

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 – Authorization to Amend Lease

REQUEST FOR: Authorization to Amend a Development Agreement and Interim Lease with United States Postal Service; Authorization to Take Related Actions

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## I. Background

In March 2007, the Corporation acquired the historic James A. Farley Post Office Building (“Farley”) from the United States Postal Service (“USPS”), subject to continued USPS presence in Farley. Pursuant to Director authorization, at the time of the acquisition, ESDC and USPS entered into: (a) a Development Agreement and Interim Lease, dated March 30, 2007 (the “Interim Lease”), pursuant to which USPS has the right to occupy interim operational space at Farley prior to substantial completion of the Moynihan Project (to date, approximately 900,000 square feet); and (2) a long-term Lease Agreement which will permit USPS to use and occupy approximately 260,000 square feet within Farley after Project completion. The Interim Lease contemplated that, by October 2009, USPS would begin the process of downsizing from its 900,000 square feet of “interim” space, moving through various interim “swing spaces” until its 260,000 square feet of “permanent” space within Farley was ready for occupancy. Due to the nature of the Project in 2007, the contemplated USPS “swing” moves were fairly complicated, numerous, and expensive.

In conformity with the October 2009 schedule contemplated by the Interim Lease, USPS has the contractual right to, and is now ready to, downsize its presence in Farley over the coming months, both by relocating certain services out of Farley and by consolidating within Farley. Such downsizing also is a pre-requisite for beginning train station construction for the Project. The currently anticipated Phase I of the Moynihan Project, focusing on constructing critical, below-grade, transportation elements (such as expansion of the West End Concourse and installation of platform ventilation), is ready to move into final design phase over the next nine months, and the initial construction of this work (beginning with catenary relocation) could begin as early as mid-2010.

## II. Proposed Contract Amendment

Accordingly, ESDC and USPS have discussed how best to satisfy these matching goals: the USPS desire to downsize and the ESDC desire to reclaim certain areas required for Project

construction. Based on USPS diminishing need for operational space, and due to the Project's currently anticipated phased construction, ESDC and USPS have agreed on a much simplified, less costly, "swing" for USPS, and have agreed to amend the existing Interim Lease as detailed below. Since (as stated above) the overall USPS downsizing was previously contemplated by Project documents, the proposed changes do not require modification of the Project's General Project Plan or further environmental review. The proposed changes merely redefine USPS swing space. Specifically:

a. USPS "swing" moves will be reduced from approximately seven to one, with the majority of USPS interim operations consolidated on the 1<sup>st</sup> and 4<sup>th</sup> floors of Farley's Annex (toward Ninth Avenue). USPS also will continue to operate the historic postal lobby at the top of the monumental steps off Eighth Avenue. When completed, such space collectively will comprise approximately 215,000 square feet (the "Interim Space")

b. ESDC and USPS have agreed on a scope and schedule for the abatement, demolition, and certain fit-out (the "Work") necessary to accommodate this modified "swing". The agreed upon detailed scope of Work will be attached to the proposed Interim Lease amendment. ESDC is required to fund the Work pursuant to the terms of the existing Interim Lease. The abatement and demolition component of the Work required to accommodate USPS is a subset of the larger overall remediation work to be done in Farley as part of constructing the Project as a whole (inclusive of the Work, hereafter the "Remediation").

c. Under the existing Interim Lease, USPS has the right to occupy approximately 40,000 square feet of interim space within Farley's Annex basement, which would be costly for ESDC to construct. Pursuant to the proposed amendment, USPS will accept a \$1 million relocation payment to move all current Annex basement operations to the USPS Morgan complex at Ninth Avenue and 30<sup>th</sup> Street, payable only after USPS fully vacates the Annex basement space.

d. If USPS is unable to fully downsize into the Interim Space by April 1, 2010 because the Work is incomplete, then ESDC agrees that, as of April 1, 2010, USPS will be required to pay rent on only the Interim Space (even if USPS continues to occupy more square footage). USPS is required to fully relocate existing operations to the Interim Space within 15 days of completion of the Interim Space, and the resulting vacant space shall be surrendered to ESDC.

e. Under the existing Interim Lease, the first \$5 million of the Remediation was to be funded by pre-existing Project funding sources and the next \$10 million of the Remediation was to be funded from (a now currently established and existing) \$10 million (principal) escrow "Remediation Account" held by a third-party escrow agent. (The Remediation Account was established at the time of the acquisition from purchase monies that otherwise would have been paid to USPS.) Pursuant to the proposed amendment, USPS has agreed that the Remediation Account will be transferred from the escrow agent to ESDC and can be used by ESDC to fund: (i) the Remediation from dollar one (that is, without, or in advance of, an initial \$5 million outlay); (ii) the relocation payment referred to in subsection c above; (iii) Farley operational costs. Please note that the total cost of the Work is estimated at less than \$15 million. (Further cost to complete the overall Remediation will be funded from train station construction dollars.)

III. Environmental Review

The requested authorization to amend the Interim Lease does not constitute an 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 the Project.

V. Requested Action

The Directors are requested to authorize amendment to ESDC's existing Development Agreement and Interim Lease with the United States Postal Service, dated March 30, 2007, on the terms and conditions as set forth in these materials.

VI. Recommendation

Based on the foregoing, I recommend approval of the required action.

VII. Attachments

Resolutions

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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 is hereby authorized to amend the existing Development Agreement and Interim Lease with the United States Postal Service, dated March 30, 2007, 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 Resolution.

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