles of highway, 55 toll areas and the construction of electronic mainline gantries at major interchanges, such as Woodbury, and at open road tolling gantries at exits that are now located adjacent to toll booths that will be demolished later this year.

Mr. Servidone and Raj Ravilla, PE, president of KC Engineering and Land Surveying, P.C. of New York City, said one of the keys to managing the project with multiple locations spanning almost the entire length of the New York State Thruway was CTC's decision to split the job into four separate divisions—Division 1 or the New York-Albany Division (Exits 16-22 and B-1, B2, Canaan mainline terminus I-90 westbound), managed by A. Servidone/B.Anthony; the Albany-Syracuse Division 2 (Exit 23-34 in the Syracuse area) managed by Rifenburg Construction; the Syracuse to Rochester Division (Exit 34-A to 48), which was handled by Economy Paving Corp.; and the Buffalo Division (Exit 48 to Ripley), which was managed by subcontractor Oakgrove Construction of Elma, NY.

Mr. Ravilla said that his firm and A. Servidone/B. Anthony were in discussions about the cashless tolling project nine months prior to the issuance of the RFP in December 2018. He recalled that originally, they were interested in the work between Albany and Woodbury, but later discovered that instead of separate projects, the Thruway Authority intended to issue one large systemwide contract.

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Thruway Tolling Goes Cashless Systemwide as Part of $355M High-Tech Project

Continued from page 1

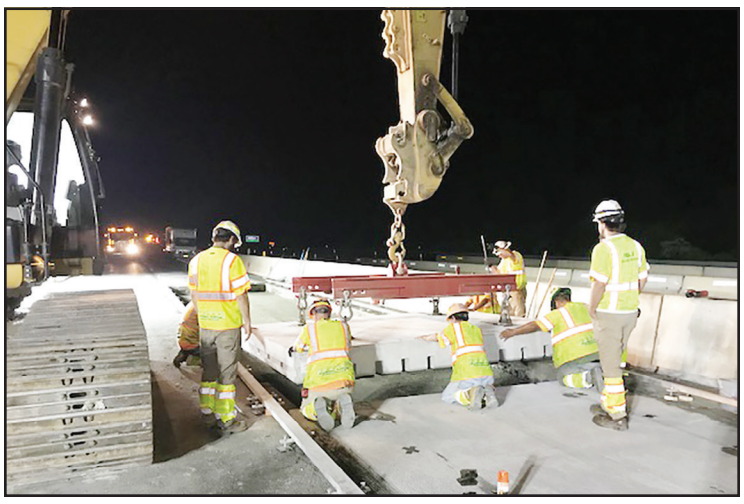
done and getting it done early shows that—even in these trying times—New York will never stop innovating and never stop building for its future"

New York State Thruway Authority Executive Director Matthew J. Driscoll added, "Motorists will now drive under American-made steel gantries with state-of the art sensors and cameras that read E-ZPass tags and capture license plate images, so vehicles no longer have to stop to pay the toll."

He added that in the coming months, drivers will continue to travel through existing toll lanes at reduced speeds without stopping until the toll booths are removed and road reconfigurations are complete. He cautioned that drivers are strongly urged to slow down and use caution around the toll plazas during this time, as it will be an active construction zone.

In 2021, after all of the toll plazas are removed, drivers will have a completely unobstructed ride on the 572-mile system, Mr. Driscoll said.

"I want to thank all toll collectors, both past and present, who have served as the backbone of the Thruway Authority since the first tolls were collected in 1954. Their hard work and dedication serving customers has made the Thruway what it is today," he said.



Crews of the joint-venture enterprise A. Servidone, Inc./B. Anthony Construction Group setting one of many superslabs at the mainline Woodbury Toll Plaza in Harriman, NY.

After 66 years of operation, the conversion marks the end of an era for the Thruway Authority. Since the first tolls were collected on the Thruway in June 1954, toll collectors have been the backbone of the Authority, assisting customers and collecting cash tolls along the superhighway. From 1954 to 2020, more than 12,000 men and women have served as toll collectors, working 24 hours a day, 7 days a week in all weather conditions. As a tribute, the Thruway Authority launched a webpage dedicated to the history of toll collection.

The conversion of cashless tolling is transforming and modernizing the Thruway system for approximately 267 million motorists that travel the superhighway each year. As part of the project, American-made steel gantries with state-of-the-art technology have been installed to replace cash collection at toll booths. Gantries are located over the Thruway or on exit ramps depending on traffic volumes, safety, and other factors. The tolling structure will not change and drivers will continue to be tolled by distance and exits traveled.

The conversion to cashless tolling marks the end of phase one of the project. Phase two, which begins following the conversion, includes the removal of existing toll plazas. During the interchange reconstruction, drivers will continue to travel through existing toll lanes at reduced speeds without stopping until the booths are removed and road reconfigurations are complete. Drivers should expect traffic shifts and must use caution around the toll plazas during this time, as these will be active construction zones. The posted speed limit when traveling through the toll lanes will be 20 miles-per-hour.

Ahead of the conversion to cashless tolling on the New York State Thruway, the new TollsNY mobile app has been released to help drivers manage E-ZPass accounts, find and pay tolls by mail invoices, and get important account alerts for tolls accrued at Thruway, MTA, and Port Authority tolling sites. The TollsNY app is available free in the Apple Store and Google Play.

When system-wide cashless tolling is operational, motorists will experience non-stop travel under gantries with state-of-the-art sensors and cameras that read E-ZPass tags and take license plate images. The system consists of more than 2,000 state-of-the-art cameras affixed to the gantries.

Vehicles with E-ZPass tags are automatically charged and vehicles without E-ZPass tags will have their license plate image captured and a toll bill mailed to the registered owner of the vehicle via Tolls by Mail. Non E-ZPass customers have a number of options to pay including by mail, over the phone, online, and via the TollsNY app. Customers who call * * 826 from most mobile devices will receive a text message with a link to the "Tolls by Mail" website and information on how to pay their toll bill.

