

# 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 –33<sup>rd</sup> Floor  
New York, New York 10017

Thursday

May 23, 2013 – 1:00 p.m.

### PROPOSED AGENDA

#### CORPORATE ACTION

1. Approval of the Minutes of March 27, 2013 Directors' Meeting
2. Appointment of Officer – General Counsel

#### FOR CONSIDERATION

3. Authorization to Amend the Contract for Architectural, Engineering, Design, and Construction Phase Services with Skidmore, Owings & Merrill LLP; and Authorization to Take Related Actions
4. Authorization to Amend the Contract with Thacher Associates, LLC for Integrity Monitor Services related to Phase 1 Moynihan Station; Authorization to Take Related Actions

#### FOR INFORMATION

5. President's Report

#### EXECUTIVE SESSION

6. Real Estate Negotiation Issues (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  
37<sup>th</sup> Floor Conference Room  
New York, New York 10017

**March 27, 2013**

**MINUTES**

**In Attendance**

**Directors:** John Porcari – Chairman (via video conference)  
Karen Hedlund,  
Jeffrey Mandel, designee for Tokumbo Shobowale  
Paul Williams

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

Ingrid Barbosa-Santiago, Director of Subsidiary Finance  
Thomas Brennan, Senior Vice President – Internal Audit  
Richard Dorado, Senior Counsel  
Kathleen Mize, Deputy CFO & Controller  
Mehul Patel, Chief of Staff  
Carlos Otero, Vice President – Contract Admin./Subsidiary Finance

**Present for the  
Moynihan Station**

**Development Corporation:** Fred Bartoli, Project Manager  
Michael Evans, Acting President  
Rebecca Pellegrini – Project Manager  
Regina Stephens, Acting Corporate Secretary  
Thelma Washington, Executive Secretary

**Present for FRA/USDOT:** Rebecca Reyes-Alicea, FRA NEC Program Director  
Vincent White FRA/USDOT (via video conference)

**Also Attending:** Karen Rae, Governor' Office (via video conference)  
Jay Neveloff, Kramer Levin  
Joseph Boardman, Amtrak  
Andrew Lynn, PANY&NJ  
Angel Martinez, PANY&NJ  
Steve Ventresca, Cool  
Steve Ross, Related  
Jay Kriegel, Related  
Michael Loughran, Related  
Andrew Rosen, Related  
Michael Rosen, Related  
Jeff Blau, Related  
David Greenbaum, Vornado  
Jill Lerner, Kohn Pederson Fox  
Stephen Lefkowitz, Fried Frank

The meeting of the Moynihan Station Development Corporation (“MSDC” or the “Corporation”) was called to order by Chairman John Porcari at approximately 9:00 am. Chairman Porcari noted for the record that the meeting was being web cast. He also noted for the record the Corporation’s policy to welcome public comment on the items on the current Agenda. Chairman Porcari briefly reviewed the protocol for comments.

The first order of business was the approval of the Minutes of the January 18 and February 15, 2013 Directors meetings. There being no changes or corrections to the minutes, upon motion duly made and seconded, the following resolution was unanimously adopted:

186. MOYNIHAN STATION DEVELOPMENT CORPORATION - APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JANUARY 18, 2013 AND FEBRUARY 15, 2013 MEETINGS OF THE DIRECTORS OF THE MOYNIHAN STATION DEVELOPMENT CORPORATION

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RESOLVED, that the Minutes of the meetings of the Corporation held on January 18, 2013 and February 15, 2013, are hereby approved and all actions taken by the Directors present at such meetings, as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

\* \* \*

Next, Michael Evans presented the President's report. Before giving his report Mr. Evans introduced Jeffrey Mandel, designee for Director Tokumbo Shobowale, he also introduced Karen Rae, on video conference from Albany. Mr. Evans stated that there had been a very productive period since the last Board meeting. The Chairman posted principles of key Moynihan stakeholders so that they could review progress on Phase 1, preview upcoming work to affirm commitments to work together to resolve technical challenges on the project and to continue to close coordination of all the regional rail projects in New York City, so that Phase 1 continues to progress on schedule and on budget. Mr. Evans then asked Angel Martinez, Program Manager from the Port Authority of New York and New Jersey ("PANYNJ") to give an update on the status of construction and a summary of some of the issues covered at the Principles' meeting.

