

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

Thursday

November 29, 2012 – 1:00 p.m.

REVISED AGENDA

CORPORATE ACTION

1. Approval of the Minutes of the October 12, 2012 Directors' Meeting

FOR CONSIDERATION

2. Authorization to Enter into a Subway Indemnity and License Agreement with the Metropolitan Transportation Authority, the New York City Transit Authority and the Long Island Rail Road for Phase 1 of the Project

FOR INFORMATION

3. President's Report (Oral Report)

EXECUTIVE SESSION

4. Report on Real Estate Negotiations (Oral Report)

ITEM 1

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

October 12, 2012

MINUTES

In Attendance

Directors: Timothy J. Gilchrist
Karen Hedlund - Acting Chair (via video conference)
Anita Romero
Tokumbo Shobowale
Paul Williams

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

Thomas Brennan, Senior Vice President
Richard Dorado, Senior Counsel
Sankar Singh, Manager – Contract Audit & Admin.
Frances Walton, Chief Financial & Admin. Officer

**Present for the
Moynihan Station**

Development Corporation: Fred Bartoli, Project Manager
Michael Evans, Vice President
Mehul Patel, Vice President - Development
Regina Stephens, Acting Corporate Secretary
Thelma Washington, Executive Secretary

Also Attending:

Michael Avery, PANY&NJ
Chris Burke, PANY&NJ
Andrew Lynn, PANY&NJ
Angel Martinez, PANY&NJ
Al Fazio, Amtrak
Kenneth Hanson, Amtrak
Tony Caracchiolo, STV

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order at approximately 3:04 p.m. by Acting Chair Karen Hedlund. 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 Acting Chair briefly reviewed the protocol for comments.

The first order of business was approval of the Minutes of the August 20, 2012 Directors’ meeting. There being no changes or corrections, upon motion duly made and seconded, the following resolution was unanimously adopted:

170. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE AUGUST 20, 2012 MEETING OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on August 20, 2012, 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.

* * *

Timothy Gilchrist presented the next Agenda item, requesting authorization to amend contracts with Skidmore, Owings & Merrill, PB Americas and SYSTRA Engineering, as well as to amend the Project Specific Professional Liability Insurance Policy. Mr. Gilchrist stated that the Directors had previously granted authorization to seek and enter into grants with federal and state agencies for funding for the remainder of Phase 1. He explained that as a result of

working with the FRA, the US DOT and NY State DOT, MSDC had been successful in obtaining a \$30 million High Speed Rail grant. Mr. Gilchrist stated that this grant assurance is consistent with MSDC's other grants. He explained that the funds from this grant would provide funding for the connecting corridor and possibly for the platform ventilation work. He stated that in order to obtain plans and specifications and provide support during construction MSDC needs to amend the existing consultant contracts. Mr. Gilchrist then asked Mehul Patel to explain the request for authorization.

Mr. Patel's presentation of the item included among other things, that in order to move forward with Phase 1 MSDC's design and engineering consultants must make adjustments to the existing plans in order to work on the 33rd Street Connector Project and the ventilation structures. He explained that consultant SOM is responsible for the 33rd Street Connector Project and will be required to modify and revise plans and specifications to assure that the 33rd Street Connector Project is solely outside the Amtrak train shed area. PB will be required to modify and revise plans and specifications for mechanical, electrical and plumbing systems which were previously planned for and which will be put in at a later date. Lastly, SYSTRA will make modifications and revisions to plans for the low bearing catenary system and electrical traction power systems, in addition to making revisions to accommodate the new pole box location for Amtrak. Amendments to the consultant contracts will result in the Corporation having to amend the Project's Specific Professional Liability Insurance policy as well.

Tokumbo Shobowale asked whether the schedule would be impacted as a result of the revisions to the plans. Mr. Gilchrist explained that if funding is obtained they will be able to meet the 2016 completion date.