Motorists are encouraged to sign up for E-ZPass, the easiest and quickest way to pay tolls on the New York State Thruway. All drivers, regardless of residency, can sign up for a New York E-ZPass account at E-ZPassNY.com or by calling the E-ZPass Toll Free Customer Service Center at 800-333-TOLL (8655). E-ZPass On-the-Go tags are available at 26 Thruway Service Areas system-wide, with more than 900 locations across the state, including participating grocery and convenience stores as well as government offices, DMV offices and AAA retail stores.

Current E-ZPass customers are encouraged to sign up for mobile alerts and to properly mount Tags to their windshield. Customers can login to their account at e-zpassny.com for more information.

For additional information on how cashless tolling works and tips on how to pay bills on time, visit the Thruway Authority's website at thruway.ny.gov/cashless.

Construction NEWS

Photo Gallery

Cashless tolling, with gantries equipped with overhead transponder readers and cameras to snap photos of license plates, is in place on the Gov. Mario M. Cuomo Bridge and in Ardsley in the Hudson Valley. Above, crews at the mainline gantry at Woodbury Toll Plaza in Harriman, NY.

The NYS Thruway Cashless Tolling Goes 'Live' Overnight, Literally

Cashless tolling systems make possible advanced traffic and congestion management strategies to help reduce congestion and make travel safer. For the New York State Thruway that "Go Live" moment to usher in cashless tolling on the 570-mile superhighway occurred shortly after 1:00 am on Sat., Nov. 14. Helping to make it happen was the design-build team Cashless Tolling Constructors, LLC, which submitted the Best Value proposal. The enterprise comprises: A. Servidone, Inc./B. Anthony Construction Group JV (based in Castleton, NY and in New Jersey); Rifenburg Construction Corp. of Troy, NY, and Economy Paving Co., Inc., of Cortland, NY. The $355-million design-build project was awarded in June 2019.

Crews of Laborers Union Local 17 equipped with night safety gear.

Equipment rolls out to prepare for the new tolling system that eliminates motorists from having to stop at human-staffed tolling booths.

INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 137

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WASHINGTON UPDATE

Voters Overwhelmingly Approve $14B in Transportation Plans

WASHINGTON—Voters in 18 states have approved a record 94% of state and local ballot initiatives to date, providing an additional $14 billion in one-time and recurring revenue for transportation improvements throughout the country, according to an analysis released recently by the American Road & Transportation Builders Association.

> ***A Record 94% of Projects, Totaling $14 Billion, Win Funding***

Results are still pending for 13 measures, but the analysis by ARTBA's Transportation Investment Advocacy Center (ARTBA-TIAC) indicates voters Nov. 3 approved 303 of 322 initiatives, the highest approval rate in the 20 years ARTBA has been tracking initiatives.

"More than ever before, these results prove that improving transportation infrastructure is something American voters strongly support," said ARTBA Senior Vice President and Chief Economist Alison Black.

Among the notable findings:

Arkansas voters approved the renewal of a half-cent sales tax increase by a 55% to 45% margin. The measure, originally approved by voters in 2012, is projected to raise approximately $205 million annually for state highways and $44 million annually for localities.

In Austin, TX more than two-thirds of voters endorsed a $7.1 billion transportation bond, approving it by a 67% to 33% margin. Revenue raised by the bond offering will fund the initial and ongoing costs of Project Connect, a transit plan anchored by two high-capacity light rail lines serving the city's densest neighborhoods.

Voters in Portland, OR rejected a 0.75% payroll tax on employers that would have funded a $7-billion transportation plan comprised of safety and transit projects.

Historically, most transportation measures are placed on the ballot in even-numbered years when congressional or presidential elections drive higher turnout. This year, the impacts of COVID-19 caused several notable measures to be dropped. These included a $3-billion environmental bond act in New York State and measures in the California's Bay Area, Sacramento, and Riverside counties that were expected to raise more than $100 billion in revenue over the next 40 years. Proponents are expected to try again in the next election cycle.

The approved 2020 measures will support $12.7 billion in new transportation investment revenue and $1.3 billion in continued funding through tax extensions, renewals or protections.

ARTBA's Transportation Investment Advocacy Center (TIAC) is an educational and informational resource designed to help private citizens, legislators, organizations and businesses successfully grow transportation investment at the state and local levels. It is a signature initiative of the Transportation Makes America Work (TMAW) campaign.

Proposition A: City of Austin, TX

Would add an 8.75-cent tax rate on property to bolster a citywide transit plan to reduce traffic. Specifically, the $7.1 billion plan would pay for the construction of light rail lines, new bus routes and a downtown subway system.

PASSED

Proposition B: City of Austin, TX

Whether to authorize $460 million in general obligation bonds for transportation infrastructure. The bonds would be supported by increased property taxes.

PASSED

Proposition A: City of Pflugerville, TX

Would authorize the use of bonds to cover a $101.7-million transportation plan for projects that include intersection improvements, street reconstruction and other projects.

PASSED

Proposition A: City of San Antonio, TX

Whether to redirect for public transit a one-eighth-cent sales tax earmarked for a workforce development program. The tax is estimated to raise $38.5 million yearly. Tax revenue would be routed to transit starting in 2026. Revenue would be split between the VIA Metropolitan Transit and the city and the county.

PASSED

Other Transportation Approvals:

• Fairfax County, VA, passed a referendum that will raise $160 million through bonds to cover the county's portion of Washington Metropolitan Area Transit Authority (WMATA) capital improvements. Fairfax County's share of WMATA's current FY2021-FY2026 capital program is $265.8 million that will be used to complete platform rebuilding, purchase new and rehabilitate rail cars, replace buses and paratransit vehicles, build new bus garages and other capital improvements.

• Proposition A, in San Antonio, TX, will begin receiving a 1/8-cent share of existing sales tax in 2021 to invest in workforce training as part of regional economic recovery plans. Beginning in 2026, that 1/8-cent share will transfer to the Advanced Transportation District for public transit programs, including

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New York City Comptroller Scott Stringer noted that every billion dollars in construction spending creates nearly 5,000 direct construction jobs and hundreds of other indirect and induced jobs. PHOTO CREDIT: KRUKLITIS/SHUTTERSTOCK

Comptroller Stringer Renews Call To Restart Lagging Capital Program

NEW YORK—New York City Comptroller Scott M. Stringer sent a letter to Mayor Bill de Blasio on Nov. 10 renewing his call for the city to re-start the New York City capital program. Comptroller Stringer urged City Hall to release an Adopted Budget capital commitment plan that will invest now to enhance the state of good repair of city buildings, infrastructure, and equipment, improve delivery of city services and grow its struggling economy.