Mr. Martinez's report included among other things, that fifty percent of the mini caissons have been put in place, footing work has taken place on several of the platforms, work has started on the C Yard survey, as well as, excavating of footings, demo column encasement work and a steel survey. He stated that the six-week outlook ahead would include no work

during the Easter weekend, as per contract. In the first couple of weeks in April, Mr. Martinez anticipates removal of utilities by Amtrak, catenary work is scheduled to begin June 15<sup>th</sup> through the end of August and then steel erection is anticipated to begin during August. Mr. Martinez stated that rehab work on the monumental stair is expected to begin in the late spring and that he believes there will be visible progress of the work being done on the Project by the summer.

Mr. Martinez reported that a survey of the steel work has been scheduled. He explained that they knew before hand that the steel required remediation, however, they were unaware of the condition of the steel until it was examined up-close. A preliminary report about the extent of the condition of the steel will be received from the structural engineers shortly. Mr. Martinez reported that Skanska USA Civil Northeast, Inc. (“Skanska”) estimated about \$6 million for such remediation however it was decided changes would not be done until a complete determination of the condition of the steel was performed.

Mr. Martinez reported on the issues with the foundation at the Farley Building. He stated that the original station was blasted out of rock. He explained that while digging test pits in the C Yard area they found the depth of the rock is further down than they anticipated. They are investigating the matter and anticipate having a report on the results of the investigation shortly. Mr. Martinez stated that as a result of this unforeseen condition, it will be necessary to use the contingency to cover the cost.

Lastly, Mr. Martinez reported that there are signal problems. He explained that they are working with Amtrak on possibly relocating the signals or they may consider making adjustments by raising the steel several inches. He stated that he expects to receive steel shop drawing from Skanska within the next week.

Mr. Evans presented the next Agenda item requesting approval of the Corporation's operating and capital budgets. Mr. Evans explained that, the New York State Financial law which requires Corporate Directors to approve operating and capital budgets prior to the preceding fiscal year. He further explained that in order for MSDC to be in compliance with the law, the Corporation is asking the Directors to approve a proposed budget covering MSDC's 2013-2014 operating and capital budgets, as well as to approve the capital budget for the maintenance of the Farley Building. On the MSDC operating budget, Mr. Evans stated that he anticipates a budget of \$423,349. This year's budget is reduced by sixty percent compared to last year, and forty five percent reduction from last year in expenses. He explained to the Directors that the reductions were due to reduction in staff costs as a result of Tim Gilchrist's retirement, in addition to the departure of Bronson Fox and the move of Mehul Patel from MSDC to ESD. Mr. Evans stated that MSDC does not anticipate filling these positions, but would return to the Board for approval in the event it becomes necessary to fill the positions in the future. He further stated that, additional costs covered within the budget are travel costs, office supplies, insurance costs, IT costs, phone line expenses and stenography services for board meetings and public hearings that may become necessary during the year.

Mr. Evans continued, explaining that the capital budget covers the design and construction costs for the Phase 1 Project. He stated that the budget for the 2013-14 fiscal year is \$80,700,000 which is more than double over last year's budget; and that the reason for the increase is because this year is the first full year of spending for construction ever on the Moynihan Station Project.

Director Karen Hedlund asked if the capital budget included the contingencies they had discussed previously. Mr. Evans responded affirmatively.

Chairman Porcari commended everyone involved in the construction process for their dedication and care taken in making sure that the construction is off to a good start. He further stated that after years of talking about this Project, that the Project is now actually under construction.

Karen Rae also commented that the State appreciates all the hard work and the progress which has been made on the Project.

Lastly, Mr. Evans discussed the Farley Building's capital budget. He explained that the capital budget for the Farley Building covers the cost of operation and maintenance of the building. He stated that the budget for Farley has increased very little from last year's budget. He reminded the Directors that the building is more than 100 years old and such effects have been seen during the construction of Phase 1, as well as in maintaining the building. Mr. Evans

stated that the Corporation is being very conservative with the contingency for the building. He reminded the Directors that the board had previously given the Corporation authorization to replace the water tank and informed them that the replacement of the water tank project is underway for this year and has been included in the 2013-14 budget. He also stated that a pipe burst a couple of months ago and as a result the basement flooded and caused water to run onto the tracks and platforms. He explained that the basement flood is one example of why the Corporation carries the hefty contingency for work that may be necessary in the building.