Al Fazio, of Amtrak stated that Amtrak concurs with the Corporation's planning of the consultants work.

Following questions and comments by the Directors Acting Chair Hedlund called for a motion, upon motion duly made and seconded, the following resolution was unanimously adopted:

171. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contracts for Architectural, Engineering, Design, and Construction Phase Services with: (a) Skidmore, Owings & Merrill LLP; (b) PB Americas, Inc.; and (c) SYSTRA Engineering, Inc.; Authorization to Amend the Project Specific Professional Liability Insurance Policy; 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 SOM, PB, and SYSTRA to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with SOM and increase the amount of such contract by \$665,500 to a new aggregate limit of \$13,529,930, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with PB and increase the amount of such contract by \$1,265,000 to a new aggregate limit of \$3,597,500, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the existing contract with SYSTRA and increase the amount of such contract by \$495,000 to a new aggregate limit of \$4,221,000, for the purposes and services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the project specific professional liability insurance policy for the Project and pay an additional amount not to exceed \$29,845 with respect to the cost of such insurance coverage; and be it further

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 Resolutions.

* * *

Acting Chair Hedlund requested that Mr. Gilchrist present the next Agenda item, requesting authorization to amend a contract with Jerome Haims Realty, Inc. to provide valuation services.

Mr. Gilchrist explained to the Directors that originally when ESD purchased the Farley Building, ESD entered into a mortgage for a three-year term in 2007 which was extended in 2010. He stated that the process has begun to extend the mortgage for another three years. He informed the Directors that the board's approval would be required for the extension of the mortgage, however as part of the due diligence the Corporation needs to establish the fair market value of the assets of the building and the air rights. Mr. Gilchrist requested that Michael Evans explain the process.

Mr. Evans explained that when the building was originally purchased an appraisal was done by Jerome Haims Realty which was authorized by the Board. As part of the process for

the extension in 2010 an appraisal was required on behalf of the lenders. Now that the Corporation has begun the process to extend the mortgage for another three year an updated appraisal is required for this transaction. Mr. Evans stated that Jerome Haims has been utilized over the years for these appraisals. He stated that the original procurement was a competitive process and Jerome Haims was the low bidder. He also stated that Jerome Haims is extremely familiar with the Project as well as, familiar with the building and its location, its constraints and the development rights, the neighborhood and the value of the air rights. Mr. Evans explained that since Jerome Haims services have been used in the prior transactions their contract requires amending to pay for their services for the current mortgage extension.

Following Mr. Evans' presentation of the item Acting Chair Hedlund asked how long will the appraisal take. Mr. Evans responded that that appraisal should take about four (4) to eight (8) weeks. Acting Chair Hedlund also asked if counsel had reviewed the amendment and advised if it is appropriate to proceed with the amendment of the contract rather than go out to bid again. Mr. Evans responded affirmatively.

Following the questions and comments by the Directors, Anita Romero noted for the record that she would abstain from voting. Acting Chair Hedlund responded, so noted. She then called for a motion, upon motion duly made and seconded, the following resolution was adopted:

172. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend Contract with Jerome Haims Realty, Inc., for Valuation Services; 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 Jerome Haims Realty, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to Amend the Existing Contract for valuation services with Jerome Haims Realty, Inc. to increase total contract amount to \$285,000 for the purposes of additional valuation services, and substantially on the terms and conditions, as set forth in the Materials; and be it further

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 Resolutions.

* * *

Acting Chair Hedlund requested that Mr. Gilchrist continue with the next Agenda item, requesting authorization to grant easements to portions of the Farley Building and Annex that will become a part of the West End Concourse Expansion.

Mr. Gilchrist explained to the Directors that the West End Concourse overhangs from the Farley Building which occupies space underneath the building and above the Amtrak train shed. He stated that there is dead air space between the Amtrak train shed and below the overhang of the West End Concourse. Mr. Gilchrist informed the Directors that an easement was purchased by LIRR from the US Postal Service for this air space. Mr. Gilchrist then asked Michael Evans to present the item requesting authorization to grant the easements as it relates to West End Concourse.

