

FOR CONSIDERATION

March 26, 2010

TO: The Directors

FROM: Dennis Mullen

SUBJECT: New York (Kings County) –Atlantic Yards Land Use Improvement and Civic Project

REQUEST FOR: Authorization to Amend the Contract with AKRF, Inc. to Provide Environmental Consulting Services

---

I. Contract Summary

Consultant: AKRF, Inc. (the “Consultant”)

Proposed Work: The contract amendment is needed to cover additional costs incurred in preparing a Technical Memorandum and responses to public comments, and providing public hearing and litigation support.

Original Contract: \$1,500,000

Amendment # 1: \$600,000

Amendment #2: \$2,056,230

Amendment #3 \$630,000

Requested Amendment #4 Amount: \$250,000

Amended Contract Total: \$5,036,230

ESDC\* Project No.: C0001

\* New York State Urban Development Corporation, doing business as the Empire State Development Corporation (“ESDC” or the “Corporation”).

## II. Project Background

The Atlantic Yards Development Company, LLC and Brooklyn Arena, LLC, affiliates of Forest City Ratner Companies (“FCRC”) are constructing the Atlantic Yards Arena and Redevelopment Project (the “Project”), a major transit-oriented development in the Atlantic Terminal area of Brooklyn. The Project includes the development of an approximately 18,000 seat arena, 16 buildings for residential, office, retail, community facilities, parking, and a minimum of 8 acres of publicly accessible open space. The Project also includes a reconfigured and improved Vanderbilt rail yard and improved access to the Atlantic Terminal subway station. The Project will occupy an approximately 22-acre site in the Atlantic Terminal area of Brooklyn, roughly bounded by Flatbush and 4<sup>th</sup> Avenues on the west, Vanderbilt Avenue on the east, Atlantic Avenue on the north, and Dean and Pacific Streets on the south.

## III. Proposed Amendment

Pursuant to the Directors’ authorization on September 29, 2005, ESDC initially retained the Consultant to perform environmental consulting services in connection with the Project in an amount not to exceed \$1,500,000. Since initially authorizing the contract, the Directors authorized a first amendment to the contract in the amount of \$600,000, a second amendment in the amount of \$2,056,230 and a third amendment of \$630,000 for a contract total of \$4,786,230. The contract has been funded, in its entirety, from an imprest account funded by FCRC.

At their September 2009 meeting the ESDC Directors affirmed a Modified General Project Plan (MGPP) and accepted a Technical Memorandum (“Tech Memo”) prepared pursuant to the State Environmental Quality Review Act (“SEQRA”), which completes the required approvals needed in order to allow for the development of the Project.

A fourth amendment is being sought at this time to cover expenses related to the preparation of the Tech Memo and related follow-up services in addition to support provided at ESDC public hearings and for on-going litigation. The work performed under these tasks covers the time period from August 2008 through December 2009. The additional funds are due to the dynamic nature of the Tech Memo scope as the Project’s modifications evolved over a lengthy period of time. In addition, since the completion of the Environmental Impact Statement (“EIS”), the assessment methodologies for two impact categories were modified, which required new analysis. The change to the Project “build year”, which was a result of litigation delaying the construction start-up and the economic down-turn, required the background “no-build” conditions to be evaluated for any significant changes from what was concluded in the EIS. Due to the demands on staffing to ensure adequate coverage at all four sessions of public hearings over two days for the MGPP process, ESDC requested the Consultant help provide support with speaker sign-in, time keeping and document display. Following the close of the public comment period, the Consultant was tasked with compiling all the written and email comments received, organizing them by subject category, and helping draft responses.

The schedule for completing this last task imposed an intense level of effort over a concentrated period and required participation of staff from multiple technical disciplines. The scope for the Tech Memo as originally envisioned did not anticipate the degree to which the Consultant would participate in the public hearing and comment review for the MGPP process, and therefore, additional funds must be allocated to cover these costs. AKRF has been providing litigation support since the Project was approved in December 2006. A contingency budget of \$38,395 is included in this contract amendment request for any future litigation support, which would be provided on an as-needed basis.

The Consultant is uniquely qualified to conduct the above described tasks for this contract amendment given their involvement with the Project since its inception, which most significantly includes the preparation of a Draft and Final EIS. The Consultant has been a long-time key environmental consultant to numerous ESDC projects, including the Brooklyn Bridge Park project, Moynihan Station, One Bryant Park and Queens West. For this Project, and numerous others, the Consultant has demonstrated their consistent ability to produce work of a superior quality under severe time constraints. Further, in completing such assignments, the Consultant has accumulated a wealth of experience and information not readily available elsewhere and which is directly transferable to the project. No other New York City environmental consultant known to ESDC staff has the resources, experience, database, staff depth and proven reliability of the Consultant.

For the reasons stated above, an amendment in the amount of \$250,000 is requested to complete the above-mentioned work. As stated above, the previously amended contract amount approved by the Directors was \$4,786,230, therefore, the revised contract total amount would be \$5,036,230. The amended contract will continue to be funded, in its entirety, from the imprest account funded by FCRC.

#### IV. Environmental Review

ESDC staff has determined that the proposed contract amendment constitutes a Type II action as defined by SEQRA and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the proposed contract amendment.

#### V. Affirmative Action

ESDC's Non-Discrimination and Affirmative Action Policy will apply.

#### VI. Requested Actions

The Directors are requested to authorize ESDC to amend a contract with the Consultant, by increasing the compensation permitted under the Contract by \$250,000 to a new total not to exceed \$5,036,230, for work as described in these materials.

Attachment  
Resolutions

March 26, 2010

New York (Kings County) –Atlantic Yards Land Use Improvement and Civic Project –  
Authorization to Amend a Contract with AKRF, Inc. to Provide Environmental Consulting  
Services

---

RESOLVED, that based upon the materials presented at this meeting and ordered filed with the records of the Corporation, the Corporation be, and hereby is, authorized to amend its existing contract with AKRF, Inc. to provide additional environmental consulting services in connection with the Atlantic Yards Land Use Improvement and Civic Project; and be it further

RESOLVED, that such amendment will increase the compensation available under the contract by \$250,000; and be it further

RESOLVED, that the total compensation for services pursuant to this contract, as amended, shall not exceed \$5,036,230 including reimburseables; and be it further

RESOLVED, that the President and Chief Executive Officer or any other Officer of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, to execute and deliver any and all documents and take all such actions as may be necessary or appropriate to effectuate the foregoing.

\* \* \*