

FOR CONSIDERATION

October 22, 2009

TO: The Directors

FROM: Dennis Mullen

SUBJECT: New York City (New York County) – Moynihan Station Civic and Land Use Improvement Project – Amendment of Contract for Environmental Legal Services

REQUEST FOR: Authorization to Amend a Contract with Bryan Cave LLP for Environmental Legal Services; Authorization to Take Related Actions

I. Background

In 2002, the Directors authorized ESDC to contract with the law firm of Bryan Cave LLP (“Bryan Cave”) to provide legal services in connection with the Moynihan Station project (the “Project”), in the initial amount of \$800,000. In 2004, as an RFP for the Farley portion of the Project was released, the Directors authorized an additional \$1,000,000 for these services. In August 2005, shortly after Related and Vornado were conditionally designated as Moynihan Station developers (“RV”), and in December 2006, after a General Project Plan (“GPP”) and a Final Environmental Impact Statement (“FEIS”) for the Project had been approved, the Directors authorized additional contract increases of \$1,200,000 and \$500,000 respectively, bringing the total contract amount to \$3,500,000.

Since December 2006, the Project expanded, requiring accompanying environmental reviews, to include a possible relocation of Madison Square Garden to the Farley Post Office Building (“Farley”) and redevelopment of Penn Station between 7th and 8th Avenues. Accordingly, the Directors authorized an additional contract increase of \$1,000,000 in October 2007, bringing the total contract amount to its present limit of \$4,500,000. Currently, the Project has returned to Senator Moynihan’s original vision of developing Farley as a train hall first. Bryan Cave has provided expert legal environmental oversight throughout all these transitions, including most recently advising on a draft Environmental Assessment of the current iteration of the Project.

II. Proposed Contract Amendment

As a pre-requisite to implementing the current iteration of the project, compliance with the National Environmental Protection Act (“NEPA”) as well as New York State Environmental Quality Review Act (“SEQRA”) is required. However, as a result of its ongoing review of environmental matters related to the Project, Bryan Cave’s remaining contract balance is nearly

depleted. In order to preserve the continuity of this valuable legal expertise, Project staff recommends that the Corporation's existing Bryan Cave contract relating to the Project be amended to increase the contract amount by an additional \$900,000, to a new total maximum of \$5,400,000. The source of funds for this legal work is Port Authority grant monies, already received, for Farley acquisition and other pre-construction costs such as these. Bryan Cave will continue to be compensated at standard ESDC counsel rates.

Pursuant to State Finance Law Section 139-j and 139-k and ESDC's policy related thereto, staff has (a) considered Bryan Cave's ability to perform the services provided for in the proposed amendment, and (b) consulted the list of offerers determined to be non-responsible bidders and debarred offerers maintained by the New York State Office of General Services. Based on the foregoing, staff considers Bryan Cave to be responsible.

III. Environmental Review

The requested authorization to amend a contract for legal services constitutes a Type II action as defined by the New York State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. No further environmental review is required in connection with this authorization

IV. Affirmative Action

The Corporation's non-discrimination and affirmative action policy will apply to this contract.

V. Requested Actions

The Directors are requested to: (1) make a determination of responsibility with respect to Bryan Cave; and (2) authorize the Corporation to increase the amount of the Bryan Cave contract by an additional \$900,000, from the present \$4,500,000 to a new aggregate limit of \$5,400,000.

VI. Recommendation

Based on the foregoing, I recommend approval of the requested actions.

VII. Attachments

Resolutions

October 22, 2009

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use
Improvement Project – Amendment of Contract for Environmental Legal Services –
Authorization to Amend a Contract with Bryan Cave LLP for Environmental Legal Services;
Authorization to Take Related Actions

BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Bryan Cave LLP (the “Contractor”) to be responsible; and be it further

RESOLVED, that the Corporation is hereby authorized to amend the existing contract with the Contractor to increase the existing amount of such contract by \$900,000, from the present \$4,500,000 to a new aggregate amount not to exceed \$5,400,000, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the Chief Executive Officer, or other Officer of the Corporation, or his or her designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing Resolutions.

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