Mr. Evans explained to the Directors that previously the Corporation obtained authorization from the ESD and MSDC boards to enter into easement agreements with Amtrak for the improvements being under taken in the Project's Phase 1. He stated that the Corporation is now seeking to grant an easement to the LIRR to access and maintain the West End Concourse expansion. Mr. Evans explained that the Corporation is required by the Public Authorities Accountability Act to appraise this space. The appraisal concluded that, the only usage of the spaces would be for basement storage space; and that it is not economical to spend millions on basement storage space. Therefore, the space has been assigned no value. He concluded that the Directors are being asked to authorize the Corporation to grant an easement to the LIRR for this space and if the LIRR abandons the easement, the easement would revert to Amtrak.

Following questions and comments by the Directors a motion was duly made and seconded, and the following resolution was unanimously adopted:

173. New York (New York County) – Moynihan Station Civic and Land Use Improvement Project Authorization to Grant Easements with Respect to the Portions of the James A. Farley Post Office Building and Annex that Will Become Part of the Expanded West End Concourse at the Completion of Phase 1 of the Moynihan Station Project; and Authorization to Take Related Actions

RESOLVED, that on the basis of the materials (the "Materials") presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, relating to the Moynihan Station Civic and Land Use Improvement Project (the "Project"), the Corporation is hereby authorized to grant the easements with respect to the James A. Farley Post Office Building and Annex for the purposes and substantially on the terms and conditions set forth in the Materials, with such changes as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized to take such actions and make such modifications to the terms of the easements as he or she may deem necessary or appropriate in connection with the furtherance of the Project; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions.

* * *

Acting Chair Hedlund requested that Mr. Gilchrist proceed with the next Agenda item, requesting authorization to approve pre-qualified counsel from an established pre-qualified counsel list.

Mr. Gilchrist stated that ESD, MSDC's parent Corporation, has requested that each of its subsidiaries adopt the pre-qualified counsel list. He then asked Richard Dorado to explain the request and its process.

Mr. Dorado explained to the Directors that the Project frequently requires that the Corporation engage outside counsel in various areas of expertise. He stated that in order to allow the Corporation to engage such counsel expeditiously while providing the Corporation with broad solicitation of qualified counsel, ESD legal staff solicited interested law firms, reviewed their submissions and compiled the list of pre-qualified counsel. Mr. Dorado informed the Directors that the pre-qualified list had been adopted by ESD Directors at their September 20, 2012 board meeting. He recommended that the board adopt the pre-qualified

counsel list and that the list remain in effect for three (3) years, subject to the extension by an additional year at the discretion of ESD General Counsel or in her absence, the Deputy General Counsel. Mr. Dorado concluded that the list does not limit the Corporation's ability to procure other legal counsel not included on the pre-qualified counsel list.

Acting Chair Hedlund asked Mr. Dorado to explain the process used for pre-qualifying the firms on the list. Mr. Dorado responded that an announcement was advertised in the New York State Contract Reporter requesting proposals from law firms in various areas of expertise. He stated that submissions were made by interested firms and those submissions were reviewed by a committee made up of ESD legal staff, including the Deputy General Counsel. The committee selected the firms based on their submitted proposals and experience in various areas of expertise.

Anita Romero asked if ESD had engaged in negotiations regarding rates. Mr. Dorado responded that the firms had to be willing to consider providing services at ESD's standard rates.

Acting Chair Hedlund asked if the firms were asked if they had any conflict of interests. Mr. Dorado explained that it is difficult to do as it relates to conflict. He stated that some firms may be working on other projects or deals and ESD may use that particular firm for another area of expertise, so there may be some conflict, however ESD will usually accept those potential conflicts and do a waiver. Mr. Gilchrist stated that while the conflicts aren't vetted

before the firms are put on the pre-qualified list, they are vetted before the firm is brought to the board for approval of an agreement.