Comptroller Stringer previously sent a letter to Mayor de Blasio in May, which outlined how the capital program's long-term benefits—including job creation, economic opportunity, and continued capital investment—would help jumpstart the city's economic recovery.

In the Nov. 10 letter, Mr. Stringer noted that in March, the de Blasio Administration implemented a halt to most city capital projects with the exception of those related to the COVID-19 pandemic, other health, life and safety issues, or required by legal mandates. In the capital commitment plan that accompanied the FY 2021 Executive Budget, some $4.2 billion in planned capital projects were removed from fiscal years 2020 and 2021, he stated. Nearly $1 billion in affordable housing projects alone—primarily new construction of extremely and very low-income and supportive housing units—were delayed from fiscal years 2020 and 2021 into later years, as well as almost $900 million in school construction projects. Mr. Stringer stated that total final capital commitments for FY 2020 were $8.06 billion, which calculated out to approximately half the authorized total for the year, and 36% below FY 2019's total of $12.6 billion.

He warned Mayor de Blasio that stopping the capital program has consequences that outweigh any short-term savings that might be achieved. "Continued capital investment is critical to maintaining our assets in a state of good repair and meeting the service needs of our city now and in the future, to promoting economic recovery, and to providing opportunities to build wealth for women and communities of color," Comptroller Stringer stated in the letter. "The Adopted Budget capital commitment plan provides an opportunity to re-start the capital plan and move forward on priority projects that will enhance the state of good repair of our buildings, infrastructure, and equipment, provide the necessary capacity for the delivery of city services and grow our struggling economy."

The city's construction program is also a major source of contracts for minority- and women-owned businesses (M/WBE). In Fiscal Year 2020, the city paid nearly $1.1 billion to 455 M/WBE firms for capital projects, the Comptroller stated. M/BWE firms have been among the hardest-hit during this economic downturn; a recent survey by Mr. Stringer's office found up to 85% of M/WBE respondents may not be able to keep their doors open for more than another six months.

"Our infrastructure needs are ongoing and significant," Mr. Stringer stated in the letter. "We know from the experience of the 1970s that the cost of deferred maintenance is high down the road. Failing to invest today will only cost us more in the future, when schools are overcrowded and unsuited to modern learning needs, roads and bridges are deteriorated and unsafe, and antiquated equipment is dilapidated and unreliable."

He also cited the economic impact the capital plan would have on the construction sector, noting that at present construction jobs in the city remain 13% below its level prior to the pandemic. Mr. Stringer related that every billion dollars in construction spending creates nearly 5,000 direct construction jobs and hundreds of other indirect and induced jobs.

"With construction in the private sector forecasted to decline significantly over the next two years, according to the New York Building Congress, increased city government capital construction projects are both needed to help boost construction sector employment, and will be competing against fewer private-sector projects for resources and labor," he said.

City Comptroller Stringer concluded his letter to Mayor de Blasio, stating, "There is no need to pull back on capital spending on the basis of our current budgetary outlook or cash position. City cash balances remain robust, and, despite recent rating actions, our access to capital markets is excellent and we are consistently achieving attractive yields on our bonds. The bond re-financings that we have together undertaken since the start of the fiscal year have yielded over $600 million in budgetary savings. Investing in our future is smart management and sound fiscal policy. We need the capital program for jobs, for small businesses and minority-owned firms, and for the future. I once again urge you to start investing in our future again."

County Exec. Latimer Proposes Tax Cut Despite COVID Pandemic

By JOHN JORDAN

WHITE PLAINS—With a backdrop of rising Covid-19 cases throughout New York State, Westchester County Executive George Latimer has proposed a tax cut in his 2021 Operating Budget plan.

The County Executive proposed a $1-million tax cut for the second year in a row. The budget, thanks to $168 million in COVID-19 CARES Act funding and Families First Funding, offset lower sales tax revenues due to the pandemic. The budget maintains all county services. The $2.091 billion county operating budget is $15.7 million below the 2020 budget.

Mr. Latimer said, "This year has been extraordinarily challenging. Despite these challenges, we as a county have remained resilient and I have no doubt that working together we will emerge from this crisis stronger than before."

Among the highlights of the 2021 Budget include an additional $5 million for economic development programs, $5 million for housing assistance programs and $2 million for food insecurity.

Before entering 2021, the 2020 budget year is slated to end with no layoffs, no furloughs, no service cuts and no borrowing for pension costs. Mr. Latimer did acknowledge that no further federal assistance may be forthcoming, which could result in a 20% reduction in state aid as Gov. Andrew Cuomo has previously warned. In 2020, the county engaged in a volunteer separation incentive that resulted in 226 employees leaving county service effective Aug. 1, 2020. Mr. Latimer also noted that the county government held vacant a large number of county positions that generated savings.

Westchester County Executive George Latimer unveils his proposed 2021 County Operating Budget.

This 2021 proposed operating budget does not assume any additional extraordinary federal assistance and also anticipates a 20% reduction in its state aid. As a result, the county must rely on drawing all of its projected increase in 2020 reserves to make up for the funding shortfall.

While the economy has rebounded, Mr. Latimer noted that the county is still not back to the level of economic activity it experienced prior to the pandemic. Sales tax collections for this year are anticipated to be $662 million or $80 million below the $742 million budgeted.

For 2021 the county has projected that sales tax will grow to $695 million, which is still $46 million below the 2020 Budget. The county also anticipates reduced revenues in some of its parks in 2021 as certain facilities are still being utilized for COVID purposes.

The 2021 operating budget fully funds all county parks and recreational facilities, which have remained open and available to residents during the pandemic. The 2021 operating budget does not propose to raise any fees for its parks.

The business community offered support for the proposed county operating plan proposal.