Jeffrey Mandel asked if the operating budget is sustainable at the current levels upon completion of Phase 1 work or does it change the way the station will operate. Mr. Evans responded that the completion of Phase 1 won't have a significant impact on the operating cost of the building. He explained that the work is below grade essentially and that the only area where there may be an issue is in the steel supporting the building, but they're correcting those types of issues now.

Following Mr. Evans' presentation of the item, Chairman Porcari entertained a motion for approval. Upon motion duly made and seconded the following resolution was unanimously adopted:

187. NEW YORK (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Approval of MSDC Operating, MSDC Capital and Farley Building Capital Budgets for FY 2013-14
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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 – FY2013-14 Operating Budget, the Moynihan Station Development Corporation – FY2013-14 Capital Project Budget (collectively the “Corporation’s Budget”), and the Farley Building – FY2013-14 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.

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Chairman Porcari requested that Mr. Evans present the next Agenda item, requesting authorization for the Corporation to award a contract for the Connecting Corridor to Skanska USA Civil Northeast (“Skanska”).

In his presentation Mr. Evans stated among other things, that MSDC would use the funding from the Federal High-Speed Rail to advance another component of Phase 1. He explained that in mid January the Corporation put out bids for the Connection Corridor work. In late February four (4) bids were received from Paul J. Scariano, Yonkers Contracting, D’Onofrio General Contractors and Skanska. He stated that of the four (4) bids Skanska was

the low bidder which was substantially below the engineer's estimate for the Project work. As a result of the review of the work plan submitted, as well as the interview with the low bidder by the PANYNJ they believe Skanska knows and understands the work and is capable of performing the work.

There was a brief interruption in the video conferencing due to technical difficulties with the video connection with Washington DC and Albany, New York.

Following the brief interruption Mr. Evans continued and explained that the Project team believes that Skanska's competitive bid is due to the fact that Skanska is already mobilized for the West End Concourse work which gives them the advantage of being familiar with the issues of the building. Mr. Evans recommended that the Board authorize the Corporation to award the contract for the Connecting Corridor work to Skanska.

Following Mr. Evans' presentation of the item, Chairman Porcari entertained a motion for approval. Upon motion duly made and seconded, the following resolution was unanimously adopted:

188. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization for the Moynihan Station Development Corporation ("MSDC") to Award the Construction Contract for the Connecting Corridor to Skanska USA Civil Northeast, Inc.

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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

Skanska USA Civil Northeast, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a contract up to the amount of \$15,915,000 and a 10% contingency (totaling \$17,506,500) with Skanska USA Civil Northeast, Inc. for the construction of the Connecting Corridor 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.

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The next Agenda item was also presented by Mr. Evans, wherein he requested authorization for the Corporation to purchase an Owner's Interest General Liability policy for the Connecting Corridor work.

Mr. Evans informed the Directors that the following three Agenda items were supplemental to the award of the Connection Corridor work. He explained that the first of the three is the purchase of an Owner's Interest General Liability policy for the Connecting Corridor work. He further explained that presently there is an Owner's Interest Liability policy in place for the West End Concourse contract work. However, the policy that the Corporation will purchase for the Connecting Corridor will provide additional coverage for MSDC in the event Skanska's policy does not cover MSDC for an incident in the Connecting Corridor. He stated that this policy would provide \$6 million worth of coverage which will be provided by two separate carriers, Colony and Mt. Hawley, which are the same carriers that provide coverage on the West End Concourse. Mr. Evans informed the Directors that Steve Ventresca, from Cool Insuring Company, ESD's/MSDC's insurance broker, was present to answer any questions that

the Directors may have regarding the policy.

Director Hedlund asked Mr. Ventresca in what way has Storm Sandy impacted the market for insurance in New York City (“NYC”). Mr. Ventresca responded that construction and other risks in New York City have faced a tightening market over the past several years due to terrorism and general liability exposure for third-party with respect to construction. He explained that Sandy has further impacted the tightening of the market which is evident when carriers withdraw or when carriers make a retention or deductible higher, when and if they’re going to cover accounts similar to the MSDC Project.

Following questions and comments by the Directors, Chairman Porcari entertained a motion for approval, upon motion duly made and seconded the following resolution was unanimously adopted:

189. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Purchase Owner’s Interest General Liability Policy for the Connecting Corridor Work of Phase 1 of the Moynihan Station Project and Authorization to Take Related Actions

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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 Colony Insurance Company and Mt. Hawley Insurance Company to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to purchase an Owner’s Interest General Liability policy for the Connecting Corridor Work of Phase 1 of the Moynihan Station Project for an amount not exceed \$121,747 with a 10% contingency of \$12,175 for an aggregate of \$133,922 for the purposes and 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.

