

MOYNIHAN STATION DEVELOPMENT CORPORATION

Meeting of the Board of Directors of the Moynihan Station Development Corporation

At the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue – 37th Floor
New York, New York 10017

Monday

March 19, 2012 – 1:00 p.m.

PROPOSED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the February 3, 2012 Directors' Meeting

FOR CONSIDERATION

2. Approval of MSDC Operating and Capital Budgets for FY 2012-2013
3. Authorization to Place Insurance Policies for the James A. Farley Post Office Building and Annex

FOR INFORMATION

4. President's Report (Oral Report)

MOYNIHAN STATION DEVELOPMENT CORPORATION

Meeting of the Directors
Held at the Offices of the
Empire State Development Corporation
633 Third Avenue
37th Floor Conference Room
New York, New York 10017

February 3, 2012

MINUTES

In Attendance

Directors:

John D. Porcari, Chairman
Timothy J. Gilchrist
Karen Hedlund
Tokumbo Shobowale
Paul Williams

**Present for the Empire
State Development
Corporation:**

Thomas Brennan, Senior Vice President
Maria Cassidy, Deputy General Counsel
Helen Daniels, Director – Affirmative Action
Richard Dorado, Senior Counsel
Justin Ginsburgh, Chief of Staff
Howard Kramer, Assistant Vice President
Barbara Lampen, President - NYCCDC & Dir. D&C
Carlos Otero, Vice President - Contracts Admin.
& Subsidiary Finance
Natasha Pallan, Director – Subsidiary Finance
Shelia Robinson, Deputy to the CFO
Sankar Singh, Manager – Contract Audit & Admin.
Renzo Sosa, Manager – Procurement & Admin. Services
Frances Walton, Chief Financial & Administrative Officer

**Present for the
Moynihan Station
Development Corporation:**

Fred Bartoli, Project Manager
Michael Evans, Vice President
Bronson Fox, Vice President – Development
Rebecca Pellegrini, Project Manager
Mehul Petal, Vice President - Development
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Also Attending: Joe Peraino, USDOT (via video conference)
Vincent White, USDOT, Deputy Secretary's office (via video conference)
James Cole, FRA/DOT
Steve Illich, FRA/DOT
Chris Burke, PANYNJ
Laura Kirschbaum, PANYNJ
Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Bruno Signorelli, PANYNJ
Kenneth Hanson, Amtrak
Anthony Caracchiolo, STV
Frederick Rohn, H&K

The meeting of the Moynihan Station Development Corporation ("MSDC" or the "Corporation") was called to order at approximately 10:34 a.m. by Chairman John Porcari. It was noted for the record that the meeting was being web cast and that the Directors had received relevant written materials in advance of the meeting. Also noted for the record was the Corporation's policy to welcome public comment on the items on the current Agenda. The Chairman briefly reviewed the protocol for comments.

The first order of business was approval of the Minutes of the October 28, 2011 Directors' meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

148. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE OCTOBER 28, 2011 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on October 28, 2011, are hereby approved and all actions taken by the Directors present at such meeting, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Following approval of the Minutes, Chairman Porcari called for a motion to conduct an Executive Session pursuant to paragraph (f) and (h) of subdivision 1, Section 105 of the New York State Open Meetings Law. Upon motion duly made and seconded, the following resolution was unanimously adopted:

149. EXECUTIVE SESSION – Pursuant to Paragraph (f) and (h) of the Subdivision 1 Section 105 of the New York State Open Meetings Law

RESOLVED, that the Directors conduct an Executive Session to consider matters pertaining to paragraph (f) and (h) of Subdivision 1 of Section 105 of the New York State Open Meetings Law.

* * *

All persons were requested to leave the room with the exception of the Directors and members of senior staff.

The Executive Session concluded at 11:41 a.m., and Chairman Porcari noted for the record that no votes were taken during Executive Session.

Mr. Gilchrist presented the next Agenda item, requesting authorization for the Corporation to reject all bids of construction contractors for construction of Phase 1 of the Project; and authorization to rebid construction work for Phase 1.

Mr. Gilchrist informed the Directors that seven bids were received for Phase 1 of the Moynihan Station Project which consists of three sub-projects of improvements of the West

End Concourse, installation of platform ventilation fans and improvements to the 33rd Street connector.

He explained that Tutor Perini Corporation (“Tutor Perini”) is the low bidder however, subsequent to the receipt of the bids, the Port Authority, STA JV, the construction manager, and MSDC staff undertook an analysis of the Tutor Perini bid, work plan and other submittals. A review of Tutor Perini’s work plan was also reviewed by the Long Island Railroad and Amtrak. An interview was conducted with Tutor Perini which resulted in follow-up questions being sent to them, with responses to the follow-up questions having been received from Tutor Perini.