The Business Council of Westchester Executive Vice President/COO John Ravitz said, "With Westchester County facing the most serious fiscal challenge since World War II, The Business Council of Westchester is confident that the County Executive and his team will be adopting a budget that to the degree possible maintains essential services, while at the same time protects the county's bond rating. There are still many unknowns, not the least of which are the state's own extremely serious budget challenges, which will impact the county's budget. The BCW looks forward to working with the County Executive and the Board of Legislators as they seek to find the best fiscal path in this difficult time, and help send a clear and positive message that Westchester is economically stable and welcomes businesses and investment."

Westchester County Association president and CEO Michael N. Romita added, "Westchester's businesses and nonprofits need the county to maintain financial discipline while continuing to invest in the economy. County Executive Latimer's proposed budget lowers the tax levy for the second year in a row while putting money towards rebuilding critical infrastructure, business development, and affordable housing. Under challenging circumstances, it has the positive hallmarks of responsive and responsible government. The Westchester County Association will continue to work with the County Executive and other local leaders to ensure that Westchester remains poised for smart growth."

On Oct. 15, County Executive Latimer submitted a 2021 Capital Budget that contained $231.8 million in new appropriations for capital projects. The Capital Budget includes more than $112 million for projects that will provide improvements to the environment, including a food scrap recovery facility, 100 Hybrid replacement buses and electric vehicle charging stations. The Capital Budget, which supports more than 2,000 permanent jobs in Westchester, also includes $80.4 million for the sewer and water districts, $42 million for parkways, roads and bridges; $1 million for the refuse district and $11.6 million for the airport.

Voters Overwhelmingly Approve $14B in Transportation Plans

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improved frequency for VIA bus service and planning for a future Advance Rapid Transit system.

- Voters approved a mill levy increase from the Missoula Urban Transportation District to fund the Mountain Line. The mill levy will raise $3 million annually to support a Zero Fare program, increase frequency of service, expand service, such as adding Sunday bus service for the first time, and support the Mountain Line's electric fleet conversion.
- Ballot Measure 2A in Denver, CO, passed with 65% support and will implement a 2.5-cent increase to the city's sales tax that will be used for a flexible set of purposes all related to fighting climate change, including improvements to the city's transit system.
- Sonoma, CA, passed an early renewal for a tax for road, bus, bicycle and pedestrian projects.
- St. Louis, Ithaca and Pine River Township, MI, where a mill levy increase will raise revenue that will all go toward Alma Transit.
- Seattle, WA, where a renewal and increase of a .15% sales tax for the Seattle Transportation Benefit District passed with 82% of the vote.
- Bellingham, WA, passed a renewal of a .2% sales tax where 20% of revenue will go toward Climate Action Programs and bus service enhancements for Whatcom Transportation Authority.
- Bend, OR, where a $190-million transportation bond measure passed. The measure would raise revenues to pay for capital projects including $7 million for public transit.
- Wheeling and Bethlehem, W.V., where renewal of a property tax levy will fund Ohio Valley/Eastern Ohio Regional Transportation Authority bus service.
- Shiawassee Area Transportation Agency in Michigan will see additional dedicated revenue after a .215 millage for public transportation passed in Durand and a .1168 millage renewal for public transportation passed in Shiawassee Township.
- Monroe, MI, voters passed a three-year mill levy renewal that will raise revenues for Lake Erie Transit.

Financial Management

Time Running Out for Owners To Use the 179D Tax Deduction

By PHILLIP ROSS, CPA, CGMA, PARTNER

The 179D deduction is a tax incentive intended to help commercial building owners be more energy efficient. The deduction was enacted in 2005 under the 2005 Energy Policy Act and has since been extended several times. In December 2019, Congress extended the deduction to all qualified buildings, for new construction or renovations, placed in service by December 2020.

The maximum deduction is $1.80 per square foot. The deduction is calculated in three areas (each being a $.60 deduction per square foot): for HVAC, for interior lighting and building envelope, and for government buildings.

How could this permanent tax deduction become an added benefit for contractors? The answer is through government-owned buildings.

Government-owned buildings are tax exempt and therefore do not receive a benefit from the 179D deduction, so the IRS created guidance that allows specifically the government building owners to pass the deduction to those involved in the design of the energy efficient system.

Among the classification of government buildings are public schools, state universities, airports and train stations, post offices, military offices, prisons and court houses.

Allocation Letter - The deduction is passed along through an allocation letter. The allocation received from the building owner should support the following: the name of the designer receiving the letter, the cost, the amount of the 179D allocated to the designer, and finally, the year placed in service.

More than one allocation letter may be issued if separate parties are involved in the different areas of design.

Qualifications - Energy and cost savings calculations need to be done by Department of Energy-approved software, certifications that the building has been placed in service and all support for the qualifications and deductions need to be saved by the taxpayer.

The 179D deduction is often missed by contractors. However, in these unprecedented times you should be taking advantage of every tax deduction that you can. There is still time to plan for the deduction in the 2020 tax year. Taxpayers are allowed to amend prior returns in order to record the deduction. As previously mentioned, the 179D deduction is scheduled to expire after December 2020. It is possible it may be extended, but nothing is certain.

For additional information about the 179D deduction, contact your CPA.

The 179D deduction is often missed by contractors. However, in these unprecedented times you should be taking advantage of every tax deduction that you can. There is still time to plan for the deduction in the 2020 tax year. Taxpayers are allowed to amend prior returns in order to record the deduction.

About the author: Phillip Ross, CPA, CGMA is an Accounting and Audit Partner and Chair of the Construction Industry Group at Anchin, Block & Anchin, LLP. For more construction industry thought leadership and content, log on to www.anchin.com.

Attorney's Column

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to satisfy your claim, or there may be no payment bond on the project, amongst other reasons. Accordingly, it makes sense to attempt to bring in as many potential defendants as possible. Before doing so, however, one must make sure that there are viable claims against those potential defendants; courts have little tolerance for simply applying a shotgun approach.