Paul Williams commented that he favored ESD for using the pre-qualified counsel list and commended them for the inclusiveness. He stated that he is familiar with many of the firms on the list because they have been qualified by DASNY. Mr. Williams also noted that the pre-qualified counsel list included a number of minority and women owned firms.

Following questions, comments and discussion by the Directors a motion was duly made and seconded, and the following resolution was unanimously adopted:

174. MOYNIHAN STATION DEVELOPMENT CORPORATION – Establishment of Pre-Qualified Counsel List - Approval of Pre-Qualified Counsel

BE IT RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the law firms, listed in Attachment A be and each hereby is, approved as pre-qualified counsel in the various areas of expertise (and, in each case, related litigation), and in such other areas as the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, may deem appropriate or advisable in connection with any particular project or matter, such approval to remain in effect until the meeting of the Directors first occurring after September 20, 2015 or, in the discretion of the General Counsel or, in the General Counsel's absence, the Deputy General Counsel, until the meeting of the Directors first occurring after September 20, 2016.

* * *

Acting Chair Hedlund then requested that Mr. Gilchrist proceed with his President's Report. In his report Mr. Gilchrist discussed among other things, the construction being

undertaken on the Project. He stated that a new grant had been approved and MSDC staff is finalizing the parts that require FRA and NYSDOT approval. He then asked Angle Martinez of the Port Authority to give a status update on the Project's construction.

Mr. Martinez stated among other things, that construction is moving along nicely. He reported that work is being performed on several of the platforms and that the first of three weekend outages will take place on the coming weekend. He also reported that installation of mini caissons and drilling work has taken place on several of the platforms. He stated that the coordination meetings with the railroads and contractors are going well and that scheduled work is moving forward.

Following the Project's status updates and comments by the Directors, Acting Chair Hedlund entertained a motion to conduct an Executive Session, pursuant to paragraph (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:

175. EXECUTIVE SESSION - Pursuant to Paragraph (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 (h) of Subdivision 1 of Section 105 of the New York State Open Meetings Law.

* * *

The Directors' meeting was temporarily adjourned at 3:48 p.m. to conduct an Executive Session. All persons were requested to leave the room with the exception of the Directors and members of senior staff.

The Executive Session concluded at 4:03 p.m. Once the meeting was back in Open Session, Acting Chair Hedlund noted for the record that no votes were taken during the Executive Session.

There being no additional business, the meeting was adjourned at approximately 4:04 p.m.

Respectfully submitted,

Regina Stephens
Acting Corporate Secretary

ITEM 2

FOR CONSIDERATION

November 29, 2012

TO: The Directors

FROM: Timothy J. Gilchrist

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

REQUEST FOR: Authorization to Enter into a Subway/Railroad Indemnity and License Agreement with the Metropolitan Transportation Authority, the New York City Transit Authority and the Long Island Rail Road for Phase 1 of the Project; and Authorization to Take Related Actions

I. BACKGROUND

The Metropolitan Transportation Authority (“MTA”) is an important partner and stakeholder in Phase 1 of the Moynihan Station project.

On May 9, 2012, the MSDC board approved the Construction License and Force Account Agreement with MTA’s subsidiary, Long Island Railroad (“LIRR”), which provided to MSDC a license to perform certain Phase 1 work in space that LIRR leases from Amtrak and which also provided for MTA to fund approximately \$32,300,000 of Phase 1 construction work. That agreement addressed only the portion of Penn Station under LIRR’s control. MTA previously provided \$1,200,000 in funding for design work, bringing MTA’s total contribution to the Phase 1 project to \$33,500,000.

Phase 1 also includes improvements to the area known as the “Connecting Corridor” that connects the 8th Avenue subway station and to Penn Station, including the station’s West End Concourse which is the principal area of the Phase 1 work. A portion of the Connecting Corridor work must be performed on property belonging to an MTA affiliate, New York City Transit Authority (“NYCT”).