MSDC project team concluded that Tutor Perini is the lowest responsible bidder for all three sub-projects; however, Tutor Perini’s bid exceeds the funding resources available for the Phase 1 Construction Project. The Project team also concluded that the bid packages did not provide MSDC the flexibility to move forward with the Project in phases and therefore, recommended that the bids be rejected and rebid with the pre-qualified bidders, as part of an ongoing procurement process. The Project team also recommended that the bid packages be repackaged into subcomponents to allow Phase 1 to be completed within the original schedule.

Chairman Porcari noted that the resolution would, specifically, authorize the Corporation to reject all bids of construction contractors for construction of Phase 1 of the Project, as well as authorize the Corporation to rebid construction work for Phase 1 and take

related actions. He then called for a motion for approval; upon motion duly made and seconded, the following resolution was unanimously adopted:

150. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project (the “Project”) – Phase 1 Construction – Authorization to Reject All Bids of Construction Contractors for Construction of Phase 1 of the Project; Authorization to Rebid Construction work for Phase 1 of the Project; and Authorization to Take Related Actions

BE IT RESOLVED, that based on the materials presented at this meeting (the “Materials”), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds that the lowest responsible bid cannot be funded within available resources and all bids, as described in the Materials, for construction of Phase 1 (“Phase 1”) of the Project are rejected;

RESOLVED, that the Corporation shall take whatever actions that the President, or other Officer of the Corporation, or his or her designee(s), deem necessary or appropriate in order to reject all of the bids and to rebid all or any portion of the construction work for Phase 1 as described in the Materials;

RESOLVED, that the President, 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.

* * *

There being no additional business, the meeting was adjourned at approximately 11:45 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

FOR CONSIDERATION

March 19, 2012

TO: The Directors

FROM: Tim Gilchrist

SUBJECT: New York (New York County) – Moynihan Station Civic and Land Use Improvement Project

REQUEST FOR: Approval of MSDC Operating and Capital Budgets for FY 2012-2013

Project Update

The Moynihan Station Project (the “Project”) will create a new intercity passenger rail facility and commercial development within the James A. Farley Post Office Building (the “Farley Building”), located on the Manhattan superblock between Eighth and Ninth Avenues and West 31st and 33rd Streets.

Subject to appropriate Director Authorization, activities for the coming 2012-2013 Fiscal Year are expected to include:

- Begin construction on the West End Concourse.
- Negotiation with the Conditionally Designated Developer on Phase 2 of the train hall project, use of the remaining portions of the Farley Building, and the transfer of 1M square feet of Farley Building Transferable Development Rights (TDR).
- Work with New York City on planning for the disposal of 1.5 million sq. ft. of remaining Farley building TDR.
- Planning and design work with Amtrak on Phase 2.
- Development of a revised Phase 2 financing strategy and operating plan.
- Continued operation of the Farley Building including increasing interim uses.

New York State Finance Law requires corporate directors to approve operating and capital budgets prior to the end of the preceding fiscal year. In order to comply with this Law, the MSDC Directors are being asked to approve MSDC’s proposed FY2012-2013 budgets as described below.

MSDC Operating Budget

As set forth in Attachment A, the total MSDC FY2012-2013 operating budget is projected at \$1,052,712, a reduction from the amount budgeted for FY2011-12.

The operating budget will be funded with State and Federal funding commitments as per the program management line of the MSDC Phase 1 (23%) budget, Phase 2 budget and Farley budget (77%).

The main components of the MSDC Operating Budget are:

- **Personal Services** – salaries and benefits for seven staff members totaling \$949,712.
- **Non-Personal Services** – budgeted at \$103,000 and consisting primarily of:
 - Insurance, including MSDC’s allocation of ESD corporate insurance, insurance advisory services, Directors and Officers insurance (new in 2012-13), Auto Liability and Employee Crime & Dishonesty Insurance;
 - Office expenses, including telephone and data, which reflect actual costs for Farley including secure data lines to ESDC;
 - Reserves for public hearings and publication expenses if property transactions progress to the point where environmental findings and hearings are required.

The 2012-13 Operating Budget is based upon the continuation of 7 staff and associated non-personal service spending.

No salary increases are included consistent with federal and state position of salary freezes. No additional staff is requested.