About the author: Thomas H. Welby is an attorney and licensed professional engineer. He serves as General Counsel to the Construction Industry Council of Westchester & Hudson Valley, Inc., and is the founder of and Senior Counsel to the law firm Welby, Brady & Greenblatt, LLP, headquartered in White Plains, NY. Gregory J. Spaun, an attorney and a partner with the firm, co-author this series with Mr. Welby.

Safety Watch

OSH Review Panel Vacates General Duty Clause Citation

Commission Points to Insufficient Proof of Effective Means of Abatement

By GEOFFREY S. POPE, ESQ.

OSHA's construction standards (Part 1926 of 29 C.F.R.) provide a detailed body of rules giving a clear picture of what the law requires. In addition, there is a single not-so-clear rule that supplements the specific standards—something of a "wild card" that is widely dreaded by construction employers—the General Duty Clause, 29 U.S.C. § 654(a)(1).

While widely misunderstood as a catch-all allowing employers to be cited for any condition that the inspector deems to be a hazard, a violation of the General Duty Clause includes necessary elements in addition to a hazard not covered by a specific standard, and is often contested successfully.

In *Secretary v. Lane Construction Corp.*, an employee was fatally injured while operating a diesel-powered hammer to drive concrete piles at a bridge construction project. Following inspection, OSHA issued a citation alleging a violation of the General Duty Clause, for exposing employees to "struck-by hazards" while they worked near the hammer's base of operation. After trial, the Administrative Law Judge affirmed the citation as "Serious," and assessed a monetary penalty. The employer sought review by the OSH Review Commission, which reversed the ALJ's decision, and vacated the citation.

Lane, working on a bridge on a section of a highway described as a "watercourse," was using a diesel-powered hammer to drive 65-foot concrete piles into the ground along the highway. The hammer rides in—and is guided by—a cage-like device (the "leads") which is enclosed on three sides. At the bridge worksite, the open side of the leads faced the watercourse. As the piles were being driven, Lane used a crane to suspend the hammer and the leads above the ground. Fuel to the hammer was controlled by three ropes; two of the ropes controlled the flow of fuel to the hammer's throttle, and the third rope—a "kill rope"—if pulled would stop the flow of fuel. A 90-pound "pile cushion" made of plywood layers sat at the bottom of the hammer to act as a buffer between the hammer and the concrete pile during the pile-driving procedure.

On the day of the accident, Lane's crew was conducting a "dry run," preparing to drive a test pile. During a dry run, the hammer is lifted to a certain height, and its piston is then unlocked, causing the piston to drop and the hammer to drive the test pile into the ground. For this dry run, the hammer operator was holding the kill rope, but not the other two ropes, because in a dry run, the piston drops and drives the hammer as a result of its own weight. On this occasion, when the piston dropped, and the hammer impacted the test pile, the test pile sank 12 feet to 15 feet into the ground, much deeper than is usual during a dry run. For undetermined reasons, when the hammer struck the test pile, the cushion was ejected from the bottom of the hammer, fell 55 to 60 feet, and fatally struck the hammer operator.

There are four elements needed to prove a General Duty Clause violation. These are: (1) a condition or activity in the workplace that presents a hazard; (2) that the hazard be one that is recognized by the employer's industry, or by the employer itself; (3) that the hazard cause or be likely to cause death or serious physical harm; and (4) that there existed a feasible and effective means to eliminate or materially reduce the hazard.

When the piston dropped, and the hammer impacted the test pile, the test pile sank 12 to 15 feet into the ground, much deeper than is usual during a dry run. For undetermined reasons, when the hammer struck the test pile, the cushion was ejected from the bottom of the hammer, fell 55 to 60 feet, and fatally struck the hammer operator.

Of the proceeding elements (1) and (3) apply to all "Serious" OSHA violations and are unremarkable. However, refuting the notion that the General Duty Clause gives the inspector unchecked latitude to cite any and all hazards to which no specific standard applies, the Secretary, to

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Safety Watch

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sustain a citation, must prove that the hazard was known in the industry in which the employer was engaged, or known to the individual employer. In addition, a General Duty Clause violation cannot be sustained, unless the Secretary demonstrates both that specified abatement measures are capable of being put into effect, and would be effective in materially reducing the hazard.

In Lane Construction, the Secretary proposed, as a means of abatement, that Lane require its employees to "keep a minimum distance of 13 feet . . . from the units to be driven," in accordance with the hammer's operating instructions. Lane did not dispute that requiring its employees to stand at least 13 feet away from the pile during driving operations would materially reduce the struck-by hazard. It conceded that the operator, in most instances, would have stood at least 13 feet away from the pile. It insisted, however, that the Secretary failed to show it was feasible for the operator to do so in the case being tried, because of the adjacent watercourse.

The ALJ rejected Lane's argument, finding that Lane could have converted the hammer's "manual" fuel control system (i.e., one controlled by ropes) to a hydraulic system, permitting the operator to stand 13 feet away from the pile. In support of her finding, the judge pointed out that Lane, after the accident, had changed to a hydraulically-operated diesel hammer. She concluded that the method of abatement was, therefore, feasible, because "It was unrebutted on this record that Lane was able to use such a system at this worksite."

On review, Lane convinced the commission that the Secretary had failed to show that using a hydraulic control system obviated the need for a kill rope, and was therefore a feasible means of enabling the operator to stand at least 13 feet away from the pile. In overturning the ALJ's finding on feasibility, the commission ruled that the ALJ had placed undue reliance on the Compliance Officer's perfunctory testimony, lacking in detail, on how such a system could have been used at the worksite. The commission found that the CO failed to explain how a hydraulic control system works, or where an operator would actually stand when using one.

Neither the CO's testimony nor the fact that Lane subsequently used a hydraulic control system (the commission concluded) established that such a system would have allowed Lane's operator to stand at least 13 feet away from the pile, while operating the hammer at the worksite where the fatality occurred. With such slender evidence of what a hydraulic control system does, what it replaces, or what the operational implications were to the workplace, the commission found that the ALJ lacked a sufficient basis to conclude that such a system was feasible.

Thus, while the General Duty Clause must be treated with respect, it is not to be feared as some sort of administrative Godzilla. If you strive to be alert to possible hazards not covered by specific OSHA standards, as may exist on your jobsites and whether and how they might be abated, you should have little to fear.