A new \$30 million USDOT grant to MSDC will fund the improvements to the Connecting Corridor (the “Connecting Corridor Improvements”). A portion of that work will occur within areas owned or controlled by MTA, LIRR and NYCT. The improvements include expansion and rehabilitation of the Connecting Corridor underneath 8th Avenue between Penn Station and the expanded West End Concourse, the relocation of the subway stairs at 33rd Street and 8th Avenue and the associated subway mezzanine work, and the reconfiguration of subway entrance gates to the 8th Avenue subway, within the Connecting Corridor.

In order to advance the Connecting Corridor Improvements, MSDC seeks authorization to enter into a Subway/Railroad Indemnity and License Agreement (the "License Agreement") with MTA, NYCT and LIRR.

II. PROPOSED AGREEMENT

Pursuant to the License Agreement, NYCT and LIRR will grant to MSDC a license to allow MSDC and its contractors to enter NYCT and LIRR space in order to perform the Connecting Corridor Improvements described above based on the following terms:

1. The Connecting Corridor Improvements will include a new ADA compliant west ramp, widened 10' stair to the south bound local platform, a new queuing area for NYCT subway revenue control, relocated and widened 9' entrance stairs inside Farley building property line at the south west corner, reconfiguration of the proposed stairs at the intersection of the West End Concourse and the 33rd Street subway underpass to accommodate the proposed east - west passageway under 33rd Street, and sewer relocation and other utility relocations necessitated by the reconfiguration of the stairs noted above.
2. MSDC and its contractors will undertake the construction described above in accordance with plans submitted to and approved by NYCT and LIRR in a good and workmanlike manner that accords with commonly-accepted industry standards for public transportation related construction projects in New York City.
3. MSDC will reimburse NYCT the actual cost for any inspections or other staff and out-of-pocket costs incurred as part of the work described within the agreement, estimated at \$1,250,000 (inclusive of contingency), and an estimate of those costs will be attached to the agreement.
4. MSDC must seek approval from NYCT and LIRR for any substantial changes to the approved construction plans for the Connecting Corridor Improvements, and NYCT agrees to review changes to the NYCT approved plans within 30 days.
5. MTA, NYCT and LIRR will be included in and indemnified by insurance coverage procured by the Project sponsors and/or their contractors under insurance acceptable to the MTA, and all required insurance requirements will remain in force until the Connecting Corridor Improvements are satisfactorily completed.
6. 186 square feet of space (the "ADA Space") necessary to complete the ADA-accessible eastern ramp of the Connecting Corridor Improvements is currently ground-leased by MTA LIRR to Vornado Realty Trust ("Vornado") and subleased by Vornado to HSBC Bank. MTA LIRR will amend its ground lease with Vornado in order to return control of the ADA Space to MTA after May 31, 2015, which is the expiration of the HSBC sublease.

7. MSDC (based on consultation with its financial advisors) and MTA value the ADA Space as follows, based on reasonably expected leasing terms for 2015:
 - \$350 psf rent;
 - 5% cap rate;
 - 5% discount rate.
8. Based upon this valuation, MSDC will pay to MTA LIRR an amount not-to-exceed \$1.254 million, which will compensate MTA and Vornado for the value of the ADA Space. At the direction of the MTA, a portion of this payment will be made directly to Vornado by MSDC on behalf of MTA.
9. This valuation was affirmed by the independent real estate advisory firm, Washington Square Partners (WSP). A memo summarizing the valuation analysis conducted by WSP is attached.
10. MSDC will be responsible to Vornado for the cost and performance of the work necessary to relocate the retail storefront to accommodate the amended metes and bounds of the ground lease, as shown on Attachment A, and to deliver a retail storefront of equivalent quality to that which exists on the effective date of the leasehold amendment. This cost has been included in project construction cost estimates. Additionally, MSDC will compensate Vornado for any lost rent during the time of construction of the improvement should Vornado's space adjacent to the ADA Space become unusable for some period of time. However, MSDC and its contractor will work with Vornado and its tenant to maintain access to the adjacent Vornado space so as to maintain the safety of tenants and their invitees, visitors and pedestrians.

