

FOR CONSIDERATION

October 20, 2011

TO: The Directors

FROM: Kenneth Adams

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

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

Contract Summary

Consultant AKRF, Inc. (“AKRF”)

Proposed Work ESD has been directed by Court Order to prepare a Supplemental Environmental Impact Statement (“SEIS”) in connection with the potential for delay in the construction of Phase II of the Project, which would include, among other work: (a) creating a scope of work; (b) preparing draft and final SEIS documents; (c) reviewing and responding to public comment; and (d) providing litigation support as necessary. This contract amendment would provide additional funds for such services.

Current Contract \$5,036,230
Amount

Requested \$1,700,000
Amendment Amount

Amended Contract \$6,736,230
Total Proposed

Funding Source The contract to date has been, and any amendment of the contract will be, funded in its entirety from an imprest account funded by the Project developer (affiliates of the Forest City Ratner companies; collectively “FCRC”) and maintained by ESD.

ESD Project No. C0001

Background and Prior Environmental Review

The Project, located on 22 acres in Brooklyn at Flatbush and Atlantic, includes development of: an approximately 18,000 seat sports and entertainment venue (the “Arena”); improved

and reconfigured subway facilities and Long Island Rail Road train yard; 16 new buildings, primarily for residential, but also for office, retail, and potentially hotel use; and eight acres of publicly accessible open space.

In 2006, ESD (as lead agency), with the City and MTA (as involved agencies), conducted an environmental review of the Project as described in the 2006 Modified General Project Plan (“2006 MGPP”), resulting in the Project’s Final Environmental Impact Statement (“FEIS”).

In 2009, in connection with further modifications of the 2006 MGPP (resulting in a further Modified General Project Plan; the “2009 MGPP”), ESD adopted a June 2009 Technical Memorandum (“Tech Memo”) to assess whether such proposed further modifications (including changes to the Project’s schedule, and the potential for further delay due to prolonged adverse economic conditions) would result in any new or substantially different significant adverse impacts than what had been described in the FEIS. The Tech Memo assumed a final completion date (or Build Year) for the entire Project (Phase I and Phase II) of 2019. The Tech Memo also considered a scenario (the “Further Delay Scenario”) in which the Project’s full build out would be further delayed as a result of prolonged adverse economic conditions. The Tech Memo concluded (based on a 2019 Build Year, and also under the Further Delay Scenario) that the proposed modifications would not result in any new or substantially different significant adverse impacts than those addressed in the FEIS, and that the affirmation of the 2009 MGPP did not require or warrant preparation of an SEIS.

In accordance with the 2009 MGPP, and pursuant to Director authorization, in March 2010: (a) ESD and FCRC entered into, among other documents, a Development Agreement, pursuant to which the Project is to be constructed as described in the 2009 MGPP; and (b) ESD acquired, by direct acquisition and condemnation, the land required for initial Project construction. As of May 12, 2010, ESD effectively achieved vacant possession of the acquired parcels, thereby triggering the “Project Effective Date”, whereby all funds for Arena construction (inclusive of transit improvements, Carlton Avenue Bridge replacement, and other infrastructure improvements) were deposited and made immediately available for eligible Project costs.

In December 2010, in response to an initial Court Order questioning the continuing reasonableness of the Tech Memo’s 2019 Build Year and Further Delay Scenario, ESD adopted a “Technical Analysis of an Extended Build-Out of the Atlantic Yards Arena and Redevelopment Project” (the “Tech Analysis”). Similar to the Tech Memo, the Tech Analysis concluded that a further modification of the Project’s construction schedule, to an outside completion date of 2035, would not result in any new or substantially different significant adverse impacts than those addressed in the FEIS, and that therefore, again, there is no need for an SEIS for the Project in connection with: (a) the changes made to the 2006 MGPP in the 2009 MGPP; or (b) the Development Agreement and related contracts with FCRC implementing the 2009 MGPP. The ESD Directors adopted findings concurring with the conclusions of the Tech Analysis in December 2010.