About the author: Geoffrey S. Pope, Esq., is counsel to the construction law firm of Welby, Brady & Greenblatt, LLP. The articles in this series do not constitute legal advice and are intended for general guidance only.

A Closer Look at the Thruway Project To Switch to All Cashless Tolling

Continued from page 12

He said that the goal in establishing the respective divisions was to "have them as four parallel projects running simultaneously." Basically, it allowed the firm to "perform four times the work in one season," he added.

"Using this format, Cashless Tolling Constructors was able to make it a manageable contract in order to handle the complex nature of the project," Mr. Servidone said. "Each company had their own project manager and safety manager, and they reported back to the home office, which was A. Servidone's new 7,200 sq. ft. office in Castleton, NY." He added that all companies worked in conjunction with the New York State Thruway Authority. "It has been a collective effort by all parties," he said.

Both Mr. Servidone and Mr. Ravilla felt the Design-Build and Best-Value format was also critical for the project's success.

"It allowed the (Thruway) authority and the contractor the flexibility to refine indicative drawings and meet the covenants that the owner desired," Mr. Servidone said. He added that under Design-Build, CTC was afforded the opportunity to engage in an accelerated schedule that allowed CTC to design and fabricate at the same time.

Mr. Ravilla added, "From the delivery of the project, there is no way it could have been done without using the Design-Build approach." He related that the Thruway Authority previously did a number of toll booth demolition-cashless tolling projects and each took about nine months to design and took almost six to seven months to build them.

"We did the whole project (involving 55 mainline or exit toll locations) in the same timeline, Mr. Ravilla said.

The project manager of Section One (New York-Albany Division) for Cashless Tolling Constructors, described the work that has been completed at each of the 21 mainline toll areas or 34 exit toll locations. He said that each site involved deep foundation work for the gantries that include cameras, laser scanners, illuminators and sensors. The drill shafts were approximately three to four feet in diameter and approximately 15 feet to 40 feet deep. Other work included putting in precast road Super Slabs that include technology that allow the authority to count the axles of vehicles that travel over the slabs.

Once the Super Slabs were in place, steel was set for the mainline and the ORT gantries. The mainline gantries and ORT gantries were fabricated off-site using U.S. steel. The mainline gantries were designed at seven feet wide by the width of the roadway (the longest being approximately 140 feet and the shortest at 48 feet). The ORT gantries were 60 feet long by the width of the roadway, which ranged from approximately 46 feet to the longest at approximately 193 feet.

The last main component of the Cashless Tolling system was the construction of the communications building. The ORT locations involved a 10-foot by 14-foot building, while the mainline interchange locations required a building of approximately 20-feet by 20 feet.

Mr. Servidone said that each building was fabricated off site and assembled on site. Each building contains a generator and all the processing systems for the tolling equipment, a company official added. Cashless Tolling Constructors was also responsible for bringing power to the communications buildings.

Another significant facet of each of the 55 individual projects was road and site work. "Each site had its own reconstruction…The site work was kind of different. We had a lot of pavement removal to do. We had a lot of road reconstruction," the official noted.

Mr. Servidone added that the mainline interchange terminus locations involved a significant amount of additional work that road reconstruction, drainage reconstruction, ramp realignments, barriers, markings, overhead signage structures, etc.

He noted that the project has successfully reached the first contract milestone, known as the "Go Live Milestone" but now must work on six fast-tracked toll booth removals (Canaan, Interchange 45, Interchange 25, Lackawanna, Williamsville and Interchange 24) which will be completed in February 2021. The existing Woodbury toll plaza is expected to be demolished in 2021, but is not one of the incentivized toll booths per the contract with the New York State Thruway Authority. Final contract completion, which will involve the remaining existing toll booths, associated civil site work and roadway realignments, is slated for December 2021.

In addition to its work on the Cashless Tolling project, A. Servidone/B. Anthony is also working on a host of projects in the lower Hudson Valley, including: the LEGOLAND New York ramp and bridge project (new Exit 125) on Route 17 in Goshen, NY that is nearing completion (approximately $29 million); the $30.4-million replacement of three bridges (College Road, Hungry Hollow and New Scotland bridges); an approximate $15-million NYSDOT project in Westchester County involving a new bridge on Route 100 C over 9A that will also include the construction of a new roundabout on Saw Mill River Road. The firm also just completed a project on the Garden State Parkway in New Jersey (Interchange 125) valued at $82 million with the New Jersey Turnpike Authority. The firm also completed the Ashokan Rail Trail Phase II project from Boiceville, NY to West Hurley in Ulster County, a $9-million project that won the American Council of Engineering Companies (ACEC) Diamond Award.

Dutchess' Salt Point Turnpike Bridge Completed

The completed Salt Point Turnpike Bridge in Pleasant Valley, NY.

PLEASANT VALLEY, NY—New York Gov. Andrew M. Cuomo announced on Nov. 10 the completion of the $3.2-million project to replace the Salt Point Turnpike Bridge over Wappinger Creek in the Town of Pleasant Valley in Dutchess County.

The bridge project, which also included the replacement of an adjacent culvert, enhanced safety and improved mobility along a key roadway (also known as State Route 115). The bridge and roadway are used by motorists traveling between the Taconic State Parkway and the City of Poughkeepsie. The new bridge has a wider span than the previous structure as well as a new culvert to help improve water flow through the area, promoting the health of the waterway. At almost 42 miles, Wappinger Creek is the longest creek with the largest watershed in Dutchess County.

"It's no secret how important strong infrastructure is to the overall health of a community, and as we continue to modernize roads and bridges for the 21st century, it is critical we continue to ensure projects support safety, the economy and the environment alike," Gov. Cuomo said. "Not only will this new bridge create a safer roadway for motorists and businesses, but its design will enable the Wappinger Creek to flow more freely, promoting the health of the waterway."

DOT Commissioner Marie Therese Dominguez added, "This project improves travel conditions for motorists across the region and promotes the health and resiliency of an important waterway and its surrounding ecosystem. This is truly an example of building back better."