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Mr. Evans presented the next Agenda item, requesting authorization to enter into a Letter Agreement with Con Edison as part of the Connecting Corridor Improvement Project. Mr. Evans explained that the Letter Agreement with Con Edison is required for work that will impact Con Edison's facilities which will require the relocation of some of Con Edison's utilities. The Letter Agreement is a standard agreement between Con Edison and the entity doing the work which impacts Con Edison's systems. He stated that the Letter Agreement is similar to the Force Account agreements entered into with Amtrak and the Long Island Railroad. Mr. Evans informed the Directors that the Letter Agreement has been reviewed and approved by in-house and outside counsel. He explained that most of the work to be performed by Skanska is included in Skanska's construction contract. He further explained that Con Edison will be required to perform some of the work as well and that the Corporation is seeking authorization through the Letter Agreement to pay Con Edison directly for any work performed by Con Edison or their contractors.

Following Mr. Evans' presentation Director Hedlund asked if Con Edison had agreed to adhere to and perform the work according to the Project's schedule. Mr. Evans responded affirmatively, stating that Con Edison is working with the Port Authority team, design team and they are having coordination meetings as well.

There being no other comments or questions from the Directors, Chairman Porcari entertained a motion for approval. Upon motion duly made and seconded the following resolution was unanimously adopted:

190. NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization for MSDC to Enter Into a Letter Agreement with Consolidated Edison Company of New York, Inc. (“Con Edison”) with Regard to Obtaining a Permit from Con Edison for Work that Must be Performed on Con Edison Facilities as Part of the Connecting Corridor Improvement Project

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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 the Consolidated Edison Company of New York, Inc. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to enter into a Letter Agreement with Consolidated Edison Company of New York, Inc. on the terms and conditions as set forth in the Materials; and be it further

RESOLVED, that MSDC is authorized to reimburse Con Edison for work performed by Con Edison and its own contractors, which is estimated to cost \$335,044 with a 10% contingency of \$33,505 for an aggregate total estimated cost of \$368,549, for the purposes and 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.

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Ms. Evans presented the next Agenda item, requesting authorization for the Corporation to Amend a Legal Services contract with Holland & Knight, LLP.

Mr. Evans explained that as a result of the Corporation's repackaging of Phase 1 work into a separate contract, the Corporation has spent more in legal cost for Phase 1 than what was originally budgeted for legal services. He stated that Rick Rohn of Holland and Knight has been the lead counsel on the development of MSDC's construction contract, agreement negotiations with Amtrak, MTA, LIRR and others. Mr. Evans stated that he believed that Mr. Rohn has provided superb services and it would be advantageous to the Project to amend the Legal services contract with Holland and Knight. Lastly he stated that he believed that \$150,000 would be a sufficient amount to cover the cost of legal services for Phase 1, however, the Corporation would seek Board approval if it becomes necessary in the future to increase the amount of the contract.

Following Mr. Evans' presentation, a motion was duly made and seconded and the following resolution was unanimously adopted:

191. New York (New York County) – Moynihan Station Civic and Land Use Improvement Project -- Authorization to Amend the Contract with Holland & Knight LLP for Legal Services Relating to Phase 1 of the Moynihan Station Project; Authorization to Take Related Actions

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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 Holland & Knight ("Counsel") 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 legal services relating to Phase 1 of the Moynihan Station Project with Holland & Knight LLP in order to increase the total contract amount by \$150,000 to a new total amount of \$900,000, for the purposes and services, and substantially on the terms and conditions, set forth in the Materials; and be it further

RESOLVED, that the President, or another Officer of the Corporation, or their designee(s), 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 to take all actions as may be necessary or proper to implement the foregoing resolutions.

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Next, Mr. Evans presented the last item, requesting authorization to place insurance policies to cover the Farley Building. Mr. Evans explained that the solicitation process was handled by Cool Insuring, ESD's insurance broker. He informed the Directors that since the tightening of the insurance market, several carriers declined to provide quotes, and the carrier providing coverage for the Corporation's commercial property is no longer in the commercial property market. However, competitive quotes were received from Affiliated Factory Mutual to provide full coverage for the Farley Building at a slightly lower price over last year price. Also, Cool recommends retaining the Chubb Group for the general liability policies. Mr. Evans stated that the total estimated cost of the policies is \$776, 276. He let the Directors know that Mr. Ventresca from Cool would address any questions regarding the policies.