III. FUNDING

Pursuant to the License Agreement, MSDC will pay to MTA approximately \$1.254 million as described above. That payment will be funded from the proceeds of the grant to MSDC by the Port Authority of New York and New Jersey pursuant the agreement between them executed on October 19, 2010.

In addition, MSDC will pay to MTA and NYCT approximately \$1,250,000 for specified costs incurred by MTA and NYCT with respect to MSDC's Connecting Corridor Improvement work. NYCT will invoice MSDC for such force account and related costs, and MSDC will reimburse NYCT for all such actual force account and related costs within thirty (30) days of receipt of vouchers. Should such costs exceed the \$1,250,000, MSDC will return to the MSDC Board for further authorization. These funds will be paid from funds provided to the Project by MTA.

IV. ENVIRONMENTAL REVIEW

ESD, as lead agency on behalf of MSDC, conducted an environmental review of the project pursuant to the requirements of the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation. This review addressed all aspects of construction and operation of Phase I of the project; therefore, no further environmental review is necessary in connection with this authorization.

V. RESPONSIBLE PARTIES

Pursuant to State Finance Law Section 139-j and 139-k, if applicable, and the Corporation's policy related thereto, staff has; (a) considered MTA, LIRR and NYCT's ability to perform the services provided for in the proposed agreement; and (b) consulted the list of officers determined to be non-responsible bidders and debarred officers maintained by the New York State Office of General Services. Based on the foregoing, staff considers MTA, LIRR and NYCT to be responsible.

VI. AFFIRMATIVE ACTION

The MTA, LIRR and NYCT Non-Discrimination and Affirmative Action policies will apply.

VII. REQUESTED ACTIONS

The Directors are requested to authorize the Corporation (i) to enter into and make payments pursuant to the Subway Indemnity and License Agreement with MTA, NYCT and LIRR, (ii) and take all related actions.

VIII. RECOMMENDATION

Based on the foregoing, staff recommends approval of required actions.

IX. ATTACHMENTS

Resolutions
Proposed ADA Space Easement
Memorandum from Washington Square Partners

November 29, 2012

MOYNIHAN STATION DEVELOPMENT CORPORATION - New York (New York County) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Enter into a Subway/Railroad Indemnity and License Agreement with the Metropolitan Transportation Authority, the New York City Transit Authority and the Long Island Railroad for Phase 1 of the Project; and Authorization to Take Related Actions.