The new bridge features metalized steel girders with a cast-in-place bridge deck. The new structure is wider than the previous span, with the addition of two, four-foot shoulders. New lighting and decorative, aesthetic barriers were also added.

As part of the $3.2 million project, which began in the spring of 2019, the nearby Hibernia Road intersection with Salt Point Turnpike was also re-configured to create a traditional "T" intersection to improve sight distance and enhance safety for motorists.

The NYSDOT announced in early 2019 that Latham, NY-based Bette & Cring LLC was the lowest of four bidders at $3,174,612 for the Rte. 115 bridge and culvert replacement job.

Lacking Federal COVID Aid, MTA Faces 'Fiscal Tsunami'

Authority Warns of Major Service Reductions, Up to 9,400 Layoffs

By JOHN JORDAN

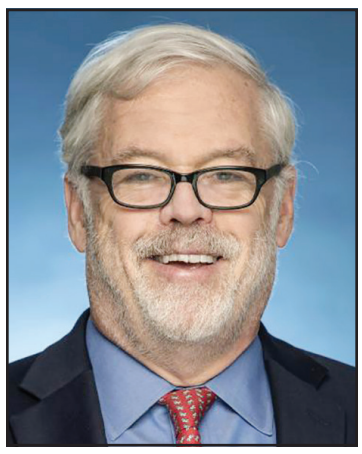
NEW YORK—MTA Chairman and CEO Patrick J. Foye presented on Wed., Nov. 18, what he described as the most difficult and devastating budget in the agency's history, warning that without $12 billion in federal aid the MTA would be forced to impose draconian service cuts. It estimated layoffs of nearly 9,400 workers and continuation of its pause to its $51.5-bilion capital plan.

MTA officials said the authority's COVID-19 induced financial crisis eclipses the Great Depression's impact on transit revenue and ridership.

Without $12 billion in federal emergency aid, the MTA is proposing service reductions of 40% for the New York City subways and buses, and 50% for the Long Island Rail Road and Metro-North Railroad, for a combined annualized savings of nearly $1.3 billion. Service reductions are estimated to have a workplace impact of nearly 9,400 positions. The proposed service reductions focus on achieving significant cost reductions, mitigating negative customer impacts, and rightsizing service in response to current and projected ridership, MTA officials stated.

The MTA proposes to reduce commuter railroad service on Metro-North Railroad the Long Island Rail Road by 50%, which may result in peak period train frequencies of every 20 minutes to 30 minutes along busier line segments, or hourly at less busy line segments. Proposed reductions under consideration take into account the existence of nearby alternate service and maintaining adequate service for essential workers. Off-peak and weekend service may be hourly, reflecting current ridership levels while maintaining sufficient service to prevent crowding. The railroads' service reductions would result in the elimination of a total of more than 900 positions.

The MTA is also proposing under the scenario it does not receive federal COVID relief, subway service reductions of up to 40% may result in reduced train frequency, suspension of service on some lines at certain times of day, and/or major weekend changes. The reduction in service may allow for a 35% subway fleet reduction, generating savings in maintenance, cleaning and inspection costs. The service reduction would result in the elimination of nearly 2,400 positions.



MTA Chairman and CEO Patrick J. Foye

The MTA also proposes to reduce bus service by up to 40% through elimination or consolidation of bus routes and reductions in frequency by up to 33% on the routes that remain. Changes to routes would ensure that service is available within a half-mile of existing stops. The bus service reductions would result in the elimination of nearly 5,900 positions in total across MTA New York City Transit and the MTA Bus Company.

"The MTA continues to face a once-in-100-year fiscal tsunami and this is without a doubt one of the most difficult and devastating budgets in agency history," said MTA Chairman and CEO Foye. "No one at the MTA wants to undertake these horrific cuts but with federal relief nowhere in sight there is no other option. As I have said, we cannot cut our way out of this crisis—we are facing a blow to our ridership greater than that experienced during the Great Depression. We are once again urging Washington to take immediate action and provide the full $12 billion to the MTA."

"The numbers speak for themselves, we are approaching a point where these draconian options will have to be implemented to ensure our survival," said MTA Chief Financial Officer Bob Foran. "Not receiving the billions we desperately need to survive would stunt the tangible progress we have made in service quality and infrastructure improvements. We can't afford to let that happen."

The November Plan unveiled by the MTA includes favorable re-estimates from the July Plan as fare and toll revenues are projected to surpass the previous forecast by $319 million and non-labor expenses are projected to be lower by $295 million in 2020. Savings from vacancies—attributable to an MTA-wide hiring freeze—are expected to total $66 million. Debt service expense is forecast to be $31 million favorable in 2020, with savings through the remainder of the period covered by the four-year financial plan, while subsidies are slightly unfavorable through 2022, followed by improvements in 2023 and 2024. This brings the MTA's projected deficits to $15.9 billion through 2024.

The MTA is proposing subway service reductions of up to 40%, which may result in reduced train frequency, suspension of service on some lines at certain times of the day, and/or major weekend changes. The service reduction would result in the elimination of nearly 2,400 positions.

The MTA reported it has taken aggressive measures to cut costs internally, focusing on three key areas: reducing overtime, consulting contracts, and other non-personnel expenses. Agencies have already begun implementing these savings, which are now projected to reduce expenses by $259 million in 2020, $601 million in 2021, $498 million in 2022, $466 million in 2023 and $461 million in 2024.

In order to close the 2020 deficit caused by federal inaction, the MTA will have to use its authority to borrow the maximum of $2.9 billion from the Federal Reserve's Municipal Lending Facility (MLF) before the window closes at the end of 2020. The MTA is taking additional actions to address the 2020 deficit by releasing the current 2020 General Reserve of $170 million, applying the $337 million in the OPEB Trust Fund to current OPEB payments, and retaining Committed to Capital transfers in the operating budget at $187 million for 2020, $181 million for 2021, $120 million for 2022 and $114 million for 2023.

The MTA has again engaged McKinsey to review the economic realities facing the Authority. McKinsey is updating its projections and developing two new ridership scenarios. In the "best case" scenario, the virus is contained through a combination of an effective vaccine and resistance to the virus due to previous exposure, eventually reaching a "new normal" ridership level (90% of pre-pandemic ridership) in 2024.