Director Hedlund asked if the policies were one year policies. Mr. Ventresca responded affirmatively. Mr. Evans explained that the renewal of the policies would be presented to the Board on a yearly basis, most likely at the March board meeting.

Following the presentation Chairman Porcari entertained a motion for approval, upon motion duly made and seconded, the following resolution was unanimously adopted:

192. 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 Affiliated Factory Mutual and the Chubb Group of Insurance Companies; and to Take Related Actions
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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., Affiliated Factory Mutual and the Chubb Group of Insurance Companies; to be responsible; and be it further

RESOLVED that, in accordance with the Materials, the 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 Affiliated Factory Mutual and the Chubb Group; and be it further

RESOLVED that the total annual cost of such insurance shall not exceed \$776,276; and be it further

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

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Chairman Porcari requested a 10 minute break before moving into Executive Session.

Following a 10 minute break, Chairman Porcari 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:

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

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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.

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The Directors' open meeting was temporarily adjourned to conduct an Executive Session. All persons were requested to leave the room with the exception of the Directors, members of ESD's senior staff and others.

The Executive Session concluded at approximately 11:07. At the conclusion of the Executive Session Chairman Porcari had to leave the meeting to attend to an urgent matter. Once the meeting was back in Open Session, Director Karen Hedlund acted as Chair and noted for the record that no votes were taken during the Executive Session.

There being no additional business, the meeting was adjourned at approximately 11:09 a.m.

Respectfully submitted,

Regina Stephens  
Acting Corporate Secretary



# ITEM 2

FOR CONSIDERATION

May 23, 2013

TO: The Directors

FROM: Michael Evans

SUBJECT: Officers of the Corporation

REQUEST FOR: Appointment of Officer – General Counsel

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BACKGROUND

The office of General Counsel to the Moynihan Station Development Corporation (the "Corporation" or "MSDC") is currently vacant. As a subsidiary of the New York State Urban Development Corporation d/b/a Empire State Development ("ESD"), MSDC derives its power and authority from ESD and is governed by ESD's enabling statute and other laws and regulations applicable to ESD. In order to ensure continuity of advice regarding statutory compliance and uniform policy in the exercise of the powers and exemptions afforded by ESD's enabling legislation, and to efficiently utilize staff, ESD's General Counsel serves as General Counsel to its subsidiaries.

Lawrence A. Jacobs was appointed Executive Vice President – Legal and General Counsel of ESD as of April 1, 2013. It is now proposed that Mr. Jacobs be appointed General Counsel of the Corporation effective as of the same date.

Mr. Jacobs graduated with honors from Temple University and Brooklyn Law School, where he was a member of the *Law Review*. After graduating from law school, Mr. Jacobs was an associate at the law firm of Squadron, Ellenoff, where he was made partner in 1991. After serving as partner for five years, Mr. Jacobs joined News Corporation as Executive Vice President and Deputy General Counsel in 1996. Mr. Jacobs was named Senior Executive Vice President and General Counsel in 2005 and served in that capacity until June 2011. Mr. Jacobs is an Adjunct Professor of Mass Media Law at Brooklyn Law School where he also sits on the President's Council.

REQUESTED ACTION

The Board is requested to appoint Lawrence A. Jacobs to the office of General Counsel of the Corporation as of April 1, 2013 and to confirm that he is an officer of the Corporation within the meaning of the New York State Urban Development Corporation Act and the provisions of the Corporation's bylaws, including the indemnification provisions thereof.