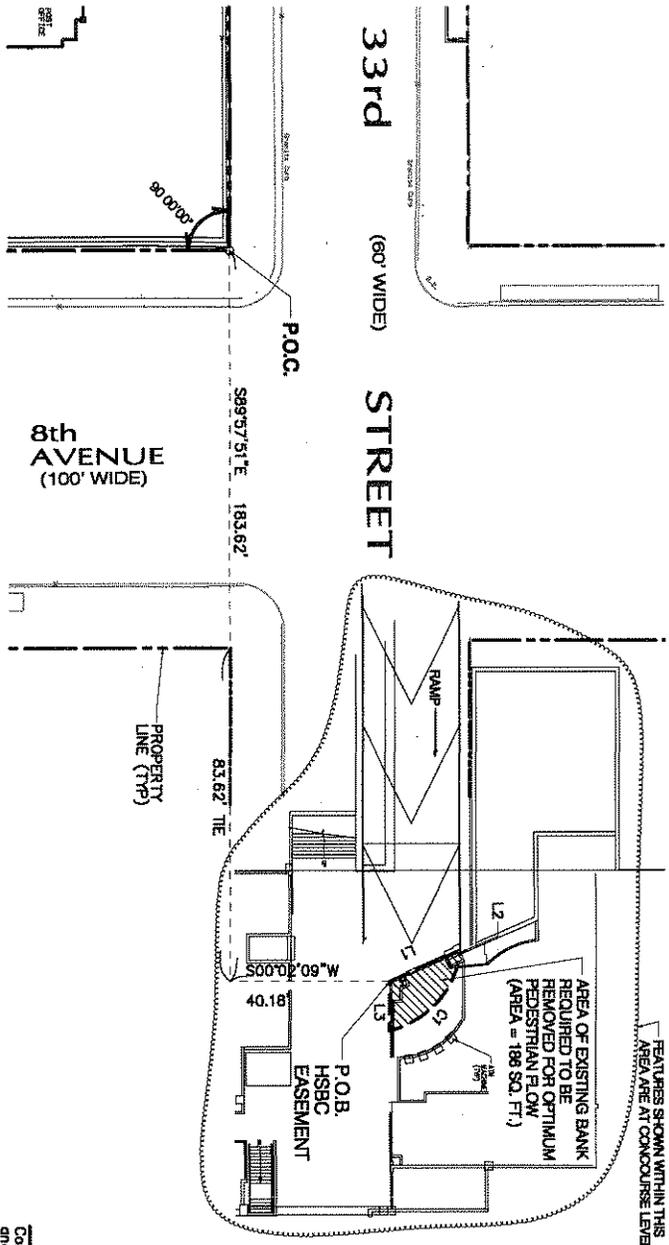
BE IT RESOLVED, that upon the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation, the Corporation hereby finds Metropolitan Transportation Authority ("MTA") and New York City Transit Authority ("NYCT") to be responsible; and be it further

RESOLVED, that the Corporation may enter into a Subway Indemnity and License Agreement (the "License Agreement") with MTA, NYCT and LIRR for a license to enter and perform work in certain space leased by MTA and LIRR from Amtrak and that the Corporation may pay to MTA an amount not to exceed \$1.254 million for real estate costs to be incurred by MTA in connection with the work;

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to reimburse MTA and NYCT for their staff and out-of-pocket costs related to the work to be performed on the licensed premises in an amount not to exceed \$1,250,000; and be it further

RESOLVED, that the President, or other Officer of the Corporation, or his 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.

* * *



FEATURES SHOWN WITHIN THIS AREA ARE AT CONDOURSE LEVEL.



NOTES:

1. THIS SURVEY IS BASED UPON EXISTING PHYSICAL CONDITIONS FOUND AT THE SUBJECT SITE, AND THE FOLLOWING REFERENCE:
 - A. BOUNDARY INFORMATION TAKEN FROM A PLAN SUPPLIED BY SKIDMORE, OWINGS AND MERRILL, INC.
 2. THE HORIZONTAL MERIDIAN OF THIS SURVEY IS REFERENCED TO AN ARBITRARY SYSTEM AS DIRECTED BY SKIDMORE, OWINGS & MERRILL, INC.
 3. STREET NAMES AS PER THE CURRENT TAX MAP.

LINE	BEARING	DISTANCE
L1	N23°49'46" W	19.09
L2	N89°59'41" E	1.46

LINE	ARC	CHORD	BEARING	RADIUS	DELTA	CHORD
C1	27.07°	546.50	57° E	24.00'	64° 37' 16"	25.65'
L3	N89° 39' 00" W	12.46				



WRITTEN DESCRIPTION OF HSBC EASEMENT

Commencing at the intersection of the westerly sideline of 33rd Street (60' wide) and the northerly sideline of 8th Avenue (100' wide) and running the following two courses to the Point of Beginning:

- A. Along the prolongation of the westerly sideline of 33rd Street (60' wide) South 89°57'51" East, a distance of 183.62 feet to a point; thence
- B. Parallel to the northerly sideline of 8th Avenue (100' wide) South 00°02'09" West, a distance of 40.18 feet to the Point of Beginning, and running, thence:
 1. North 23°49'46" West, a distance of 19.09 feet to a point; thence
 2. North 89°59'41" East, a distance of 1.46 feet to a point; thence
 3. Southeasterly along a curve to the right, having an arc distance of 27.07 feet, a radius of 24.00 feet, and a central angle of 64°37'16" and being subtended by a chord which bears South 46°50'57" East 25.65 feet to a point; thence
 4. North 89°38'00" West, a distance of 12.46 feet to the Point of Beginning.