MSDC Capital Budget for Phase I

As set forth in Attachment B, the budget (expected expenses) for Phase 1 for 2012-13 includes the following expense items:

Phase 1

Consultant Design support during construction, PANYNJ Program Management, Construction Management	\$ 10,209,000
Legal Costs	125,000
Insurance	500,000
Construction, including Amtrak Force Account	<u>42,257,000</u>
<i>Sub Total</i>	<i>\$ 53,091,000</i>

The above figures are the expected cash payments in 2012-13. The project cash flow will be updated once a contractor is selected. The consultant support during construction contracts will be presented to the Board at the next meeting, and they are currently being negotiated. The PA cost is one-quarter of the approved \$4,500,000 agreement; the CM cost is the

estimated cash flow during 2012-13. The Legal fees are for Holland & Knight costs in finishing the Construction Contract, the Amtrak FAA and LIRR grant agreement. The insurance is the high end of the estimate for MSDC coverage for a three year \$10 million excess liability policy for the construction phase for any possible event not covered by the Contractor Controlled Policy required by Construction contract. Board action on this item will be requested at the time the Construction Contract is approved.

Funding for Phase 1 is pursuant to existing funding commitments from the Federal Railroad Administration (FRA), the Port Authority of NY and NJ (PA), and the Metropolitan Transit Authority (MTA).

Farley Budget

This budget includes costs for the Phase 2 development work and the operation of the Farley Building.

- Phase 2 Expenses are shown in 3 Categories:
 - Design costs for an owner's representative for \$250,000;
 - Legal fees (\$625,000) anticipated for Land Use Counsel to support the disposal of Farley TDR and for Real Estate Counsel to support negotiations with the Conditionally Designated Developer on Phase 2;
 - Miscellaneous costs (\$213,000) include the Phase 2 real estate advisor and appraisal services.
- These costs are absent a closing with private sector partners on air rights or the building. If there is a closing and further funding for Phase 2 becomes available, Board action for design and other costs will be requested.
- Farley operations include the following:
 - Property Management/Maintenance Costs. Since acquiring the Farley Building in 2007, ESDC has procured the New York State Office of General Services (OGS) to provide property management services. The current annual budget for these services is \$4,500,000, and primarily includes costs for various contracted building services, utilities and equipment purchases used for ongoing building repairs and maintenance. Efforts to reduce Farley building operational costs have been focused on the steam, water and electricity. Recent steam system repairs and close management of seasonal use reduced steam costs by about 30% over the last two years. Building operations and maintenance is funded primarily by USPS rental income and escrow funds from the building purchase. In addition to the USPS rent of \$1,350,000, MSDC secured a one-year (renewable) license for storage of construction materials in the Farley basement at \$120,000 annually. In addition, rentals for movie and TV productions resulted in an income of \$16,000.
 - Insurance. A separate action at this meeting, insurance is \$750,000 for 2012-13.

- Construction Costs. With the completion of the USPS fit out, expected costs include payment of retainage to fit out contractors (\$773,500), emergency repairs (\$90,000) and possible replacement of the Annex roof water tank due to its deteriorated condition (\$450,000). These costs total \$1,283,500.

Requested Action

The Directors are requested to approve the attached MSDC Operating and Capital Budgets for Fiscal Year 2012-2013.

Recommendation

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

Attachments

Resolutions

Attachment A – MSDC FY 2012-13 Operating Budget

Attachment B – MSDC FY 2012-13 Capital Budget

Attachment C – Farley FY 2012-13 Capital Budget

March 19, 2012

NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Approval of MSDC Operating and Capital Budgets for FY 2012-13

RESOLVED, that on the basis of the materials submitted to this meeting, a copy of which is ordered filed with the records of the Corporation, the Corporation does hereby authorize, approve, and adopt, subject to the availability of funds, the Moynihan Station Development Corporation - FY 2012-2013 Operating Budget, the Moynihan Station Development Corporation - FY 2012-2013 Capital Project Budget (collectively the "Corporation's Budget"), and the Farley Building FY 2012-2013 Capital Budget substantially in the form set forth in the materials; and be it further

RESOLVED, that the President of the Corporation or his designees be, and each of them hereby is, authorized and directed to take all actions and execute all documents in connection with the establishment and implementation of the Corporation's Budget; and be it further

RESOLVED, that the President of the Corporation or his designees be, and each of them hereby is, authorized and directed to execute and deliver all documents and to take all related actions as each of them deems necessary or appropriate to effectuate the forgoing resolutions.