RECOMMENDATION

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

ATTACHMENT

Resolutions

May 23, 2013

Moynihan Station Development Corporation - Appointment of Officer – General Counsel

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BE IT RESOLVED, that Lawrence A. Jacobs be, and he hereby is, appointed to the office of General Counsel to the Moynihan Station Development Corporation (the "Corporation") until his earlier resignation or removal, his appointment being effective as of the date indicated in the attached materials, a copy of which is hereby ordered to be filed with the records of the Corporation; and be it further

RESOLVED, that in accordance with and for all the purposes of the New York State Urban Development Corporation Act and the bylaws of the Corporation, including but not limited to the indemnification provisions thereof, the foregoing individual is an "officer" of the Corporation, and be it further

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# ITEM 3

FOR CONSIDERATION

May 23, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Amend the Contract for Architectural, Engineering, Design, and Construction Phase Services with Skidmore, Owings & Merrill LLP; and Authorization to Take Related Actions

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BACKGROUND

In April 2010, the Directors authorized the Amended and Restated Agreement for Architectural and Engineering and Other Consulting Services with Skidmore, Owings & Merrill, LLP (“SOM”). That agreement amended and restated the earlier SOM architectural, engineering, and consulting services contract that had been competitively procured in the nineteen-nineties. The amendment and restatement of the original contract was necessary in order to reflect changes to the Project, including the then newly adopted phased approach for the development of Moynihan Station.

On October 12, 2012, the Directors authorized an amendment to the SOM contract in order for SOM to provide Construction Phase Advisory services for the Phase 1 project and to advance the re-packaging of designs so that the Connecting Corridor Improvement Project could be bid as a separate construction contract.

SOM’s Scope of Services in 2010 included “Feasibility and Master Plan Studies” relating to the Phase 2 train hall. Specifically, this scope included a review of the proposed baggage concourse, a review of plans for access to the Diagonal Platform, and a study of power service for the complex under different train hall and commercial development scenarios. MSDC moved forward with the baggage study and baggage concourse review in 2012, and MSDC also had SOM conduct initial work on the electrical power study. The Diagonal Platform review was postponed due to developments with Amtrak’s Gateway tunnel project. The work that SOM completed under the described tasks was performed satisfactorily. In particular, it should be noted that the consequence of the baggage concourse review exercise was a reduction in estimated Phase 2 construction costs of between \$100 – 200 million.

Additional work best categorized under “Feasibility and Master Plan Studies” is now required. In particular, MSDC would now like to advance a more sophisticated electrical power study as well as conceptual level utility planning and space allocation for the Farley building under various development scenarios that are now under consideration as part of the Phase 2 train hall project.

The work that will be accomplished under this amendment by SOM and its subconsultants includes:

- Test fits and space planning for the Farley building based on assessment of highest and best uses and compatibility with the Phase 2 train hall conceptual Master Plan completed by SOM in 2012—including gross and net usable areas, approximate disposition in the building, and description of core and shell building requirements; access and circulation elements; mechanical, electrical and plumbing “MEP” requirements; etc.;
- This exercise will include an evaluation of retail, hotel, commercial office uses within the Farley Building and identify appropriate comparables, gross and net rents, and specific physical requirements for each use, such as base building cooling and power requirements and/or atypical tenant work letter requirements;
- Determination of common area charges and base building operating cost for each proposed use/function;
- Conceptual design package to be used for cost estimating purposes.

Because of its role in developing the current conceptual Master Plan for the Phase 2 train hall, SOM is uniquely qualified to carry out this work and the Corporation is best served by amending the contract with SOM to accomplish this work. SOM will coordinate the work of other subconsultants necessary to accomplish the tasks described above, and MSDC will retain the right to approve or disapprove the use of a subconsultant.

The fees for this planning work are estimated to cost **\$362,000**. Staff recommends a 10% contingency of **\$36,200**.

This amount is based on the proposal submitted by SOM and reviewed by the Port Authority and MSDC. The staff of MSDC and the Port Authority concur that the fees are reasonable and fair. Additionally, MSDC and PANYNJ have interviewed the proposed subconsultants for the market study and financial feasibility component of the work, and will exercise sole discretion over the selection of this subconsultant.

Therefore, authorization is requested to amend the SOM contract by a total of **\$398,200**, for a new total contract amount not to exceed **\$13,785,130**, inclusive of contingency in order to cover the expanded Feasibility and Master Plan Studies relating to the Phase 2 train hall and associated commercial development.

For reference purposes, a summary of the SOM contract amendments to date is attached to these materials. A Contract Reporter Exemption is being sought for this Amendment.

### **FUNDING**

The work advanced under this amendment will be funded through a combination of funds from MSDC pre-development funds, the Port Authority of New York and New Jersey and Amtrak.

### **RESPONSIBLE PARTIES**

Pursuant to State Finance Law Section 139-j and 139-k and MSDC's policy related thereto, staff has (a) considered the ability of SOM to perform the services as set forth in these materials, 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 finds SOM to be responsible.