Encompassing an area of 186 sq. ft. or 0.004 acres, more or less.

LANGAN
ENGINEERING & ENVIRONMENTAL SERVICES
River Drive Center 1
P-201.794.0900 F-201.794.0988 www.langan.com
NEW JERSEY PENNSYLVANIA NEW YORK CONNECTICUT FLORIDA
VIRGINIA CALIFORNIA NEVADA
N.J. Certificate of Authorization No. 24542789-000

Project: **MOYNIHAN STATION**
HSBC EASEMENT
BOROUGH OF MANHATTAN
NEW YORK CITY
Project No. 1646001 Date 10-26-2012 Scale 1"=30' DWG. No. SCE-2

V:\engon.com\adda\EP\dat001\1646001\Survey Data - 1646001\Terramodel\Subway Connector Easement\pro Nov 6, 2012

WASHINGTON SQUARE PARTNERS

MEMORANDUM

TO: MICHAEL EVANS
FROM: RAFFAELA DUNNE SISKIND
SUBJECT: ADA SPACE VALUE
DATE: NOVEMBER 6, 2012

WSP was asked to evaluate the potential value of a 186 square foot portion of space, located on the LIRR concourse (Level A) just east of the A/C/E subway entrance. This space would need to be bought out in conjunction with creation of an ADA-accessible ramp leading to the subway entrance. The space is located in an area owned by a single purpose entity owned by Vornado, which holds a long-term master lease of this area of the station. The space is part of an approximately 2,092 square feet retail space, inclusive of a 694 square foot vestibule that has approximately 45 feet of frontage on the LIRR concourse (31 feet facing south; 15 feet facing the A/C/E ramp). The public project requires 186 sf of area fronting the concourse as shown in the drawing on the attached drawing.

The potential value for this space was estimated using a standard methodology for a commercial real estate sale in which an estimated future net operating income is capitalized at a market rate in order to derive its value. This analysis compensates the owner for the revenue forgone over time for this space. There are several factors that significantly affect this calculation. The first factor is the fair market rent for the space. WSP assumed that the current rent paid by the bank is approximately \$280 psf would remain until 2015. Further, we do not believe that this lease value is undervalued and therefore considered a rent increase of 15% at the end of the lease term or \$322 psf. MSDC and Vornado have valued the space at \$350 psf, which is a reasonable assumption given the range of retail rents within the Penn Station complex.

Other factors that affect the value for the space are the cap rate and the discount rate used. The space would not be required until the end of the current lease term (2015); therefore, there would not be an early termination fee. WSP spoke with other retail REITs and was told that due to the location of the space and low risk of tenancy, they would value the space aggressively at a 4 percent cap rate and a discount rate of 6%. Using the 6% discount rate and 4% cap rate, the value in 2012 would be \$1,356,000.

We understand that a cap rate of 5% and discount rate of 5% have been agreed to by the parties.

This space is part of the Level A and Platform Lease with the MTA. Vornado makes payments to the MTA for this space.

In order that MTA may amend its sublease with Vornado to return control of this 186 sf to the MTA to allow for MSDC to construct the ADA improvements, MSDC will pay an amount not-to-exceed \$1,254,000 to the MTA.

This amount is consistent with the projected value for the space as described above.

675 Third Avenue, 25th Floor
New York, NY 10017
Tel: (212) 906-9090 Fax: (212) 906-9043