* * *

Attachment A:
Empire State Development
Moynihan Station Development Corp
Operating Budget FY 2012-13

	Actual Expense FYE 2011	Spending Plan FYE 2012	Projected Expense FYE 2012	Spending Plan FYE 2013
<u>PERSONAL SERVICES (PS)</u>				
Salaries	611,980	703,490	703,490	703,490
Fringe Benefits	136,980	239,187	211,047	246,222
TOTAL PERSONAL SERVICES	748,960	942,677	914,537	949,712
HEADCOUNT	7	7	7	7
POST EMPLOYMENT COST	0	0	0	0
<u>NON-PERSONAL SERVICES (PS)</u>				
Professional Fees				
Legal Fees	0	0	0	0
Consultant Fees	0	0	0	0
Accounting / Audit Fees	0	0	0	0
Total Professional Fees	0	0	0	0
Other Non-Personal Services				
Employee Travel & Meals	2,003	5,000	2,500	2,500
Seminars & Conferences	1,170	3,000	1,500	500
Dues & Memberships	699	2,000	1,000	1,000
Subscriptions & On-Line Services	0	300	150	0
Office Occupancy Expenses	126,385	125,000	50,000	0
Insurance	767	1,000	15,000	22,700
Agency Temps	27,596	5,000	0	5,000
Telephone/Fax/Internet	4,072	6,500	6,500	30,000
Postage/Express Mail/Messenger	732	1,000	1,000	1,000
Office Supplies	1,932	2,000	2,000	1,000
Advertising/Promotion/Public Hearing Notice	9,929	30,000	0	30,000
Printing & Reproduction	1,529	5,000	1,500	5,000
Computers/Software/Equipment	0	1,000	0	1,000
Other Outside Service	0	1,000	0	1,000
Property Management Expense	0	0	0	0
Repairs & Maintenance	0	0	0	0
Other Expenses	2,238	5,000	2,500	2,300
Total Other Non Personal Services	179,053	192,800	83,650	103,000
TOTAL NON-PERSONAL SERVICES (NPS)	179,053	192,800	83,650	103,000
TOTAL PS & NPS	928,013	1,135,477	998,187	1,052,712

Attachment B:
Empire State Development
Moynihan Station Development Corp
Capital Budget FY 2012-13

	Actual Expense FYE 2011	Spending Plan FYE 2012	Projected Expense FYE 2012	Spending Plan FYE 2013
Acquisition Costs	0	0	0	0
Design & Other Soft Costs	11,289,335	15,743,158	7,500,000	10,209,000
Legal Costs	0	500,000	250,000	125,000
Property Management/Maintenance Costs	0	0	0	0
Insurance	48,202	0	1,550,000	500,000
Demolition & Site Clearance	0	0	0	0
Construction Costs	0	15,000,000	0	42,257,000
Other Misc. Costs	0	0	0	0
Total Capital	<u>11,337,538</u>	<u>31,243,158</u>	<u>9,300,000</u>	<u>53,091,000</u>

Attachment C:
Empire State Development
James A. Farley Building
Capital Budget FY 2012-13

	Actual Expense FYE 2011	Spending Plan FYE 2012	Projected Expense FYE 2012	Spending Plan FYE 2013
Acquisition Costs	0	0	0	0
Design & Other Soft Costs	1,154,182	0	1,000,000	250,000
Legal Costs	282,603	0	300,000	625,000
Property Management/Maintenance Costs	6,633,568	4,700,000	4,500,000	4,500,000
Insurance	806,886	1,000,000	736,851	750,000
Demolition & Site Clearance	3,839,480	0	0	0
Construction Costs	5,823,151	9,000,000	6,000,000	1,283,500
Other Misc. Costs	6,533	0	0	213,000
Total Capital	<u>18,546,403</u>	<u>14,700,000</u>	<u>12,536,851</u>	<u>7,621,500</u>

FOR CONSIDERATION

March 19, 2012

TO: The Directors

FROM: Tim Gilchrist

SUBJECT: New York (New York County) - Moynihan Station Civic and Land Use Improvement Project - Insurance for the James A. Farley Post Office Building and Annex

REQUEST FOR: Authorization to Place Insurance Policies with OneBeacon Insurance Company, Pacific Indemnity Company (Chubb Group), Federal Insurance Company (Chubb Group) and Travelers Excess & Surplus Lines Company (Travelers Group); and to Take Related Actions

I. BACKGROUND

In March 2007, Empire State Development Corporation (“ESDC”) acquired the James A. Farley Post Office Building and Annex (“Farley”) in Manhattan (bound by 31st and 33rd Streets and 8th and 9th Avenues) for use in the Moynihan Station Civic and Land Use Improvement Project. For the coming FY 2012-2013, MSDC needs to secure renewals or replacements of: (a) real property insurance, for financial losses in the event of significant physical damage to Farley; and (b) general liability insurance, for personal injury and property damage that may result from activity at Farley.