### **AFFIRMATIVE ACTION**

MSDC's DBE/MBE/WBE Program Plan will apply to these contracts. SOM will be encouraged to use best efforts to achieve a Minority Business Enterprise participation goal of 15% and a Women Business Enterprise participation goal of 5% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the Project. This is a comprehensive goal for all areas of the project (i.e., professional, construction and purchasing of supplies), and therefore the overall goal for the project is 20%. MSDC will also encourage DBE participation, but there is no numerical goal for DBEs.

### **ENVIRONMENTAL REVIEW**

The requested authorization 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 with this authorization.

### **REQUESTED ACTIONS**

The Directors are requested to authorize the Corporation to amend the existing contract with SOM for architectural, engineering, design, and construction phase services, as set forth in these materials.

### **RECOMMENDATION**

Based on the foregoing, MSDC staff recommends approval of the requested actions.

**ATTACHMENTS**

Resolution  
Summary of SOM contract amendments

May 23, 2013

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Contract for Architectural, Engineering, Design, and Construction Phase Services with Skidmore, Owings & Merrill LLP; and Authorization to Take Related Actions

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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 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 \$398,200 (\$362,000 plus a 10% contingency) to a new aggregate limit of \$13,785,130, for the purposes and 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.

\* \* \*

Summary of SOM Contract Amendments

SOM	Description	Amount	Contingency	Total
Base Contract	Phase 1 Design Contract	\$5,755,928.00	\$744,072.00	\$6,500,000.00
Amendment #1	Insurance Modification	\$0.00	\$0.00	\$0.00
Amendment #2	PB Pedestrian Modeling	\$536,430.00	\$80,500.00	\$616,930.00
Change Order #1	Phase 1 Staging Drawings	\$211,884.00	(\$211,884.00)	\$0.00
Change Order #2	Reconfigure Subway Stairs	\$80,000.00	(\$80,000.00)	\$0.00
	Additional Bollards Surveys	\$80,000.00	(\$80,000.00)	\$0.00
	LIRR Waiting Area Alternate	\$200,000.00	(\$200,000.00)	\$0.00
	Repackage Phase 1 Bid Docs	\$200,000.00	(\$200,000.00)	\$0.00
Amendment #3	Construction Phase Services	\$5,225,000.00	\$522,500.00	\$5,747,500.00
Amendment #4	33rd St Connector Repackage	\$185,000.00	\$18,500.00	\$203,500.00
	33rd St Connector CA Services	\$290,000.00	\$29,000.00	\$319,000.00
<b>CONTRACT TOTAL</b>		<b>\$12,764,242.00</b>	<b>\$622,688.00</b>	<b>\$13,386,930.00</b>
Proposed Amendment	Expanded Feasibility & Master Plan Studies	\$362,000.00	\$36,200.00	\$398,200.00
<b>NEW CONTRACT TOTAL</b>		<b>\$13,126,242.00</b>	<b>\$658,888.00</b>	<b>\$13,785,130.00</b>

# ITEM 4

FOR CONSIDERATION

May 23, 2013

TO: The Directors

FROM: Michael Evans

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

REQUEST FOR: Authorization to Amend the Contract with Thacher Associates, LLC for Integrity Monitor Services related to Phase 1 Moynihan Station; Authorization to Take Related Actions

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**BACKGROUND**

On June 27, 2012, after a competitive procurement process, the MSDC Board of Directors authorized a contract with Thacher Associates, LLC for Integrity Monitor Services related to Phase 1 of the Moynihan Station Project.

Thacher's tasks under this contract include:

- Review of all existing procedures and processes for vulnerability to fraud, corruption, cost abuse, safety, and/or environmental risks;
- Design and implementation of corruption prevention programs;
- Records review and compliance;
- Forensic review and oversight;
- Forensic auditing and investigations.

The original Request for Proposals for Integrity Monitor Services covered the entire Phase 1 project: (1) the West End Concourse Expansion, (2) the Emergency Ventilation System, and (3) the Connecting Corridor Improvement Project. Thacher was the winning bidder for these services. However, due to funding constraints, only the West End Concourse Expansion construction contract was awarded. Therefore, Thacher's services were limited to that construction contract with a commensurate reduction in the cost of the services.