The "worst case" scenario assumes a resurgence of the virus in the New York City area, resulting in restrictions similar to those experienced earlier this year. From that resurgence, recovery will be slower and will take longer before reaching the "new normal" ridership level; by the end of the Plan period, McKinsey projects aggregate MTA ridership will only reach 80% of the pre-pandemic level under this scenario.

The MTA board will be asked to vote to enact a new budget in December.

ALBANY UPDATE

NY Local Sales Tax Collections Slide 5.2% in October, Down 10.4% in 2020

ALBANY—Local government sales tax revenue declined by 5.2% in October compared to the same month last year, according to a report released by New York State Comptroller Thomas P. DiNapoli on Nov. 13. October's sales tax collections totaled $1.4 billion for counties and cities, or $74.4 million less than in October 2019.

This drop was less severe than previous declines since the start of the COVID-19 pandemic, particularly in the spring when collections fell by double-digits. Still, declines in local sales tax collections continue to mount, and overall local government collections in 2020 (January-October) are down nearly $1.6 billion (10.4%) compared to the same period in 2019.

"Statewide local sales tax collections have declined year-over-year for eight straight months," Mr. DiNapoli said. "Our local governments are on the forefront of the pandemic response and they need financial aid from the federal government to help them get through this crisis."

New York City had a 5.3%, or $34.5 million, decline in sales tax revenue in October, and all but eight counties in the state saw drops in collections as well, ranging from 0.8% in Jefferson and Rockland counties to nearly 19% in Oswego and Monroe counties. On a regional basis, sales tax collections were down across the board, ranging from a decline of 2% in the North Country to a drop of 13.5% in the Finger Lakes.

Mr. DiNapoli reported last month that local sales tax collections dropped 9.5% in the July-September quarter, down $452 million from collections in the same quarter of 2019.

Howard Hughes Corp. Proposes $1.4 Billion Mixed-Use Project at South Street Seaport

NEW YORK—The Howard Hughes Corp. unveiled a comprehensive $1.4-billion proposal late last month in the Lower Manhattan's Seaport area, including the transformation of an underutilized full-block surface parking lot along the boundary of the South Street Seaport Historic District into a mixed-income development that would include some of the area's first new affordable housing in decades.

The proposal also provides for the long-term financial stability of the South Street Seaport Museum, improvements to the museum's historic buildings that will allow it to reopen, and a design for a new museum building on an adjacent vacant lot.

The plans were designed by world-renowned architecture and urban design firm Skidmore, Owings & Merrill (SOM). As the city focuses on economic recovery from the ongoing pandemic, the 250 Water St. development will help propel that recovery through more than $1.8 billion in economic impact for the city and state, creating nearly 2,500 permanent jobs and roughly 2,000 construction jobs, the development firm stated. HHC recently repaid the debt on its Seaport ground lease, has nearly $1 billion on its balance sheet, and is in a strong position to carry out the project.

The proposed $1.4-billion South Street Seaport development will include two tower buildings.
IMAGE CREDIT: THE HOWARD HUGHES CORP./ SKIDMORE, OWINGS & MERRILL

The centerpiece of the Dallas-based firm's proposal is 250 Water St., which will include the first affordable housing built in Manhattan Community Board 1 through the city's Mandatory Inclusionary Housing program. It will bring at least 100 permanently affordable apartments to a Community Board district where just 2.5% of all housing qualifies as affordable and the median household income is more than $150,000. The MIH rental apartments will be made available to families earning 40% of Area Median Income. Of the project's roughly 360 overall units, approximately 25% will be affordable, along with approximately 260 condominium units. The 250 Water proposal also includes enhancements to the Peck Slip Play Street used by the neighboring Peck Slip School and Seaport families, as well as community-oriented spaces and office space.

Through HHC's proposal, $50 million will be available to the museum, providing it with a secure recurring revenue stream and allowing it to advance a first phase of restoration and rehabilitation that will enable the museum to reopen.

Building on this solid financial base, the museum will plan for a new state-of-the-art building that will meet its programming needs. The future vision is for the museum to maintain and restore key current properties, which are crucial testaments to the history of how New York was built and grew, as well as construct a modern, properly climate-controlled, high-ceiling space suitable to display precious art and artifacts from its collection. HHC is funding significant design and planning costs to enable the museum's future development, laying the groundwork for a larger fundraising campaign.

The project will also provide significant economic benefits for the area and city at a time when the need for private investment in its long-term future is urgent. The developer estimates the 250 Water St. project's construction will generate more than $1.8 billion in economic output annually for both the city and the state, $640 million in new labor income, and roughly 2,000 construction jobs. Ultimately, the site is projected to create an estimated 2,475 new direct and indirect full and part-time permanent positions, and annually generate $645 million in economic output for New York City, along with $327 million in wages, salaries and benefits.

LOW BIDS

Defoe Corp. Wins NYSDOT Bid For NYC Where/When Contract

ALBANY—The New York State Department of Transportation announced recently the selection **of Defoe Corp**. of Mount Vernon, NY as the apparent low bidder with the lowest of 16 bids at $11,276,800 for "Non-Structural Corrective Maintenance Where and When Contract: New York City" in the Bronx, Kings, New York, Queens and Richmond counties.

D.A. Collins Lands Thruway Job For Upstate On-Demand Repairs

ALBANY—The New York State Thruway Authority reported recently the selection of **D. A. Collins Construction Company** of Wilton, NY as the apparent low bidder with the lower of two bids at $2,823,600 for on-demand infrastructure repairs at various locations in Rensselaer, Columbia, Ulster, Green, Albany, Schenectady and Montgomery counties in accordance with the plans and specifications.

Nua Construction Bests 11 Bidders For Bus Facility Maintenance Work

WHITE PLAINS—The Westchester County Department of Public Works reported recently the selection of **Nua Construction Corp**. of Ardsley, NY as the apparent low bidder with the lowest of 12 bids at $2,665,000 for roof replacement, Alphonse J. Cerrato Bus Maintenance Facility at the Valhalla Campus in Valhalla, NY.