ESDC’s approved broker, Cool Insuring Agency, Inc. (“Cool”), has provided annual premium quotations for Commercial General and Excess Liability Insurance and Real Property and Excess Property Insurance for Farley. Cool sought premium quotes from a wide range of insurance carriers.

The total proposed 2012-2013 renewal premium for Farley’s insurance policies is \$749,434 for coverage of the period April 1, 2012 through and including March 31, 2013. This represents an increase of 3.5% from the 2011-12 total cost of \$722,886. Based on Cool’s statewide insurance and risk management expertise, staff recommends that MSDC adopt the following policies at a total annual premium of \$749,434.

FARLEY BULDING 2012-13 INSURANCE POLICIES

Insurance	Carrier	Policy	Premium Cost
Commercial General Liability Insurance	Pacific Indemnity Company (Chubb Group)	Limit of \$2,000,000 general aggregate coverage with \$1,000,000 per occurrence	\$129,900
Excess Liability Insurance	Federal Insurance Co. (Chubb Group)	Limit of additional \$25,000,000 general aggregate in umbrella coverage	\$45,903
Real Property Insurance	OneBeacon Insurance Co.	Limit of \$100,000,000 in coverage	402,361
Excess Real Property Insurance	Travelers Excess & Surplus Lines Company (Travelers Group)	Limit of additional \$150,000,000 in umbrella coverage	171,270
Total Annual Insurance Cost			\$749,434

II. FUNDING

Insurance is one of the property expenses funded by the USPS from Farley rent collections and remediation escrow funds.

III. AFFIRMATION ACTION

There are no NYS certified MWBE insurance carriers and therefore the goal for this contract is 0%. However, there are opportunities to do business with MWBE firms as part of ESD’s contract for insurance advisory and brokerage services with Cool. At this time, MWBE participation with Cool is approximately 15% and Cool continues to explore avenues to further increase participation. (Please note that the contract for insurance advisory and brokerage services is a separate ESD board authorization.)

IV. RESPONSIBLE PARTY

Pursuant to State Finance Law Sections 139-j and 139-k and the Corporation's policy related thereto, staff has: (a) considered Cool Insuring Agency, Inc.'s ability to perform the services provided for in the proposed contract; 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 Cool Insuring Agency, Inc. to be responsible.

V. REQUESTED ACTIONS

The Directors are requested to: (1) authorize procurement of the Corporation's: (a) Commercial General Liability Insurance with Pacific Indemnity Company (Chubb Group); Excess Liability Insurance with Federal Insurance Company (Chubb Group) (b) Real Property Insurance with OneBeacon Insurance Company and Excess Real Property Insurance with Travelers Excess & Surplus Lines Company (Travelers Group) for April 1, 2012 through March 31, 2013 at a total annual premium of \$749,434; (2) approve, ratify, and confirm any and all actions previously taken on behalf, or in the name, of ESDC/MSDC in connection with this matter; and (3) authorize the taking of related actions.

VI. RECOMMENDATION

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

VII. ATTACHMENT

Resolutions

March 19, 2012

New York (New York County) - Moynihan Station Civic and Land Use Improvement Project - Insurance for the James A. Farley Post Office Building and Annex - Authorization to Place Insurance Policies with One Beacon Insurance Company, Pacific Indemnity Company (Chubb Group), Federal Insurance Company (Chubb Group) and Travelers Excess & Surplus Lines Company (Travelers Group); and to Take Related Actions

RESOLVED, that in accordance with the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the "Materials"), the Corporation hereby finds Cool Insuring Agency, Inc. to be responsible; and be it further

RESOLVED that, in accordance with the Materials, President or Other Officer of the Corporation, or their designee(s), are hereby authorized, in the name and on behalf of MSDC, to enter into all contracts, agreements, and instruments necessary or appropriate in connection with the placement of insurance for the James A. Farley Post Office Building and Annex with Pacific Indemnity Company (Chubb Group) , One Beacon Insurance and Travelers Excess & Surplus Lines Company (Travelers Group); and be it further

RESOLVED that the total annual cost of such insurance shall not exceed \$749,434 and be it further

RESOLVED that all actions heretofore taken on behalf of MSDC in regard to the replacement of the foregoing insurance policies are hereby approved, ratified, and confirmed.

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