Current Status

The Arena and related improvements are now actively under construction by FCRC. The current Project schedule is for the Arena and its related improvements to be completed in 2012 in time for the 2012-2013 basketball season. Commencement of construction of the next building is required by May 2013.

Recent Litigation, and Further Environmental Review

A recent Court Order directed ESD to prepare an SEIS to study the potential impacts of a delay in construction of Phase II of the Project (i.e., the buildings, below-grade parking, and publicly accessible open space and other Project features east of 6th Avenue). While staff and counsel believe that the assumptions and conclusions set forth in the FEIS, the 2009 Tech Memo, and the 2010 Tech Analysis were and remain valid and reasonable (and thus ESDC has appealed the Court Order), nonetheless it is recommended that ESD be prepared to produce a Project SEIS as directed by the Court.

Proposed Contract Amendment

Pursuant to Director authorization on September 29, 2005, ESD initially retained AKRF to perform environmental consulting services in connection with the Project in an amount not to exceed \$1,500,000. Since such initial authorization, the Directors have authorized a first amendment (April 2006) in the amount of \$600,000, a second amendment (September 2006) in the amount of \$2,056,230, a third amendment (May 2007) of \$630,000, and a fourth amendment (March 2010) in the amount of \$250,000, for a contract total of \$5,036,230 to date. As indicated, the contract has been funded, in its entirety, from an imprest account funded by FCRC.

In addition to costs required to prepare the SEIS, this contract amendment includes approximately \$80,000 for payment of AKRF work on the 2010 Tech Analysis. Based on the original scope of work for the Tech Analysis, staff estimated that contract funds remaining at the time would suffice to conclude the work. However, as the Tech Analysis progressed, additional analyses were required, necessitating further involvement of senior level AKRF technical staff. Such additional work was performed but has not been compensated.

During the course of this retention, AKRF has, among other work: (a) produced a draft and final environmental impact statement; (b) catalogued, reviewed, and responded to voluminous public comment on multiple occasions; (c) produced the 2009 Tech Memo; (d) produced the 2010 Tech Analysis; and (e) conducted other environmental reviews and studies as requested. The proposed new work, producing a new Project SEIS, is directly related to, and substantially will build upon, all prior environmental work. These tasks invariably were on tight time frames, demanding intense effort over concentrated periods from multiple technical disciplines. The SEIS is expected to present the same challenges.

AKRF is uniquely qualified to produce the proposed SEIS given its involvement with the

Project since inception. AKRF has been a long-time key environmental consultant to numerous ESD projects, including Brooklyn Bridge Park, Moynihan Station, One Bryant Park, Queens West, and the 42nd Street Project. In connection with this Atlantic Yards Project, and for numerous other ESD projects, AKRF has demonstrated a consistent ability to produce complex work of a superior quality under severe time constraints. Further, in completing such assignments, AKRF has accumulated a wealth of experience and information not readily available elsewhere and which is directly transferable to this Project. No other New York City environmental consultant known to ESDC staff has the resources, experience, database, staff depth, familiarity with the Atlantic Yards Project, and proven reliability of AKRF.

Accordingly, for the reasons stated above, an amendment of the AKRF contract for this Project in the amount of \$1,700,000 is requested. As stated above, the previous total amended contract amount approved by the Directors is \$5,036,230; therefore, the revised contract total amount would be \$6,736,230. The amended contract will continue to be funded, in its entirety, from the imprest account funded by FCRC.

Environmental Review

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.

Affirmative Action

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

Requested Actions

The Directors are requested to authorize ESD to amend a contract with AKRF, Inc., by increasing the compensation permitted under the Contract by \$1,700,000 to a new total not to exceed \$6,736,230, for work as described in these materials.

Attachment

Resolutions

October 20, 2011

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

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 \$1,700,000; and be it further

RESOLVED, that the total compensation for services pursuant to this contract, as amended, shall not exceed \$6,736,230 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.

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