Subsequently, the award of a \$30 million grant from the High Speed Intercity rail Program administered by the Federal Railroad Administration allowed the Connecting Corridor Improvement Project portion of Phase 1 and the platform ventilation fan room structures over C-yard to both move into construction. In January 2013, the MSDC Board authorized a change order to the Skanska contract to include the C-yard fan room structures. And after a

competitive bidding process, on March 27, 2013 the MSDC Board awarded the construction contract for the Connecting Corridor Improvement Project to Skanska USA Civil Northeast, Inc.

Integrity Monitor services will now be required for both the Connecting Corridor construction contract and the new fan room work in C-yard. Because of the complications and coordination challenges that would result from using an additional firm to perform the same oversight functions with regard to Skanska and the construction management team, MSDC staff believes that it is in the best interest of the Corporation to amend the existing contract with Thacher to include Integrity Monitor services for the Connecting Corridor Improvement Project.

In addition, Thacher was originally selected through a competitive process for the entire Phase 1 project, which included the additional work now being pursued.

Thacher has performed its duties satisfactorily, and Thacher is willing to amend its contract on essentially the same terms and pricing as the original contract. Thacher will be compensated according to the same percentage (1.09%) of the combined total of the contracts for construction and construction management. A chart detailing the compensation structure is below.

Sub-project	General Contractor (Skanska)	Construction Manager (STA JV)	Integrity Monitor (Thacher)	Thacher's % of STV/Skanska Contracts
West End Concourse Expansion	\$147,750,000	\$19,921,743	\$1,825,000	1.09%
C-Yard Fan Rooms	\$22,260,679	n/a	\$242,641	1.09%
Connecting Corridor	\$15,915,000	n/a	\$173,474	1.09%
<b>TOTAL</b>	<b>\$185,925,679</b>	<b>\$20,081,375</b>	<b>\$2,241,115</b>	<b>1.09%</b>

A Contract Reporter Exemption is being sought for this contract amendment.

**COST**

The cost of Integrity Monitor services relating to the Connecting Corridor Improvement Project and to the fan room work in C-yard is budgeted at \$416,115, which is based on the dollar value of the Skanska contract. With a 10% contingency of \$41,612, the total projected cost of this contract amendment is \$457,727. This will increase the total amount of the contract to \$2,282,727.

## **FUNDING**

The contract will be funded at 100% with federal funds from the Appropriations grant as part of the approved Phase 1 budget. It is included in the program management category.

## **RESPONSIBLE PARTIES**

Pursuant to State Finance Law Section 139-j and 139-k and MSDC's policy related thereto, staff has (a) considered the ability of Thacher Associates, LLC to perform the services as set forth in these materials, 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 finds Thatcher Associates, LLC to be responsible.

## **AFFIRMATIVE ACTION**

MSDC's DBE/MBE/WBE Program Plan will apply to this contract. Thacher will be required to use their best efforts to achieve a Minority Business Enterprise participation goal of 15% and a Women Business Enterprise participation goal of 5% of the total dollar value of work performed pursuant to contracts or purchase orders entered into in connection with the construction work related to the Project. This is a comprehensive goal for all areas of the project (i.e., professional, construction and purchasing of supplies), and therefore the overall goal for the project is 20%. MSDC will also encourage DBE participation, but there is no numerical goal for DBEs. Thatcher's DMWBE plan includes a participation rate of 28.6%, and Thacher has affirmed that it will be able to meet MSDC's DMWBE goals with this amendment.

## **ENVIRONMENTAL REVIEW**

The requested authorization to amend this contract for consulting 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 with this authorization.

## **REQUESTED ACTIONS**

The Directors are requested to authorize the Corporation to amend the contract with Thacher Associates, LLC in an amount not to exceed \$457,727 (\$416,115 plus a 10% contingency) for total overall contract amount of \$2,282,727 a period of five (5) years.

## **RECOMMENDATION**

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

**ATTACHMENTS**

Resolution

May 23, 2013

NEW YORK CITY (NEW YORK COUNTY) – Moynihan Station Civic and Land Use Improvement Project – Authorization to Amend the Integrity Monitor Contract with Thacher Associates LLC; and Authorization to Take Related Actions

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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 Thacher Associates LLC. to be responsible; and be it further

RESOLVED, that in accordance with the Materials, the Corporation is hereby authorized to amend the contract for Integrity Monitoring Services with Thacher Associates, LLC in the amount of \$457,727 (\$416,115 plus a 10% contingency) for new total contract amount of \$2,556,727 for a term not to exceed five (5) years 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.

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